THE EFFECT OF ACTIONS OF CRIMINAL JUSTICE AGENTS ON ACCESS TO JUSTICE AND PERSONS AWAITING TRIAL

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ABSTRACT

The actions of criminal justice agents play a crucial role within the Criminal Justice System (CJS) and in Ensuring Access to Justice (A2J) for Persons Awaiting Trial (PAT). These actions are often influenced by Criminal Justice Approaches (CJA) which should reflect in policy and practice. Previous studies on CJAs' influence on actions of persons driving the agencies have been more from the Western context than on how they operate in Nigeria. This study was, therefore, designed to examine the effects of CJAs such as crime control, due process, rehabilitation, just deserts and power approach on legislation, principles and practice on the actions and inactions of agents within Nigeria's CJS.

The study was premised on Sociological Jurisprudence and adopted a system-wide approach to qualitative methodology. Primary data included the Nigerian Constitution 1999 (as amended), Criminal Code, Penal Code, Administration of Criminal Justice Act (ACJA 2015), Child Rights Act, International Bill of Human Rights, International Basic Principles and legislation from the United Kingdom and United States of America. Secondary data included books, journal articles, and international reports. Insights from secondary data were relevant and helped answer research questions particularly in the context of the comparative analysis.

Criminal justice perspectives are reflected in legislation such as the ACJA 2015 which recommends a restorative approach to criminal justice. The Child Rights Act recommends a rehabilitative approach to juvenile justice, which should ideally affect the practice of agents of the system. In contrast to the United Kingdom and United States of America, the actions and inactions of agents of the system, particularly law enforcement in Nigeria appear random and do not conform to criminal justice approaches reflected in policy and procedure. The actions of agents of the criminal justice system play a crucial role in ensuring A2J particularly for PAT who represent over 70% of the Nigerian prison population. The due process, non-intervention, rehabilitation, bureaucratic, managing offender and restorative approaches work best to ensure A2J for PAT. The actions of some agents of the CJS such as arbitrary arrest and detention, and other acts of impunity do not conform to the recommended CJAs and deny A2J. The situation in Nigeria is further compounded by weak policies, which do not provide a proper institutional framework. In addition, the international framework on A2J is merely prescriptive and difficult to enforce on state signatories. These factors, amongst others, have resulted in loss of confidence in the system.

An integrated approach to criminal justice which incorporates the crime control, due process, non-intervention, rehabilitation, bureaucratic, managing offender and restorative approaches to criminal justice is required for processing persons awaiting trial in Nigeria. The Nigerian government needs to ensure constant assessment and reassessment of the criminal justice system in the context of recognised criminal justice approaches and ensure that the actions of criminal justice agents, normative and institutional frame work are harmonised to conform with international provisions on access to justice for persons awaiting trial.

Keywords: Criminal justice approaches, Access to justice, Agents of criminal justice, Persons awaiting trial

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DEDICATION

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CERTIFICATION

I certify that this thesis was undertaken by Bukola Odesiri Ochei in the Faculty of Law, University of Ibadan

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ABBREVIATIONS

2nd Cir.	Second Circuit
ACJA	Administration of Criminal Justice Act 2015
ACRWC	African Charter on the Rights and Welfare of the Child
All ER	All England Reports
All FWLR	All Federation Weekly Law Reports
All NLR	All Nigeria Law Reports
AU	African Union
CAT	Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment
CRC	Convention on the Rights of the Child
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic Social and Cultural Rights
LFN	Laws of the Federation of Nigeria
PAT	Persons Awaiting Trial
UDHR	Universal Declaration of Human Rights
UK	United Kingdom (England and Wales)
UN	United Nations
USA	United States of America
VAPPA	Violence Against Persons (Prohibition) Act 2015

CHAPTER ONE

GENERAL INTRODUCTION

1. Background to the Study

Access to justice is a fundamental and essential part of the criminal justice process;[1] an intrinsic aspect of the rule of law and a principal condition for the success of any democratic society. It refers to the diverse components that lead to appropriate justice against the infraction of a right, such as advisement on rights and procedures, legal aid, legal representation and includes general access to the courts[2]. Access to justice encompasses the substantive and procedural mechanisms fashioned to ensure that citizens have prospects of pursuing recompense for the breach of their rights and includes human and material resources available to the criminal justice system.[3] It also refers to the substantial and procedural access to fair and equitable sets of laws[4] and is in essence, central to the criminal justice process.

One major problem of Persons Awaiting Trial (PAT) is access to justice. Without access to justice, a PAT could be detained for long periods of time till the outcome of trial; thereby loosing contact with families friends and the community, this effect is not limited to the awaiting trial detainee as persons awaiting trial in the community also face problems associated with delay in the trial process such as; uncertainty of their fate, ostracization, loss of job, stigmatization and a slow pace of trial.[5] According to Ojukwu:[6]

> It is important that any person accused of any crime is given an opportunity to determine his/her guilt or innocence at the earliest opportunity even as the constitution presumes the innocence of every person accused of crime.

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[1] Oputa, C.A. 1989. Rights in the political and legal culture of Nigeria, 50.
[2] Anon.2015.Report of the Committee on *Equality and Non-Discrimination in the Access to Justice, Draft Resolution by the Committee on Equality and Non-Discrimination*. Text adopted by Council of Europe assembly on 24 April, 2015. Retrieved 26 July, 2015, from http://assembly.coe.int
[3] Ojukwu, E. (et. al.), 2012 Handbook on Pre-Trial Detainee Law Clinic, 121.
[4] Rawls, J. 1999. A theory of justice.
[5] *Innovating access to justice for awaiting trial inmates (ATIs') of the Nigerian criminal justice system*. Retrieved October 12, 2014, from http://innovationlaw.org/wp-content/uploads/2014/04/paper-Access-to-justice-to-Awaiting-Trial-Inmates-in-Nigeria.pdf
[6] Ojukwu E., et.al. 2012. ibid.

> It will serve the interest of justice and conform to civilized standard if the legal process provides an early opportunity for hearing all sides of a case. It is an abuse of all known rules of human rights to keep a person... without trial for an indefinite and unpredictable length of time.

In Nigeria, the arrest process and subsequent investigation of an alleged offence, more often than not, leads to pre-trial detention. Persons are detained from arrest to criminal investigation and pending the outcome of trial.[7] As at 2014, an estimated seventy percent (70%) of the inmates of the Nigerian prison system were awaiting trial.[8] PAT are remanded in conditions worse than those of convicted prisoners, more often than not, for years on end.[9] Though legally presumed innocent until proven guilty; most PAT are suspected of relatively minor, non-violent offences and are not likely to receive a prison sentence, if convicted.[10] A large number of PAT may not be convicted of the charges they are accused of because the state is for any number of reasons, unwilling or unable to proceed with or conclude the trial process.[11]

Justice depends on having a fair chance to be heard regardless of whom a person is, what offence they are suspected of having committed, the financial circumstances of such persons and whether the person is awaiting trial in the community or on remand. Legal representation is crucial to safeguarding fair, equitable and meaningful access to justice in the criminal justice system. Yet far too many Nigerians are unable to gain access to justice because they are unable to afford legal services or are ignorant of their rights.

PAT have not been sentenced and are not under punishment. International and national laws and rules recognise their special status,[12]therefore they should be regarded and treated as innocent. Indeed, the law recognises the presumption of innocence in favour of the

[7] Ojukwu, E. (et. al.), 2012. op. cit.
[8] Nigerian Prison facts. Retrieved February 22, 2015, from www.nigerianprison.org
[9] Huber, A. 2015.Pretrial detention: addressing risk factors to prevent torture and ill-treatment. Penal Reform International Fact Sheet, 2nd ed. Retrieved August, 22, 2015 from https://www.aptch>content>files_res
[10] See generally, Access to Legal Aid in Criminal Justice Systems in Africa Survey Report, UNODC, Vienna, 2011. 35
[11] Schonteich, M. 2014. Presumption of Guilt: The Global Overuse of Pretrial Detention, 11.
[12] Section 35 (5) Constitution of the Federal Republic of Nigeria (CFRN) 2004

accused person.[13]However, in practice, the opposite is the case. PAT in detention tend to be treated worse than convicted persons.[14]Ordinarily, detention pending the outcome of trial should be used sparingly, however it is routinely used in the Nigerian criminal justice system and in most cases, this is because they do not have timely access to legal representation, cannot afford legal representation even if available, or are ignorant of their rights. Even where legal aid exists, they can only do so much as their programme and activities are severely restricted by lack of funds and bureaucratic bottlenecks and restrictions.

Lack of access to justice directly impacts the presumption of innocence. The foundation of the Nigerian criminal justice system is that no person should be punished without the benefit of due process. The effect of lack of access to justice in Nigeria is; overcrowding of prisons, corruption, human right abuses, ill health and even death. Presumed innocent, yet treated worse than convicted persons, PAT have become victims of an inept, decayed and outdated system that is due for an overhaul.[15] The Nigerian criminal justice system is in effect, undermining the rule of law and according to Dicey "*...no man is punishable or can be lawfully made to suffer in body or goods except for a distinct breach of law established in the ordinary legal manner before the ordinary courts of the land*." [16]

Bamgbose [17] posits that undue delay in dispensing criminal justice is the main cause of the swelling ranks of PAT in the Nigerian criminal justice System,[18]and this is irrefutable in light of the large number of PAT and the human rights abuses they face day in, day out. The plight of persons awaiting trial - in detention or out on bail in the community – is in dire need of urgent attention. The fact that a person is awaiting trial in the community does not make his situation any better, the cloud of insecurity also hangs over him as he is

[13] Section 36 (5) CFRN. Ibid.
[14] Schonteich, M. op.cit.
[15]Agbonika J. 2014. Delay in the administration of criminal justice in Nigeria: issues from a Nigerian viewpoint, 130-138.
[16]Dicey A.V. as cited in Denning, A. (1955), The road to justice, 1.
[17]Bamgbose, O.A. 2010. The sentence, the sentencer, and the sentenced: towards prison reform in Nigeria, 46.
[18]Bamgbose, O.A. The Sentence, the sentencer, and the sentenced. Ibid; See also Olatunbosun, A. 2000. The plight of awaiting trial persons under the criminal justice system in Nigeria, and; Olatunbosun, A. 2012, *Criminal justice in Nigeria*.

neither here nor there. The delay in the justice process can have far reaching effects on the awaiting trial person by negatively affecting their families, financial stability and standing in the community.[19]

It is important to point out that there are common challenges facing the Nigerian criminal justice system, such as corruption, lack of sufficient funding and equipment, and incessant interference from political bigwigs.[20] But in order to ensure the rule of law and due process, the criminal justice agencies must be regulated so that they do not act at the expense of due process and fair trial of the accused persons and the society at large.

The objective of this research is to comparatively analyse criminal justice approaches,[21] which reflect in legislation, principles, practice and procedures, and influence the actions of actors in the criminal justice system that affect access to justice in Nigeria. This research will also identify factors that have encouraged lack of access to justice and lengthy trial process which leads to long durations of remand and severe human rights infractions, and put forward recommendations which will assist the Nigerian government and the criminal justice system to respect the constitutional and fundamental human rights of persons awaiting trial, especially pretrial detainees; achieve international standards on access to justice, and reduce the awaiting trial detention rate in the Nigerian prisons.

[19]See *Alade v. Federal Republic of Nigeria, ECW/CCJ/APP/05/11* where the court found that the prolonged detention of Alade was unlawful, and violated both the African Charter on Human and Peoples' Rights and the 2005 ECOWAS Protocol

[20]Tosin Osasona May 06, 2015. Time to mend Nigeria's broken criminal justice system (1). *The Guardian*. Retrieved June 12, 2015 from http://www.nguardiannews.com/2015/05/time-to-mend-nigerias-broken-criminal-justice-system-1/

[21]The field of criminal justice is a response to the problems of the criminal justice system agencies and is a relatively new field of study which emerged in the early 1960s as an offshoot of criminal law and criminology. It emerged in the United States of America as a field of study which attempts to unify policy formation. It must be pointed out that no single view of criminal justice perspective exists, instead the questions to be asked are; what are the dominant perspectives on criminal justice and what is its role in the criminal justice system. See generally, Siegel, L.J. and Worral, J.L. 2014, *Introduction to Criminal Justice*, 21-28.

Law is the mainstay of any society; it serves as the mechanism for regulating the behaviour and actions of people and organizations. Olomola and Bamgbose aver that;[22]

> The importance of law in any society is to prevent a situation of anarchy and misrule. Thus, every human society is governed by laws of some sort. Law is thus the body of rules made by the state to regulate the activities of men and women in the community as they go about their daily aspiration.[23]

Society creates laws in order to regulate the conduct of people and these laws, do not enforce themselves, a system is required to carry out the laid down laws, and the major means of controlling deviant social behaviour, is the criminal justice system[24]. The criminal justice system is the system of practices and institutions of government directed at mitigating and deterring crime, upholding social control and sanctioning individuals who violate the laid down laws with penalties.[25]The criminal justice system consists of four major elements, namely; law enforcement, prosecution/defence, judiciary and penal institutions.[26] The primary aim of the criminal justice system is the dispensation of justice in accordance with the rule of law[27] and when a person is found or suspected to have contravened the laid down laws of the state, that person is arrested and handled through the criminal justice system.

The aim of an effectual criminal justice system ought to be upholding the rule of law[28] and due process by striking a balance among punishing the guilty, protecting the innocent and

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[22] Olomola, O. and Bamgbose, O.A. 2013. The dynamics of street law and community awareness: revisiting the system of clinical legal education in Nigeria. *Zambia Open Law Journal. 1.1:121-147*

[23] op.cit. pg. 129

[24] Davies M., et. al. 2005. *Criminal justice: An introduction to the criminal justice system in England and Wales*, 4

[25]Cronkhite, C. 2007. Criminal justice administration: strategies for the 21st Century; Hostettler, J. 2009. *A history of criminal justice in England and Wales.*; Dambazau, A. B. 2012. *Criminology and criminal justice.* 174; Siegel, L. J. and Senna, J. J. 2005. *Introduction to criminal justice,* 8.; Davies M. et. al, *Criminal justice: an introduction to the criminal justice system in England and Wales*

[26] Ojukwu E., et.al. 2012. *Handbook on Pretrial Detainee Law Clinic* op.cit.

[27]See Dicey as cited in Denning, A. The road to justice, op. cit.

[28]The rule of law requires that people should be governed by accepted rules, rather than by arbitrary decision. These rules should be general and abstract, known and certain, and apply **equally** (emphasis mine) to all individuals. See Younkins, E. 2000. The purpose of law and constitutions. Le Quebecois Libre. 66.2:32.; See also, Elegido, who averred as follows: *No doubt it is very important that public officials respect the law in their actions, but according to the great majority of jurists and philosophers who have expounded it, the ideal of the rule of law goes far beyond this…the ideal rule of law has evolved which demands….that the government should respect the law in all its actions….* Elegido, J.M. 2010. Jurisprudence. 184

processing suspects and awaiting trial persons.[29] This aim cannot be said to have been met when majority of the population and particularly people awaiting trial do not have access to justice. According to Rawls, "…*Justice is the first virtue of social institutions as truth is of systems of thought. A theory, however elegant and economical must be rejected if it is untrue; likewise laws and institutions, no matter how efficient and well arranged must be reformed or abolished if they are unjust."* [30]

Rawls further postulated that the primary subject of justice is the basic structure of society. This relates to ways in which the criminal justice institutions determine their actions. His aim was to present an idea of justice which hypothesizes and raises to a higher plane, the theory of social contract as found in Locke, Rousseau, and Kant[31] to the effect that it is not to be thought that the original contract was one to enter an identified society or to set up a certain form of government, but rather, that the principles of justice for the basic morphology of society are the object of the original agreement. To him, these are the principles that free and logical persons who are interested in promoting their own interests, would accept in an incipient position of equality as delineating the basic terms of the association. These principles are to regulate all further agreements; they specify the kinds of social cooperation that can be entered into and the form of government that can be established. He perceives this way of regarding the principles 'justice as fairness.'[32]

Rawls postulated two principles of justice[33];

1. Each person is to have an equal right to the most extensive basic liberty comparable with similar liberty for others.
2. Social and economic inequalities are to be arranged so that they are both;
   a. Reasonably expected to be to everyone's advantage, and
   b. Attached to positions and offices open to all.

[29]Ojukwu E. et. al. Handbook. ibid
[30] Rawls, J. 1999. *A theory of justice*, 3.
[31]Locke's Second Treatise of government, Rousseau's 'The social contract' and Kant's 'Ethical works' as contained in Gough, J. W. 1957. *The social contract*.; Gierke, O. 1934, *Natural law and the theory of society; and* Grice, C. R., 1967, The grounds of moral judgment.
[32] Rawls, J.1999. Ibid.
[33] Ibid.

These principles primarily apply to the elemental architecture of society. To him, they should govern the assignment of rights and duties and regulate the distribution of social and economic advantage.[34] He further identifies the basic liberties of citizens as; political liberty (the right to vote and be voted for), freedom of speech and assembly, liberty of conscience and freedom of thought, freedom of the person, right to hold (personal) property and freedom from arrest and seizure as defined by the concept of the rule of law. These liberties are all required to be equal by the first principle, since citizens of a just society are to have the same basic rights. Injustice, then, is simply inequality that is not to the benefit of all and one of this is access to justice. [35]

In the absence of access to justice, people are unable to have their voice heard; they are unable to exercise their rights, challenge discrimination, cruel, inhuman and degrading treatment, torture, corruption, arbitrary arrest and detention, or hold decision makers accountable. The Rule of Law is thus the foundation for both justice and security and access to justice is a necessity to ensure justice and security. In essence, access to justice and the rule of law are essential to an enabling environment for achieving sustainable development; this is because a safe and secure environment encourages economic growth. According to Ojukwu:

> ...access to justice...embraces the nature, mechanism and even quality of justice obtainable in a society as well as the place of the individual within the judicial matrix. It is also the barometer for assessing not only the rule of law in any society but also the quality of governance in that society. It emphasises that the system must be accessible to everyone, and secondly that access must be meaningful and effective. The importance of ensuring that majority of the people who cannot afford legal services are able to enforce their rights by legal representation through legal aid is at the root of access to justice....[36]

[34] Ibid
[35] Rawls, J.1999.op. cit.
[36] Ojukwu, E. et al. op.cit. pg. 123

Sackville[37] explained that the principle subsumed in the idea of access to justice is not really limited to the idea that each person should have adequate means of securing his or her rights under the law. This ideal is often seen as an essential feature of the elemental principle that all people should enjoy equality before the law. That principle obtains from the idea that the root of justice presumes the acknowledgement by the state of the values of human dignity and political equality. He explains that people are not generally opposed to the ideal that appears to lie at the hub of a just society. But like other slogans, such as fairness or democracy, part of the attraction of 'access to justice' is its ability to bear different meanings, depending on the approach of the commentator.[38]Thus, it can be deduced that there is injustice where all members of society are unable to access justice and the Nigerian criminal justice system appears to have a difficult time striking that balance, particularly when it comes to awaiting trial persons remanded in prison.[39]

Olatunbosun describes the criminal justice process as follows:

> The administration of criminal justice involves report of the commission or suspected commission of an offence, record of the same at the police station, investigation of the offence by the police followed by either prosecution of such offenders at the Magistrates courts by the police or referring the same to the Director of Public Prosecutions in a Ministry of Justice of a State for Legal Advice, filing of information/complaint papers, arraignment of the offender before a high court..., taking of a plea, trial, conviction, sentence and custody of convicts in prisons.[40]

The criminal justice process is a long one, and more often than not, causes the protracted delay in the trial of accused persons and trials can sometimes take as long as ten (10) years

[37] Sackville, R. 2011. Access to justice: towards an integrated approach.
[38] Sackville, R. 2011. Ibid.
[39]See *Alade v. Federal Republic of Nigeria* supra. Mr. Alade got judgement in his favour from the ECOWAS court against Nigeria for his lengthy pretrial detention to the effect that his arrest and continued detention by the agents of the Defendant (Nigeria), its officers, servants, and privies was a gross violation his right to personal liberty; Sa'Adatu Umar v. Federal Republic of Nigeria Suit No: ECW/CCJ/APP/12/11 an application made by Mrs. Umar for herself and on behalf of her three (3) children as their guardian *ad litem* to that their arrest and detention without arraignment in a court of law is arbitrary and constitutes a gross violation of their fundamental human rights to personal liberty and freedom of movement. See also, Aliyu Tasheku v. Federal Republic of Nigeria, Suit No: ECW/CCJ/APP/13/11. See generally Official Journal of the Economic Community of West African States (ECOWAS) English ed. Vol. 57 (CCJ)2, 2011
[40] Olatunbosun, A. 2000. op.cit

or more to conclude.[41]Pretrial detention serves an important function in the criminal justice system and the society at large, it ensures that arrested persons who pose a threat to the pretrial process stand trial; those who are recognised as dangerous to the community and could commit further offences before the outcome of the trial, and those who could/would intimidate witnesses or interfere with the investigation. Pretrial detention is a preventive measure which implies dispossession of liberty of the accused by a judicial authority while a criminal justice process persists, in order to secure productive execution of criminal law.[42]Pre-trial detention is recognised by law and should be used mainly as a last resort to ensure the presence of an accused person at trial. It is not meant to be punitive or rehabilitative as pre-trial detainees have not been convicted of a crime.

In or out of detention, awaiting trial persons in the Nigerian criminal justice system are in urgent need of attention. Just because a person awaits trial in the community on bail does not mean they are free, there still exists a cloud of uncertainty around them, familial, and societal perceptions and reactions can be brutal. Awaiting trial persons have fundamental rights guaranteed by the constitution of Nigeria and such rights include prompt and proper notification of charges[43], impartial adjudication,[44]adequate time for defence,[45]examination of prosecution witnesses among others.[46]

The major problem of the Nigerian criminal justice system as relates to awaiting trial persons is that it is grossly inadequate in qualitative and quantitative terms to ensure that all persons have access to justice.[47] In Nigeria as in all societies, the poor are more likely to be arrested, denied bail, and detained for long periods of time than wealthy and politically influential members of the society.[48] Considering that the presumption of innocence is

[41]Schonteich, M. Ed. 2014. *Presumption of guilt: the global overuse of pretrial detention*, 99; and Anon. 2013. Reforming the Nigerian prisons. Retrieved March, 20, 2015, from http://www.thisdaylive.com/articles/reform-the-Nigerian-prisons/139318
[42]An analysis of Minimum Standards in Pretrial Detention and the grounds for regular review in the Member states of the EU JLS/d3/2007/01 Spain
[43] Section 36 (6) (a) CFRN 1999
[44] Section 36 (1) CFRN 1999
[45] Section 36 (6) (b) CFRN 1999
[46] Section 36 (6) (d) CFRN 1999
[47] Aduba J.N. and Alemika E. I. 2013. *Bail and criminal justice in Nigeria*.
[48] Schonteich M. Presumption of Guilt, op. cit.

universal,[49] promoting rule of law and due process through transparent and effective procedural reforms will improve the human rights situation in Nigerian prisons especially with regard to awaiting trial persons.

Lack of access to justice has a disproportionate impact on the most vulnerable and marginalized members of society; the poor, the illiterate, women and children. It has been asserted that the greater numbers of pretrial detainees are more often than not, poor and unable to afford legal assistance or post bail.[50] The arbitrary use of pretrial detention and the conditions of detention do not accord with basic minimum standards.[51]International and national agencies have come up with modalities by which indigent awaiting trial persons can access justice. Notable amongst these agencies are non-governmental organisations[52]and the Nigerian Legal Aid Council which provide access to justice for awaiting trial inmates. Laudable as these services are, more needs to be done to address the issue of access to justice for awaiting trial persons.[53] These awaiting trial persons are detained in the Nigerian prison system but there is obviously no action plan for them. A look into the provisions on awaiting trial inmates show that the prison administration acknowledges their existence and remands them in prison, pending the outcome of

[49]This is the fundamental principle that a person ought not to be convicted of a crime unless the government proves his/her guilt beyond reasonable doubt, without any burden being placed on the accused to prove his/her innocence. The presumption of innocence lies at the foundation of the administration of criminal law and can be traced to various statements under Roman law. Indeed Blackstone opined that "it is better that the guilty person escapes than that one innocent person suffers (Blackstone). See Section 36 (5) Nigerian Constitution 1999.

[50] Schonteich, M. 2014. Who are the world's pretrial detainees? 33-55.

[51]United Nations Standard Minimum Rules for the Treatment of Prisoners. 1957. – Section C- Prisoners Under Arrest or Awaiting Trial; United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (The Bangkok Rules) (2010), Rules 57; Articles 6-7 African Charter of Human Peoples' Rights (Banjul Charter); African Commission on Human and Peoples' Rights, Guidelines for Pretrial Detention; Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, General Assembly Resolution 43/173 of 09 December, 1998; Article 9 and14 International Covenant on Civil and Political Rights; Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment (1988); United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (2012); United Nations Standard Minimum Rules for Non-Custodial Measures (Tokyo Rules) 1990; Articles 7-8 American Convention on Human Rights; Articles 5-6 European Convention on Human Rights

[52] Examples of such non-governmental agencies are; Network of University Legal Aid Institutions (NULAI), Open Society Justice Initiative (OSJI), Amnesty International, Justice Development and Peace Commission (JDPC), and Prison Reform International (PRI).

[53]With the exception of the three (3) Borstal Institutions provided to cater for awaiting sentence juveniles. See generally

trial,[54]but the main focus of the prison system are the convicted persons and almost all programmes and provision are directed at their welfare. These inadequacies make it difficult if not near impossible to meet international standards on ensuring access to justice for awaiting trial persons.[55]

The aim of imprisonment within the criminal justice system serves certain purposes which can be any of the following: deterrence, retribution, rehabilitation or incapacitation.[56] Of the purposes listed, only incapacitation applies to an awaiting trial person. The resultant effect of overcrowding is that token gestures are made by parties to the criminal justice system in order to reduce the number of persons in prison custody, an examples of such gestures is; the periodic unconditional release of persons awaiting trial.[57] Thus they are regarded as an "overcrowding problem" in the criminal justice system, rather than as an integral part of the mandate of the system, to which they have an obligation.[58]Reducing arbitrary and excessive pretrial detention or easing awaiting trial persons speedily out of the criminal justice system is critical to the success of the system.[59]

This study therefore aims at undertaking a comparative analysis of the criminal justice perspectives, legislation, principles, practice and procedure of the actors in criminal justice

[54]Section 4 (2) (b) of the Nigeria Prisons Act Cap 366, P 29 Laws of the Federation of Nigeria 2004, provides for "…*lock up house for* the temporary detention or custody of prisoners newly apprehended or under remand….."; Section 5 (3) provides "*Subject to this Act every superintendent is authorized and required to keep and detain all persons duly committed to his custody by any court, judge, magistrate, justice of the peace, or other authority lawfully exercising civil or criminal jurisdiction , according to the terms of any warrant or order by which any such person has been committed, until that person is discharged by due course of law"*

[55]The United Nations Development Programme Post-2015 Development Goals are to promote effective, responsible, accessible and fair justice system as a pillar of democratic governance. An analysis of Minimum Standards in Pretrial Detention and the grounds for regular review in the Member states of the EU JLS/d3/2007/01 Spain

[56] See generally, Bamgbose O.A., The sentence, the sentencer and the sentenced, op.cit.

[57]Enietan-Matthews, T. October 21, 2014, Kaduna government releases inmates to decongest prisons. *Daily Post*. Retrieved May 20, 2015, from http://www.dailypost.ng/2014/10/21/kaduna-government-releases-inmates-decongest-prisons/; See also the Bill for an Act to Amend the Criminal Justice (Release from Custody) (Special Provisions) Act. Cap L40 Laws of the Federation of Nigeria, 2004; A bill sponsored by Senator Babajide Omoworare, seeking to amend the existing principal Act to confer ultimate power on the Chief Justice of the Federation and the Chief Justice of the States to carry out monthly release of prison inmates who have been detained unlawfully or for longer periods than they would have been detained if convicted of the alleged offence.

[58] Lukas Muntingh, Criminal (In) Justice in South Africa: The Prison System.

[59] Pre-trial protection. Retrieved October 12, 2014, http://www.lincoln.edu/criminaljustice/hr/pretrial.htm

system which leads to lengthy trial process and arbitrary and excessive pretrial detention that inadvertently undermines the rule of law and due process and the subsequent effect on awaiting trial persons. At the end of the study, recommendations will be proffered that can improve access to justice for PAT which will promote the rule of law, due process and pretrial justice.

1.2. Statement of the problem

Fair criminal justice procedures are important in ensuring that the rights of PAT are protected. This cannot be achieved unless the agents of the criminal justice system administer criminal justice in such a way that the pretrial process promotes the rule of law and due process. The actions and inactions of agents of the criminal justice system affect the arrest, interrogation, arraignment, charge, remand and trial process of PAT. Their actions and inactions can either bar or ensure access to justice for PAT therefore, where there are problems in the administration of criminal justice, this can result in lack of access to justice for persons awaiting trial.

Access to justice is a recognized problem;[60] inequality thwarts the enjoyment of human rights and social justice in the criminal justice system. The poor and the vulnerable, particularly women and children continue to experience difficulties accessing justice on an equal footing with the privileged in society. Due to lack of financial resources to hire a lawyer, ignorance of the rights of accused persons, improper investigation and arrest techniques, lack of knowledge about the law, absence of due process, or non-observance of the rule of law. Most awaiting trial persons find it extremely difficult to access justice and this can have unintended consequences on the awaiting trial persons, their families, the community and the criminal justice system as identified below:

[60]Ladan, T. M. 2010. Enhancing access to justice in criminal matters: possible areas for reform in Nigeria, A paper presented at a 2 day national workshop on Law Development, organized by Nigerian Law Reform Commission, Abuja; Why Access to Justice Matters. Retrieved July 25, 2015, from www.justiceindex.org/our-vision; Increasing access to justice. Retrieved July 25, 2015, from www.britishcouncil.org.ng/justice-for-all-nigeria/about/justice/mediation-legal-services

i. **Consequences of pretrial detention on the state:** there can be health consequences, resulting in the spread of diseases, stunted economic development, loss of productivity, loss of tax revenue, erosion of public trust, discrimination against the poor, enabling abuse of and condoning of power and corruption undermining of the rule of law and the directing of State revenue towards maintaining an unnecessarily large number of remanded detainees**.**[61]

ii. **Consequences of pretrial detention on the families of awaiting trial detainee and society:** A number of consequences could arise from pretrial detention on the families of the awaiting trial detainee and the society at large. These include: exposure of the family and society to diseases, economic hardship, loss of income, loss of housing, emotional stress, broken trust in the state, undermining the Rule of Law, impunity for the guilty, coercion to pay bribes, reshaping societal norms and arbitrary detention among others.[62]

iii. **Consequences of pretrial detention on the awaiting trial person:** An awaiting trial person is vulnerable to suffer some negative conditions as a result of detention pending the outcome of trial. The awaiting trial person could face exposure to diseases, loss of livelihood, loss of accommodation, emotional stress, psychological and physical trauma, stigmatization, malnutrition, physical danger, inadequate legal assistance or inability to access a lawyer, remand with hardened criminals, abuse by police, and discrimination against the poor among others.[63]

Access to justice is recognised as essential to the realisation of human rights and other rights (cultural, civil, economic and social), without fair access to justice,[64]most PAT in or

[61]Schonteich, M. 2014. 57-92 op.cit.
[62] ibid.
[63]Schonteich, M. 2014. 57-92 op.cit.
[64]Emeritus Professor at Harvard University and the author of the path breaking 'A theory of justice, (Harvard 1971) and 'Political liberalism' (Columbia, 1979), Professor Rawls used the theory of social contract to generate principles of justice for assigning basic rights and duties, and determining the division of social benefits in a society. He argued that the two principles that would be reached through an agreement in an original position of fairness and equality are:

1. Each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others, and
2. Social and economic inequalities are to be arranged so that they are both a) reasonably expected to be everyone's advantage; and b) attached to positions and offices open to all.

out of detention will continue to face human rights abuses, intolerable remand conditions, impunity, corruption, lengthy /delayed trial, torture and degrading treatment, low level of accountability of criminal justice officials, rise in recidivism, introduction to criminal activities and weak infrastructural support. It is beyond dispute that fair access to justice can protect the rights and lives of those awaiting trial and all people who seek access to the justice system.

As such, fair criminal procedures are of the utmost importance in ensuring that the human rights of persons awaiting trial are protected. This cannot be achieved unless the agents of the system administer criminal justice in such a way that the criminal justice process is properly managed in order to promote and maintain the rule of law and due process. The actions of agents of the criminal justice system affect every aspect of the criminal justice process. Therefore, where there are problems in the administration of criminal justice; this will result in lack of access to justice for PAT. Access to justice is an area of national concern which has led to the creation of the Legal Aid Council of Nigeria[65] whose main aim is providing legal aid to poor citizens. It serves both complainants and suspected offenders but with just one Office in each state and six regional offices, access to justice is still a desired but unattainable goal for most.

Nigeria's system of pre-trial justice and pre-trial detention is inadequate to meet the needs of the justice system; detaining accused persons in conditions which "*... are intolerable enough when inflicted on persons found guilty of an offence, but for the many persons still awaiting trial and thus innocent before the law, these experiences are completely insupportable...*"[66] It is a fact that the situation is dire; data shows that persons awaiting trial constitute about 70% of the prison population in Nigeria[67]and are thus the main

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Rawls posits equal distribution as the desirable state and further argues that inequality can be justified only by benefits for the least advantaged. He is considered to have introduced a new conceptual basis for debates about the core principles of social justice and action.
See Rawls, J. 1979. A Theory of Justice

[65] A body under the Federal Ministry of Justice, established pursuant to the promulgation of the Legal Aid Decree of 1976 which was later amended by Cap 205, 1990 later Cap L9 Laws of the Federation of Nigeria 2004. It was repealed by the Legal Aid Act 2011. It has branches in every state and it is mandated to provide legal services to Nigerian citizens who cannot afford legal services. The Legal Aid Council provides a range of legal aid; from legal services to consultation and legal advice.

[66]Bamgbose, O.A., 2010. The sentence, the sentencer, and the sentenced, 53

[67] Bamgbose, O.A. ibid. See also www.prisonstudies.org/country/Nigeria Retrieved on May 15, 2015

contributors to the problem of overcrowding in Nigerian prisons.[68] According to Bamgbose,[69]persons awaiting trial are treated worse than convicted persons; they are locked up for longer periods and do not have access to recreational facilities. These punitive conditions of detention can, and do have far reaching effects on the persons detained and their families as they can lose their homes, health, families, jobs and ties to the community. It has also been asserted that pretrial detention does not reduce crime or improve public security, if anything; it is likely to increase criminality rather than deter it.[70]

One of the most glaring effect of lack of sufficient access to justice for awaiting trial persons is excessive and arbitrary detention;[71]a serious form of human rights abuse which affects individuals, families and communities on a daily basis. It causes and deepens poverty; stunts economic growth, allows for the spread of diseases and undermines the rule of law.[72]The Nigerian criminal justice process is thus the antithesis of what is preached. The system claims to be tough on crime, yet is punishing those who are legally innocent and is in essence, committing a crime against humanity. The criminal justice system involves many issues, and questions of fairness and freedom are important if the system is to achieve pretrial justice and promote the rule of law. It is said that if the system performs its duties too vigorously, citizens may be arrested and unfairly accused of a crime they did not commit,[73]on the other hand, the society is at risk if crime is tolerated and the system cannot deal effectively with it.

The agencies in the criminal justice system are recognised as interdependent, with the work of one agency depending on the other in a system that involves encounters between human beings, all coming to the system with their own motives, be they offenders, suspected

[68] See generally, Sarkin, J. 2008. Prisons in Africa: an evaluation from a human rights perspective.
[69] Bamgbose O.A. Ibid
[70] See Open Society Justice Initiative Report op.cit.
[71]The Human Rights Commission has ruled that "*the notion of 'arbitrariness' is not to be equated with 'against the law' but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law."* As cited in Schonteich M. The causes of arbitrary and excessive use of detention, 95.
[72] Schonteich M. The causes of arbitrary and excessive use of detention, 95. op.cit
[73] Davies, M. et. al. 1999. Criminal justice: an introduction to the criminal justice system in England and Wales. 2

offenders, victims or the criminal justice officials. In other words, the work of the prison administration depends on the work of the courts who, in turn depend on the work of the prosecution and defence, the generation of cases by the law enforcement agencies and initially by the activities of law breakers.[74]Multiple and competing aims of the system mean that different goals may be simultaneously pursued by different participants in the criminal justice system. According to Davies,[75] these aims are not easy to reconcile, either in the system as a whole or within specific agencies. These multiple aims also affect how those working in criminal justice agencies see their role, and how over time they have developed their own justice perspective,[76] which leads to the question; what justice perspective drives our criminal justice system and how has it affected access to justice? This question is asked bearing in mind the fact that the processing and treatment of awaiting trial persons reflects the nation's actual criminal justice perspective.

A significant number of awaiting trial persons will have their charges- which led to their arrest, and or detention and trial- withdrawn or struck out (either for lack of diligent prosecution or lack of evidence), some will be found not guilty and will subsequently be acquitted at the outcome of the trial, others will be convicted for non-violent offences for which remand would be inappropriate and others will be sentenced for much less duration than the time already spent. A lot of awaiting trial persons would not pose a threat to society, if released on bail to await trial at liberty.[77]Furthermore, pretrial detention increases the possibility of pressure on accused persons to confess to crimes accused of, whether they are guilty or not. There are also strong indications that violence, torture and psychological abuse of awaiting trial persons are rampant at the pretrial stages of criminal justice process mainly as a means of extracting information and confessions from awaiting trial persons.

[74]Davies, M. et. al. 1999. Ibid.
[75] Ibid.
[76] Davies, M. et. al. 1999. op.cit.
[77] It must also be pointed out that some persons awaiting trial in detention have been granted bail, but are unable to fulfill or perfect their bail conditions.

A major source of concern is the public perception of awaiting trial persons; the popularly held belief of most people is that awaiting trial persons ought to be presumed guilty by virtue of their remand in prison and are not aware of the criminal justice process and the resultant effect of this is that awaiting trial persons are more often than not abandoned to their fate by families and the society at large. The result of lack of proper scrutiny of the pretrial stage of the criminal justice process is that it does not allow for pretrial justice; leading to social injustice which in effect undermines socio-economic development.[78]

A lot of research has been conducted into the plight of PAT– particularly awaiting trial detainees[79]- and recommendations made on how to improve their situation. Martin and O'Dell[80] in their report on Nigeria stated that:

> No single party (can) be identified as the major contributor to dire conditions in the criminal justice system…this results in a vicious cycle in which each group contributes to the problem-police, politician, and the judiciary- and is content to blame the other. The finger pointing and avoidance is present in most countries but seems exceptionally prevalent in Nigeria. Until individuals are accountable for their actions, progress will remain excruciatingly slow. Nigerians who have had their human rights violated by public officials describe feeling powerless to seek redress...Effective reform must incorporate a holistic view. Measurable results will be undeniably difficult to obtain. However, difficulty is never an excuse for inaction.[81]

There are extensive research materials on pretrial detention, the Nigerian criminal justice system and access to justice which have provided important insights into the criminal justice system. However, there is no comparative analysis of the criminal justice system within the context of criminal justice approaches which focuses on the actions of agencies and agents of the criminal justice system and the effect of their actions on access to justice for persons awaiting trial. This study was carried out to fill that gap. Lack of access to

[78] Schonteich, M. 2010. The socio-economic impact of pretrial detention. op.cit

[79] See for example, Araromi, M.A. 2015. Prisoners' rights under the Nigerian law: legal pathways to progressive realization and protection. Afe Babalola University: Journal of Sustainable Development Law and Policy. 6.1:169-198; Ukwayi, J.K. And Okpa, J.T. 2017. Critical assessment of Nigeria criminal justice system and the perennial problem of awaiting trial in Port Harcourt maximum prison, Rivers state. Global Journal of Social Sciences. 16:17-25; Emeka, J.O., Achu A.A., Udiba, U.D. and Uyang, F. 2016. International Journal of Sociology and Anthropology Research. 2.1:1-6

[80] Martin, N and O'Dell, J 2015. Human Rights Reporting in Nigeria [Emphasis on Pre-Trial Detention]. Report for Nigerian Bar Association- Human Rights Institute.

[81] Martin, N and O'Dell, J 2015.op.cit

justice is particularly worrying as it erodes people's confidence in the justice system, and, further limits both the access to, and the quality of justice. It is therefore necessary to identify the key barriers faced by persons awaiting trial in protecting their rights and accessing legal protection mechanisms.

Laws do not operate in isolation, they have specific functions; criminal law and justice operate under the field of public law,[82] and encompass, institutions, people, policies, principles, practice and procedures in the administration of criminal justice. According to Justice Mohammed,[83] access to justice does not mean just access to lawyers and the courts, it encompasses a recognition that everyone is entitled to the protection of the law and that whatever rights we seek to protect are meaningless unless these rights can be enforced with minimal constraints to the aggrieved persons and under circumstances that ensure that all manner of people are treated fairly according to the law and are able to get appropriate redress in circumstances where they are treated unfairly. He further states that, it is in this context that it can be said that there is no access to justice where citizens, particularly those awaiting trial, women and children, conceive the system as frightening. This is especially so where they cannot access a lawyer or lack access to information or knowledge of their rights, or where the system is fundamentally weak in delivering justice to its people.[84]

It is evident that the current criminal justice system in Nigeria is inadequate to meet the needs of the Nigerian society in the 21st century as the system is alleged to be a seething bed of corruption, injustice, breach of laws and morality. Lack of trust in the criminal justice process inevitably leads to jungle justice[85] and vigilantism.[86]This study is a

[82] A general classification of law concerned with the political and sovereign capacity of a state. Public law focuses on the organization of government, the relations between the state and its citizens, the responsibilities of government officials, and the relations between sister states. It is also concerned with political matters, including the power, rights, capacities and duties of various levels of government and government officials. It covers criminal law, constitutional law, taxation law, Administrative law, procedural law and international law. See generally, West's Encyclopedia of American Law, 2008 (2nd Ed.), The Gate group, retrieved 14 February, 2015 from http://www.legal.dictionary.thefreedictionary.com.public+law

[83] Justice Mahmoud Mohammed, the then Chief Justice of the Federation of Nigeria

[84]Soniyi, T. Feb. 04, 2009. Judiciary is overburdened, CJN cries out. *Thisday live*. Retrieved May 12, 2015, from http://www.thisdaylive.com/articlesjudiciary-is-overburdened-cjn-cries-out/200968/

[85]A prime example, is the lynching of four young men later identified as students of University of Port Harcourt, known as the Aluu four. John Alechenu et. al. Lynching: uniport students burn houses, cars in Port

comparative analysis of access to justice mechanisms in selected criminal justice systems, with a view towards understanding how principles, practice and procedure, criminal justice approaches, the perception of crime and offenders, and agents of the criminal justice system affect access to justice and the pretrial process and undermines the rule of law and due process by subverting pretrial justice. It aims at offering a fresh perspective of the criminal justice system as it relates to access to justice.

As indicated earlier, the law does not exist in a vacuum, if there is to be an improvement in the Nigerian criminal justice system, it is necessary to understudy the underpinnings of the criminal justice system and access to justice with the aim of tracing our steps in the criminal justice process and identifying where the criminal justice system has gone wrong with regard to ensuring access to justice. By a comparative analysis of the criminal justice system, it will be possible to learn lessons from the successes and mistakes of similar jurisdictions and eventually come up with recommendations for improvement that may be able to suit the Nigerian criminal justice system. Criminal justice is about society's formal response to crime and overcrowding in prisons as a result of lack of access to justice is a worldwide phenomenon that affects developed, developing and underdeveloped countries alike. Some countries however, manage better than others. The United Kingdom for example, despite having overcrowding problems, has established laws that enable access to justice for all.[87]The English Access to Justice Act, 1999, abolished the legal Aid Board and created in its stead a Legal Services Commission and Criminal Defence Services, which are charged with assessing local needs, identifying lawyers eligible to provide services, and requesting funding.[88]

Harcourt. Retrieved January 12, 2015, from http://www.punch.com/news/lynching-uniport-students-burn-housescars-in-protest.

[86]With prime examples being; O'odua Peoples Congress (OPC); Igbos' Peoples Congress (IPC); Bakassi Boys; Egbesu Boys; Movement for the Actualization of the Sovereign State of Biafra (MASSOB), Tiv Militia, Jukun Militia, Itsekiri Militia, Ijaw Militia, Movement for the Survival of the Ogoni People (MOSOP). See generally, Onimagesin S.I. "The OPC Militancy in Nigeria, 1992-2003: Its implications and Management. Retrieved May 21, 2015, from www.unilorin.edu.ng/publications/onimagesin.html

[87] Access to Justice Act, 1999 C.22. Retrieved July 26, 2015, from http://www.opsi.gov.uk/Acts/acts1999/ukpga_19990022_en_1

[88] See generally, Resnik, J. and Curtis, D. E. 2011. Representing justice: invention, controversy, and rights in city states and democratic courtrooms.

Therefore, an understanding of the underpinning of the Nigerian criminal justice approach will prove beneficial.

1.3 Purpose and assumptions

This thesis seeks to fill some gaps in the existing literature on access to justice and the pretrial process in the criminal justice system by comparatively analysing the effect of criminal justice approaches on legislation, procedure and practice in selected jurisdictions (United Kingdom - England and Wales, the United States of America and Nigeria). It is aimed at bringing to light, various principles, practice and procedures that can be beneficial to the Nigerian criminal justice system with particular reference to improvement of access to justice, which will eventually ensure that the rule of law and due process is upheld.

This thesis is based on some assumptions or basics. The first assumption is that the criminal justice system is the base of law and order in any society and as such, a capable, unprejudiced and reliable criminal justice system, which assures the rights of all parties in the criminal justice system, is important to the preservation of law and order.

The second assumption is that the rule of law is paramount and in a society administered by the rule of law, the government and its officials and agents are subject to and held accountable under the law.[89]

The third assumption is that due process in the administration of the criminal justice system must be ensured, because without due process, a nation cannot be under the "rule of law" but will be at the mercy of a government with unlimited power to detain and imprison at will.[90]

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[89] The rule of law follows four universal principles, that:

1. Government and its officials and agents as well as individuals and private entities are accountable under the law.
2. Laws are clear, publicized, stable, and just, and are applied evenly and protect fundamental rights, including the security of persons and property
3. The process by which the laws are enacted, administered and enforced is accessible, fair and efficient
4. Justice is delivered timely by competent, ethical, independent representatives and neutrals who are of sufficient number, have adequate resources and reflect the makeup of the communities they secure.

See generally "History and Importance of Rule of Law" Retrieved May 13, 2015, from www.worldjusticeproject.org/sites/default/files/history_and_importance_of_the_rule_of_law.pdf and www.worldjusticeproject.org/what_rule_law

[90] With regard to the criminal justice system, due process means that a person accused of a crime must be told of the charges against him or her, have the opportunity to present a defense against such charges at a

The fourth assumption is that timely access to justice is essential to the success of the Nigerian criminal justice system. Pretrial processes that are fair and just are important to the success of the system and to this effect, there are laws that cover the duties of officers administering justice in Nigeria,[91]which are used in regulating the actions and activities of officers in the administration of criminal justice to check abuse of power.[92]

This study was a comparative analysis of access to justice mechanisms in selected criminal justice systems, with a view towards understanding how criminal justice approaches, principles, practice and procedures and the perception of crime and offenders, affect access to justice and the pretrial process and undermines the rule of law and due process. It aimed at offering a fresh perspective of the criminal justice system as it relates to access to justice.

The study built on existing literature on access to justice and the Nigerian criminal justice system by highlighting the relationship between the prevailing justice approaches, the administration of criminal justice in Nigeria and access to justice. Just as jurisprudence has played a pivotal role in the development of the rule of law, so also the Nigerian justice approach plays an important role in the administration of criminal justice and access to justice. As such, an analysis of these approaches is necessary to identify shortcomings of the Nigerian criminal justice system and come up with recommendations that will encourage the Nigerian criminal justice system to uphold the rule of law and ensure access to justice for all.

In doing this, this research started by identifying the particular criminal justice approach that pushes the administration of criminal justice in Nigeria thereby ascertaining if it is just one approach or a combination of approaches, and in doing this, it also studied how the Nigerian justice approach affects access to justice and the administration of the criminal

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trial, and have the services of counsel and the right to an appeal. See Sections 33, 34, 35 and 36 of the Constitution of the Federal Republic of Nigeria. See also www.enyclopedia.org/?title=Due_process and http://www2.maxwell.syr.3edu/plegal/lesson/dpr/dprl.htm Retrieved May 22, 2015

[91] Section 116 of the Criminal Code

[92] See Fakayode, E.O. 1977. The Nigerian criminal code companion, 89-95.

justice system. The result of the study answered questions on the possibility of changing the Nigerian justice approach and how to seek modalities for such a change.

`1.4 Significance of the study

This study aimed to contribute to scholarly discourse on justice approaches and their effect on access to justice for persons awaiting trial. The research was comparative in nature, as it studied new trends in ensuring access to justice in the selected jurisdictions of Nigeria, the United Kingdom (England and Wales) and the United States of America. To compare is to judge or consider two or more items in relation to each other, in order to bring out their similarities and attributes. According to Orucu,[93]comparative analysis:

> ...enables for a decision about quality and preference...when the vast number of works making use of comparative law are read, the following objectives can be noted: academic study; law reform and policy development; a tool for research to reach a universal theory of law; the provision of perspective to students; an aid to international practice of the law; international unification and harmonisation - common core research; a gap-filling device in law courts; and an aid to world peace...The findings of comparative lawyers can indeed be utilised for any of these objectives. Whether these uses have been fully taken advantage of and whether the objectives formulated above have been realised should be open for discussion when taking stock of comparative legal studies.[94]

From the above it can be seen that a comparative research of legislation, principles, practice and procedure as relates to access to justice would bring about recommendations that would be of immense benefit to the Nigerian criminal justice system by finding ways by which access to justice for all can be improved, particularly for awaiting trial persons.

1.5 Justification of the study

Access to justice is the foundation for ensuring that people can realize their human rights, be it economic, social, cultural, political or civil.[95] Without the rule of law, decisions are

[93]Orucu, E. 1999. Critical comparative law: considering paradoxes for legal systems in transition.
[94] Para 1-3
[95] Avocats Sans Frontiers, 2012, The obstacles people living in extreme poverty face in accessing justice'. Retrieved July 27, 2015 www.asf.be/wp-content/uploads/2012/08/ASF/Gen_Extreme-Poverty_Briefing_ASF_FINAL_Version.pdf

decided arbitrarily, generally at the whim and in favour of those who hold power in society. The rule of law is a pre-condition for affirming and upholding the principle that all people have equal rights and are equal before the law. Without the rule of law, it is impossible to hold officials accountable to the systems that uphold national laws and international human rights framework which makes the realization of human rights unattainable[96].

As well as underpinning all human rights realization, the interaction citizens have with the law has a profound impact on how they are able to live their lives in dignity, enjoying their full range of human rights as provided for in the Nigerian constitution.[97] For example, illegal pre-trial detention affects not only the right to liberty[98] and security of person, but also the right to work, the right to the highest attainable standard of health, the right to education, the right to an adequate standard of living and in extreme cases; the right to

[96] Ibid.

[97] See Section 17 of the Constitution of the Federal Republic of Nigeria(CFRN) which provides as follows:

1) The State social order is founded on ideals of Freedom, Equality and Justice
2) In furtherance of the social order-
   a) Every citizen shall have equality of rights , obligations and opportunities before the law
   b) The sanctity of the human person shall be recognized and human dignity shall be maintained and enhanced;
   c) Governmental actions shall be humane
   d) Exploitation of human or natural resources in any form whatsoever for reasons, other than the good of the community shall be prevented; and
   e) The independence, impartiality and integrity of courts of law, and easy accessibility thereto shall be secured and maintained.
3. The State shall direct its policy towards ensuring that-
   i. all citizens, without discriminating on any group whatsoever, have the opportunity for securing adequate means of livelihood as well as adequate opportunity to secure suitable employment
   ii. conditions of work are just and humane, and that there are adequate facilities for leisure and for social, religious and cultural life;
   iii. the health, safety and welfare of all persons in employment are safeguarded and not endangered or abused
   iv. there are adequate medical and health facilities for all persons:
   v. there is equal pay for equal work without discrimination on account of sex, or on any other ground whatsoever; and against moral and material neglect;
   vi. children, young persons and the aged are protected against any exploitation whatsoever, and against moral and material neglect
   vii. provision is made for public assistance in deserving cases or other conditions of need; and
   viii. the evolution and promise of family life is encouraged.

[98] See Section 35 (1) CFRN, 1999 which provides that where a person is charged with an offence and has been detained in lawful custody awaiting trial, should not be kept in detention longer than the maximum period of imprisonment prescribed for the offence.

life.[99] When someone is held illegally in prison over the period of months or years before his trial, he is likely to lose his job or miss school, and not have access to adequate health care or food.[100]

Pre-trial detention is a global issue which affects as much as 3.3 million people annually[101]and in Nigeria, an estimated 70% of prisoners on remand are awaiting trial.[102]A fair trial is one of the most important mechanisms of ensuring that the human rights of awaiting trial persons are protected. In the light of this, an effectively run criminal justice system where the pretrial process is properly managed is important in order to promote and maintain the rule of law and due process in Nigeria.

It is an accepted fact that the Nigerian criminal justice system is archaic and outdated. The problems in the criminal justice system affect the trial process, resulting in mismanagement of awaiting trial persons. There are constant reports of abuse of office, corruption, abuse, laziness and torture levelled against the various agencies and institutions of the criminal justice system.[103] Akinseye-George[104]stated that the detention of persons without trial and access to justice is symptomatic of the ineffectiveness of the criminal justice system. Accepting that the Nigerian criminal justice system is in a crisis and this crisis manifests in pervasive lawlessness, abuse of human rights, reduced quality of human life, widespread insecurity, increasing wave of anti-social behaviour, kidnapping for ransom, corruption, extrajudicial responses to crime, impunity, and lack of accountability.[105] He further stated that the crisis gave rise to delegitimisation of the state, which breeds social disorder and anarchy and tends towards state failure, erosion of citizens' respect and trust in the ability of the state to protect its people, weakens public

[99] Section 17 CFRN 1999.
[100] ibid, see also Schonteich, M. 2014, Presumption of guilt op cit.
[101] See Walmsley, R. 2014. World prison population list. These figures do not take into cognizance, persons who enter and exit the system within the year.
[102] Nigeria has an estimated prison population of about 57, 121 with awaiting trial figures of 39, 577 which translates to 69.3% of the prison population on remand. These figures were what obtained as at 31 October, 2014. Information was obtained through World Prison Brief, International Centre for Prison Studies Retrieved March 23, 2015, from http://www.prisonstudies.org/country/nigeria
[103] See generally, Olatunbosun,A. 2014. Tough on crime but soft on justice op cit.
[104]Akinseye-George Y., Public safety, security and reform of pretrial detention in Lagos State.
[105]Ibid.

confidence in the ability of the courts to dispense justice, engenders mistrust of the law enforcement agencies and leads to self help.[106] In response to these problems, Akinseye-George outlined proposed reforms in the Lagos State criminal justice system, which aimed to place at its forefront, the realization of human rights and access to justice as listed below;

- **i.** Passage of the Administration of Criminal Justice law
- **ii.** Criminal case tracking system (CCTS) –which tracks the case of individuals entering the criminal justice system from arrest to the disposal of the case and alerts the relevant institutions about stalled cases
- **iii.** Computerized case tracking units in the principal criminal justice institutions: Police, Magistrate Courts, Prisons, Ministry of Justice and the High Court
- **iv.** Linking electronically all case tracking units in all agencies to collate, update, share and produce sector-wide data about each awaiting trial persons in the system
- **v.** Establishment of the office of the public defender
- **vi.** Provision of strong financial and logistical support for federal criminal justice agencies[107]

The above proposed reforms of the Lagos criminal justice system are laudable, and if successful, would prove to be effective in enabling the criminal justice system uphold the rule of law and due process and will in effect solve to an extent, the problem of awaiting trial persons.

Notwithstanding the above, there are persistent challenges to accessing justice in Nigeria which have resulted in the congestion of police cells, prisons and the courts. PAT in and out of detention continue to face human rights abuses, intolerable conditions of detention, impunity of the police, low level of accountability of criminal justice officials, rise in recidivism rates and introduction of awaiting trial persons to criminal activities, weak

[106] Akinseye-George Y. op.cit
[107] Ibid.

infrastructural support and the application of obsolete laws to the administration of criminal justice.[108]

This study was conducted on the idea that promoting access to justice situated in the rule of law and the international human rights structure can permit rights-holders, particularly those in vulnerable positions, have more control over their lives by improving their conditions and power in relation to others in society. It analysed access to justice mechanisms in the Nigerian criminal justice system and the pretrial/trial process. Excessive pretrial detention is a human rights issue and as such requires a holistic and comprehensive analysis of the criminal justice process in Nigeria, starting from the beginning and tracing our steps in order to identify where the system went wrong. There is a saying that those who do not learn from history are doomed to continue repeating their mistakes.[109] Research shows that detention does not inhibit future offending; instead, it does exacerbate the possibility that family providers will be kept out of their home to their detriment and that of their family.[110]

As such, a comparative analysis of criminal justice systems and the pretrial process will be most beneficial to the Nigerian criminal justice process as it will enable a study of new trends in criminal justice systems; their principles, practice and procedure. The study aims at the select jurisdictions of the United Kingdom-England and Wales and the United States of America as they both share a common law origin and their adjudication system is adversarial in nature.

There are a plethora of research material on pretrial detention, the Nigerian criminal justice system and access to justice which have provided important insights into the criminal justice system and the pretrial process, and will be most useful for this study. However, there is no extensive comparative analysis of the criminal justice process which focuses on

[108]See generally, Bamgbose O.A. 2010. The sentence, the sentencer and the sentenced op cit; Olatunbosun, A. 2012. Criminal justice in Nigeria op.cit.; Dambazau, A.B.,(2012), Criminology and criminal justice.

[109] The Quote is ascribed to George Santayana and in its original form, it reads '*Those who cannot remember the past are condemned to repeat it*.' Santayana, G. 1905. The Life of Reason: The Phases of Human Progress.

[110] See for example, Chin V. 2012. Introductory handbook on the prevention of recidivism and the social reintegration of offenders.

the criminal justice approach of the agencies and the effect of these approaches on the Nigerian criminal justice process, particularly in light of the interrelationships of the agencies in the system. This thesis offers a new perspective of the Nigerian criminal justice system by doing a comparative analysis with a jurisprudential slant- identifying the underlying philosophical underpinnings and their effect on the criminal justice system. This study will be of interest to the academia, legislature and policy makers in Nigeria, it will add to the existing body of literature in a field that is relatively new and in the words of Cole;[111] "*...The study of criminal justice offers a fascinating view... It is a challenge to a democracy to develop policies that will deal with crime while still preserving individual rights, the rule of law, and justice...*" This study will also offer an interesting reading to those fascinated by criminal justice.

1.6 Aims and objectives of the study

The aims and objectives of the research can be categorized into two groups; general and specific. In general, this thesis aims to undertake a comprehensive study of the mechanisms in place that ensure access to justice for awaiting trial persons in the Nigerian criminal justice system and identify problem areas that need to be resolved. This is best done by comparatively analysing access to justice principles, practice and procedures in Nigeria and selected jurisdictions.

The specific objectives of the study were to:

- **i.** identify the Nigerian criminal justice approach(es);[112]
- **ii.** comparatively analyse legislation, principles, practice and procedures as they relate to access to justice;
- **iii.** evaluate and assess the effect of criminal justice approach on legislation, principles, practice and procedures;
- **iv.** identify the lapses (if any) in the pretrial process that result in lack of access to justice, which invariably leads to injustice, human rights abuses and undermines the rule of law;
- **v.** outline the consequences of lack of access to justice and the implications on the rule of law; and

[111] Cole, G.F. and Smith, C.E. 1998. *The American system of criminal justice.* 8th ed, 6

[112] This is because no single approach on crime exists. See generally, Siegel L.J. and Worral J.L. 2014. *Introduction to Criminal Justice*. 14th Ed. 21-28

vi. explore successful reformative changes and interventions in the criminal justice system agencies in select jurisdictions that will improve access to justice and the pretrial justice process in Nigeria without remanding a large percentage of people in prison.

1.7 Research questions

The thesis raised and answered the following questions:

1. What criminal justice approach obtains in the Nigerian criminal justice system?
2. What are the lessons that can be learned from a comparative analysis of criminal justice systems with a view towards improving access to justice in the Nigerian criminal justice system?
3. What are the lapses (if any) in the pretrial process that result in lack of access to justice, which invariably lead to injustice, human rights abuses and undermine the rule of law?
4. What are the consequences of lack of access to justice and its implications on the rule of law?
5. What justice approach would best ensure access to justice in the Nigerian criminal justice system?
6. What are the successful reformative changes and interventions in the criminal justice system that will improve access to justice and pretrial and trial justice in Nigeria without remanding a large amount of persons awaiting trial in prison?

1.8 Research methodology

This study was an applied qualitative research.[113] It applied a combined methodology of research and involved a systematic study of available literature, legal instruments, policy documents, reports of international organisations and inter-governmental committees relating to the pretrial/trial process in the criminal justice system and its effects on PAT and the pretrial/trial process.

[113] Applied research refers to original work undertaken to acquire new knowledge with a specific practical application in view. It is undertaken to determine possible uses for the findings of basic research or to determine new methods or ways of achieving some specific and pre-determined objectives. See Olayinka, A.I. et.al.(ed.) 2006. Methodology of basic and applied research. 2nd ed., 3

This research was comparative in nature and also has a basis in legal philosophy. The work analysed the origin of the concepts of justice and access to justice in the criminal justice system as it obtained at the time of the research. It was comparative because it analysed the justice approaches and access to justice, policy, practice procedure in the United Kingdom (England and Wales) and the United States of America and Nigeria, compared and analysed findings and made recommendations.

In the context of the comparative analysis, the research adopted a system-wide approach to the study and in that sense, it chose breadth over depth in the comparative analysis by touching on different dimensions and aspects of the criminal justice system. The research acknowledges that a problem of comparative research is the paucity of reliable, comparable information on the proper functioning of the different criminal justice systems. The research attempted to integrate information sourced from studies in the three jurisdictions, statutes, data, case law and impressionistic description of practice and quantitative data. Informal observations are also incorporated in the research findings.

1.9 Scope of the study

The criminal justice system comprises the agencies that administer criminal justice, the legislation that deal with the substantive issues and the suspects who are processed through the criminal justice system; there are also international standards and instruments which relate to the administration of criminal justice. Recognizing the importance of institutional relationships towards ensuring respect for human rights and fairness of criminal proceedings, this thesis examined the interaction between the different parts of the criminal justice system. It was structured to correspond to the five key criminal justice institutions: the police, prosecutors, defence lawyers, the judiciary and the prisons and considered issues pertinent to the functions of these particular institutions as they relate to the awaiting trial person, but did so in the context of the entire system.

1.10 Structure of the thesis

This thesis has five chapters and this section constitutes chapter one. Chapter two is the literature review and theoretical framework. It also gives an overview of criminal justice,

the jurisprudence of criminal justice, principles of criminal justice, as well as discusses comparatively the criminal justice approaches and the criminal trial process. Chapter three discusses the conceptual framework of access to justice and the criminal justice system. Chapter four analysed international, regional and national jurisprudence on access to justice. It also comparatively analyses the effect of criminal justice approaches on policies and jurisprudence and the administration of criminal justice, identifies lapses in the pretrial/trial processes as a result of lack of access to justice, the current state of access to justice in Nigeria and the impact of lack of access to justice in Nigeria. Chapter five presents the findings as obtained from chapters two, three and four, makes possible recommendations, summarises and concludes the research. It also reflects on the key themes of the thesis.

CHAPTER TWO

LITERATURE REVIEW AND THEORETICAL FRAMEWORK

2.0. Introduction

The subject of criminal justice is an emerging field of study which can be analysed from a number of perspectives. This can be done by analysing available literature on the subject which will give one an insight into the various operations of the system, highlighting observed hindrances in the administration of criminal justice, discussing the theoretical framework of the research in the context of legal theory, providing an outline of the history of the subject, discussing the theories of criminal justice which have developed as a way of conceptualising research in criminal justice.

In this chapter also, the core principles of criminal justice are outlined, prominent criminal justice approaches are identified and analysed and the Nigerian criminal justice administration, detailing the criminal justice agencies, personnel and process is delineated.

2.1 Literature review

Criminal Justice is a fairly recent field of study which encompasses the analysis of the different components of the criminal justice system and the inner workings of its agencies. Writers such as Smith and Cole, Davies et al., Ashworth, Siegel and Worrall, Packer, King, Cole and Smith, Olatunbosun, Adebayo, Bamgbose[114] and many others have studied the criminal justice system either in part or the whole; giving insight to the workings of the agencies in the system, highlighting problems in the administration of criminal justice and proffering solutions to the perceived problems of the system. There is evidence of a recognition of the importance of an 'approach' to criminal justice, which can be regarded as a set of formal organizational, structural, rules and informal conventions, customs and norms for the provision of criminal justice services.

[114] Previously cited.

A successful approach to criminal justice is a precondition for the success of any criminal justice system; because in the end, the criminal justice system shapes the socioeconomic behaviour and activity of a nation[115]either negatively or positively. There have however, been unsuccessful attempts at a unified idea of how the aims and objectives of the criminal justice system – such as crime control, and ensuring the security of lives and property - should be approached; whether by focusing on the recognition of the rights of the accused person, the punitive nature of sanction, the recognition of the need to rehabilitate people who come into the criminal justice system, or the recognition of the need to balance the finances of the system with the stated goals of the system. The criminal justice system continues to evolve as a result of the work of researchers and professionals working within criminal justice systems who constantly strive to better understand the system and arrive at better ways to serve actors in the criminal justice system- suspects, defendants, victims, witnesses, convicts, agents of the system and the society at large.

The study of criminal justice serves a very important function because it operates as a means of improving the ways in which the administration of criminal justice is understood and functions, while seeking new and more effective ways to improve its functions. Key researchers in terms of criminal justice approaches[116] are Herbert Packer, Michael King, Siegel and Worrall[117] and Davies et. al;[118] of which the most notable of the researchers is Herbert Packer.[119] In the 1960's, Professor Herbert Packer proposed two models of justice – the crime control and due process models of justice.[120]Subsequently, writers and researchers such as King critiqued and built on Packer's models of criminal justice and evolved other models of justice, such as King's six models of criminal justice – justice; punishment; rehabilitation; management of crime and criminals; denunciation and

[115]Schmidt, D.C., Gokhale, A. and Balachandran, N. Frameworks: why they are important and how to apply them effectively. Department of Electrical Engineering, University of Nashville, Tennessee, 37203, Retrieved November 22, 2017 from http://www.cs.wustle.edu
[116] Otherwise called perspectives/models or paradigms.
[117] Siegel, L.J. and Worral, J.L. 2014, Introduction to criminal justice. 14th ed.
[118] Davies M., et. al. 2005. Criminal justice: an introduction to the criminal justice system in England and Wales. 3rd ed.
[119] Packer, H.L. 1968. The limits of the criminal sanction.
[120] Packer, H.L. Ibid.

degradation; and maintenance of class domination.[121] There are also Davies et. al's additional approaches to criminal justice- just deserts and managing offender behaviour models and Siegel and Worrall's popular variations of criminal justice approaches which include the non-intervention, just deserts, and restorative justice approaches.

Some of these approaches have gained wider acceptance than others such as the restorative justice, the just deserts and the rehabilitative approaches to justice;[122]while most of the approaches have been in existence in one form or the other, and have only recently been conceptualized as criminal justice approaches/models/paradigms or perspectives. They reflect changes, innovations and advancements in the field of criminal justice and an example is the managing offender behaviour model of criminal justice as conceptualized by Davies et. al,[123] which includes the electronic surveillance in its approach to criminal justice.

These approaches serve as a means of assessing the criminal justice system by identifying the focus, structure, nature of, and the means of ensuring justice. Approaches to justice serve as a way of assessing the operations of the criminal justice system, ascertaining the thoughts of the public about crime prevention strategies, criminal justice processes, handling of victims, suspects, defendants, witnesses and the citizenry in general and the administrative and financial management of the system.

The above mentioned researchers have described and explained the criminal justice system in terms of the major ideas behind the activities of the system; for instance in the United States of America and the United Kingdom and some other developed countries, it is possible to correlate recognised approaches to justice to certain actions and trends in

[121] King, M. 1981. The Framework of Criminal Justice.
[122] Coates, R. B., Umbreit, M. and Vos, B. (2006) "Responding to Hate Crimes Through Restorative Justice Dialogue." Contemporary Justice Review, Vol. 9 No. 1 ; Daly, K and Stubbs, J. (2006) "Feminist Engagement with Restorative Justice." Theoretical Criminology, Vol. 10 No. 1. pp. 9-28 retrieved through Google Scholar; Pollard, C. "If Your Only Tool is a Hammer, All Your Problems Will Look Like Nails" in Strang, H., and Braithwaite, J. (eds.) Restorative Justice and Civil Society, Cambridge University Press, Cambridge, United Kingdom; Gailly, P. "Restorative Justice in England and Wales" retrieved on 12 December, 2017 from http://www.arpegeasbl.be retrieved through Google Scholar
[123] Davies M., et. al. 2005. Criminal Justice: An Introduction to the Criminal Justice System in England and Wales op.cit.

police, legislation, investigation, arrest, interrogation, and sundry other criminal justice processes. For example, the Non-intervention perspective advocates decriminalization and deinstitutionalization of criminal offences and this also reflects changing social and moral views on what is harmful or not and should be addressed by the criminal justice system. Examples of subject matter that come up for consideration, and the effect of this approach can be seen on issues such as the legalization of marijuana for medical purposes in twenty nine states and Washington DC in the United States. Others include; [124]gambling, euthanasia, drug possession and drug use, abortion, prostitution, age of consent, polygamy, consent, breastfeeding in public and homosexuality. Siegel and Worrall explain that agencies of the criminal justice system must try to eradicate diverse social problems such as substance abuse, gang violence, cyber crime, terrorism, armed robbery and kidnapping, all the while trying to ensure respect for the individual liberties and civil rights of suspects, accused persons, surviving victims, witnesses and members of the public. In carrying out their duties, agencies of the system also need adequate resources to carry out their complex tasks effectively.

In Nigeria, there has been a lot of focus on the criminal justice system and the administration of criminal justice which has resulted in various studies and researches with the aim of identifying the problems of the system which are plentiful and proffering possible solutions to the identified problems of the system. Such works include those done by Okogbule,[125] Alemika and Alemika,[126] Bamgbose,[127] and Olatunbosun.[128] These shed light on the diverse problems that the Nigerian criminal justice faces, either in part or the

[124]Geiger, A. 2016. Support for Marijuana Legalization Continues to Rise" Fact Tank, Pew Research Center, retrieved on 22 December, 2107 from http://www.pewresearch.org/fact-tank/2016/10/12/support-for-marijuana-legalization-continues-to-rise; "Marijuana is Legal for Medical Purposes in 29 States" retrieved from https://www.vox.com/cards/marijuana-legalization/where-is-marijuana-legal

[125]Okogbule, N.S.2005. Access to Justice and Human Rights Protection in Nigeria: Problems and Prospects" Sur, Revista. Internacional de Direitos Humanos. 2.3. Retrieved on 22 August, 2016, from http://dx.doi.org/10.1590/S1806-64452005000200007

[126]Alemika, E.E.O. and Alemika E.I. 1995. Penal Crisis and Prison Management in Nigeria. Lawyers Bi-Annual 1. 2: 62-80

[127]Bamgbose, O.A. 2010. The Sentence, The Sentencer, and the Sentenced: Towards Prison Reform in Nigeria. An Inaugural Lecture Delivered at the University of Ibadan on 15 July, 2010, Ibadan University Press, pg. 46. See also Olatunbosun, A. 2000. The Plight of Awaiting Trial Persons Under the Criminal Justice System in Nigeria.; Bamgbose, O. 2011. "The Use of Modern Technology in Criminal

[128]Olatunbosun, A. 2012. Criminal Justice in Nigeria; Olatunbosun, A. 2000. The Plight of Awaiting Trial Persons Under the Criminal Justice System.

whole, so also have Akinseye-George and[129]Ojukwu et.al.[130] However, research material that assesses the criminal justice system in terms of its 'recognised approach to justice has not been found. Identifying the Nigerian approach to criminal justice will enable a holistic assessment of the criminal justice system- its legal/normative framework, structural frame work and processes, with a view to adopting and adapting the recommendations which would best suit the Nigerian approach to criminal justice. The need to site the Nigerian criminal justice system within a criminal justice approach can be related to the study of jurisprudence which John Austin defines as "*the science concerned with the expositions of the principles, notions, and distinctions which are common to systems of law…in developed societies"*[131]and which Julius Stone described as *"…the lawyer's examination of the precepts, ideals, and techniques of the law in the light derived from present knowledge in disciplines other than the law."*[132]This is in recognition of the principal dimensions of law which are:

- law as a logical system, with its own internal principles of structure and operation;
- law as an agent of ethical values and norms; and
- law as an agent/instrument of social purpose.

Thus, legal action, be it that of the legislator, the judge, the law enforcement agent, the administrator or the lawyer either as prosecution or defence, reflects the simultaneous pressure of logic, morality, and power.[133]Criminal justice approaches, like jurisprudence is not concerned with expositions about law; such as how branches of substantive law are concerned about how rights and duties are acquired. Rather, justice perspectives/approaches/paradigms/models, like jurisprudence, would prefer to investigate such questions as: What are rights and duties of agents of the criminal justice system? How do they perform their duties? Within what framework do they perform their duties?[134] It also improves the use of law by drawing together insights from different disciplines such as sociology, politics, economics, psychology, psychiatry, medicine etc, in finding the

[129]Akinseye-George Y. 2014. Public Safety, Security and Reform of Pretrial Detention in Lagos State. Retrieved March 12, 2015 http://googlescholar.com
[130] Ojukwu E., et.al. 2012. Handbook on Pretrial Detainee Law Clinic, ibid.
[131]As cited in Adaramola, F. 2008. Jurisprudence. 4th ed., 1.
[132] Stone, J. 1964. Legal System and Lawyers' Reasoning.
[133] Stone, J. Ibid.
[134] Dias, R.W.M. 1985. Dias Jurisprudence, l

solution to problems faced by the criminal justice system. Thought about law is also a story of movements in outlook and ever-changing ideas. Developments are taking place in contemporary physical, moral and other social sciences, which make it difficult to decide once and for all how, if at all, these should be taken into account, so also in criminal justice, where different approaches affect the outlook, ideas and practices of the system.

As indicated earlier, the earliest work conceptualising approaches/models of justice can be traced to Professor Herbert Packer who proposed two models of justice, the crime control and the due process models of justice. Other researchers after much critiquing and analysis have built on his work and developed other models of justice in the light of prevailing issues and circumstances such as the recognition of victims' rights, technological advancements and the international and cross-border nature of crimes. Whether a criminal justice system's approach is identified or not, criminal justice systems operate within one or more of the identified criminal justice approaches in a bid to combat crime, process suspects and accused persons, while managing the resources allocated to and situated within the various agencies, and coping with the varied issues that crop up along the way, such as an upsurge in terrorism, kidnapping, armed robbery, illegal drug use or religious clashes. This can be likened to a jurist whose legal arguments can be situated in a jurisprudential school of thought whether or not he aligns himself with one.

The right approach to justice is important because access to justice encompasses "all" the elements needed to enable citizens obtain redress for their grievances. This necessitates that accused persons should be processed through a system that is fully functional and operates within recognised approaches with stated goals, rules and regulations and respect for the accused's rights. As with the right/proper approach to criminal justice, access to justice includes the existence of a legal and institutional framework which covers the entirety of the system and processes in accordance with recognised international norms and values on access to justice.

It is this researcher's opinion that justice approaches aid effective access to justice- because effective access to justice necessitates a recognised framework of substantive law, procedural law, well defined structure, institutional mechanisms, all functioning within an identified approach to justice which recognises and operates with respect for the rule of law and due process.

Criminal justice as a field, is constantly open to research and innovations as a result of constant study. Although justice approaches are a fairly recent area of justice that have been introduced into studies of criminal justice, more often than not, this study observes that not enough attention is paid to the recognition of the criminal justice perspectives, particularly in Nigeria, where legislation appears to recognize and advocate one or more models of justice whilst actual practice is at variance with legislation.

There is also a tendency to combine criminology and criminal justice studies together, and an example of this is Dambazau's book titled "Criminology and Criminal Justice"[135] which focuses on the concept of crime, theories of crime, the etiology of crime, crime typologies, the nature and impact of crime. This is distinct from criminal justice which is the study of the agencies and actors within the criminal justice system. Criminal justice is aimed at studying the criminal justice system in totality with the aim of understanding the system with a view to improving on the existing structure and ideology, as opposed to criminology, which focuses on why crime is committed and other discussions on crime and the criminal.

It is plausible to hazard a guess that works such as this do not address criminal justice, and Dambazau's definition of criminal justice is cursory at best and does not do justice to the subject. There appears to be a consensus that there is a need to identify how the problem of crime control should be approached and this forms an area of consensus among researchers of criminology and criminal justice.

[135] Dambazau, A.B. 2012, Criminology and Criminal Justice

There is no doubt that it is important to find a way of resolving the perennial problems facing the Nigerian criminal justice system. Researchers such as Okogbule, Akinseye-George, Ojukwu et.al., Alemika and Alemika, Bamgbose, Olatunbosun,[136] and others have discussed the criminal justice system at length, and identified problems facing the system such as lack of redress and accountability, lack of respect for the rule of law and due process leading to human rights infractions, mismanagement of funds, administrative inefficiency, they however, have not tied the Nigerian criminal justice system to a criminal justice approach or approaches.

The right approach to criminal justice can have a positive impact on access to justice, because it establishes a framework within which the criminal justice system operates, achieves its primary aim of crime control and the security of lives and properties of citizens. It is of little value to profess to have a system of criminal justice with carefully formulated guarantees which ensure access to justice for awaiting trial persons if the majority of the awaiting trial persons are unable to utilize it or the citizenry have no confidence in the system. This research focuses on ascertaining the criminal justice approach which can best ensure access to justice for PAT in Nigeria; it does not focus on the awaiting trial person per se, as there is a significant amount of literature available on the subject of the awaiting trial person. It elucidates the notions associated with access to justice in terms of the agents of the criminal justice system and the way their actions affect the criminal justice system. Justice approaches illuminate the major conflicts in values which lie at the heart of the criminal justice system and serve several functions such as providing guidance for the formulation of rules and can be used as a foundation for codes of conduct, staff training and professional ethics.

It is probable that the right approach to criminal justice will have a positive effect on access to justice, particularly for awaiting trial persons who are at the mercy of the agencies of the criminal justice system. This is because an adequate approach ensures that the criminal justice system functions within a well defined structure which promotes the creation of a unique and valuable position through the systematic activities of the various

[136] Previously cited

agencies of the criminal justice system towards achieving a stated goal such as rehabilitation, crime-control, due process, just deserts, nonintervention or restoration.

Ignoring approaches to criminal justice and forging on with the administration of criminal justice does not allow the system to achieve the stated goal. Cole and Smith[137] posit that legislators, heads of police, controllers of prisons and other decision makers in the system are increasingly looking to scholars' research for guidance about which laws and policies to develop. However, even when evidence based procedures are available, they are not always known or followed by decision makers. Legislators and other policy makers may resist adopting them because they conflict with their own strongly held beliefs or commitment to familiar, customary approaches. This is in spite of the fact that evidence based approaches have the ability to lead people to question the existing framework, structures, policies and practices of the criminal justice system. There can also be practical impediments to shifting an existing criminal justice approach in a different direction. This is because it is not only difficult to shift people's viewpoints about criminal justice practice and procedures, it can also be difficult to change approaches to criminal justice because huge amounts of money are spent on law enforcement efforts, prison and correctional institutions. However, in the interest of the system and the society at large, it would be foolhardy not to consider alternatives to the present approach to criminal justice which can improve the criminal justice processes, make the justice system more responsive to the vulnerable people, restore confidence in the system, ensure that criminal justice agencies share information effectively and ensure safety and security of lives and property. This will result in increased confidence in the justice system, attract foreign investment with the ultimate aim of ensuring sustainable development for the Nigerian citizen.

Criminal Justice is regarded as the intertwining of legislation, agencies and processes of the criminal justice system, which have the set objectives of crime control, processing of suspects and accused persons, and the remand and care of awaiting trial persons and convicted persons. In advanced jurisdictions such as the United States and the United Kingdom, criminal justice also includes the post-conviction and release handling of

[137] Op cit.

convicted persons and the management of persons on various other forms of sanctions such as electronic monitoring and community corrections.[138]

Siegel and Worrall,[139] and Senna and Siegel[140]give a comprehensive overview of criminal justice, legislation, principles, practice and procedure, in the American criminal justice system, as do Lehman & Phelps.[141] These materials provide an insight into the general workings of the system, and a comprehensive overview of American criminal justice and take you through the process of criminal justice from the point of arrest to conviction and post conviction, concepts in criminal justice, historical overview, important events and cases of note to criminal justice, and contemporary issues in criminal justice.

Davies, et. al.[142] also undertook an examination of criminal justice in the United Kingdom as did Cronkite,[143]Ashworth,[144] Hostettler,[145]and King.[146]They provide a comprehensive overview of the process of criminal justice from the point of arrest to conviction and post conviction, concepts in criminal justice, historical overview, important events and cases of note to criminal justice, and contemporary issues in criminal justice. In Nigeria, criminal justice is a recognised subject of interest and Dambazau[147] Olatunbosun[148] Adebayo[149], Ojukwu, et. al.[150]amongst others have examined and discussed criminal justice and the criminal justice system at length from the Nigerian perspective. These provide an overview of the field and discuss the Nigerian criminal justice system in the light of various agencies and the processes of the criminal justice system. They also discussed identified problems facing the administration of criminal justice in Nigeria. However, Adebayo's major focus

[138] See generally, Siegel, L.J. and Worral, J.L. 2014, Introduction to Criminal Justice.; Davies M., R, Tyrer, J and Croall H. 2005. Criminal Justice: An Introduction to the Criminal Justice System in England and Wales op.cit.
[139] Siegel, L.J. and Worral, J.L. 2014, op.cit.
[140] See also Senna J.J. and Siegel L.J. 1978. Introduction to Criminal Justice.,; Siegel, L.J. and Senna, J.J. 2005. Introduction to Criminal Justice.
[141] Lehman, J. and Phelps, S. 2005. West's Encyclopedia of American Law.
[142] Davies M., et. al. 2005. Criminal Justice: An Introduction to the Criminal Justice System, op.cit.
[143] Cronkhite, C. 2007. Criminal Justice Administration: Strategies for the 21st Century.
[144]Ashworth, A. 1998. The Criminal Process.
[145]Hostettler, J. 2009 A History of Criminal Justice in England and Wales.
[146] King, M. 1981. The Framework of Criminal Justice.
[147] Dambazau, A.B. 2012, Criminology and Criminal Justice.
[148] Olatunbosun, A. 2012, Criminal Justice in Nigeria
[149]Adebayo, A. M. 2012. Administration of Criminal Justice in Nigeria
[150]See Ojukwu, E. (et.al) 2012. Handbook on Prison Pre-trial Detainee Law Clinic.

is the administration of criminal justice in terms of substantive and procedural legislation and judicial review, while Ojukwu et. al. are more focused on providing a guide on criminal justice and access to justice

This study reveals that the authors in the United Kingdom and United States convey credible information about criminal justice in their respective jurisdiction. For example, Siegel and Worrall give a comprehensive analysis of all perceived aspects of criminal justice as it pertains to the American criminal justice system, and cover broadly, the recognized topics in criminal justice. They also go beyond the cause of crime in criminology to issues such as victimization. An analysis of the contents of the above works indicate the reflective state of each jurisdiction in terms of discussions on criminal justice, which they describe as a response to the problems of criminal justice agencies and identify criminal justice as an offshoot of criminology.[151]This research discusses the criminal justice system in the light of the criminal justice perspectives and builds on the works of Professor Herbert Parker who developed two models of criminal justice, the crime Control and Due Process models of criminal Justice.[152] Packer's models of criminal justice were later built on by King[153] and subsequently others have evolved approaches of criminal justice, which lies at the very heart of this research.

In Nigeria, works like Ojukwu's[154]discussed access to justice in the broad sense and its effect on the criminal justice system. In terms of this research however, the focus is on how criminal justice perspectives can influence the criminal justice system with a view to ensuring access to justice and in this regard, this research leans heavily on Siegel and Worrall, and Davies and others'[155] reference to criminal justice perspectives/models/approaches/paradigms or philosophy. In their works, they identify dominant perspectives of the criminal justice system and the effect they have on the role of the justice system and how it should approach its tasks. Herein lies the specific aim of this

[151]Brown, R.M. 1969. Historical Patterns of American Violence; See also Stiles, T.J. 2003. Jesse James, Last Rebel of the Civil War ; Yeatman, T. 2003. Frank and Jesse James: The Story Behind the Legend.
[152]See Packer, H.L. 1968. The Limits of the Criminal Sanction.
[153] King, M. 1981. The Framework of Criminal Justice.
[154] Ibid.
[155]Siegel, L.J. and Worral, J.L. 2014, Introduction to Criminal Justice, op.cit.; Davies M., et. al. 2005. Criminal Justice: An Introduction to the Criminal Justice System, op.cit

research which is to identify the Nigerian criminal justice perspective within the dominant criminal justice perspectives, evaluate the effect (if any) on legislation, principles, practice and procedures and explore successful reformative changes and interventions in the criminal justice agencies in select jurisdictions that will improve access to justice and the pretrial process in Nigeria.

The subject of criminal justice can be examined from any number of areas like, the formal criminal justice process involving formal procedures such as investigation, arrest, custody, bail/detention, plea bargaining, trial, sentencing/disposition, appeal/post-conviction remedies, correctional treatment, release and post release. In terms of the above angles, the previously mentioned authors have done credible work examining and discussing them. However, other authors also discussed criminal justice in terms of its many features: Bamgbose and Akinbiyi[156]amongst others provide insights into the Nigerian normative criminal law, while[157] Dyson, Omrod and Laird, and Smith et. al provide insights into the English normative criminal law. Many authors in recent times have focused on trends in crime and criminal justice, or contemporary issues that criminal justice systems face. For instance, the recent trend of terrorism has been addressed by Aremu from the angle of policing in Nigeria.[158] In this researcher's opinion, Aremu provides useful and thought provoking analysis of the situation of terrorism in Nigeria.[159]

Aremu, in his focus on policing has also analyzed the needs of the police and advocated for what he terms "emotional intelligence" in policing. Aremu explains that Nigerian Police

[156] Bamgbose, O. and Akinbiyi, S. 2015. Criminal Law in Nigeria.

[157]Anon. 2015. Criminal Law. University of Minnesota Libraries. Open Source txt (Attribution Non-Commercial-Share Alike), University of Minnesota. Retrieved 31 October, 2017, from http://open.lib.umn.edu/criminallaw/; Dyson, M. 2017. Blackstone's Statutes on Criminal Law 2017-2018 27th ed.,; Ormerod, D. and Laird, K. 2017. Smith, Hogan and Ormerod's Text, Cases, and Materials and Criminal Law 12th ed.

[158]Aremu, O. 2014. Policing and Terrorism; Challenges and Issues in Intelligence; Aremu O. 2011 The moderating effect of emotional intelligence on the reduction of corruption in the Nigerian police. *Police Practice and Research*12.3:195-208

[159]See generally on terrorism, Law, R.D. 2016. Terrorism: A History.; Anon. Terrorism. Federal Bureau of Investigation. Retrieved 16 August, 2017, from https://www.fbi.gov/investigate/terrorism; Hoffman, B.(ed.). 2017. Inside Terrorism, 3rd ed. See also Anon. Terrorism Research http://www.terrorism-research.com; Anon. The United Nations Office on Drugs and Crime and Terrorism Prevention" https://www.unodc.org/unodc/en/terrorism/; Thompson, L.D. 2013. Terrorism and the U.S. Criminal Justice System. Brookings Report. Retrieved 22 March, 2015, from http://www.brookings.edu/on-the-record/terrorism-and-the-u-s-criminal-justice-system/amp/

Officers face unique challenges as a result of their daily interaction with citizens in the discharge of their duties either as suspects, accused persons, witnesses, or victims, within the paramilitary structure of the Nigeria Police. To him, this has led to mounting resentment, anger against the citizenry, leading to a disconnect of agents and agencies from their primary duties of securing the lives and properties of all persons within the borders of the nation state. He advocates for Emotional Intelligence training of police officers to assist officers in understanding and coping with stressors such as anger of non-offending citizens, uncooperative witnesses or suspects and recognizing subtle signs of aggression in citizens.[160]

It can be argued that Aremu's research points along a trajectory that has positive inclinations for the criminal justice system in general and policing in particular because he combines counseling and psychology with criminal justice and discusses the criminal justice system in terms of its actors and not the accused persons, victims and witnesses in the criminal justice system. This can only yield positive results in the long run in terms of the administration of criminal justice because it indicates a shift in criminal justice towards practical means of solving some of the problems that beleaguer the Nigerian criminal justice system. Aremu's work on emotional intelligence also informs his research into community policing in Nigeria.[161] Others such as Alemika, Nwaubani, Obeagu and Ordu and Nnam have also contributed to research on the issue of community policing in Nigeria[162]and built on existing literature on the issue such as Friedman, Siegel and Worrall and David et. al's research into community policing.[163]

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[160]See also, Goleman, D. 1995. Working with Emotional Intelligence. and Okioye, O.E. 2011. The inclusion of emotional intelligence in Nigerian police recruits training programme: agenda for Police personnel pro-social development and effective policing. *Journal of Research in Education and Society*. 2.1. Retrieved April 22, 2017 from http://www.icidr.org

[161] Aremu, A.O. 2013. The Impact of Emotional Intelligence on Community Policing in Democratic Nigeria: Agenda Setting for National Development" in Verma, A., Das, D.K. and Abraham, M. (Eds.) 2013. Global Community Policing: Problems and Challenges.

[162] See Alemika, E.E.O. 1999. Police Community Relations in Nigeria: What Went Wrong? A Paper presented at a seminar on the role and function of the police in a post-military era, organized by the Centre for Law Enforcement Education in Nigeria (CLEEN) and the National Human Rights Commission (NHRC) at the Savannah Suite, 8-9 March 1999Abuja; Nwaubani, O.O. et al. 2014. Building support for community policing; challenges and implications for national security in Nigeria. *International Journal of Educational Science and Research* 4.3:9-20. Retrieved March 03, 2017, from http:///www.tjprc.org; Obeagu, C.C. 2014 Community policing in Nigeria: issues and challenges. *World Journal of Management and Behavioral*

In terms of juvenile justice in Nigeria, Akinseye-George,[164] Bamgbose,[165] and Alemika and Alemika[166] provide insights into the Nigerian juvenile justice system, which has been in existence for decades, and expound on the laws, principles, practice, procedures relating to juvenile justice, identifying perceived problems confronting the system and proffering workable solutions to the perceived problems in light of the dynamics of the Nigerian justice system. It must be pointed out that research on juvenile justice in Nigeria is not limited to these authors, as there are innumerable articles in learned journals that discuss the issue of juvenile justice at length and from various dimensions such as Bamgbose's article on juvenile justice[167] and Akinseye-George's work on juvenile justice.[168]

On cybercrime, Nhan, studied the policing of cybercrime and explored the structural, cultural, and various criminal justice issues in policing cyberspace and posits that collaborative security efforts at tackling the menace is marred by inter and intra – organizational frictions whilst dealing with digital media pirates, hostile hackers, and an unsympathetic public.[169] Although a relatively new concept in Nigeria, Bamgbose has also discussed the issue of cyber crime in Nigeria.[170]Corporate crime is also an emerging and pertinent issue and researchers and writers such as Selous, Jibueze, Young, Ngobeni,

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Studies. 3.3:58-68; Ordu, G.E. and Nnam, M.U. 2017. Community policing in Nigeria: a critical analysis of current developments. *International Journal of Criminal Justice Sciences*. 12.1:83-97; Undu, J. Feb. 05, 2017. Nigeria's value system does not favour implementation of community policing- Dr. Audu. The Vanguard Newspaper. Retrieved July 31, 2017 from http://www.vanguardngr.com/2017/02/nigrias-value-system-not-favour-implementation-community-policing-dr-audu/

[163]Friedman,R.R. 1996. Community policing: some conceptual and practical considerations. Home Affairs Review. 34.6:114-123 (in Hungarian). Retrieved January 13, 2017, from http://www2.gsu.edu/-crirxf/c**o**nsiderations.htm; Siegel, L.J. and Worral, J.L. 2014, Introduction to Criminal Justice, op.cit.; Davies M., et. al. 2005. Criminal Justice: An Introduction to the Criminal Justice System, op.cit.

[164] Akinseye-George, Y. 2009. Juvenile Justice in Nigeria. op.cit.

[165] Bamgbose, O. 2014. Re-evaluating the juvenile/child justice system in Nigeria. A paper delivered at the 2014 Professor Jadesola Akande memorial lecture organised by the Nigerian Institute for Advanced Legal Studies. Retrieved December 22, 2017 from https://nialsng.wordpress.com/2014/12/01/reevaluating-the-juvenile-child-justice-system-in-nigeria/

[166] Alemika, E.E.O. and Chukwuma, I.C. 2001. Juvenile Justice Administration in Nigeria: Policy and Practice.

[167] Bamgbose, O. 1991. Juvenile justice in Nigeria: a case for urgent reforms. Akinyele, I.O. et. al. Eds Economic and Democratic Reforms in Nigeria's Development.

[168] Akinseye-George, Y. 2009. Juvenile Justice in Nigeria, op. cit.

[169]Nhan, J. 2010. Policing cyberspace: a structural and cultural analysis.; Anon. Cyber Crime. Federal Bureau of Investigation. Retrieved August 16, 2017 from https://www.fbi.gov/investigate/cyber; Broadhurst,R. and Choo, K.R. 2011. Cybercrime and online safety in cyberspace. Smith, C. et.al. Eds.153-165

[170]Bamgbose, O. and Akinbiyi, S. 2015. Criminal Law in Nigeria. See also, Umoru, H. May 26, 2017. "$450m lost to cyber crime in Nigeria-senate. Vanguard. Retrieved August 14, 2017 from https://www.vanguardngr.cm/2017/05/450m-lost-cyber-crime-nigeria-senate/

Holtfreter, Hartley, Olejarz, Pearce and Snider[171]have expounded and discussed it at length, highlighting trends and issues. It is notable that corporate criminal liability is a largely neglected area of law and according to Okoli,[172]judicial affirmation of the concept is relatively recent, and although crimes for which corporations are most likely to be liable are "white-collar" in nature, the lukewarm attitude of the organs of state as to the prevention and prosecution of white collar crime has enabled it to flourish. Thus research can lend a voice to influence future policy on white collar crime in Nigeria.

There is no doubt that the criminal justice system has been looked at from particular perspectives-such as Bamgbose's and Akinseye-George's works on Juvenile Justice, Falana's article on Pre-Charge Detention of Suspects,[173]Olatunbosun's article on the plight of awaiting trial persons,[174]amongst others, to a holistic perspective- as in, Agbonika's discussion on the administration of criminal justice in Nigeria,[175]Olatunbosun's book on Criminal Justice, Adebayo's book on Criminal justice administration and Saleh-Hanna's work, which considered the criminal justice system from the angle of the effect of colonial control on the administration of criminal justice.[176] These researches and other analysis

[171]Selous, A. 2015. The future of criminal justice. Speech at Criminal Justice Management. Retrieved September 22, 2017 from https://www.gov.uk/gov/speeches/criminal-justice-management-2015; Jibueze, J. 2009. Justice for the rich (I). The Nationonline. Retrieved August 20, 2017, from http://thenationonlineng.net/justice-rich-1/; Young, M. 2009. White Collar Crime.; Ngobeni, P. Dec. 14, 2014. Special justice for the rich. Sunday Independent. Retrieved August 15, 2017, from https://www.101.co.za/sundayindependent/special-justice-for-the-rich-1795288; Holtfreter, K. 2014. White-collar and corporate crime. Gartner, R. and McCarthy, B. Eds. The Oxford Handbook of Gender, Sex and Crime; Hartley, R.D. 2008. Corporate crime: a reference handbook.; Anon. Corporate crime and fraud TaylorWessing, United Kingdom. Retrieved August 28, 2017 from https://unitedkingdom.taylorwessing.com/en/corporate-crime-and-fraud; Olejarz, J.M. "Understanding White-Collar Crime" November, 2016, Harvard Business Review retrieved on 02 November, 2017 from https://hbr.org/2016/11/understanding-white-collar-crime; Pearce, F. and Snider L. 1995. Corporate Crime: Contemporary Debates, University of Toronto Press, Canada; "Cybercrimes" Justia, https://www.justia.com/criminal/offenses/other-crimes/cybercrimes/

[172] Okoli, C. 1994. "Criminal Liability of Corporations in Nigeria: A Current Perspective. *Journal of African Law*. 38.1:35-45

[173] Falana, F. "Constitutional Validity of Pre-Charge Detention of Suspects" The Herald Nigeria. Retrieved February 08, 2017, from http://www.herald.ng/constitutional-validity-of-pre-charge-detention-of-suspects-by-femi-falana/

[174]Olatunbosun, A. 2000. The Plight of Awaiting Trial Persons Under the Criminal Justice System. In Topical Issues in Nigerian Law, Laoye, L. and Akintayo J.O.A. (eds.) A Collection of Essays in Honour of Hon. Justice Nurudeen Olalekan Adekola.

[175] Agbonika J.A.M. 2014. Delay in the Administration of Criminal Justice in Nigeria: Issues from a Nigerian Viewpoint, *Journal of Law, Policy and Globalization*. 26

[176]Saleh-Hanna, V.2008.Colonial systems of control: criminal justice in Nigeria.

have yielded fruit one way or another and influenced legislation such as the Administration of Criminal Justice Act 2015, the Violence Against Persons (Prohibition) Act, 2015, the Prisons Bill, 2008 for the replacement of Cap P29 Laws of the Federation of Nigeria, 2004, which seeks to make comprehensive changes in the administration of prisons in Nigeria

We all perceive things differently and tend to have different understandings of what the aim of the criminal justice system ought to be and how best to approach the idea of crime control as a system. This is also true of the different components of the criminal justice system. The Nigerian criminal justice system currently lacks a coherent and identified criminal justice framework that identifies the roles and expectations of the various components of the system and this can only result in finger pointing and blame game which can be seen in the manner in which agencies of the criminal justice system, rather than fighting and trying to control crime, tackle themselves, fight for individual goals and policies even at the detriment of the other agencies and evince a serious lack of cooperation.[177] There appears to be very little research on the ideal frame work of criminal justice in Nigeria. An identified framework/model/paradigm/perspective/approach would state clearly, the roles and expectations of the component units of the system with a view to achieving a common goal within a coherent policy frame work which would comprise a legal, institutional, financial framework for the criminal justice system as a whole.

Admittedly researchers and Jurists such as Solomon and Nwankwoala,[178]Ogwezzy et.al.,[179] Profesor Kevin Nwosu[180] and the Chief Justice of Nigeria; Justice Walter Onnoghen,[181]

[177] See for example Baiyewy, Leke. Dec. 14, 2017. EFCC/DSS Clash: Senate Grills Magu, Daura, others in Secret. Punch Newsletter. Retrieved January 22, 2017 from http://punchng.com/efccdss-clash-senate-grills-magu-daura-others-in-secret/; Atuma, Uche. Nov. 22, 2017. DSS, EFCC, DIA Clash over Bid to Arrest Ekpenyong, Oke. The Sun Newspaper. Retrieved January 03, 2017, from http://www.sunnewsonline.com/dss-efcc-nia-clash-over-bid-to-arrest-ekpenyong-oke/; Ezeamalu, Ben. Dec. 11, 2017. Updated: EFCC Lacks Powers to Prosecute Serving Judges, Court of Appeal Rules. Premium Times. Retrieved February 08, 2018 from https://www.premiumtimesng.com/news/headlines/252123-updated-efcc-lacks-powers-to-prosecute-serving-judges-court-of-appeal-rules.html; Akuki, Alfred, April 15, 2017. The Judiciary in the EFCC's Court. Independent Newspaper. Retrieved February 08, 2018 from https://independent.ng/the-judiciary-in-the-efccs-court/amp/

[178] Solomon, O.J. and Nwankwoala, R. 2014. The role of restorative justice in complementing the justice system and restoring community values in Nigeria. *Asian Journal of Humanities and Social Sciences*. 2.3:126-137

have advocated the inclusion/integration of the restorative justice approach to the Nigerian criminal justice system. There is no doubt that these approaches to justice are recognised and we see them in legislation such as the Child's Right Act's reference to rehabilitation as its main aim, the Administration of Criminal Justice Act, 2015, and its recognition and encouragement of restorative justice. However, research reveals that there appears to be a tendency towards rhetoric and little or no attention is paid to the actual requirements of an identified approach or model of justice.

Available research on approaches to criminal justice and criminal justice; legislation, practices and procedure, provides a basis for analysis of justice perspective in this study's attempt to situate the Nigerian criminal justice system in a criminal justice approach. In the US and UK, there appears to be a recognition of the importance of approaches to justice and their importance as a framework within which the criminal justice system ought to operate. Admittedly, the approaches to justice represent an ideal that the criminal justice system ought to aspire to, but what is any endeavor without lofty ideals to point one in the right direction and serve as a means of constant evaluation and re-evaluation?

Just as the law has the field of jurisprudence which according to Aguda[182] is a practical discipline which aims to provide guidance on how to act in order to attain certain valuable objectives, so also does the criminal justice system have the criminal justice approaches. Thus, using Elegido's description of the main characteristics of jurisprudence, it is possible to characterize criminal justice as a field of study which:

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[179]Ogwezzy, M.C., Adebayo, A.A. and Kekere, A.I. 2016. Restorative justice and non-custodial measures: panacea to recidivism and prison congestion in Nigeria. *Nnamdi Azikiwe University Journal of International Jurisprudence.* 7:69-78

[180] Former Director of Academics, Nigerian Law School and initiator of the Settlement House, Nigeria. See Azu, J.C. Feb. 01, 2011. Nigeria: plea bargaining, restorative justice can decongest prisons-Prof. Kevin Nwosu. Daily Trust, Abuja.

[181] Anon. Feb. 15, 2017. Nigeria moving away from punitive criminal justice system – Onnoghen. Premium Times Agency Report. Retrieved February 18, 2018 from https://www.premiumtimesng.com/news/more-news/223609-nigeria-moving-away-punitive-criminal-jusitce-system-onnoghen.html

[182] Elegido, J.M. 1994. Jurisprudence.

a. As a practical discipline, can be utilized in orientating the decisions of agents of the criminal justice system and providing guidance on how to act in order to attain the objective of a recognised approach, perspective, or model of justice.
b. Has a tendency to make value judgments because as averred by ELegido, "*there is simply no way to act, or to recommend others how to act, without previously determining, even if only in an implicit way, which objectives are worth striving for and which are not."* This simply put, indicates that it is not possible to remain detached from one's actions in the criminal justice system as a recognised criminal justice approach will provide a basis for value judgments.
c. Borders on moral and political philosophy because the criminal justice researcher operates in an interdisciplinary and multidisciplinary field and does not have its own "independent" ultimate principles and objectives, but rather borrows them.
d. Pays attention to the rational justification of each criminal justice approach and of the law as a whole.

Citing Fuller,[183] as stated by Elegido, "*...it is scarcely possible to talk intelligently about social institutions without recognizing that they exist because and in so far as men pursue certain goals and ideals."*Thus, in conceptualizing criminal justice approaches, there is a conscious thought to ascertain the 'human good' that can be fostered or protected through the criminal justice system and subsequently, appraising the specific criminal justice approach that can be better suited to the criminal justice system.[184]Based on available information, this research will be a comparative analysis of justice perspectives/approaches to criminal justice in the selected jurisdictions of Nigeria, the United Kingdom (England and Wales) and the United States of America, and Siegel and Worral, and Davies et. al.'s work on approaches provide good material for a comparative analysis of approaches to criminal justice

Just as Jurisprudence gives credence to the study of law and situates the jurist in a school of thought whether the writer is aware of it or not, situating the Nigerian criminal justice system in an approach will provide a basis for the analysis of the system in the light of the preferred or identified criminal justice approach and inevitably, this will have a positive impact on access to justice because it will lead to improvement in legislation, policy and

[183] Fuller, L.L. 1978. The forms and the limits of adjudication *Harvard Law Review. 92:*353-356
[184] See generally Elegido, J.M. 1994. Jurisprudence. op. cit. 7-10

procedure. It is of little value to have a system of criminal justice with carefully formulated guarantees if no one except the rich and powerful are able to utilize it, or majority of the people do not understand it. This research focuses on an angle of criminal justice –access to justice for awaiting trial persons; it does not focus on the awaiting trial person per se, as there is a significant amount of literature available on the subject of the awaiting trial person. It elucidates the notions associated with access to justice in terms of the agents of the criminal justice system.

Cappaletti[185] undertook a comparative assessment of access to justice initiatives worldwide in a study "the Florence Access-to-Justice Project"[186]which was completed in 1979; it was a comparative assessment of access to justice and it serves as a spring board for the subject of access to justice by enlightening readers about the nature of access to justice; he distinguishes between the narrow and broad conceptions of access to justice by informing that from a narrow perspective, access to justice can be confined to access to legal aid or access to the courts,[187] while the broad conception informs that access to justice encompasses the whole of the criminal justice system in terms of legislation, structure, administration, practice and procedure.

This researcher considers access to justice from the broad conception and posits that the right approach to criminal justice will have a positive effect on access to justice, particularly for awaiting trial persons who are at the mercy of the agencies of the criminal justice system. Thus, ignoring approaches to criminal justice which describe the relationship framework of the respective agencies and the role of the component agencies

[185] Cappelletti, M. and Garth, B.1978. *Access to Justice: The newest wave in the worldwide movement to make rights effective. Buffalo L. Rev. 27:*181-227

[186]The Project was a four (4) year comparative research project entitled "Florence Access to Justice Project" which was sponsored by Ford Foundation and the Italian National Council of Research (CNR). It led to a four-volume series on Access to Justice: Vol. 1. Access to Justice: A World Survey (edited by Messrs. Cappelletti and Garth; Vol.2. Access to Justice: Studies of Promising Institutions (edited by Messrs. Cappelletti and Weisner); Vol. 3 Access to Justice: Emerging Perspectives and Issues (edited by Messrs. Cappelletti and Garth; and Vol. 4. Patterns in Conflict Management: Essays in the Ethnography of Law. Access to Justice in an Anthropological Perspective (edited by Professor Klaus-Friedrich Koch)

[187] See generally, Robins, J. Oct. 16, 2016. Access to justice is a fine concept. what does it mean in view of cuts to legal aid. The Guardian Retrieved August 23, 2016, from https://www.theguardian.com/law/2011/oct/06/access-to-justice-legal-aid-cuts; Hamlyn Lectures 1999, presented by Professor Zander. He offered an incisive appraisal of the United Kingdom Access to Justice Act 1999 and its potential to undermine the accomplishments of the Legal Aid Act, 1949. Retrieved October 16, 2016, from http://www.socialsciences.exeter.ac.uk

of the criminal justice system has led to the current state of affairs; the agencies of the criminal justice system attacking themselves, rather than working together to achieve the stated goal of the system.

It is rather curious that it seems to be the practice of most researchers of the criminal justice system to lump criminology and criminal justice studies, and identify criminal justice as an offshoot of criminology.[188] However, Bernard and Engel[189] and Hagan[190] provide insight into discussions about the separation of criminology and criminal justice and argue for a separation of the two. This study is in consonance with Bernard and Engel and Hagan, who posit that there is a distinction between criminology and criminal justice and that criminal justice as a field has come into its own. This research therefore discusses the criminal justice system in the light of the criminal justice perspectives and builds on the works of Professor Herbert Parker and Michael King as presented by Siegel and Worrall and Davies et. al. It is this researcher's opinion that Siegel and Worrall, and Davies et. al. provide valuable insight into the effect of criminal justice system as they elucidate on the effect that an identified model/approach can have on the criminal justice system.

The information obtained from available literature on criminal justice approaches in the United States and the United Kingdom indicates that recognised justice perspectives have informed policy and practice in the criminal justice system to the extent that policy makers, police, judges and magistrates constantly seek to find a balance between major criminal justice perspectives all the while reviewing the effect of policy and practice on crime and the criminal justice system as a whole.

This research also takes into cognizance, International and African Regional jurisprudence and instruments on human rights which recognize a strong link between access to justice, and a proper approach to criminal justice which can only ensure access to justice for awaiting trial persons and a safe and secure government. There has also been an increased

[188] Brown, R.M. 1969. Historical Patterns of American Violence. Graham, H.D. and Gurr, T.R. Eds. *Violence in America: Historical and Comparative Perspectives*.. See also Stiles, T.J. 2003. Jesse James, last rebel of the civil war.; Yeatman, T. 2003. Frank and Jesse James: the story behind the legend.

[189] Bernard, T.J. and Engel, R.S. March 2001. Conceptualizing Criminal Justice Theory. *Justice Quarterly*, 18.1:1-30.

[190] Hagan, J. 1989. Why so little criminal justice theory: neglected macro and micro-level links between roganization and power. *Journal of Research in Crime and Delinquency 116-139.*

focus by the international community in recent years, on the improvement of countries' justice systems by providing international instruments and covenants which aim to strengthen legal frameworks and justice institutions either to fight corruption, attract investments, redress inequality or broaden individual' access to resources.[191] Access to justice is recognised as a basic human right and a vital part of the United Nations mandate to reduce poverty and strengthen democratic governance. It is also regarded as an indispensable means of combating inequality, poverty, prevention and resolution of conflicts.

From the foregoing, it is this researcher's opinion that there is sufficient information to undertake research into criminal justice approaches, by identifying the Nigerian criminal justice approach and contrasting with the stated or non-stated approach to justice, determining the justice approaches and identifying a criminal justice approach(es) best suited to the Nigerian criminal justice system with a view to ensuring access to justice for awaiting trial persons.

2.2 Theoretical framework

Access to justice in Nigeria can be regarded as both a social and political issue because of its connections with the entrenchment of the rule of law, due process and the recognition of public interest in access to justice which is indicated by wide media profiling of the theme, and political and legal involvement in issues concerning access to justice. It is important to situate legal research in one of the schools of jurisprudence because jurisprudence "*is the dormitory or repository for law subjects and legal concepts…through jurisprudence, we examine society within the microscope of the law.*[192] Identifying the school of thought that this research falls under is indeed a topic worthy of research in itself; this is because one must first consider the meaning of criminal justice which can vary, based on individual

[191] Marchiori, T. 2015. A framework for measuring access to justice including specific challenges facing women. A Report commissioned by the United Nations Women in partnership with the Council of Europe accessed on 22 July, 2017, from https://rm.coe.int

[192] Adaramola, F. 2008. Jurisprudence (4th ed.)LexisNexis, Durban, South Africa pg.2

interpretations. According to Dias[193] *"If meaning and experience rest on individuals interpretation, it follows that concerted activities can only take place within areas of similar interpretation...*[194]

This research is premised on the sociological jurisprudence school of thought because much of the characteristic tendencies of the sociological school, especially its reliance on interrelated social sciences, can be utilized in advancing arguments for improvements in all facets of the system. It can be done through justified social scientific research with the effect of establishing postulates through measured social desires instead of following tradition.

In utilizing a sociological jurisprudential approach, researchers are able to focus their attention on social purposes and interests served by law while also recognizing the individual rights of citizens. This is because sociological jurisprudence encourages the acceptance of positive law as a means of social control, while also reiterating the need for constant improvement as a catalyst for progress and positive change in society.

This research studied the effect of the society on law and the effect of that law on society. It is this researcher's opinion that legal thought has tended to reflect trends to be found in sociology,[195] and the sociological school, seen as a 'fall out' from natural law and legal positivism's jurisprudential conflict; is "*an idealist science of law based on a conceptual fusion of the central idea of legal positivism*[196]*…and the need for a continuous advancement of civilization."*[197] Amongst its many qualities, Sociological jurisprudence combines elements of traditional jurisprudence concerning the aims and nature of laws with the social science understanding of organizational dynamics and constraints, resulting in a mixture of institutional realism, social theory and normative theory, which offers a different approach to understanding law and its effect on society,[198] whilst utilizing the

[193] Dias, R.W.M. 1985. Dias Jurisprudence, (reprinted 2009) Butterworths and Co. Publishers, Great Britain.
[194] Ibid at pg.6
[195] Freeman, M.D.A. 2010. Lloyd's Introduction to Jurisprudence (8th ed.), Sweet and Maxwell, Thomson Reuters (Legal) Publishing, United Kingdom
[196] That is, the separation of law from extra legal phenomena such as morals, history or religion
[197] Adaramola, F. 2008. Jurisprudence, op.cit pg. 253
[198] See Selznic, P. 1961. Sociology and natural law. *Natural Law Forum*. Retrieved June 23, 2016 from http://scholarship.law.nd.edu/nd_naturallaw_forum/61

knowledge obtained from sociological research towards providing a more effective science of law. It also evinces concern for social justice, although there is no consensus on the definition and the method of attaining it.

Sociological jurisprudence looks beyond the traditional confines of legal scholarship and attempts to place law in its social context.[199] Selznic[200] informs that:

> The broad aim of legal sociology is the extension of knowledge regarding the foundations of a legal order, the pattern of legal change and the contribution of law to the fulfillment of social needs and aspirations. The special interest of sociology in these matters rests on the basic assumption that law and legal institutions both affect and are affected by the social conditions that surround them…the sociology of law shares with political sociology a concern for the nature of legitimate authority and social control, the social bases of constitutionalism, and the evolution of civic rights, and the relation of public and private spheres…the roots of legal sociology lie mainly in jurisprudence rather than in the autonomous work of sociologists.[201]

Cotterrell[202] on the other hand views socio-legal studies as "*a transdisciplinary enterprise and aspiration to broaden understanding of law as a social phenomenon."* To him, sociological studies is central to legal education and legal practice, and can offer insights into legal thinking and transform legal ideas by reinterpreting them. Tamanaha[203] supports Cotterrell's view of sociological studies and believes that legal theory is a key to social phenomenon that must be understood, analysed and discussed. To him, this cannot begin nor be carried far without conceptual analysis.

Sociological jurisprudence emerged in the twentieth century as a result of the synthesis of various juristic schools and owes its origins and existence to jurists and researchers, legal

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[199] Freeman, M.D.A. 2010. Lloyd's *Introduction to jurisprudence* (8th ed.), op. cit.
[200] Selznic P. The sociology of law. I*nternational Encyclopedia of the Social Sciences*. Retrieved October 17, 2017 from http://www.encyclopedia.com/social-sciences-and-law/law/law/law. See also, Selznic, P. 1961. Sociology and natural law. p.cit.
[200] Ibid.
[201] The sociological school emerged out of the works of jurists such as Rudolf von Jhering, Oliver Wendel Holmes, Leon Duguit, Eugen Ehrlich, Kantorowicz, Heck, Gmelin, Leon Duguit, and Roscoe Pound. See generally on the sociological school of jurisprudence, Adaramola, F. 2008. Jurisprudence ibid.; Elegido, J.M. 1994. (reprint 2010) Jurisprudence..; Freeman, M.D.A. 2010. Lloyd's Introduction to Jurisprudence op. cit.; Dias, R.W.M. 1985. Dias Jurisprudence.
[202] As cited in Freeman, M.D.A. 2010. Lloyd's Introduction to Jurisprudence. op. cit.858-872
[203]Tamanaha, B.Z. 2016. How history bears on jurisprudence. *Legal Studies Research Paper Series*. Paper No.16-09-01. Retrieved January 22, 2018 from http://www.ssrn.com, pdfSSRN-id2841936.pdf

and non-legal, such as Auguste Comte, Montesquieu, Roscoe Pound, Rudolph Von Jhering, Eugen Ehrlich, Max Weber, Emile Durkheim, Julius Stone, Paul Vinogradoff and Philip Selznic amongst others. The sociological school of jurisprudence is best understood by a brief foray into the thoughts and beliefs of some of the proponents of the school of thought.

Emile Durkheim, considered to be one of the founders of French sociology regarded society as a system with an independent existence. He proposed that as society became more complex in its growth, the body of civil law concerned primarily with restitution and compensation, grew at the expense of criminal law and penal sanction. Over time, law has grown from repressive (cruel) to restitutive law (contract). Thus, law was an indicator of the manner of blending of a society, and this could be mechanical, among identical parts or organic, among differentiated parts, such as industrialized societies. Durkheim was of the opinion that the sociology of law should be developed along and in close connection with morals, by studying the development of value systems reflected in law.[204]Durkheim is recognised for his interpretive approach to sociological studies and his identification of repressive law with penal law, which he contrasted with restitutive law, which is at the fringe of communal principles.

Max Weber and Durkheim were contemporaries and are both recognised as leading sociologists. However, Weber was the first to develop a systematic sociology of law, and emphasized the belief that opinions and actions should be based on reason and knowledge rather than on religious belief or emotional response. To him, "reason, rather than experience," was the foundation of certainty in knowledge quality of legal institutions in modern western studies; thus his was an external approach to law that studied the empirical characteristics of law as opposed to the internal perspective of the legal sciences and the moral approach of the philosophy of law. Although an influential sociologist of law, one problem with his approach to sociological studies was his perceived belief that laws would fail where the legal system was insufficiently autonomous or legal reasoning insufficiently legalistic.

[204] Nicco-Law Solutions. Sociological Jurisprudence op.cit.

Eugen Ehrlich was an Austrian legal scholar of Roman law and sociology of law, who was of the opinion that "*at the present as well as at any other time, the center of gravity of legal development lies not in legislation, nor in juristic science, nor in judicial decision, but in society itself."* In this opinion, the substance of the different attempts to identify the fundamental principles of sociological jurisprudence can be seen. Ehrlich is credited with presenting an acceptably complete and ground-breaking programme for sociological theory of law and for socio-legal research as a basis for legal knowledge. Ehrlich was unconventional and uncompromising in the search for 'scientific reliability' of findings, rather than adherence to the prevailing attitude of the time towards law and or doctrine, and this set his work apart from all others of the time because it sought to unveil the myths, errors and weaknesses of legal theory where it proceeded simply by way of automatic doctrinal examination.

Agreeably, legal thought has tended to reflect the trends that can be found in sociology which is a distinct discipline with a recent origin traced to the work of the French philosopher Auguste Comte;[205] who is known as the founder of sociology as a science, and sociology can be sited within three approaches to it; the interpretive (antipositivist) sociology and positivist sociology and critical sociology. Sociologists such as Emile Durkheim developed positivist sociology based on the belief that it could raise the subject to the level of a rational science, like chemistry or physics. Thus, the aim of positivist sociology is to understand social institutions using only the methods of the natural sciences and by relying on known and observable facts, thus emphasizing empirical observation. Admittedly, this approach led to a more formal understanding of how societies operate, it gives little recognition to the study of social mechanisms that cannot be observed or proven through the collection of facts.[206]

Rudolph Von Jhering, sometimes regarded as the father of sociological jurisprudence was a German legal scholar who placed great emphasis on the function of law as an instrument

[205] 1798-1857

[206] Cranford, N. Difference Between Positivist, Interpretive and Critical Sociology. Retrieved November 22, 2017 from ,http://education.seattlepi.com/difference-between-positivist-interpretive-critical-sociology-6396.html

for serving the needs of human society.[207] Jhering felt that law is designed to meet human ends and built a utilitarian philosophy of law. Jhering was of the opinion that the sense of right has not produced law, but law, produced the sense of right, thus *"law knows but one source, the practical one of purpose."*To him, while the philosophical jurist adopts an idealistic interpretation of legal history by considering that the principles of justice and right are discovered and expressed in rules, and the historical jurist believes that principles of action are found by experience and developed into rules, Jhering opined that the means of serving human ends are discovered and fashioned consciously into law.

Herbert Spencer was of the opinion that evolution was the key to understanding human progress and legal as well as social development could be best left to evolve by natural selection, like biology. He believed that the great process of biological evolution would lead to social evolution as part of an automatic and independent process, but also alluded to the effect that conscious direction could hope to achieve in altering the process of social evolution. Spencer was however opposed to Pound's concept of social engineering as he was more grounded in his perception of society which considered a structure, characterized by cooperation between parts and the whole.

Philip Selznick, an American professor emeritus of law and sociology and founder of the institutional perspective in organizational theory, was also credited with helping transform the social study of law by developing a scholarly approach that combined elements of traditional jurisprudence concerning the aims and nature of law with social science understanding of organizational dynamics and constraints. He tried to understand legality from a sociological point of view and identified three stages in the sociology of law;

- the first stage- the pioneer communicates a perspective, formulates a programme of action and attempts to gear individual and social needs to the values of their identified ideal society such as the western democratic society.[208] He pegs Pound and his continental progenitors here, along with the concept of social engineering;

[207] Freeman, M.D.A. 2010. Lloyd's Introduction to Jurisprudence ibid.
[208] Freeman, M.D.A. 2010. Lloyd's Introduction to Jurisprudence op. cit.; Dias, R.W.M. 1985. Dias Jurisprudence.

- the second stage is characterized by a concern for method, and here, the skills of the academic lawyer and the sociologist were fused. The jurists of this stage were content to survey narrower problems and achieve less far-reaching conclusions.
- The third stage would be a time when sociological jurisprudence would develop an "'*intellectual autonomy and maturity', when having learnt the necessary skills, the jurists can return to some of the theoretical questions posed at the outset, the function of law, the role of legality, the meaning of justice, and a sociology of law will emerge"*

Selznick is recognised for his combination of pragmatic emphasis on empirical knowledge and natural law thinking in sociological jurisprudence. He asserted that legal orders are not unique to the political state. He sees law as a generic element in the structure of many different groups in society. To him, law is '*endemic in all institutions that rely for social control on formal authority and rule making."*Thus, what distinguishes law from social control is not the coercion involved but the summoning of authority. In this sense, Selznick's ideas on jurisprudence involve a fusion of Weber and Ehrlich's ideas of justice, Hart and Fuller's debate on law and morality[209]and recognition of the importance of natural law to juristic thinking. Natural law cannot be excluded from considerations of sociological jurisprudence, as even Auguste Comte in his later years deserted the empirical method for *a priori* affirmations, such as his view that there were invariable natural laws operating in the field of social activity, thus natural law enables us to think about why we have law, what law can achieve and what we should do when the law is failing and this is very important, as it enables us not to just study law in the context of other disciplines, but as with critical sociology, it enables us to see the flaws in our findings and constantly aspire to the greater good. Thus, all schools of jurisprudence can find relevance in sociological jurisprudence and much will then depend on the emphasis placed on the researcher's idea of jurisprudence.

Adaramola aligns himself with the sociological jurisprudence school of thought, which he sees as the amalgamation of the arts, sciences, psychology, socio-biology and

[209] Hart was of the positivist view that morality and laws were separate, as such, to him there was no necessary relationship between a legal system and idea of justice and morality. While Fuller argued for morality as the source of law's binding power and that law and morality cannot be so neatly distinguished such that the post world war II courts were entitled to hold Nazi rules not to be law as they were instruments of an arbitrary and tyrannical regime. See "Hart Fuller" Debate, Sociology Guide. Retrieved January 31, 2018 from http://www.sociologyguide.com/sociology-of-law/hart-fuller-debate.php

epistemology of law. He also regards it as the scientific investigation and systematic analysis, synthesis and presentation of certain abstract, general and theoretical ideas about law and legal systems, carried out with a view to discovering those ultimate truths and principles (if any) that are common to human societies, which might possibly lead to replacing and reforming those principles or improving upon their functioning. He further regarded sociological jurisprudence as a 'chemical' built up from subject-molecules, external to, but not entirely alien to law. This did not in any way, remove from his analysis of the other schools of jurisprudence, but rather, gives credence to a holistic appreciation of jurisprudence.

As a whole, sociological jurisprudence has helped to expand legal boundaries by introducing non-legal ideas and findings to law and legal reasoning. It seeks to emphasize the primacy of the social context by seeking "the legal" outside of its conventional sphere, and that is the aim of this research; by examining access to justice for awaiting trial persons in the criminal justice system through the perceived criminal justice perspective/approach that would best operate to enable access to justice. The beauty of socio-legal studies is that it is a broader compass than the study of the requirements of justice which can be termed principles of legality, law is so intimately associated with the realization of these special values that the study of the 'rule of law' must be a chief preoccupation of legal sociology.[210] This researcher however, does not agree with some of the sociological jurists, who believe that reality is a social construct with no natural guide to the solution of many conflicts and that natural law has no place in sociological jurisprudence due to the fact that it deflects attention from "*the historically fortuitous in Human laws and institutions to the universal or near universal principles which underlie them"* by postulating that an ultimate theory of values can be found. Admittedly, natural law attempts to conceptualize some rights as universal and has succeeded to an extent, but the disagreement that other schools of jurisprudence have on natural law theories is the belief that natural law is ever fixed and immutable.

[210] Gale. T. Law. *International Encyclopedia of the Social Sciences*. Retrieved April 17, 2017 from http://www.encyclopedia.com/social-sciences-and-law/law/law/law; See also Cohen, A. June 16, 2010. Philip Selznick, Leading Scholar in Sociology and Law, Dies at 91. *Berkeley News.* Retrieved November 16, 2017, from http://www.news.berkeley.edu/2010/06/16/selznick

In Nigeria, the sociological school has a lot of relevance in terms of the realization of the social and economic goals of the country. The sociological school of thought can be seen in some legislation but its impact can be said to be felt more in trial proceedings than anywhere else and it is not clear if the importation of socio-legal inferences is by sheer inadvertence or by design. Its usefulness cannot be denied and one main area of recognition of the effect of social sciences in law is the court room in terms of the allowance of psychological and sociological interpretations of actions in trial proceedings. However, the effect of sociological jurisprudence has not really been felt in the codifications of laws and thus, one major problem faced is the outright contravention and ignoring of the laws. This may be attributed to the permissiveness of society and justice agents in terms of respect for the rule of law and due process, and often times, the hasty approach to legislation, lacking in sociological investigation and a delinquent deficiency of enforcement of the laid down laws with no regard for considerations of social justice.

Thus with a sociological approach and an identified criminal justice perspective, an agent or actor of the criminal justice system can have a clear idea of the specific aims and objectives of the criminal justice system. This will reflect in procedures and practices of the system. Perhaps the actors of the criminal justice system such as the police, other law enforcement officials and officers in the prison system do not need to delve deeply into jurisprudence and criminal justice perspectives in order to perform their duties, however the criminal justice process is so important that it calls for a clear understanding of the social objectives which is served by the criminal justice system as contained in the legal framework of criminal justice, such as substantive law, procedural law and codes of conduct.

2.3 Historical overview of criminal justice

The basic philosophy of the law is "respect"[211] and the function of law in society is not only to follow or adapt itself to public opinion, but also to give a lead to and mould public opinion.[212] As society continues to evolve, it develops the scope and perspective of the law, In other words, law is the language of the development of relations between members

[211]Malekian, F. 2014. *Jurisprudence of international criminal justice*.
[212]Pawar, S. 2013. Euthanasia: Indian socio-legal perspectives. *Journal of Law, Policy and Globalization*.

of society. It is one of the final stages of the creation and evolution of law which has the aim of protecting the legal and moral aspirations of society. It can be said that law is the consequence of the circumstances of a given social order, whether derived from monarchy, dictatorship, religion, democracy or other such social phenomena. Malekian posits that although most of the subjects of most social sciences may be observed and recorded by one means or another, this is not possible in the case of law or other socio-legal order.[213]

In another sense, a law does not exist as do other material objects; it has to be created by human agents through their attention in terms of political science and law. Thus, a law is tied to human thoughts, human understanding, and misunderstanding; human interpretation, inspiration, instigation; human will and resistance; human tolerance and intolerance; and also, human physical and moral capability.[214] In the final stages of its creation, law is bound by material – i.e., visible- subjects of our social environment, transferred from a piece of paper to physical violence.[215]

Consequently law is subject to the interpretations of persons with different understandings of the law (i.e. a person from an affluent background would have a different understanding of the law compared to someone who comes from a poor background; they see law from different aspects and angles. They may reach similar conclusions but with different perceptions, views and frameworks. There are further factors that can affect personal understanding of the law; these may be religious, political, theoretical, philosophical, ideological, cultural flexibilities, economic variations or the historical description of the development of social expectations of sadness and happiness. In other words, a law may be defined in terms of individual tolerance in accepting a different understanding of the law and its interpretation from one's own. Thus, a law is a form of integration and disintegration of the will of a human being regarding what is recognized by him or her to be reasonable and not reasonable. The law should therefore represent the principle of give

[213] Malekian, F. 2014. Ibid.
[214] See also Hacker, P.M.S. and Raz J. 1977 Law, Morality and Society; Detmold, M.J. 1984, The Unity of Law and Morality: A Refutation of Legal Positivism.
[215] ibid

and take and, more obviously, the framework of duties and responsibilities of persons to recognize the existence of other theories.

An overview of the history of criminal justice presents a picture of the evolution of punishment, rights of/for offenders and victims and the birth of policing, courts and prisons (confinement). The evolution of these components of criminal justice reflects the changing customs, political ideals and economic conditions of societies. Humans were first identified as nomadic in nature[216], the development of agrarian societies led to closely populated cities which in turn led to cultures and behaviour adapted to address the commission of crimes and formal systems of punishment for crimes.

The first of such systems of laws and punishments easily identified are the Babylonian laws of Hammurabi and the Hammurabic Codes.[217] The earliest history of criminal justice indicates that crime was viewed as a private matter; this is evidenced in Ancient Greece and Rome. Even for the offence of murder, justice was the prerogative of the victim's family and private war or vendetta was the means of protection against criminality. Publicly owned slaves were used as law enforcers and guards to ensure public safety and crowd control. They were also used when dealing with criminals or in apprehending people. Tasks such as investigation of crimes were the purview of the citizens themselves.[218]

The middle ages saw crime being dealt with through blood feuds between parties, payment to the victims or the their family. Those who could not buy their way out of punishment received harsh penalties including various forms of punishment including corporal punishment such as whipping and flogging, and other forms of punishments such as mutilation, branding, banishment and exile. The field of criminal justice as an academic discipline is less than sixty years old. Davies[219]claims that the modern system of criminal

[216] Hacker, P.M.S. and Raz J. ibid; Detmold, M.J. ibid.
[217] ibid.
[218] See generally, Hunter, V.J. 1994. Policing Athens: social control in the attic lawsuits, 420-320 BC. 4
[219] Davies, M. Comparative Criminal Law and Enforcement: England and Wales-Law Enforcement: The Police and Prosecution, Prosecutors: Crown Prosecution Service, Criminal Courts Pre-trial and Trial Retrieved May

justice has evolved over a considerable period of time and can be seen to be a unique mix of traditional and modern institutions, agencies, and procedures. The main features of the system are policing, prosecution, criminal courts, sentencing, the penal system, and the governmental and administrative context of criminal justice.

Davies (et. al) recommend a view of the advancement of criminal justice through a history of legislative reforms in the field, as this helps to illustrate the growing interest in criminal justice and cites a brief summary of the legislative reforms in England and Wales as follows: In the first eighty years of the twentieth 20th century, there were four (4) statutes entitled Criminal Justice Acts enacted in 1925, 1954, 1967 and 1972. Subsequently, there were the Criminal Justice Acts of 1982, 1988, 1991, 1993 and 1994. There were then major pieces of legislation in each year from1994; Criminal Appeal Act 1995, Criminal Procedure Act and Investigations Act 1996, Crime (Sentences) Act 1997, Crime and Disorder Act 1988 and the Youth Justice and Criminal Evidence Act 1999. Between 1999 and 2000 the following laws were enacted: Powers of the Criminal Courts (Sentencing) Act, Crown Prosecution Service Inspectorate Act, Regulation of Investigatory Powers Act, and the Criminal Justice and Court Services Act. Davies states that these reforms were in part a response to internal pressures for more effective crime control, a desire to protect citizens from bias and unfair procedures, the pursuit of greater administrative efficiency, and technological change. Pressure for reform in the United Kingdom also resulted from Britain's membership in the European Union, which he asserts, has brought greater cross-jurisdictional cooperation and coordination in an attempt to control cross-European organized crime and to incorporate reforms such as the European Convention on Human Rights (adopted by the United Kingdom in Human Rights Act 1998). It has been heralded as the most significant constitutional change in recent British history and is expected to have widespread impact, especially on aspects of policing, bail, and prison procedures.

The success of the British criminal justice system resulted in its wide acceptance and subsequently, the concept spread to other countries and Nigeria as a commonwealth of the

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20, 2016, from http://www.law.jrank.org/pages/660/Comparative-Criminal-Law-Enforcement-England-Wales-html .

United Kingdom –with a colonial linkage – derives its criminal justice system from the British. The Nigerian criminal justice system has evolved over a long period of time and a view of the advancement of criminal justice in Nigeria can help illustrate the trends in criminal justice in Nigeria. The criminal justice agencies in the Nigeria are central to the success of the system and for there to be true success in the administration of criminal justice there needs to be a viable means of ensuring considerable cooperation and uniformity of approach in the criminal justice agencies and courts

This importance of the criminal justice system cannot be underscored and the need for a fully functional system which complements international and regional efforts at improving criminal justice is a highly viable objective. In Africa, this is further enhanced by the increasing interest of the international community and non-governmental agencies in the effect of the African Union on matters such as cooperation between police forces across Africa to combat transnational crimes (particularly organized crime, money laundering, prostitution, human trafficking, drugs and terrorism). The sources and interpretation of the criminal laws are to be found in individual constitutions (statutory sources) and decisions by judicial bodies, in particular, the High Court, the Court of Appeal and the Supreme Court (case law). Decisions of the International Criminal Court of Justice are now recognised as having increasing influence on the administration of criminal justice in most jurisdictions including Nigeria which signed the Rome Statute on 01 June 2000 and became a State party on 27 September, 2001. Although there have been areas of resistance, there have been demonstrated positive appreciation of the position of the International Criminal Court.[220]

Although crime, courts and punishment have been in existence for thousands of years, police and prisons are fairly recent concepts. The history of criminal justice in Nigeria predates colonization of the country in the late 1800s by the British. Prior to the advent of colonialism, tribes indigenous to the present day Nigeria practiced law enforcement for social order and had evolved authorities and institutions with values that sought to ensure

[220] Ojukwu-Ogba, N.2009. The implication of the jurisdiction of the international criminal court for African states. *Journal of Law and Development*.2:97-126

accountability and order through punitive measures. The aim of this was to regulate society and successfully keep repugnant activities in check to achieve order.[221]

With the colonisation of Nigeria, criminal justice was introduced based on the administration of criminal justice in England with a view to protecting the interests of the Crown. The development of Nigerian criminal justice was influenced by European confrontation and slave trade, British occupation of Nigeria and the amalgamation of the northern and southern Nigeria.[222] After colonization, the Nigerian criminal justice system was formed to protect the Europeans from the natives who were being exploited. Although some British participants at that time had humanistic and religious inclinations; the British influence in Nigeria was most dominant in police, courts and prison administration, and the fundamental objectives of the colonialists was to protect a group of people believed to be superior to another group, regarded as inferior,[223] -their idea of justice in a colonial system. By so doing, the British colonial system did not guide the justice system in a positive manner, i.e. adapting western ideals of justice and the colonial heritage to African conditions; as this would have required extraordinary effort and creative thinking.

Obilade[224]explains that a characteristic feature of the Nigerian justice system, is its complexity; in the sense that Nigeria consists of a federal capital territory and thirty-six (36) states, each state has its own legal system and in addition, there is a general federal legal system applicable throughout the country. He further highlights that the complexity of the system is further shown by the application of local customs as law in each state. As such, there is a multiplicity of legal systems even within the state.[225] But in spite of the diversity of legal systems, as stated above, history has contributed to a measure of uniformity of Nigerian legislation and on some matters; the laws of the various states are almost identical.[226]In this researcher's opinion, Obilade's insight into the Nigerian Justice

[221] See Onongha,S.2006.The role of the Nigeria police in the maintenance of peace and security. Retrieved August 21, 2016 from http://samuelonogha.blogspot.com.ng/2006/06/role-of-nigeria-police-in-maintenanc.html
[222] See Otu, N. 1999. Colonization and the criminal justice system in Nigeria. *International Journal of Comparative and Applied Criminal Justice*. 23.2:293-206
[223] See Otu, N. 1999. Ibid.
[224] Obilade, A.O. 2011. *The Nigerian legal system*. 4
[225] Obilade, A.O. 2011. Ibid.
[226] Ibid.

system can be viewed as reflective of the state of justice in Nigeria and the recognition of the complexity of the system shows an in-depth understanding of the system

Criminal law is the law of crime, and a crime or an offence is an act or omission punishable by the state. Criminal proceedings are instituted principally for the purpose of punishing wrong doers. Criminal proceedings are controlled by the state, although private persons may sometimes institute such proceedings and the definition and punishment for criminal offences are contained in written law.[227]It is acknowledged that the purpose of the criminal justice system is to deliver justice for all, by convicting and punishing the guilty and helping them to stop offending, while protecting the innocent.[228] Also, the central purpose of the criminal justice system is to deliver an efficient, effective, accountable and fair justice process for the public.[229] Garside[230]in assessing the above statements on the purpose of the criminal justice system noted that while they appeal to the utilitarian efficiency and an instrumental logic-protecting the innocent and punishing the guilty- the above statements offer a picture of criminal justice as being in the business of crime control.

The criminal justice system has strong implications for a country because it is fundamental to the welfare, security and happiness of citizens and this necessitates strong public institutions that are properly managed and assures that irrespective of the financial or social status of its citizens, justice can be obtained. Jack Straw, in his first major speech as Lord Chancellor in 2007 stated that "…*justice is a delicate plant. It has to be nurtured, protected, cared for."* The philosophy of criminal justice may vary from time to time and

[227] Private persons may initiate or commence criminal proceedings in Federal Courts and Courts within the Federal Capital Territory, and if only that person is a qualified legal practitioner. See section 106 of the Administration of Criminal Justice Act, 2015. In all other cases, private persons may institute criminal proceedings against a person alleged to have committed an offence by laying a complaint before the court or by filing a private information. See generally, section 383 of the Administration of Criminal Justice Act, 2015 and Attorney General Anambra State v. Nwobodo (1992) 7 NWLR (Pt. 256) 711.

[228]Aims and objectives of the UK criminal justice system as contained in www.cjsonline.gov.uk. Retrieved August 24, 2016.

[229]The United Kingdom's criminal justice plan as contained in Anon. 2007. Working together to cut crime and deliver justice: a strategic plan for criminal justice 2008 to 2011. Retrieved July 13, 2016, from https://www.gov.uk>uploads>file

[230] Ibid.

from nation to nation, depending on prevailing attitudes towards the substantive rules which deal, in one way or another, with cultural norms. The aim of criminal justice in the twenty first century has gone beyond advocacy, the court system, law enforcement and government. It also focuses on the panoply of institutions and devices, personnel and procedures, used to process and prevent crime in society. Criminal justice at present encourages experimentation with a wide range of reforms, including changes in forms of procedure, changes in structure of courts, creation of new courts, the use of paralegals, modifications of substantive law designed to facilitate the adjudication process.

The concept of justice connotes the legal equality of human beings; it is a concept conceived and formulated around the dignity of the human person. Its external manifestation is the sense of justice, i.e., equality of all citizens before the law, and in society generally, for all practical purposes. Criminal Justice and the criminal justice system on the other hand; is the societal instrument utilized to achieve justice.[231] Jones and Johnstone[232] claim that the world has "*always been on a path of destruction",* and that history presents us with a sense for better or worse, that the condition of the world only seems worse than it really is. That the world is constantly beset by war and strife, and this has always been the case; despite this, somehow, mankind has survived[233]. With criminal justice, history informs us that while crime seems to be on the rise and is a "big problem" now, there has never been a 'golden age' of crime and criminal justice, when crime was not a problem. It is claimed that in fact, the world may be a much better place now than in the past.

In any criminal justice system, it is important to understand the origins of the definitions of criminal conduct, be it through statutory or common law sources. Criminal justice history enables a comparison of current criminal justice practice with those of past periods in time as well as cultures. Thus, criminal justice history provides information that the criminal

[231]Inyang, J.D. and Awakessien, M. S. 2014. An Investigation on the application of criminal justice of procedure and its impact on crime factors in Akwa Ibom state, Nigeria. *International Journal of Humanities and Social Science:* 4.9:214-224.
[232] Jones, M and Johnstone, P. 2011. *History of Criminal Justice.*
[233] Ibid.

justice system as exists around the world today, is less the result of a carefully constructed plan and more the result of a series of unplanned historical occurrences. This is because at a point in time, citizens prosecuting crime relied on self-help in arresting suspects, but modern criminal justice is a more formal process. It is therefore necessary to understand the influences on the agencies of the criminal justice system and participants in the system who interpret and implement the law.

Law depends on the activities and decisions of the actors in the agencies of the criminal justice system i.e. law enforcement, legal practitioners, courts, judges and correction/prison officials. They do not work from a single document, but an array of regulations, requirements, and guidelines as to how they should undertake the task of implementing the criminal law. They therefore have to refer to specific laws that relate to their activities and a number of policy documents from the central government. Furthermore, an agency's approach to making law work in practice will be determined by the available resources, as well as the organizational culture that has developed over time regarding the appropriate way of carrying out their duties.

Although there are many factors that affect the way criminal justice is enforced, it is particularly important to understand the influence of adversarial justice, rule of law and due process, and how these principles shape the way criminal justice is perceived and implemented. Adversarial justice means that a person is not considered to be guilty of a crime simply on the words of a government official. Conviction in a Court of law requires the presentation of admissible evidence that convinces the court that the evidence demonstrates the guilt of the defendant "beyond reasonable doubt." This test of the evidence is in contrast to the much lower standard of proof used in civil cases, where the facts are determined by the judge on the balance of probability. The adversarial system of justice does not ask whether a defendant is innocent or guilty but is only concerned with whether they are "guilty" or "not guilty."[234]

[234] See generally Anon. Comparative criminal law and enforcement: England and Wales-law enforcement: the police and prosecution, prosecutors: crown prosecution service, criminal courts pre-trial and trial retrieved on 20 May, 2016, from http://www.law.jrank.org/pages/660/Comparative-Criminal-Law-Enforcement-England-Wales-html

The adversarial nature of criminal justice[235]which has the main aim of prevention of private justice, relies heavily on advocacy and is similar to a battle; in the sense that the lawyer (prosecution) presents its case based on evidence, and a worthy defence counsel acts zealously by searching out all favourable evidence to seek to neutralize or destroy all unfavorable evidence and to press for the most favourable interpretation of the law for his client.[236]The basic values of an adversarial system are; the presumption of innocence, the right to a fair trial and the protection of citizens and there is an extension of judicial management and supervision into the pre-trial stage of the process. The Nigerian criminal justice procedure provides for the following:

- the right of parties to be assisted by counsel of their own choice or one appointed by the court from the beginning of proceedings
- the right to consult with counsel while being held in detention
- the right to obtain a copy of the record of proceedings
- the right to communicate the proceedings to third parties, in particular, an expert to consider the technical relevance of the evidence produced
- the right of the accused to be given adequate time and facilities to prepare his defence
- the right to demand a stay of proceedings if rules of procedure are not respected
- the right to appeal all important decisions to a higher court
- the right to a public hearing before the court if the case proceeds to court.

Nigeria's adversarial nature of justice is related to that of the United Kingdom and the United States of America; where the burden is on the prosecution to establish that a crime has been committed, that they have sufficient evidence to be able to persuade the court, beyond reasonable doubt, that the person accused, carried out the alleged act, and was responsible in the sense of being blameworthy for the crime. Davies explains that the

[235]There are two basic systems of criminal justice; the adversarial system and the inquisitorial one. The adversarial system of criminal justice relies on advocacy by each party (more often than not, prosecution and defence lawyers)to the case with a judge as an umpire. In the inquisitorial system, the judge plays an active role while the lawyers play a passive role. The judge actively steers the search for evidence and questions the witnesses, including the suspect, defence lawyers and prosecution. See generally Schroeder, P. September 03, 2010. The adversarial legal system: is justice served? Retrieved October 03, 2016 from http://www.thelawinsider.com/insider-news/the-adversarial-legal-system-isjustice-served

[236] Ibid.

principle of adversarial justice has been in existence for a long time and has developed in such a way as to protect the liberty and freedom of citizens.[237]

Admittedly, there can be differences between the principles of a justice system and the way it operates in practice. The officials of the criminal justice agencies are answerable to the law, and this system is known as the "rule of law,"[238] and officials of the criminal justice agencies should only make decisions and exercise powers that are permitted through the law. The rule of law is the antithesis of arbitrariness and is identified with the legality of the individual. It seeks to maintain a balance between the opposing notions of individual liberty and public order. Under the principle of the rule of law, adequate protection of the law must be given to all persons and to give meaning to it, there must exist an unimpeded right of access to justice. Lord Bingham opined on the rule of law that:

> It would seem to be an obvious implication of the principle that everyone is bound by and entitled to the protection of the law that people should be able, in the last resort, to go to court to have their…rights and claims determined. An unenforceable right or claim is a thing of little value to anyone.[239]

Thus, state actions are subject to judicial review; the state is therefore accountable to the courts for the legality of their actions and therefore, the right of access to justice is an inviolable right of every Nigerian. Although some awaiting trial persons are convicted by their own admission of guilt and as such an adversarial trial to ascertain the guilt of the awaiting trial person is not necessary, the possibility of a trial is the main safeguard of a citizen who may have been wrongly accused of a crime. It is expected that someone who becomes a suspect would cooperate to help establish his/her innocence but should he/she choose not to cooperate, the onus is on law enforcement to collect sufficient evidence about the crime and pass it on to the prosecution who will make a decision about whether

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[237] Davies, M., Croall, H. and Tyrer, J. 2005, Criminal Justice

[238] *See Bigham, T. 20*11. *The Rule of Law. 85; Jabalpur v. S. Shukla AIR* 1976 SC 1207, at 1254, 1263; "Access to Justice-A Fundamental Human Right" Speech by The Right Honourable Tun Arifin Zakaria, Chief Justice of Malaysia, at the ceremonial opening of the legal year 2016 of the Malaysian Bar on 08 January, 2016 retrieved on 02 March, 2017, from http://www.malaysianbar.org.my/speeches_by_yaa_arifin_bin_zakaria_chief_justice_of_malaysia_at_the_opening_of_the_legal_year_2015_8_Jan_2016.html

[239] *Bigham, T. 20*11. *The Rule of Law. 85*

to prosecute or not. The suspect has a number of safeguards that start at the point of questioning and arrest for the crime.

2.3.1 Conceptions of criminal justice

A theoretical framework is fundamental to any legitimate area of study and to this end, according to Kraska[240]it defines the parameters of how one thinks about the objects of study, and provides the lenses through which the subject matter is filtered in order to make sense of complex phenomena. A theoretical framework thus gives the organizing concepts, frames research questions, guides scholarly interpretations and is an unavoidable presence in crime control policy, practice and decision making. And in light of this research, it is necessary to identify and outline the theory and context of criminal justice in Nigeria.

It has been observed that most researches into criminal justice focus on criminology and the concept of crime; defining the 'what and whereof' of it. [241] Dambazau[242]as with most criminologists -and other writers in Nigeria- in his book, focuses on the criminology and the concept of crime, he discusses the theories of crime, crime typologies, the etiology of crime, the nature and impact of crime. In addressing criminal justice, his definition of justice and criminal justice is cursory at best and does not do justice to the subject. This is because he approaches criminal justice from the theory of crime and criminal behaviour.[243] This is typical with most writers of the subject of criminal justice who argue that criminology has a rich body of work theorizing the behaviour of the state, the legal apparatus, trends in social control and oppressive crime control policies. To them, explaining law breaking behaviour is a primary pursuit, as such; the main focus of criminal justice theory should be to focus on the criminological pursuits of theorizing criminal justice.

[240]Kraska, P.B. 2006. Criminal justice theory: toward legitimacy and an infrastructure. *Justice Quarterly*. 23. 2 Retrieved August 23, 2016 from https://doi.1080/07418820600688753 pp.167-185

[241] For example Dambazau's work on criminal Justice. See Dambazau, A.B. 2012. *Criminology and criminal justice*.

[242] Ibid.

[243] Kraska, P.B. Criminal Justice Theory: Toward Legitimacy and an Infrastructure. ibid.

Bernard and Engel[244] in enlightening about criminal justice theory, indicate that criminal justice theory is not only possible but necessary for the progress of criminal justice as an academic discipline. Rather than propose a comprehensive theory that attempts to describe and explain the entire criminal justice system, they examined the history and development of the academic field of criminal justice. In doing this, they examined the actual theories that have developed within the field of criminal justice since it originated in the 1950's. Three major classifications of criminal justice theory identified are:

1. The type of organization within the criminal justice system (e.g. police, courts, prisons
2. Underlying theoretical assumptions (e.g. consensus, conflict) and;
3. Predictor variables (e.g. individual, situational organizational, community)

To them, each of the above classification schemes presents a way to conceptualize research in criminal justice and each has its weaknesses. They proposed a simple and straightforward way to organize theory in criminal justice, and state that categorizing criminal justice theory by components of the criminal justice system; dividing criminal justice theory into Police, Courts and Prisons has become the standard way to organize the field. Most criminal justice research takes this approach and many criminal justice researches identify themselves primarily with one of these three areas.

Bernard and Engel claim that this approach to organizing research impedes theoretical development in criminal justice for a number of reasons. First of which is that some topics in criminal justice do not fit into any one particular category (e.g. juvenile justice). Secondly, the above classifications limit comparisons across components thereby hindering development of theory regarding the relationships between organizations and how they work together to accomplish their respective tasks and to this end, it is difficult to describe and explore the similarities and differences among the components. Thirdly, it is difficult to conceptualize the criminal justice system as a single entity when research is continually divided into three areas.

[244] Bernard, T.J. and Engel, R.S. 2001. Conceptualizing criminal justice theory. *Justice Quarterly*, 18.1:1-30

Although the criminal justice system is marked by decentralized and disjointed parts with goals that are not –but should be- in harmony, the relationship that does exist among and between the parts of the criminal justice system are obscured by such a classification. There is also another classification of criminal justice which focuses on the underlying assumptions and positions of particular theories and there is evidence that scholars generally move towards this when they attempt to break out of categorization by criminal justice component.[245]

Hagan[246]categorized criminal justice theory research as based on either consensus or conflict theory and noted the limitation of having only two predominant theories of criminal justice available and suggested an alternative approach for theoretical development.[247] This approach presents some problems; as such a broad classification obscures differences among theories and research while doing little to increase clarity. This is because unlike other "pure" academic disciplines, the field of criminal justice is both interdisciplinary and multidisciplinary, applying theoretical propositions from sociology, criminology, law, economics, political science, psychology, medicine, psychiatry and anthropology. Describing theories on the basis of these disciplines would be too broad a task and as such, may not be useful[248].

Bernard and Engel then suggested that a meaningful categorization of criminal justice theories must cut across the components of the criminal justice system comprising: police, courts and prisons. This is because it cannot simply organize theories and research within each separate component, as such a classification must be able to incorporate the similarities in the context found in theories across the components, and facilitate generalization and competitive testing of the theories. Finally the categories must be able to include considerable detail and specificity in order to be useful. They cannot be so broad, that that the entire field is divided into only two or three categories. To this end,

[245]For example Scheinghold, acknowledged that there are many individual differences among theories but suggested that they can be classified as belonging to one of three groups: mainstream, Marxist or conflict. See generally Scheinghold, S.A. 1984. *The politics of law and order: street crime and public policy*.
[246] Hagan, J. 1989. Why so little criminal justice theory: neglected macro and micro-level links between organization and power. *Journal of Research in Crime and Delinquency*
[247] Holmes, Oliver Wendel. 1881. *The common law*, 1
[248] Bernard and Engel op. cit.

they proposed that criminal justice theories should be grouped first on their dependent variables, and then according to their independent variables.[249]

Criminal justice comprises numerous objects of study including crime and the criminal justice system, each of the major components within the system (i.e. police, courts, corrections, juvenile justice, crime control agencies and practices that fall outside the formal criminal justice system (private sector controls, such as guards, surveillance agencies, social services), and other participants in criminal justice, including but not limited to academic researchers, the media the legislative body, civil service agencies and the public.

In theorizing criminal justice, the under listed are a sample of the types of scholarly inquiries that scholars pose when theorizing criminal justice.

a. How do we best make theoretical sense of criminal justice apparatus long term development?
b. What accounts for the steep growth in the power and size of the criminal justice system over a period of time?
c. How do we best make theoretical sense of current and possible future trends associated with criminal justice administration?
d. On what theoretical basis can we best understand various controversial issues facing the criminal justice administration (e.g. death penalty, erosion of constitutional safeguards, facial profiling, and privatization etcetera)?
e. On what theoretical basis can we best make sense of past and current criminal justice reform efforts, including what drives them and why they succeed or do not?
f. How does the criminal justice administration affect the larger society in which it operates; conversely, what societal forces shape the criminal justice administration?
g. How do we make theoretical sense of the behaviour of criminal justice practitioners?
h. What best explains the internal functioning and practice of criminal justice agencies?

These questions demonstrate that the crime theories of the field are insufficient to provide adequate answers on criminal justice because they have been constituted specifically to explain crime. In this researcher's opinion, a theoretical infrastructure unique to the study

[249] That is for example, as in this research, taking justice perspectives of actors in the criminal justice system as the dependent variable.

of criminal justice which explains the behaviour of the state, public agencies, the criminal law apparatus, trends in crime control thinking and practice, private crime control organizations, and trends in control is a necessity and to this end, there are various approaches to developing criminal justice theory:

a. Constructing models of criminal justice functioning based on differing theories of crime, attempts to articulate a general theory of criminal justice grounded in the context of local communities. To this end, a grand theory that accounts for all social, political, economic, and cultural influences would likely be an impractical undertaking
b. Answering specific questions about a specific object of study, for example, Daniel Garland's[250]theoretical analysis of what accounts for the rapid growth of the criminal justice system over 30 years[251]
c. Explaining individual practitioners behaviour- i.e. why some police officers engage in corruption
d. Developing normative theories of criminal justice, concentrating on philosophical principles intended to guide criminal justice future practices.[252]

In the opinion of some scholars, the study of criminal justice is atheoretical in research and writing, and the problem of criminal justice is one of recognition and accessibility. This is because labels are often used to identify particular areas of scholarship and scholars who target their academic efforts plainly in criminal justice issues tend to refuse to have their studies categorized as building up on criminal justice theory. Regardless of a lack of acknowledgement and cognizant pursuit of a theoretical undertaking, there subsists a considerable amount of academic work about criminal justice trends that can be envisioned plausibly as criminal justice theory. A good example of this are the research works by authors such as Bauman, Garland and Bamgbose on the issue of crime and punishment.[253] Other researches in the last 30 years have focused on the state's oppression of marginalized groups (women, the poor, ethnic and racial minorities, and juveniles). This group of work

[250] Garland, D. 1997. Governmentality and the problem of crime: Focault, criminology. *Sociology-Theoretical Criminology*. 1.2:173- 214.
[251] Focusing primarily on the correctional subsystem
[252] See generally, Miller, J. M. ed.2009. 21st century criminology: a reference handbook. Vol. 1.
[253] See for example, Bauman, Z. 2000. Social issues of law and order, (Corrected title: Social Uses of Law and Order). 40.2:205-221, Garland, D. Governmentality and the Problem of Crime: Focault, Criminology, Sociology. Theoretical Sociology, Criminology. 1.2:173-214; Bamgbose, O.A. 2010. The Sentence, The Sentencer, and the Sentenced: Towards Prison Reform in Nigeria, Being an Inaugural Lecture Delivered at the University of Ibadan on 15 July, 2010, Ibadan University Press, pg. 46.

could be viewed rightfully as far more concerned with criminal justice, specifically, the oppressive behaviour of the state in contrast to crime behaviour.[254]

For the purpose of legal research, research into criminal justice cannot be limited by an overly restrictive methodology in support of sophisticated analysis and often by synthesis, as with Bernard and Engel,[255]Hagan[256]and others.[257] The conceptual analysis of law offers many chances to discover the internal logic of law, and as stated by Holmes, "*the life of the law has not been logic, it has been experience"*[258]and the essence of the law is its function, and this function can be realized only by the operation and application of law, and to this end, conceptual approaches cannot grasp this operation merely through analysis of concepts. A Functional approach to the understanding of criminal justice can lead to the understanding of criminal justice and can lead to a theoretical concept of criminal justice from a legal perspective.

This does not in any way denigrate the analytical-conceptual approach to criminal justice as it is highly helpful in cognition as in the case of developed legal subjects that were founded on a conceptual basis, not forgetting that established legal subjects are not merely products of conceptual and theoretical categories. There are deep basis for legal subjects

[254] See for example, Increasing Access to Justice for Marginalized People (September 2008-December- 2017) accessed through www.undp.org>dam>india>docs>str ;United Nations Development Project in India; Access to Justice for Marginalized People, accessed through www.undp.org>undp>projects>IND ; Marginalized Communities and Access to Justice/ The World Justice Project accessed through www.worldjusticeproject.org>publications ; Access to Justice for the Poor, Marginalized and Vulnerable People of Uganda/Legal Aid Service Provider's Network retrieved through www.lapet.org>alias=3777-access-to-justice;

[255] Bernard, T.J. and Engel, R.S. March 2001. Conceptualizing Criminal Justice Theory op.cit

[256] Hagan, J. 1989. "Why So Little Criminal Justice Theory: Neglected Macro and Micro-Level Links between Organization and Power. Op.cit

[257] Szmodis, J. "On Law, From a Multidisciplinary Perspective" Hungarian Review Vol. VII No. 4, 25 July, 2015, retrieved on 8 August, 2016 from http://www.hungarianreview.com/article/on_law_from_a_multidisciplinary_perspective

[258] Oliver Wendel Holmes Jr. was a Justice of the U.S. Supreme Court and a Legal Philosopher who has become a celebrated legal figure. His writings on Jurisprudence and Legal Theory have shaped discussions about the nature of law. He is credited with the legal Positivism approach to jurisprudence which suggests that the law is what he government says it is.. Holmes traced the origins of the common law to ancient societies where liabilities were based on feelings of revenge and the subjective intentions of a morally blameworthy wrongdoer and moved to the present societies which had evolved to the point where liability is now premised on objective and external standards that separate moral responsibility from legal obligation, and wholly eliminate concerns regarding the actual guilt of the wrongdoer. See generally Alschuler, A.W. 2000. Law Without Values: The Life, Work and Legacy of Justice Holmes. University of Chicago Press, Chicago; Burton, D. H. 1998. Taft, Holmes, and the 1920s Court: An Appraisal. Fairleigh Dickinson University Press. London; Associated University Press, Cranbury, New Jersey.

and systems as they are continuations of a special ideological structure which consisted of Christian morality, Islamic morality, systems of feudal domination, and Roman law. Consequently, in an attempt to understand the nature of criminal justice, it would be erroneous to neglect an analysis and inquiry into past phenomena. The historical aspect of criminal justice is of particular importance because it provides a comprehensive overview of the current criminal justice systems and their influences[259]

Rather, criminal justice should be a policy based pursuit, more interested in effecting practical solutions to the problems permeating the administration of the criminal justice system, while utilizing the wealth of information derived from theories of crime in crime-control initiatives.[260] Criminological theorists argue that crime theory has been the foundational material for developing models of criminal justice functioning based on the concept of crime causation.[261] While modeling criminal justice sheds light on the criminal justice system, it does not constitute the development of theory,[262] rather, it reinforces the notion that the only theoretical foundation for understanding criminal justice behaviour is the pre-existing theories designed to make theoretical sense of crime.

The central purpose of the criminal justice system is to deliver an efficient, effective, accountable and fair justice process for the public.[263] According to Jack Straw[264] "*Fundamental to the welfare and happiness of citizens is a strong public institution, properly managed, and above all, whether all…citizens, poor, or rich, low or high, get justice against the powerful and the state."*[265] To him, the justice system should present a fortification against the potential overweening power of the state and other vested interests.

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[259] See generally, Szmodis, J. "On Law; From a Multidisciplinary Perspective" op. cit

[260] Miller, M. 2009. 21st Century Criminology: A Reference Handbook, Vol. 1. Sage Publications

[261] Take for example, Dambazau, A. B. 2012. Criminology and Criminal Justice. Op.cit.

[262] Einstatder, W.J. and Henry, S. 1995. Criminological Theory: An Analysis of its Underlying Assumptions. 301-309 As extracted from Einstatder, W.J. and Henry, S. 2006. Criminological Theory: An Analysis of Its Underlying Assumptions, Rowman and Little field, Lanham, Maryland, United States.

[263] "Working Together to Cut Crime and Deliver Justice: A Strategic Plan for Criminal Justice" Office for Criminal Justice Reform Policy Paper, 15 November, 2007 retrieved 18 March, 2016, from http://www.gov.uk/government/publications/working-together-to-cur-crime-and-deliver-justice-a-strategic-plan-for-criminal-justice-2008-to-2011

[264] Lord Chancellor and Secretary of State for Justice (2007-2010) in the United Kingdom

[265] Jack Straw's first major speech as Lord Chancellor of the United Kingdom in July, 2007. See generally, Garside, R. The Purpose of the Criminal Justice System Monday, 17 March, 2008 retrieved on 23 July, 2016 from https://www.crimeandjustice.org.uk/resources/purpose-criminal-justice-system

A concern for due process, checks and balances, core values and an underlying institutional strength informs this perspective, rather than the pragmatic appeal to the effective, and efficient control of crime. There is no single view of the underlying goals that helped shape criminal justice, as there are varying perspectives of what criminal justice is or should be and they will be discussed subsequently.

2.3.2 The jurisprudence of criminal justice

Crime has been called a social problem, a political problem, a spiritual problem and an economic problem. Hence undertaking a study of the criminal justice system without first understanding the complexities of the interplay of the various agencies of the system can become a fruitless endeavour.[266] The Criminal justice system cannot properly function without an understanding of its norms, rules, as well as the philosophy behind the implementation of its theory. According to Malekian,[267]a body of law may not be taken seriously if its provisions or norms are not protected by a system of jurisdiction that executes justice based on adherence to the principle of fairness. Moreover, the principles of justice play the most significant role governing the abolition, elimination, prohibition, prevention, prosecution, jurisdiction, judgement and punishment of crimes.

Whilst the principles of justice may never convince the victims of crime that the principles represent a message of security, humanity, understanding of common problems and respect for the rule of law, successfully upheld to the people; the principles of justice have the capacity to strengthen the faith and belief of the average citizen in the efficacy of the criminal justice system. Criminal justice is inspired by ideals of fairness and rehabilitation. The aims, function, purpose and principles of criminal justice continue to constitute some of the most important elementary questions of criminal justice. There are differing/different views on what the proper goals of the system ought to be. For some, the

[266] Sterling, J.A." Concepts of Justice: Historical Development of the Theories of Crime and Punishment" retrieved on 25 March, 2016 through http://www.lawandliberty.org/justice.htm. See also, Rawlings, P. 1999. Crime and Power: A History of Criminal Justice 1688-1988, Crime, History and Society. Longman Criminology Series, London

[267] Malekian, F. 2005. Emasculating the philosophy of international criminal justice in the Iraqi special tribunal. *Cornell International Law Journal*. 38.3:673-723. Retrieved October 03, 2016 from http://scholarship.law.cornell.edu/cilj

system is a treatment dispensing institution designed to rehabilitate criminal offenders, while for others, it is an agency of social control, in the sense that it protects citizens from criminal predators.

The above indicate that some people are more concerned with providing people accused of crime with fair and equitable treatment before the law. This is because everyone is entitled to a criminal defence, even if they actually committed the crime–informing the actors in the agencies- to EFCC, Nigeria Customs, and Immigration etcetera. Criminal justice as an academic discipline grew out of criminology. It is a subset of sociology which involves the study of crime as a social phenomenon, the roots and causes of crime, criminal behaviour and other aspects of crime. Criminal justice is a relatively new discipline which involves the study of the police, criminal courts, correctional institutions, juvenile justice agencies, as well as the agents who operate the institutions. It begins with a basic understanding of crime, law and justice.

2.3.3 Core principles/values of criminal justice

The criminal justice system is mainly concerned with the balance of societal order in contrast to the individual rights and the presumption of innocence of the awaiting trial person. The laws or absence of certain laws in a society tend to reflect the values and morals of the society and as such, the decision making process within the criminal justice system is based on the values operating within the system.

According to Baldwin[268] the fundamental principles of criminal justice are;

1. That the person accused should have notice of the charge against him, and a fair opportunity to make answer, with the aid of witnesses and counsel.
2. The tribunal which hears his case should be so constituted as to be reasonably independent of executive or legislative dictation as to the judgement pronounced.
3. The sentence, in case of conviction, should be imposed by that tribunal.
4. It should be promptly and publicly made known to the convict

[268] Baldwin, S.E. 1913. The fundamental principles of criminal justice. *Faculty Scholarship Series*, Paper 4262. Retrieved August, 23, 2016, from http://www.digitalcommons.law.yale.edu/fss-papers

5. In framing it, regard should be given to; (a) to the nature and gravity of the offence; (b) to the intent of the offender, and the fault to be imputed to him; (c) to the natural effect of the punishment awarded, in preventing the commission of similar offences, whether by himself or others, and in satisfying the public conscience; and (d) when not capital, to its possible utility in improving his moral character.

Baldwin further asserts that the above propositions should be sought in laws and not in newspapers; which he averred were the "*opinions of theorists and humanitarians and others who are subject to the direction of others, and speak without that sense of responsibility which attends the possession of plenary power."*[269] Thus the custodian of the fundamental principles in criminal justice is the constitution, considered in connection with the settled social usages and institutions in view of which they have been framed. [270]

Central to the administration of criminal justice is the question of due process safeguards and general fairness. All modern jurisdictions have rules and procedures that govern the process through which a criminal suspect is apprehended, prosecuted and punished, if found guilty after trial. The constitution provides for the protection of the rights of the citizens to freedom, privacy and security of life and property. These rights ought to be protected and should not be infringed upon by the state or individuals except when the actions and behaviours of a person become a threat to others and thus infringes on the individual or collective rights of the people. Therefore the government has the power and obligation to protect society, maintain order and prevent harm to the people. As such, the rights of the society override the rights of one person. In consequence, when a person contravenes the laid down rules and regulations governing conduct of people which proscribes undesirable , harmful and prohibited behaviour, society calls such behaviour crimes and punishes such behaviour by sanctioning the offender.

The Principle of *de lege lata:* "as the law is" or "the law that exists" is a latin expression which describes the idea that some contend is a binding force, that is, legal norms generally accepted by the legal community. The Principle of *de lege ferenda*: "with a view

[269] Baldwin, S.E. 1913. Ibid.
[270] Baldwin further states that it is the right of any State to vary its modes of administering criminal justice and the constitution does not forbid it. This can be said to support the current Administration of Criminal Justice Act 2015.

to future law" refers to a treaty that has not entered into force and as such is not yet legally binding. For example, the presumption of innocence is *lege lata* whereas, the right to democratic freedom of expression-self governance is *lege ferenda. Lex lata*[271] is used in the normative sense[272] and *de lege lata* is used in the ablative sense[273].

The Principle of *Nullum Crimen Sine Lege* states that only the law can define a crime and a penalty. In order to respect the principle of legality, the scope of crime and the applicable punishment must be set out in clear terms before its commission.[274]

According to Crisan[275]the principle of legality is a core value, a fundamental defence in criminal law prosecution according to which no crime or punishment can exist without a legal ground. The principle is a guarantee of human liberty and serves to protect individuals from state abuse and unjust interference. In essence, it serves to ensure fairness and transparency of judicial authority. The principle of *nullum crimen sine lege* is often associated with the attempts to constrain states, governments, judicial and legislative bodies from enacting retroactive legislation, or *ex post facto clause* and ensures that all criminal behaviour is criminalized and all punishments established before the commencement of any criminal prosecution. Its origins date back to post-world war II, at

[271] Both *de lege lata* and *lex lata* mean the same thing.

[272] Law is conceived by most legal scholars and philosophers as a system of norms that confers rights and imposes duties, and as such, when law is conceived, it gives rise to normative reasons for action. Normative legal theory is concerned with the ends and justification for the law as a whole and for particular legal rules. Its purpose is to purify the traditional science of law by removing from it, foreign elements which have found their way into it, and establish a pure method of legal cognition. One key feature of the normative theory of law is that it is methodological and critical. Glos, G.E. in his work on the Normative Theory of Law asserts that the normative theory sets out to build a system of generally valid notions which presuppose the normative contents of the various legal orders, and the theoretical equations which refer to these generally valid notions are not subject to change; they are found exclusively in the theory of law and it is only for the theory of law to define them. The normative theory of law is identified as being beyond the reach of empirical norm givers, such as legislatures and judicatures, and the empirical norm givers are regarded as having the exclusive authority to make norms. The original proponents of the normative theory of law are Hans Kelsen- the doctrine of pure theory of law, also called the 'Vienna School of Jurisprudence', and Franstisek Weyr-the doctrine of normative theory, also called the 'Brno School of Jurisprudence'. They both gave an exhaustive exposition on the normative theory in several treatises. See generally Glos G.E.1969. The normative theory of law. *William. & Mary Law Review*. 11:151. Retrieved November 13, 2016 from http://scholarship.law.wm.edu/wmlr/vol11/iss1/6

[273] See generally Conda, V. 1999. A handbook of international terminology, 82

[274] See article 11 (2) of the Universal Declaration of Human Rights, which states that " no one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time it was committed.' Thus retroactive laws are an issue.

[275] Crisan, I. 2010.The Principles of Legality "nullum crimen, nulla poena sine lege" and their role. Effective Justice Solution, Effectus Newsletter, Issue 5

which time a set of compelling criminal statutes were established and the drafters of the Nuremberg Statute affirmed the notion of individual criminal responsibility from a tri-dimensional perspective; legal, moral and criminal[276]

2.3.4 Criminal justice theories

It may be asked, if it is necessary to study criminal justice theories? After all, theories are not answers to questions of what ought to be, nor are they philosophical, religious or metaphysical systems of beliefs and values.[277] Rather, they are statements about the relationship between actual events about what is and what will be in the criminal justice system.

A well developed theoretical infrastructure lies at the heart and soul of any academic endeavour and a well articulated theory advances the lenses through which students, academics, researchers, practitioners and policy makers make sense of object of study.[278] What are criminal justice theories? Despite the large number of scholarly works dedicated to the study of criminal justice, there appears to be a wide dearth of answers proffered on this question. It has been observed that a theoretical infrastructure is the intellectual core of any legitimate area of study and as such, a theoretical foundation that explicitly makes sense of criminal justice is essential. Particularly because there is a tendency to subsume criminal justice under criminology and criminological studies, and researchers in the field tend to argue that traditional crime theories infer a model of criminal justice functioning based on the concept of crime causation. This is in itself misleading, because although modeling criminal justice functioning based on concepts of crime and crime causes can shed theoretical light on the criminal justice system. Traditional crime theories do not constitute a theory on criminal justice and still retain criminal justice under preexisting theories designed to make theoretical sense of crime.

[276] See also the International Covenant on Civil and Political Rights 1966.
[277] Karimu, O.O. 2015. Criminal behaviour: evaluation of labelling and conflict perspectives. *European Scientific Journal*. 11.4: 1-14.
[278] Ibid.

Cesare Beccaria[279] and Jeremy Bentham[280] have been credited with founding the first theoretical perspectives on crime around 1764 with the Classical Perspective/Theory; which holds that society can deter crime when the consequences of crime are absolute, harsh, and quickly administered. To them, people choose to commit crime after they consider the negative and positive aspects of crime and find that the positives outweigh the negatives. The modern classical theory is also called the choice theory and this perspective is noted as the major influence on the prison system. The choice theory subsequently gave way to Positivism and the Scientific method of studying human behaviour and society. Auguste Comte[281] who is considered as the founder of sociology, noted that Positivism is the basis for the emergence of the current classical theoretical perspectives on crime, these include; sociological theories, biological theories, psychological theories, and social-psychological theories which represent different causes of crime.

Critical criminological theorists[282] argue that criminology has a rich body of work which theorizes the behaviour of the state, the legal apparatus, trends in social control and oppressive crime control policies and that their analysis of lawbreaking is a secondary pursuit. To this end there always appears to be conflict because under criminology, criminal justice studies tend to focus on the crime control apparatus (the oppressive features of how the state differently defines acts as crimes) in contrast to the causation of crime. On the other hand, the study of criminal justice embraces careful research analysis to support public policy initiatives. Historically, programmes, policies, and procedures of criminal justice were shaped by political goals, but recent development in criminal justice supports the examination of information and data to determine the applicable programmes and policies that can be adopted.[283] According to Sherman et. al.,[284] empirical evidence,

[279] Cesare Beccaria. 1764. On crime and punishment as described in Monachesi, E. 1956. Pioneers in criminology IX—Cesare Beccaria. *Journal of Criminal Law and Criminology.* 46.4: 439-449.
[280] Bentham, Jeremy. 1781. An Introduction to the Principles of Morals and Legislation. See also Akers, R.L. 2000.Criminological theories.
[281] Anon. Oct. 1, 2008. Auguste Comte. Stanford Encyclopedia of Philosophy. Retrieved 15, March, 2016 from https://plato.stanford.edu/entries/comte/
[282] Such as Jeremy Bentham, Cesare Beccaria and John Howard. Williams, F.P. and McShane, M.D. 1999. Criminological Theory.
[283] See generally Sherman, L.W. et.al. 1998. Preventing crime: what works, what dosen't, what's promising. A report to the United States Congress, prepared for the National Institute of Justice. National Institute of

carefully gathered, using scientific collection of data can determine whether criminal justice agencies actually work. In recent criminal justice studies, programmes must now undergo rigorous review to ensure they achieve their stated goals and have real and measurable effects on criminal justice. As such, contemporary criminal justice should be society's instrument of social control. Criminal justice agencies ideally seek to work toward the development of common goals of crime prevention, apprehension of criminals and keeping the society safe.

To this end collaborations among criminal justice agencies are essential to the success of the system, particularly when all stakeholders come together to develop informal partnerships which can result in the success of the collaborations and the system in general. Thus they will be able to analyze problems from different perspectives, gather information from different sources and combine resources to arrive at successful solutions to identified problems facing the criminal justice system.

2.3.5 Approaches to criminal justice

The field of criminal justice is a fairly recent one, spanning less than sixty (60) years.[285] It can be viewed as an academic undertaking and an attempt to unify policy formation. Siegel and Worral[286] claim that identifying the true meaning of the term Criminal Justice and the control of crime is an uphill task, maintaining that the field of criminal justice is not a unified field. It is pointed out that there are irreconcilable differences regarding the goals, purposes and direction of the criminal justice system (Is it a punishment dispensing system, a just desserts system, or a rehabilitation system?).

Justice, Office of Justice Programs. U.S. Department of Justice. NJ171676. Retrieved March 20, 2016. From http://www.ncjrs.org/works/wholedoc.htm

[284] Ibid.

[285] Conley, J.A. 1977. Criminal justice history as a field of research: a review of the literature, 1960-1975. *Journal of Criminal Justice. 5.1:13-28*

[286] Siegel, L.J. and Worral, J.L. 2014, Introduction to criminal justice. op cit.

The earliest propositions on the concerns of the criminal justice system- effective crime control and due process- were discussed by Herbert Packer,[287] an American legal scholar. He proposed that the competing logics of 'crime control' and 'due process' exercise varying influence on the operations of the criminal justice process in the context of the United States. Under the crime control model, the underlying logic of the criminal justice system is to contain and repress criminal behaviour – successful criminal detection, prosecution and conviction are the hallmarks of an effective criminal justice model.[288] The due process model on the other hand, places to an extent, emphasis on protecting the rights of the innocent as it does on convicting the guilty- the protection of individual liberty in the face of a potential all powerful state, is the main concern of the due process model[289]

Garside, noting that the contrast between crime control and due process was developed in the context of the United States criminal justice process, admits that in considering debates on criminal justice in England and Wales, the above categories are still relevant. The same can be said of the Nigerian criminal justice system. Garside in further discussions, points out that the crime control and due process perspectives of criminal justice are not faultless and mutually exclusive, adding that debates over the appropriate balance between due process protections and the crime control imperative, tend to be dominated by disagreements of the procedural kind because, a society that shows indifference to the processes by which those deemed to have breached the laws of the land are dealt with is unlikely to be a society in which the rights of individuals are respected.

Two predominant views on the administration of justice have been identified, that is the conservative and the liberal view of criminal justice. The conservative view of criminal justice holds that the solution to resolving crime in the society is to increase law enforcement agents, apprehend more criminals and impose the maximum sentence for incarceration on them. In contrast, the liberal view calls for a strong focus on social

[287] Packer, H.L.1964. Two models of criminal process. *University of Pennsylvania Law. Review*. 113.1:1-68. Retrieved August 13, 2016, from www.scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=6428&context
[288]Ibid. See also, Garside R. March 17, 2008. The purpose of the criminal justice system. *Barrister Magazine*. Retrieved March 22, 2016, from http://www.crimeandjustice.org.uk/resources/purpose-criminal-justice-system
[289] Ibid.

services and community organisation. Some liberalists also express fear about the possibility of the government having too much power and thus interfering with individual freedom and liberty. There are a plethora of problems facing the criminal justice system and this makes the lack of agreement about the aims and objectives somewhat niggling. Siegel and Worral[290] maintain that despite the problems facing the criminal justice system, it must try to eradicate diverse social problems such as substance abuse, cultism, kidnapping, terrorism, cybercrime all the while respecting individual rights and civil liberties, pointing out that the agencies of justice system also need to have adequate resources in order to carry out their diverse tasks efficiently. They point out that experts are continually trying to find the appropriate mix of policies and actions that will significantly reduce crime and increase public safety while upholding individual freedom and social justice. Taking into consideration the complex nature of criminal justice, there is no single view or philosophy or perspective that pushes criminal justice. What obtains, are various models and perspectives on justice, and the role and approaches to the criminal justice system.

Packer[291] proposed that the competing logics of "crime control' and 'due process' exercise varying influence on the operations of the criminal justice system. He constructed and presented these two models of criminal procedure to the academic world in his analysis of the criminal justice system in the 1960's. Under the crime control model, the underlying logic of criminal justice is to enforce the law and maintain social order by containing and repressing criminal behaviour; in its aggressive pursuit of justice, successful crime detection, prosecution and conviction are hallmarks of an effective crime control model of criminal justice. The due process mode of criminal justice, on the other hand, places an emphasis on protecting the individual rights of the accused from injustice while they undergo the criminal justice process. To this extent, protecting individual liberty in the face of a potentially all-powerful state is a key concern of the due process model of criminal justice.

[290] Siegel, L.J. and Senna, J.J. 2005. 10th Ed., *Introduction to criminal justice*.
[291] Packer, H.L., Two models of criminal process, op.cit.

Packer's contrast between crime control and due process was developed in the context of the United States criminal justice process, but it is possible to consider the models in the context of most criminal justice systems, and in particular, Nigeria: The crime control model of criminal justice can be seen in the aggressive attitude of law enforcement which tend to view their aim as the suppression of criminal behaviour, crime detection, arrest, prosecution and conviction, while the due process model on the other hand can be seen in the adversarial criminal justice processes of the courts- the prosecution and defence counsel arguing their cases before the judge/umpire. There are arguments for and against the two models of criminal justice. The down side of the crime control model is that it is less protective of individual rights, and it tends to want to put it aside for the purpose of maintaining public safety. Strategies on crime control may include targeting high crime areas, raids, surveillance, increasing patrols on the streets and undercover work. Strong proponents of the model tend to argue that certain individual rights can be sacrificed for the greater good of the society. The result of these actions can see positive results such as neighbourhoods being cleared of criminals and becoming safe for law-abiding citizens, thus making such aggressive methods of criminal justice acceptable to the populace. But the down side of the model can see the rights of innocent citizens being infringed upon and eroded. For example, in the course of acting on information from an informant on a crime ring, law enforcement agents may raid a suspect's residence and in the course of the raid, innocent citizens could be harmed or killed. Further information may then reveal that they had the wrong residence. Following the incident, the Inspector General of Police or other law enforcement agent may apologize and claim that the victim was an innocent victim in the struggle against crime/criminality.

The due process model on the other hand tends to focus on the fundamental freedoms and individual rights of each and every citizen; requiring a careful and informed consideration of the facts of each individual case. Schmalleger,[292] describes the due process model as one in which law enforcement agents must recognize the rights of suspects during arrest, questioning, and handling. In addition, constitutional guarantees of the accused person

[292] Schmalleger, F. 1999. *Criminal justice today* 5th ed., 28

must be considered by judges and prosecutors during trials. The main aim at the end of the day is to ensure that innocent people are not wrongly convicted.

One key argument against the model is that it tends to focus more on the rights of the accused while ignoring the rights of victims. But this does not mean that law enforcement should ignore the constitutionally guaranteed rights of the suspect or accused person such as i) right to remain silent or avoid answering any question until after consultation with a legal practitioner or any other person of his own choice[293] ii) the right to be informed in writing within 24 hours (and in a language that he understands) of the facts and grounds of his arrest or detention[294]iii) the right to be presumed innocent until proven guilty[295]iv) the right to be informed promptly in the language that he understands and in detail of the nature of the offence,[296]v) the right to be given adequate time and facilities for the preparation of his defence,[297] and vi) the right to defend himself in person or by legal practitioner of his own choice. [298]

In discussions about the two models of justice, it is sometimes asked 'if the rights of the individual outweigh the rights of many?' Advocates of the due process model tend to argue that the rights of one person in fact represent the rights of many. Garside[299]claims that the two models of criminal justice are not mutually exclusive, but disputes between the two models tend to also boil down to questions of degree and emphasis. He avers that crime control advocates might argue that a misguided attachment to certain protections historically afforded to suspects hampered convictions. But the principle of appropriate protections is not generally denied and the debate over the appropriate balance between the due process model and crime control model tend to be dominated by disagreements of a largely procedural kind.

[293] Section 35 (2) CFRN
[294] Section 35 (3) CFRN
[295] Section 36 (5) ibid.
[296] Section 36 (6) (a) ibid.
[297] Section 36 (6) (b) ibid
[298] Section 36 (6) (c) ibid.
[299] Garside R. The purpose of the criminal justice system. op.cit

Such debates are vital because a society that shows indifference to the process by which those who are deemed to have breached the laws of the land are dealt with is unlikely to be a society in which the rights of the individuals are respected. He opines that procedural debates offer little insights into the social context and political–economic structures within which the criminal justice processes operates. Schmalleger,[300] recommends an approach to justice that effectively combines the two models of justice "crime control through due process." To him, the combination of the two models fuses the strengths of the two models while also recognizing and avoiding the weaknesses and potential dangers that the models of justice, whilst separate, can inflict on society.

Approaches[301] can be said to be different viewpoints that capture the truth about the aims and objectives of the criminal justice system as perceived by the viewer. Sometimes perspectives are reconcilable and sometimes they are not. However, it must be pointed out that the agencies of the justice system are supposed to act in accordance with the aims and objectives of the system. The importance of perspectives cannot be underscored, as the effort spent in reconciling perspectives can bring about new insights into the criminal justice system.

People have different needs and means for approaching, understanding and describing the justice system. An awaiting trial person may view the justice system as a waste of time, a victim may view the justice system as the last vestige of hope, the law enforcement agencies may view the justice system as just a justice dispensing authority e.t.c. These views of the justice system may not seem compatible because the needs and means of the different persons, the awaiting trial person, the victim, the law enforcement agencies, the courts, prosecution, defence and the prison system are often based on experience and the reason for contact with the system. Criminal justice approaches can be regarded as an individual's view of crime, causes and control. In order to properly understand the criminal justice system as it operates today, it is necessary to understand the roles, institutional

[300] Schmalleger, F. 2005. Criminal justice: a brief introduction.
[301] Hereafter, they will be referred to either as criminal justice perspectives or approaches

processes, substantive rules and administrative procedures of the criminal justice system. Davies, Croall and Tyrer[302] posed some questions with regard to perspectives:

> In what ways are issues of crime and justice thought about in public debates and in everyday life? Are criminals regarded as an evil minority or just as ordinary people? Should the police be more concerned with strategies to prevent crime or to capture criminals? Should we spend more money on probation to help offenders or more on prison to punish them? Are the courts effective in ensuring fair trials and preventing miscarriages of justice? Should the phrase 'miscarriage of justice' apply only to those who are wrongly convicted of a crime they did not commit, or should it also apply to those who committed a crime but were not convicted through a lack of evidence caused by witness intimidation? Should it even apply to those who avoid conviction although they have committed a criminal act?[303]

To them, the above questions and issues depend on a number of assumptions and views about the nature and extent of the problems of crime and the 'justice and injustices' associated with the way agencies who function on behalf of the criminal justice system handle their duties in the system. It is essential to identify criminal justice approaches because approaches impact laws and also the freedom of citizens, tax revenue, quality of life, schools, the rule of law and due process- all actors in the criminal justice process. Criminal justice approaches are essentially different views or different ways of looking at criminal justice. These approaches are derived from the works of various writers from a variety of legal, sociological, or administrative backgrounds. Perspectives present a way of looking at criminal justice in terms of some general characteristics, principles or themes of the system.

As earlier discussed, two alternative models of criminal justice were first identified by Herbert Packer;[304]the crime control model which emphasizes the role of criminal justice in terms of the efficient control of crime, and the due process model, which emphasizes the importance of the rule of law and procedural safeguards[305] Davies et al[306] indicate that these two models are the major influence in the emergence of other models and

[302] Davies, M., Croall, H. and Tyrer, J. 2005. Criminal Justice, 8
[303] Ibid.
[304] Packer, H.L., Two Models of Criminal Process, op.cit.
[305] ibid.
[306] Davies, M. et.al 2005 Criminal justice. 23

perspectives of justice which were identified by later writers such as Michael King,[307] Siegel and Worrall[308] and Davies et al.[309] Since the recognition of criminal justice as an academic study, there have been attempts at unified policy formulation and significant arguments have persisted as to how the problem of controlling crime should be approached.

Despite years of research and analysis, criminal justice is still not a unified field because practitioners, academics and the society at large tend to have conflicting opinions as to the goals, direction and purpose of the criminal justice system: Some researchers suggest an increase in the number of law enforcement agents and an increase in remand punishment as the solution to the problem of crime. To them, this will increase the number of people arrested, which will necessitate building more prisons.[310] Some researchers believe that more money should be spent on welfare and social services, while others believe that the government has too much power to regulate and control behaviour which can only lead to an interference with individual liberty and freedom.[311]

From the above, it can be surmised that there is no shortage of problems facing the criminal justice system and the inability to agree on an approach to criminal justice can be incommodious as there are so many issues to be addressed by criminal justice agents and the agencies such as; countering social problems like terrorism, cybercrime, fraud, substance abuse, cultism and occultism, whilst respecting the individual liberties and civil rights of citizens and protecting their lives and properties. These are not the only problems faced by the system; there are also problems of lack of adequate resources to carry out their respective tasks and lack of cooperation and coordination between the various agencies.

[307] Michael King identified six models of criminal justice; Due process model, crime control model, medical model, bureaucratic model, status passage model and power model. King, M. 1981. The framework of criminal justice
[308] Siegel, L.J. and Worral, J.L. 2014. Introduction to Criminal Justice op. cit.
[309] Davies, M. (et.al) ibid.
[310] Davies, M. (et.al) ibid.
[311] Ibid.

Bearing in mind the intricacies of criminal justice systems, there is no unified perspective or philosophy that directs the system, there are however identified perspectives of the role of the criminal justice system and how it should approach its responsibilities. These models or perspectives will be discussed below:[312]

2.3.5.1 Crime pre-emption: Also called preventive justice, or pre-crime and pre punishment measures, is a less formal system or action that operates with an eye to more efficiency, with the goal of preventing the breach of the peace rather than waiting until a crime is actually committed and points to the increasing interest in some criminal justice systems with anticipating threats and is the opposite of the conventional method of criminal justice. It functions on the perceived need for preventive devices capable of incapacitating a person feared as dangerous but not subject to conviction for past crimes. Perhaps to be considered an approach of grave importance to criminal justice in the twenty-first century,[313]most references to preemption tend to point to the Hollywood film *Minority Report,*[314] where criminals were caught and punished by a "precrime" police force before they could commit their deeds. Most countries justify their "spying mission' much like in the "James Bond movies" on the need to prevent grievous and heinous crimes and the need to protect their country from security threats.

Preemption links coercive state actions to suspicion without the need for charge, prosecution or conviction, and also includes measures that expend the limit of criminal law to include activities or associations that are deemed to precede the substantive offence targeted for preventing.[315] Preemption is an approach to criminal justice that incorporates national security into criminal justice along with a temporal and geographic shift that

[312]This section of the research draws heavily on Siegel, L.J. and Worral, J. L., and Davies et. al's work on criminal justice perspectives as contained in their books- Introduction to Criminal Justice op. cit. pp. 21-26 and Criminal Justice: An Introduction to the Criminal Justice System in England and Wales op. cit. pp.23-28

[313] See generally, Dershowitz, A.M. 2006. Preemption: A Knife that Cuts Both Ways, W.W. Norton & Company, New York, United States of America pp. 8-15. See also Bonner, D. 2007. Executive Measures, Terrorism and National Security: Have the Rules Changed? Routledge, London, United Kingdom

[314] The Minority Report was a 1956 science fiction short story by American writer Philip K. Dick, it was adapted into a film directed by Stephen Spielberg in 2002. Dick P.K 1956. Minority report.

[315] McCulloch, J. and Pickering S.2009. Pre-crime and counter-terrorism: imagining future crimes in the 'war on terror. *The British Journal of Criminology*. 49.5:628-645

encompasses a blurring of borders between the states' internal and external coercive capacities.[316] According to Zedner,[317]preemption rings with a growing academic interest in crime prevention, risk and security and lurks behind developments in surveillance, profiling, and extensions in criminal liability for attempts, conspiracy, preparatory, and possession offences, and offences of risk creation. He further informs that crime preemption interferes with individual liberties and assigns liability ahead of harm or wrongdoing.

It was developed in response to threats, particularly terrorism, high profile kidnappings, assassinations and drug lords, and was a well established trend prior to current terrorist attacks with high impact such as the United States terror attack of September 11, 2001. It consists of intelligence investigation, surveillance and arrest prior to committing a crime. Although, preemption is often times viewed with suspicion, and until recently, it was widely assumed that the idea of confining someone preventively, under the precautionary principle was anathema to the rule of law. On the issue of crime preemption, Lord Denning said "*…it would be contrary to all principle for a man to be punished, not for what he has already done, but for what he may hereafter do."*[318] Crime preemption has however gained wide acceptance and is utilized in all three jurisdictions. Particularly in light of the recent security trends of acts of insurgency and terrorism such as the actions of Boko Haram and ISIS, attacking and bombings of law enforcement agents and civilians.[319]

An effective crime preemption approach to criminal justice requires legislative and the executive broadening of the sphere of criminal offences in order to enable early

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[316] ibid

[317] Zedner, L. 2010. Pre-crime and pre-punishment: a health warning. *Journal of Criminal Justice Matter*. 81 .1:24-25

[318] Everett v. Ribbands [1952] QB 198, 206. See also the American case of Williamson v. United States 184 F.2d 280 (2d Cir. 1950), 280, where Justice Robert Jackson (as he then was), sitting as a judge of the United States Court of Appeals for the Second Circuit, held that: "*The jailing of persons by the courts because of anticipated but as yet uncommitted crimes, could not be reconciled with traditional American law…Imprisonment to protect society from predicted unconsummated offenses [is] unprecedented in this country…and fraught with danger of excess.*

[319] In the United Kingdom examples of such attacks are: Mayhem at London Bridge and Borough Market on 03 June, 2017; Philips, M. May 23, 2017. "Sickening" Manchester attack targeted innocent children" CBS News. Retrieved Nov. 29, 2017 from https://www.google.com/amp/s/www.cbsnews.com/amp/news/manchester/-terror-attack-ariana-grande-suicide-bomber-children-theresa-may/

intervention so as to prevent perceived disastrous consequences.[320]This is based on 'expert' belief that there are ways of distinguishing real criminals from law-abiding citizens before they have committed any crime,[321]and includes the use of pretextual charges for preventive detention, the expansion of criminal liability to prohibit conduct that precedes terrorism, and expansion of surveillance within and outside the state borders.[322]

Proponents of crime preemption such as Zedner and Ashworth[323]amongst others, argue that preventive justice is all around us, and that a well functioning society cannot function without it.[324]According to Ashworth and Zedner,[325]the benefit of the preemption approach is that it authorizes officials to take preventive measures, mostly in situations where the possible damage could be life threatening or serious destruction of property. This is because the police are expected to respond swiftly to avert crimes, even though the evidence against the suspect is usually weak. Preemption is justified by explicit or implicit claims that it is possible to determine in advance who poses a risk and in what degree.

Opponents of preemption on the other hand[326] indicate that preemption embodies a trend towards integrating national security into criminal justice, and one of such trends is the inclusion of counter-terrorism framework, which gives rise to a number of tensions such as the encouragement of colonial strategies of domination, control and repression.[327] An inevitable consequence of preemption is pre-punishment, which according to Zedner has generated lively philosophical discussions because it opens the way to condemnation and punishment before they are deserved. It must be pointed that preemption tends to erode the

[320] Weinberg, M. 2006. The move towards Preemption in the Criminal Law. Retrieved July 20, 2017, from http://www.austlii.edu.au
[321] Ibid.
[322] Cole,D. 2014. The difference prevention makes: regulating preventive justice. *Criminal Law and Philosophy*. Retrieved February 12, 2017 from http://dx.doi.org/10.1007/511572-013-9289-7
[323] Ashworth, A., Zedner L. and Tomlin, P. Eds. Prevention and the limits of criminal law.
[324] Schauer, F. 2013.The ubiquity of prevention. Ashworth, A., Zedner L. and Tomlin, P. Eds. Prevention and the limits of criminal law.
[325] Ibid.
[326] Keenan , J. 2010. Africa unsecured? The role of the global war on terror (GWOT) in securing US imperial interests in Africa. *Critical Studies on Terrorism.3.1:2748*
[327] See also McCulloch,J. and Pickering, S. 2010. Future threat: pre-crime, state terror, and dystopia in the 21st century. *Journal of Criminal Justice Matters*. 81.1:32-33.

basic principles of criminal law and punishment and tramples on the presumption of innocence by treating individuals as guilty ahead of any wrongdoing. It negates personal autonomy and denies individuals of the chance to prove their innocence. [328]Preemption also leads to human rights abuses and goes against the rule of law. Zedner further holds that preemption permits intrusive, coercive measures which are imposed ahead of wrongdoing.[329]

In terms of PAT, it has been averred that those accused of crimes and facing trial and a possible conviction and punishment, may have a reason to abscond or try to interfere with the criminal justice process and try to pervert justice, particularly where the charge against the accused person is serious and as a result, the citizenry, particularly victims, witnesses and larger society may have reason to fear the accused person. Thus, given the pressures created by such fears, there is the justification of pretrial detention. However, in the case of preemption, the person arrested and detained, has not committed an offence and is being charged with "trying to commit" an offence, which can be likened to crimes under the category of attempt and conspiracy. Bamgbose and Akinbiyi[330]inform that such offences come under what is categorized as inchoate offences.[331] Inchoate offences are deemed punishable by virtue of the fact that aside from not committing the offence, *mens rea* can be proved. Section 4 of the Criminal Code and Section 95 of the Penal Code provide for the conditions necessary to be fulfilled which include:

- Putting the intention into execution by means adapted to its fulfillment
- Manifesting the intention by some overt act even though the actual offence is yet to be committed
- A manifest intention to bring about the commission of the actual crime

The crime preemption approach tends to raise questions about the use of early inchoate conduct as the target of punishment, and the negative implications for the awaiting trial person and other persons arrested for offences not yet committed. Some major effects of the crime preemption approach are; the speculative nature of the future harm can lead to

[328] Zedner, L. 2010. Pre-crime and pre-punishment: a health warning. op cit.
[329] Ibid.
[330] Bamgbose O. and Akinbiyi, S. 2015. Criminal law in Nigeria, op.cit
[331] An inchoate offence is one that is committed by doing an act or taking some steps with the purpose of effecting some other offence.

the invocation of the preemption approach against trivial threats, the circumvention of procedural protections that avail the awaiting trial person and other criminal defendants such as the presumption of innocence, proof beyond reasonable doubt, the adverse consequences for civil and personal liberties such as; the right to a fair trial, the right to silence and the right to privacy. It is plausible therefore, to say that the crime preemption approach has more or less, a negative implication for awaiting trial persons and any one arrested based on this approach. Thus although the state and law enforcement agencies tend to support the crime-preemption approach to criminal justice, it is not one that can securely ensure access to justice for awaiting trial persons.

2.3.5.2 Crime control: this approach sees the role of the justice system as the prevention of crime through judicious use of sanctions. It recognises that society wants to be protected from criminals and expects the State to ensure their safety. The approach operates on the premise that if the justice system operates effectively, most potential criminals would be deterred from crime and those who break the law would be arrested, tried and punished such that they would not commit such crimes again. It identifies effective law enforcement, strict compulsory punishment and increasing use of prisons as key to reducing crime rates.

The crime control approach is of the view that the true goal of the justice system is protecting the society and that this can best be attained through effective protection by law enforcement agents, harsh criminal punishment and incapacitation of hardened convicted criminals. Adherents of the approach are of the opinion that fewer people would be tempted to break laws if the justice system were well organized and that the efficiency of the system would improve.[332]

The crime control approach focuses on effective administration of justice through quick procedures and is not in support of legal technicalities that it believes 'help the guilty go free' and 'ties the hands of justice.' Its proponents lobby for the abolition of legal restriction on law enforcement agents. They believe that law enforcement agents may sometimes be forced to use strategies that cut down civil liberties for the sake of effectiveness. An example of such actions is the profiling of people at airports on the basis

[332] Einstadter, W.J. and Henry, S. 2006. Criminological theory: an analysis of its underlying assumptions.

of their race or ethnic origin in order to apprehend suspected terrorists. Civil liberty advocates are suspicious of racial or ethnic profiling but crime control advocates tend to be of the opinion that when it comes to the control of crime in the society, the end justifies the means.

One perceived setback to the effectiveness of the crime control approach is the 'roadblock' set up by the courts to protect due process rights of criminal defendants. They allege that thousands of criminals are allowed to go free every year where the courts find that law enforcement agents violate the rights of the accused persons. The downside of the crime control perspective of justice is that it is expensive to maintain. However, proponents argue that a safe and secure society, where crime is reduced to the barest minimum could make the money spent worth it.

The effect of the crime control method of criminal justice is that it tends to encourage full support of police actions to the extent of ignoring the legal procedures of building a case against an accused person such as information gathering, collection of evidence, a disregard for due process, the rule of law and the legal controls in criminal justice processes in favor of the accused person, such as the presumption of innocence, the right to silence, right to legal representation, and inclusion of non-legal interrogation techniques. This can ultimately lead to wrongful convictions of innocent awaiting trial persons and as such, cannot be regarded as a viable approach that can ensure access to justice for awaiting trial persons.

2.3.5.3 Rehabilitation: the rehabilitation approach also called by some; the welfare approach is concerned with the failure of individuals to develop their full potential, a failure which involves a loss to the society as well as a loss to the individual.[333] The welfare approach relies on some recognised assumptions about the causes of criminal behaviour and the emphasis is on the state of the individual rather than on the action of the

[333]Ifeta, B. O. 2010. Restructuring of correctional facilities of juveniles: the effectiveness of rehabilitation, Unpublished Dissertation, University of Ibadan, 7-8

individual.[334] Proponents of the approach see the justice system as a means of caring for and treating people who cannot manage themselves. According to Siegel and Worrall,[335]advocates of the perspective see crime as an expression of frustration and anger created by social inequality. It is believed that crime can be controlled by giving people the means to improve their lifestyle through conventional endeavours and that people are at the mercy of social, economic, and interpersonal interactions.

Proponents of the approach are of the opinion that the suspects/criminals are themselves victims of racism, poverty, strain, blocked opportunities, alienation, and family disruption among other social problems. They are adjudged to live in socially disorganized neighborhoods that are incapable of providing proper education, healthcare or social amenities. To the end of rehabilitation, proponents believe that society must compensate them for their social problems. Advocates of the approach tend to advocate that government programmes can help reduce crime on both a societal (macro) and an individual (micro) level. Siegel and Worrall posit that on the societal level, as the number of legitimate opportunities to succeed declines, people are more prone to criminal behaviours in order to survive.

It has been asserted that the means of discovering whether or not a person needs help does not resemble a battle field and with specified laid down rules which must be strictly followed and that individual justice is the only justice which can embody ideas of fairness, because people are not equal from the point at which they start. Treatment must be tailored to the individual needs, and the act which brought those needs to the attention of the criminal justice system cannot be used alone as the basis for a treatment/rehabilitation. Rehabilitation is the main concern of the approach and retribution or vengeance and deterrence of others plays no part in it.[336]

[334] Ibid.
[335] This approach operates on the assumption that that the law enforcement agents have respected a person's rights from the investigation of a crime through the arrest process and that there is a strong likelihood that the person is truly guilty of an offence. In the United States of America, it often leads to a 'plea bargain' where the arrested person agrees to admit to the crime in exchange for a lesser sentence on conviction.
[336] Ifeta, B. O. 2010. Restructuring of correctional facilities of juveniles. op. cit.

The main purpose of the rehabilitative approach is to prevent a recurrence of the crime that was committed. The approach advocates that a person is not criminally inclined for life, and that it takes the right process to straighten out the mind of a convict. It can be argued that increasing economic opportunities through job training, family counseling, educational services, and crisis intervention is a more effective crime reducer than prisons and Borstal institutions. This is because as legitimate opportunities increase, crime rates decrease. Thus society has a choice: fund treatment and educational programmes now or pay later when the rates of incarcerated persons increase thereby increasing the amount of revenue spent on catering for those on remand.

On the other hand, the practicability of compelling people into changing can be argued. Learning theories[337]support the view that behaviour can be changed by negative reinforcement, although studies[338] suggest that it is more permanently recognised by positive reinforcement on a sporadic basis. On the other hand, many treatment theories suggest that lasting change only takes place when a person is engaged in changing himself and that, unless this desire develops, any behavioural change may be short-lived.[339]However, there is recognition of the fact that punishment alone is not beneficial to either the offender or the society, and evidence abounds as to the success of the rehabilitative approach to criminal justice, particularly with juveniles, and modern criminal justice which recognises three main types of rehabilitation; treatment (medical, psychiatric and psychological), in-prison rehabilitation programmes and parole, recognises that simply locking up offenders in prison without resources to eventually rejoin society often leads to high rates of recidivism, which negatively impacts both the offenders and societies.[340]

2.3.5.4 Due process: the due process approach recommends fair and equitable treatment to those accused of crime and advocates the strict monitoring of discretion by justice officials to ensure no one suffers racial, religious or ethnic discrimination. According to

[337] See generally on Learning theories. Retrieved March 11, 2018, from https://warwick.ac.uk/fac/soc/cte/students-partners/academictechnollogy/learningtheories/
[338] Ibid.
[339] Ifeta, B. O. 2010. op. cit
[340] Hayes, C. Three types of rehabilitation for offenders. The Law Dictionary, Featuring Black's Law Dictionary Free Online Legal Dictionary 2nd ed. Retrieved February 12, 2018 from https://thelawdictionary.org/article/three-types--rehabilitation-offenders/

Lord Denning due process is "*...the measure authorized by the law so as to keep the stream of justice pure: to see that arrests and searches are properly made; that lawful remedies are readily available; and that unnecessary delays are eliminated."* This means the provision of impartial hearings, competent legal counsel, equitable treatment, and reasonable sanctions. It provides for the use of discretion within the justice system which should be monitored and advocates that the criminal justice system should be regulated to the fundamental human rights afforded an awaiting trial person.

The due process approach starts by analyzing the awaiting trial person's rights in the justice system from the onset of the criminal justice process; the arrest of the suspect, police investigation up to the conviction/acquittal of the accused person. From the starting point, it seeks to determine whether the police used legal means to conduct the investigation and if there actually existed, probable cause for the arrest. The due process approach analyses the arrest and interrogation process, analyzing the statements made by the suspect and any evidence located by law enforcement and how the evidence was gathered. It seeks to protect the right of the awaiting trial person through every step of the criminal justice process up till the outcome of trial and judgement.

The due process approach is less interested in speedy resolution of a case and instead focuses on a step by step examination of the individual due process rights accorded the awaiting trial person. Proponents[341] of the due process approach of criminal justice tend to advocate its use in severe cases where, upon conviction, an awaiting trial person would spend a long time in prison. It is more concerned with the structured efficiency of the law and places a great deal of emphasis on procedural law, rules of evidence, impartial fact findings, as well as respect for the presumption of innocence, respect for the rule of law and the right of an accused person not to be punished except for a breach of the law.

The due process model recognises and seeks to enforce the rights of the awaiting trial persons and encourages full access to justice and respect of the fundamental human, civil and political rights of the awaiting trial person in consonance with the rule of law and due process. It however, makes no arrangement of anything else, such as the rehabilitation of

[341] Such as Henam,R. 1998. Human rghts, due process and sentencing. *The British Journal of Criminology. 38.4:592-610*

the accused person should he/she need it, nor does it point to the recognition of the role of victims of crime in the criminal justice process.

2.3.5.5 Non-intervention: Seen as a Western democratic policy agenda, with a focus on the rights of the individual over the rights of the society as a whole, to the effect that the state must not use its overwhelming power to insure social peace at the risk of unfairly depriving people of liberty.[342] Proponents of the non-intervention perspective[343] are concerned about the effect of the shame (stigma) attached to crime and suspected offenders when they are branded.

According to Travis and Cullen[344]proponents of the approach harbour a benevolent inclination that the goal of correctional intervention should not be 'to do good' but rather to 'do no harm.' Seigel,[345]avers that justice agencies should limit their involvement with criminal defendants. This is because, regardless of whether intervention is designed to punish people or to treat them, the ultimate effect of any involvement of the awaiting trial person with the criminal justice system is harmful; whatever their goals or design, actions/programmes that bring people in contact with a social control agency – such as the police, the courts or corrections- will have long-term negative effects. Once involved with an agency of the criminal justice system, awaiting trial persons may be watched, people might consider them dangerous and untrustworthy, and they develop a lasting record that can have negative connotations.

Bearing an official label can have a harmful effect on the personal and family life of the awaiting trial person, their families, the work and interpersonal relationships in the society. Over time they may come to believe the labels associated with them and end up viewing themselves as outcast, troublemakers or evil. To this effect, official intervention promotes, rather than reduces, the tendency to engage in antisocial activities. Because of their fear of the harmful effect of labeling, noninterventionists recommend placing limits on the

[342]Travis, LF. And Cullen, F.T. 1984. "Radical Nonintervention: The Myth of Doing No Harm" 48 Fed. Probation 29 (1984) accessed from http://heinonline.org/HOL/LandingPage?handle=hein.journals/fedpro48&div=9&id=&page=
[343] Such as Siegel, L.J. 2006. Criminology: theories, patterns, and typologies. 10th Ed.
[344] Travis, LF. And Cullen, F.T. ibid.
[345] Siegel, L.J. ibid.

government's ability to intrude into people's lives. They call for the lessening of criminal penalties in relation to certain acts (decriminalization), through regulated permits, fines and diversion from formal court processes into informal treatment programmes such as mediation, diversion and community based corrective programmes.

Decriminalization reflects changing social and moral views and a society may come to the view that an act is not harmful, should no longer be criminalized, or is otherwise not a matter to be addressed by the criminal justice system. Admittedly, other subject matter have come under the focus of noninterventionists in response to changing views on criminality and as different societies have different views on what constitutes criminality as such, the subject matter is diverse and wide ranging such as; as breastfeeding in public, abortion, prostitution, recreational drug use, homosexuality, public nudity, steroid use in sports, age of consent, polygamy, euthanasia, gambling. Decriminalization should be distinguished from legalization which removes all or most legal disadvantages from a previously criminal act. However, not all acts have been decriminalized, the action depends on the jurisdiction, as decriminalization may take place in one jurisdiction while criminalization may take place in another, such as homosexuality which has enjoyed relative decriminalization in the United States and parts of Europe whilst it has been further criminalized in Nigeria. Other acts which come under this subject matter are familial sexual activities, such as incest.[346]

Noninterventionists maintain that nonviolent offenders should be removed from correctional system, i.e. deinstitutionalization, and recommend that first offenders who commit misdemeanours/minor crimes should be placed instead in informal community-based treatment programmes- a process referred to as pretrial diversion. The noninterventionist approach to criminal justice is most recognised, effective and apparent in developed countries such as the United States of America where passages of new

[346]In the US, the laws vary from state to state on incest and depends on how closely related the pair are. Generally, sex is banned between lineal ancestors, such as grandparents, parents, children and grand children, siblings and aunts and nephews, and uncles and nieces. However, incest is generally criminalised between consenting adults. See for example, the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007. In Nigeria, incest is criminalised under Section 214 (3) of the Criminal Code. In the United Kingdom, the Sexual Offences Act, 2003 (see particularly Sections 25-29-familial child sex and Sections 64-65- sex with an adult relative) outlaw consensual sexual relationships between family members, even where they are aware and know the potential consequences for their actions.

criminal laws can stigmatize offenders beyond the scope of their offence, a phenomenon Siegel and Worrall[347] refer to as 'widening the net of justice'. They give an example that a person who purchases pornography on the internet may be labeled a dangerous sex offender, or that someone caught with marijuana for a second time may be considered a habitual drug user.[348] Noninterventionists fight the implementation of community notification–type laws that require convicted sex offenders to publicly disclose when a registrant moves into a community. Their efforts have resulted in court decisions that admit that these laws can be damaging to the reputation and future of offenders who have not been given an opportunity to defend themselves from the charge that they are chronic criminal sex offenders.

Noninterventionist activities have been focused on helping people avoid the stigma associated with contact with the criminal justice system, and the failure correctional treatment coupled with constantly increasing correctional cost has prompted advocates of the nonintervention perspective to develop alternatives to incarceration such as; intensive probation supervision, house arrest, and electronic monitoring. The idea is to move as many non-violent offenders as possible out of the correctional system by means of community-based programmes. Although Travis and Cullen argue that the result of an overly strict adherence to the noninterventionist position can end up doing more harm than good as it leads to the relinquishing of responsibility for offences committed and promoting a liberal approach to justice, [349]the nonintervention approach has positive implications for the awaiting trial person, particularly non serious offenders, and those who are accused of minor offences or offences not related to severe bodily harm.

2.3.5.6 Equal justice: The equal justice approach recommends that all people should be able to identically access the criminal justice system and receive the same treatment under the law. Proponents[350] aver that 'discretion' routinely employed in criminal justice processes has created a system of individualized justice that can be inequitable and that this inequity undermines the goals of the criminal justice system. They point out that

[347] Travis, L.F. and Cullen, F.T. Ibid.
[348]ibid
[349] Travis, LF. And Cullen, F.T. 1984. Radical Nonintervention: The Myth of Doing No Harm. ibid
[350] Cullen, F.T., and Gendreau, P. 2000 Assessing correctional rehabilitation: policy, practice and prospects.

frustration arises when two persons commit the same crime but receive different sentences or punishments and this can result in anger and a sense of disillusionment with the system, and can increase the rates of recidivism.

Supporters of the equal justice approach[351] insist on the legitimacy of the model and point to evidence that perceptions of race, ethnicity and religion can influence how people think about crime and its control. They recommend that each criminal act must be treated independently and punished proportionately and that punishment must not be based on ethnicity, race, class, religion, status or past events for which people have already paid their debt to society. They further aver that it is critical not to base punishment of offenders on- more often than not- erroneous guesses about what an accused person may do in the future, and that criminal offenders must be treated based on their present behaviour. Punishment must be equitably administered and based on the principle of "just desserts".[352]

However, equality before the law is not a guarantee of equal justice, as a law with general application can have adverse prejudicial results as a consequence of the different circumstances and characteristic qualities of accused persons who come into contact with the system.[353] The approach provides a certainty of outcome, but a certainty which may be achieved at the price of serious injustice in some cases; because such laws require that the same punishment should be applied to every offender irrespective of the accused person's level of moral culpability, and the seriousness of the accused's conduct. For example, a person who steals out of hunger, one who steals to fund a recreational drug use, and one who steals for the fun of it, all have varying levels of moral culpability and can benefit from other approaches to criminal justice such as a skill acquisition programme on probation for the one who steals to feed himself; a referral to a rehabilitation facility for the habitual drug user to wean him off the habit, and punishment mixed with interaction with the victim, in the event of a sign of regret, can communicate to the offender, the gravity of the offence and the effect on the victim.[354] Where there is no evidence of remorse,

[351]See for example, Braman, D. 2006. Criminal law and the pursuit of equality. *Texas Law Review.* 84:1-37
[352] Siegel and Worral, pg. 26
[353] Chief Justice Robert French. 2015 "The General Meets the Particular" a paper presented at the Cultural Diversity and the Law Conference in Sydney, Australia
[354] ibid

punishment can serve as a deterrent to others who may conceive of committing the same offence.

2.3.5.7 Restorative justice: Proponents of the restorative justice approach[355] aver that the true purpose of the criminal justice system is to promote a peaceful and just society and that the justice system should aim for peace building and not punishment. Advocates of the perspective[356] view the attempts by the state to control and punish crime as 'encouraging crime' rather than 'discouraging crime'. They claim that the violent punishments of actions of offenders by the state are not unlike the violent actions of the individual offender. Thus, shared aid and not compelling punishment, is the key to a pleasant society. Supporters of the perspective[357] claim that without the capacity to restore damaged societal relations, society's response to crime has become almost exclusively punitive.

They recommend that resolution of the conflict between criminal and victim should take place in the community in which that conflict originated and not in a remote prison. The victim should be given a chance to tell his story and the offender can directly communicate his need for social reintegration and treatment. The aim of this is to enable the offender understand the damage he has caused, make amend and be reintegrated into society. Restorative justice programmes frequently utilize alternative dispute resolution mechanisms to resolve harmful interactions ranging from domestic violence and hate crimes.[358] They recommend that police officers, as elements of 'community programmes' should use mediation techniques to settle disputes instead of resorting to formal arrest.

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[355]Such as, Ashworth, A. 1993. Some doubts about restorative justice. *Criminal Law Forum.* 4.2:277-299; Bazemore, G. and Mara Schiff, Eds. 2001. *Restorative community justice*; Blagg, H. 1998. Restorative visions and restorative practices: conferencing, ceremony and reconciliation in Australia. *Current Issues in Criminal Justice.* 10.1:5-14; Bottoms, A.E. 1998. Five puzzles in Von Hirsch's theory of punishment. Ashworth, A. and Wasik, M. Eds. *Fundamentals of sentencing theory: essays in honour of Andrew von Hirsch.*

[356] Ibid.

[357] Ibid.

[358]Hate crimes are crimes motivated by racial, sexual, ethnic, or other prejudice, and typically involve violence. They can have serious effects on families and groups. They happen because people and groups preach hatred and intolerance which tends to plant the seeds of uprising and terrorism. A hate crime is a traditional criminal offence like rape, murder, arson or vandalism, but with an added element of bias. Hating, in itself is not a crime, it is when it leads to criminal acts that the crime occurs. The Federal Bureau of Investigation (FBI), United States of America, defines a hate crime as a "*criminal offence against a person or property motivated in whole or in part by an offender's bias against a race, religion, disability, sexual*

However, restorative justice can be a little difficult to promote as society appears to be more inclined towards retributive justice, and restorative justice is not an approach that is readily available to all offenders, but rather to those who admit their guilt and the victims indicate willingness to participate in the process. There is also the fear that should the accused person show no sign of empathy, there may be psychological damage to the victim; restorative justice does not look to control the behaviour of the accused person, but rather seeks to get them to acknowledge their actions and its effect on others. There is also the possibility of retaliation by the victim on the offender or a deliberate attempt to shame the offender which is not the aim of restorative justice.

2.3.5.8 Management of crime and criminals: This approach is also known as the Bureaucratic efficiency approach to criminal justice. It adopts a pragmatic approach that identifies the rights of the accused person or defendant to a range of recognised rights which should be respected, but that these rights have limits which deter defendants from excessively asserting such rights. It reflects the pressure on criminal justice officials to implement rules and procedures within the many constraints imposed by limited resources and public pressure to solve crimes. Agencies of the criminal justice system must therefore establish measures of bureaucratic efficiency.

Under this approach, the courts can be described as configured in the following ways: There is independence from political consideration, there is speed and efficiency, records are accepted, conflict is minimized, expenses are minimized and there is economical division of labour:[359]They must ensure that accused persons are tried and sentenced as speedily and efficiently as possible, particularly when cases come into the lime light and the system is under pressure to resolve the underlying issues that go with a case such as: where defendants spend too long awaiting trial, particularly in remand, if trials take too

orientation, ethnicity, gender, or gender identity." See generally, https://www.fbi.gov/invstigate/civil-rights/hate-crimes accessed on 14 October, 2016.

[359]McFarquhar, H. 2011. Key Concepts in Criminology and Criminal Justice, MacMillan Publishers, Palgrave, Basingstoke, United Kingdom.

long and are too costly, if too many accused persons are acquitted, if there are too many unsolved criminal cases, or if there are miscarriages of justice.

Agencies of the criminal justice system- particularly the courts and police- tend to come under considerable criticism in the discharge of their duties and the cost effectiveness of law enforcement and court administration are always a major concern.[360]According to Davies (et. al),[361] it is not always easy to balance the interests of due process with those of crime control and bureaucratic efficiency because it can be difficult to subject abstract principles such as justice to tests of cost effectiveness; adding that there is no yardstick against which to assess the efficiency of the system. They further contend that the interests of justice of the various agencies can conflict with those of efficiency. They claim that conflicts over aims which stem from the particular function of each agency tend to occur, for example, the police are to investigate crime and arrest and detain suspects, while the courts are to protect the rights of the defendant. Conflict may emerge from the bureaucratic interests of each agency, for example, the police may cut corners in following procedure so that they can charge suspects as quickly and as early as possible, whereas, prosecutors, as lawyers with duties to the court, may insist on the letter as well as the spirit of the law being followed and carried out. Also there are conflicts over values, that is, what the criminal justice system ought to be doing, for instance, is it more important to handle cases efficiently or to ensure that people are not subject to abuses of state power?[362]

Another example of the conflict within the system is the effect of not guilty pleas – if a defendant pleads not guilty, the prosecution and the defence have to prepare a case which may involve collecting evidence, summoning witnesses and preparing the many documents involved in a trial. Where a defendant pleads guilty, a lot of this work can be avoided. In essence, guilty pleas are cost effective and save time. On the other hand, putting pressure on accused persons and defendants to plead guilty can deprive them of their right to life.

[360]Davies, M., Croall, H. and Tyrer, J. 2005. Criminal Justice: An Introduction to Criminal Justice in England and Wales, op.cit
[361]Ibid.
[362]See Daly, K. "The Aims of the Criminal Justice System" an update and review of chapter 13 of the book "Crime and Justice: A Guide to Criminology" (3rd ed.) 2006 Ed. By Goldsmith, A., Israel, M. and Daly, K. retrieved on 20 August, from https://www.griffith.ed.au/-data/assets/pdf_file/0010/300988/Chap17-Aims-of-Criminal-Justice-Update/-22-April-11-for-web-posting.pdf

However, if more defendants insist on their right to trial, the system could become overloaded and more costly, but the police may not have sufficient admissible evidence to proceed against a person they suspect is guilty and in the context of the due process model of criminal justice, it would be expected that no action would be taken against such a person and as such, there is a tendency to charge the person and hope that he or she pleads guilty or the case against the person is dropped.[363]

Financing and funding are fundamental to the success of any agency, particularly the criminal justice system. It would also be a safe assumption that all systems require sound administrative strategies for a successful administration and the criminal justice system is no different. The efficacy of this approach therefore rests on prudence and an eye for the core values of the agencies.

2.3.5.9 **Denunciation and degradation**: The denunciation and degradation approach, also known as the status passage model is of the opinion that public trial and punishment are necessary to underline the law-abiding values of the community. According to Palmer,[364]public shaming is an integral part of the criminal justice system, and although its prominence rises and falls periodically, it is perceived to be necessary to underline the law-abiding values of the community. It emphasizes the value of public trials and punishment as a means of stigmatizing offenders and reassuring law-abiding citizens;[365]

It can be averred that the criminal justice system serves an important social function in reinforcing social values, and that public punishment and expression of society's disapproval can itself be rehabilitative in the sense that it may induce feelings of shame in offenders-a prerequisite for rehabilitation. [366]The question is sometimes asked; 'should

[363]Davies, M., Croall, H. and Tyrer, J. 2005. *Criminal Justice: An Introduction to Criminal Justice in England and Wales*, op.cit

[364] Pamler, B. "Can We Bring Back the Stockades? The Constitutionality of Public Shaming, *Slate.* Retrieved August 22, 2017, from http://www.slate.com/articles/news_and_politics/explainer/2012/11/public_shaming_sentences_can_judges_subject_criminals_to_humiliation.html

[365] See generally, Moore, K.E., Stuewig, J.B. and Tangney, J.P. Deviant. The Effect of Stigma on 'Criminal Offenders' Functioning: A Longitudinal Mediational Model. *Author Manuscripts HHS Public Access:* 37.2 Retrieved July 22, 2017, from https://www.ncbi.nlm.nih.gov/pmc/articles/Pmc4788463/

[366] Davies, M., Croall, H. and Tyrer, J. 2005. *Criminal Justice: An Introduction to Criminal Justice in England and Wales*, op.cit

shame be a component of punishment and the criminal justice process? "*Does taking someone down a peg set a miscreant straight, any more than locking him up?* Richard Lovelace,[367] a poet wrote from prison over 350 years ago that "*Stone walls do not a prison make, nor iron bars a cage."* This appears to be an example of the idea behind the denunciation and degradation approach to criminal justice, where it may be, at the discretion of the judge, that remand would not necessarily serve the purpose of carrying across to the accused person the effect of his offence and the society's disdain of his actions.[368]

Also, denunciation and degradation can serve as a politically viable and cost-effective way of achieving deterrence, specific and general, as well as of satisfying the legitimate demands of retribution. Garvey[369] avers that shame is not the only reason for the imposition of alternate sentences. To him, although shame may explain many of the sanctions imposed, it cannot account for them all. He also asserts as follows:

> …for example, shame involves an audience, and while some of these sanctions require an offender to publicize his offense to an audience that ordinarily would be unaware of it, not all of them do. Some of them are carried out in relative privacy. If not shame, then what is the appeal? The answer I give is education, but education of a peculiar sort. The education I have in mind is peculiar because it trades on the widely discredited though strangely enduring principle of 'lex talionis', or law of talion, popularly known as 'an eye for an eye'...[370]

The denunciation and degradation approach is diametrically opposite to the non-intervention approach-which believes that the criminal justice system stigmatizes offenders and locks them into a criminal way of life and advocates for the least intrusive method of criminal justice and de-stigmatization and decriminalization of offenders and offences. The downside of the denunciation and degradation strategies is that they have been linked to

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[367] Richard Lovelace, was an English poet and Soldier in the 17th century (1616-1658)

[368] See generally Morrison, P. May, 25, 2014. Is public shaming fair punishment? *Los Angeles Times*. Retrieved September 12, 2017, from http://www.latimes.com/opinion/op-ed/la-oe-0525-morrison-sentencing-shame-judges-20140525-column,amp.html where examples of decisions to utilize public shaming were given.; Garvey, S.P. 1988. Can Shaming Punishments Educate? *The University of Chicago Law Review*. 65:733-794.

[369] Ibid.

[370] Garvey, S.P. ibid.

maladaptive behaviours, adverse psychological developments and increased recidivism as well as dichotomizing those who offend from the rest of society thereby creating fear and resentment between two supposedly distinct and polarized populations. Research also indicates that rather than deterring offenders from committing crime, such offenders become more cautious, while giving society a false sense of security.[371]

2.3.5.10 Maintenance of class domination: Also known as the power model, the maintenance of class domination –using the Marxist or conflict perspective- argues that criminal justice systems essentially reinforce the role of the powerful (those who make the laws and whose interests are served by the law, that is, dominant classes, elites, races or gender, depending on the particular version of domination that is used. Here, the state is regarded as acting in the interest of the dominant group who use the criminal law to further these interests. According to Young[372]the system of social control for the rich and powerful is quite different from those controlling the poor; it is less formal, more oriented to distributive justice and more informal. This system is also more indulgent of crime, lax in policing, easily circumvented and often under the control of the criminals that the criminal justice system is supposed to police. Young explains that the upper class is beyond the law in several respects; its members have a combination of social power, economic power as well as the physical power of the security guards they hire.[373]Here, the system of social control for the rich and powerful is different from those controlling the masses.

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[371] See generally Zogba, K and Bachar, K. 2011. Sex offender registration and notification, ibid.; Tangney, J.P., Stuewig, J., Mashek, D. and Hastings, M. 2011. Assessing jail inmates proneness to shame and guilt: feeling bad about the behaviour or the self. *Criminal Justice and Behavior*. 37.7:710-734; McCulloch, T. and McNeill, F. 2007. Consumer Society, Commodification and Offender Management. 2 *Criminology and Criminal Justice:* 7.3:223-242; Karp, D.R. The judicial and judicious use of shame penalties. *Crime and Delinquency*. 44.2:277-294; Baldwin, K.M., Baldwin, J.R. and Edward, T. 2006. The relationship among shame, guilt and self-efficiency. *American Journal of Psychology*. 60.1:1-21; Braithwaite, J. *Crime, Shame and Reintegration*.; Karp, D.R. and Frank, O. 2016. Restorative justice and students development in higher education: expanding 'offender' horizon beyond punishment and rehabilitation to community engagement and personal growth.; Paul, S. Shame, an effective tool for justice. Written as part of a placement from HMP Grenock with the Centre for Youth and Criminal Justice. Retrieved March 17, 2017, from http://ww.cycj.org.uk

[372]Young, T.R. Crime and the rich. Lecture 14 in the series *Crime and Social Justice: Theory and Policy for the 21st Century*. Retrieved August 29, 2017, from http://www.critcrim.org/redfeather/crim/014rich.html

[373] Ibid.

Barak explains that the rich and powerful, in a bid to avoid the legal consequences of their criminal activities such as theft, murder, conspiracy to fix price, exploit workers and default on guarantees, try to control the law-making apparatus in a country by controlling the politicians who make the law. This is done in various ways such as through campaign donations, bribery or terrorizing judges and law enforcement officers. Also, given their ownership of the mass media, the capitalist class can use newspapers, radio, television and magazine reportage to shape the beliefs and actions of millions of citizens and as a result, both moral and social power grow out of their ideological hegemony.

Gobert and Punch[374]give an example of how the rich and powerful are able to avoid the legal consequences of their crime, explain that criminal law was not developed with companies in mind, and concepts such as *mens rea* and *actus reus*, which make sense when applied to individuals, do not translate easily to a fictional entity such as a corporation. Nelken[375]avers that accountants and lawyers have used their expertise to help businesses create tax avoidance schemes which can seem as if it was done accidentally. Nelken adds that corporate crimes rely on a certain amount of awareness on behalf of the victim and that white-collar crimes are frequently called 'complaint less,' and that those who suffer the consequences of them cannot be relied upon to act as reliable sources of information. Workers may be unaware of the risks they have been exposed to and consumers may not appreciate what they have lost.[376]

Research indicates that the average citizen in most jurisdictions tend to favour the view that the rich and powerful are able to obtain justice, utilize the criminal justice system to further their interests[377]or evade justice.

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[374] Gobert, J. and Punch, M. 2003. Rethinking corporate crime.
[375] Nelken, D. 2007. White collar and corporate crime
[376] Ibid.
[377]See generally, May, T. 2017. The rich get richer and the poor get prison. *Ivory Research*. Retrieved October 23, 2017. from https://www.ivoryresearch.com/writers/tallula-may-ivory-research-writer/; Anon. 2017. Justice for the Rich (1). *The Nation*. Retrieved October 23, 2017 from http://thenationonlineng.net; Robins, J. 2011. Access to justice is a fine concept but what does it mean in view of cuts to legal aid? *The Guardian*. Retrieved August 16, 2017 from https://amp.theguardian.com/law/2011/oct/06/access-to-justice-legal-aid-cuts; Ngobeni, P. 2014. Special justice for the rich? *Sunday Independent*. Retrieved November 16, 2016 from https://www.iol.co.za/sundayindependent/special-justice-for-the-rich-1795288; Makin, K. 2011. Access to justice becoming a privilege of the rich, judge warns. *The Globe and Mail*. February 10. Retrieved

2.3.5.11 Just deserts: The Just deserts approach is contrived from the retributive theories of Emmanuel Kant who believed that his retributive theories of justice were based on logic and reason. The idea of retributive justice has played a dominant role in theorizing about punishment, but many features of retribution, especially the notions of desert and proportionality, the normative status of suffering, and the ultimate justification for retribution remain contested ideas. The just deserts approach does not believe that the criminal justice system should be concerned with rehabilitation but should be limited to the fair administration of punishments appropriate to the severity of the crime committed.[378] The concept of 'just deserts' has been effectively described in the writings of Andrew Von Hirsch,[379]who explains that those who commit crime deserve to be punished, and by punishing them, future crime may be prevented.

There are different positions on the approach; Cavadino and Dignan[380] aver that just deserts is a compromise theory of retribution with a strong emphasis on making the punishment fit the crime by linking proportionality with seriousness and culpability. However, while retribution views culpability as matching the severity of the punishment in a sort of 'an eye for an eye' way, just deserts emphasizes that the penalty inflicted should not exceed that which is proportionate to the blameworthiness of the offender. Thus, for punishment to be justified as well as appropriate, it must be deserved.[381]The just desert approach proposes reduced judicial discretion in sentencing and specific sentences for criminal acts without regard to the individual defendant. It revolves around the idea that criminals should be punished because they deserve it. It stresses the importance proportionality[382]of the punishment of offenders in terms of their blameworthiness and the

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July 22, 2016, from https://www.theglobeandmail.com/amp/news/national/access-to-justice-becoming-a-privilege-of-the-rich-judge-warns/article565873

[378] Hudson, B. 1987. *Justice Through Punishment: A Critique of the 'Justice' Model of Corrections*.

[379]Von Hirsch, A. 1976. Doing justice: the choice of punishments: report of the committee for the study of incarceration; Von Hirsch, A. 1992. Proportionality in the philosophy of punishment. *Crime and Justice*. 16: 55-98.

[380] Cavadino, M. and Dignan, J. 2006. Penal systems: a comparative approach.

[381] Von Hirsch, A. 1976. Doing Justice: The Choice of Punishments: Report of the Committee for the Study of Incarceration, ibid.

[382] Proportionality is a general principle in law. The concept of proportionality in terms of just deserts and criminal justice is that it is used as a criterion of fairness and justice in statutory interpretation processes. It is intended to assist in discerning the correct balance between the restriction imposed by punishment and the severity of the nature of the prohibited act. In the United States, the Supreme Court proposed the proportionality doctrine in three cases: Enmund v. Florida (1982), 458 U.S. 782; Solem v. Helm (1983) 453

seriousness of their offence, not through crude revenge or incapacitation, but in response to the wrongfulness of their action. It brings together the principles of respect for the offender as a human being with certain rights (equal justice perspective) and the need to establish the offender's culpability for the offence, so as to punish only the guilty (crime control perspective), as well as the right of society to extract retribution from those who have done wrong (restorative justice). It thus links punishment and crime to issues of morality and control. In the just deserts approach, the treatment of the accused persons and punishment of offenders must be fairly and equally apportioned to all individuals who come before the criminal justice system.[383]

The just deserts approach to criminal justice takes into account the act committed and does not consider the offender, their circumstances, known past or what may happen to them in the future. While proponents of the just deserts approach to criminal justice aver that it is non-discriminatory, critiques of the just desert approach claim that the administration of the same penalties to different offenders inflicts diverse levels of punishment because different individual have differing characteristics and circumstances. For example, a fine of ₦ 100,000.00 would be an inconvenience to a person who earns ₦ 5, 000,000.00 a year, but it would result in untold hardship for a person earning average to minimum wage between ₦ 200,000 – ₦ 1, 000, 000.

It has also been observed that the approach ignores the unintended consequences of sentencing such as stigma, loss of employment, accommodation, and the impact on the family of the offender. As a result, the totality of the sentence and the extent of the

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U.S. 277; Tinson v. Arizona (1987) 481 U.S. 137. According to Goh proportionality in criminal justice is derived not from merely considering crime and punishment on their own, but through taking into account the social sentiments towards them as well as the values attached to crimes and punishment. The application of the proportionality principle then is not an objective measurement to be made of criminal offenders and sentences, but is a companion of the moral assumption that society harbours towards them. In this sense, proportionality can be reached by first scaling crimes and punishments according to social values, and then by anchoring these two scales against each other, from which calibrations and meaningful comparison can then be made and a practical application of proportionality may then be derived. To Goh, proportionality is never truly attained, since it is not an objective truth to be discovered from the observation of criminal offences and punishment, but is an enterprise of striving towards the goal of representing the wide-ranging and evolving values of society. See Goh, J. 2013. Proportionality-an unattainable ideal in the criminal justice system. *Manchester Student Law Review*. 2:41-72. See also, Grossman, S. P. 1995. Proportionality in non-capital sentencing: the supreme courts tortured approach to cruel and unusual punishment. *Kentucky Law Journal* 84:107-172.

[383] Burke, R.H. 2011. Criminal Justice Theory: An Introduction, ibid.

suffering involved may exceed the intentions of the Sentencer.[384] Other criticisms of just deserts revolve around its implementation, for example, how do you measure harm, seriousness, the severity of the sentence and blameworthiness? Moreover, how do you deal with multiple offences or an offender who has subsequently repented or made amends to the victim? How does the idea of 'making the punishment fit the crime' become quantifiable in real terms? Another critique of the just deserts approach is based on proportionality. Where a person kills ten (10) people, can he be killed ten times? Can the court order that a rapist should be raped as punishment for the offence committed?

2.3.5.12 Managing offender behaviour: The managing offender perspective can be seen as a combination of justice approaches that recognise and combine more than one criminal justice approach in a bid to come up with a strategy to manage offenders. Here the strategy as recommended by Davies, et al, is broader than rehabilitation, and while encompassing efforts to change behaviour also attempts to monitor and control offenders depending on the risk and record of offending. Intensive supervision and surveillance programmes for juveniles and electronically monitored curfews are examples of a strategy of intervention that relies on surveillance and supervision to reduce crime.[385]

Here, the crime control perspective is extended beyond policing and prosecution into the treatment and correctional stage, thus blending crime control and rehabilitative practices with surveillance. The key aim of the proponents of the approach is to adapt other approaches and or blend two or more approaches to attain a perspective that would best suit the needs of the particular criminal justice system. To this writer, the managing offender approach also contains strong elements of the preventive justice/crime preemption approach to criminal justice and has positive connotations for the awaiting trial person because it looks beyond the crime committed and possible punishment and seeks to ensure good behaviour through surveillance and monitoring.

[384] Walker, N. 1991Why Punish? Op.cit.
[385] Davies, M. Croall, H. and Tyrer, J. Criminal Justice, op. cit.

2.3.6 Analysing the approaches

Proponents of the various justice approaches have attempted to promote their vision as regards justice and its application in the criminal justice process, the criminal justice system and its effect on the society. Arguments can be made for one approach over the other and each approach of criminal justice has had an impact on the criminal justice system. Understanding the criminal justice system today requires an analysis of the occupational roles, institutional processes, legal rules, and administrative doctrines, and each of the above stated perspective offers a vantage point for understanding and interpreting the complex issues of the criminal justice.

It can be rightly said that, no one approach answers all the needs of the criminal justice system, as the aims of the system-crime control and ensuring justice in the criminal justice process- can and often conflicts. The significance of the approaches to justice is situated at the main objective of any criminal justice system, which could be, a primary focus on the protection of the rights of individuals to a fair trial, a focus on public safety and the control of crime, or the cost effectiveness of the system as a whole. There may be indications from policy, legislation, practice and procedure that point to one or more perspectives and competing goals of the various agencies in the system can point to different perspectives. In the end, the ideals might not necessarily be incompatible, as different agencies may utilize different approaches in order to carry out their duties. It would however not be fair to say that the approaches can all work together as for example, a just deserts approach would clash horribly with a rehabilitative approach to criminal justice.

A careful look at the criminal justice process from arrest, investigation, arraignment, trial and sentencing will reflect the impact of the above discussed approaches in the administration of criminal justice and indicate if awaiting trial persons are able to access the justice system. Advocates of the various perspectives tend to promote their vision of how the justice system is and how it should be applied. The effect of these perspectives either actively or inactively, can be felt in the promulgation of laws and policies regarding criminal justice. For instance, in Nigeria, the Administration of Criminal Justice Act 2015 shows a strong recognition of restorative justice and there are constant efforts to

rehabilitate offenders, provide them with elements of due process and adherence to the rule of law and there are constant agitations for the provision of the supply of a wide range of treatment and rehabilitation to offenders in all stages of the criminal justice system.

However, it is important to note that these approaches are not just situated in rhetoric in the media and with academics, as it applies to the criminal justice system; they have characteristic features that help in identifying them in any criminal justice system such as normative law, institutional frameworks, policy and procedure, and actual practice as observed by national and international monitoring bodies. There are access to justice indicators that if thematically grouped, can mirror the justice chain and reflect through an understanding of access to justice mechanisms any criminal justice perspective. Marchiori,[386]in a report commissioned by the United Nations in partnership with the Council of Europe identified fifteen dimensions that reflect a broad understanding of access to justice, spanning from the existence of substantial rights and entitlements to physical, economic and intellectual accessibility of courts to fair and effective processes, accountability and transparency and lack of corruption in judicial institutions. In Chapter four, utilizing access to justice indicators to identify access to justice perspectives, a comparative analysis of the selected jurisdictions will be undertaken to assess the criminal justice systems of the three jurisdictions and subsequently, there will be a discussion of the effectiveness of the various perspectives and their effect on access to justice for awaiting trial persons.

Comparative analysis of criminal justice approaches

It may be asked if the approaches to criminal justice are useful in any way. This is because they tend to focus on and magnify one feature or more of the criminal justice system and may not necessarily encompass the entire criminal justice system. They however, demonstrate different ways of looking at the system and indicate very different influences on policy and practice. Considering the interdisciplinary and multidisciplinary nature of

[386]Marchiori, T. 2015. A framework for measuring access to Justice including specific challenges facing women. A Report Commissioned by UN Women, realized in partnership with the Council of Europe retrieved May 06, 2017 from https://rm.coe.int

criminal justice, the various models of justice have been developed by different academic disciplines such as criminology, sociology, law and systems analysis utilized by experts in management and auditing techniques.

The criminal justice approaches as outlined in this study, build on Herbert Packer's crime control and due process models of criminal justice,[387] and reflect the American and English approaches to criminal justice. There is a similarity amongst the approaches in the sense that the foundations can be traced to Herbert Packer's two approaches of criminal justice, and Michael King's[388]six models of criminal justice, two of which are strongly rooted in Herbert Packer's models. The criminal justice approaches of Siegel and Worrall enjoy apparent popularity - restorative justice; non-intervention; equal justice, and have been variously discussed by researchers.

It is worthy of note that there are similarities in the approaches as outlined. For example, the medical model is very similar to the American rehabilitation approach while the American equal justice approach can be seen in the bureaucratic and the just deserts approach. It should be noted that the approaches in the two jurisdictions are not wholly identical as they are described in the context of the aims and objectives of their respective criminal justice administrations. On the other hand, an assessment of research materials on criminal justice in Nigeria does not reveal discussions on criminal justice approaches *per se*, but shows recognition of criminal justice models such as rehabilitation and restorative justice. This does not in any way mean that there are no perspectives that drive the administration of criminal justice in Nigeria, either in the legislation, principle or in practice. What it implies, is that there have been no academic discussions about the justice perspectives and their influence on the criminal justice system. In order to try to ascertain the Nigerian justice approach, each of the approaches will be briefly discussed comparatively to see if they apply to the Nigerian criminal justice system:

[387] Packer, H. 1968. The Limits of Criminal Sanction op. cit
[388] King, M. 1981. The Framework of Criminal Justice.

i. **Pre-emption:** Although, pre-emption is sometimes viewed with suspicion,[389] it has gained wide acceptance and is utilized in all three jurisdictions. Particularly in light of the recent security trends of acts of insurgency and terrorism such as the actions of Boko Haram and ISIS, attacking and bombing law enforcement agents and civilians.[390] Legislatures and the executive are broadening the sphere of criminal offences in order to enable early intervention so as to prevent perceived disastrous consequences.[391] This is based on 'expert' belief that there are ways of distinguishing real crime criminals from law-abiding citizens before they have committed any crime.[392]

ii. Crime control: Identified by both the United Kingdom and American jurisdictions, the crime control approach places an emphasis on the aggressive arrest, prosecution and conviction of suspects. The main aim of the perspective is to prevent and reduce crime through the use of criminal sanctions. It is premised on the belief that people want a safe and secure community and protection from dangerous criminals.[393] There is therefore an expectation that government will do all that is necessary to ensure the security of life and property of the citizens. Its values include the notion that those thought to be guilty may be punished regardless of the rules that may be in place for protecting the rights of suspects.

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[389]Until recently, it was widely assumed that the idea of confining someone preventively, under the precautionary principle was anathema to the rule of law. On the issue of crime preemption, Lord Denning said "*…it would be contrary to all principle for a man to be punished, not for what he has already done, but for what he may hereafter do."* (Everett v. Ribbands [1952] QB 198, 206). See also the American case of Williamson v. United States 184 F.2d 280 (2d Cir. 1950), 280, where Justice Robert Jackson (as he then was), sitting as a judge of the United States Court of Appeals for the Second Circuit, held that: "*The jailing of persons by the courts because of anticipated but as yet uncommitted crimes, could not be reconciled with traditional American law…Imprisonment to protect society from predicted unconsummated offenses [is] unprecedented in this country…and fraught with danger of excess.*

[390]In the United Kingdom examples of such an attack is the Mayhem at London Bridge and Borough Market on 03 June, 2017

[391] For example, including the activities or associations that are deemed to precede the actual offence targeted for prevention. See Weinberg, M. 2006. The move towards preemption in the criminal law. Retrieved July 22, 2017, from http://www.austlii.edu.au; McCulloch and Pickering, S. 2009. Pre-crime and counter-terrorism: imagining future crime in the 'war on terror.' *British* Journal of Criminology. 49: 628-645

[392] Ibid.

[393] Siegel, L.J. and Worral, J.L. *Introduction to Criminal Justice*, 22

The crime control approach is favoured by law enforcement agents who have as one of their core mandates, crime control and ensuring the security of life and property of citizens.[394] It is safe to say that the Nigeria Police and other law enforcement agencies operate under the crime control model.[395] However, it must be pointed out that there is a tendency for agents acting under this perspective to disregard legal controls, to presume guilt on the part of an accused person, to seek for high conviction rates as opposed to truly ascertaining the guilt or innocence of the accused person, and use any means possible to obtain a confession from a suspect or accused person such as torture or intimidation. All these point to the beginnings of the criminal justice process- arrest, investigation and interrogation- which involves law enforcement, particularly the police; where legal controls which would ensure fair hearing such as the presumption of innocence are ignored, failing to inform the accused person of his rights at the point of arrest and interrogation, using torture and brutality to extract confessions, tampering with or concealing evidence, just to secure a conviction and maintain the aura that the police are efficient.

iii. **Due process**: The due process approach incorporates recognised constitutional principles such as the presumption of innocence, the right of the accused to a fair hearing, equality before the law and that justice should be seen to be done.[396]It focuses less on the speed and resolution of a case and more on the step by step examination of individual due process rights given to the accused person or defendant. It requires recognition of the civil, economic and fundamental rights of the accused person and means that impartial hearings, competent legal counsel, equitable treatment, and reasonable sanctions should be provided. By virtue of the fact that the three jurisdictions of reference in this research operate an adversarial system of justice, the due process perspective is necessary to the achievement of a fair trial and criminal justice process.

[394]Nigeria Police has as its vision:"*To make Nigeria safer and more secured for economic development and growth; to create a safe and secured environment for everyone living in Nigeria"* See Nigeria Police Code of Conduct

[395] See generally Dambazau, A.B. 2012. Criminology and Criminal Justice, 221-224

[396] Davies , M. (et. al) Criminal Justice, 24-25

The due process approach begins by analyzing the accused person's rights from the earliest point of the criminal justice process: arrest, investigation e.t.c. Whether legal means are utilized and if probable cause existed for the arrest. It also looks at statements made by the accused person, evidence gathered by the police and how it was gathered. In the due process approach, the accused person's rights are protected at every step of the criminal justice process; including the determination of guilt and the administration of a sentence.[397] The due process model of justice has been identified by the American and United Kingdom criminal justice systems.[398] In consonance with Chapter IV of the Nigerian Constitution- Fundamental human rights- it can be observed that the Nigerian normative provisions correspond to the due process perspective.[399]The Due process perspective conforms to the international perspective on the respect for the rule of law and due process as contained in the triad of the international human rights provisions[400]

iv. **Rehabilitation**: The rehabilitation approach regards the criminal justice system as a means of caring for and treating people who cannot manage themselves; who would better serve society if individual attention is paid to them while in the criminal justice system. The perspective operates on the belief that people's choices to break the law are not borne out of pure free will, rather, some criminals are the victims of poverty, discrimination, blocked opportunities, family disruption and other social problems and as such, they are at the mercy of social, economic and interpersonal conditions. The success of the perspective requires an individualized approach to the handling of

[397] Davies , M. (et. al) Criminal Justice. op.cit

[398]The United Kingdom's Police and Criminal Evidence Act (Pace) 1984, identified the lack of procedural safeguards in police interviews. At present, police interviews are now recorded and suspects have the right to legal representation. There is also the Human Rights Act of 1998 which allows for criminal justice practices to be structured from a human rights perspective. See Siegel, L.J. and Worral, J.L. Introduction to Criminal Justice, op.cit. and Davies , M. (et. al) Criminal Justice. op.cit.

[399] See also the Nigerian Legal Aid Act which provides for legal representation for persons who would otherwise be unable to access legal representation.

[400] The Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic Social and Cultural Rights and other supporting instruments previously cited.

accused persons and gives agencies of the criminal justice system more discretion than the crime control and due process models of criminal justice.[401]

Thus in the interest of the accused person, a perceived offender could be diverted from the criminal justice system at any stage from arrest to sentencing and conviction, if it is observed that no benefit will be served by prosecuting such a person. Such diversion can be to a social worker, probation officer, or even a medical officer (or psychiatrist) for counseling and treatment. The rehabilitative approach can also be seen in government programmes directed at prison inmates with the aim of educating and training them for jobs. By utilizing the rehabilitative approach, the legitimate opportunities present themselves for economic, behavioural and social improvement of offenders who will in the long run be reintroduced back into the society.

The rehabilitative approach can be seen in all three jurisdictions. Existing literature and the normative laws of the three jurisdictions show[402]that the criminal justice system is geared towards the rehabilitation of offenders such that the prison system is not only a means of incarceration to remove the offender from posing any danger to the public, but is also a way of preparing the offender for release and re-integration into society. This is particularly so in Nigeria where the Child's Right Act provides that juveniles should be processed separately from adult offenders, and the provisions made for their care should the system decide to remand them.[403] It must be pointed out though that the United Kingdom and the United States of America have more developed means of ensuring the rehabilitation of accused and convicted persons, which includes educational programmes, skill acquisition programmes, counseling

[401] See generally Ugwuoke, C.U. 2014. Rehabilitation of convicts in Nigerian prisons: a study of federal prisons in Kogi state. *Research on Humanities and Social Sciences*. 4. 26: 33-43; Davies , M. (et. al) Criminal Justice, 25; Siegel, L.J. and Worral, J.L. Introduction to Criminal Justice, 22-23.
[402] Amended by the Criminal Justice and Immigration Act 2008)
[403]The National Agency for the Prohibition of Trafficking in Persons (NAPTIP) has a Counselling and Rehabilitation Department which under Section 9 (3) (a-b) perform the function of rehabilitating and counseling victims of human trafficking.

services, religious services, Mid-range industrial production, group work programmes, medical/mental rehabilitation, social work, probation supervision.[404]

v. **Non-intervention**: The non-intervention approach posits that the criminal justice system stigmatizes offenders and the stigma locks people into a criminal way of life. It is argued that it is better to utilize the least intrusive treatment possible, and push for [405]policies such as deinstitutionalization,[406] diversion and decriminalization. Their argument is premised on the belief that whatever the goals or design, programs that brings people into contact with the criminal justice system, will have long term negative effects, because once involved with the system, accused and awaiting trial persons may be watched, people might consider them dangerous and untrustworthy, and they can develop a lasting label which can disrupt their lives and harm their ability to interact with people. Proponents[407] demand the removal of nonviolent offenders from the correctional systems by deinstitutionalization, and recommends that first offenders who commit minor crimes should instead be placed in informal, community-based treatment programmes, a process referred to as pretrial diversion.

   The non-intervention approach appears to be more established in developed countries where criminal justice legislation provides for programmes run by a police department, court or outside agency and there are actually, institutions in place to ensure the success of such programmes. It can be seen in the use of diversion programmes as a form of sentence which demands that a criminal offender joins a rehabilitation programme such as an anger management programmes, detoxification centers/clinics for alcohol or drug related problems in order to help remedy the behaviour leading to the original arrest and avoid conviction and a criminal record.[408] For example, the United States Sentencing Guidelines provides for adult diversionary

[404]Asokhia, M.O and Osumah, O.A. 2013. Assessment of rehabilitation services in Nigerian prisons in Edo state. *American International Journal of Contemporary Research*. 3.1:224-232
[405]This can be by reducing the penalty of a criminal act, but not actually legalizing the criminal act.
[406]Removal of non criminal offenders from the prison system
[407] Such as, Schur, E. 1973. Radical non-intervention: rethinking the delinquency problem; Schur, E. 1971. 1971. Labeling deviant behaviour.
[408] See generally, Siegel, L.J. and Worrall, J.L. 2016. Introduction to Criminal Justice, 24-26.

dispositions where defendants can first receive the benefit of a rehabilitative sentence. In the United Kingdom, it can be seen in the identification of people with mental health problems who enter or are at risk of entering the system and providing them with appropriate mental health services, treatment and any other support they need.[409]Although there are advocates for a nonintervention approach to criminal justice in Nigeria,[410]the country lacks the necessary legislative and structural setup to back the approach.[411]

vi. **Equal justice**: Equal justice, also defined in terms of 'fairness' is based on the idea that all people should receive the same treatment under the law and should be evaluated on the basis of their current behaviour, and not their past behaviour. Proponents aver that the discretion routinely employed in criminal justice making has created a system of individualized justice that can be unfair, and unfairness undermines the goals of the system and want each criminal act to be treated independently and punished proportionately and that such punishment should not be based on class, race, ethnicity or status, nor past events for which people have already been punished.[412]

Although strongly advocated as an ideal approach to justice, the equal justice approach has not enjoyed much success even though the normative system in the three jurisdictions provide for equal justice in the criminal justice system such as; the presumption of innocence, the right to a fair trial, freedom from discrimination, right to dignity of the human person and right to legal aid where an accused person is unable to afford the services of a lawyer.[413] There are various reasons why the equal justice approach, though ideal, is not fully achievable: for example, in the United

[409] See Anon. Diversion: the business case for action. *Centre for Mental Health, Rethink and the Royal College of Psychiatrists.* Retrieved July 22, 2017 from https://www.centreformentalhealth.org.uk/pdfs/Diversion_business_case.pdf

[410] See Bamgbose, O.A. "The Rod, the Cane, and the Punishment" a paper delivered at Justice and Peace Development Commission, Ibadan. 2012.

[411] However, it should be noted that the criminal law of Lagos State 2011 has removed the punishment for attempted suicide and replaces it with counseling/rehabilitation/hospitalization.

[412] See generally, Siegel, L.J. and Worrall, J.L. 2016. Introduction to Criminal Justice op. cit. 26

[413] See Chapter IV of the Constitution of the Federal Republic of Nigeria op.cit.

States there exists according to Samuel Walker-a scholar who analyzed the criminal justice system- a wedding cake model of justice[414] and the criminal justice system's method of handling accused persons is divided into four categories: **celebrated cases**-which get a lot of media attention because the crimes are unusual or because the accused persons are celebrities or high-ranking officials,[415]**serious felonies**-here the system is said to engage in its standard operating procedure because the external factors of fame or celebrity do not interfere with the criminal justice process, **lesser felonies**-non-violent offenders such as drug related offences and financial crime, and **misdemeanours**-the least serious types of crimes such as petty theft.

In the United Kingdom, a study on the subject of equality in the criminal justice system revealed varying responses: it was generally felt that accused persons were treated well and given preferential treatment, particularly since many of them ended up not being convicted or punished for the crimes they were believed to have committed. Examples of people that were seen to be treated better were; serious offenders (such as rapists, murderers and pedophiles), repeat offenders, asylum seekers, young offenders, and wealthy people.[416]In Nigeria, the question of equality in the criminal justice system is met with various literature which point out the defects/injustices of the administration of the criminal justice system which is said to foster and encourage inequality by virtue of defects in substantive law such as the Criminal Code and the Penal Code, discrimination on the grounds of protection of public officers from criminal prosecution, procedural defects and inadequacies, structural injustice and imbalance in the distribution of wealth. As such, the criminal justice system is perceived as in instrument of oppression and protection of the status quo.[417]

[414] See generally, Siegel, L.J. and Worrall, J.L. 2016. Introduction to Criminal Justice ibid.
[415] Examples of such cases in the United States are the OJ Simpson and Michael Jackson cases.
[416] "Fairness and Effectiveness in the Criminal Justice System: Development of Questions for the British Crime Survey" A Report, prepared for the Home Office by British Market Research Bureau (BMRB) Social Research, retrieved on 27 February, 2017, from http://www.webarchive.nationalarchives.gov.uk
[417]Statutory examples of the inequalities include discrimination on the grounds of marriage, i.e. traditional and legal marriage, criminalisation of adultery under Section 387-388 of the Penal Code without such in the Criminal Code and immunity some public officers from prosecution as contained in Sec. 308 of the 1999

vii. **Restorative justice**: This is a justice approach that advocates peaceful solutions, mediation and other peacemaking moves rather than coercive punishment. It sees the main goal of the criminal justice system as making a systematic response to wrongdoing that emphasizes healing victims, offenders, and communities wounded by crime.[418] It must not be assumed that restorative justice excuses crime or tries to let people go free people, or forgiveness per se. Restorative justice views crime as a violation of people and relationships and involves as much as possible interactions between victims, offenders, community members, as well as representatives from the law enforcement, court and prison systems. The 'beauty' of the restorative justice approach is that offenders who are found appropriate for restorative justice programmes have to accept responsibility for their actions, meet face-to-face with victims and come up with a plan to repair the harm they have caused.

In the United States, as a result of accusations that the criminal justice system is tainted by racial discrimination, police brutality, incarceration of people for minor offences, creating a school to prison pipeline and the practice of expecting punishment and isolation for all involved when a crime occur;[419]there is a shift in the direction of restorative justice with at least thirty-five states adopting legislation encouraging the use of restorative justice for children and adults both before and after prison.[420]In the United Kingdom, although retributive justice is credited as the default approach to criminal justice, the restorative justice approach is increasingly being used in different parts of the criminal justice system, particularly in the

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Nigerian Constitution and Diplomatic Immunities and Privileges Act. Cap D9, Laws of the Federation of Nigeria, 2004. See generally, Okogbule, N.S. 'Access to Justice and Human Rights Protection in Nigeria: Problems and Prospects' December, 2005 Sur. Revista Internacional de Direitos Humanos Vol.2.No.3 retrieved on 23 March, 2016 from http://www.scielo.br/scielo.php?pid=S1806-64452005000200007&script=sci_arttext&tlng=en; Ojukwu, E. (et. al.) 2012. Handbook on Prison Pre-trial Detainee Law Clinic op.cit.; Okogbule, N.S. 2005. The Nigerian factor and the criminal justice system. Retrieved May 12, 2016, from http://www.nigerianlawguru.com

[418] See generally, Braithwaite, J. and Mugford, S. "Conditions of Successful Reintegration Ceremonies: Dealing with Juvenile Offenders" British Journal of Criminology and Law, Vol.34 No.2, 1994 retrieved on 24 July, 2017 from http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.524.4876&rep=rep&type=pdf

[419] Bietsch, R. "States Consider Restorative Justice as Alternative to Mass Incarceration" PBS News Hour, 20 July, 2016 retrieved on 02 December, 2017 from http://www.pbs.org/newshour/rundown/states-consider-restorative-justice-alternative-mass-incarceration/

[420] Ibid.

management of young offenders and the prison system with a view towards changing how the society responds to crime and wrongdoing.[421] As a result of the positive effect that the restorative approach to criminal justice has, its effect can be seen in changes in legislation and the criminal justice procedure.[422] The Nigerian criminal justice system is patterned after the English common law which is retributive in nature: it provides that offenders should be punished for any crime done to another. There is however, a growing movement in support of restorative justice, which is recognised to have been the modus operandi of the traditional societies.[423]

An example of the effect of the restorative justice approach to criminal justice can be seen in the enactment of the Administration of Criminal Justice Act 2015 which seeks to stem the tide of retributive justice and seeks to ensure that the administration of criminal justice in Nigeria promotes efficient management of criminal justice, ensure speedy dispensation of justice, protect the society from crime and ensure respect of the rights of the suspect, accused person, defendant and victims[424]by introducing the suspended sentence and community services as alternative punishments.[425] However, for the restorative approach to criminal justice to be truly

[421] This led to the 1998 Crime and Disorder Act which introduced multi-agency Youth Offending Teams, called YOTs, under the guidance of the national Youth Offending Team (YOT) in each of the 154 local authorities in England and Wales, which is made up of representatives from police, probation service, social services (welfare), health, education, drugs and alcohol misuse, and housing. See, Davey, L. 2005. Building a global alliance for restorative practices and family empowerment. Pt. 3. A paper presented at the IIRP's Sixth International Conference on Conferencing, Circles and other Restorative Practices, 3-5 March, 2005, Penrith, New SouthWales, Australia.

[422] Ibid. See also, information on Restorative Justice in the United Kingdom as obtained from Restorative Justice Consortium, http://www.restorativejustice.org.uk/index.html; Transforming Conflict, http://www.transformingconflict.org/; Youth Offender Panels,http://www.youth-justice-board.gov.uk/youthoffenderpanels; Crime Concern Mediation and Reparation Project (Mars), http://www.crimeconcern.org.uk/pages/projecttext.asp?contidno=2.3.5 Retrieved August 14, 2017.

[423] Issues regarding crime and deviances were resolved among the parties involved amicably by elders and within the community using traditionally recognised dispute resolution mechanisms. See James, H. Aug. 04, 2017 Restorative justice; a panacea to crime prevention in Nigeria. Retrieved August 12, 2017, from http://www.nigeriabar.com/2017/08/restorative-justice-a-panacea-to-crime-prevention-in-nigeria-by-james-hope-esq#.WZmHo1giE

[424] Ibid.

[425] The caveat to the application of restorative justice in the Administration of Criminal Justice Act 2015 is that the offence for which the convict was tried does not involve the use of arms or offensive weapons, or for an offence for which the punishment does not exceed imprisonment of for a term of three years. See Section 460 and 468 of the ACJA 2015

effective in Nigeria, it would require proper institutional framework which would enhance restorative justice programmes; a well established welfare system, and the active participation of non-governmental organizations in order to ensure proper sensitization of the community and the full embrace by the community in all states of the federation.

viii. **Management of crime and criminals**: Financing and funding are fundamental to the success of any agency, and all systems require sound administrative strategies for a successful administration. Efficacy of this approach therefore rests on prudence and an eye for the core values of the agencies, however there is evidence aplenty that that the three jurisdictions struggle with issues of financing, funding and proper administration of the criminal justice system, and that what is left to compare is the degree of effectiveness of administrative strategies of the respective jurisdictions.

The United States of America's criminal justice system is reputed to spend billions of dollars annually[426]and the greatest expense is the police, followed by corrections and then judicial and legal expenses.[427] This is because the criminal justice system employs hundreds of thousands of people[428] who process, treat, and care for millions of people yearly.[429]It is claimed that the criminal justice process often terminates at police interrogation or review of case files by prosecution, and that vast majority of cases do not go to trial, but end up in plea bargains.[430] The effect of this is that, although the due process approach applies in the criminal justice process, particularly

[426] Siegel and Worrall provide that the contemporary American criminal justice system is monumental in size and costs federal, state and local governments more than $200 billion per year for civil and criminal justice. Siegel, L.J. and Worrall, J.J. 2014. Introduction to Criminal Justice op.cit. pg. 9

[427] Ibid.

[428] In 2006, the American criminal justice system employed more than 2.4 million people, the greater number of them working in policing, then corrections and then judicial and legal.

[429]Siegel and Worrall provide that more than 13 million people are arrested each year, including 550,000 for violent crimes and 1,600,000 for property crimes. The juvenile courts handle about 1.5 million juveniles and state and federal courts process, convict and sentence over 1million adults each year. Also, more than 7 million people are under some form of correctional supervision in prisons, jails, in the community while on probation or parole.

[430] Reynolds, G.H. "Our Criminal Justice System Has Become a Crime" USA Today Opinion 19 March, 2014 retrieved on 22 June 2016, from https://www/usatoday.com/story/opinion/2014/03/19/law-enforcement-clue-jury-criminal-column/6490641

during trial- the right to cross-examine, right to counsel, rules of evidence, right to adequate time and facilities to prepare for trial, do not apply at the arrest, interrogation and decision to prosecute stage of the criminal justice process where prosecutorial discretion is often utilized.

The United Kingdom is unique in the sense that there are three separate criminal justice systems; one each for Scotland, Northern Ireland, and England and Wales. In the United Kingdom (UK), it is estimated that the total funding of the justice system by the central government is €17.1 billion[431]by some and over €19 billion by others.[432]The main organisations involved in the UK criminal justice system are the police forces, the Crown Prosecution Service, HM Courts and Tribunals Service, victims and witness services, the judiciary and lawyers. The whole system is co-ordinated through a national Criminal Justice Board and on the average, 1.7 million offences are dealt with through the courts. This figure however, does not take into account, those who are diverted from the system before the court stage of the criminal justice process. There are reports that the UK criminal justice system is close to a breaking point and as a result of lack of shared accountability and resource pressures, costs are being shunted from one part of the system to another and the system is overstretched.[433]

Nigeria on the other hand, cannot claim the vast amounts spent on the agencies of the criminal justice system and large number of people employed in the criminal justice system by the two jurisdictions. The agencies of the Nigerian criminal justice system are underfunded[434] and are facing the worst cuts in budget allocated to a system that

[431] The Criminal Justice System: Landscape Review, 07 March, 2014, National Audit Office accessed on 22 July 2017 from https://www.nao.org.uk/press-release/criminal-justice-system-landscape-review/

[432] Speech by Attorney General Dominic Grieve QC MP "The Criminal Justice System: Meeting the Challenge" delivered on 09 February, 2011 and published under the 2010 to 2015 Conservative and Liberal Democrat Coalition Government accessed on 04 March, 2017 from https://www.gov.uk/government/speeches/the-criminal-justice-system-meeting-the-challenge

[433] "Efficiency in the Criminal Justice System" First Report of Session 2016-17, House of Commons Committee of Public Accounts, HC 72 Published on 27 May 2016 accessed on 26 July, 2017 from http://www.publications.parliament.uk

[434] Ayorinde, B. and Co.2014. Nigeria: a reformatory approach to the criminal justice system in Nigeria. Retrieved May 19, 2016, from www.mondaq.com ; Ukwayi, J.K. and Okpa, J.T. 2017. Critical assessment

was already inadequate to fulfill its mandate. It also has the lowest number of staff of the agencies–to-population ratio. It is apparent that this approach to justice, though very important, is utopian at best and represents the aspiration of any agency or system which aspires to efficiency, speedy process, accountability and adequate record keeping whilst keeping expenditure at a minimum.

ix. **Denunciation and degradation**: There is sufficient evidence in the United States of America and the United Kingdom that the denunciation and degradation perspective exists in the criminal justice system and even, thrives. In the US for instance, acts such as; posting the names of drug offenders; sex offender registration lists;[435] requiring people convicted of drunk driving to affix fluorescent license plates to their cars once they start driving again; the 'perp-walk'- a pre-conviction public shaming ritual whereby judges' order offenders to wear signs and shirts, or go door-to-door, apologizing to victims of crimes are examples of denunciation and degradation strategies, in the United Kingdom, examples of denunciation and degradation strategies include registration of sex offenders, introduction of chain gangs.[436]In Nigeria, unfortunately, the denunciation and degradation in the criminal justice system, can be felt at all the stages of the criminal justice process, the very idea of arrest, investigation and the trial process are highly degrading and demoralizing to the accused person. The prison system cannot be left out of the equation as according to Shajobi-Ibikunle,[437]there is no

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of Nigeria criminal justice system and the perennial problem of awaiting trial in Port Harcourt maximum prison, rivers state, op.cit.; Elechi,O.O., Lambert, E.G. and Jenkins, M. 2016. A study on Nigerian and U.S. college students' views on justice issues. *African Journal of Criminology and Justice Studies. 9.1:243-265.*

[435] The United States Supreme Court in *Connecticut Department of Public Safety v. Doe, 538 U.S. 1 (2003)* upheld the legality of sex offender registration and ruled that persons convicted of sexual offences may be required to register with a state's Department of Public Safety and may then be listed on a sex offender registry that contains the names, addresses, photographs and descriptions of registrants which can be accessed on the internet, because disclosing their names on the registry without a hearing did not violate their right to due process. See also Zogba, K and Bachar, K. 2009. Sex offender registration and notification: research finds limited effects in New Jersey. *National Institute of Justice.* Retrieved May 22, 2016, from http://www.ncjrs.gov/pdffiles1/nij/225402.pdf

[436] See, Tonry, M. (ed) 2011.*The Oxford handbook of crime and criminal Justice*, 881; Nash, M. and Williams, A. 2010 Handbook of Public Protection

[437] Shajobi-Ibikunle, G.D. 2014. Challenges of imprisonment in the Nigerian penal system: the way forward. *American Journal of Humanities and Social Sciences.* 2. 2:94-104

clearly identified penal policy for Nigerian prisons and although there is provision for vocational and educational training for convicts, they are largely rhetoric and this defect is shared with the entire criminal justice sector.[438]

On the other hand, denunciation and degradation strategies aimed at shaming offenders, have been linked to maladaptive behaviours, adverse psychological developments and increased recidivism as well as dichotomizing those who offend from the rest of society thereby creating fear and resentment between two supposedly distinct and polarized populations. Research also indicates that rather than deterring offenders from committing crime, such offenders become more cautious, while giving society a false sense of security.[439]

x. **Maintenance of class domination**: In the United States examples abound such as the Enron Case: the Enron scandal which was highly publicized, eventually led to the bankruptcy of the Enron Corporation, based in Houston Texas and the de facto dissolution of Arthur Andersen, which was one of the five largest audit and accountancy partnerships in the world.[440] Also the case of Robert H. Richards IV, heir to the Du Pont Chemical Fortune; he was accused of raping his 3 year old daughter and charged with multiple counts of second-degree child rape which carried a minimum sentence of ten years. His charge was reduced to fourth-degree rape contingent on a plea and was not imprisoned because the court ruled that he would

[438] Ibid. pg. 100

[439] See generally Zogba, K and Bachar, K. "Sex Offender Registration and Notification: Research Finds Limited Effects in New Jersey," op.cit.; Tangney, J.P., Stuewig, J., Mashek, D. and Hastings, M. " Assessing Jail Inmates Proneness to Shame and Guilt: Feeling Bad About the Behaviour or the Self" Criminal Justice and Behavior, 2011 Vol. 37 No.7 pp. 710-734 http://doi.org/10. 17/0093854811405762; McCulloch, T. and McNeill, F. "Consumer Society, Commodification and Offender Management" 2Criminology and Criminal Justice, 2007, Vol. 7 No. 3 pp. 223-242 http://doi.org/10. 1177/1748895807078863 ; Karp, D.R. "The Judicial and Judicious Use of Shame Penalties' Crime and Delinquency Vol. 44 No.2, 277-294 http://doi.org/10.117/0011128798044002006; Baldwin, K.M., Baldwin, J.R. and Edward, T. "The Relationship Among Shame, Guilt and Self-Efficiency" American Journal of Psychology No. 60 No.1, 2006, pp. 1-21; Braithwaite, _. "Crime, Shame and Reintegration" Cambridge University Press, Cambridge,; Karp, D.R. and Frank, O. "Restorative Justice and Students Development in Higher Education: Expanding 'Offender' Horizon Beyond Punishment and Rehabilitation to Community Engagement and Personal Growth" in Offenders No More: An Interdisciplinary Restorative Justice Dialogue, Nova Science Publishers, New York; Paul, "Shame, an Effective Tool for Justice" written as part of a placement from HMP Grenock with the Centre for Youth and Criminal Justice, March, 2017, http://ww.cycj.org.uk

[440] Segal, T. 06 February, 2017. Enron scandal: the fall of a wall street darling. *Investopia. Retrieved 22 June 2017, from www.investopia.com*

not 'fare well' in prison.[441]In the United Kingdom, Colin Read, a management consultant branded his wife with a hot steam iron because she failed to press his shirt, he also cut her with a knife because she did not make him a sandwich. He was convicted of three counts of causing actual bodily harm and fined two thousand pounds and no prison time because there were "special circumstances" and his job made him "too busy" to go to jail or perform community service and he was likely to reoffend[442]

In Nigeria, in the Oceanic Bank scandal, Cecilia Ibru, the then Managing Director and Chief Executive Officer of Oceanic Bank was arrested in 2009 on charges of fraud and mismanagement on account of her granting credit facilities above the approved limit set by the Central Bank of Nigeria. She was sentenced by a Federal High Court in Lagos to six months imprisonment and a fine involving the forfeiture of 199 assets scattered all over the world. She spent duration of her jail sentence in the hospital.[443] Expounding on the trend of soft landing in the processing and handling of the rich and influential in Nigeria, Jibueze[444] states that the law applies differently to the rich and the poor and that the idea of equality before the law is not a reality as the criminal justice process works against the poor, he adds that:

> …what has been termed "*the Nigerian Factor*," a euphemism for corruption, ensures that nothing is done right. This seems to have become the accepted norm in Nigeria where those with money, power and connections get what they want. The "Nigerian Factor" is seen as a weapon through which justice can be manipulated to suit individuals. The criminal justice system works against the poor from the point of arrest by security agencies.

[441] See Jensen, T. June 22, 2016. The lightest sentences handed out for the worst crimes. *Crave*. Retrieved March 02, 2018, from http://www.craveonline.co.uk/mandatory/1109224-the-lightest-sentences-handed-out-for-the-worst-crimes/amp

[442] Anon. 2016. Executive who branded wife with iron freed with a €2,000 fine. *Daily Mail Online*. Retrieved August 20, 2017, from http://www.dailymail.co.uk/news/article-476644/Executive-branded-wife-iron-freed-2-000-fine.html

[443]See generally, Ajai, O. 2013. EFCC V CECILIA IBRU: What to do when the law has you in its sights., field research published by Lagos Business School, Lagos

[444] Jibueze,J. December 26, 2016. Justice for the rich (1). *The Nation* online. Retrieved August 04, 2017, from http://thenationonline.net/justice-rich-1/

This situation is particularly worrisome as 60-70% of the populace live below one dollar per day, and where someone in this economic percentile enters the criminal justice system, he has no means of support and access to justice in the criminal justice system compared to the rich who can pursue justice by contracting the service of lawyers, expert witnesses, and forensic analysts. There is also the situation where the complainant becomes the suspect and this tends to happen where suspect is wealthier than the complainant and is able to 'buy' the police over. Prior to the enactment of the ACJA, 2015, proceedings were stayed in several high profile cases which were on interlocutory appeals. This has changed, however, counsel in high profile cases still try to manipulate the law and the criminal justice process by applying dilatory tactics.

xi. **Just deserts**: In the United States, the introduction of the just deserts approach into policy led to the replacement of indeterminate sentences with determinate ones, across the United States, legislators altered penal/criminal codes so that determinate sentences became mandatory and the extent to which they could be varied in aggravating or mitigating circumstances.[445] The just deserts approach is still relevant presently as is the 'three strike rule' which was introduced 1994 with the main aim of punishing repeat offenders by handing out long sentences to those who have been convicted of a felony and already have 'two strikes' for violence on their record. In the United Kingdom, the Criminal Justice Act of 1991 was preceded by research, planning, consultation and training. Davies et. al.[446]explain that the Act was hailed as a far-reaching systematic reform of sentencing and reflected the perceived need for more consistency in sentencing policy and for sentences to be proportionate to the offence. It introduced the 'twin track' approach to sentencing which made a distinction between property offences and violent crimes. The overall framework for sentencing otherwise was provided by a philosophy of 'just deserts.'[447]

[445] Walker, N. 1991.*Why punish?*. See also Johnston, L.E. 2013. Vulnerability and just desert: a theory of sentencing and mental illness. *Journal of Criminal Law and Criminology*. 103.179-229.
[446] Davies, M., Croall, H. and Tyrer, J. 2005. Criminal Justice, op. cit.
[447] Ibid.

In Nigeria, it cannot be categorically stated that a just desert approach has been adopted at any time by the criminal justice system or in any penal policy. Were it to be adopted, there should be evidence of determinate sentence guidelines as opposed to the range of sentences utilized at the discretion of the judges.[448] According to Bamgbose and Akinbiyi,[449]in Nigeria, it is the duty of a trial judge to impose sentence. At trial court, the sentencer is solely responsible for giving the verdict and passing the sentence on the offender. The lack of uniformity in sentences passed by Trial Courts on offences of identical nature reflects the lack of specific and definite sentencing policy, thereby leaving the range of sentence to the idiosyncrasies of each sentencer. To them, the very importance of the stage of sentencing calls for the assistance of counsel and the lack of uniformity on matters of crime has been a subject of dismay to innocent victims of crime and also to criminal offenders. Sentencers are individuals and thus their decisions reflect their individuality. Sentencers are also products of different backgrounds and they have different social values and their method of sentencing has been explained by one group as judicial discretion, and others as irrational sentencing principles.

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While proponents of the just deserts approach to criminal justice[450] aver that it is non-discriminatory, critiques of the just desert approach to criminal justice claim that the administration of the same penalties to different offenders inflicts diverse levels of punishment because of the different individual and characteristics and circumstances. For example, a fine of ₦ 100,000.00 would be an inconvenience to a person who earns ₦ 5, 000,000.00 a year; it could result in untold hardship for a person earning minimum wage. It has also been observed that the approach ignores the unintended

[448]Ugwuoke, C.U. 2014. Explaining crime in the Nigerian context: a study of federal prisons in Kogi state. *Research on Humanities and Social Sciences*. 4.26:33-43

[449] Bamgbose,O. and Akinbiyi, S. 2015. Criminal Law in Nigeria, op.cit.

[450] Such as Andrew von Hirsch, See von Hirsch, A. 1976. Doing justice: the choice of punishments; Report of the Committee for the study of Incarceration; von Hirsch, A. 1981. Desert and previous convictions in sentencing. *Minnesota Law Review.*65:591-634; Frase, R. 1997. Sentencing principles in theory and practice. *Crime and Justice. 22:*363-433

consequences of sentencing such as stigma, loss of employment, accommodation, and the impact on the family of the offender. As a result, the totality of the sentence and the extent of the suffering involved may exceed the intentions of the sentencer.[451] Other criticisms of just deserts revolve around its implementation, for example, how do you measure harm, seriousness, the severity of the sentence and blameworthiness? Moreover, how do you deal with multiple offences or an offender who has subsequently repented or made amends to the victim? How does the idea of 'making the punishment fit the crime' become quantifiable in real terms?

xii. **Managing offender behaviour**: In the United States and the United Kingdom Weisburd[452]informs that statutory and case law authorize the use of electronic monitoring and every state in the US except New Hamshire has some form of electronic monitoring. Also, juvenile court judges order youths to wear electronic ankle monitors;[453]the monitors maintain records of the devices' movements 'moment-by-moment for days, weeks, or even years. Nigeria on the other hand cannot allude to this perspective as there are no established post sentencing/conviction programmes. Also, the approach would require a level of technology, infrastructure and manpower that the current Nigerian criminal justice system cannot support.

In the jurisdictions where the approach is utilized, Weisbud avers that little is known about the precise way that the approach is used or the extent to which it is used. He does inform that a range of unlikely allies, from sheriffs to police to public defendants, advocate for the increased use of electronic monitoring as a successful alternative to incarceration. There are three key assumptions upon which the appeal of electronic monitoring is based:

1. That electronic monitoring works

[451] Walker, N. 1991.Why Punish? op.cit.
[452] Weisburd, K. 2015. Monitoring the youth: the collision of rights and rehabilitation. Iowa Law Review, 101.1:297-342
[453] Small devices that rely on the Global Positioning System ("GPS") to monitor people's movements.

2. That electronic monitoring lowers incarceration rates
3. That electronic monitoring is cheap

There are however, arguments that the use of electronic monitoring can increase the number of people under supervision and increase court involvement on the supervision of offenders as the approach can be utilized at the pretrial, trial and post trial stages of the criminal justice system.

2.3.7 Summary

Criminal justice approaches provide different pictures of parts of the system from the perspective of the proponents and disciplines; they provide a wonderful way of understanding the complexities of the criminal justice process and allow common trends to be highlighted and analysed. According to Roach[454]it is not possible or desirable to reduce the discretionary and humanistic system of criminal justice to a single truth. Multiple models are helpful because multiple versions of what is going on, existing side by side may legitimately account in different ways for various aspects of the systems operations[455] Siegel and Worrall posit for instance that:

> …lawyers focus mainly on procedures before and during trial. Sociologists put emphasis on the informal influences that can lead to inequalities and injustices. Criminologists focus on crime statistics and explanations of crime. Systems analysts trace the aggregate flow of cases through the system, management consultants look at problems of accountability and effectiveness, while accountants examine the cost effectiveness of the entire system and agencies within it...[456]

Criminal justice approaches serve multiple purposes; they provide a guide to judge the actual or positive operation of the criminal justice system. As a result of the justice approaches it is possible to conceptualize the features of the criminal justice system in the three jurisdictions and identify their principles and characteristics. The approaches as

[454] Roach, K. 1999. Four models of the criminal process. *Journal of Criminal Law and Criminology*. 89.2:671-716.
[455] Roach, K. 1999. op.cit.
[456] Siegel, L.J. and Worral, J.L. Introduction to criminal justice, 27

discussed, reflect the different influences that tend to come together to shape practice and policy in criminal justice, and can be viewed as contrasting rationales and characteristics of the system. For example, an interest in improving due process, efficiency and introducing a restorative approach to criminal justice led to the enactment of the Administration of Criminal Justice Act, 2015 in Nigeria.

The shift in emphasis is as a result of these justice approaches but can also come about as a result of events such as domestic violence which led to the Violence Against Persons (Prohibition) Act,[457]internal displacement as a result of terrorist activities and change in state borders. The justice approaches presented in this research are based on different conceptions and aspire to offer positive descriptions of the operations of the criminal justice system, they can also be regarded as normative statements about the values that should guide criminal justice, and description of the discourse which surround it.

These approaches describe phenomenon such as the trending issues in criminal justice cases; issues which pit the accused person against the state and victims, recognition of victims of crime, attempts to bring victims of crime and their supporters together with offenders and their supporters. This research has unraveled that none of the justice perspectives discussed were intended to operate to the exclusion of others or to be accepted as the only legitimate, positive, normative, or discourse guide to the criminal justice process. They are however, valuable in helping to identify areas where the perspectives are dominant and give a sense of the existing trends in criminal justice and can help shape policy to fit into an approach or to stop the effects of an approach which is perceived to be at variance with the recognised aims and objectives of the administration of criminal justice.

[457] 2015. It is said to cap 14 years of social and legislative advocacy. It is comprehensive and covers most of the prevalent forms of violence which can be categorized into: physical, psychological, sexual, socio-cultural, economic violence and harmful cultural practices. It is applicable to all people. See generally "The Violence Against Persons (Prohibition Act) A CHELD Brief, Centre for Health Ethics Law and Development (CHELD) http://cheld.org; http://www.refworld.org ; http://metropole.ng/justicemedia/explanatory-memorandum/ accessed on 02 June, 2017

It thus allows us to appreciate the different values found in the criminal process and enables an easy identification of what particular perspective dominates in a particular jurisdiction and in an agency's procedural patterns in the criminal justice system.[458]Criminal justice approaches express the procedures for implementing government's criminal justice strategy and justice approaches tend to boil down to degree and emphasis. Procedures are important because a society that shows indifference to the process by which those deemed to have broken the laws of the land are handled is unlikely to be a society in which most rights of individuals will be respected.

Criminal justice practices are 'inherently coercive'[459] and a concern with the proper standard and the right way that will guide the criminal justice process remains an important and necessary task. Where recognised perspectives of criminal justice are derogated from in such ways that practice and procedure become detrimental to the respect of fundamental human rights, the rule of law and due process, such that the criminal justice system, which should regulate and manage underlying social antagonisms, does not. The outcome will likely be bad policies and uncertain outcomes,[460]such as the denial of access to justice for awaiting trial persons.

2.4 The criminal justice process

The administration of criminal justice deals with the procedure utilized by the various institutions in the criminal justice system and encompasses both substantive[461] and procedural law,[462] and operates through several steps in a sequential order. Although this means that the criminal justice system operates like an assembly line, it is not necessary a fluid system because there may be a time span between one stage in the process and the

[458] Roach, K. "Four Models of the Criminal Process" op. cit.
[459] Sanders, A., Young, R. and Burton, M. 2010. (Online Print, 2014) Criminal Justice (4th ed.) Oxford University Press, United Kingdom.
[460] See generally Garside, R. The Purpose of the Criminal Justice System Monday, 17 March, 2008 retrieved on 23 July, 2016 from https://www.crimeandjustice.org.uk/resources/purpose-criminal-justice-system; Braithwaite, J. and Pettit, P. 1990. Not Just Deserts: A Republican Theory of Criminal Justice, Oxford University Press, Clarendon, Oxford
[461] Substantive law defines the proscribed behaviours and specifies penalties for offence e.g. Administration of Criminal Act (2015), Criminal and Penal codes of various states.
[462] Procedural law consists of the rules which state how the government proceeds against an accused person.

next; An example of this is that a crime may go unreported for a long period of time due to the fact that the victim did not discover the incident immediately or where the investigation process is halted for lack of evidence or a substantial lead and most especially because criminal cases do not have a time limitation and can go to trial at any time. The successful prosecution of an accused person is the culmination of the efforts of many agencies and there are many steps that a criminal case may go through before a verdict can be reached.

Criminal procedure is the body of state and federal legislation, constitutional provisions, statutes, court rules and sundry laws that govern the administration of criminal justice. The term "criminal procedure" encompasses procedures that the governmental agencies of the criminal justice system must follow during the entire course of a criminal case and this ranges from the initial investigation of an individual suspected of criminal activity, through arrest, arraignment, pretrial hearings, trial, sentencing, and conviction/acquittal. The rules may also apply after an accused person has been unconditionally released following an acquittal.[463]

Rules and decision making are central to the criminal justice process and considering that Nigeria operates a federal system of government, the criminal justice process is governed by a range of federal and state legislations; Criminal Procedure Act,[464]Criminal Procedure Code[465] the Criminal Justice Administration Act of 2016,[466] Criminal Code Act,[467] which

[463] 'Jeopardy' in the legal sense describes the risk that arises from criminal prosecution. It applies only to criminal cases and acts like a shield to protect an accused person against multiple prosecutions for the same offence after an acquittal, prosecution for the same offence after conviction and more than one punishment for the same offence.

[464] The Criminal Procedure Act (CPA) initially had general application in Nigeria, but from 1963, its application was restricted to the High Courts and Magistrates courts in States making up the then southern region; now comprising-Abia, Akwa-Ibom, Ebonyi, Delta, Edo, Ekiti, Ondo, Oyo, Ogun, Osun, Enugu, Rivers, Imo and Bayelsa. Lagos State is the exception due to the Administration of Criminal Justice Law 2011. The above states have re-enacted the provisions of the CPA as Criminal Procedure Laws of the various states.

[465]The Criminal Procedure Code (CPC) was enacted by the Northern Regional Government in 1963 as Cap 30, Laws of Northern Nigeria, 1963 to govern criminal proceedings in the Northern Region of Nigeria, now consisting of the following states: Kaduna, Kano, Katsina, Kebbi, Kogi, Kwara, Nasawara, Nigeria, Plateau, Sokoto, Taraba, Yobe and Zamfara. The CPC had been re-enacted by the affected states as CPC laws of the states.

[466] This repealed the Criminal Procedure Act (CPA) as well as the Criminal Procedure Code (CPC) and is now the unified law applicable to all federal courts with respect to offences contained in federal legislations. It preserves the existing criminal procedures and introduces new provisions which should enhance the efficiency of the justice system.

applies in the Southern part of Nigeria and the Penal Code Act[468] which applies in the Northern Part of Nigeria,[469]Law of Evidence,[470] Economic and Financial Crimes Commission (EFCC) (Establishment) Act, 2004, [471]Money Laundering (Prohibition) Act 2011, and Money Laundering (Prohibition) (Amendment) Act 2012,[472] Advanced Fee Fraud and other Fraud related to Offences Act,[473]Terrorism (Prevention) Act No. 10, 2011 and Terrorism (Prevention) (Amendment) Act, 2013,[474]Firearms Act,[475]Robbery and Firearms (Special Provisions) Act[476] Cyber Crime (Prohibition and Prevention) Act,[477]Dishonoured Cheque Offence Act,[478]Recovery of Public Property (Special

[467] Cap C38 Laws of the Federation of Nigeria, 2004. The Criminal Code Act and Criminal Code laws of southern states set out what constitutes a particular offence, what to prove, the number of witnesses needed in certain cases, when something must be proved and the courts with jurisdiction to try certain offences. It also provides the prescribed punishment for various offences as well as the mitigating factors that can affect a case; such as if the offender is a first time offender.

[468] Cap C 39 Laws of the Federation of Nigeria, 2004. The Penal Code Act and Penal code laws of Northern states set out in detail what constitutes a particular offence, what to prove, the number of witnesses needed in certain cases, when something must be proved and the courts with jurisdiction to try certain offences. It also provides the prescribed punishment for various offences as well as the mitigating factors that can affect a case; such as if the offenders is a first time offender.

[469]Although the codes are similar in many aspects, there are some significant variations, as at the time they were introduced, they reflected the religious and traditional cultures of the two parts of the country.

[470] The Evidence Act, 2011 contains the rules and regulations that apply in criminal proceedings in courts in Nigeria.

[471] Provides for the establishment of the EFCC which is charged with the responsibility for the enforcement of all economic and financial crime laws. Section 19 of the Act provides that the Federal High Court, High Court of a State or Federal Capital Territory has jurisdiction to try offences under the Act.

[472] Makes comprehensive provisions to prohibit the financing of terrorism, the laundering of the proceeds of a crime, or an illegal act, and provides penalties and expands the scope of supervisory and regulatory authorities so as to address the challenges faced in the implementation of the anti-money laundering regime in Nigeria.

[473] Cap A6 Vol. 1 Laws of the Federation, 2004. It prohibits and punishes offences related to advanced fee fraud and other fraud related offences.

[474] Provides for offences relating to conduct connected to terrorism; Section 32 of the Act provides that the Federal High Court has sole jurisdiction to try offences and impose the penalties specified in it.

[475] Cap F.28 Laws of the Federation of Nigeria. It provides for the regulation of the possession of firearms and creates offences related to dealings with firearms and ammunition, including muzzle-loading firearms and other matters ancillary to it.

[476] Cap R11 Laws of the Federation of Nigeria, 2004, which provides for all matters relating to armed robbery.

[477]Provides for an effective, unified, comprehensive legal, regulatory and institutional framework for the prohibition, prevention, detection, prosecution and punishment of cybercrimes in Nigeria. The Act also provides for the protection of important national information infrastructure, and promotes cyber security and the protection of computer systems and networks, electronic communications, data and computer programmes, intellectual property and privacy rights.

[478]Cap D Laws of the Federation of Nigeria, 2004

Provisions) Act,[479]Public Order Act,[480]Police Act,[481]Independent Corrupt Practices and Other Related Offences Act 2000,[482]High Court Laws of the States, Federal High Court Laws, Court of Appeal Rules, Supreme Court Act, Coroners' Acts and Laws of the various States,[483]Army Act 1960, Navy Act 1964, Airforce Act 1964, Police Act 1967, English High Court Rules of practice and procedure,[484]Child Rights Act and Child Right Laws of states that have enacted it,[485]Interpretation of Statutes and decisions of Superior Courts as contained in case law[486] and rules applicable to criminal courts in Nigeria.[487]

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[479]Which provides for the investigation of assets of any public officer who is alleged to have engaged in corrupt practices, unjust enrichment of himself/herself or any other person who has abused his office or has breached the code of conduct of public officers as contained in the Constitution.

[480]Cap P. 42 Laws of the Federation of Nigeria, 2004; It repeals all public order laws in States of the Federation and replaces them with a Federal Act which has the purpose of maintaining public order, prohibiting the formation of quasi military organizations, as well as regulating the use of uniforms and other matters related to it.

[481]Cap P. 19 Laws of the Federation of Nigeria, 2004; It provides for the organization, discipline, powers and duties of the Police, Special Constabulary and Traffic Wardens.

[482] Prohibits the commission of corrupt practices and other related offences and prescribes punishment for the offences contained in it.

[483]Creates the coroners'court for the determination of the cause of death of a deceased person.

[484]It is basically concerned with the issue of lacuna in the laws. In some cases in the English High Court Rules of Practice and Procedure is a source of criminal procedure in the instance of a lacuna in the principal enactments and it is applicable only in States where the Criminal Procedure Act is applicable. The authority for this proposition is Section 363 of the Criminal Procedure Act. See also the case of *Simidele v. C.O.P. (1966) NMLR 116*. However the English High Court Rules of Practice and Procedure are not applicable to proceedings before the High Courts in Northern Nigeria, Lagos State, Federal High Court and Courts within the Federal Capital Territory.

In respect of High Courts in Northern Nigeria, Section 35 of the High Court, Law of Nigeria provides that where there is a lacuna in the Criminal Procedure Code, a High Court in Northern Nigeria would look at any other law made for that purpose or pass another law to take care of that lacuna or do what in their view amounts to substantial justice. The judicial authority for this position is Achadu v. The State (1981) 1NLR 16

In respect of Lagos State, Section 262 of the Administration of Criminal Justice Law provides that where a matter arises in respect of which no adequate provisions are made in the rules, the court shall adopt such procedure as will in its view do substantial justice between the parties.

In respect of the Federal High Courts, Section 9 (2) of the Federal High Court Act Cap F 12 Laws of the Federation of Nigeria, 2004 states that where a matter arises in respect of which no provisions are made, the court shall adopt such procedures as will in its view do substantial justice between the parties. In respect of the High Court of the Federal Capital Territory, the rules applicable to it are the same as with Section 9 (2) of the Federal High Courts.

Section 492 (3) Administration of Criminal Justice Act, 2015 provides that where there are no express provisions in the Act, the Court may apply any procedure that will meet the justice of the case.

[485]Creates the juvenile courts for the trial of juveniles and young persons who have committed crimes.

[486]There is also reliance on the Judicial Interpretation of all the above enactments as contained in documented case law. Judicial Interpretation, refers to the principles of law propounded and interpreted by superior court judges while determining criminal cases brought before them which are binding on lower courts that have to be guided by them. See generally, Bamgbose, O. and Akinbiyi, S. 2015. Criminal Law, 7-12

Rules and decision making are at the centre of the criminal justice process and decision making in the criminal justice process involves more than just knowledge of rules and the application of these rules to specific cases. Decisions are also based on discretion, that is, the individual exercise of judgement to make choices about alternative courses of action. Decision making based on discretion is common in the criminal justice process and comes into play whenever the police make choices about whether to arrest, investigate, search, question or apply the use of force. It also comes into play whenever the Ministry of justice, through the Attorney-General, Director of Public Prosecutions and other legal officers decides to institute proceedings against a person or not. The judiciary also exercises discretion when granting or denying bail and in sentencing a person convicted of the offence.

Criminal procedures are designed to safeguard both the innocent and guilty from arbitrary application of substantive criminal law and from subjective or abusive treatment at the hands of the police force, the courts, prison officials, or other members of the criminal justice system. These safeguards are primarily set forth in the constitution in Chapter 2[488] and 4[489]of the constitution and the Administration of Criminal Justice Act among others as follows:

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[487] Supreme Court Rules, Court of Appeal Rules, National Industrial Court Rules, Federal High Court Rules, Magistrate Court Rules, Area Court Rules, Sharia Court Rules, Judges Rules, Terrorism Prevention Regulation and Police Regulations (Special Provisions).

[488] See particularly under the Fundamental Objectives and Directive Principles of State Policy, Section 17 provides that:

(1) The State social order is founded on ideals of Freedom, Equity and Justice.
(2) In furtherance of the social order-
    (a) Every citizen shall have equality of rights, obligations and opportunities before the law;
    (b) The sanctity of the human person shall be recognised and human dignity shall be maintained and enhanced;
    (c) Governmental actions shall be humane;
    (d) Exploitation of human or natural resources in any form whatsoever for reasons, other than the good of the community, shall be prevented; and
    (e) The independence, impartiality and integrity of courts of law and easy accessibility thereto shall be secured and maintained.

[489]Fundamental Rights of citizens are contained therein, and relating to the criminal justice process in particular are Sections 33-36

1. Section 36 (5) provides that the defendant is presumed innocent until proven guilty- this is the foundation of the adversarial method of criminal justice and influences all other legal principles
2. Section 35 (4) provides for the right to a fair trial within a reasonable time by a court of competent jurisdiction
3. Section 35 (2) provides that an accused person has a right to remain silent or avoid answering any question until after consultation with a legal practitioner or any other person of his choice.
4. Section 35 (2) provides that an accused person has the right to be informed in writing within 24 hours (in a language that he understands) of the facts and grounds for his arrest and detention.
5. Section 35 (6) provides that where it is determined that a person was unlawfully arrested or detained; such a person is entitled to compensation and public apology from the appropriate authority.
6. Burden of Proof: The State has the responsibility of the burden of proving the defendant is guilty and must show beyond a reasonable doubt that the accused committed the crime preferred against him and the defendant does not have to prove his innocence.
7. Confrontation of Witnesses: the Constitution[490] and the Administration of Criminal Justice Act also provide that an accused person has the right to cross examine any witnesses testifying against him. He also has the right to cross examine any witnesses who testify on behalf of the State, and for this reason; the accused should always be present in the courtroom, while other witnesses are required to be present only for their own testimony and closing arguments.
8. Ability not to testify. If a defendant chooses not to testify, this cannot be considered as a factor in determining his guilt or innocence. The full burden of proof lies with the State and the State must supply the evidence

The framework of laws and rules that govern the administration of criminal justice are specifically designed to enforce the constitutional rights of suspects and accused persons,

[490] Section 34 (6) (d)

beginning with the initial police contact and continuing through arrest, investigation, trial, sentencing and appeals. There have been many reforms to the criminal justice system in Nigeria, the most recent being the Administration of Criminal Justice Act, 2015 which has made bold steps in tackling the problem of criminal justice administration and the Criminal Justice process in Nigeria. It is as a result of many years of research and study and advocacy by criminologists, legal practitioners, the bench, academic writers, the legislature, police officers, prison officers, journalists, non-governmental organizations, the community at large and other government officials,[491]and is the brain child of the Presidential Committee on the Reform of the Administration of Justice in Nigeria. It merged the provisions of two principal legislations; The Criminal Procedure Act and the Criminal Procedure Code into one principal federal Act, it preserves some of the provisions, modified others and added new ones as deemed necessary in order to enhance the efficiency of criminal justice system and bring the Nigerian Criminal Procedure Law up to international standards. It further seeks to strengthen the rights of the accused persons, the relevant provisions will be discussed in subsequent chapters.

It is pertinent to note that the Administration of Criminal Justice Act 2015, among others, introduces reforms on the law of arrest, detention, interrogation, bail process, remand time and time protocol for remand, plea bargain and alternatives to imprisonment such as suspended sentence, parole and community service. Another identified feature of the Administration of Criminal Justice Act 2015 is its shift from punishment as the main goal of the criminal justice system to a restorative approach to justice. A restorative approach to justice shifts the attention of the justice system to the needs of the society, the victims, the awaiting trial persons, vulnerable persons and recognises the importance of human dignity. On the other hand, the Act has been the subject of much debate particularly with regard to its applicability,[492]recognition of the holding charge,[493]and the concept of compensation

[491] See generally, Ani, C.C. 2011. Reforms in the Nigerian criminal procedure laws. *NIALS Journal on Criminal Law and Justice.* 1:52-90

[492] See Section 2 of the Act which excludes only court martial on the applicability of the Act.

[493] The Act still recognises the Holding Charge even though it is in contravention of the provisions of the Constitution which provides that a suspect can be held for a maximum of 48 hours whereas the Act allows for 14 days or more- see section 293-295 (1) – (7).

which is not clearly addressed.[494]But by and large, the ACJA, 2015 is a vast improvement on the CPA and CPC and shows a progressive trend in terms of the administration of criminal justice in Nigeria.

2.4.1 **Criminal justice administration**

The administration of criminal justice not only comprises of the paraphernalia and rules laid down for processing persons who are suspected to have contravened the provisions of the law, it also consists of the various agencies in the system; the Police Force and other security agencies,[495]the Ministries of Justice, the Courts and Correctional Services which comprises of Prisons, Remand Homes and Borstal Institutions. Following a decision to prosecute a suspect, there are various stages of the process before a conviction or acquittal can be arrived at, and these stages are partially administrative,[496]and partly judicial. These are necessary to ensure that the interest of justice is served.

The different agencies have different functions i.e. the Police are saddled with the functions of Arrest and Investigation, Ministries of Justice have functions which intertwine with the Police, as they have the function of investigation of complaints and the building of a case against an accused person, the courts adjudicate on the issues brought before them and the Prisons remand both persons accused of offences and those convicted. They will be briefly outlined:

a. The Police

[494] Although the Act makes reference to the issue of compensation, its provisions appear to be vague and imprecise: it does not identify who will compensate(the state or the convicted person?), who will be compensated (the victim or family), what offence can attract compensation (is it for loss of life, inflicted injury or financial criminal activity?)

[495] The activities of other security agencies in the country like the Economic and Financial Crimes Commission (EFCC), Independent Corrupt Practices Commission (ICPC), Nigerian Security and Civil Defence Corps (NSCDC), National Drug Law Enforcement Agencies (NDLEA), National Agency for the Prohibition of Trafficking in Persons (NAPTIP), Customs and Excise and Immigration Service, State Security Service (SSS), Directorate of Military Intelligence (DMI), also have significant effects on the administration of criminal justice process. The laws establishing them grant them powers similar to that of the Police. They were set up to curb the rising and recent trends in crime and to complement the efforts of the Police in maintaining law and order in the country.

[496] For example, ensuring that resources are available and paper work is done

Prior to the advent of British occupation of Nigeria which led to colonial rule, there were practices of law enforcement for social order by tribes indigenous to the present day Nigeria. Communities in the North, South, East and West had evolved authorities and institutions with values that enshrined accountability and transparency through punitive measures. This was effective to regulate society and keep abhorrent activities in check with a view to achieving coercion.[497]Examples of indigenous crime control mechanisms include; Ekpe of Calabar, the Ekpo of the Ibibio, the Dogari of the Sarki in Northern States and the Ilari, Agunren and Emese of the Western States.[498]

The Nigeria Police Force is a creation of the colonial administration. The present police force can trace its origin to the colony of Lagos in 1861. In June of that year, the Consul John Beecroft, the then representative of the British Government gained permission from the Queen to enlist a Consular Guard of thirty (30) men with the aim of 'crime detection, crime prevention and repression of internal disturbances, and the defence of the colony and the protection against external aggression.[499] The name of this security outfit was renamed severally and expanded to other parts of the country and after the creation of the Northern and Southern Protectorates in the early 1900's, the Northern and Southern Police were produced respectively and in 1930, both the Northern and Southern Police were merged to form the Nigeria Police with its headquarters in Lagos.

The Native Authority (NA) Police was also established via the Native Authority Ordinance No. 14 of 1917 for the maintenance of law and order, and the propagation of the policy of rule through the native administration system.[500]In order to expand their rule to all territories the colonial administration extended the British-Fostered Police Force in the eastern part of Nigeria and developed the local African means of maintaining law and order in localities in the North and West in a bid to ensure that the system of indirect rule

[497] See generally, Dambazau, A.B. 2012. Criminology and Criminal Justice, 226-230.
[498] Ibid. See Onongha, S. June,2006. The role of the Nigeria police in the maintenance of peace and security. Retrieved August 19, 2016, from http://samuelonongha.bolgspot.com.ng/2006/06/role-of-Nigeria-police-in-maintenance.html
[499] See the Police Ordinance of 1897
[500] Ibid.

succeeded. Dambazau[501]summarizes that the policing activities of the colonial administration was;

> …mainly for easy colonial administration in serving the colonial government interests, and this formed the foundation of the Nigeria Police today. Furthermore, the police as agency of "socialization" through which colonized people could be brought closer to civilization" in terms of "the acceptance of the colonisers' norms of order and regularity," involved the members imbibing "attributes desirable in a 'good citizen', and then act as conduits carrying to their fellow subjects colonisers' notions of discipline, order, regularity… *''502*

Chukwuma,[503] explains that the British colonial administration trained staff in programmes which were expected to be used in making members of the communities subservient to the effect that;

> …the British established police forces and constabularies to protect their interests. These forces and constabularies were armed and organized as quasi-military squads. Such forces in different territories comprised officials who were strangers in the communities where they were employed. The purpose of this practice of alienating the police from the communities they served, was to ensure that such officials, when deployed to execute punitive expeditions, would act as an army of occupation and deploy maximum violence on the communities.

Police allegiance has been consistent in the direction of the source of power and with the attainment of independence in 1960; the tide of allegiance shifted the loyalty of the Nigeria Police towards the National leaders and the society in general. This redefined their commitment to new ideals, but the Police had in the course of a century, gained a reputation for being subservient to the colonial administration at the cost of loss of the regard of the natives. This has been explained by Dambazau,[504]who stated that the Nigeria Police force was constituted to provide services to the colonial administration, whose main aim was suppression of popular resistance against colonialism. Alemika[505] posits that;

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[501] Ibid.
[502] Dambazau, A.B. 2012. Criminology and criminal justice, 230
[503] Chukwuma, I. "Police Transformation in Nigeria: Problems and Prospects" as contained in Dambazau, A.B. op. cit. at pg. 230
[504] Ibid., 274
[505] Alemika E.E.O. 1998. Policing and Perceptions of Police in Nigeria" Police Studies 11 No. 4. Pp. 161-176

> …historical evidence demonstrates that the colonial police force were organized and oriented to behave as occupational forces- ruthless, brutal, corrupt, dishonest and prone to brutalizing the colonized peoples and vandalizing their properties… The preoccupation of colonial and post colonial Nigeria Police were not the promotion and enforcement of just laws, rule of law, natural justice and equity and security of the vast majority of Nigerians, as colonial surrogates often claimed… the greatest part of the police energies and resources were committed to, and dissipated on, the suppression of struggles and protests against oppression and exploitation, the large scale theft and mismanagement of the public wealth of by those who controlled the economy and state apparatus.

The change from colonial administration to National Sovereignty led to a rethink by Nigerians of the Police force but not without certain problems. The change of persons in authority and shift in power did not end nepotism, favouritism, tribalism, sectarianism in the Nigeria Police and till the present, there are accusations of obstruction of justice, abuse of power, corruption, obstruction of proper appointment of credible persons for job placement in the police and non-promotion of deserving staff, preferential nominations for staff appointment and promotion, and unlawful treatment of unprotected citizens.

Notwithstanding the above, the Nigeria Police force play a crucial role in the administration of criminal justice and the nation as a whole, as they are the biggest and most visible aspect of the criminal justice system. They are in regular direct contact with the populace, they provide the entryway into the criminal justice system and are a major decision making factor as to who enters into the criminal justice system. The decision of the police has a high implication for the system. The police are "*charged with responsibility for the prevention and detection of crime, the apprehension of criminals, the preservation of law and order, the protection of property and the enforcement of all laws and regulations in the country."*[506]

The Police powers are provided for in the Nigerian Constitution[507] and the Police Act[508] which provides for the organization, discipline, powers and duties of the police, special

[506] Olatunbosun, A. 2012. op cit. 14

[507] Section 214 (2) (b) Constitution of the Federal Republic of Nigeria which provides that: "…*the members of the Nigeria Police Force shall have such powers and duties as may be conferred on them by law."*

constabulary and traffic wardens. The police have considerable discretion in their choice of whom to stop, search, arrest, investigate, release and the amount of time and effort to put into a case. Their decision ranges from the choice to undergo undercover work to surveillance. In carrying out their duties, the police are expected to protect the society and respect the constitutionally guaranteed rights of persons stopped, questioned and apprehended for offences or stopped from committing a crime. In their capability, they serve as an interface between the authority of the state and its citizens. Their identified functions are listed below:

- Crime detection
- Prevention of criminal activity
- Apprehending criminal offenders
- Participating in court proceedings
- Protecting constitutionally guaranteed rights
- Controlling traffic
- Investigating crimes
- Preserving and promoting civil order
- Providing a sense of security in the community
- Resolving day-to-day conflict in the society
- Assisting in the protection of those in danger of physical harm

The Nigeria Police force is presently divided across three structures; Administrative, Authority and Organizational structure. The Inspector-General of Police(IG) is at the Apex of the Structure in accordance with section 215 (2) of the Constitution,[509]Section 6 of the Police Act, 1990[510]and orders, directives and instructions to carry out duties flow from the IG, through the chain of command.[511]

The Police also carry out other responsibilities such as, obtaining warrants, conducting searches, visiting the scenes of crime, collecting data and specimen for the analysis of

[508] Cap. P. 19 Laws of the Federation of Nigeria, 2004
[509] Constitution of the Federal Republic of Nigeria 1999, LFN, 2004 (as amended in 2011)
[510] Ibid.
[511] The rest of the command flow is as follows; Deputy Inspector General of Police, Assistant Inspector - General of Police, The Commissioner of Police, Deputy Commissioner of Police, Assistant Commissioner of Police, Chief Superintendent of Police, Superintendent of Police, Deputy Superintendent of Police, Assistant Superintendent of Police, Inspector of Police, Sergeant, Corporal, Constable. See generally Dambazau, A.B. 2012. Criminology and Criminal Justice, op.cit. 231-234

experts[512] such as blood samples, finger prints, and documents e.t.c. These responsibilities are very important to the building up of a case against a suspect or an accused person and can make or mar a case. There is heavy reliance on the confessions of accused persons to ensure conviction and this would not be the case if the police paid more attention to this area of the job. Although focusing on the technical and specialized aspects of crime investigation can be time consuming, and at the onset, cost intensive, it has the potential to bring about a more efficient and professional police force.

b. The Courts

The Police and other law enforcement agencies are responsible for maintaining public safety and preventing crimes by conducting investigations, gathering evidence and arresting suspects, they however do not distribute justice. The judiciary, through the courts is responsible for the distribution and serving of justice. They interpret the laws as they apply to each individual case brought before the courts. The judiciary makes decision based on facts and evidence required to prove that a law has been broken. Section 6 of the Nigerian constitution confers judicial powers on the court and this power extends to all inherent powers and sanctions of a court of law, while Section 17 (2) (e) provides for the independence, impartiality and integrity of court and easy accessibility to them.

The power of the courts extends to all matters between persons or between government and persons, businesses and persons, businesses and government, and all actions relation from them for the determination of rights and obligations. In terms of the administration of criminal justice, the court plays an elemental role in ensuring that justice is done by hearing and determining all criminal matters brought before it,[513]and is the only institution invested with the power to pronounce on the guilt or innocence of a person and to impose punishment. The Supreme Court in the case of *Sokefun v. Akinyemi*[514] per Fatayi-Williams , CJN (as he then was) held that "*…once a person is accused of a criminal offence, he must be tried in a 'court of law' where the complaints of the accusers can be ventilated in public*

[512] Such as medical laboratories, forensic analysis (medical, anthropological, accounting)
[513] See Section 6 of the Constitution. See also Ibrahim v. Dailey (2009) All FWLR (Pt. 494) 1576 at 1584
[514] *(1981) I NCLR 135*

and where he would be sure of getting a fair hearing as set out in the …Constitution of Nigeria. No other tribunal, investigating panel, or committee will do." However, it must be pointed out that per Section 36 of the Constitution, tribunals are now recognised as being able to adjudicate on criminal matters.

The role of the judiciary in upholding the rule of law cannot be overemphasized. Hemphil and Charles[515] define the courts as *"…an agency set up by government to define and apply the law, to order its enforcement and to settle disputed points on which individuals or groups do not agree."* Often viewed as pivotal to the administration of justice,[516]Courts play a very important and characteristic role in the administration of criminal justice as they are regarded as the arbiter of fairness and impartiality. This is because they allow each side to present its case.[517] Most criminal cases start or are dealt with in the Magistrates' court. The courts process in criminal cases is different from civil cases because prosecution is conducted on behalf of the state against an accused person/defendant in order to establish guilt for a crime. Guilt may be proved by evidence in a trial or accepted after a guilty plea, following which the person is convicted and sentenced.

The Judiciary is recognized as the third arm of government in Nigeria. It is modeled after the British Court system due to the nation's historical antecedents of colonial rule. This does not imply that prior to the advent of the British Colonial Administration there was no court system in Nigeria, rather historical records indicate that in most parts of the northern states of the country the principal law administered by courts was the Moslem law of the Maliki School while in some parts of the northern States and in the southern States, the law that operated was unwritten customary law.[518]

Obilade informs that prior to the 19th Century, British and other foreign merchants had started to trade with the indigenous people on the coast of West Africa, but the indigenous

[515] Hemphil, (Jr.) and Charles, F. 1978. Criminal Procedure: The Administration of Justice, Goodyear, Santa Monica CA. pg. 139.
[516] Roscoe Pound, further asserted that the administration of justice revolves around the court system. See generally Pound, R. 1952. Justice According to Law, Yale University Press, New Haven. Pp.89-91
[517] Most notable as the latin maxim *audi alteram partem- hear the other side*
[518] Obilade, A.O. 2011. The Nigerian Legal System. Spectrum Books Limited, Ibadan. pg. 17

court method of settling disputes was unfamiliar to the British and in 1849, the first British Consul was appointed. His territory extended from Dahomey to the Cameroons, of which, Nigeria is a part. The Consul established courts known as Consular Courts which dealt with trading disputes between indigenous and British traders and in addition to the Consular Courts, there were courts known as equity courts established jointly by the foreign traders and the indigenous traders in the coastal areas of West Africa, for the purpose of settling disputes. It is of interest to note that both Courts were not established formally until 1872, when a British Order in Council provided for the reorganization of the equity courts and the formal establishment of the consular courts and both courts were under the control of the Consul. It is also worthy of mention to say that the indigenous courts continued to administer justice involving only the indigenous people.[519] The rest of the history of the courts up till 1960 will be summarized as follows;

- 1862 –Lagos was made a British colony and a court was established there;
- 1863- Under Ordinance No.3, English law was introduced to the Colony;
- 1863- the First Supreme Court of the colony was established by Supreme Court Ordinance No. 11;
- 1866- the Court of civil and criminal Justice was established to replace the Supreme Court and the West African Court of Appeal;
- 1874- other Courts were established and Trial by jury was introduced;
- 1874-a separate single government was established for the British settlements of Lagos and the Gold Coast, called the Gold Coast Colony and the West Africa Court of Appeal did not function as a court for the new colony;
- 1876- Supreme Court was established for the colony and was divided into three arms, i.e. the Full Court (Court of Appeal), Divisional Courts- with original and appellate jurisdiction, and the District Commissioners' Courts.
- 1886- Establishment of a separate government for the colony of Lagos and a new Supreme Court Ordinance;
- 1900- Establishment of the Protectorate of Southern Nigeria[520]and a Supreme Court by the Supreme Court Proclamation of 1900; Establishment of Protectorate of Northern Nigeria
- 1901- Establishment of Native Courts[521]

[519] Obilade, A.O. 2011. op.cit.
[520] The amalgamation of the Niger Coast Protectorate and the territories of the Royal Niger Company by the Nigeria Order in Council 1899 to form a new protectorate with effect from 01 January, 1900

- 1906- Enactment of Native Courts Proclamation 1906[522]
- 1914-Amalgamation of the Colony and Protectorate of Southern Nigeria and the Protectorate of Northern Nigeria to form the Colony and Protectorate of Nigeria, this led to the existence Nigeria as a Political Unit. Establishment of three types of courts for the country; the Supreme Court, the Provincial Courts and the Native Courts
- 1918- Establishment of Native Courts Grades A,B, C, D.[523]
- 1933- Establishment of a High Court and Magistrates courts
- 1937- Establishment of Native Courts (Colony)
- 1943- Passage of statutes which reformed the legal system[524]
- The Judicial system was reorganized by 1945 such that, the set up of courts was divided into two tiers by the colonial administration; one was composed of a series of inferior courts established across the country and divided into Magisterial Districts, whilst the other was the Supreme Court for the colony and protectorate of Nigeria.[525]
- 1954- Enactment of the Federal Constitution[526]which structured Nigeria as comprising of three regions – the Northern, Western and Eastern Regions- and a federal territory (Lagos). [527]

After independence, the judicial system was re-organized into two tiers of courts with two hierarchies of courts.[528]Currently, two tiers of courts still exist - state courts and the federal courts, and the hierarchy of the courts is still divided into two- inferior and superior courts. The inferior courts are the Area Courts, Magistrate Courts and Sharia Courts while the superior courts are the Supreme Court, the Court of Appeal, the Federal High Court, the High Court of the Federal Capital Territory, High Courts of States, the National Industrial Court, the Sharia Court of Appeal of the Federal Capital Territory, the Sharia Court of Appeal of a State, the Customary Court of Appeal of the Federal Capital Territory and the

[521] This led to the disappearance of indigenous courts. The native courts, which were established by English type law and not local custom were empowered to administer local laws and customs. See generally Obilade, A.O. 2011. The Nigerian Legal System

[522]As a result of the amalgamation of the Colony and Protectorate of Lagos and the Protectorate of Southern Nigeria to form the Protectorate of Southern Nigeria. See Obilade. op.cit

[523] These courts had jurisdictional powers according to their grades, Grade A courts having the Highest and Grade D courts having the lowest. See Obilade, op.cit.

[524] Such as Magistrates Courts (Colony) Ordinance No.7; Magistrates Courts Ordinance No. 43; the Supreme Court Ordinance No. 33; the West African Court of Appeal Ordinance No.33; and the Children and Young Persons Ordinance No. 41

[525] Olatunbosun O.A. 2012. Criminal Justice in Nigeria, op. cit.

[526] Nigeria (Constitution) Order in Council S.I. No. 1146 of 1954; Nigeria's first truly federal constitution.

[527] Establishment of the Federal Supreme Court, a High Court for each region, Magistrates Courts

[528] Ibid.

Customary Court of Appeal of a State. The organization of Courts is designed such as to allow for the resolution of disputes in relation to their seriousness and eliminate congestion or at least, bring it down to the minimum.

In terms of criminal matters the relevant courts will be outlined briefly:

i. Customary/Area/District Courts

The Customary courts are inferior courts mainly graded A, B, and C which try people who are subject to customary law. The Grade A and some Grade B Courts are mainly presided over by lawyers, whilst other Grade B and Grade C Courts are presided over by laymen.[529] They largely administer customary laws, bye-laws of local government, contempt in the face of court and generally have limited jurisdictions in criminal matters.[530] In the Southern part of Nigeria, they are commonly known as District or Customary Courts and are governed by the Criminal Procedure Act for criminal matters, while in the Northern part of the country, they are known as Area Courts and are governed by the Criminal Procedure Code.

Customary Courts are regarded as mainly advantageous to the urban poor and those in rural areas and in Oyo State, the lowest courts are Customary Courts. In *Oyah v. Ikahile*[531] per Justice Belgore, it was posited that:

> *... Customary courts are by their nature cheap grassroots courts. They are easily accessible because they are not confined by cumbersome procedure, and it they have rules of procedure, they are merely to be guided by them. The essence of these courts is to dispense justice quickly, efficiently and without miscarriage of justice. Once on the face of their records it is clear that justice has been done, failure of strictly adhering to the procedure will not vitiate the judgement…"*

It is pertinent to note that customary courts do not require legal representation, but are however in short supply and so do not necessarily attend to the needs of the polity. Customary courts are a creation of State statutes which specifies the limit of jurisdiction of the Customary Court and this is subject to state specification, and rules of evidence do not

[529] Albert, O.I.; et al. 1995. Informal channels for conflict resolution in Ibadan, Nigeria.
[530] Olatunbosun O.A. 2012. Criminal Justice in Nigeria, op. cit.
[531] *(1995) 7 NWLR (Pt. 150) 168*

ordinarily apply to judicial proceeding before a Customary Court unless the Governor by order confers upon the court, power to enforce any of the provisions of the Evidence Act.[532] For example Section 1[533]of the Akwa Ibom State Customary Laws provides that:

> *...Customary Courts have jurisdiction to hear and determine criminal causes and matters where the penalty is a fine not exceeding one thousand naira or imprisonment for a term not exceeding three months or both such fine and imprisonment, or where in the case of juvenile offenders, the penalty does not exceed twelve strokes..*

While Section 3(2) and (4 a-b) of the Customary Courts Law of Lagos State provides that:

> *(3) A customary court shall have jurisdiction to hear and determine criminal causes or matters, or impose the punishment or fine.*
> *(4) (a) The fine which a customary court may impose in respect of an offence shall not exceed N200 but shall not in any event exceed the specified above.*
> *(b) The term of imprisonment which a customary court may impose in respect of any offence shall not exceed one month, shall not in any event exceed the maximum terms of imprisonment provided by law that offences and in no case shall aggregate term of imprisonment in respect of two or more consecutive terms of imprisonment imposed in case by any Customary Court exceed the term specified above.*

From the above, it can be seen that there is no uniformity in terms of the limits of jurisdiction and imposition of sentences for offences committed in the customary courts. Examples of criminal cases that can come before the customary courts include, common assault, obstruction, molestation, resisting arrest, aiding or inciting another person to commit a common assault, molest or resist arrest.

ii. Magistrate Courts

The Magistrate Court has jurisdiction to try a wide range of offences except where there is a possibility of a sentence of life imprisonment or Death sentence (capital punishment) or where the law specifically confers jurisdiction on the High Court. A Magistrate cannot pronounce the death sentence nor a sentence over fourteen (14) years imprisonment. However, where an offence carries a mandatory punishment which exceeds 14 years

[532] See *Ogunnaike v. Ojayemi (1987) NWLR (Pt. 53) 790*
[533] First Schedule, Laws of Akwa Ibom State, Cap. 40 Vol. 2, 2000

imprisonment, a Magistrate may adjudicate on the offence and refer it to a high court to pronounce a more serious punishment which will reflect the mandatory sentence.[534]

Magistrate courts are established by the State Judicial Service Commission in consideration of the number of magistrate courts needed to meet the needs of the state. The Court is headed by a Chief Magistrate. A Magistrate Court usually has one Magistrate sitting in the court to hear cases.[535]The jurisdiction of Magistrates' are not uniform across board, for instance, the Magistrates Courts Law of Lagos State[536] restructured magistrates' court practice, the magistracy as an institution and its perception and place in the justice system.

iii. High Courts

All states of the federation have established High Courts to serve with unlimited jurisdiction over the whole state, and has appellate jurisdiction to hear appeals from Magistrate and other subordinate courts. The State High Court and the Sharia Court of Appeal and the Customary Court of Appeal are the highest ranking courts under the direct control of the State government, however, the Chief Justice of the State High Court is regarded as the head of the judiciary.

iv. Federal High Court

The Federal High Court and other Federal tribunals of co-ordinate jurisdiction, such as the National Industrial Court,[537] the Electoral Tribunals,[538] Code of Conduct Tribunals[539] and special tribunals like the disciplinary bodies of various Professional bodies, have

[534] Olatunbosun O.A. 2012. Criminal Justice in Nigeria. op. cit.
[535] See generally, Asada, D. and Aduba, N. 2010. Jurisdiction of courts in criminal proceedings.1-27. Retrieved June 22, 2017,from http://www.9jalegal.com.ng
[536] Law No. 14, Lagos State Government Notice No. 51, Lagos State of Nigeria Official Gazette No. 40, Vol. 42, 29 July, 2009.
[537] Established in 1976 is vested with exclusive jurisdiction in civil causes and matters arising there from. See Oluwadunsin, O.O. 2018. National industrial court: court with a difference and the need to review its legal status. NAUJILJ 9.1: 59-75.
[538] See Section 285 (1) and (2), which provides for the establishment of National Assembly Elections Tribunal and the Governorship and Legislative Election Tribunals respectively. See also Electoral Act, 2010.
[539]Chapter C15 Code of Conduct Bureau and Tribunal Act, No.1 of 1989, Laws of the Federation of Nigeria, 2004.

independent standing with the State High Court although their jurisdictions are different. They operate within the state but are not under the control of the state government as their set up dependency dwells with the federal government, or for the disciplinary tribunals, reside in the control and funding of the mechanism designated for them-usually by statute.[540]The respective courts or tribunals cannot review a decision of the other and appeals lie from them to the Court of Appeal.[541]

In terms of criminal matters, the jurisdiction of the Federal High Court is limited to the trial of offences created by the Act of the National Assembly subject to the exercise of jurisdiction as may be conferred on the State High Court by the Act. An example of this is Section 9 of the Robbery and Firearms (Special Provisions) Act which conferred jurisdiction to try offences on the State High Court despite the fact that it is a Federal Act.

v. The Court of Appeal

The Court of Appeal has no original jurisdiction in criminal matters in Nigeria, but only appellate jurisdiction to hear all appeals on questions of law or sentences from Federal High Courts, High Courts of States and the Federal Capital Territory, Abuja, Sharia Court of Appeal of the States, Customary Courts of Appeal of the State and from Decisions of a Court Martial or other tribunal that may be prescribed by an Act of the National Assembly.[542]

vi. The Supreme Court

The highest court in the hierarchy of courts is the Supreme Court, which is provided for by Section 230 (1) of the Constitution. Recognised as the final court of appeal in the land, with appellate, supervisory and advisory jurisdiction, the court has no original jurisdiction in criminal matters, but hears all criminal appeals emanating from the Court of Appeal. The Supreme Court is the court of last resort and is comprised of a Chief Justice and such

[540]See Tribunals of Inquiry Act, Chapter 447 LFN, 1990, which empowers the President to constitute tribunals of inquiry and other matters attached to them. See also, Orugbo v. Una (2009) 9-10 S.C. 60 at 69

[541] Information culled from Centre for the Nigerian Judicature, retrieved February 12, 2018 from http://www.lawnigeria.com/Judicature/FCTAbujaJudiciary.html

[542] See Sections 237, 240 and 274 Constitution of the Federal Republic of Nigeria, 1999

numbers of Justices of the Court not exceeding twenty one (21) or as may be prescribed by an Act of the National Assembly.[543]

Transfers and Supervision of the Courts and other information

A criminal case can be transferred from one court to another and most cases start from the magistrates' court and are then passed to the High court. Some cases can be heard by higher courts because one party or the other has appealed against the decision of the first court. Court proceedings are the most visible part of a judges' duties and during a trial it is the responsibility of the judge to direct the lawyers, determine questions of admissibility, determine issues of questions of jurisdiction or lack thereof, determine the sentence if the accused/defendant is found guilty and to generally take charge of the proceedings. Davies[544]indicates that for trials to be regarded as fair, it is important that judges are regarded as independent and not subservient to political or other interests. Lord Taylor[545]explained the importance of the judiciary as follows:

> To maintain not only the fact of judicial independence but its appearance, judges have to be cautious in their social activities and must avoid politics. The result of all this care to guard judicial independence is that litigants can be confident that the judge will try their case on its merit and as the judicial oath requires: Without fear or favour, affection or ill-will.

He also explains the trial process in the context of a judge's overall work as follows:

> Many people believe that when judges sit in the morning from 10.30 to 1 pm and in the afternoon from 2 to 4.30 pm, they have a very cushy life…sitting in court for 5 hours in the day is exhausting in itself. It cannot be compared to attending an office or other workplace for 5 hours. Time in court requires concentrated attention on the evidence and the submissions. There is no scope for day-dreaming, telephone calls, cups of coffee, bandinage with a fellow employee or even visits to the lavatory. But on top of that, what the public see of a judge's work between 10.30 and 4.30 is only the tip of the iceberg. He has to read all the papers and consult any legal authorities before coming to court. He also has to deal with paper applications, and find time to write reserved

[543] Section 230, Constitution of the Federal Republic of Nigeria, 1999
[544] Section 230. CFRN. op.cit.
[545] Taylor, Lord Chief Justice. 1993. 17th Leggatt Lecture-What do We Want from our Judges? University of Surrey

> judgments. Most judges have in addition a number of extra-mural commitments…

The above explain and indicate the importance of the work of the judiciary in the administration of justice, however, there are other court officials who help ensure the smooth running of the Courts without whom the courts would be in a quandary and these are; the Registrars, the Sherriff and the Court clerks, whose roles according to Hon. Justice Katsina Alu[546]are indispensible, as they fast track the desired standard and improve justice delivery, and will be discussed briefly below:

i. The Registrar

The Court Registry is manned by Judicial Employees under the leadership of the Court Registrar who is expected to work with the Judges and Magistrates to ensure the smooth administration of justice.[547] The Registrar is an officer of the Court who performs administrative duties and is taxed with the responsibility of keeping records of the court, drawing up orders of the court, supervising the activities of bailiffs and clerks of the court and other duties as outlined for him. The Registrar's duties amongst others include:

a. Heading the Registry and ensuring proper day to day administration of the court registry
b. Supervision of the work of staff deployed on litigation duties
c. Preparation and issuance of Trial Summons, Warrants, Orders and Subpoena
d. Coordinating the handling of court processes, such as issuance of hearing notices, warrant of arrest, summons and so on.
e. Acting as a middle man between the litigant and trial judge and making arrangement for court sittings and giving necessary assistance to the judge in open court

[546] Speech of the Former Chief Justice of Nigeria, Hon. Justice Katsina Alu, I.N. at the National Workshop for Court Registrars and Clerks in June 2011, as cited in Olumo, A. "The Role of Secretaries , Court Registrars, Process Clerks and Bailiffs in the Administration of Justice" A Presentation by the Deputy Director of Studies Nigerian Judicial Institute, Abuja at an Internal Workshop themed "Improving Staff Performance through Attitudinal Change" accessed on 17 March, 2017 from http://www.nji.gov.ng>Workshop_Papers/2016/Refresher_Sec/s05.pdf

[547] Olumo, A. "The Role of Secretaries , Court Registrars, Process Clerks and Bailiffs in the Administration of Justice. ibid.

f. Maintaining the record books in accordance with the rules of court and preparation of the court proceedings, such as rulings and judgments of interested litigants and lawyers in addition to when a matter is going on appeal.
g. Reading the Charge and taking the plea of the accused
h. Ensuring proper preparation of quarterly returns of cases filed and disposed
i. Ensuring the proper maintenance and disposal of attached property and exhibits in his custody.
j. Overseeing the execution of court Judgments and Orders
k. Preparation of certified true copies of court proceeding (s) for the endorsement of the judge for any party to the suit who requests for it.
l. Receipt of all fees, fines and penalties[548]

According to Olumo,[549]there are two types of Registrars in Nigeria's judiciary; The First category, is the Chief Registrar and his deputies who are qualified Barristers and Solicitors and can be appointed to the higher bench. They are also regarded as accounting officers of their respective courts and are usually appointed from the magistracy. The second category of Registrars are those who are not lawyers, but are well educated and certified in other professions who when recruited, are trained in the handling of judicial matters and process tailored to their schedule of duties and responsibilities.[550]

ii. The Sherriff

The Sherriff is saddled with the responsibility of executing judgement and orders of the court. The Sherriff and Civil Process Act, 2004 provides for the position of the Sherriff who performs his duties through the Bailiffs who work under him. The Sherriff is the Chief Registrar of a State or Federal Court, as the case may be, and the Deputy Sherriff or Assistant Sherriff is the Court Bailiff who will carry out the duties of the Sherriff under the supervision of the Sherriff.[551]

[548]See generally; Olumo, A. op. cit. and Adebayo, A.M. (2012) Administration of Criminal Justices System in Nigeria, op cit.
[549]Olumo, A. ibid.
[550] ibid
[551] Olumo, A. "The Role of Secretaries, Court Registrars, Process Clerks and Bailiffs in the Administration of Justice" ibid.

The Bailiff is therefore under the direct supervision of the Chief Registrar and in carrying out duties on behalf of the Sheriff, works along with law enforcement agents and other officials of the criminal justice system such as the Police and Prison Officials.[552] The duties of the Sheriff include but are not limited to the following:

- Supervision of all Bailiffs and staff working under him
- Executing orders of the courts arising from proceedings
- Keeping an up to date register of all court processes issued by the court for service
- Ensuring that court sentences are effected on convicted persons
- Monitoring proof of service of court processes, where the responsibility has been delegated to a junior staff
- Deposition to an affidavit of service, for processes effected
- Facilitation of the arrest of absconding culprits or parties and bringing them before court or the nearest police station or prison for custody That the levying of all fines and penalties imposed by the court are paid
- Service of all court processes on litigants, from writ of summons to motion on notice, statement of claim and statement of defence, orders of injunction –whether interim or interlocutory,
- Service of briefs and other orders of the court [s]
- Attending court sessions for cases in respect of which summons have not been effected or served
- Giving testimony in court whenever summoned or called upon to do so by either of the parties to the case

iii. The Court Clerks

The Court clerk can be found working in all the various courts and are expected to perform a wide range of tasks which will help ensure the smooth flow of courtroom trials. The Court clerk also assists the Registrar in performing administrative duties such as records and paper work. The clerk works under the direct supervision of the judicial officer and can also functions as the Exhibit Keeper in the courts. The duties of the clerk will depends

[552] See Adebayo, A. M. 2012. Administration of Criminal Justice in Nigeria, op cit. pg. 263

on the court as area courts clerks may perform simpler administrative tasks than those in Magistrate, State and Federal High Courts and above. The job/duties of the court clerk include but are not limited to the following:

- Assisting the Court Registrar
- Responsible for case files, custody of record books, exhibits and other court documents and preparing court orders
- Preparing the court's cause list at least one week in advance
- Announcing the entrance of the Magistrate or Judge in readiness for the business of the day and on the instruction of the Judge or Magistrate, mentioning each of the listed cases for the day
- Management of administrative tasks such as filing of documents, managing office supplies and answering phone calls and collection of basic information from attorneys, witnesses, plaintiffs and defendants
- Conducting legal research where necessary
- Answering general inquiries about judicial procedures, proceedings and court logistics, contacts litigants and processing court decisions
- Manages the dockets and records to provide administrative support for judicial proceedings
- Record court orders and case dispositions
- Keeps track of court performance statistics
- Examining legal documents
- Arranging trial dates, scheduling court appearances and sending court orders and managing court payments.

From the delineation of the duties of the other staff of the judiciary, it is evident that no staff is unimportant and that it is the interworking of all the units of the judiciary that ensures the successful administration of justice.

D. Correction Services/Prisons

The prison is regarded as the third arm of the criminal justice system in Nigeria.[553] It serves several purposes in the criminal justice system and in the society at large. It is an institution for punishment, retribution, deterrence, incapacitation and rehabilitation.

[553]The Nigerian Prisons Service is under the Federal Ministry of Interior and constitutes of five departments; operations directorate, health and social welfare directorate, administration and supply directorate, finance and accounts directorate, inmates' training and productivity, works and logistics. There are about 250 prisons in Nigeria with an estimated number of 55,033 prison inmates. See https://www.prisons.gov.ng>statistics retrieved, 22 may, 2016.

Although the historical records indicate that prisons were built in Nigeria prior to colonization, those places were for the temporary confinement of those who committed certain offences pending the determination of their cases, and not for the purpose of incarceration.[554]

The prison system in Nigeria today can trace its antecedents to the colonial administration in Nigeria; it was one of the first formal colonial machinery of governance.[555] It was established in 1872 to complement the activities of the Police Force established in 1861 and the Courts system in 1863. It was the last link in the criminal justice system which served the colonial interests of ensuring law and order, collection of taxes, and protection of legitimate trade, guarantee the profit of British merchants and missionaries.[556] They were not designed for the purpose of reformation and as such no penal policy was in place for penal administration. The prison staff were largely untrained and police officers also performed prison duties. Prisoners were mainly used for public work. Subsequently ex-service men were recruited to administer the prison. They were not properly administered and served the additional purpose of punishing those who opposed the colonial administration. In 1917, the Prison regulation was published to prescribe for admission, custody, treatment and classification procedures as well as staffing, dieting and clothing regimes of the prisons. It is pertinent to note that the prison administration, at that time, distinguished between awaiting trial persons and convicted inmates.[557]

There were attempts subsequently to improve the administration of the prisons by successive Directors' of Prisons such as modernization, introduction of vocational training and progressive earning schemes for long term first offenders, introduction of moral and adult education classes in both Christian and Islamic education, classification of prisoners, allowing visits by relatives to inmates. There was also the founding of the Prison Training School in 1947, appointment of educated wardresses to take charge of the female wings of the prisons, the opening of remand homes for treatment and housing of juveniles and the

[554] Olatunbosun, A. op.cit. pg. 20
[555] Dambazau, A.B. op.cit. pg. 197;
[556] Orakwe, I.W. History of Nigerian Prisons Service. Retrieved 25 August 2016 from http://www.prisons.gov.ng/history_of_nps
[557] Ibid.

open prison in Kakuri, Kaduna to train first time offenders who were serving terms of 15 years or more in agriculture so as to ensure that on discharge, they could employ themselves gainfully.[558]

Since independence the prisons were unified as a "composite reality" to subsequently become the Nigerian Prisons Service. Although transformations and reorganizations of the prison over a period of time has led to the manpower of the prisons having among their officers, medical, environmental health officers, sociologists/psychologists, lawyers, general administrators and engineers, successive periods of civil war, military coups and regimes led to the prison becaming a "dumping ground" and till the present, there are reports of prisoners being subject to torture and all forms of inhuman and degrading treatment. A human rights report on Nigeria had this to say about Nigerian prisons;

> It is an incontrovertible fact that the prisons in Nigeria are terribly congested. Estimates state that they are at overcapacity by as much as 250 percent. Conditions of prisons and treatment of prisoners demonstrates that Nigerian prison system has complete lack of disrespect of human life and dignity. [559] Amnesty International has concluded in a report that Nigeria does not prioritize its responsibility towards those in prison and that recommendations made by national and international organizations have not yet led to effective action by the government.

Notwithstanding the challenges of the Nigerian Prisons Service, prisons serve a very important function in the criminal justice system. The prison is an institution of the state and serves as a correction unit.[560] It is designated by law to confine or detain from the outside world, persons who are judicially ordered to be kept in custody; keep them under constant scrutiny and surveillance and force them to obey a strict code of official rules to avoid facing formal sanctions.[561]Prisons also confine awaiting trial persons who are remanded in prison pending the outcome of trial or because they are unable to perfect their bail conditions on arrest. The Nigerian Prisons Service is charged with the following responsibilities:

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[558] Orakwe, I.W. History of Nigerian Prisons Service. op.cit.
[559] United Nations Special Rapporteur Report , United Nations High Commission in Human Rights, 2007.
[560] See section
[561] Ajayi, J.O. 2012, Nigeria Prisons and the Dispensation of Justice. *International Journal of Arts and Humanities.* 1.3: 208-233

- taking into lawful custody all those certified to be so kept by courts of competent jurisdiction;
- identifying the cause of their anti-social dispositions
- setting in motion mechanisms for their treatment and training for eventual reintegration into society as normal law abiding citizens on discharge;
- Administering Prisons farms and Industries for this purpose.[562]

Prisons are regarded as not only a place of confinement, but also serve as an institution for reformation and rehabilitation. Alemika and Alemika[563]posit that the fundamental aims of penal policy in Nigeria are punishment, deterrence, and societal protection and as a result, prisons in Nigeria are used as institutions for punishment and apart from the use of corporal punishment against inmates, the conditions of the prisons are so deplorable.

Nigerian Prisons are classified broadly into two main categories: Medium Security Prisons and Maximum security prisons. Medium security prisons are for minor offenders, those serving time for various offences other than capital offences and those awaiting trial and if convicted for capital offences, they are transferred to a maximum prison. Maximum prisons accommodate all classes of inmates, especially those on death row. Acceptably the administration of Prisons is not ideal; the major problem of the prison administration is the inadequate funding of the prisons and the large amount of awaiting trial personswhich is about 70% in contrast to the convicted inmates.

E. The Ministry of Justice/Public Prosecution

By virtue of the adversarial nature of the Nigerian criminal justice system, criminal matters are generally between the state- representing the people, and the defendant.[564]An offence committed against an individual is deemed to have been committed against the state and the state has a duty to protect the lives and properties of the citizens. The Ministry of Justice is a department established to prosecute and defend matters on behalf of the government and the prosecutorial powers of the state are usually vested through the Ministry of Justice in the Attorney General, and Minister of Justice who is the Chief Law Officer of the Federation or the State as the case may be. Sections 174 and 211 of the 1999

[562] Ibid.
[563] Alemika, E.E.O. and Alemika E.I. 1995. Penal Crisis and Prison Management in Nigeria. *Lawyers Bi-Annual*. 1. 2:62-80
[564] Ojukwu, E. (et.al) 2012. Handbook on Prison Pre-trial Detainee Law Clinic. op cit

Constitution provide for the powers of the Attorney-General of the Federation or State to embark upon, take over or discontinue criminal proceedings against any person before any court of law in Nigeria and the authority of any agency including the police or a private individual to institute criminal proceedings is subject to the overriding constitutional powers of the Attorney-General.[565]

The Ministry of Justice is divided into several departments; Public Prosecutions, Civil Litigation, Legal Drafting and Conveyancing, Law Reform and Administrator General and Public Trustee. The Solicitor General Heads the Ministry, while the Director of Public Prosecutions (DPP) heads the Prosecution Department. The constitutional supervisory power of the Attorney-General over criminal proceedings is delegated to the Director of Public Prosecutions (DPP) in Nigeria and this can be either at the state or federal level. The Federal Attorney General can institute criminal proceedings in respect of offences created by the National Assembly while the State Attorneys General can institute criminal proceedings in respect of offences created by the State Laws. The powers granted to the Attorney General can be effected by him or through officers of his department usually referred to as Legal Officers or State Counsel.

Adebayo,[566]explains that the 1963 Constitution of Nigeria, the office of the Director of Public Prosecutions was specifically provided for, however, the provision is omitted from subsequent Constitutions. Despite this omission, the Directorate of Public Prosecutions is still recognised and plays a very relevant and important role in the administration of criminal justice in Nigeria.[567] The Director of Public Prosecutions is responsible to the Attorney-General but does not refer cases to the Attorney-General on a day to day basis, however, where the offence/illegality is of a controversial nature; such as cases with a religious, ethinc or political undertone with ripple effect, the individual consent of the Attorney-General will be required as the Attorney-General maintains formal control and this includes the power to initiate and terminate public prosecutions for certain offences and take over private prosecutions.[568]The Attorney-General can also delegate the power of

[565] Ibid.
[566] Adebayo, A. M. 2012. Administration of criminal justice in Nigeria, 117
[567] ibid
[568] Ibid.

prosecution to other authorities or bodies established by law, such as the Economic and Financial Crimes Commission and the Independent and Corrupt Practices Commission.[569] The Attorney General can also permit private Legal Practitioners to act for him and such a practitioner must be issued a fiat which allows him to prosecute on behalf of the Attorney-General,[570]also, by virtue of Section 383 of the Administration of Criminal Justice Act 2015, a private practitioner may also institute criminal proceedings by complaint or by information, provided that the following conditions are met:

(a) The information must have been endorsed by the Attorney-General of the Federation or a law officer acting on his behalf that he has seen the information and has declined to prosecute the offence set out therein;
(b) The private legal practitioner must enter a recognizance in such sum as may be fixed by the court with a surety, to prosecute the information to conclusion from the time the defendant shall be required to appear, pay such costs as may be ordered by the court; or deposit in the registry of the court, such sum of money as the court may fix.

Section 108 (4) of the Administration of Criminal Justice Act 2015[571] further provides that where the private prosecutor withdraws from the prosecution of an offence under the provisions of the section, the court can in its discretion award costs against the prosecutor.

F. Defence Counsel

Section 36 (6) (c) of the Nigerian Constitution establishes the right of every accused and charged with a criminal offence to defend himself in person or by a legal practitioner of his choice. Section 349 of the ACJA 2015, provides that where a defendant who is charged before the court is not represented by a legal practitioner, the court is to inform him of his right to counsel and ask if he wishes to engage one of his own or have one engaged to him by way of legal aid. Where the accused is charged with a capital offence and cannot afford legal representation, the accused person should be assigned a counsel by court to represent

[569] See Section 211 of the Constitution of the Federal Republic of Nigeria (1999)
[570] See the case of C.O.P. v. Tobin (2009) All FWLR (Pt. 483) 1302 where a private practitioner who instituted criminal proceedings could not produce a fiat and the respondent's counsel made no-case submission on grounds *inter alia* that the applicant lacked *locus standi* to prosecute
[571] Hereinafter referred to as ACJA 2015

him.[572] However, where the defendant refuses legal representation after being informed of this right and the risks involved in self representation, such a defendant will be deemed to have elected to defend himself in person and the absence of counsel will not nullify the trial. The ACJA 2015 further provides that where a legal practitioner who had appeared on behalf of the defendant does not appear in court in two consecutive sessions of the court, the court should inquire from the defendant whether he wishes to engage another legal practitioner or a legal practitioner may be engaged for him by way of legal aid. If the defendant chooses to obtain the services of another counsel, the court will permit him 30days. However, where he is unable to secure the services of a legal practitioner, the court can direct that a legal aid counsel should represent the defendant. This is to ensure that the accused person will be aided by someone who is learned in the law to explore all legal defences available to him and present his case logically and as professionally as possible.

It is the duty of the defence counsel to apply himself to the case of the defendant by utilizing his professional skills to the best possible defence of the accused person within the confines of the law and rules of procedure. In *R. v. Uzorukwu*[573]it was stressed that Counsel must give the accused persons case priority over all matters, especially where the offence is a capital one, by being present in court at all sittings and where Counsel is unable to attend court sittings, counsel must inform the Court and give cogent reasons why he must be absent. In the process of defending the accused, counsel must appraise himself of the facts of the case so as to avoid misstating the facts.[574]In the case of *O.B.M.C. Ltd v. M.B.A.S. Ltd*,[575] per Acholonu JSC, it was held that:

> It is always tempting for lawyers to concentrate on the law, and relegating the facts which give rise to the law to the background. The tool or magic that should be in the possession of a seasoned advocate is the mastery of the facts of the case. I have always stated that knowledge of the case must be assiduously and painstakingly pursued. The facts must then be subjected to scrupulous analysis, and serious efforts made by the Counsel to know how to elevate them to the pedestal that would convince the court to find in the favour of the party seeking the courts intervention…

[572] Section 267 (4) Administration of Criminal Justice Act 2015
[573] *(1958) 3 FSC 14*
[574] *Ubani v. State(2001) All FWLR (Pt, 44) 483*
[575] (2005) All FWLR Pt.261 pg.216

In apprising himself of the facts of a case, a pre-trial conference will afford Counsel with the information needed to pursue the case of the defendant and ensure that where the accused person makes a confessional statement, it was voluntary. In conducting the trial, it is expected that Counsel will defend with reasonable skill and attention to the case,[576]examine cross-examine and re-examine witnesses on all vital points raised,[577]review the case and evidence presented by the prosecution, address the court and in doing so, cite referenced authority to support his position by drawing the attention of the Court to previous decisions of the court or superior courts of record on the point he is pushing forward.[578] Where the defendant is found guilty at the end of the trial, it is the duty of Counsel to enter allocutus on behalf of the defendant by presenting facts which will convince the court to mitigate or reduce the punishment to be meted out to the defendant.

2.4.2. The Process of a Criminal Trial

a. Arrest

Criminal prosecution more often than not, begins with an arrest. In Nigeria, the Police force and Ministry of Justice are assigned the role of investigation of complaints against persons.[579] In certain instances, the arrest can be the culmination of a police investigation, in some cases, it may involve a little police investigation and in others it leads to a full investigation and subsequent arraignment. The Police need no justification to stop persons on the street and ask questions, and persons who are stopped for such questioning are completely free to refuse to answer any such questions and to go about their business.[580] The police is ordinarily not permitted to conduct any kind of search of the clothing of a person arrested without reasonable suspicion. They may however stop and search someone who sees them and attempts to flee.[581]

In apprehending and arresting a suspect, the police officer may or may not touch or detain the body of the person arrested, except the person resists arrest or attempts to flee from

[576] *Ayalogu v. Agu (2001) FWLR (Pt. 75) 622*
[577] *Kim v. State (1992) 4 SCNJ 81*
[578] *Are v. Saliu (2006) All FWLR (Pt. 327)574*
[579] Olatunbosun, A. 2012. Criminal Justice in Nigeria. op cit Pg. 14
[580]Section 24 and 25 of the Police Act provide that a police officer can lawfully arrest any person whom he reasonably suspects to have committed an offence.
[581] Section 9 (2) of the Administration of Criminal Justice Act 2015.

arrest. The Criminal Justice Administration Act in Section 6, provides that except when the suspect is in the actual course of the commission of an offence, or has escaped from lawful custody, the police officer shall inform the suspect of the reason for the arrest.

In all investigations, arrest, and sundry procedures, the method by which police investigate suspects, collect evidence is recurrently an issue in a criminal case. Olatunbosun[582] points out that more often than not, the practice of the police in Nigeria in not complying with the above requirements renders an arrest improper and voidable, thus enabling the person arrested to sue for damages, assault, battery or false imprisonment. To him, this practice amounts to a gross abuse of the fundamental human rights of the arrested person, so also is the practice of arresting relatives of suspects, where the suspects cannot be located. It should be pointed out though that the issue of arresting relatives of the suspect has been addressed by Section 7 of Administration of Criminal Justice Act 2015 which prohibits arrests of friends, relatives or close associates in lieu of the suspect.

After the arrest and the suspect has been taken to the police station, the police are expected to inform the suspect of his rights, these include; the right to remain silent; the right to legal representation of his choice before endorsing or saying anything, and the right to free legal representation by the legal aid council of Nigeria.[583] The practice of informing the suspect of his rights is similar to that of the United States of America where these rights are also called Miranda Rights in reference to the case of *Miranda v. Arizona*.[584] The words used in informing the suspect of his rights are phrased; "*You have the right to be silent. Anything you say can and will be used against you in a court of law. You have the right to an attorney and to have an attorney present during any questioning. If you cannot afford a lawyer, one will be provided for you at government expense."* It is based on an extensive review of police interrogation practice, which identified that the police tended to use a variety of ploys and subterfuges, many of which were codified in police manuals and tests to obtain confessions from suspects. The Court found that 'custodial interrogation' tends to take a heavy toll on individual liberty and preys on the weakness of individuals.

[582] Olatunbosun, A. 2012. Criminal Justice in Nigeria op.cit.
[583] Section 6 (2)
[584] (1966) 384 U.S. 436

However, in the recent cases of *Salinas v. Texas,*[585] it was held that when a petitioner has not yet been placed in custody or received Miranda warnings, and voluntarily responded to some questions about a murder, the prosecution's use of his silence in response to another question as evidence of his guilt at trial did not violate the Fifth Amendment because the petitioner failed to expressly invoke his privilege not to incriminate himself in response to the officer's questions. This has significantly limited the applicability of the Miranda rule, but has not overruled the case outright.

In the United Kingdom, the Criminal Justice and Public Order Act 1994 redefined the country's words of caution and it goes thus; "*You do not have to say anything. But it may harm your defence if you do not mention when questioned something which you will later rely on in court. Anything you do say may be given in evidence*"[586]

b. Investigation

On the receipt of a complaint, petition or information that leads to the notion that a crime has been committed, the next step is to conduct an investigation. An investigation could also be conducted to ascertain the motive of a person who actually committed an offence,[587]to identify the likelihood of a conspiracy and the circumstances of the offence.[588]The prosecution of an offence depends on the information collected by the Police and the detective work of the criminal investigation department (CID).

The presumption of innocence is a constitutional guarantee for an accused person and the criminal investigation is one important way of protecting the rights of citizen. The role that investigation plays in the quest for justice in a criminal case cannot be undermined. It requires the coordination of efforts among several specialists and is often regarded as a highly sophisticated art. In the light of the advancement of information technology, the police have an increasing array of technological aids to assist investigation of organized and serious crime which operates at a national and global level. It has the added advantage

[585] (2013) Tex. Crim. App. 12-246
[586] See generally, Davis, M., et. al 2005. Criminal Justice, 158
[587] In order to ascertain if the act committed was deliberate, self-defence or provocation
[588] See Ojukwu, E. (et.al) 2012. Handbook on Prison Pre-trial Detainee Law Clinic, 31

of being able to provide valuable evidence in contrast to the unpredictability of human witnesses.[589] Such aids include;

- Forensic services: Forensic services are most effective where there is a national database of DNA utilizing blood, urine and other bodily fluid samples, finger print database, storage details of car registrations, and psychological profiling, voice and handwriting samples, photographic samples and so on.
- Computer information systems –which have the ability to search for information and conduct analysis, track mobile phones.

Criminal investigation is a process that seeks all the facts associated with a crime in order to discover the truth and identify who is responsible. The aim of an investigation is to:

i. determine whether a crime has been committed;
ii. legally obtain information and evidence to identify the person(s) responsible;
iii. arrest suspects;
iv. recover stolen property;
v. present the best possible case to the prosecution[590]

c. **Police Detention and Pretrial Procedures**

Upon arrest of a suspect and subsequent move to the police station, the law permits the police to detain a suspect for 24 hours and up to 48 hours for the purposes of questioning or further investigation or to prevent the suspect from committing another offence. Section 15 of the ACJA provides that:

> 1) Where a suspect is arrested with or without a warrant and taken to a police station or any other agency effecting the arrest, the police officer making the arrest or the officer in charge shall cause to be taken immediately, in the prescribed form, the following record of the suspect arrested:
> a) The alleged offence;
> b) The date and circumstance of his arrest;
> c) His full name, occupation and residential address; and
> d) For the purpose of identification;
> i. His height
> ii. His photograph

[589] Dambazau, A.B. 2012. Criminology and criminal justice, 186-188; Davies, M. (et.al). 2005. Criminal Justice, 161-165
[590] Dambazau, A.B. 2012. op.cit.

iii. His full fingerprint impressions, or
iv. Such other means of his identification

2) The process of recording in subsection (1) shall be concluded within a reasonable time of the arrest of the suspect, but not exceeding 48 hours.
3) Any further action in respect of the suspect arrested pursuant to subsection (1) of this section shall be entered in the record of arrests.

The law requires that a suspect is charged to court within a reasonable time.[591] The issue of reasonable time as contained in the constitution is one that has been fraught with dissension, legal practitioners argue for and against the detention of a suspect for long periods pending arraignment.[592]

Where in the course of an investigation into a crime, the Police feel there is a need to elongate the period of detention of the suspect, they prepare a preliminary charge designed to extract a remand order from a local magistrate court, which enables the police hold a suspect while criminal investigations continue. The excuse for this practice is that often, investigations are not completed within the maximum of 48 hours detention allowed under the constitution because they are understaffed, ill-equipped and overworked and criminal suspects may interfere with investigations, tamper with evidence, threaten witnesses and also because of the complex nature of some crimes.

[591] Section 35 of the Constitution guarantees the right of citizens to personal liberty and the courts have upheld the fundamental rights of citizens to freedom from arbitrary arrest and detention. Where the police arrest a suspect upon a reasonable suspicion of having committed a crime, or for the purpose of preventing him from committing a crime, it is expected that such a person should be brought before a court of law within a reasonable time and should be released either conditionally or unconditionally, if the person is not tried within a period of two months from the date of arrest or detention in the case of someone who is in custody or is not entitled to bail. Section 293 of the Administration of Criminal Justice Act, 2015, vests Magistrate Courts with powers to order the remand of suspects within the period allowed by the constitution or on the order of a court and as such, it is not a violation of the right to liberty guaranteed citizens that a person is held in custody pre-charge. The Supreme Court case of *Lufadeju v. Johnson (2007) 8 N.W.L.R. (PT 1037) 535* is very clear on the issue; it upheld the constitutional validity of pre-charge detention of criminal suspects in Nigeria.

[592] See generally, Anon. Lawyers divided over "Holding Charge" http://www.nigeriabar.com/2016/01/lawyers-divided-over-idquo-holding-charge; Igboanugho C.C. and Ajah, O.A. "Holding Charge and Pre-Trial Detention Vis-à-vis the Doctrine of Fair Hearing in Nigeria" The Lawyers Chronicle retrieved from http://www.thelawyerschronicle.com/holding-charge-and-pre-trial-detention-vis-a-vis-the-doctrine-of-fairhearing-in-nigeria/; Falana, F. "Constitutional Validity of Pre-Charge Detention of Suspects" The Herald Nigeria, accessed through http://www.herald.ng/constitutional-validity-of-pre-charge-detention-of-suspects-by-femi-falana/ all Retrieved February 08, 2017

The practice of the holding charge, while serving a function to the police is seen as a mockery of the criminal justice system because although a magistrate issues the remand order, the warrant does not include a date on which the suspect is to be brought back to the court by the police and the magistrate. This is as such, an open ended warrant that can allow for the remand of a criminal suspect for years on end and is attributed to be the major cause of the high numbers of awaiting trial persons in the prisons.

It has been argued that the use of the holding charge contravenes the right to personal liberty as guaranteed by Section 35 of the 1999 constitution. However, Sections 293-299 of the ACJA 2015 have laid to rest, the issue of the legality of the holding charge and makes elaborate provisions for dealing with remand cases pending the receipt of the legal advice from the Attorney General and the subsequent arraignment of the suspect before the appropriate court as the case may be. Section 294 provides that only after the Magistrate has taken into consideration the circumstances surrounding a case and ascertains that there is probable cause, can an order for remand be granted. An order for the remand shall not exceed fourteen (14) days in the first instance,[593]and the case is returnable within that period. In order for an extension of another fourteen (14) days, there must be an application in writing, showing good cause for the extension.

At the expiration of the 28 days where a charge has not been filed at the appropriate court or the trial has not commenced, the court is expected to issue a hearing notice on the Inspector General of Police, the Commissioner of Police of the State or Federal Capital Territory as the case may be or the Attorney General of the Federation and adjourn the matter within a period not exceeding fourteen days of the expiration of the initial remand or the subsequent one. This is to enable the Magistrate inquire from the Inspector General of Police, the Commissioner of Police or the Attorney General, the position of the case and for them to show cause why the suspect should not be released unconditionally.[594]Where good cause is shown, the suspect may be remanded for a final fourteen (14) days in order for the suspect to be arraigned for trial and the case would be returnable within the fourteen

[593] Section 296 (1)
[594] Section 296 (2-4)

days,[595]and where good cause cannot be shown for the continued remand of the suspect or the remand period has expired, the court will immediately discharge the suspect, the suspect should be released immediately and the court will not entertain any further application on the issue.[596]

d. Bail

Although Section 35 (1) of the Constitution[597]guarantees the right to liberty and when a person is arrested or detained on a charge other than a capital offence, he may at any time while he is in custody, or before a charge is preferred against him in court, be admitted to bail. Bail is regarded as both a statutory and a constitutional right. It is recognised as an inherent power of the court and an embodiment of the right to personal liberty, fair trial and freedom of movement,[598]it is also a recognition of the right to the presumption of innocence. According to Eko,[599]bail is an interim protection or preservation of the civil liberty of the defendant. The relief granted by bail is to serve the purpose of preventing the punishment of the innocent; otherwise the presumption of innocence constitutionally guaranteed to an individual accused of criminal offence would lose its meaning. It can also be viewed as a security the accused gives that he will appear and attend the court to respond to the allegations brought against him. It includes a bail bond and a personal bond. There are three instances where bail is processed in the criminal justice system:

- Grant of bail at the Police station;
- Grant of bail by the court pending trial, and;
- Grant of bail by the court pending the outcome of an appeal

i. Police Bail

Sections 30 and 31 of the ACJA make concise provisions for the procedures to be followed by the police and other law enforcement agencies in the grant of administrative bail to a

[595] Section 296 (5)
[596] Section 296 (6)
[597] Constitution of the Federal Republic of Nigeria, CAP C23, Laws of the Federation of Nigeria, 2004
[598] Ojukwu, E. (et.al) 2012. Handbook on Prison Pre-Trial Detainee Law Clinic op.cit. pg.65
[599] Eko, E. 2008. The Law of Bail, Life Gate Press, Ibadan. Pg. 1

person arrested in connection with a crime pending investigation or arraignment in court for trial. Section 30 provides for an arrest without a warrant for a non-capital offence, and allows that a suspect may be released on the conditions of either entering into a recognizance with sureties or on personal recognition, for a reasonable amount of money to appear before a court or at the police station at the time and place named in the recognizance. Section 31 provides that the suspect may be admitted to bail with or without conditions.

It is worthy of note that once a suspect has been arraigned, the police bail ceases and the defendant must apply to the court for bail; otherwise he will be remanded unless the court of its own volition grants the defendant bail pending the determination of the case.

ii. Bail Pending the Outcome of Trial

Part 19 of the ACJA 2015 makes general procedural provisions for bail. Section 158 of the ACJA informs that a suspect can be entitled to bail subject to certain provisions as provided for in Section 165 of the act to the effect that bail conditions must not be excessive, may require the deposit of a sum or any other security as specified by the court or his surety and the money or security deposit will be returned to the defendant or his surety or sureties, as the case may be, at the conclusion of the trial or on an application by the surety to the court to discharge his recognizance.

The grant or refusal of a bail application at a hearing for bail is dependent on the facts, circumstances as well as the discretion of the court at the time of hearing the bail application. In the case of *Uwazurike v. A.G. Federation*[600]referencing the case of *Bamaiyi v. State*[601]the conditions that govern the exercise of the discretion of the court to grant bail was provided as follows:

a. The evidence available against the accused person
b. Availability of the accused to stand trial
c. The nature and gravity of the offence

[600] *[2009] All FWLR (Pt.489) 549*
[601] *[2001] FWLR [Pt. 46] 956*

d. The likelihood of the accused committing another offence while on bail
e. The likelihood of the accused interfering with the course of justice
f. The criminal antecedents of the accused person
g. The likelihood of further charges being brought against the accused
h. The probability of guilt
i. Detention of the accused for his protection
j. The necessity to procure medical or social report pending final disposal of the case.

It has been pointed out that the above factors listed above are not exhaustive, but serve as a guide in the granting or refusal of a bail application. Also, where a bail application has been refused by a lower court, a further application can be made to a higher court.[602]

iii. Bail Pending the Outcome of an Appeal

In general, the law does not grant the bail application of an applicant who has been convicted and sentenced to a term of imprisonment. This is because the right to the presumption of innocence is no longer available to a convicted person. There is a special provision however, in exceptional circumstances where an applicant who has been convicted and sentenced but has appealed against the conviction can be granted bail pending the determination of the appeal. In considering an application for bail pending the outcome of the appeal, the approval or refusal of the request is at the discretion of the Court and the applicant is expected to show exceptional circumstances before such discretion can be exercised in his or her favour.[603]Where the application is not granted by a lower court, an application can be further made to a higher court.[604]

E. Detention Awaiting Trial

Following a decision to prosecute, a suspect may be kept in the custody of the prison or other place of remand pending the outcome of the trial in order to ensure his availability in court throughout the proceedings. The detainee could be held in custody because he is unable to perfect bail conditions or on court ordered detention. Pretrial detainees are

[602] See the case of Aga Nyamikume v. Commissioner of Police, Unreported, March 1984, No. GBD/5M & 6M/84
[603] See generally *Munir v. Federal Republic of Nigeria [2009] All FWLR(Pt. 500) 775; Obi v. State (1992) 8 NWLR (Pt.257) 76; Buwai v. State (2004) All FWLR(Pt. 227) 540; Fawehinmi v. State (1990) 1NWLR(Pt. 127) 486; R v. Philip Wise (1924) 17 CAR 17; Olamolu v. State (2009) All FWLR (Pt.485) 1800*
[604] *See the case of Olamolu v. State (supra).*

unconvicted inmates in prisons and constitute a majority of those awaiting trial in the Nigerian prisons. Their stay in prisons and remand homes can be for years on end.

i. Preventive Detention versus Administrative Detention

Preventive detention is imprisonment that is carried out for non-punitive purposes. It is usually contrasted with police detention of an accused person which is followed by a criminal charge and arraignment. In some jurisdictions, preventive detention is authorized for certain circumstances as outlined below;

- Canada; anyone declared a dangerous offender by the courts will be subjected to an indefinite period of detention.
- United States of America; Convicted persons can be held indefinitely as 'dangerous offenders'
- United Kingdom; the Legal Aid, Sentencing and Punishment Act of 2012 has abolished the Imprisonment for Public Protection Act which used to deal with dangerous offenders.
- New Zealand – Preventive detention is an indeterminate sentence and is usually given to repeat offenders and serious violent recidivist offenders where it is likely that the offender will reoffend if released.

Administrative Detention on the other hand is the detention of individuals by the state without trial, usually for security reasons. Administrative detention is resorted to as a means of combating terrorism, controlling illegal immigration and for the protection of the ruling regime. In contrast to criminal detention (imprisonment) imposed on conviction of a previously committed offence, administrative detention is regarded as a forward looking mechanism based on an assessment of a suspect as a potential threat in the future. It is preventive in nature rather than punitive. The practice of administrative detention is regarded as a breach of civil and political rights of citizens.

f. Preferring the Charge

When an offence is committed, an investigation may be carried out and a suspect is identified and arrested, the next step in the criminal justice process is to charge the suspect to court. A charge can be regarded as a formal accusation of an offence, a preliminary step

to prosecution.[605]The charge must inform both the defendant and the court in clear and concise terms, the offence committed for which he is being tried. Section 36 (6) (a) provides that every person who is charged with an offence shall be entitled to be informed promptly in the language he understands and in detail, the nature of the offence with which he is charged. It serves to ensure that there is fair hearing in the course of the trial of the defendant.

g. Arraignment/Plea/Court Process

The criminal trial of the accused commences with an arraignment, which is the process by which a defendant is charged in a court of competent jurisdiction to be tried for an offence and his plea is taken. In *Lufadeju v. Johnson,*[606]the Supreme Court outlined the requirement for a valid arraignment as follows:

> Arraignment involves two things. One, the reading of the charge or information to the accused. Two, the response to the charge or information by a plea from the accused. The plea can either be guilty or not guilty. It is only when the above procedure is followed that a court of law will be said to have taken the arraignment proceedings… It is very clear…that the arraignment of a suspect before the Magistrate's Court or any other court involves the presentation of the person or suspect before that court unfettered where the charge against him is read over and interpreted or explained to him by the Registrar of the Court to the satisfaction of the Court and the accused person is called upon to plead to the charge…an arraignment or trial… cannot be properly so called unless the accused person pleads to the charge containing the offence with which he is charged.[607]

A valid trial takes off with an arraignment and failure to comply with the requirements of an arraignment as stipulated in the constitution and the ACJA will render the trial of an accused person a nullity.[608]Section 36 (6) (a) of the constitution provides that a person charged with a criminal offence should be promptly informed of the nature of his offence, in a language he understands. After a plea has been taken, the court calls upon the

[605] Blacks Law Dictionary. 2009 (9th Edition)
[606] supra
[607] Per Onnoghen, JSC. pp. 1567-1568
[608] Olatunbosun, A. 2012, op.cit., 39. See also the case of *Sunday Kajubo v. The State (1988) 1 NWLR (Pt.73)721*

prosecution to open the case by calling witnesses to prove the offences the accused has been charged with, in accordance with the provisions of the Evidence Act and the ACJA. The prosecution counsel makes an opening speech which outlines the case and calls on witnesses to confirm the facts (examination-in-chief). Defence counsel can cross-examine the witness and the prosecution can re-examine the witness to clarify facts.

The back bone of the criminal justice system is the presumption of innocence until proven guilty as provided for in section 36 (5) of the constitution and the underlying principle is that the burden in criminal cases rests firmly on the prosecution to prove beyond reasonable doubt, the guilt of the defendant by producing cogent and credible evidence to support their claim. It is said to be discharged where the essential ingredients of the offence have been clearly established. Although the responsibility to produce cogent and credible evidence may shift to the accused on certain conditions, such as a plea of insanity, self defence, or alibi.

h. **Judgment and Beyond (Discharge, Conviction)**

At the end of trial where the prosecution and defence have called witnesses, examined and re-examined the case, presented all facts, and proved and controverted all facts, the trial judge may adjourn the case or deliver judgement immediately. The delivery of the judgement is in writing and the judge is expected to state points of law and evidence on points presented in his decision and the reason for the decision. Where a defendant is found guilty of the offence for which he is charged, he will be convicted and sentenced in line with the prevailing rules. Sentencing may be in the form of imprisonment, binding over, fines or execution. With regard to the imposition of a term of imprisonment, the law provides that the term imposed must not exceed the maximum term of punishment prescribed by law. A court also has the discretion to impose a sentence that is less than the maximum sentence stipulated by the law. It is not in all criminal cases that a defendant is convicted; a defendant may also be discharged. Where the accused is discharged it may be on technical grounds; such as lack of diligent prosecution, failure to call a particular witness or tender a necessary document. The effect of this is that the defendant can be

charged again when the state is able to produce evidence establishing the guilt of the defendant.

The defendant may also be discharged and acquitted which means that the defendant is found not guilty after an examination by the court of all the material evidence supplied by the prosecution. The effect of an acquittal is that the person acquitted is free and cannot be tried again for the same offence.

CHAPTER THREE

CONCEPTUAL FRAMEWORK OF ACCESS TO JUSTICE AND THE CRIMINAL JUSTICE SYSTEM

3.0 Introduction

Access to justice has become a major issue in the administration of criminal justice and is recognised as an important part of the rule of law, particularly in a democracy. Two perspectives of access to justice have been recognised; the narrow sense of access to justice and the broad sense. There are a number of ways to link and discuss access to justice- access for the victims of crime, the accused, the community and even the agents of the criminal justice system as a whole. In this study, access to justice will be considered in the context of persons awaiting trial and how the actions of agents can affect access to justice.

In this chapter, access to justice will be examined in the broad sense: the elements of access to justice will be outlined and access to justice in relation to concepts in the administration of criminal justice will be discussed. The benefits and barriers to access to justice will also be delineated.

3.1 Access to Justice

Access to justice has two major recognised perspectives; the narrow perspective and the broader perspective. In the narrow sense, it can be regarded as access to lawyers and the law courts[609]and in the broader sense it connotes "an equal right to participate in every institution where law is debated, created, found, organized, administered, interpreted and applied" [610]or as the ability to access the political order, and the benefits accruing from the social and economic developments in the state.[611] Okogbule[612]points out that the two perspectives are not mutually exclusive as access to justice is a key component of the

[609] Ojukwu, E. (et. al) 2012. Handbook on pretrial detention in Nigeria op.cit.
[610] MacDonald, R. A. 2005 Access to justice in Canada today: scope, scale and ambitions, 19, 23
[611] Okogbule, N.S. 2005. Access to Justice and Human Rights Protection in Nigeria: Problems and Prospects" Sur, Revista. Internacional de Direitos Humanos 2.3:--
[612] Ibid.

realization and enjoyment of all rights; whether civil, political, economic or legal. Although this research will focus on the broader conception of access to justice, it does so only in connection with the effect on awaiting trial persons and will utilize access to justice mechanisms as a means of assessing the efficacy of the identified criminal justice.

Access to justice can therefore be expansively described as an "integral part of the rule of law in constitutional democracies."[613] Ojukwu[614]in discussing access to justice defines it in the broad sense as encompassing access to a fair and equitable set of laws; access to popular education about laws and legal procedures as well as access to formal courts, legal representation and legal aid. Access to justice in this sense is not limited to the substantive and procedural mechanism for the resolution of disputes or as a means of redress for the violation of legal rights within the legal system; it is regarded as entailing so much more. Access to justice is also regarded as;

> *…not being limited to the procedural mechanism for the resolution of disputed but includes other variables like the physical conditions of the premises where justice is dispensed, the quality of the human and material resources available thereat, the quality of justice delivered, the time it takes for the delivery of justice, the moral quality of the dispenser of justice, the observance of the general principles of the rule of law, the affordability of the cost of seeking justice in terms of time and money, the quality of the legal advisers that assist the litigants, the incorruptibility and impartiality of operators of the system.* [615]

From the above, access to justice can be viewed as a concept that embraces the nature, mechanism and even the quality of justice obtainable in a society as well as the ability of the individual to access justice whether in connection to civil and political rights or economic social and cultural rights.[616] Access to justice has also been defined as the ability of people to seek and obtain a remedy through formal or informal institutions of justice for

[613]Faisal, B. 2007. Institutionalizing access to justice: judicial, legislative and grassroots dimensions. *Queen's Law Journal*. 33:139-149

[614] Ojukwu, E. (et al.) 2012. Ibid.

[615] Gwangudi, M.I. 2002. Problems militating against women's access to justice in Nigeria. *University of Maiduguri Law Journal*., 5: 51 as cited in Okogbule, N.S. 2005. Access to Justice and Human Rights Protection in Nigeria: Problems and Prospects.

[616] Okogbule, N.S. ibid. He further asserts that access to justice is also an important barometer for assessing not only the rule of law in any society, but also the quality of the governance in that society. To him this also puts the focus on transparency, accountability and good governance as an effective panacea for socio-economic development.

grievances in compliance with human rights standards[617]It also means being treated fairly, according to the rule of law and if a person is not treated fairly, being able to get appropriate redress. According to Mattei[618]the challenges faced by an accused person throughout the criminal justice process is an important indicator of the attitude of any legal system towards the law, and this in turn reflects on the fundamental issue of what general role the law has in society.[619]

Regarded as more than improving an individual's access to courts or guaranteeing legal representation, access to justice is premised on the co-existence of the various agencies and institutions in the criminal justice system. In this sense, increasing access to justice may mean ensuring physical accessibility to the courthouse, simplifying procedural rules, using plain language in a statute, ensuring that all people have a basic understanding of their rights, explaining what the law means and ensuring wide dissemination of the explanations, provision of translation services, dispute resolution other than through the courts, legal aid and similar steps to removing barriers of various kinds. A more comprehensive understanding of access to justice goes beyond the legal system to encompass efforts to assess and respond to ways in which laws impede or promote economic or social justice. For example, recognizing the interrelationships of these systems, in short, access to justice may involve steps to diminish substantive injustice in society at large. It thus encompasses recognition that everyone is entitled to the protection of the law and that rights are meaningless unless they can be enforced. It is about protecting ordinary and vulnerable people and where possible solving their problems.[620]

Access to justice is classed among the new crop of contemporary research investigating the delivery of legal services and the public experience with the justice system. Albiston and

[617] United Nations Development Programme, Programming for Justice: Access to Justice for All: A practitioners guide to a Human Rights Based Approach to Access to Justice, Bangkok, UNDP, 2005
[618] Mattei, U. 2007. Access to justice. a renewed global issue? *Electronic Journal of Comparative Law*. 11.3 :1-25. Retrieved September 04, 2017 from http://www.ejcl.org/113/article113-14.pdf
[619] ibid
[620] See Robins J. Oct. 06, 2016. Access to justice is a fine concept, but what does it mean in view of cuts to legal aid. *The Guardian*. Retrieved October 21, 2016, from http://www.theguardian.com/law/2011/oct/06/access-to-justice-legal-aid-cuts

Sandefur[621]in their work on access to justice, inform that previously, researchers thought and wrote of disputes as if they were found objects in the world: quarrels that entered into the legal system *sui generis* to be processed and resolved, but findings of subsequent research[622]reveal that disputes are social constructs and characterized legal disputes as products of a process of "naming," "blaming," and "claiming," that is, recognizing an injury, holding another responsible for it and seeking legal remedy.

Ideas about access to justice owe their origins to the Florence Access-to-Justice Project of Professor Maurio Cappelletti[623] which was completed in 1979; it was a comparative assessment of justice initiatives worldwide,[624] and produced a multi-volume outcome. Cappelletti used a wave metaphor to describe the access to justice movement[625]especially in reference to the United States experience. The first wave involves reforming institutions to provide legal services for the poor, and according to Mattei,[626] the first wave, precedes the moment at which public institutions started being transformed. This necessitates overcoming the economic obstacles faced by people who are financially incapable of accessing justice by virtue of lack of or inadequate information or representation which has led to the introduction of legal aid.

The second wave concentrates on extending representation to diffuse interests, such as consumers or environmentalists. The third wave questions the effectiveness of dispute-

[621] Albiston, C.R. and Sandefur, R.L. 2013. Expanding the empirical study of access to justice, Wisconsin Law Review. 101: 101-120.

[622]Civil Litigation Research Project (CLRP) as contained in the Special Issue of Law &Society Review. Special Issue on Dispute Processing and Civil Litigation, 15 Law and Society Review. 391 (1980-1981

[623] The Project was a four (4) year comparative research project entitled "Florence Access to Justice Project" which was sponsored by Ford Foundation and the Italian National Council of Research (CNR).

[624]A review of the project informs that the project resulted in a four volume work entitled 'Access to Justice' In an attempt to make the findings of the Florence Project more accessible to policy makers, an international conference titled "Access to Justice after the Publication of the Florence Project : Prospects for Future Action" was held in October, 1979 and resulted in articles by respected authors who were able to provide realistic access to some of the research results contained in the 2700 pages of the Florence Access to Justice Project. See generally, Reviewed Work: *Access to Justice and the Welfare State by Mauro Cappelletti, Reviewed by Michigan Law Review* Vol.81, No. 4, 1983, Survey of Books Relating to the Law (March, 1983), pp. 1006-1008, Michigan Law Review Association retrieved on 26 August, 2016, from https://www/jstor.org/stable/1288427

[625] See generally, Cappelletti, M. and Garth, B. *Access to Justice: The Newest Wave in the Worldwide Movement to Make Rights Effective*, *(*1978) *27 Buffalo L. Rev.* 181, 197-227

[626] Mattei, U. "Access to Justice. A Renewed Global Issue?"op.cit

resolving institutions, and examines less formal alternatives to traditional courts. The first three volumes of the work discuss the waves while the fourth volume goes beyond the waves and considers access to justice in the light of the political realities of a modern welfare state.[627] To Cappelletti, access to justice involves more than access to the courts and legal representation; in the sense that a mere formal right to access cannot solve problems, neither can a declaration of a right, guarantee its enforcement. He recommended the revealing of the actual workings of the legal system and encouraged the invasion into the legal professions traditional preserve by among others; sociologists, anthropologists, economists, political scientists, economists, and psychologists.

Although the Florence Access-to-Justice Project was focused on civil justice, a similar context can be identified in criminal justice as there have been changes in the administration of criminal justice and the criminal justice process at national and international levels to make it more effective, such as: introduction of legal aid for accused persons, the successive reforms in the administration of criminal justice, recognition of the rights of the accused person, such as the rights to silence, legal representation, bail and the recognition of the need to handle victims and witnesses with care.[628]

Cappelletti and Garth[629] claim that the words 'access to justice' serve dual purposes in the legal system; it can be regarded as the system by which people may vindicate their rights, or resolve their disputes under the general auspices of the state. To them, the system must

[627] A welfare state is defined as "a society with considerable governmental involvement in an essentially private economy and with governmental commitment to ameliorating the economic and social conditions of the disadvantaged."

[628] At the national level; in Nigeria, it has led to the enactment of the Administration of Criminal Justice Act (ACJA) 2015- recognition of the rights to silence, legal representation, police prosecution of cases, limits on the duration of remand of persons awaiting trial except in exceptional cases, suspended sentence, amongst other provisions, and sundry other reforms in legislation which have had a direct impact on the administration of criminal justice. For Example the Violence Against Persons (Prohibition) (VAPPA)Act, 2015 which was passed into law in May, 2015. The result of agitations for protection of persons against different forms of violence, it seeks to eliminate violence in private and public life and prohibits all forms of violence, including physical, sexual, psychological, domestic, harmful traditional practices, discrimination against persons and provides for maximum protection and effective remedies for victims and punishment of offenders.

[629] Cappelletti, M. and Garth, B. *Access to Justice: The Newest Wave in the Worldwide Movement to Make Rights Effective op.cit.*.

first be accessible to all and second, it must lead to results that are individually and socially just. The basic premise of their research is that social justice, as sought by modern societies presupposes effective access to justice, and that the focus on access to justice- the means by which rights are made effective now increasingly characterizes modern procedural scholarship.

Mattei summarized the progress of access to justice research and informs that from the 1980's the global ideological picture changed and an economic ideology centered around the values of globalization was initiated into Great Britain - regarded as the foundation of welfarism, and introduced on a much weaker level in the United States. The result of the subsequent weakening of welfarism led to an adaptation infused with capitalism, resulting in the privatization of some of the welfare services such as public shelter, health, education and cuts in legal aid which has in turn affected access to justice negatively. To Mattei, and indeed truthfully, this was not limited to the United States and the United Kingdom alone, as other countries with a welfarist bend started to undermine its policies as well, thus:

> …to be sure, closing the doors of justice to the non-wealthy constituted a further empowerment of the strong economic actors because there is no legal venue relatively open to the average individual, powerful market actors became free not to confront the social consequences of their actions.[630]

Access to justice as a concept has become a pressing issue in the reform of the legal system. The term "access to justice" can be used to mean 'access' in either basic terms or socio-political terms. It has been averred that the impediments to equal access to justice for all- regarded as one of the highest ideals of a good legal system- includes obtaining legal representation, accessing the judicial system, a lack of knowledge of legal rights and the intimidating nature of the legal system possesses. Chakrabarti[631]reckons that the concept of access to justice struggles with an image problem in the sense that fundamental rights, freedom and the rule of law are vital checks and balances in any civilized society, but are meaningless without access to justice or the practical means of understanding and

[630] Mattei, U. "Access to Justice. A Renewed Global Issue?"op.cit pg.3
[631]Chakrabarti, S. was the Director of 'Liberty' a membership organization founded in 1934 which campaigns for civil liberties and human rights in the United Kingdom, from 2003 - 2016. Information Retrieved July 23, 2016, from http://www.liberty-human-rights.org.uk/

enforcing the law of the land. To this end, a society can only be democratic and regarded as civilized if everyone has broadly the same legal opportunities. Chakrabati adds that we all recognize the importance of schools and hospitals, but legal advice and representation don't seem as important until a person is in conflict with the law.[632]

Access to justice is also regarded as a necessity for the attainment of social rights. It is considered to be of paramount importance because, without effective access to justice, attaining the most basic human rights of a system which claims to guarantee legal rights can be a futility.[633] To this extent, obtaining legal redress should not be beyond the reach of the common man, because where people believe that they cannot obtain redress through criminal justice institutions, they resort to self help, and this will not aid the criminal justice system and society as a whole. Access to justice should not just be equated to legal aid. Access to justice is a much broader concept which encompasses recognition that everyone is entitled to the protection of the law and that rights are meaningless unless they can be enforced. It is about protecting ordinary and vulnerable people and solving their problems and this is particularly important in the context of awaiting trial persons.

Justice means the ability to obtain redress in the criminal justice system and not just the ability to obtain access to lawyers and the law courts which cannot be regulated[634] It means access to an ombudsman;[635]advice agencies; police and authorities in the criminal justice agencies behaving properly. It also means that the average citizen should have some basic

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[632] Chakrabarti, S. ibid.

[633] See generally, Robins, J. "Access to Justice is a fine concept. What Does it Mean in View of Cuts to Legal Aid" 16 October, 2016. The Guardian UK retrieved on 23 August, 2016, from https://www.theguardian.com/law/2011/oct/06/access-to-justice-legal-aid-cuts

[634] See the Case of Kolo v. A.G. Federation (2003) 10 NWLR (Pt. 829) 602. Where it was held that the right to the Courts is guaranteed by the constitution. See also, Bakare v. A.G. Federation (2009) 5 NWLR (Pt.152) 516

[635] A public advocate who is usually appointed by the government or legislature, but with a significant degree of independence, who is charged with representing the interests of the public by investigating and addressing complaints of maladministration or a violation of a rights. An ombudsman can identify systematic issues leading to poor service or breaches of people's rights. In the United Kingdom for example, the United Kingdom Parliamentary Commissioner for Administration is charged with handling concerns about national government. The ombudsman is recognised as the national human rights institution and the position of ombudsman has been instituted by some intergovernmental organizations such as the European Union. See generally http://www.ombudsmanWatch.org;http://eclrps.uoc.edu/index.php/journal0of-conflictology/article/view/vol2iss2-lang accessed on 23 October, 2016

understanding of their rights and serious attempts to make laws less complex and more intelligible.

It is highly desirable that every criminal justice professional -law enforcement officer, prosecution counsel, defense counsel, judicial officer, and corrections officer- in the justice system should be concerned with the application of ethics and be able to discern the right approach in the instant case and apply equality and fairness in the administration of justice. Basically, there is an obligation on the criminal justice system to provide a criminal justice process which is accessible, equal and fair to all members of the society. In order to do this, it is necessary for the occupational roles, institutional processes, legal rules and administrative doctrines of the criminal justice system to be analyzed in the context of the prevailing perspectives of criminal justice. It must be pointed out though that the demands of the perspectives to justice could be hard to meet in the light of the situations that criminal justice actors find themselves and questions have been posed as to how justice personnel should react to situations that warrant their attention such as those posed by Siegel and Worrall;[636]

> *...should a police officer be forced to arrest, a prosecutor be forced to charge, and a corrections officer to punish a woman who for many years was the victim of domestic abuse and in desperation retaliated against her abusive spouse? Who is the victim here, and who is the aggressor? And what about the parent who attacks the man who has sexually abused his young child? Should he be prosecuted as a felon? And what happens if the parent mistakenly attacks and injures the wrong person? Can a clear line be drawn between righteous retribution and vigilante justice? As students of justice, we are concerned with identifying the behavioral standards that should govern everyone involved in the administration of criminal justice. And if these standards can be identified, can we find ways to disseminate them to police departments, courts and correctional agencies around the nation.*

While justice is the fair and proper administration of laws and denotes the right standards as set out in legal and regulatory works in the form of substantive law and procedure, access to justice is the blood vein of justice. Access to justice refers to the ability to utilize

[636] http://www.ombudsmanWatch.org; http://eclrps.uoc.edu/index.php/journal0of-conflictology/article/view/vol2iss2-lang. op.cit.

the institutions of the criminal justice system effectively to ensure the rule of law and due process. In essence, proper access to justice operates in an environment where people are able to obtain justice.

Despite recent legislative and policy changes in the administration of criminal justice in Nigeria, the current criminal justice system in Nigeria is premised on the idea of punishment for wrongdoing, and this can be seen in the variety of justifications suggested for this; deterrence, social control, reinforcement of societal and state values, denunciation, promotion of public safety, the need to remove the offender from society for a period of time, retribution and ensuring that the offender knows that he has done wrong. To this extent, the Nigerian criminal justice system is fundamentally flawed and the problem can be seen at every point of the criminal justice process; the inability of the legislature to appropriately transform policies into laws, a judicial system plagued by corruption, crippling bureaucratic bottlenecks, incompetence, an outdated and counterproductive style of policing, and correctional services that accommodate those presumed innocent by law in an inhumane manner[637]

It is this researcher's opinion that there are complex social, political and legal contexts within which discussions about justice occur. Definitions of access to justice in the legal context can have important consequences for social justice. Beyond the context of courts and legal proceedings, social and political contexts also shape ideas about access to justice and are important in accessing current efforts to envisage criminal justice as transformative.[638]To this end Professor Zander opined that; *"there are all indications of a concern regarding at least the appearance of justice. But knowing how to improve the 'quality' of justice is much more difficult. To Zander,* often, miscarriages of justice are the result of human failings (the volume of awaiting trial inmates in the Nigerian prisons can testify to this) such as errors made by witnesses, prosecutorial investigation flaws, false

[637] Osasona, T. 2016. Policy brief on the Nigerian criminal justice system. *The Centre for Public Policy Alternatives.*

[638] See generally, Hamlyn Lectures 1999, presented by Professor Zander. He offered an incisive appraisal of the United Kingdom Access to Justice Act 1999 and its potential to undermine the accomplishments of the Legal Aid Act, 1949. Retrieved August 12, 2016 from http://www.socialsciences.exeter.ac.uk

confessions by an accused person, incompetence and inefficiency of police, prosecution and defence lawyers. Sometimes, no one is to blame because a defendant may simply have the bad luck of being convicted of strong but misleading circumstantial evidence. As such, the criminal justice system has a variety of procedures and rules in place to help reduce the risk that an innocent person will be convicted while also providing protection to the "guilty." This is the right and proper thing, since all suspects deserve certain basic rights.[639]

Access to justice is not just about the court processes, the victim, the convict, and legal aid for the poor and vulnerable. It is also about the rule of law[640] and due process; it is about the justice perspective of the system; how awaiting trial persons are treated- from the point of arrest, questioning, trial process, conviction, sentencing and post incarceration. As stated above, a lot of materials on access to justice focus on civil procedure. Where there is mention of access to criminal justice, it is mainly with regard to court process, legal aid, and the protection of select groups.[641]However, justice is not just about the court process and legal aid, it is also about the method utilized by the actors in the various agencies. They all play a vital role in ensuring access to justice; hence, criminal justice officials must be held accountable. Difficulties in accessing justice can be attributed to the inability of the public to access legal advice, afford legal representation or justice within the criminal justice system. It can be due to exclusion from the legal process, lack of funds, lack of awareness of individual rights or lack of faith in the justice system.

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[639] Hamlyn Lectures 1999. op. cit

[640] There is generally no hard and fast definition of the rule of law but Andrew Caplen, President of the Law Society of England and Wales at dthe Access to Justice lecture, University of Portsmouth, United Kingdom in his speech titled "What Use is the Rule of Law If there is No Access to Justice?" stated some generally agreed principles on the rule of law:

- Laws should be accessible, clear, precise and open to public scrutiny
- People should only be punished for crimes set out by law and not simply the discretion of the state, judiciary or otherwise
- Court must be accessible, affordable and cases should be heard without excessive delay
- All people should be treated equally unless objective differences justify otherwise
- There must be a respect for human rights
- The state must abide by both its internal laws and its international obligations.

He summarised this by saying that the rule of law limits the power of the state and guarantees the rights of citizens

[641] i.e. Minors, women and people living with disabilities

Criminal justice and access to justice are intertwined in the sense that they explore issues of both law and social policy and draw links between legal and social problems as well as the obstacles to attaining justice. As the contextual approach of this research is that the criminal justice perspectives are of importance to ensuring access to justice, it necessitates a comparative analysis of criminal justice perspectives in select jurisdictions, and the select jurisdictions of this study alongside Nigeria are; the United Kingdom and the United States of America. This is so because there are strong identified justice perspectives in these jurisdictions.

Examining access to criminal justice in the context of justice perspectives is socio-legal in the sense that it considers the performative nature of criminal justice of Nigerian law in the political and social context. It looks at how law is implemented and enforced and the exercise of discretion in the criminal justice process. In exploring laws, connections with the broader social and political forces, an insight is gained. In that sense, this research is interdisciplinary and multidisciplinary. Being smart on crime means measuring the effectiveness of the criminal justice system; proper access to justice can only serve to strengthen public trust, enhance government accountability and inform public policy; there needs to be accountability and transparency in the enforcement of justice and public safety. It is far better to promote justice rather than enable better access to the legal system, and there are three aspects of this analysis:

- The context of access to justice developments, including recent initiatives in criminal justice in Nigeria
- The public/private dimensions of justice, including issues about resources, capacities, and power; and
- The concept of fairness in promoting social justice/access to justice

The access to justice project of Cappaletti has also led to a comparative assessment of initiatives worldwide and brings in the issue of ethics in criminal justice; Siegel and Worral point out that it is particularly an important topic today in light of the considerable power granted to the operators of the criminal justice agencies in the system. There is a strong reliance on the justice system to exert power over people's lives and to be society's

instrument of social control, as such; the criminal justice system is given the power to deny the right to personal liberty on a regular basis.

A Police officer's ability to arrest and utilize force, a judicial officer's power to detain, remand and sentence an accused person, a correctional officer's ability to punish an inmate; all these are considerable power which must be governed by ethical considerations, because in the absence of ethical decision making, the individual rights of the awaiting trial person will suffer and personal liberties guaranteed by the constitution of the federal republic of Nigeria will be trampled upon.

Discussions about ethics in criminal justice has important implications for access to justice; it has been pointed out that the need for ethical criminal justice systems is further enhanced by cyber-age advances in record keeping and data recording because agents of the criminal justice system now have immediate access to an individual's most personal information, ranging from bank details, educational history, work history and financial history. In this context, issues of privacy and confidentiality can have enormous economic, social and political consequences, therefore they have become critical. Ethical issues encompasses all fundamentals of the justice system but definite concerns form the ethical standards in the individual agencies of the criminal justice system and this affects access to justice for awaiting trial persons and it is necessary to understand how agents of the criminal justice system balance their need to protect control crime, ensure public security, recognize and protect the legal rights of citizens.

3.1.1 Elements of Access to Justice

Access to justice is recognised as important in terms of the increasing interest and engagement of government in criminal justice reforms that are regarded as essential elements of development, human rights, democracy and the rule of law. In terms of elements necessary to ensure access to justice, some recognised dimension indicators which tend to mirror and reflect the main issues relevant to attainment of justice include:[642]

[642] See generally, Marchiori,T. 2015. A framework for measuring access to justice including specific challenges facing women op. cit.

- Rights and entitlements
- Legal assistance and representation
- Legal awareness and literacy/opinions and perceptions of the law and justice systems
- Main justiceable issues experienced by citizens/actions taken/outcomes/involvement with criminal justice
- Trust, satisfaction in justice institutions
- Procedures
- Appeal mechanisms
- Independence of judiciary
- Corruption
- Transparency and accountability
- Enforcement of judicial decisions
- Capacity of the justice systems
- Special courts and procedures
- Alternative dispute resolution.

Most of the identified elements, also regarded as dimensions to justice/indicators are used by international organisations and civil society such as the United Nations, Amnesty International, Prison Reform International, CLEEN World Bank, Open Society Justice Initiative and World Justice Project,[643]to assess justice systems, sometimes states are required to prepare reports with regard to the dimensions, such as the Universal Periodic Review of the United Nations, Human Rights Commission; which provides an opportunity for member states to declare actions taken to improve their human rights obligations[644]and the comments on the state's human rights compliance by other member states.[645] The main

[643] They are also used by governments as a benchmark for the collection of data. In addition to the above other indicators studied in order to measure access to justice include:

- Surveys of living standards
- Demographic and health surveys
- Follow-Up mechanisms/Progress Indicators for measuring the implementation of legislation enabling access to justice.

See Marchiori,T. 2015. A Framework for measuring access to justice op. cit.

[644] Universal Periodic Review (UPR). Retrieved March 06, 2016 from, http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx

[645] The UPR Report of the United States of America of 06 February, 2015, submitted to the U.N. High Commissioner for Human Rights in conjunction with the Universal Periodic Review. Retrieved March 06, 2016 from https://www.stategov/j/drl/upr/2015/237250.htm

purpose of these elements and indicators is to provide governments, civil society and international organizations with tools for:

a. Guiding legal reform, policy making and interventions to improve access to justice;
b. Assess existing gaps in the supply of and demand for justice;
c. Facilitation of monitoring and reporting on progress in improving access to justice and implementing rights and entitlements of awaiting trial persons
d. Enabling comparison of trends in access to justice over time and within and between countries
e. Providing incentives for the collection of data on areas directly or indirectly affecting access to justice; and
f. Raising awareness on the status of awaiting trial persons and on the barriers affecting access to justice.

These indicators tend to be organized around three dimensions: a) the enabling environment[646]b) the supply side of justice,[647] and c) the demand side of justice[648]which will be utilized in chapter four for the comparative analysis of access to justice in the three selected jurisdictions.

3.1.2 Access to Justice at Arrest: Police and Prosecutorial Influence

Weinreb[649]posits that the criminal process is no longer the exclusive property of the specialist because crimes are of interest to the general public and the well-being of the citizenry depends on the effectiveness of law enforcement's response to crime and disorder. He adds that changing the law amounts to little when the process changes only a little and the 'revolution' in criminal procedure seems to be little more than spinning wheels. Police officers who investigate crimes often face ethical issues during the criminal justice process. They must determine who committed the crime so that they can be apprehended and brought to justice. The investigation and arrest of a suspect often have serious implications and should be guided by rule of law and due process. Access to justice at the point of arrest is a big challenge in Nigeria; an arrest can be regarded as the act of

[646] This covers the legal framework setting forth the rights and entitlements, regulations and safeguards which define the space within which citizens and the state can negotiate access to justice and justice outcomes
[647] This includes the elements that make up the justice machinery, such as the institutions and human resources that are essential to the provision of justice services.
[648] This focuses on the elements that enable citizens to seek remedies through the justice system.
[649] Weinreb, L. L. 1977. Denial of justice, vii

depriving a person of liberty in relation to an apprehension at the scene of a crime or based on the outcome of an investigation, prevention from committing a crime or in the process of an investigation. It is a very important aspect of the criminal justice process of an investigation. The police and other law enforcement agents have the powers of arrest but more often than not the citizenry's interaction with law enforcement agents are marred by rudeness, humiliation, harassment, stonewalling, corruption, police indifference and brutality and these are also factors in the obstruction of access to justice of awaiting trial persons.

Nigeria was ruled by colonial powers for several decades and although it has gained independence for over sixty six years, the history of successive administrations has shown either a militarized or commercialized criminal justice system with either a dictatorial military/civilian rule or a weak democracy. There has also been a history of violent ethnic conflicts with the nation currently facing problems of insurgency, terrorism, ethnic and religious tension. The constitution categorically stresses the importance of achieving equal justice for all citizens but the system of values of the federation is obstructing the criminal justice process. The police, particularly in uniform, conveys the power and authority of the office, it also has a subconscious psychological influence on people, the nature of which depends on a person's preconceived feelings about police officers[650] Police public relations are problematic in Nigeria especially because of its multiethnic societies, although this is not particular to Nigeria as multiracial societies such as the United States of America, the United Kingdom, Australia and New Zealand face the same problems. In order to address this, there is a need for a systematic programme to minimize the negative influences exerted by more experienced colleagues on fresh recruits being inducted into the police force and other law enforcement agencies or else the subculture of occupational deviance will continue.

There have been debates on the broad powers of the Nigerian police to investigate, arrest and prosecute cases. It has been claimed that it hinders the criminal justice process and

[650] Johnson, R. (2001). The Psychological Influence of the Police Uniform. FBI Law Enforcement Bulletin, pp. 27-32

leaves room for manipulation of evidence by the police. The delays in the criminal justice process are often blamed on the police who handle majority of criminal cases at the magistracy level. Fortunately or unfortunately, depending on a person's point of view, the Administration of Criminal Justice Act 2015 has limited the prosecutorial powers of the police to only those who are lawyers.[651] And this has been welcomed as a positive change in the administration of criminal justice in Nigeria and represents a deliberate attempt to lay to rest the issue of lay prosecution of criminal cases as affirmed by the Supreme Court in the case of *I.G.P. v. Osahon*.[652] In this case, the Supreme Court affirmed the powers of the police prosecutor, whether qualified as a legal practitioner or not, to prosecute criminal cases in any court.[653]Section 23 of the Police Act also provides for police prosecutorial powers, and case law shows that the practice has gained ground through judicial pronouncement.

The drive against lay prosecutors prosecuting criminal cases has been spurred by the limited legal knowledge of lay police prosecutors which result in substandard handling of cases, police prosecutors tend to lack knowledge of the inner workings of the legal profession and courts and are more likely to make mistakes because they are unable to match the expertise and experience of practiced defence counsel, particularly Senior Advocates. This has led to the strong support for the removal of police prosecutorial powers. The support for the removal of police prosecutorial powers has been premised on the possibility of the action speeding up the criminal trial process and the dispensation of justice. This would thus vest the power of all prosecution on the Attorney General and the Ministries of Justice.

3.2 Access to Justice and Corruption

[651] See Section 106 where it is stipulated that prosecution of all offences in any court should be undertaken by the Attorney General of the Federation (AGF) or a lawyer in his Ministry; a legal practitioner authorized by the AGF or a legal practitioner authorized to prosecute by law.
[652] (2006) 5 NWLR (pt. 973)361
[653] Historically, the practice of using police men who are not lawyers to prosecute cases originated during the colonial era due to the unavailability of lawyers to handle criminal cases.

Corruption is defined as depravity, perversion, or taint; an impairment of integrity, virtue, or moral principle; especially the impairment of a public official's duties by bribery.[654]it is also defined as the act of doing something with an intent to give some advantage inconsistent with official duty and the rights of others; a fiduciary's or other official's use of a station or office to procure some benefit either personally or for someone else, contrary to the rights of others.[655] Akintola[656] perceives corruption as implying:

> …abuse of office, abuse of privilege, undue advantage, undeserved favour obtained through manipulation of the law, rules or regulations, untoward conduct premised on graft, or a promise of same, performance of services in exchange for gratification, non-performance of duties or services in order to confer some advantages or benefits, advance fee payments, kick-backs, upfront gratifications, pecuniary or immoral benefits from illegal conduct, sexual harassment of subordinates or the weak, political corruption, nepotism, tribalism…[657]

Corruption is a significant factor in access to justice and is one of the major contributors to human rights violations in the Nigerian criminal justice system. It is not limited to Nigeria and developing countries but permeates criminal justice systems worldwide as corruption has been with man from time immemorial, it just that the degree to which it is practiced in some jurisdictions far outweighs the services that the system provides to the society. Corruption permeates the criminal justice process and poses a serious threat to the administration of criminal justice.

Aligba[658]blames the prevalence of corruption today on the British colonial administration who he opines were out for 'blatant cheating and exploitation of the indigenous people and their resources' and as such, no emphasis was placed on principles of good governance such as accountability and transparency in the management of the nation's affairs under colonial administration. As such, the native chiefs that ruled were not expected to render

[654] Garner, B.A. (ed. in Chief) Black's Law Dictionary
[655] Ibid.
[656] Akintola, A. 2010. Corruption and the rule of law: wither Nigeria, University of Ibadan Alumni Association (U.I.A.A.) 2010 Annual Alumni Lecture, Guest Lecturer
[657] Akintola, A. 2010. op.cit.
[658] Aligba, A. 2013. A critical appraisal of the fight against corruption in Nigeria. An edited article presented at the 46th Annual Conference of the Nigerian Association of Law Teachers tagged 'Corruption and National Development' 22-26 April, 2013, University of Ilorin, Ilorin. 129-158.

accounts of their stewardship to the indigenous people and neither were the colonial administrators. He asserts that at the time the British colonized Nigeria, they were also faced with the problem of corruption in their own country and that at that time; King George III monitored bribes and payments to the parliamentarians. He further asserts that the fact that the present corruption in Nigeria is the product of British colonialism can be supported by the series of laws that were enacted by the British society long before they colonized Africa and even after, such as; the Sales of Offices Act of 1551, the Sale of Offices Act of 1809, the Public Bodies Corrupt Practices Act of 1889, the Honours (Prevention of Abuses) Act of 1925, the Prevention of Corruption Acts of 1606 and the Prevention of Corruption Acts of 1916. To him, the promulgation of these laws on corruption for Britain is a pointer to the fact that corruption was identified as a problem to the British society long before its companies and people came to the shores of Nigeria to colonize it and the eventual colonization of the country marked the transfer of existent British corrupt practices into the Nigerian society. These corrupt practices were then invidiously transmitted into the indigenous elites that were recruited in the colonial service, and later succeeded the British colonialists as leaders of Nigeria.[659]

There is subjective evidence about corrupt activities in the criminal justice system,[660] although there is a clear link between corruption and human rights violations of awaiting trial persons. Corruption manifests itself in many ways and occurs at every step of the criminal justice process; from the point of arrest, movement to the police station or other detention facilities of law enforcement agencies, interrogation, the prosecution, defence counsel, judges, magistrates, and prison officials. Although Open Society Justice

[659] See also Lai, O. and Akinboye, S.O. Eds. 2005. Democracy, good governance and corruption in Nigeria: 1999-2005.; Okonkwo, C.O. 1980. Okonkwo and Naish, Nigeria criminal law. 2ed ed. 4-5; Adedayo, A. 1990. Power in politics, 26

[660] For example former Inspector General of Police, Mr. Tafa Balogun was arraigned and tried for official corruption and misappropriation of police funds to the tune of about 17 Billion naira (*FRN v. Tafa Adebayo Balogun & 8 ors, FHC/ABJ/CR/14/2005);* Inspector General of Police, the Comptroller-General of Customs and the Chief of Naval Staff were interrogated by a Committee for the National Assembly but could not account for the disappearance of a ship which was allegedly involved in a crime in Nigeria. Subsequent investigation by the State Security Service revealed that two Senior Officers of the Nigerian Navy, Rear Admiral Francis Adegbite and Rear Admiral Samuel Kolawole were behind the disappearance of the ship, MT African pride, they were dismissed in January, 2005. See also Aligba, A. op.cit.

Initiative[661]opines that this is often as a result of the police officers, judges, prosecutors and prison officials being underpaid, and consequently, they make decisions about arrest, investigations, charging the accused person, bail and pretrial detention to generate income rather than to uphold the law or protect public safety, it goes beyond that. Corruption has now become the norm. Examples of corrupt practices in the everyday life of the criminal justice system abounds, particularly on the streets and everyday life of the Nigerian criminal justice agents. You see police officers, traffic wardens and Federal Road Safety marshals regularly stop motorists, particularly motorcycle operators, taxicab and bus drivers and extort money from them and when they do not "cooperate" they delay them for long periods of time or brutalize them, and this actions flow into the interrogation process upon arrest, interrogation, bail, arraignment, remand, the trial process, conviction, sentencing, and the prison.

Thus, corruption affects the ability of the awaiting trial person to access due process, to access the most basic rights and services in or out of detention and even the ability of citizens to stay safe from harm. Looking through the criminal justice process, corruption can be seen: At the beginning of the criminal justice process, as the police can misuse their powers of arrest to extort money. After arrest, they may require bribes to prevent torture or other forms of abuse. The families of victims, the victims and the accused may need to pay bribes to push the case forward. Sometimes lawyers bribe the police to ensure that the case does not go beyond the point of arrest. Judges have been accused of encouraging pretrial detention as a means of demonstrating that they are not corrupt, but this is often a means to distract the populace from their release of arrested persons who pay bribes.Corruption also mars the trial process as cases can be adjourned.

The prisons are not left out in the whole process as it is alleged that there is little transparency or public oversight and as such, they are high risk environments for corruption, such that detainees become actively involved in and initiate corrupt practices; the prisons themselves becoming homes to black markets; the prisons as havens for criminal groups who operate from behind bars; and Prison guards cooperating with prisons

[661]Open Society Justice Initiative 2014. Presumption of guilt, 106-108

to smuggle in contraband items such as drugs, mobile phones, cigarettes and alcohol which help gang culture to thrive in prisons. There are also other effects of corruption on awaiting trial persons, such as; sexual exploitation of detainees for basic services or for better treatment, and forced labour, where detainees work to survive.

Corruption in the administration of criminal justice also leads to the diversion or outright theft of funds and supplies meant for the proper administration of the agencies of the criminal justice system, leading to infrastructural neglect and decay, non availability of services due to the diversion of funds or supplies such as, guns, vehicles, bedding, food, medicine e.t.c. Apart from the fact that corruption and its practices lead to so many injustices and human rights abuse in and out of detention, and that its tentacles spread beyond the awaiting trial person and the agents of the criminal justice system to the families and friends of the accused persons, corruption has a deleterious effect on the rule of law and due process. This is because its profit making opportunities makes the actors prefer to maintain the status quo rather than seeking to improve the system. President Olusegun Obasanjo on 29 May, 1999 made an important statement as regards corruption when he said that "*no society will be able to achieve anything near its potential if corruption is allowed to become a full blown cancer."*

3.3 Access to Justice and Procedural Factors

In Nigeria, the process of deciding between pretrial detention and release is more often than not skewed against the accused/awaiting trial person and where a decision has been made to detain an accused person it is almost impossible to challenge the decision. It is however expected that at the stage of deciding whether a person should be detained, adequate consideration should be made of the character of the accused, his health, mental state, and financial situation and other alternatives to pretrial detention.

The practice of 'holding charge' in Nigeria, enables the police and other law enforcement agents to bring an accused person before a court that lacks jurisdiction to try him/her for the primary purpose of securing a remand order prior to obtaining sufficient evidence against the suspect. Black's law dictionary defines a holding charge as "*a criminal charge*

of some minor offense filed to keep the accused in custody while prosecutors take time to build a bigger case and prepare more serious charges,"[662]the concept is further explained in the case of *Onagoruwa v. State*[663]that;

> …in a good number of cases, the police in this country rush to court on what they generally refer to as "holding charge"…Where the investigation does not succeed in assembling the relevant evidence to prosecute the accused to secure conviction, the best discretion is to abandon the matter and throw in the towel…On no account should it go out of its way in search of evidence to prosecute the accused when it is not there. When it degenerates to such a situation of "hunting down," the prosecution is no more regarded as the prosecutor but as a persecutor, and that is not consistent with the philosophy of our adversarial system of adjudication."

Thus, the holding charge enables the police and other law enforcement officers conduct investigations at their leisure while a suspect languishes in a prison. The main excuse proffered by the police who are the main users of the holding charge is that an alleged offender could interfere with the criminal investigation or abscond from the jurisdiction of the police. It is worthy of note that criminal law and justice is predicated on the commission of an offence and not on an assumption or speculation that an offence has been committed and this is what the holding charge does.

Sections 99 (b), 293 and 294 of the Administration of Criminal Justice Act (2015) has further entrenched the holding charge menace on the awaiting trial person, despite the fact that it violates the principle of presumption of innocence and gives legal justification for the detention of accused persons where the police or other law enforcement agents do not have sufficient evidence or are yet to obtain evidence on the suspect and seek to remand the suspect while they seek for evidence against the accused person.

The holding charge is the main reason why there are so many awaiting trial persons on remand in Nigerian prisons. Examples of this will be highlighted as follows: 72% of the estimated 63,000 people in 235 prisons across Nigeria are awaiting trial, an estimated

[662] Garner, B.A. (ed. In chief). Black's Law Dictionary (9th ed.) op.cit
[663] (1992) 2 NWLR (Pt. 221)33 at 54

17,897 (28%) while 45, 263 (72%) are awaiting trial.[664]In some prisons the number of awaiting trial persons versus convicted prisoners is as follows: Awka prison which has a retention capacity of 238 inmates, has 509 inmates-28 are convicted prisoners while 481 are awaiting trial; Onitsha prison which has a capacity for 326 inmates has 847 inmates out of which 41 have been convicted and 735 are awaiting trial;[665]while Lagos State has 5,503 awaiting trial inmates out of a total figure of 6,552 (85.91%) of the total state inmate population.[666]This is as a result of Nigeria's practice of arrest before investigation instead of investigation before arrest which is a procedural defect in the criminal justice process and has very negative ramifications for the awaiting trial persons on remand and the entire criminal justice process.

3.4 Access to Justice and Coordination between Criminal Justice Agencies

Coordination and active collaboration amongst criminal justice agencies is a crucial element to the success of the administration of criminal justice and ensuring access to justice. Lack of coordination will only serve to delay the criminal justice process and pose undue and unnecessary hardship on the awaiting trial persons. In Nigeria, coordination among criminal justice is a challenge; it has been reported that there is a "*near total failure of coordination and information management between the various agencies at the state and federal levels involved in the criminal process."*[667] Open society has this to say on lack of coordination:

> The lack of coordination between, and even within, criminal justice agencies typically lengthens the duration of police investigations. Prosecutors need to

[664] Idoko, C. Aug. 31, 2016. Inmate population in Nigerian prisons hits 63,000. FG. says 72% inmates awaiting trial: as UN offers assistance on prison decongestion. *Tribune*. Retrieved Feb. 22, 2017 from https://tribuneonlineng.com/inmates-population-nigerian-prison-hits63000-fg%.E2%A2say-72-inmates-awaiting-trial-%E2%80%A2as-un-offers-assistance-prison-decongestion ; International Centre for Prison Studies gives the figures as at January, 2017 as 67,586 total inmate population, with 42,229 (69%) awaiting trial-a female population which stands at 1.7% and a juvenile/minor/young prisoners at 1.7%. Retrieved 22 February, 2017 from http://www.prisonstudies.org/country/nigeria.

[665] Ayorinde B. (et.al) 2014. Nigeria: a reformatory approach to the criminal justice system in Nigeria. *MONDAQ.* Retrieved October 23, 2016 from http://www.mondaq.com/Nigeria/x/293894/Public+Order/A+Reformatory+Approach+To+TheCriminal+Justice+System+In+Nigeria

[666]It should be noted that the figures presented in this research fluctuate from day to day, month to month, and year to year, consequently the figures given are but an indication of the trend; as such, information given is inevitably incomplete. See Onyekwere, J. (et.al). Feb 07, 2017. Quick justice delivery and burden of ACJ act implementation. *The Guardian*.

[667] Schonteich, M. 2014. Presumption of guilt. op.cit

> communicate and consult with one another to avoid case files collecting dust on a detective's or prosecutor's desk. Arrestees need to be brought before court in a timely manner for their initial remand hearing or, once in pretrial detention, to be returned to court for reviews of their pretrial detention at regular intervals. Court based hearings can typically proceed only with the presence of the arrestee, a police investigator, witnesses, a judicial officer and, in many cases, defense counsel. A lack of coordination bars the progress of such hearings.

They also provide a glimpse of the coordination required to get a detainee to court for trial:

> For a detainee's case to be heard at the given date requires six things to perfectly coincide. First, the Magistrate must arrive in town on the predetermined date. Second, the complainant/plaintiff must be present. Third, relevant witnesses must not take longer than anticipated. However, the preceeding court cases must not take longer than anticipated. However, the requirements needed for a case to proceed are infrequently met. Often, a lack of fuel, backed up court cases at another site, and unforeseen logistical problems arise and cause an absence. Witnesses rarely come to court as the costs associated with going to court are high and in many cases insurmountable (basic travel costs, etc). Prosecuting officers often do not show up. Interviews with officials at [x] Prison suggest that prisoners are not always transferred to court on the day of their hearing. Moreover, court cases often take longer than expected and the queue of cases is never quite finished.[668]

This paints a picture that is not strange to the Nigerian criminal justice system and has the effect of keeping awaiting trial persons in detention awaiting trial indefinitely. The police as with most other law enforcement agencies in Nigeria is a federal agency and has the primary responsibility for investigating crimes, however, most crimes are state crimes prosecuted by state prosecutors administered by State Directors of Public Prosecution who have no control over the police; as such records could get lost, case files could go missing, leaving an awaiting trial person in the loop. It is pertinent to point out that although lack of coordination is a major problem in the administration of criminal justice in Nigeria, it is not endemic to Nigeria and developing countries alone, developed nations with well defined justice systems also have coordination problems amongst criminal justice agencies[669]

[668] Sandefur, J., Siddiqi, B. and Varvaloucas 2011. Timap criminal justice pilot: baseline report. *Centre for the Study of African Economics* (unpublished), Oxford, as quoted in Schonteich, M. 2014. Presumption of guilt, 110.
[669] Schonteich, M. 2014., op.cit.

In light of the fact that the different agencies of the criminal justice system perform different functions but are interdependent on each other for the success of the system as a whole, it is necessary for them to integrate and appreciate each other's roles in order to achieve the aims and objectives of the criminal justice system which is to deliver justice for all by convicting and punishing the guilty and helping them to stop offending, while protecting the innocent.

3.5 Access to Justice and Limited Resource/ Inadequate Legal Representation and Assistance

Since independence, the Nigerian Legal system has operated under substantial resource constraints. The criminal justice system has been perennially plagued with the paucity of funds to carry out its operations. The Police, Directorate of Public Prosecutions, Judiciary and Prisons in Nigeria are poorly equipped to carry out their duties of prevention, detection, investigation, arraignment, conducting trial, and processing inmates. Most of the agencies lack a viable communication network, vehicle, well equipped libraries, and even the basic office supplies. Lack of adequate resources has the effect of increasing pretrial detention and serves to lengthen the pretrial and trial process.

The effect of limited resources on the police is that they are poorly equipped to carry out their basic duties of investigation, detection and apprehension of suspects and criminals. For example, lack of forensic equipment or staff, leaves the police with limited investigative abilities which makes them place over reliance on apprehending minor offenders, catching people in the act and relying heavily on confession. The effect of this is that there is therefore a strong tendency for police to use pretrial detention, not as a means of detaining dangerous suspects pending the outcome of trial, but rather, as a form of sanction[670]

[670] See generally, Schonteich, M. 2014. Presumption of Guilt: The Global Overuse of Pretrial Detention op. cit. pg. 111 and Olatunbosun, A. (2012) Criminal Justice in Nigeria, op.cit. pg. 86

The effect of limited resources on the courts is that Judges and Magistrates tend to have ill-equipped libraries, if any at all. On the issue of limited resources on the judiciary, Olatunbosun states that;

> It is common practice to see Judges and Magistrates request a private legal practitioner to leave behind in Court, the cases and authorities cited in the argument of a case, if the Counsel wants the Judge or Magistrate to consider such a citation in the ruling or judgment of the court, for the reason that the Judge or Magistrate cannot otherwise have access to the publications cited. Also facilities such as telephones. Faxes, photocopies, air-conditioners are non-existent in most of the offices.
>
> To worsen their problems, judicial officers write court proceedings in long hand, with no supporting staff, Court stenographers or electronic recording systems such as the court dockets are full everyday, due to neglect on the part of government in providing financial grants to the judiciary with very little achieved results leading invariably to several adjournments to the detriment of the suspect awaiting trial.[671]

Limited or lack of resources also affects the prisons in the sense that due to lack of fuel or vehicles, it becomes difficult to transport awaiting trial persons to the courts on their appearance dates thus adding to the problem of delay of the justice process and keeping them in remand for long periods of time where they can be abandoned.

The Directorate of Public Prosecutions is not left out in the problem as the directorate tends to lack basic facilities such as up to date law reports, reference books, journals and other legal materials. Thus public prosecutors tend to be unaware of current legal developments. They also suffer from a limited/lack of supply of basic stationery, office equipment, office personnel and vehicles which hinders the performance of their duties.[672]Lack of resources also undermines alternatives to pretrial detention, thereby increasing the possibility that courts will remand awaiting trial persons in pretrial detention because they lack the capacity and personnel to track awaiting trial persons awaiting trial within the community.

[671] Olatunbosun, A. (2012) Criminal Justice in Nigeria, ibid. pg. 86
[672] Olatunbosun, A. 2012. Criminal justice in Nigeria. 82

Another factor which hinders access to justice is inadequate legal representation and assistance: inadequate legal representation and assistance is a conundrum which beleaguers the Nigerian criminal justice system. Persons without financial wherewithal are effectively denied their rights throughout the criminal justice process, and this is further compounded by a lack of general education and knowledge about basic rights, particularly rights at the point of arrest, interrogation, bail, arraignment and trial. As a result, suspects are not aware that their rights are often ignored or trampled upon by the police and other law enforcement agents. Where a person is arrested and interrogated without proper representation, he could be forced or deceived into confessing to a crime that he should be presumed innocent of. Subsequently, being unaware of the legal and factual criteria utilized by courts, he could be detained pending the outcome of trial which can only make any preparations for his defence all the more difficult[673]

Adequate legal assistance and representation, particularly at the point of arrest can have a very significant effect on the chances of pretrial detention of an awaiting trial person, and even when they are detained, how long they are detained,[674] but as the main problem faced by most arrestees who happen to be low income earners is accessing legal assistance, free legal assistance is the main way they are able to obtain legal assistance. In Nigeria, the legal aid council was created to give effect to the Section 46 (b) of the constitution which mandates a legal scheme in Nigeria and is geared towards expediting justice for everyone. Legal aid is thus essential to guaranteeing access to justice for awaiting trial persons, especially those who do not have any knowledge of the criminal justice process and those who do not have the financial means to obtain legal assistance.

[673] The ability to trace and interview witnesses, scrutinize evidence against them, study the relevant laws and prepare for their defence. See generally Cape, E. and Stapleton, A. 2012. Improving pretrial justice: the role of lawyers and paralegals, *Open Society Justice Initiative*. Retrieved September 13, 2016 from http://www.opensocietyfoundations.org/sites/default/files/improving-pretrial-justice-20120216.pdf

[674] See for example, the Open society justice initiative in selected Nigerian states which provides for lawyers known as duty solicitors, to be stationed at police stations around the clock. The end result of the initiative was that the duration of pretrial detention reduced by almost 20 percent. See generally, Nwapa, M. 2008. Building and sustaining change: pretrial detention reform in Nigeria, 97-98

3.6 Implications of lack of access to justice and awaiting-trial detention on the rule of law

The rule of law, regarded as the foundation of a fair and just society, a guarantee of responsible government, and critical to enabling peace and co-operation in any society;[675]provides the framework for transparent, responsive and accountable institutions which strengthens people's trust and confidence, and by so doing, promotes peaceful societies.[676]According to Lord Bingham[677] the rule of law is the foundation of modern states and civilizations. As important as it is, the rule of law is not fixed for all time, some countries do not subscribe to it fully, and some subscribe to it only in name, if that.[678] Even those who subscribe to it find it difficult to apply all its precepts all the time.

The rule of law is thus the cornerstone of stability, peace and security, law and order, the protection of civilians and the protection of property. The rule of law is not just about observance of laws; it is about a commitment to justice, social as well as legal.[679] There is an international agreement that the rule of law and access to justice are indivisible. Access to justice is thus a necessity for a society based on the rule of law. Although access to justice and the rule of law are deeply rooted in Nigeria's laws and the Constitution provides the right to have one's case heard by an impartial and competent tribunal, there are those who struggle to access justice. Justice is the vindication of legal rights, and where justice cannot be accessed, the rule of law cannot be said to operate. Access to justice is thus one of the more pressing and significant issues confronting the criminal justice system today.

The rule of law requires that individuals are provided with meaningful access to justice which goes beyond guaranteeing physical access to the courts and lawyers; it requires that all processes that bring people in contact with the law are just, fair and in line with due

[675] Arnot, B. (et. al.) (2015). Access to justice and the rule of law: the British council approach. Retrieved February 23, 2017 from www.britishcouncil.org/society/justice-security-conflictresolution
[676] Irene Khan, Director-General of the International Development Law Organization (IDLO) as contained in Holdsworth, V. 01 July, 2016. Rule of law and access to justice are indivisible from development. Retrieved February 22, 2017 from http://www.diplomaticourier.com/rule-law-access-justice-indivisible-development/
[677] Lord Bingham 2007. The rule of law. *The Cambridge Law Journal*. 66:67-85.
[678] ibid
[679] Irene Khan, ibid.

process. Thus where the rule of law is undermined, it can mar the legitimacy of a nation's criminal justice system because the norms, values and standards enshrined in laws and regulations that are not consistently applied by law enforcement, prosecutors, judges and other criminal justice actors will only have face value. The right of access to justice exists to uphold the rule of law, and undeniably, the rule of law cannot be upheld unless access to justice is effective. Even though the right of access to justice is justified as fundamental to the preservation and enforcement of every legal right, freedom, and obligation which exists under the rule of law,[680]access to justice is one of the greatest challenges facing the Nigerian criminal justice system. For some, the rule of law in Nigeria can best be described as a political terminology used to express political situations in a democratic setting, it is also regarded an abstract concept taught in school as literature but has nothing to do with the practice of law and justice.

The direct impact of lack of effective access to justice can be seen in the proportion of awaiting trial inmates in the Nigerian prisons and these have a direct impact on citizens, the community and the criminal justice system as a whole. There is a relationship between the high rates of pretrial detention, the violation of procedural norms that the criminal justice system operates by and the harm done to the ideas and practices of basic fairness, due process, and equality before the law.[681]Ensuring access to justice, particularly for persons awaiting trial, by making sure that they have adequate legal representation and where they cannot afford one, providing one for them; ensures that the criminal justice agents carry out their respective duties in line with due process and laid down rules and regulations has strong positive implications for the rule of law.

3.7. Benefits of early access to justice[682]

[680] Sharp, G. (01 July, 2016) The Right of Access to Justice Under the Rule of Law: Guaranteeing an Effective Remedy. (Unpublished) University of Saskatchewan of Law

[681] Schonteich, M. Ed. 2014. Presumption of Guilt: The Global Overuse of Pretrial Detention

[682] This portion of the research relies on information culled from, Gray, A. (et. al) 2009. Cognitive impairment, legal need and access to justice. *Justice Issues Paper 10*. Retrieved March 08, 2017 from http://www.lawfoundation.net.au/ljf/print/4016D54ECE363B3CA25756F001DEE70.html; Dyck, K. March 23, 2016. Making a list: barriers to access to justice. *Justice Issues*, *Slaw*. Retrieved March 08, 2017 from http://www.slaw.ca/2016/03/23/making-a-list-barriers-to-access-to-justice/;OjukwU, E. (et. al.) 2012,

Early access to justice can have a positive impact on the criminal justice process, the criminal justice system and the society at large. The most important thing that can happen to an awaiting trial person is early intervention. There is evidence to show that early intervention in the form of legal representation, particularly at the point of arrest and interrogation can reduce the use of pretrial detention, improve the performance of criminal justice personnel, yield more rational and effective decision making and increase accountability and respect for the rule of law.

The constitution recognises the right of a suspect/accused person to the presumption of innocence, and it is the responsibility of government to ensure that the criminal justice system and its processes are fair and humane. As the criminal justice process proceeds, from the point of arrest, early access to justice, particularly where measures are taken to assist people with legal representation, ensuring that they understand the way the criminal justice system works, improving the facilities and services of the criminal justice system, would increase the possibility of effective and timely justice; as more often than not, in a criminal case where the police cannot establish a case against a suspect, such a case can be dealt with at the point of arrest and interrogation and the suspect can be eased out of the system, thus saving time, money and resources of the system. The effect of timely and effective access to justice would reflect in the following;

3.7.1 Effect on the criminal justice system

Where the system processes awaiting trial persons timeously and humanely; keeping in mind the ultimate aim of modern criminal justice systems which should be the ascertainment of the true facts of the individual case and not just the apprehension of a

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Handbook on prison pre-trial detainee law clinic op.cit.; Beqiraj, J. and McNamara, L. 2014. International access to justice: barriers and solutions. *Bingham Centre for the Rule of Law Report 02/2014*. International Bar Association, October 2014. Retrieved March 08, 2017 from www.binghamcentre.biicl.org; Hanson, A.L. 2015. Eliminating barriers to justice: how and why to ensure language access for limited English proficient and deaf/hard of hearing litigants. Retrieved March 10, 2017, from www.proliability.com/lawyers ; Anon. 2011. Handbook on improving access to legal aid in Africa. *Criminal Justice Handbook Series, United Nations Office on Drugs and Crime*..; Schetzer, L. (et.al.) 2002. Access to justice and legal needs: a project to identify legal needs, pathways and barriers for disadvantaged people in New South Wales (Background Paper), Law and Justice Foundation of New South Wales.

scapegoat to answer for purported crimes committed without ensuring that the accused is indeed guilty of the crime accused of, reduces the burden that such a large group of persons place on the system financially, procedurally and resource wise, Thus improving the image of the system and reflecting a more effective system.[683]

3.7.2 The effect on the awaiting trial person

Studies have shown that pretrial detention can have very negative effects on awaiting trial persons; it could affect their financial status, social status, health and education. This increases poverty; particularly where the awaiting trial person is a major breadwinner in the family and has dependants. An effective criminal justice process would enable such a person know their fate timeously and an effective criminal justice would ascertain their innocence or guilt thus reducing detention rates.[684]

3.7.3 The Effect on the Victim

Although the focus of this research is on awaiting trial persons and not victims, an effective criminal justice system that upholds the rule of law, due process and respects the fundamental human rights of all cannot but have a positive impact on victims of crimes who are sadly neglected and more often than not ignored in the Nigerian criminal justice system, except perhaps, as a point of reference to the fact that a crime has been committed. An effective criminal justice system could assist, where necessary, in ensuring that a surviving victim and their families are considered while the agents of the criminal justice system go about their duties of interrogation and obtaining information and evidence in support of the case.[685]

3.7.4 The Effect on Society

An effective criminal justice system would be beneficial to the society in the sense that improving access to justice is not just about increasing criminal justice personnel in law enforcement, the legal profession, judiciary, prison and other administrative functions, it is about improving the quality of justice in terms of substantive law and procedure in

[683] op.cit.
[684] op.cit
[685] ibid

consonance with the prevailing norms on the rule of law and due process. When the quality of criminal justice improves, it restores the confidence of citizens in the criminal justice process and has the added benefit of a stable society which in turn will encourage development which will create jobs and reduce poverty rates.

The criminal justice system can also aspire to the following principles in order to 'ensure access to justice,' in the results it delivers;

a) Be just in the way it treats accused persons/suspects;
b) Offer appropriate procedures at a reasonable cost (bail, litigation);
c) Deal with cases presented to the system with reasonable speed;
d) Be understandable to those who use the system
e) Be responsive to the needs of those who use it;
f) Provide as much certainty as the nature of the particular situation allows
g) Be effective: ensure that there are adequate resources and that the system is organized

Although, the expectations of the effects of early access to justice are at best utopic, and can be seen in some criminal justice perspectives, aspiring to an ideal which can ensure access to justice can have a positive impact on a percentage of people who come into contact with the law. At the end, the effect of early access to justice on the criminal justice process is that the rule of law and due process is upheld, confidence is restored in the system as a whole and society benefits.

3.8 Barriers to access to justice

The Nigerian citizenry want a criminal justice system that is capable of efficient response to crime, punishment of crimes committed and prevention of crimes. There are however many barriers to access to justice, particularly for the common man, the vulnerable and those awaiting trial. These barriers stand between a person in contact with the law and effective access to justice; they exist despite efforts to remove them and the good intentions of legislators, regulators, service providers, lawyers, and other actors in the criminal justice system. They include the following;

3.8.1 The cost of legal services

Legal issues are not something a person plans for or anticipates, they more often than not occur and become pressing issues in the life of an accused person. Lawyers normally charge for their services based on factors like experience, success rates, location, and the perceived complexity of the case and they tend to ask for a significant upfront payment towards likely costs which most awaiting trial persons are unable to afford. The high cost of legal services in Nigeria means that many citizens find it difficult to pay for a lawyer for even the most basic legal services as a large percentage of the Nigerian populace are finding it difficult to survive daily, talk less of being able to afford legal assistance.[686]

3.8.2 Difficulty in obtaining legal aid

When people find themselves in need of legal assistance and they are unable to afford the services of a legal practitioner they search for legal aid. The Nigerian government recognises that the legal system is out of the reach of many Nigerians. Legal aid, the Nigerian Bar Association, researchers, scholars, the courts and the community have highlighted the problem of access to legal aid, yet despite the enactment of the legal aid scheme, government has failed to keep pace with the demand for legal assistance thus, access to legal aid is a recognised barrier to access to justice and a large percentage of the citizens, particularly those awaiting trial, who cannot afford the services of a legal professional are denied access to justice because the legal aid scheme is unable to cater to their needs, and when this happens, they are forced to represent themselves or give up on their rights.[687]

3.8.3 Language/communication barrier

This can affect access to justice particularly in a multi-lingual and multi-ethnic society such as Nigeria where migrants and non-indigenes face significant barriers to access to justice because they tend to have insufficient knowledge of the language on which legal information is available or where the state is unable to access timeously, an interpreter for the individual.[688]

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[686] op.cit.
[687] Ibid.
[688] op.cit.

3.8.4 Ignorance

Lack of education, knowledge of the applicable laws and how they apply to a particular case are recognised as barriers to access to justice because without education, an individuals have a decreased capacity to understand and enforce their rights and obtain legal representation.[689]

3.8.5 Fear of Retribution

Fear of retribution is a recognised barrier to access to justice as victims or witnesses to a crime may be afraid of the effect of reporting an offence, particularly where they are dependent on the offender, relatives or friends for livelihood and support or they are afraid that offenders with the wherewithal to ensure their silence can do so as a result of ineptitude or corruption, whereby information leaks as to their identity, which can have dire consequences for their personal safety, livelihood, or the safety and or livelihood of their families and friends.[690]

3.8.6 Disability/Impairment

Disability or impairment has the potential to allow for discrimination which can have a negative effect on access to justice for those concerned, particularly, those with physical, hearing or speech impediments who may have difficulty comprehending the criminal justice process or communicating with officials of the criminal justice process.

3.8.7 Discrimination

Discrimination has the potential to affect access to justice in the sense that it can affect awareness and understanding of legal rights, access to counsel and the achievement of fair, impartial and enforceable solutions. In Nigeria, discrimination has a negative effect particularly on migrants and non-indigenes of states who can face a contradiction in relation to their understanding of the laws applicable to crimes in a state and the means of

[689] ibid
[690] ibid

achieving access to justice. Thus, such people become subject to increased risk of abuse, injustice and exploitation

3.8.8 Distrust

Distrust of the criminal justice system leads to un-cooperative witnesses, surviving victims of crime who are reluctant to report crimes and a society that views the system with a jaundiced eye.[691]

3.8.9 Poverty

Poverty is regarded as both a cause and consequence of inadequate access to justice can be looked at from two sides-

i. The inability of an individual to access economic resources which can enable him to overcome systemic failures and enforce his economic, social, cultural and political rights; and
ii. The reduced financial and human resource allocations to justice institutions which produce failures in the system and also lead to reduced access to literacy and information, limited political say, stigmatization and discrimination.[692]

3.8.10 Summary

The above mentioned barriers to access to justice can be found at two levels: Structural and Individual: Structural barriers include Poverty, lack of representation and participation in decision making, discrimination in access to economic resources, the cost of legal representation, and legal aid that is not wide reaching, lack of enforcement of decisions, inadequate physical infrastructure, limited judicial capacity, corruption, lack of oversight mechanisms for promoting transparency and accountability of the criminal justice system. Shortcomings in the structure and operation of the criminal justice system have the effect of negatively impacting access to justice.

Individual barriers on the other hand, include illiteracy, fear of retribution, a sense of powerlessness, lack of awareness and economic status deriving from lower wages and

[691] Ibid.
[692] op. cit.

customary practices, distrust of the criminal justice system, knowledge of the applicable laws and how they apply to a particular case. Although these distinctions in barriers to access to justice are theoretical, the barriers are themselves situated within the structures of the criminal justice system, the society, culture and economy and capture the complexity of the barriers to access to justice. In practice, the barriers to access to justice tend to operate simultaneously and have mutual effects on each other that intensify their impact on the awaiting trial person, the community and the criminal justice system. Addressing barriers to access to justice therefore not only has a beneficial effect on awaiting trial persons, their families and the society at large, it also has economic and social gains, as access to justice is not a favour that States grant to its citizens, but an intrinsic right of the citizen and a significant recourse for the oppressed and marginalized.

CHAPTER FOUR

INTERNATIONAL AND REGIONAL JURISPRUDENCE ON ACCESS TO JUSTICE AND COMPARATIVE ANALYSIS OF CRIMINAL JUSTICE APPROACHES

4.0 Introduction

There are different methods of assessing the ability of a criminal justice system to ensure justice for persons awaiting trial and one of them is by measuring policy–legislation, principles-and practice against recognised international jurisprudence so as to ascertain that it conforms to international norms on the quality that legislation and practice ought to meet. It can also be done by comparatively analyzing policy and practice in select jurisdictions against Nigeria's.

In this chapter, international and regional jurisprudence on access to justice will be examined: the key criminal justice approaches that appear to have influenced international jurisprudence will be identified and Nigeria's compliance with international norms and standards will be assessed. A comparison of the effect of criminal justice approaches in the United Kingdom, United States of America and Nigeria will also be undertaken. It will outline how criminal justice approaches affect policy and practice; identifying criminal justice approaches as reflected in policy and complimented by practice. Nigeria's criminal justice approach will also be identified.

4.1 International jurisprudence on access to justice

The materialization of human rights law in the international realm is largely an important advancement in the world post World War II. Human rights law has questioned and discarded the previously established rules relating to state sovereignty, and conceded to the individual, the status of subjects of international law, thus, people are no longer mere objects, or pawns of the states.[693]At the international level, there is a recognised strong link between access to justice and a safe and secure government and in recent years, the international community has focused more on improving the justice systems of countries by reinforcing legal frameworks and justice institutions so as to better fight corruption,

[693] Rehman, J. 2010. International human rights law, 1

improve economic conditions, offset inequality or increase individual means of obtaining redress.[694]

Within a broad context of justice reform, access to justice is recognised as an intrinsic human right; an important ingredient of the United Nations mandate to reduce poverty and strengthen democratic governance, and is regarded as an indispensable means of combating inequality, poverty, prevention and resolution of conflicts. The United Nations General Assembly of 10 October, 2014,[695]affirmed that access to justice must be ensured if a society is to be truly democratic; this was the basis of deliberations on the principle of access to justice as different nations, including Nigeria, shared national practices. The Nigerian representative, while associating himself with the African group asserted that Nigeria's constitution is the substructure for a rule of law style of governance at the national level, adding that the Nation's law making process was 'people oriented' and particularly alert to the needs of the disadvantaged and vulnerable groups in the society. He further informed the assembly that Nigeria had implemented relevant international instruments and recommended practices.[696] How far these assertions are true in practice has however, been the subject of much debate.

In this researcher's opinion, examining access to justice as found in provisions of international instruments provides support for which a comparative analysis of access to justice across jurisdictions can be undertaken. General acceptance of access to justice and a comparative analysis provide a medium for examining the mechanism of ensuring access to justice. Provisions on access to justice tend to include both civil and criminal justice systems in the context of access to justice; but as the main area of focus of this research is criminal justice, the criminal justice portion of access to justice will be the area of concentration.

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[694] Marchiori, T. 2015. A framework for measuring access to justice including specific challenges facing women. *Council of Europe*. Retrieved July 22, 2017, from https://rm.coe.int

[695]GA/L/3478 sixty-ninth session, 6th and 7th meetings. Retrieved July 22, 2017, from http://www.un.org/press/en/2014/gal3478.doc.htm

[696] Examples of these Acts include; the Freedom of Information Act, 2011; Terrorism Prevention Act, 2011 and the Money Laundering (Prohibition)Act, 2011.

Kovacs[697] points out that access to justice is rooted in international human rights law and is integral to attaining other human rights. She adds that justice and equity are fundamentally allied and fashioned by human rights and refers to the report of the Special Rapporteur on the Independence of Judges and Lawyers[698] who informed that a right related to access to justice can be found in the major international human rights instruments. Kovacs further stated that the beauty of access to justice is reflected in the fact that it is both a right and a means of restoring rights that have been ignored or trampled upon. It is an important part of definitive rights, like the right to equality, effective judicial protection (fair trial, upholding of the rule of law and due process), the right to an effective relief and equal rights.[699]

Improving access to justice is crucial to enjoying human rights whether fundamental, political, economic social or cultural, and plays a material part in securing and realising those rights;[700] it can safeguard the citizenry, particularly those awaiting trial as well as other rights and entitlements; such as protection from sexual or economic exploitation as a result of deprecation and dearth of capacity.[701] Effective access to justice can also secure the ability of poor people to take care of themselves by thwarting or rectifying injustice occasioned by influential people or unscrupulous agents of the public or private sector. Information obtained from reports of non-governmental agencies researches on the access to justice within the Nigerian society reflects a tendency to think that justice can only be secured by the bourgeois. This should be of concern to all because justice should be within the purveyance of all without prejudice.[702]

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[697] Kovacs, P.R. 2015. Access to justice and the international human rights framework. Canadian Lawyers for International Human Rights. Retrieved October 05, 2016, from http://claihr.ca/2015/05/27/access-to-justice-and-the-international-human-rights-framework/

[698] Despouy, Leandro.2008. Report of the Special Rapporteur on the Independence of Judges and Lawyers, A/HRC/8/4, United Nations General Assembly, May 13, 2008

[699] Ibid.

[700] Akinbola, B. R. 2015. Prioritization of the protection of economic, social and cultural rights: a *sine qua non* for achieving a holistic human rights protection. *University of Ibadan Journal of Public and International Law.* 5:271-291.

[701] Carmona, M. S. and Donald, K. 2014. Access to justice for persons living in poverty: a human rights approach: a human rights based approach to access to justice. Elements for Discussion, Ministry of Foreign Affairs of Finland.

[702] Ibid.

Timely access to justice is important, particularly for suspects and accused persons at the initial part of the criminal justice process because at that period, they are most defenseless and open to suggestion. Also, the mode of handling suspects and accused persons is indicative of the competence and capability of the system. Access to justice ensures that suspects and persons accused of crimes are handled reasonably and respectfully, and also has the added benefit of bolstering criminal justice agencies and makes them better reactive to the demands of the people.[703]

Access to justice is recognised as a fractious topic; it flows from recognition of barriers that people face when they have legal rights that they are unable to enforce. Admittedly, justice involves appropriate legal representation and independent legal advice and where people cannot afford the services of counsel, legal aid. This is because legal aid can bridge the gap and ensure access to justice. Although legal aid is significant in securing access to justice and is thus an essential feature of the criminal justice process, particularly for indigent people, there is more to the concept of access to justice; it also requires that there is procedural justice,[704]which means that the *modus operandi* of the agents of the system plays a considerable part in ensuring that persons awaiting trial are able to access justice.

4.1.1 International Provisions on Access to Justice

Some international instruments recognize the concept of access to justice and set out a framework under which a given nation can measure the extent to which access to justice has been realized. The issue of access to justice is covered in several human rights as contained in international human rights treaties. These treaties establish the minutest

[703]Anon. Early access to justice crucial for suspects and accused persons. UNDP Pacific Office, Fiji. Retrieved March 18, 2017, from http://www.pacific.undp.org/content/pacific/en/home/presscenter/articles/2017/02/16/early-access-to-justice-crucial-for-suspects-and-accused-persons.html

[704]Procedural justice looks at the way criminal justice agents, particularly the police and other legal authorities interact with the people and how those interactions shape the public's perception of criminal justice agents, their willingness to respect and obey the law and actual crime rates. It is concerned with the fairness and openness of the process whereby decisions are made. It can be contrasted with retributive justice which relates to the fairness of the process of punishing wrongdoing. Thus, how people are arrested, detained, processed, interrogated, arraigned and tried, are issues to consider in terms of appropriateness of the criminal justice process which can lead to equitable outcomes. See Tyler, T.R. 2003. Procedural justice, legitimacy, and the effective rule of law. *The University of Chicago Press Journals.* 30:283-357.

principles and rules for the administration of justice and guide states on human rights and justice. They comprise policies and standards proclaimed by the international community under the aegis of the United Nations. The Universal Declaration of Human Rights (UDHR), the International Covenant on Economic Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR) and its two optional protocols are regarded as the International Bill of Human Rights;[705] they form the nucleus of international human rights law.

The core international human rights instruments; the UDHR, ICCPR and ICESCR have roots in the same process: A "Declaration on the Essential Rights of Man" had been proposed at the 1945 San Francisco Conference which led to the founding of the United Nations, and the Economic and Social Council was given the task of drafting it. As the drafting progressed, the document was segregated into an affirmation declaration setting out general principles of human rights, and a convention or covenant consisting of binding commitments. The first one became the UDHR. The second devolved into two distinct covenants; civil and political rights and economic, social and cultural rights-ICCPR and ICESCR.[706]

These core international human rights instruments provide for access to justice. They establish standards and influence international notions on access to justice. Nigeria is a member of the United Nations and has ratified the UDHR, the ICCPR[707] and the ICESCR[708] along with other important international human rights instruments and as such, is committed to conform to the standards contained in the instruments. Due to the fact that Nigeria has ratified the Optional Protocols for UN Human Rights Conventions and has accepted the capacity of the coterminous United Nations Treaty Bodies, Nigerians can

[705] The International Bill of Human Rights is an informal name given to the two international treaties and the general assembly resolution.
[706] In consonance with the principle of *Pacta Sunt Servanda as* expressed in Article 26 of the Vienna Convention on the Law of Treaties, Nigeria has ratified several conventions on human rights (ICCPR, ICESCR, ICERD, CEDAW, CAT, CRC, ICRMW, Enforced Disappearance, ICRPD), and the optional protocols and as such they are regarded as binding.
[707] 1993 with no reservations
[708] 1993 with no reservations

invoke their human rights through these bodies.[709] They, as well as other important international instruments relevant to access to justice will be highlighted below:

1. Universal Declaration of Human Rights (UDHR)

The Universal Declaration of Human Rights was adopted by the United Nations General Assembly[710]on 10 December, 1948, at the Palais de Chaillot, Paris. The UDHR was the result of the experience of the 2nd world war. It was drawn up by representatives of different countries and is regarded as an accepted standard of attainment of all people. It enumerates fundamental human rights to be generally guaranteed. The UDHR is generally recognised as the foundation of international human rights law.[711] In relation to this discussion on access to justice, Article 2 constrains states to take steps to make sure that all persons are allowed to attain access to adjudicatory mechanisms without discrimination based on race, colour, sex, language, religion, opinion, place of origin, property, birth or other status. It also requires that parties in legal proceedings should be treated without distinction. Its scope also extends to prevention of unfairness based on social and financial status[712].

Articles 7 and 8 provide for the right to equality before the law irrespective of origin, equal protection under the law and the right to adequate redress by proficient national tribunals. These are key elements of human rights guarantees and serve as a method of ensuring that individuals can secure their rights and get justice because remedies must be sufficient and judicial outcomes must be unbiased and fair. These rights also include making amends, reconciliation and guarantees of non-recurrence. Article 10 provides for equality before the

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[709] Citizens of Nigeria can thus turn to the United Nations Human Rights Committee through procedure 1503, to the Special Rapporteurs for violations of specific human rights or to ECOSOC for women's rights violations. Citizens can also use the UNESCO procedure for human rights violations in UNESCO's fields of mandate or file complaints to the African Commission on Human and People's Rights. Nigeria has also joined the International Criminal Court, and as such, can be called upon in cases of severe human rights infractions or crimes. See generally, Claiming human rights: guide to international procedures available in cases of human rights violations in Africa. Retrieved March 31, 2017, from http://www.claiminghumanrights.org/nigeria.html

[710] Resolution 217A

[711] See generally, Universal Declaration of Human Rights, United Nations. Retrieved March 22, 2017, from http://www.un.org/en/universal-decalration-human-rights/

[712] The UDHR states that "*everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by the law*"

courts and tribunals and a fair trial and creates responsibility upon States to make sure that all are able to obtain a fair and public hearing by a competent, non-partisan and dispassionate tribunal created by law. Article 11 provides for the right to legal support which is crucial to safeguarding due process and equality before the courts. Access to legal assistance, whether free or aided is essential in criminal matters most times, it takes a person who is trained in the law to navigate the criminal justice process effectively. Thus, without legal assistance, an accused person with or without financial constraints is being prevented from asserting his/her rights.

It can be seen that the UDHR sets a minimal standard for the protection of human rights. However, despite its lack of legal force as a treaty and its inability to give individuals the ability to bring legal proceedings when their rights have been violated, it serves as an authoritative interpretation of the United Nations Charter which places member states under an obligation to respect human rights, thus having a binding effect. It is also regarded as being part of traditional international law as indicative of state practices. O*pinio juris* endorses the customary binding nature of provisions of the declaration,[713] and in Nigeria, the UDHR can be regarded as incorporated into Chapter four (4) of the Nigerian Constitution, reflecting a constitutional democracy in consonance with the ideals of the United Nations, in recognition of human rights and the rule of law as the basis for a stable and sustainable society.

2. **The International Covenant on Civil and Political Rights (ICCPR)**

The ICCPR is a multilateral treaty which Nigeria acceded to along with its optional protocols with no reservations in 1993. It is part of the International Bill of Human Rights and is monitored by the United Nations Human Rights Committee which reviews regular reports of State parties on how the rights are being implemented. In recognition of the right to access to justice, the ICCPR requires each state party to the Covenant to undertake the following:

[713] Rehman, J. 2010. International human rights law op.cit.

- Ensure that any person whose rights or freedom as herein recognized has been violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity
- Ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
- Ensure that the competent authorities shall enforce such remedies when granted.

It enshrines the principles of equality before the law;[714]recognition of equality before the law and courts;[715]non-derogation from the fundamental human rights;[716]no arbitrary deprivation of life;[717]that no one should be tortured or face cruel, inhuman or debasing treatment or punishment, non-subjection to experimentation without approval;[718]non-subjection to arbitrary arrest and detention;[719]communication about reason for arrest;[720]presentation before competent judicial or other authority;[721]enforceable right to compensation for unlawful arrest or detention;[722]presumption of innocence;[723] and adequate enforcement of the following rights:

- Prompt information in a language understood about the essence, nature and cause of the charge against him;
- To have sufficient time and accompaniments to prepare for defence and relate with counsel of his choice;
- To be tried without excessive hinderance;
- To legal representation, either by self, paid legal representation or legal aid;
- To examine, cross-examine and re-examine witnesses;

[714] Article 2 of the ICCPR provides that: "Where not already provided for by existing legislative or other measures, each state party to the present covenant undertakes the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognised in the present covenant
[715] Article 3
[716] Article 5 (2)
[717] Article 6 (1)
[718] Article 7
[719] Article 9 (1)
[720] Article 9 (2)
[721] Article 9 (3)
[722] Article 9 (5)
[723] Article 14(2)

- To an interpreter
- The right not to be forced or constrained to testify against self;
- The right against double jeopardy[724]

Article 10 and 14 are particularly important in this instance because, Article 10 recognises the intrinsic dignity of the person, directs that all persons divested of their liberty should be managed with humanity and dignity, and the rehabilitation and reintegration of prisoners should be a vital aim of imprisonment. While Article 14 is noteworthy as it specifically addresses the administration of criminal justice and in the context of access to justice; it recognises that there are actual (*de facto)* barriers to justice and advocates the elimination of obstacles that erode the ability to access justice - such as lack of information about rights and laws, support in the pursuit of a legal matter, an affordable legal system and an effective criminal justice process.[725]In essence, the ICCPR adds to the access to justice framework by encouraging equality before the law; equality under the law; equal protection of the law; and equal advantage of the law. It shows an interest in the efficacy of both the written and practiced law and in the opinion of this researcher, recognises that for rights to be effective they must cover the entire criminal justice process and ensure access to justice for all actors in the criminal justice system.

3. **International Covenant on Economic, Social and Cultural Rights (ICESCR)**

The ICESCR is part of the International Bill of Rights and is monitored by the United Nations Committee on Economic, Social and Cultural Rights.[726]It commits its parties to work toward the granting of economic social and cultural rights (ESCR) to the non-self-governing and trust territories and individuals, including labour rights, right to health, right to education and the right to an adequate standard of living.

The ICESCR is a multilateral treaty that was adopted by the United Nations General Assembly on 16 December, 1966 and came into force from 03 January 1976. It is committed to conferring economic, social, and cultural rights (ESCR). Although it does not oblige state parties to amongst others 'develop the possibilities of judicial remedy,'

[724] Article 14 ICCPR
[725] Articles 14 and 26 ICCPR
[726] Committee on economic, social and cultural rights. Retrieved on February 23, 2017 from www.ochr.org

however, a state party trying to absolve itself of failure to provide any municipal relief for the breach of economic, social and cultural rights would need to indicate either that such remedies are not suitable methods within the terms of article 2 (1) of the ICESCR or that, in the light of the other methods used, they are not necessary.

4.1.2 United Nations Basic Principles

The United Nations Basic Principles are regarded as soft-law instruments,[727] and are as such, not viewed as legally binding. They are however, highly regarded and are broadly accepted, and some consider them an important precursor of law or an impression of international customary law. The basic principles were collectively adopted by the 8th United Nations Congress on the prevention of crime and the treatment of Offenders in Havana, Cuba on 07 September, 1990. Afterwards, the United Nations General Assembly received the principles in their 'Human Rights in the Administration of Justice' resolution which was accepted without a ballot on 18 December, 1990, in both the session o n the Third Committee and the Plenary Session of the General Assembly. The Basic Principles are regarded as important to the efforts of the United Nations in bolstering international and regional cooperation in countering crime, and are contained in binding international or regional human rights treaties[728] and those important to this research on access to justice and the awaiting trial person will be discussed below.

1. **Basic principles on the role of lawyers**

The basic principles on the role of lawyers provide a succinct depiction of international steps relating to the major aspects of the right to independent legal representation. It was formulated to assist in promoting and ensuring professional standards for lawyers and paralegals and provides a brief depiction of international standards relating to the important parts of the right to independent counsel. It was adopted by the Eight United Nations Congress on the Prevention of Crime and the Treatment of Offenders in Havana, Cuba on

[727] "Soft-law" refers to quasi-legal instruments which do not have any legally binding force, or whose binding force is somewhat 'weaker' than the binding force of traditional law, it is often contrasted with 'hard-law.' Soft-Law is acknowledged to play an important role in attempting to define the human right commitments of a variety of actors.

[728] For instance, the ICCPR, the Convention against Torture, and Other Cruel, Inhuman and Degrading Treatment or Punishment, the ICESCR, the European Convention on Human Rights and the African Charter on Human and Peoples' Rights. See lawyers for lawyers (L4L) 'What are the Basic Principles. Retrieved March 23, 2017 from http://www/advocatenvooradvocaten.nl/basic-principles/

07 September, 1990. It provides guidelines for judges, prosecutors, members of the executive and the legislature, paralegals and the public. It provides assurances vital for defending people charged with a criminal offence. The principle recognises the importance of the independence of lawyers and holds that lawyers play a decisive role in the administration of justice and defence of human rights. The right to legal assistance is well developed and recognised by a variety of international standard-setting documents. Principle 3 states that "*Government shall ensure the provision of sufficient funding and other resources for legal services to the poor and, as necessary, to other disadvantaged persons*." The Basic Principles on the Role of Lawyers can be regarded as a very detailed description of the rights and responsibilities of lawyers and amongst others, provides for:

a. The independence of lawyers[729]
b. Freedom of expression and association,[730]
c. Confidentiality of communications between lawyers and their clients[731]
d. Protection from unlawful interference[732]
e. Right to due process for lawyers facing disciplinary sanctions[733]

The Basic principles on the Role of Lawyers is of paramount significance because it allows the lawyer to act assiduously and boldly in seeking all possible defences, and acknowledges the right to challenge the handling of the case if there is belief that it has been conducted unfairly.[734]Specifically it asks that governments assure that all persons are promptly told by competent authority of their right to be aided by a lawyer of their choice on arrest or detention or when charged with an offence, and all persons arrested or detained should have ready access to a lawyer, no later than 48 hours from when they are arrested or detained. Also, that all arrestees, detainees or prisoners should be given adequate

[729] Preamble to the Basic Principles on the Role of Lawyers
[730] Principle 24
[731] Principle 22
[732]To the effect that it expects governments to ensure that lawyers are able to perform their professional functions without intimidation, hindrance , harassment or improper interference. That lawyers are able to travel and to consult with their clients both within and outside their country, that lawyers should not be threatened with prosecution or administrative, economic or other sanctions for any actions taken in accordance with recognized professional duties, standards and ethics. See Principle 16
[733] Principle 28
[734]See, International covenant on civil and political rights general comment No. 13: Equality before the courts and the right to a fair and public hearing by an independent court established by law (Article 14)

opportunities, time and facilities to be visited by and to interact and consult with a lawyer, without tarrying, hindrance or restriction, and in privacy.[735]

2. Basic principles on the independence of the judiciary

Although there are different ideas as to what constitutes judicial independence, there appear to be three definite characteristics that describe an independent judiciary, to wit;

1. Impartiality[736],
2. Finality and respect for decisions[737], and
3. Freedom from outside influence.[738]

It is important to a successful democracy that the judiciary and individual judges are impartial and independent from all types of external pressures. The independence and non-partisan nature of the judiciary allows for confidence in the decisions of the court based on the belief that they accomplish their duties in consonance with the law.

The United Nations Basic Principles on the Independence of the Judiciary was designed to help member states in their job of attaining and bolstering the independence of the judiciary. It is expected to be considered and respected by governments inside the structure of national legislation and practice and it is that judges, lawyers, members of the executive, the legislature and members of the public are made aware of it. Although the principles were designed chiefly for professional judges, they apply alike, as applicable, to lay judges, where they employ them. It was adopted by the seventh United Nations Congress

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[735] See Jacobsen, A.F. 2008. Human rights monitoring: a field mission manual, 159.

[736]Impartiality commands a judge to make decisions based on the facts of a case and the relevant law. It expects that any personal opinions and biases that may motivate a decision outside the judicial context be put aside. See, The World Bank Group. 2001. *Judicial independence: what it is, how it can be measured, why it occurs, in legal institutions of the market economy*. Retrieved December 16, 2016 from http://siteresources.worldbank.org/INTLAWJUSTINST/Resources/JudicialIndependence.pdf

[737] The concept of finality means that a court's decision must be deemed final or self-reviewable by the same institution (such as a higher court) and parties to the decision must respect the decision and follow the court's orders. Ibid.

[738] The concept of freedom from outside influence is of particular importance because it precludes the interference of all agencies, organizations and individuals that may try to subvert justice by bullying the court or curry the courts favour. It is of particular importance because it precludes the interference of interested parties with court proceedings, through manipulation and requires that the court should be incorruptible and non-susceptible to coercion. See, The world bank group. Ibid. See also Beijing statement of principles on the independence of the judiciary in the LAWASIA Region. Beijing. Aug. 19, 1995. Retrieved December 23, 2016, from http://www/hurights.or.jp/archives/other_documents/section1/1995/08/beijing-statement-of-principles-of-the-independence-of-the-judiciary-in-the-lawasia-region-beijing-1.html

on the prevention of crime and the treatment of offenders held at Milan from 26 August to 06 September, and endorsed by the General Assembly Resolutions 40/32 of 29 November, 1985 and 40/146 of 13 December, 1985.

It relates to issues concerning the autonomy of the judiciary, freedom of expression and association, qualifications, selections and training, conditions of service and tenure, professional secrecy and immunity, discipline, suspension and removal of judges and is very important in ensuring access to justice, where the integrity of the judiciary can be maintained, access to justice can be ensured.[739] Judicial independence is of paramount importance because it is a crucial component inherent in the proper and effective administration of any government and a crucial element to the protection of citizens and the preservation the balance of power in any government.[740]To this end, it provides that the foundation of the independence of the judiciary enables and behooves the judiciary to make sure that judicial proceedings are carried out impartially and the rights of the parties are honoured.[741]

3. The guidelines on the role of prosecutors

The United Nations Basic Principles on the Role of Prosecutors was adopted by the Eight United Nations Congress on the prevention of Crime and the Treatment of Offenders[742] in Havana from 27 August-7 September 1990,[743] and were formulated principally with public prosecutors in mind; however, they apply equally as appropriate, to prosecutors appointed on an ad hoc basis. Prosecutors occupy an important role in the criminal justice system and possess substantial powers and responsibilities. Inevitably, for the rule of law to be upheld and human rights to be respected and protected, there must be effective prosecution

[739] See generally, United Nations Human Rights Office of the High Commissioner. Retrieved March 23, 2017, from http://www.ohchr.org/EN/Professionalinterest/Pages/IndependenceJudiciary.aspx

[740] See also The Bangalore Principles of Judicial Conduct. Retrieved Jan. 23, 2016, from http://www.unorg/docs/ecosoc/documents/2006/Resolution%202006-23.pdf; Anon. Courts and tribunals Judiciary *Independence*. Retrieved June 05, 2017, from https://www.judiciary.gov.uk/about-the-judiciary-the-government-and-the-constitution/jud-acc-ind/independence/

[741] See Article 6

[742] Known as the 'Havana Guidelines'

[743] See the report prepared by the Secretariat, Chapter 1, Section C.26, annex, United Nations publications, Sales No. E.91.IV.2)

services that can act with integrity, impartiality and independence, and it is expected that prosecutors respect and protect human dignity and uphold human rights, thereby contributing to ensuring due process and the protection of society from a culture of impunity.[744]

Prosecutors are not commonly referred to in international instruments when compared to judges, defence lawyers and court administrators despite the central role they play in criminal proceedings.[745]They are noticeably not mentioned in the UDHR and ICCPR, nor does case law of the Human Rights Committee of the United Nations accord much consideration to the place of prosecution.[746] However, prosecutors are regarded as important to the exercise of many principles advanced by international instruments, such as the right to a fair trial, and the right to be heard by a court, the principle of equality before the law and before the court, and the prohibition against torture.[747]

The purpose of the guidelines is expounded as being designed to help member states in their job of procuring and preserving the capability, neutrality and integrity of prosecutors. It is expected that they should be valued and considered by governments inside the context

[744] Adapted from the Report of the Special Rapporteur on the independence of judges and lawyers (A/HRC/20/19), para. 93.)
[745] See, United Nations Office on Drugs and Crime. 2014. The status and role of prosecutors, 2
[746] Ibid.
[747] Ibid. In 1980, the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders recognised that there was a need for defining international standards regarding prosecutors and linked the effective implementation of Article 14 of the International Covenant on Civil and Political Rights - which specifically addresses the administration of criminal justice and in the context of access to justice – to the proper selection and training of judges and prosecutors. The Seventh United Nations Congress which held in 1985 underlined the importance of impartiality of prosecutors in institutions and the need to avoid discrimination in that selection and appointment of prosecutors, and recommended that Member States should guarantee the objectivity of the prosecution service and further called for consideration to be given to drafting guidelines relating to the selection, training and status of prosecutors, their expected tasks and conduct, immunity, means to enhance their contribution to the smooth functioning of the criminal justice system and their cooperation with the police, the scope of their discretionary powers, and their role in criminal proceedings. Both congresses led to the Eighth United Nations Congress which then produced the Guidelines on the Role of Prosecutors. See Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders held in Caracas from 25 August -5 September 1980 (Caracas Declaration, General Assembly resolution 35/171, annex, op) as contained in the report prepared by the Secretariat (United Nations publication, Sales No. E.81.IV.4), chapter I, sect. B. 16; Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, which held from 26 August-06 September 1985 as contained in report prepared by the Secretariat (United Nations publications, Sales No. E.86.IV.1), Chapter I, sect. E.7. See, Anon. 2014. The status and role of prosecutors, 1.

of the domestic legislation, practice and prosecution, and other personnel of the criminal justice and the public should be made aware of the guidelines.[748]

The guidelines are considered as the first international bid to define the role of the public prosecutor, they are for states and those exercising the power of the state, but are not concerned with the connection amongst the prosecutor, the executive or legislature in any detail.[749]The guidelines provide an international standard for the conduct of individual prosecutors and prosecution services; they encourage international collaboration and highlight the need for independence. They assume distinct importance in the sense that it is not a result of an accord between states or governments, but was drafted and embraced by prosecutors, who came from different legal traditions all over the world. It can as such, be regarded as representing the opinion of prosecutors regarding measures /principles that should concern the profession of a prosecutor.[750]

Although the Guidelines are written for, and apply to, prosecutors, they also apply to those who are specifically engaged in, or have interest in the roles and responsibilities of prosecution and prosecution services because it contains internationally recognized standards and states how the principles contained therein should be applied in practice. As such it should be of interest to the following:

- National policymakers – the executive and legislative branches of government
- Prosecutors
- Technical assistance providers- the United Nations and others who are tasked with strengthening the integrity and capacity of prosecution services
- Criminal justice practitioners, including judges and defence lawyers
- Academia
- Non-governmental agencies focusing on criminal justice and human rights
- Students, and
- The general public[751]

[748] The status and role of prosecutors, 2-3.
[749] ibid.
[750] The status and role of prosecutors, 2-3. op.cit.
[751] Anon. 2014. The status and role of prosecutors, 4-5.

The guidelines require states to make sure that prosecutors are capable of performing their duties without duress, barriers, intimidation, disturbance or needless exposure to civil, penal or other liability and provide directions to improve fairness and conformity of manner in taking decisions in the prosecution process, along with instituting or waiving prosecution.[752] Hamilton[753] on the role of prosecutor has averred that it is important that prosecutors have enough freedom to take their decisions irrespective of any interference particularly from the executive branch of government. Where the executive exert pressure on the prosecutor, the prosecutor will be unable to preserve the interest of justice, uphold the rule of law or human rights and will be unable to deal correctly with the cares of corruption or abuse of state power.[754]

This emphasizes the importance of independent prosecutorial services where accountability, respect for the rule of law, due process and respect for the fundamental human rights of citizens, which are all core mandates in the successful administration of criminal justice. It must be noted that the guidelines do not take an active posture on the issue of established independence of prosecutors from the executive branch of the government, and this is because it recognizes that disparate legal customs and legal orders handle the principle in contrasting ways and that although the independence of prosecutorial decision helps to ensure that governments are to account for their actions, prosecutors function in relation to the executive branch. However, prosecutorial independence can be regarded as an important part of the administration of criminal justice.

4. Code of conduct for law enforcement officials

[752] See Guidelines No. 4 and 17

[753] Speech of the President of the International Association of Prosecutors, James Hamilton, at the opening ceremony of the 18th Annual Conference of the International Association of Prosecutors, themed "The prosecutor and the rule of law," held in Moscow from 8-12th Sept. 2013. Retrieved May 23, 2017, from http://www.iap-association.org

[754] Ibid.

Adopted at the 106th plenary meeting of the United Nations General Assembly of 17 December, 1979,[755]the Code of Conduct for Law Enforcement Officials covers the accountability of law enforcement officials and provides that law enforcement officials are expected to carry out their responsibilities in light of the dictates of their profession.[756]
It applies to all law enforcement officials, along with police and military personnel employed in a law enforcement capacity,[757]and have powers of arrest or detention. Law enforcement officials hold a position of public trust and their fundamental duties include the protection of lives and property and ensuring that the laws of the land are enforced and obeyed. Most law enforcement agencies use a code of ethics which are usually binding.

The code of conduct amongst others includes:

- Not inflicting, instigating or tolerating any act of torture or other cruel, inhuman or degrading treatment or punishment or invoking superior orders or exceptional circumstances such as a state of war or a threat of war, a threat to national security, internal political instability or any other public emergency as a justification for torture or other cruel, inhuman or degrading treatment or punishment[758]
- Respect for the constitutional and civil rights of all persons[759]
- Impartial and professional behaviour and action, such as not allowing personal feelings, prejudices, animosities or friendship influence a decision[760]
- Respect for the confidentiality of the office and information gathered on citizens[761]
- Enforcement of the law courteously and appropriately[762]
- Non-intimidation of citizens or suspects and using self-restraint while watching out for the welfare of others[763]
- Not using excessive force or violence[764]

[755] United Nations General Assembly Resolution A/RES/34/169. Retrieved April 22, 2017, from http://www.refworld.org/docid/48abd572e.html
[756] Article 1
[757] Examples of other law enforcement officials employed in a law enforcement capacity in Nigeria include, the Department of State Services, National Security and Civil Defence Corps, Economic and Financial Crimes Commission amongst others
[758] Article 5
[759] Article 2 and Article 8
[760] Article 8
[761] Article 4
[762] Article 8
[763] Article 5
[764] Article 3. See generally on the Code of Conduct for Law Enforcement Officials. Retrieved June 17, 2017, from http://www/ohchr.org/EN/ProfessionalInterest/Pages/LawEnforcementOfficials.aspx

Notably, the current acts of insurgency and terrorism in the world creates a generalized climate of impunity for law enforcement officials and contributes to the erosion of any accountability mechanisms that exist in terms of civilian control over law enforcement agencies. This however, does not mean that international obligations on law enforcement officials should be ignored. Violence and impunity in the operations of security forces which leads to the casting aside of human rights of citizens in general and awaiting trial persons in particular are clearly a danger to the society and as such must be resisted. Ensuring compliance with international standards on the Conduct of Law Enforcement Officials and domestic provisions on the code of conduct of law enforcement officials can go a long way towards ensuring that the rule of law, due process and the respect for the fundamental human rights of all is achieved. This is because the number one responsibility of law enforcement officials is the protection and preservation of human life and when tactics and behaviour that are military like in behaviour and derogate from the established code of conduct for law enforcement officials are utilized, it can escalate tension and undermine the confidence of the citizenry in law enforcement.

4.1.3 International human rights standards governing the treatment of prisoners

Some international documents provide particularly for the protection of people detained and imprisoned. They are the principal international human rights document for the protection of the human rights of prisoners and detained persons, and comprise:

1. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment[765]
2. Basic Principles for the Treatment of Prisoners[766]
3. Body of Principles for the Protection of All Persons Under any Form of Detention or Imprisonment[767]
4. United Nations Standard Minimum Rules for the Treatment of Prisoners[768]

[765] G.A. res. 39/46, l0 December, l984, United Nations Treaty Series vol. l465, p.85. Retrieved June 28, 2017, from http://www.refworld.org/docid/3ae6b3a94.html
[766] G.A. res. 45/111, annex, 45 U.N. GAOR Supp. (No. 49A) at 200, U.N. Doc. A/45/49 (1990)
[767] G.A. res. 43/173, annex, 43 U.N. GSAOR Supp. (No. 49) at 298, U.N. Doc. A./43/49 (1988)
[768] U.N. Doc A/CONF/611, annex l, E.S.C. res 663C, 24 U.N. ESCOR Supp. (No. 1) at 11, U.N. Doc. E/3048 (1957), amended E.S.C. res. 276, 62 U.N. ESCOR Supp. (No. 1) at 35, U.N. Doc. E/5988 (1977).

5. United Nations Standard Minimum Rules for the Administration of Juvenile Justice[769] (also known as the Beijing Rules)

The above mentioned instruments are recognised as binding on governments to the extent that the norms set out in them make clear the broader standards contained in human rights treaties. They clearly affirm the tenet that prisoners and accused persons retain fundamental human rights and seek to protect their human rights. They will be discussed below:

1. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)[770]

The Convention against Torture,[771]is an international human rights treaty under the review of the United Nations, which was adopted in 1984 and entered into force on 26 June, 1987. It recognises the equal and inalienable rights of all human beings as the foundation of freedom, justice and peace in the world, and that these rights derive from the inherent dignity of the human person. The Convention against Torture is of particular importance and has become accepted as a principle of customary international law. It refers States to their obligations under the Charter, in particular, their obligation to promote universal respect for, and observance of human rights and fundamental freedoms. It makes it clear that torture is not justifiable under any circumstance and requires States that sign up to the treaty to act to prevent and investigate torture and punish anyone who carries it out.

The Convention against Torture is regarded as the most comprehensive international treaty that deals with torture; it forbids states from transporting people to any country where there

[769]A/RES/40/33 29 November, l985, 96th Plenary Meeting. Retrieved June 28, 20l7, from http://www.un.org/documents/ga/res/40/a40r033.htm

[770] And the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), adopted by the General Assembly on 18 December 2002 and entered into force on 22 June, 2006. It provides for the establishment of a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment. See generally, United Nations Treaty Collection- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment accessed on 02 June, 2017 from https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9&chapter=4&clang=_en

[771] G.A. res 39/46, [annex, 39 U.N. GAOR Supp. (No. 51) at 197, I.N. Doc. A/39/51 (1984)

is reason to believe they will be tortured;[772]provides that a State party has an obligation to take all necessary measures to prevent acts of torture;[773]requires States to ensure that any victim of torture gets adequate compensation, including support for rehabilitation;[774]requires that State parties include torture as a specific crime in their national criminal law;[775]obliges State parties to establish jurisdiction over persons found in their territory who are alleged to have committed the crime of torture irrespective of whether the crime was committed outside its borders and regardless of the alleged perpetrator's nationality, country of residence or absence of any other relationship with the country;[776] requires State parties to keep under systematic review, interrogation rules, instructions, methods and practices as well as custody procedures which should comply with the United Nations Standard Minimum Rules for the Treatment of Prisoners and the United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment;[777]requires that each State Party must establish prompt and impartial investigations whenever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction;[778] and that any statements gathered as a result of torture must be deemed inadmissible in all legal proceedings.[779]

By ratifying CAT on 28 June 2001, Nigeria agrees to prevent acts of torture in connection with activities that include:

- Arrest, detention and imprisonment
- Interrogation by police (civil or military), medical staff, public officials and anyone else who may be involved in the arrest, detention and questioning of a person, and

[772] Also known as the principle of non-refoulement. See Article 3
[773]Article 2, this includes legislative, administrative and judicial measures as well as any other measures that may be appropriate. See also Article 16 which provides that states are obliged to prevent other cruel, inhuman or degrading treatment or punishment.
[774] See Articles 13 and 14 which provide that victims of torture have the right to complain and to have their case investigated promptly and impartially as well as to receive redress, adequate compensation and rehabilitation that is as full as possible
[775] Article 4
[776]Also known as the principle of Universal Jurisdiction, see Articles 5-9
[777] Article 11
[778] Article 12
[779]Article 15. This provision is particularly important because, by making statements obtained by torture inadmissible in court proceedings, one of the primary aims of torture – obtaining evidence- becomes redundant.

- Returning, expelling or extraditing someone to another country where there are real grounds to believe he or she will face torture

The covenant follows the structure of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

2. **The United Nations Standard Minimum Rules for the Treatment of Prisoners**

The United Nations Standard Minimum Rules for the treatment of Prisoners[780] was first adopted by the United Nations Congress on the Prevention of Crime and the Treatment of Offenders[781] held in Geneva on 30 August, 1955 and approved by the United Nations Economic and Social Council in 1957[782]and 1977.[783] It has recently been adopted by the United Nations General Assembly after a five year revision process and is known as the Nelson Mandela Rules[784]in honour of the former South African President Nelson Mandela.[785]Although it is not legally binding, it constitutes an authoritative guide to binding treaty standards and provides principles of good practice in the treatment of prisoners and the management of penal institutions such as jails, detention centres, prisons and correctional facilities. Standard Minimum Rules describe standards for international and domestic law for citizens held in prisons and other forms of custody and prescribes the minimal conditions for the treatment of prisoners.

The Rules contain generally acceptable standards and good practice on the treatment of prisoners and the management of penal institutions. It is divided into two parts and provides for the following minimum standards relating to:

[780] Also known as the Standard Minimum Rules
[781] The first United Nations Congress on the Prevention of Crime and the Treatment of Offenders
[782] 31 July, 1975
[783] 13 May, 1977
[784] UN General Assembly Resolution A/RES65/230 of 21December, 2010. Retrieved June, 28, 2017, from http://undocs.org
[785] It is so named not only in recognition of South Africa's major support during the revision process, but also in honour of the legacy of late Nelson Mandela who spent 27 years in prison in the course of his struggle for democracy and the promotion of a culture of peace in South Africa. In addition, the United Nations General Assembly also decided to extend the scope of the Nelson Mandela International Day- 18 July – in order to promote humane prison conditions of imprisonment and raise awareness about prisoners being a continuous part of society and to value the work of prison staff who are recognized to provide important service.

- Accommodation[786]
- Personal hygiene[787]
- Clothing and bedding[788]
- Food[789]
- Exercise[790]
- Medical services[791]
- Discipline and punishment[792]
- The use of instruments of restraints[793]
- complaints[794]
- contact with the outside world[795]
- The availability of books[796]
- Religion[797]
- Retention of prisoners' property[798]
- Notification of death, illness and transfer[799]
- Removal of prisoners[800]
- Quality of training of prison personnel[801]
- Prison inspections[802]
- Treatment (Rehabilitation) of prisoners[803]
- Classification and individualization[804]
- Privileges[805]
- Work[806]
- Education and recreation[807]
- Social relations and after-care[808]

[786] Rules 12-17
[787] Rule 18
[788] Rules 19-21
[789] Rule 22
[790] Rule 23
[791] Rules 24-35
[792] Rules 36-46
[793] Rules 47-49
[794] Rules 54-57
[795] Rules 58-63
[796] Rule 64
[797] Rules 65-66
[798] Rule 67
[799] Rules 68-70
[800] Rule 73
[801] Rules 74-83
[802] Rules 83-85
[803] Rules 91-92
[804] Rule 93-94
[805] Rule 95
[806] Rules 96-103
[807] Rules 104 -105

The minimum rules recommend that the human rights of all persons deprived of their liberty be recognised as a vulnerable group who risk abuse and ill-treatment. The revised rules also contain new provisions and provide guidance on intrusive searches; requires the prison director to report, without delay, any custodial death, disappearance or serious injury and conduct a prompt and impartial and effective investigation into the circumstances and causes of such cases. The guidelines are of particular importance because more often than not, States fail to recognise and protect the human rights of prisoners and tend to view prisoners as separate from communities and societies. As such, they tend to suffer abuse and mistreatment. The revised rules are regarded as important in international attempts to break cycles of prison recidivism and re-offending and are an important component of ensuring access to justice and the recognition of human rights of prisoners[809]and detained persons.

3. **The United Nations Basic Principles for the Treatment of Prisoners**

The United Nations Basic Principles for the Treatment of Prisoners was adopted and proclaimed by the United Nations General Assembly in 1990[810]and deals with the essential features of daily life in prison. While it makes it clear that some aspects of the treatment of prisoners are non-negotiable and reflect legal obligations, the Principles also recognise that a variety of legal, social, economic and geographical conditions prevail in the world. It states that the rules are designed to 'stimulate a constant endeavour to practical difficulties' and encourages experiments, providing that this is in harmony with the principles expressed in the rules. It recognises that people who are imprisoned or detained exist as human beings with rights and that the loss of their liberty whether temporarily or permanently as dictated by the courts, is not a forfeiture of their humanity.[811]Former President Nelson Mandela while addressing prison staff in South Africa in 1998 stated that:

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[808] Rules 106 -108

[809] See generally, UN News Centre 'UN Launches 'Nelson Mandela Rules' on improving treatment of prisoners' retrieved on 05 June, 2017 from http://www.un.org/apps/news/story.asp?NewsID=52190#.WUUylHo1giE

[810] Adopted at the 68th plenary meeting of 14 December, 1990. UN A/RES/45/111 28 March, 1991

[811]Coyle, A. 2009. A Human Rights Approach to Prison Management: Handbook for Prison Staff (2nd Ed.), International Centre for Prison Studies, London, United Kingdom, pg. 33

> …prisons are essential to making our justice system an effective weapon against crime. When prisoners-convicted or awaiting trial-are entrusted to your care, they must know and the public must know that they will remain there until they are legally discharged…
>
> The full contribution which our prisons can make towards a permanent reduction in the country's crime-rate lies also in the way in which they treat prisoners. We cannot emphasize enough the importance of both professionalism and respect for human rights.[812]

The information above underlies the beliefs of the United Nations with regard to the treatment of people under remand in custodial facilities and depicts the importance of managing prisons and other custodial facilities within an ethical context because a pragmatic approach to prison management can ensure an effective and safe prison environment. To this extent, the recognition of human rights of prisoners and detainees, should not just be a topic of discussion, it should be an integral part of prison management.[813]

Thus, the United Nations basic principles for the treatment of prisoners along with corresponding instruments, although non-binding, provide principles of good practice in the treatment of prisoners and the management of penal institutions such as jails, detention centers, correctional facilities and prisons. The principles put forward the long-standing concern of the United Nations for the humanization of criminal justice and the protection of human rights, while noting that sound policies of crime prevention and control are essential to viable planning for economic and social development and desiring to reflect the perspective of the Seventh United Nations Congress, that the function of the criminal justice system is to contribute to safeguarding the basic values and norms of society.[814]In these, elements of the due process and equal justice perspective to criminal justice can be perceived particularly as the equal justice perspective encourages good practices in the administration of criminal justice and seeks to erode discretionary powers which tend to lead to human right abuses.

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[812] Culled from Coyle, A. 2009. A Human Rights Approach to Prison Management op. cit.
[813] Ibid.
[814] A/RES/45/111 68th Plenary meeting , 14 December, 1990 accessed on 24 May, 2017 from http://www.un.org/documents/ga/res/45/a45r111.htm

The basic principles thus provides for:

a. Respect for prisoners[815]
b. Non-discrimination[816]
c. Respect for religious beliefs[817]
d. Responsibility of prisons for the custody of prisoners and the protection of society against crime[818]
e. Save for certain exceptions, respect for the human rights and fundamental freedoms of prisoners[819]
f. Right to participate in cultural activities and education[820]
g. Addressing solitary confinement[821]
h. meaningful employment of prisoners[822]
i. access to health services[823], and
j. reintegration[824]

4. **Body of Principles for the Protection of all Persons Under Any Form of Detention or Imprisonment**

The Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment[825]was adopted by the United Nations General Assembly on December 1988. It outlines the principles for the protection of all persons under any form of detention or imprisonment. The principles provide that everyone who is arrested, detained or imprisoned has the right to inform, or have the authorities notify, their family or friends.[826] The information provided must include the fact of the arrest or detention and the place where the person is being kept in custody. If the person is transferred to another place of custody, his or her family or friends must be informed again. Communication of the

[815] Article 1 ibid.
[816] Article 2
[817] Article 3
[818] Article 4
[819] Article 5
[820] Article 6
[821] Article 7
[822] Article 8
[823] Article 9
[824] Article 10
[825] United Nations General Assembly Resolution 43/173 of 09 December, 1988 at its 76th Plenary meeting. GA res. 43/173, annex, 43 UN GAOR Supp. (No.49) at 298, UN Doc. A/43/49 (1988) accessed on 03 June, 2017, from http://www.unhchr.ch/html/menu3/b/h_comp36.htm>
[826] Principle 6

detained or imprisoned person with the outside world, and in particular his family or counsel, shall not be denied for longer than a few days.[827]With regard to foreign nationals; it states that foreign nationals are entitled to have their consulate or other diplomatic representative notified of the fact of detention.[828]

4.1.4 International principles governing juvenile justice

When children offend and are brought before the law under the legal system, it is expected that they should be dealt with in a manner which is different from adults.[829] A juvenile offender is a child or young person who is alleged to have committed an offence or who has been found to have committed an offence.[830] In terms of international jurisprudence on child care, the United Nations Convention on the Rights of the Child[831] (popularly abbreviated as CRC) is regarded as one of the most widely ratified international human rights treaty. It has succeeded in changing the perception and treatment of children as human beings with a distinct set of rights,[832] and sets out the civil, political, economic, social, cultural and health rights of children.[833]

The UK ratified the CRC in 1991 with its own declaration and reservations to it.[834] The US signed the Convention but till date, has not ratified it, although it played an active role in drafting the Convention.[835] Nigeria signed the Convention on the Rights of the Child in

[827] Principle 15
[828] Principle 16 (2)
[829] Principle 2.1(a)
[830] Principle 2.1(c) . The CRC defines a child as someone who has not attained the age of eighteen (18) years unless the age of majority is attained earlier under a State's own domestic legislation. See amendment to article 43, paragraph 3 of the Convention of the Rights of the Child. See GA/Res/50/155, 21 December, 1989.
[831] Ibid.
[832] UNICEF, *The Convention on the rights of the child is the most rapidly and widely ratified international human rights treaty in history. Retrieved on April 22, 2018 from* https://www.unicef.org/crc/
[833] Ibid.
[834] The UK has a low age of criminal responsibility and reports indicate violence towards children and high rates of custody for young offenders in contravention of the CRC. See UNICEF ibid.
[835] Although the US has ratified two optional protocols to the Convention: i) the Optional Protocol on the involvement of Children in Armed Conflict; and ii) the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, the US is famed for its opposition for the terms of the Convention as a result of its society that regards moral authority as being exercised by religious congregations, family and other private associations as fundamental to the American order. There are also reports of passing of mandatory life sentences without the possibility of parole and execution of juvenile offenders. UNICEF ibid.

1991 and has domesticated it into National Law–the Child Rights Act 2003.[836] The appeal of the Child Right's Act is that it consolidates all laws[837]relating to children, into one legislation that specifies the rights and responsibilities of young people. It also includes the duties and obligations of parents, organizations, governments and other authorities towards children. However, what the Child Rights Act contains in substantive law, it lacks in infrastructural and procedural law and practice.

The CRC is also regarded as the umbrella body for three international instruments relating to child/juvenile justice which are incorporated into the CRC, viz:

1. The UN Guidelines for the Protection of Juvenile Delinquency (the Riyadh guidelines which was adopted in 1990);
2. The UN Standard Minimum Rules for the Administration of Justice (the Beijing Rules) **[838]**; and
3. The UN Standards for the Protection of Juveniles Deprived of their Liberty (the JDL or Havana Rules, adopted in 1990)

The three instruments, although regarded as non-binding have been incorporated into the United Nations Convention on the Rights of the Child. The instruments provide that the aims of juvenile justice include the promotion of the young persons' welfare and the assurance that each response towards juvenile delinquents will always be in proportion to circumstances of the young person as well as the crime. The Rules include specific measures that cover the different phases of juvenile justice and emphasize the presumption of innocence, conduct of proceedings in the best interest of the child, encouragement of the use of diversion programmes which remove young people from the criminal justice process and the implementation of supportive or community services that remove the focus from institutionalization[839]and that administering juvenile justice should be with the goal of assisting young people towards becoming \productive members of the society.[840]

[836] http://www.unicef.org/nigeria/ng_publications_Childs_Right_Act_2003.pdf
[837] Both international and national
[838] A/RES/40/33 of 29 November, 1985 adopted at the 96th Plenary meeting of the United Nations. Retrieved March 02, 2018 from www.un.org/documents/ga/res/40/a40r033.htm
[839] Principle 17
[840] Principle 26

The provisions of the instruments as outlined above, point towards the rehabilitation approach blended with restorative justice and due process, bureaucratic and managing offender approaches to criminal justice despite the need for a crime approach to criminal justice. This is borne out of the recognition of the importance of reintegrating offenders back into their families and the societies at large. However, findings of previous studies on the administration of juvenile justice indicate that the institutional, procedural framework and practice of juvenile justice does not conform to the laid down laws:

- **i.** there is a general failure to adhere to the general standards set out in the instruments[841]
- **ii.** inadequate training of personnel working with children in the criminal justice system[842]
- **iii.** lack of data, constant monitoring and evaluation of the administration of juvenile justice
- **iv.** neglected information sharing and networking among agencies and sectors
- **v.** non-recruitment of professionalized personnel such as parole and probation officers
- **vi.** non-development of a treatment plan for children who commit offences
- **vii.** lack of technological aids to manage children and reduce the dependence on custodial arrangements
- **viii.** remand of child offenders with adult offenders

It is only when these identified problems are addressed that a fully functional juvenile justice system can be said to operate in Nigeria.

4.1.5 United Nations principles and guidelines on access to legal aid in criminal justice systems

Access to legal aid is an important aspect of ensuring access to justice for persons awaiting trial. The United Nations Office on Drugs and Crime, in their global study on legal aid, recognised that access to legal aid was an important component of a fair, humane and efficient criminal justice system.[843]Although legal aid is regarded as a complex matter to be dealt with by individual States, the United Nations General Assembly in December,

[841] Akinseye-George, Y. 2009. *Juvenile Justice in Nigeria*. Centre for Social-Legal Studies. XVII:1-130. Retrieved April 13, 2016 from http://www.censolegs.org/publications/9.pdf
[842] ibid
[843] Anon. 2016. *Global study on legal aid: global report. united nations development programme* United

2012, adopted the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems. It is the first international instrument dealing with legal aid and emphasizes the right of equal access for all, including members of vulnerable groups and requires member States to take all necessary steps to provide fair, transparent, effective, non-discriminatory and accountable services that promote access to justice for all.

The Principles and Guidelines go beyond any existing regional or international standards by establishing minimum standards for the right to legal aid in criminal justice systems and provides practical guidance on how to ensure access to effective criminal legal aid services. According to Open Society Justice Initiative,[844]the Principles and Guidelines were drafted with a keen sense of the controversies and difficulties in providing legal aid around the world and attempt to provide valuable guidance about best practices, and in some cases stretching beyond what any international document has done before.[845]The Principles and Guidelines amongst others provide for the following:

a. Generous criteria for legal aid eligibility: Principle 3 encourages States to provide legal aid regardless of the person's means, if the case is particularly urgent or complex, or if the penalty the person faces is very severe.[846]
b. Paralegals and other legal aid providers: Guidelines 1, 5 and 13 encourages states to involve other actors in the provision of legal aid, including paralegals and law students. This makes the Principles and Guidelines the first international instrument to recognize paralegals as legal aid providers.[847]
c. Gender sensitivity: Guideline 9 encourages states to incorporate "*a gender perspective into all policies, laws, programmes and practices relating to legal aid to ensure gender equality and equal and fair access to justice"* In essence, it

[844]Anon. 2013. The UN guidelines and principles on access to legal aid in criminal justice systems. *Open Society Foundations Fact Sheets*. Retrieved March 02, 2017, from https://www.opensocietyfoundations.org/fact-sheets/un-guidelines-and-principles-access-legal-aid-criminal-justice-systems
[845] ibid
[846] This goes beyond the provisions of Nigerian Legal aid which only requires that legal aid be given if the accused is indigent and cannot afford the services of legal practitioners. In Nigeria, legal aid entails the provision of free or subsidized legal services to the indigent and underprivileged litigants. However, although some countries have a sophisticated mechanism in place for the provision of legal aid, Nigeria has a long way to go towards providing quality legal aid services to its citizens. See generally, Ojukwu, E. (et. al.).2012. Handbook on Prison Pretrial Detainee Law Clinic op.cit. pp. 129-132
[847] See also principle 14 which indicates that States should "*recognize and encourage the contribution of lawyers' associations, universities, civil society and other groups and institutions in providing legal aid.*

emphasizes the role of gender in the legal aid context and states that States should take active steps to ensure that where possible, female lawyers are available to represent female defendants, accused persons and victims.

d. Victims and witnesses: Principle 4 and 5 encourages states to provide legal aid to victims of crime in appropriate cases, thereby recognizing the importance of both victims and witnesses in the criminal justice process. Guidelines 7 and 8 require that the views and concerns of victims and witnesses should be presented and considered at appropriate stages of the criminal justice process, acknowledging the important role they play in a fair criminal justice system.
e. Education and information: Guideline 2 encourages states to make information about the right to legal aid, how to access it, and what it consists of, available in local government offices, educational and religious institutions and through the media, including the internet, or other appropriate means, as well as radio and television programmes and regional and local newspapers. The Principles and Guidelines go further than any instrument or jurisprudence before it, by stressing the importance of ensuring that the public is well-informed of their right to legal aid as well as about the criminal justice system generally.
f. Provision of legal aid to economically and socially disadvantaged persons: Principle 9 provides that "*States should also ensure that legal aid is provided to persons living in rural, remote and economically and socially disadvantaged areas and persons who are members of economically and socially disadvantaged groups.*"

In terms of persons awaiting trial, the Guidelines on the Provision of Access to Legal Aid, lends credence to constitutional provisions on the presumption of innocence and aids due process by ensuring access to justice for accused persons who are unable to afford legal fees and are ignorant of their rights. In the US and UK, there are comprehensive national strategies that include all legal aid providers, thus giving a structural backing to the legal framework of legal aid.[848] In Nigeria on the other hand, the legal framework exists for legal aid. However, there is an absence of a strong structure or national strategy to support the legal frame work on legal aid. Thus, despite over thirty years of legal aid in Nigeria, the criminal justice system still contends with a legal aid system that is ill-equipped to handle anything but the barest minimum number of cases of persons awaiting trial in spite of the fact that they constitute over 70% of the prison population.

[848] Ayorinde, B. 2016. *Legal aid should be elevated to the level of a fundamental right.* Legal Aid Council. Retrieved 22 April, 2018 from www.legalaidcouncil.gov.ng/index.php/en/about-us/governing-board/86-about-us/140-legal-aid-should-be-elevated-to-the-level-of-a-fundamental-right;

Summary

With regard to the current study on access to justice for persons awaiting trial, it can be observed that the above mentioned international human rights treaties, principles and guidelines emphasize that there is a distinction between people who have been found guilty, convicted by a court of law and sentenced to prison, and those who have not; this is because persons awaiting trial should be regarded differently due to the fact that the law recognises them as innocent until they are pronounced guilty. It is estimated that on any given day, around three million people worldwide are held in pre-trial detention and this represents about 30% of the total prison population.[849]

Without effective access to justice, people can be detained for months or years on end and the presumption of innocence is lost. The longer a person spends awaiting trial, the less the chances the person has of receiving a fair trial in accordance with the rule of law and due process, This is because evidence can go stale and witnesses can disappear. Also, the pressure to plead guilty to a crime not committed increases as people lose confidence in the justice system and seek to end the uncertainty faced awaiting trial. Access to justice is thus essential for the attainment of justice for awaiting trial persons because, justice delayed, is justice denied.

The international human rights treaties, principles and guidelines provide guidance to agents of the criminal justice system and recommend ethical action in line with the rule of law and due process, equal justice, rehabilitation, restorative justice, management of offenders all the while taking into account the resources available to the criminal justice system in a bureaucratic manner while respecting the important aim of crime control and the protection of lives and property of the average citizen. This is of particular importance because the principles codify practice and procedure that, if followed, can help ensure access to justice for persons awaiting trial in the Nigerian criminal justice system. Also, it

[849] Penal Reform International and UKaid. 2013. *Briefing on the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems.* Penal Reform International, London, United Kingdom, Retrieved June 03, 2017 from http://www.cdn.penalreform.org

is state parties that give effect, not only to international norms and jurisprudence on criminal justice but also national normative law.

4.2 Regional framework on access to justice

There are three principal regional human rights instruments that are nested within the bigger framework of International human rights; the African Charter on Human and Peoples' Rights, the American Convention on Human Rights for the Americas, and the European Convention on Human Rights. This section will however, discuss only the African regional framework of access to justice.

The African system is regarded as the youngest; least developed, and least well-resourced of the Regional systems of human rights. While giving a brief background to the Organisation for African Unity (OAU), Rehman[850]informs that the OAU, from the point of its inception was consumed by the rhetoric of anti-colonialism, anti-racism and anti-apartheid movements. The preservation of State Sovereignty, territorial integrity and non-interference in internal domestic affairs of States were the cardinal principles of the Union. However, concern at the OAU's failure to react to various gross violations of human rights committed by dictators like Idi Amin in Uganda, Jean-Bedel Bokassa in the then Central African Empire, and Francisco Macias Nguema in Equatorial Guinea, combined with a growing recognition of the importance of human rights led the Union to adopt, in 1981, the African Charter on Human and Peoples' Rights[851]

In 1981, the Assembly of Heads of States and Government of the Organization of African Unity adopted the African Charter on Human and Peoples' Rights[852](the African Charter) which entered into force in 1986 and as of the present 53 African States, including Nigeria, are parties.[853] According to Alston and Goodman[854]the African Charter:

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[850] Rehman, J. 2010. *International human rights law*:2nd ed.)Edinburgh: Pearson Education Limited. Pg. 308
[851] Alston, P. and Goodman, R. 2013. International Human Rights, op.cit. pg. 1026
[852]African (Banjul) Charter on Human and Peoples' Rights, adopted 27 June, 1981,OAU Doc.CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force 21 Oct. 1986
[853]See African Commission on Human and Peoples' Rights. Retrieved June 02, 2017 from, http://www.achpr.org/instrument/achpr
[854]Alston, P. and Goodman, R. 2013. *International human rights*. Oxford: Oxford University Press. pg. 1025

> …served as an important illustration of a human rights regime that was more duty-oriented than the universal human rights system or the two other regional systems…although the overall system has become increasingly elaborate, the lack of resources and the limited political will of governments have served to limit its achievements. Although the Commission has been in existence for a quarter of a century, its workload has expanded only gradually and it has been cautious in exercising its limited powers or creatively interpreting and developing them.[855]

They also aver that the African system has not yet yielded as much information and output of recommendations or decisions - state reports and reactions to the reports, communications (complaints) from individuals about state conduct, studies of 'situations' or investigations of particular violations, as the European and Inter-American systems have done.[856] And in comparison to those systems, the State parties and the Commission have taken only a few forceful or persuasive actions within the structure of the Charter to attempt to curb serious human rights violations, although recent years have shown promise of a more insistent and active stance.[857]

Although the AU Charter does not contain any human rights requirements relating to admission into the Union, it provides for the possible suspension of certain rights or the imposition of sanctions upon states that fail to comply with AU decisions and policies.[858]In addition, governments that come to power through unconstitutional means shall not be allowed to participate in AU activities.[859]The African Charter is also regarded as having helped steer Africa from an age of human wrongs into an age of human rights because it sets standards and establishes the groundwork for the promotion and protection of human rights in Africa. The Charter forms the basis for individuals to claim rights in an international forum and emphasizes that human rights cannot be swept under the carpet of 'internal affairs.'[860]In addition to the African Charter on Human and Peoples' Rights, the OAU adopted two other important instruments which address specifically the rights of

[855] Alston, P. and Goodman, R. 2013. op.cit.
[856] ibid
[857] ibid.
[858] See Article 23 (2) of the African Union Charter
[859] See Article 30 of the African Union Charter
[860] See African Commission on Human and Peoples' Rights op.cit

women and the rights of children. The African Charter on the Rights and Welfare of the Child (ACRWC) was adopted in 1990.[861]

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa was adopted in 2003[862]and is regarded as an antidote to the African Charter's perceived neglect of women issues. The Protocol defines discrimination against women and has detailed provisions dealing, amongst others, with harmful practices against girls and women[863], violence against women,[864] equality in and after marriage,[865] the right to political participation,[866] protection of women in armed conflicts,[867] health and reproductive rights[868] and widow's rights.[869]

When States ratify human rights treaties, they agree to both refrain from violating specific rights and to guarantee enjoyment of those rights by individuals and groups within their jurisdiction. The Regional system and oversight bodies contribute to State compliance and provide opportunities for redress and accountability that may be non-existent or ineffective at the national level. The African system appoints individual experts to monitor human rights conditions in a range of priority areas, such as arbitrary detention and discrimination. These experts, called Rapporteurs, carry out their work by receiving information from civil society, visiting countries and reporting on human rights conditions and the ways in which they violate or comply with international norms. It must be pointed out that the relationship between the international and regional human rights components is not hierarchical, and the work carried out can be duplicative, but given the variations in State ratification and the different mandates, working methods and possible outcomes of the various mechanisms,

[861] It entered into force in 1999
[862] It entered into force in November, 2005
[863] Article 5
[864] Article 4
[865] Articles 6 and 7
[866] Article 9
[867] Article 11
[868] Article 14
[869] Article 20

advocates will rarely have to choose between two bodies that are equally able to provide the desired result.[870]

The African Union (AU), succeeded the OAU in 2002, and has, in symbolic terms, accorded greater attention to the principles of human rights, democracy and the rule of law. The Constitutive Act of the AU, represents an improvement on the Charter of the OAU in its recognition of human rights values. Among its objectives, Article 3 seeks to promote human and peoples' rights in accordance with the African Charter on Human and People's Rights and other relevant instruments[871] and one of its principles the respect for democratic principles, human rights, the rule of law and good governance; promotion of social justice to ensure balanced economic development; respect for the sanctity of human life, condemnation and rejection of impunity and political assassinations, acts of terrorism and subversive activities.[872]

4.2.1 Criminal justice approaches and international jurisprudence on access to justice

How do we relate criminal justice approaches as discussed in chapter two to the international jurisprudence and the human rights framework on access to justice? In this researcher's opinion, it is possible to infer the criminal justice approaches that international jurisprudence recommends in terms of access to justice for persons awaiting trial in the criminal justice process. This is because in the context of the instruments, reference is made to ideals that reflect these criminal justice approaches for example; in the context of the due process approach, the international bill of human rights indicates a strong recognition of the inherent rights of the persons awaiting trial.

In terms of an equal justice approach to criminal justice, recognition of the approach can be seen in the UDHR, for example, Article 2 of the UDHR obliges states to take measures to ensure that all individuals are entitled to equal access to judicial and adjudicatory

[870] International Justice Resource Center. 2017. *Overview of the Human Rights Framework*. retrieved on 22 May, 2017, from http://www.ijrcenter.org/ihr-reading-room/overview-of-the-human-rights-framework/
[871] Article 3 (h)
[872] Article 4 (m) – (o)

mechanisms which include legal representation, the rights to a fair and speedy trial, freedom from discrimination amongst all other provisions. This obviously points to recognition of the importance of due process in international criminal justice.

The Restorative approach has received international recognition to such an extent that the United Nations at its 10th Congress on the prevention of crime and the treatment of offenders[873]in its declaration; The *Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-First Century*[874] encouraged the "…*development of restorative justice policies, procedures and programmes that are respectful of the rights, needs and interests of victims, offenders, communities and all other parties.*" Subsequently, experts developed the Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters[875]

Although there is no pointer to the crime control and bureaucratic approaches, it is recognised that one of the central aim of criminal justice is crime control hence; all other approaches are ancilliary to this approach. and are geared towards achieving this aim. In terms of the bureaucratic approach, the administration of criminal justice in any system cannot boast of true success without resources allocated to the system and the optimal management of the said resources.

Rehabilitation has been an important historical development in international human rights, for example, in Article 10 (3), the ICCPR requires that judicial systems to impose punishment that is reflective of the social rehabilitation principle. Also the basic principles were enacted to look into how best to approach justice and point to restorative, rehabilitative measures and even non intervention in the administration of criminal justice. This researcher has observed the absence of any indication or recognition of a power model or status passage approach to criminal justice in legislation and policy relating to persons awaiting trial in international and regional jurisprudence. This is ideal particularly

[873] This held in Vienna, 10-17 April, 2000.
[874] A/CONF. 184/4/Rev.3 paragraph 29
[875] Economic and Social Council Resolution 2002/12,

because awaiting trial persons are legally presumed innocent and should not be put in a situation that punishes them, much like the crime control, crime preemption, status passage, and the power approaches to criminal justice tend to do.

However, in practice, the situation is different, as procedures used in arrest, interrogation and remand, do not lend credence to normative and procedural law standards of criminal justice. This situation is further compounded by media trials, public condemnation and shunning of awaiting trial persons which has the effect of punishing awaiting trial persons in contravention of the presumption of innocence.

4.2.2 Regional Jurisprudence

The institutional structure of the Inter-American and African Conventions are modeled on that of the Convention, as such, the Inter-American and African Courts have functions that are similar to those of the European one. One unique feature of the African System is that it is grounded in the three international human rights instruments; the UDHR, ICCPR and ICESCR and includes civil and political rights, as well as specific economic and social rights and does not separate socio-economic rights into different instruments like the European and American System. On the other hand, the American system rests on the American Charter on Human Rights (AmCHR), the Organization of American States Charter (OAS Charter) and the American Declaration, while the European System combines the ECHR and the European Social Charter. The African Charter includes civil and political rights, as well as specific economic and social rights and does not separate socio-economic rights into different instruments like the European and American system.

The adoption of the protocol to the African Charter on Human and Peoples' Rights on the establishment of an African Court was a significant initiative in the promotion of African Human Rights. According to Singh[876]although this development signified a regional intention to deal with Human Rights violations through a judicial process, it acknowledged the failure of the African Commission on Human and Peoples' rights to impact

[876]Singh, S. 2009. The Impact of Clawback Clauses on Human and Peoples' Rights in Africa *African Security Review:*18.4. 95-104 Retrieved July 22, 2010 from https://doi.org/10.1080/10246029.2009.9627561

meaningfully on the development and maintenance of Human Rights in Africa as a result of politicking and power hunger by its leaders who have a tendency to sacrifice individual liberties in order to safeguard national independence and its resultant disregard of Human Rights. Also, establishing a court which empowered to legally condemn state parties for human rights violations is no guarantee of success an effective human rights mechanism requires more. The African Human Rights Courts has the ability to hear cases of abuse of civil and political rights as well as violations of socio-economic rights and collective or peoples' rights. The problem however lies in the enforceability of judicial decisions in domestic courts.

The African Charter has been incorporated into the body of Nigerian Municipal law, however, this also means that as a result of claw back and non derogation clauses, it cannot be preferentially treated, but is regarded as being at par with other municipal legislation and is thus, subordinated.[877]The Nigerian Government's recognised lack of respect for the rule of law and due process is brought to the fore in cases such as Dasuki's - Nigeria's former National Security Adviser, Colonel Dasuki Sambo - where the ECOWAS Community Court of Justice (ECOWAS Court) declared his arrest and continued detention as unlawful, unreasonable and arbitrary; amounting to a mockery of democracy and the rule of law.[878]

The ACHPR does not contain any derogation provisions[879] for States, from the Charter even in times of public emergency;[880]for instance, in the case of *Media Rights Agenda v. Nigeria, Communication,*[881]the African Commission affirmed that the lack of any derogation clause in the African Charter on Human and Peoples' Rights means that "*…limitations on the rights and freedoms…cannot be justified by emergencies or special circumstances..*"' Reservations that are compatible with the objects and purposes of the

[877] See General Sani Abacha v. Chief Gani Fawehinmi (2000) 6 NWLR (Pt.660) 228
[878] Okakwu, E. Oct. 04, 2016. ECOWAS court orders Dasuki's release, imposes N 15 million fine on Nigerian government. Premium Times. Retrieved March 23, from, http://www.premiumtimesng.com
[879]Derogation clauses are clauses that explicitly provide circumstances where rights may be limited and define rights that are non-derogable and must be respected even when derogation is permitted. See
[880] Article 19
[881] No. 224/98 (2000)

treaty are permissible and valid, however, most human rights standards are embedded in claw-back clauses, which blocks the attainment of the rights guaranteed,[882]and subjects provisions of the Charter to domestic law, thereby limiting the strength of the Charter. Thus, human rights in the African regional context become vulnerable to the institutions that abuse them because although it purports to protect human rights, it permits the breach of those rights by States who cite reasons of public interest or national interest[883]

One major drawback to the African Charter is the inadequate provisions on criminal procedure before and during trials which has negative implications for awaiting trial persons.[884] The African Charter, like the United Nations Human Rights Council's Universal Periodic Review, provides for a State reporting procedure[885]in order to ascertain if each State party has taken necessary administrative, legislative or other measures to implement the Charter. The African Commission, with the permission of the Assembly examines the reports in consonance with alternative or shadow reports f NGOs.[886]Since the Rules of Procedure in the African Commission do not attach sanctions for non-compliance with reports, there have however, been few reports submitted[887] which then asks questions of the effectiveness of the African Charter.

4.3.0 Comparative analysis of the effect of criminal justice approaches on legislation, principles and practice in the United Kingdom (England and Wales), United States of America and Nigeria

As earlier stated, the criminal justice system is an extremely important component that is necessary for the success of any society, and in a democracy, confidence in the system is

[882] Mapuva, L. 2016. Negating the promotion of Human Rights through "claw-back"clauses in the African Charter on Human and People's Rights. *International Affairs and Global Strategy, 51:1-4*
[883] Ibid.
[884] Heyns, C. 2001.The African Regional Human Rights System in Need of Reform? Vol. 1 No. 2 2001, African Human Rights Law Journal. Retrieved on 28 February, 2018, from www.ahrlj.up.ac.za/heyns-c
[885] See Article 47-54, 55-59, and 62 of the AFCHPR
[886]It must be pointed out that NGOs are unable to access official State reports and as such, cannot highlight deficiencies in consonance with State reports.
[887] Heyns, C. 2001. Ibid.

important; where confidence is eroded, it becomes hard for ethical standards to be upheld.[888] The criminal justice system is real, with life altering consequences for those caught up in it and as such, it is necessary to be clear about the principles that govern the criminal justice system. This portion of the research is a comparative analysis of the framework/approach/paradigm of criminal justice in relation to awaiting trial persons. It utilises identified dimensions that reflect key issues in the criminal justice system, and their effect on access to justice, in consonance with the international framework of access to justice, in line with the objectives of this research which is; to identify access to justice principles, practice and procedures, comparatively analyze principles, practice and procedures as relates to access to justice; identify lapses (if any) in the pretrial process as a result of lack of access to justice that lead to injustice, human rights abuses and undermine the rule of law, and outline the consequences of lack of access to justice.

Frase and Weigend[889]recommend a system wide analysis of criminal justice systems as opposed to the generalized method of looking at isolated parts of the system that are most suitable for borrowing, and branching out from a focus on the formal rules and structures which tend to disregard data on how the formal rules and structures actually function in the system.[890] They also recommend that rather than seeking to discover smaller differences between foreign and domestic systems which are likely to offer feasible reform transplants, they recommend borrowing aspects of the foreign systems which are the most strikingly different from analogous procedures, as in their opinion, it will produce feasible and desirable reforms. In consonance with Frase and Weigrend recommendations, this research seeks to apply the systems wide, theory and practice approach to the comparative analysis of the criminal justice system in the three jurisdictions with a view towards proposing reforms for the Nigerian criminal justice system. Reference to the United States focuses on

[888] Morgan, R. "The Process is the Rule and the Punishment is the Process" The Modern Law Review Limited 1996. (MLR 59:2), Blackwell Publishers, 108, Oxford, United Kingdom and 238 Main Street, Cambridge, MA 02142, United States of America

[889]Frase, R.S. and Weigend, T. "German Criminal Justice as a Guide to American Law Reform: Similar Problems, Better Solutions? Vol. 18 No. 2 Boston College International and Comparative Law Review (1995) retrieved on 22 March, 2018 from http://lawdigitalcommons.bc.edu/iclr/vol18/iss2/2

[890] Ibid.

Federal Statutes and rules of criminal procedure, as the different states tend to have varying approaches to the administration that are too broad to be discussed in this research.

A cursory examination documentation on the three criminal justice systems reveal that although there are some sharp differences in the three systems, there seems to be sufficient similarity to enable reform of the Nigerian criminal justice system based on advantageous features of the English and American systems. The significance of comparative analysis is sometimes questioned based on the differences in legal cultures amongst the three jurisdictions- despite the common law origin- which can make it difficult to import procedures from the two jurisdictions into the Nigerian criminal justice system. For example, the right to trial by jury in the two jurisdictions, the different traditions of training and professional progression and the American viewpoint about the relationship between the individual and the state to the effect that the state governments are run by the society within the state through their representatives. Thus, society runs the states and nation through the government, which are in turn limited by the government.

Because it is not entirely possible to draw direct comparisons between the selected countries, what follows is an analysis of primary sources of information; such as national and international legislative frameworks and other regulations, including relevant case law, strategies and action plans pertinent to the criminal justice system, reports of international organisations on particular issues on the criminal justice system and compliance reports of national authorities with regard to their international, constitutional and legislative obligations.

It must be pointed out that changes in criminal justice policy in the three jurisdictions are typically universal with one or two exceptions; they generally start with research aimed at fixing perceived errors in the criminal justice system, organizations – such as Prison Reform International, the United Nations office of Drug and Crime and Amnesty International to name a few -then utilise research findings by taking up active roles in spearheading movements for criminal justice reform which are not limited to, decreasing prison population, reducing prison sentences, altering sentencing policies, policing reform,

juvenile justice reform, addressing racial profiling, trial procedures and reform policies targeted at remand on conviction and post release stages of the criminal justice process.

The criminal justice system as discussed in chapter three of this research can be viewed as an instrument of social control, where some behaviours are considered to be very dangerous; requiring strict control or a complete ban, and some people, based on their actions are considered to be destructive and as such, they must be treated, monitored or confined. This idea rings true in the criminal justice systems of the three jurisdictions and a comparative analysis of the respective systems will highlight how the systems operate, with a focus on the actions of the agents of the system and the effect on access to justice for persons awaiting trial. As the criminal justice system is too wide to cover in intricate details in one thesis and in order to keep the length of this thesis within a reasonable amount, some of the most significant differences amongst the three systems that can best point to criminal justice perspectives and their effect actions of agents and the corresponding effect on access to justice for persons awaiting trial will be analysed with the idea of obtaining ideas for credible reform which will help ensure access to justice for persons awaiting trial in Nigeria. These areas are:

a. The scope of criminal law
b. Form and process:
i. Limits on gathering and use of evidence against the accused
ii. Frequency in the use of arrest and pretrial-detention
iii. Prosecutorial charging discretion
iv. plea-bargaining and other forms of bargaining
v. Pretrial judicial investigation and review of charges
vi. Defence discovery rights
vii. trial procedures and rules of evidence
viii. Broad defence and prosecution appeal rights
c. The broader rights of awaiting trial persons

This research is an attempt to incorporate available descriptive and empirical information culled from formal legal rules and structures, impressionistic descriptions of practice, quantitative data and an examination of both the theory and practice to determine the

extent of similarities and differences amongst the three system, and identifying the extent that a criminal justice perspective can be identified from the above analysis.

4.3.1 The scope of criminal law

Criminal justice agencies are political entities whose structures and functions are logged within the legislative, judicial and executive branches of government. The Nigerian, American systems share similar features in the sense that they are part of a federal/national system. The United Kingdom on the other hand has three distinct criminal justice systems with separate procedures and agencies: England and Wales, Scotland, and Northern Ireland. The organizational and jurisdictional limits of criminal justice in England and Wales are determined by constitutional distinctions and by the need to respond to issues that concern not only the country, but cross borders such as terrorism, slave trade, kidnapping, trafficking etc, in line with their membership within the European Union. Although there have been questions as to the impact of BREXIT on the UK criminal justice, Fenner[891]opines that Brexit will not negatively impact the UK as Criminal legislation dealing with due process, trying and sentencing of defendants is a matter for each individual state within the European Union, and criminal offences that enforce European Union legislation are already enshrined within domestic law.[892]

The Criminal Justice System of the United States and United Kingdom appear to embrace careful research analysis to support public policy initiatives. The current criminal justice systems in both countries are regarded as being shaped by reliance on the scientific collection of data to determine whether programs work and what policies should be adopted.[893]As such, criminal justice programs undergo time-bound review (evidence based justice)[894]to ensure that they achieve their stated goals and have a real and measurable effect.

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[891] Fenner, E. *The Impact of Brexit on the Criminal Justice System.* 2016. Retrieved March 28, 2018 from www.fmlaw.co.uk/impact-brexit-criminal-justice-system

[892] Fenner, E. "*The Impact of Brexit on the Criminal Justice System. op.cit*

[893] Ibid.

[894]Evidence–based justice in the United States have some principles; target audience, randomized experiments, intervening factors, measurement of success and cost effectiveness

The volume of recent legislation amendment, government reports and commissions set up to administer aspects of the criminal justice system available on the internet, in bookshops and libraries can attest to this and virtually every aspect of their respective criminal justice systems have recently undergone, or is undergoing change, this is partly as a result of new problems such as terrorism and the expansion of cyber crime. The Nigerian Criminal Justice system as it obtains today is based on the set up of the criminal justice system during the colonial administration of the British government. Since then there have been adjustments and adaptations to the existing laws, structures and procedures, built on the faulty existing foundation inherited from the colonial British administration. There have been some careful research analyses to support policy changes such as the National Study Group set up to discuss the death penalty issue[895] and the processes and deliberations that led to the enactment of the Administration of Criminal Justice Act, 2015. However, there has not been a total overhaul of any of the components of the system which is desperately needed.

The measure of justice in a system can be determined by the access that a person can obtain to it. Thus, without effective access to justice, it is almost impossible to ensure that justice is not just seen to be done, but is actually done. One primary means of ensuring access to justice is by ensuring that substantive law, procedural law and the actual practice of the law by the agents of the system adequately provide for respect for the rule of law and due process. One way of influencing substantive and procedural criminal justice is through the right justice perspective. Admittedly substantive and procedural laws have key differences, some of which are:[896]

i. Substantive law deals with the subject matter of a case and status rights and obligations of the parties concerned, while procedural law prescribes the method, procedure and machinery for the enforcement rights and obligations[897]

[895]In 2004 the Attorney General of the Federation and Minister of Justice inaugurated a panel of experts to serve as the National Study Group on Death Penalty. The Study Group recommended that all executions should be put on hold until the Nigerian justice system could deliver fair trials and due process. See generally Onuoha, C.C. 2010. The quality of justice is strained: the death penalty in Nigeria pg. 18. Retrieved May 22, 2018 from http://www.nigerianlawguru.com

[896] Surbhi, S. "Difference between Procedural Law and Substantive Law" Key Differences, 23 August, 2017, accessed from http://www.keydifferences.com/difference-betwen-procedural-law-and-substantive-law.html

[897] Ibid.

ii. Substantive law comprises of the statutory rules passed by the legislature through the process of enactment, regulating the conduct of citizens. Procedural law administers the operation of a particular case by conforming to the step by step process through which the case passes[898]
iii. Substantive law governs how people should behave while procedural law governs how the legal case flows[899]
iv. Substantive law is concerned with the rights and duties of the citizens while procedural law is concerned with the ways and means of imposing substantive law[900]
v. Substantive law defines the rights of parties and punishment for wrongdoing while procedural law defines the initiation and prosecution of criminal law suits.[901]

Procedural law also determines the means of imposing rights and providing remedies to wrong and consists of rules concerning jurisdiction pleading, appealing, presenting evidence, executing judgement, costs and determines the procedure of all law suits. In summary, substantive and procedural laws go hand in hand as some elements of procedural law such as the rules of evidence, the right to notice of charges, questions of appeal, and the right to counsel, affect substantive law. Procedural law also gives the bite to substantive law's bark in the sense that it implements substantive law.[902] This does not in any way denigrate the focus on procedural and institutional issues that plague the criminal justice system as these will be discussed later in this chapter. However, in the context of criminal justice and the interrelationships of the systems, Civil[903] and Public[904] law are also important as all four elements of the law can be interrelated. Siegel and Worrall explain the relationship as follows:

[898] Ibid.
[899] Ibid.
[900] Ibid.
[901] Ibid.
[902] Siegel L.J. and Worrall, J.J. 2014. Introduction to Criminal Justice op.cit.
[903]Civil Law can be regarded as the set of rules governing relations between private parties, including both individuals and organizations such as business enterprises and corporations. Civil law is used to resolve, control and shape personal interactions such as contracts, wills, trusts, property ownership, and commerce. One element of civil law that is most relevant to criminal justice is torts- the law of personal injuries.
[904]Public law is the branch of the law that deals with the governments and its relationships with individuals or other governments. Public law governs the administration and regulation of city, state, local government, county and federal government agencies. See generally, Siegel, L.J. and Worrall, J.J. 2014. Introduction to Criminal Justice, op.cit. pp. 128-130

> A crime victim may also sue the perpetrator for damages in a civil court; some crime victims may forgo criminal action and choose to file a tort claim alone. It is also possible to seek civil damages from a perpetrator, even if he is found not guilty of crime (as in the case of Nicole Brown and Ron Goldman, who successfully sued O.J. Simpson for damages), because the evidentiary standard in a tort action is less than that which evidence must meet for a criminal conviction…In some instances, the government has the option of either pursuing a legal matter through the criminal process or filing a tort action, or both. White-collar crimes, for example, often involve both criminal and civil penalties.

This section looks at the influences of justice approaches on criminal justice, whether substantive or procedural: when one wants to ascertain the trend or approach to justice of a system one looks to the provisions of the law and procedure to obtain an indication. Here, we will comparatively analyze the effect of justice approaches on substantive and procedural law in the respective jurisdictions.

The content of criminal law provides the basis of operation of the criminal justice system by defining behaviour that is to be regulated through the use of criminal law. Admittedly, there is no simple way of defining what behaviour is criminal and the best means of identifying what is regarded as a crime is to look to legislation. Therefore, a crime is what the law identifies as a crime and the three jurisdictions have varying interpretations of crime, what constitutes criminal behaviour, and how to respond to criminal behaviour based on an identified criminal justice model or approach. They also have established procedures in the criminal justice system for the processing of accused/awaiting trial persons and offenders.

In England, Siegel and Worrall posit that ideas about issue of crime and safety are subject to change and that there exist in the English criminal justice system a plethora of legislation which would have been inconceivable by parliaments and governments for much of the 20th century. These legislations illustrate that response to crime and criminal behaviour is a major feature of government and politics. There have been key constitutional events that have set the foundation of the current criminal justice system but

there is no one defining moment.[905] As such, there has been a gradual evolution of the constitutional foundations of the criminal justice system (the rule of law, parliamentary democracy, and freedoms of the individual). Since the 1980's there has been a new pace of change as matters of crime, justice, law and order have dominated the political headlines and actions of both government and citizens, and there have been a steady flow of legislation on matters concerning criminal justice.

In the first eighty years of the twentieth century there were four statutes titled Criminal Justice Acts in the UK, enacted in 1925, 1948, 1967 and 1972. The changes in legislation increased with Criminal Justice Acts in 1982, 1998, 1991, 1993, and 1994 and major pieces of criminal legislation in each year from 1994 to 2003:[906] Sexual Offences Act, 1994; Criminal Justice and Public Order Act, 1994; Police and Magistrates' Court Act, 1994; Criminal Appeal Act, 1995; Learmont Report on Prison Security, 1995; Criminal Procedure and Investigations Act, 1996; Fire Arms (Amendment) Act, 1997; Protection from Harassment Act, 1997; Sex Offenders Act (which established the sex offenders register), 1997; Crime (Sentences) Act, 1997 and the White Paper, '*No More Excuses*," which proposed a range of proposals to improve the effectiveness of the youth court in

[905] Davis, M., Croall, H. and Tyrer, J. Criminal Justice op. cit

[906] Sexual Offences Act, 1994; Criminal Justice and Public Order Act, 1994; Police and Magistrates' Court Act, 1994; Criminal Appeal Act, 1995; Learmont Report on Prison Security, 1995; Criminal Procedure and Investigations Act, 1996; Fire Arms (Amendment) Act, 1997; Protection from Harassment Act, 1997; Sex Offenders Act (which established the sex offenders register), 1997; Crime (Sentences) Act, 1997; White Paper, '*No More Excuses*," which proposed a range of proposals to improve the effectiveness of the youth court in preventing offending by children and young persons. This is now the recognised principal aim of the youth justice system; White Paper, Modernising Justice, 1998; Consultation Paper, *Joining Forces to Protect the Public*, 1998; Crime and Disorder Act, 1998; Access to Justice Act, 1999; Criminal Cases Review (Insanity) Act, 1999; Youth Justice and Criminal Evidence Act, 1999; National Standards for the Supervision of Offenders in the Community, 2000; Criminal Justice and Court Services Act, 2000; Powers of Criminal Courts (Sentencing) Act, 2000, a consolidation Act that brought together all existing legislation on sentencing; Sir Robin Auld's *Review of the Criminal Courts in England and Wales, 200*1, a comprehensive review of criminal procedure and the criminal courts; Anti-terrorism, Crime and Security Act, 2001. Enacted in response to the 11 September terrorist Attacks on New York and Washington; Criminal Justice and Police Act, 2001; Criminal Defence Service (Advice and Assistance) Act, 2001; International Criminal Court Act, 2001; White Paper, *Policing a New Century: A Blueprint for Reform, 200*1; Police Reform Act, 2002, White Paper *Justice for All*, 2002; Proceeds of Crime Act, 2002; White Paper *Respect and Responsibility – taking a stand against anti-social behavoiur, 2003;* Courts Act, 2003, Abolished the Magistrates' Courts Committees (MCCs) and established court boards and a new HM Inspectorate of Court Administration; Crime (International Cooperation)Act, 2003; Anti-social Behaviour Act, 2003; European Union (Accessions) Act, 2003; Criminal Justice Act, 2003 and the Sexual Offences Act, 2003

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The reforms were partly a response to internal pressures for more effective crime control (crime control perspective), a desire to protect citizens from bias and unfair procedures (due process and equal justice), the pursuit of greater administrative efficiency (the bureaucratic perspective), and technological change (managing offender perspective). Reforms also came about as a result of Britain's membership in the European Union and this brought about cross-jurisdictional cooperation and coordination in an attempt to control cross-European organized crime and incorporate reforms such as the European Convention[907]

[907]Human Rights Act, 1998; Regulation of Investigatory Powers Act, 2000

In the United States before the American Revolution, the colonies, then under British rule were subject to common law. After the colonies gained their independence, state legislation standardized common-law crimes such as murder, burglary, arson and rape by putting them into statutory form in criminal codes.[908] Where common law proved inadequate to deal with changing social and moral issues, the states and Congress supplemented it with legislative statutes and today, criminal behaviour is defined primarily by statute and with few exceptions, crimes are removed, added, or modified by the legislature of a particular jurisdiction. The current U.S. legal system is codified by the state legislatures and the U.S. Congress. Each jurisdiction defines 'crime' in its own legal code and sets out appropriate punishment. However, for ease of reference, the U.S. Congress codified legislation will be discussed.

Like the U.K. criminal law, U.S. criminal law is not static and has been constantly evolving and some interesting legislation herein reflected have been enacted in the course of over two centuries. These include; Adam Walsh Child Protection and Federal Safety Act 2006;[909] Anti-terrorism and Effective Death Penalty Act, 1996;[910] Armed Career Criminal Act, 1984;[911]Arms Export Control Act, 1976; Ashurst-Summers Act, 1935; Assimilative Crimes Act, 1925; Biological Weapons Anti-terrorism Act of 1989;[912]Brady Handgun Violence Prevention Act, 1993; Child Abuse Prevention and Treatment Act, 1974 and its reauthorization Act of 2003;[913]Child Pornography Prevention Act, 1996; Child Protection and Obscenity Enforcement Act, 1988; Civil Rights Act, 1967;[914]Communications Assistance for Law Enforcement Act, 1994; Combat Methamphetamine Epidemic Act,

[908]See generally on the history of American criminal law, Siegel L.J. and Worrall, J.J. 2014. Introduction to Criminal Justice op.cit.

[909]The Act organizes sex offenders into 3 tiers according to the severity of the crime committed and mandates that the offenders must be registered. The Act creates a national sex offender registration

[910]This law is controversial for its change in the law of *Habeas Corpus.* It also contains provisions to deter terrorism, provides justice for victims, and has provisions on the death penalty.

[911]It provides for sentence enhancement for felons who commit crimes with firearms if they are convicted of certain crimes three or more times.

[912]Provides for the implementation of the Biological Weapons Convention as well as criminal penalties for violation of its provisions, it was amended in 1996

[913] (CAPTA) is a key federal legislation addressing child abuse and neglect. It provides federal funding to states in support of prevention, assessment, investigation, prosecution, and treatment activities and also provides grants to public agencies and non-profit organizations for demonstrations programs and projects.

[914]Also known as the Fair Housing Act, is a follow up to the Civil Rights Act of 1964 which outlaws discrimination based on race, color, religion, sex or nation of origin.

2005; Comprehensive Crime Control Act, 1984;[915]Comprehensive Methamphetamine Control Act of 1996;[916]Controlled Substances Act, 1971; Controlled Substances Penalties Act, 1984; Crime Victim's Rights Act, 2004; Crimes Act, 1790 and 1825;[917]David Ray Hate Crimes Prevention Act, 2009;[918]Debbie Smith Act, 2004;[919]DNA Analysis Backlog Elimination Act, 2000; Digital Millennium Copyright Act, 1998; Economic Espionage Act, 1996; Lautenberg Amendment, 1997;[920]Drug Trafficking Vessel Interdiction Act, 2008; Fair Sentencing Act, 2010;Federal Firearms Act, 1938; First Enforcement Act, 1871;[921]Foreign Agents Registration Act, 1938; Foreign Corrupt Practices Act, 1977 (amended in 1988); Foreign Intelligence Surveillance Act, 1978; Foreign Intelligence Surveillance Act of 978 (Amendment Act, 2008); Federal Wire Act, 1961; Foreign Narcotics Kingpin Designation Act, 1999; Gun Control Act, 1968; Fraud Enforcement and Recovery Act, 2009; Hate Crimes Statistics Act, 1990; Hobbs Act, 1961; Hostage Taking Act, 1985; Hyde Amendment, 1997; Increased Penalties Act, 1929; Innocence Protection Act, 2001;[922]Insanity Defence Reform Act, 1984; Insurrection Act, 1807; International Anti-Bribery Act, 1998; International Parenting Kidnapping Crime Act, 1993; Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, 1993 (amended in 1998); Kilah Davenport Child Protection Act, 2013; Major Crimes Act, 1885;

[915]It is the first comprehensive revision of the U.S. Criminal Code since the early 1900s and among its constituent parts and provisions were: Armed Career Criminal Act; Sentencing Reform Act which created the U.S. Sentencing Commission; Extension of the U.S. Secret Service's fund over credit card fraud and computer fraud; a new section in the criminal code for hostage taking; reinstitution of the federal death penalty; and stipulation about using civil forfeiture to seize assets of organized crime

[916] Regarded as one of the major drug laws in the U.S., it was enacted to prevent the illegal manufacturing and use of methamphetamine

[917]The Crimes Act, 1790 is regarded as a quasi-constitutional text- a comprehensive statute defining an 'impressive' variety of federal crimes. The Crimes Act, 1825 is the first piece of omnibus federal criminal legislation since the Crimes Act, 1790 and provided for more punishment than the 1790 Act.

[918] It was designed to enhance federal enforcement of laws regarding hate crime and to specifically make sexual orientation, race and gender, a protected class.

[919]It provides federal government grants to eligible states of backlogged DNA samples collected from victims of crimes and criminal offenders. The Act expands the Combined DNA Index System (CODIS) and provides legal assistance to survivors of dating violence. It was passed as part of larger legislation – the Justice for All Act, 2004

[920] Named the Domestic Violence Offender Gun Ban (Gun Ban for Individuals Convicted of a Misdemeanor Crime of Domestic Violence. It is an amendment to the Omnibus Consolidated Appropriation Act of 1996

[921]Also known as the Civil Rights Act, 1871 or the Second Ku Klux Klan Act- the second of 3 enforcement Acts passed by the U.S. Congress from 1870-1871during the Reconstruction Era to combat attacks on suffrage rights of African Americans from groups like the Ku Klux Klan

[922] The first federal penalty reform to be enacted; it seeks to ensure the fair administration of the death penalty and minimize the risk if executing innocent people. It is included in the Justice for All Act, 2004

Making False Statements Act;[923]Matthew Shepard and James Byrd Jr. Hate Crimes Prevention Act, 2009; Military Cooperation with Civilian Law Enforcement Agencies Act, 1981; Money Laundering Control Act of 1986; National Firearms Act, 1934; Non-Detention Act**,** 1971, Omnibus Crime Control and Safe Streets Act, 1968; Organized Crime Control Act, 1970; Parental Kidnapping Prevention Act, 1980; Patriot Act, 2001; Prison Rape Elimination Act, 2003; Protect Act, 2003; Protect America Act, 2007;[924]Protected Computer (the Computer Fraud and Abuse Act as amended by the National Information Infrastructure Protection) Act, 1996; Racketeer Influenced and Corrupt Organization Act (RICO), 1970; Second Chance Act, 2007; Sentencing Reform Act, 1987; Speedy Trials Act, 1974;Unborn Victims of Violence Act, 2004; Undetectable Firearms Act, 1988; Victims of Crimes Act, 1984; Victims of Trafficking and Violence Protection Act, 2000; Violence Against Women Act, 1994, Violent Crime Control and Law Enforcement Act, 1994; and Whistle Blower Protection Act, 1989.

In Nigeria, the main sources of criminal legislation are the Administration of Criminal Justice Act, 2015,[925] Criminal Code, the Penal Code, the Child's Rights Act, Cybercrime (Prohibition) Act, 2015[926]Advance Fee Fraud and Other Related Offences Act;[927]African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act;[928] Borstal Institutions and Remand Centres Act;[929] Code of Conduct Bureau and Tribunal Act;[930]Constitution of the Federal Republic of Nigeria 1999;[931] Violence Against Persons (Prohibition) Act 2015, Terrorism (Prevention) Act (TPA) 2011, the Terrorism (Prevention) (Amendment) Act 2013, Court Rules and the Interpretation of Statutes and Decisions of Superior Courts in case law.

[923] Section 1001of Title 18 of the U.S. Code
[924] An amendment to the Foreign Intelligence Surveillance Act, 2007
[925] op.cit.
[926] See generally on the sources of criminal law in Nigeria, Bamgbose, O. and Akinbiyi, S. 2015. Criminal Law in Nigeria, Evans Brothers (Nigeria Publishers) Limited, Ibadan, Nigeria pp.7-12
[927] Cap A 6 LFN. 2004
[928] Cap 10 LFN.2004
[929] Cap B 11 LFN 2004
[930] Cap C 15 LFN 2004
[931] Cap C23 LFN 2004

From the above, it can be seen that criminal justice legislation in the three jurisdictions have not been static, but have been constantly evolving, although there have been more innovations and amendments in the other two jurisdictions than in Nigeria. Examples of the effect of new approaches in criminal law and justice can be seen in the enactments that reflect the change in criminal justice approaches, public opinion and morality:

i. Female circumcision: Female genital cutting, also known as female genital mutilation[932] (FGM), is widely practiced in about 30 countries of Africa and the Middle East.[933] It also prevails in the UK and US as a result of African and Eastern migrants to the countries. Shahidullah[934]informs that since the 1970s, a world movement has been growing for the criminalization of female genital mutilation and as a result of decades of international debates, discussions, research and lobbying by local advocates, laws have been enacted to criminalize FGM.[935]The United Nations has since designated 06 February, 2003, as the International Day of Zero Tolerance to Female Genital Mutilation, and countries across the world commemorate the day through a range of activities with the aim of putting an end to the act which is considered a violation of the right to health, security and physical integrity, as well as the tight to freedom from torture and the right to life because the procedure can result in death.[936] In the US, FGM is a federal crime, Congress passed the Criminalization of Female Genital Mutilation Act 1996,[937]which states that: "*…Whoever knowingly circumcises, excises or infibulates the whole or any part of the labia majora or labia minora or clitoris of another person who has not attained the age of 18 years of age shall be fined under this title or imprisoned not more than five years, or both*."[938]

[932]World Health Organization defines Female Genital Mutilation (FGM) as the partial or total removal of the external female genitalia or any other injuries to the female genital organ for non-medical reasons.
[933]Shahidullah, S.M. 2012, Comparative Criminal Justice Systems: Global and Local Perspectives, Jones and Bartlett Publishers
[934] Ibid.
[935] Ibid. See also United Nations Center for Reproductive Rights, 2008
[936] Ibid.
[937] PL 104-208
[938] See United States Code of Criminal Law, 202 pg. 1

The UK also criminalizes FGM under the Female Genital Mutilation Act of 2003. However there is not much research material on female genital mutilation in the UK. In Nigeria, Female Genital Mutilation had previously been banned in several states, but has finally been banned nationally, and as such, any act of FGM has now been criminalized with the enactment of the Violence Against Persons (Prohibition) Act 2015. However, as no formal structures have been put in place to ensure compliance with the law, FGM still thrives, though, the practice has gone underground.[939]

ii. Controlling technology: The influence of technology in the daily lives of people cannot be quantified, and technologies such as mobile phones, laptops, information technology, automatic teller machines (ATMs) have generated new sets of criminal acts apart from petty theft and robbery of items, such as, software piracy, cyber piracy, cyber squatting, cyber predation, cyber stalking, cyber bullying, cyber harassment, cyber terrorism, cyber fraud, drug trafficking, identity theft, theft of access numbers, phishing and the sale of information obtained through phishing.[940] The effect of technology on crime has led, to modifications of laws and the enactment of others to contain and control technology assisted crimes in the three jurisdictions. Computer crime laws deal with a broad range of criminal offences committed using computers or similar electronic devices. More often than not these crimes are committed with the use of the internet or through Information communication technology. The devices used provide a level of anonymity to perpetrators as well as possible access to personal, business and government information.[941]

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[939] See Babalola, P. "Despite Law Banning Female Circumcision in Nigeria, Practice not Abating-UNICEF" The Eagle Online 06 February, 2016 retrieved through http://www.theeagleonline.com.ng and Musbau, R. "Analysis of Female Genital Mutilation and Women's Right" 05 February, 2017, Business Day retrieved from https://www.businessdayonline.com/female-genital-mutilation-womens-right/

[940] Sending out bulk email or text messages designed to trick consumers into revealing bank account passwords, bank verification numbers(BVN), and other personal information.

[941] See generally on Criminal law and Technology, Koops, B.J. "Criminal Law in Cyberspace as a Challenge for Legal Research" Scripted, Journal of Law, Technology and Society, 09 March, 2012 http://script-ed.org/?p=695; Pattavina, A.(Ed.) 2005, Information Technology and the Criminal Justice System, Sage Publications, USA; Bamgbose, O.A. and Akinbiyi, S. 2015. Criminal Law in Nigeria, op. cit. pp.455-479; "A Summary of the Legislation on Cybercrime in Nigeria" The Communicator 3rd Ed. Issue 22, October, 2017, Legislation and Government Relations Unit, Public Affairs Department, Nigerian Communications Commission, retrieved on 25 October, 2017 from

In the US, efforts to combat computer related crimes have led to the Computer Fraud and Abuse Act (CFAA) 1986 which forms the basis for federal prosecutions of computer-related criminal activities. Other federal statutes include the Electronic Communications Privacy Act (ECPA), the Identity Theft Enforcement and Restitution Act 2008, the Unlawful Internet Gambling Enforcement Act 2006, and relevant provisions of the USA Patriot Act. In the UK Computer Misuse Act (CMA) 1990[942] was the first piece of legislation designed to specifically address computer misuse. The Police and Justice Act 2006 amends the Computer Misuse Act;[943] it covers broader issues than computer crime alone and increases punishments for offences committed.[944] It is worthy of note that the CMA does not define what a computer is, and this is to allow for technological development and advancement.[945]Other legislation that are related to cybercrime in the UK are the Regulation of Investigatory Powers Act 2000, Data Protection Act 1998, Fraud Act 2006, the Theft Act, 1968, Forgery and Counterfeiting Act 1981 and the Proceeds of Crime Act 2002 and the Police and Justice Act 2006. These legislations are considered when reviewing and charging cyber-dependent and cyber-enabled crimes.[946]

In Nigeria, prior to the Cybercrime (Prohibition) Act, 2015, there was no identifiable legislative framework for the implementation and evaluation of response and preventive measures to fight cybercrime in line with current practice. In order to prosecute anyone accused of cybercrime, the person could be charged under an act that could be related to the offence such as the Advance Fee Fraud and other Fraud Related Offences Act

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http://www.ncc.gov.ng/thecommunicator/index.php?option=com_content&view=article&id=899:a-summary-of-the-legislation-on-cybercrime-in-nigeria

[942]An act to make provision for securing computer material against unauthorized access or modification: and for connected purposes.

[943]From Part 5 Sections 35-38 as contained in http://www.legislation.hmso.gov.uk/acts1990/Ukpga_19900018_en_1.htm

[944]Emm, D. 2009.*Cyber Crime and the Law: A Review of UK Computer Crime Legislation"* SecureList Publications. Retrieved August 17, 2017 from https://securelist.com/cybercrome-and-the-law-a-review-of-uk-computer-crime-legislation/36253/

[945]See the English case of DPP v. Jones [1997] 2 Cr App R 155, where a computer was defined as "*a device for storing and retrieving information"*

[946]Crown Prosecution Service. *Cyber crime-Legal Guidance.* Retrieved May 29, 2017 from http://www.cps.gov.uk/legal/a_to_c/cybercrime/ ; Emm, D. 2009 *Cybercrime and the law: a review of UK Computer Crime Legislation* ibid ;Mullock, J. *Data Security and Cybercrime in the United Kingdom.* Retrieved October 22, 2017 from https://www.lexology.com/library/detail.aspx?g=1776bc96-5523-4108-acc2-2dc8cb7def2

2006.[947]The Cybercrime Act is aimed at providing effective and unified legal regulatory and institutional framework for the prohibition, prevention, detection, prosecution and punishment of cybercrime in Nigeria. This is done by ensuring the protection of critical national information and infrastructure, promoting cyber security and computer systems and networks, electronic communications, data and computer programmes, intellectual property and privacy rights. It captures offences that were hitherto not provided for in the laws of the country.

iii. Protecting the environment: Arising from the concern of environmentalists, legislations have been passed to address:

> …natural or artificial disturbance of the physical, chemical or biological components that make up the environment…the maintenance and protection of the environment, including protective measures such as the requirements of environmental impact statement as well as measures to assign liability and provide cleaning for incidents that harm the environment.

This is done with a view to protecting the environment for future generations while trying to interfere as little as possible with commerce or the liberty of people. In the US, there is an environmental policy which is a federal government action to regulate activities that have an impact on the environment within the borders of the country; the US National Environmental Policy Act 1970 was enacted. It established an environmental impact statement for major federal actions which have considerable impact on the quality of the environment.

The major environmental legislations of the country are: the Refuse Act 1899, the Migratory Bird Treaty Act 1918, the Federal Water Pollution Control Act 1948, the Air Pollution Control Act 1955, the Clean Air Act 1963, the Solid Waste Disposal Act 1965, the Water Quality Act 1965, the Air Quality Act 1967, the National Environmental Policy Act 1969, the Clean Air Act 1970, the Occupational Safety and Health Act 1970, the Consumer Product Safety Act 1972, the Clean Water Act 1972, the Noise Control Act

[947]Cap A6 LFN 2004.

1972, the Endangered Species Act 1973, the Safe Drinking Water Act 1974, the Hazardous Materials Transportation Act 1975, the Resource Conservation and Recovery Act 1976, the Solid Waste Disposal Act 1976, the Toxic Substances Control Act 1976, the Clean Air (Amendment) Act 1977, the Clean Water (Amendment) Act 1977, CERCLA (Superfund) 1980,[948] Resource Conservation and Recovery Act (Amendment) 1984, Safe Drinking Water (Amendment) Act 1984, Superfund Amendments and Reauthorization Act 1986, Clean Water Reauthorization Act 1986, Emergency Wetlands Resources Act 1986, Clean Water (Reauthorization) Act 1987, Oil Pollution Act 1990, Clean Air Act, 1990, North American Free Trade Agreement Act 1993, Healthy Forests Initiative 2003.[949]

In the UK, early laws developed to protect the environment often focused on the protection of rights associated with the ownership of property and they indirectly protected the environment. Later, systematic attempts were made to control the polluting effects of the industrial revolution. Subsequently, there was a recognized need to protect the environment itself. The Environmental Protection Act 1990 defines the fundamental structure and authority for waste management and the control of emissions into the environment. Prior to the Act, there was no uniform system of licensing or public right of access to information and there had also been separate regulation of air, water and land pollution. The Act brought to bear, an integrated scheme that would seek to utilize the best environmental option. Other legislations that serve to protect the environment are not limited to the following: the Control of Pollution Act 1974, Environment Act 1995, Environmental Protection Act 1990, Wildlife and Countryside Act 1981, Weeds Act 1991, Badgers Act 1991, Protection of Badgers Act 1992, Planning (Listed Buildings and Conservation Areas) Act 1990, National Parks and Access to the Countryside Act 1949,

[948]The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) commonly known as 'Superfund.' created a tax on the chemical and petroleum industries and provided broad federal authority to respond directly to releases or threatened releases of hazardous substances that may endanger public health or the environment. See generally "Superfund: CERCLA Overview. Retrieved August 04, 2017, from https://www.epa.gov/superfund/superfnd-cercla-overview

[949]It must be pointed out that violations of environmental laws in the US are generally civil offences, resulting in financial penalties and or civil sanctions such as an injunction. However, many environmental laws also provide for criminal penalties for serious violations and adjudicatory proceedings for environmental violations are often handled by the agencies themselves under the structures of administrative law. See https://www.epa.gov/laws-regulations/laws-and-excutive-orders for a list of Executive Orders of the United States Environmental Protection Agency

Ancient Areas and Archaeological Areas Act 1979, Countryside and Rights of Way Act 2000, Climate Change Act 2008, Planning and Energy Act 2008, Energy Act 2008, Energy Act 2010, Energy Act 2011.[950]As at January 2017, a committee of the House of Commons has released a report[951] calling for the government to pass a new Environmental Protection Act before the UK leaves the European Union. This is because there is a perceived need to ensure that the UK has equivalent or better levels of environmental protection once she leaves the EU, and also ensure that parliament only can change environmental laws.

Bamgbose and Akinbiyi inform that environmental crimes in Nigeria range from environmental pollution and degradation to environmental degradation resulting from indiscriminate disposal of domestic waste, dirt, accumulation through hawking, street trading, night markets and lack of planning in land and housing projects.[952] Crimes against the environment are being committed with impunity such as environmental pollution of water and land in the oil rich Niger-Delta as a result of the Oil exploration companies not taking sufficient steps to guard against environmental pollution, the indiscriminate dumping of refuse, littering of the environment with wrappers of sachet water, fruit and snack items and decaying food, fruit, meat and fish leftovers which are discarded on the streets. This has resulted in total degradation of the environment, leading to "*deleterious effects as harm to living resources, hazards to human health…hindrance to marine activities including fishing, impairment of quality use of water and reduction of* amenities.[953]

[950]See Anon. *Background to Environmental Law*. Retrieved August, 04, 2017, from https://www.ukela.org/environmental-law-history; Anon. *A New Environmental Act for the UK?* Client Earth. Retrieved January 06, 2017, from https://www.clentearth.org/new-environmental-protection-act-uk/

[951] *The Future of the Natural Environment after the EU Referendum* Sixth Report of Session 2016-17 House of Commons Environmental Audit Committee. Retrieved on January 22, 2018 from http://www.publications.parliament.uk

[952] Bamgbose O.A. and Akinbiyi S. 2015. *Criminal Law in Nigeria*, op cit. pp.480

[953] See Section 38 of the Federal Environmental Protection Agency Act, 1988 (FEPA ACT) as cited in Bamgbose O.A. and Akinbiyi S. 2015. *Criminal Law in Nigeria*, op cit. pp.484

Although there is legislation[954] recognizing the deleterious effect of environmental degradation and the need to protect the environment and some actions which lead to environmental pollution such as street trading and hawking, there is no identifiable legislation criminalizing environmental degradation. At present, various communities and ethnic militias are left to address the issue or file civil cases claiming compensation and the indiscriminate dumping of refuse and other pollutants continues. Bamgbose and Akinbiyi have suggested that a more pro-active step is needed in the form of criminalization of acts of environmental degradation and pollution in Nigeria.[955]

iv. Controlling drug use: the three jurisdictions have different approaches and legislations to control drug use which indicates the amount of time and energy spent on the control and management of illegal drugs and drug dealings. Drugs considered addictive or dangerous in the UK and US are called 'controlled substances' which are regulated by law. The US has a complicated patchwork of drug laws as complimentary federal and state legislations relating to illegal drugs overlap. However, the US Congress assumes a significant role in the criminalization of drug use and current legislation on drug use are the Controlled Substances Act 1971,[956]the Comprehensive Crime Control Act, 1984, the Controlled Substances Penalties Act, 1984, the Anti-Drug Abuse Act 1986, the Anti Drug-Abuse Amendment Act 1988, the Narcotics Leadership Act 1988, Comprehensive Methamphetamine Control Act 1996, Foreign Narcotics Kingpin Designation Act 1999, Combat Methamphetamine Epidemic Act 2005, and the Drug Trafficking Vessel Interdiction Act 2008.

In the UK as a result of pressure from the US to regulate 'controlled substances' the Drugs (Regulation of Misuse)Act 1964 was enacted.[957] The following is an outline of some of the

[954] Such as the Federal Water Pollution Act of 1972; The Endangered Species Act of 1973; and the Federal Environmental Protection Agency Act, 1988.
[955] Bamgbose O.A. and Akinbiyi S. 2015. ibid. pp.485
[956] The foundation of the US federal drug law today. See generally, Dolin, B. 2001 *National Drug Policy: United States*, 24 July, 2001, prepared for the Senate Special Committee on Illegal Drugs, Library of Parliament retrieved on 19 August, 2017 from https://sencanada.ca/content/sen/committee/371/illee/elibrary/dolin2-e.htm
[957]The Act introduced criminal penalties for possession of controlled substances by individuals of small amounts of drugs as well as possession with intent to traffic or deal in drugs.

major legislations concerning controlled substances in the UK: the Misuse of Drugs Act (MDA) 1971, Drug Trafficking Offences Act 1986, Criminal Justice Act 1991, Schedule 1A6,[958]Crime and Disorder Act 1998, Criminal Justice and Court Services Act 2000, Criminal Justice Act 2003, Anti-Social Behaviour Act 2003, Drugs Act 2005, Police and Justice Act 2006, Controlled Drugs (Drug Precursors) (Community External Trade) Regulations 2008, The Misuse of Drugs Act 1971 (Amendment) Order 2008, The Misuse of Drugs (Designation) (Amendment) (England, Wales and Scotland) Regulations 2009, The Misuse of Drugs Act 1971 (Amendment) Order 2009 and the Psychoactive Substances Act, 2016.[959]

In Nigeria, illegal drugs are described as 'illicit drugs'[960]and the National Drug Law Enforcement Agency which was established by the promulgation of Decree No. 48 of 1989, now an Act of Parliament, was set up in a bid to signal Nigeria's attempt in the fight against illegal drugs within its borders, and is charged with the job of eliminating illicit drug trafficking and consumption in Nigeria.[961]

v. Response to terrorism:[962]Following the 11 September, 2001, terrorist attack in the US and other acts of terrorism in the United Kingdom and Nigeria, the three jurisdictions are struggling to effectively fight terrorism without compromising the basic human rights and freedom of the citizens, which are democratic values. The three jurisdictions have adopted stringent measures to fight terrorism by amending legislations and passing new legislations.

[958]It started an attempt to integrate health and criminal justice responses, and reduces the separation between medical and punitive responses.

[959]Information on controlling drug use in the UK was obtained from the following UK Government websites:http://www.legislation.gov.uk/ukpga;http://www.idmu.co.uk/uk-drug-laws.htm ; http://www.drugscope.org.uk/ ; http://drugs.homeoffice.gov.uk

[960] http://www.ndlea.gov.ng/v1/?q=node/37. The preceding laws on drug control were the Indian Hemp Decree of 1966 which focused on the control of cannabis, cultivation, exportation, importation and consumption; the Indian Hemp Amendment Act if 1975; the Indian Hemp Amendment Decree of 1984.

[961] Ibid.

[962]See generally on terrorism, Tuval, Y. 2008. *Anti-terrorism Legislation in Britain and the United States after 9/11*" The Israel Democracy Institute. Retrieved July 22, 2017, from, https://en.idi.org.1//articles/6936

Prior to 1995, the attention of the US was directed towards preventing international terrorism, and the major acts in operation were the Foreign Intelligence Act 1978 (as amended in 2005 and the Classified Information Procedure Act 1980. However, after the Oklahoma City Bombing of April 1995, where American citizens blew up a federal building, domestic terrorism got more attention from the government.[963] This led to the enactment of the Anti-Terrorism and Effective Death Penalty Act 1996 and the Immigration and Nationality Act 1996 which was aimed at allowing law enforcement agents to identify and prosecute international and domestic terrorists. After the September 11, 2001 bombings, the main act of legislation against terrorism was the US Patriot Act of 2001 as amended in 2015. It amended the Immigration and Nationality Act (Title V- Alien Terrorist Removal Procedure) 1996 and added provisions on the detention of suspected terrorists. The provision, amongst others, empowers the US Attorney General to order the arrest of foreign nationals when there is a reasonable suspicion of involvement in terrorism or other activities that constitute a danger to the national security of the US.

The Act, extended the period of arrest from seven days to six months at a time, if the Attorney General thinks that the release of that person would endanger the national security, public safety or the safety of any individual. It also allowed for the use of surveillance and wiretapping to investigate terror-related crimes; allowed federal agents to request court permission to use roving wiretaps to track specific terror suspects, allows delayed notification of search warrants to stop a terrorist from knowing they are a suspect; ended the statute of limitations for some terror-related crimes; provision of aid to terrorism victims and public safety officers involved in investigating or preventing terrorism or responding to terrorist attacks.[964]

However, the Act was challenged for allowing the collection of bulk call records[965]and infringement on the civil liberties of Americans. The USA Freedom Act 2015 was enacted to correct these anomalies. Other legislation that deal with terrorism in the US are: the

[963] Anon. 2017. Patriot Act. History.Com. A& E Television Networks. Retrieved from https://www.history.com/topics/21st-century/patriot-act
[964] Anon. 2017. Patriot Act. History.Com. A& E Television Networks. op.cit.
[965] Section 215

Terrorist Expatriation Act 2010, the International Emergency Economic Powers Act 2003, Homeland Security Act, 2002, Real ID Act 2002, Maritime Transportation Security Act 2002, Terrorist Bombings and Financings Conventions Implementation Act 2002, Terrorism Risk Insurance Act 2002, Enhanced Border Security and Visa Entry Reform Act 2004, Terrorist Penalties Enhancement Act 2004, Intelligence Reform and Terrorism Prevention Act 2004, National Intelligence Reform Act 2004, Detainee Treatment Act 2005, Military Commissions Act 2006, Security and Accountability at Every Port Act 2006, the Secure Fence Act 2006, Homeland Security Appropriations Act 2006, Protect America Act 2007 and the Habeas Corpus Restoration Act 2007

The United Kingdom is noted for its rapid response to terrorism threats. Current legislation on terrorism is as a result of the American 11 September, 2001 bombing of the World trade centre, the 7 July 2005 bombings of London which were a series of coordinated terrorist suicide attacks[966]and the global war on terrorism. From 2000-2015, the British Parliament enacted a number of legislations aimed at combating terrorism in the UK by defining terrorism and establishing a distinct set of police powers and procedures that are beyond those related to daily crime control; the Terrorism Act 2000 was in existence before the terrorist attacks; the Anti-Terrorism, Crime and Security Act 2001;[967]the Anti-terrorism, Crime and Security Act 2001; the Criminal Justice Act 2003;[968] the Prevention of Terrorism Act 2005;[969]the Terrorism Act 2006;[970]the Terrorism (United Measures) Order 2006;[971]the Counter-Terrorism Act 2008;[972]the Coroners and Justice Act 2009[973]the

[966]North R. 2005. *Coming together as a city. BBC*

[967]Amongst other provisions, it allows the Ministry of Defence to operate outside military bases and enables foreigners to be detained as terrorist suspects indefinitely.

[968]It contains provisions aimed at combating terrorism, such as doubling the period of detention of a terrorist suspect for questioning to 14 days in justification of the claim that forensic analysis of chemical weapons materials might not be complete in 7 days.

[969]It established a "control order" which is regarded as a type of house arrest.

[970]It came into effect after the London bombing of 2005. It defines the offence of "glorifying terrorism, revises the period of detention of terrorism suspects without charge up to 28 days on the justification of the claim that necessary evidence to decide charges might be encrypted on a lot of hard disks and it could take a long time to search them.

[971]It allows the UK Treasury to freeze the assets of suspected terrorists and gives effect to Resolution 1373 of the United Nations Security Council. Unanimously, on 28 September, 2001; a counter-terrorism measure which among other provisions, condemns terrorism, encourages states to prevent and suppress the financing of terrorism, criminalizes the willful provision or collection of funds for terrorism acts, ensure that terrorist acts are established as serious criminal offences under domestic laws and regulations and that the seriousness

Terrorism (United Nations Measures) Order 2009;[974]The Terrorism Asset-Freezing (Temporary Provisions) Act 2010;[975]the Justice and Security Act 2013[976] and the Counter-Terrorism and Security Act 2015.[977]

In Nigeria, the formal response to terrorism happened ten years after the September, 2001, terror attacks with the enactment of the Terrorism (Prevention) Act (TPA) 2011, followed by the Terrorism (Prevention) (Amendment) Act 2013. The Terrorism (Prevention) Act 2013 (as amended) is the attempt by Nigerian legislation to conform to Resolution 1373 of the United Nations Security Council and United Nations Guidelines on counter-terrorism. When compared with the US and UK reactions which was about 2 weeks after the attack, the Nigerian, reaction was slow. Honourable Alaba Ajileye[978]described the reaction of the Nigerian government to terrorism as ambivalent because prior to the enactment of the TPA's, the Criminal Code; the Penal Code; the Economic and Financial Crimes Commission Act, the Banks and Other Financial Institutions Act, 1999; the Extraction Act 1967 and the Money Laundering (Prohibition) Act 2011, were all inadequate to meet the needs of counter-terrorism in Nigeria.[979]He further explained that:

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of such acts is duly reflected in sentences delivered. See generally, United Nations. 2001. *Security Council Unanimously Adopts Wide-Ranging Anti-Terrorism: Calls for Suppressing Financing, Improving International Cooperation*, Security Council Press Release, SC/7158. Retrieved 14 May, 2018, from https://www.un.org/press/en/2001/sc7158.doc.htm

[972]It allows police questioning of suspects after they have been charged, allows for monitoring of convicted terrorists and extends extra-territorial jurisdiction of courts over terrorism charges.

[973]It extends the sentencing provisions of the Criminal Justice Act 2003 to terrorism offences.

[974]Replaced the Terrorism (United Nations Measures) Order 2006, allows the UK Treasury to freeze assets of suspected terrorists and gives effect to resolution 1373 of the United Nations Security Council, 2001.

[975]The Act was passed in response to the Supreme Court's ruling that the Terrorism (United Nations Measures) Order 2006 was void and retrospectively legitimized the Terrorism (United Nations Measures) Order 2006.

[976]Provides for oversight of the Security Service, the Secret Intelligence Service, GCHQ and other matters ancillary to intelligence or security matters, provides for the establishment of closed material procedures in relation to some civil procedures and prevents the making of court orders for the disclosure of what the government may deem to be sensitive information.

[977]It amends the Terrorism Act 2000 provides for terrorism prevention and investigation measures, data retention and travel restrictions.

[978]Ajileye, A. 2015. "Legal Framework for the Prevention of Terrorism in Nigeria." paper presented 15 May, 2015. at the Annual Law Week of the Nigerian Bar Association, Lokoja Branch, Kogi State Nigeria. Retrieved, 09 May, 2018 from https://www.researchgate.net/publications/277021838_Legal_Framework_for_the_Prevention_of_Terrorism_in_Nigeria

[979]Ibid.

> Between 2001 and 2004, no step was taken by Nigeria to give effect to Resolution 1373 in spite of the fact that there was no counterterrorism law in existence then. Rather than enact a new law, as demanded by the resolution, the National Assembly, in a half-hearted manner, perfunctorily inserted two sections in the Economic and Financial Crime Commission (EFCC) (Establishment) Bill that was then undergoing legislative processes. The two sections now form sections 15 and 46 of the EFCC (Establishment) Act 2004. Section 15 of Act merely creates some offences relating to terrorism while section 46 attempts to define terrorism.

However, there is evidence that groups and individuals have had ties with terrorist sources in Sudan, Iran, Pakistan, and Libya,[980]and the terrorist attacks which started in December 2003 and January, 2004 in Boro and Yobe States. Also the activities of Boko Haram, the insurgent terrorist group, has reached alarming heights, yet, activities matching those of the US and UK in combating terrorist activities are not to be seen in Nigeria. Moreover, it appears that Nigeria needs more than current legislation to battle terrorism; what is needed is formal tackling of the socio-economic challenges disturbing the northern part of Nigeria.[981]

vi. Stalking/Harassment: in the U.S. and U.K. and Nigeria, laws have been enacted to prohibit and punish acts described as "the willful, malicious, and repeated following and harassing of another person and putting a person in fear of violence.[982] In the UK the Protection from Harassment Act 1997 was introduced to deal with stalking, it was discovered that it was not effective in dealing with stalking and as a result of inquiries and reports which indicated that victims of stalking in the UK had expressed lack of confidence in the criminal justice, the Protection of Freedom Act, 2012 was enacted. It amended the protection of Freedom Act and created two offences of stalking, and further increased the

[980]Anon. 2004. US Country Report on terrorism (Nigeria), pg 31.Retrieved 16 May, 2016, from http://www.state.gov/document/organization/45313.pdf

[981]Bhura, S. 2012. Can Nigeria's Anti-Terrorism Law Address the Boko Haram Threat? Africa Trends, Institute for Defence and Analyses. Retrieved July 22, 2017, from https://idsa.in/africatrends/nigeria-anti-terrorism-law-address-the-boko-haram-threat_sbhura_1212

[982]Siegel L.J. and Worrall J.J. 2014, *Introduction to Criminal Justice*, op.cit. pg. 144; Anon. Stalking Resource Centre, National Centre for Victims of Crime. Retrieved August 24, 2017, from www.victimsofcrime.org/our-progrtams/stalking-resource-centre/stalking-laws/federal-stalking-laws

prison sentence for stalking to a maximum of 10 years from April, 2017.[983]In the US, the US Codes Service in Codes Nos. 223, 2261, 2262, 2263, 2264, 2265,922, along with the Violence against Women Act, 2013 prohibit and punish acts regarded as stalking. Stalking laws were originally formulated to protect women terrorized by former husbands and boyfriends. It then expanded to cover celebrities, who are often beleaguered by stalkers.[984]

In Nigeria, the Violence Against Persons (Prohibition) (VAPPA) Act, 2015, introduces the offence of stalking, prohibits stalking and provides that a person convicted for stalking is liable on conviction to a term of imprisonment not exceeding 2 years or to a fine not exceeding ₦500,000.00. The law also criminalizes attempts at stalking which can earn a person found liable, a fine not exceeding ₦200,000,00.

vii. Sex offenders registration: In the UK and US, a community protection approach to the perceived dangerousness of sex offenders has emerged, in response to high profile cases involving sexual assault and murder or mutilation of young children. The key elements of the approach are sex offender registration, tracking, community notification, post-sentence controls in the form of civil commitment, peace bonds and community surveillance.

In particular, in the US, a rapid, aggressive approach has been taken at both the federal and state levels.[985]In the UK, the Sexual Offences Act 2003, repealed the Sex Offenders Act 1997 and enlarged significantly, the type of behaviour that is criminalized and increases the protection, support and rights of victims and witnesses. It is regarded as having clarified, the law in relation to sexual assault; for example, it establishes a legal definition of 'consent', creates new offences, and strengthens sentences. It also gives the police and

[983]There is also a stalking and harassment publication of the Crown Prosecution service, while the College of Policing has current guidelines on stalking. See Strickland, P. "Stalking: Criminal Offence" Briefing Paper No. 06261, 09 June, 2017, Commons Library retrieved on 22 August, 2017 from www.parliament.uk/commons-library/intranet.parliament.uk/commons-library/papers@parliament.uk/@commonslibrary

[984]ibid

[985]Petrunik, M. 2003. The Hare and The Tortoise: Dangerousness and Sex Offender Policy in the United States and Canada. *Canadian Journal of Criminology and Criminal Justice* 45.1 pp.43-72. Retrieved August 24, 2017, from https://doi.org/10.3138/cjccj.451.43

other agencies the tools to address domestic violence crimes. Under the reformed law, the defendants' belief that the woman was consenting no longer necessarily results in an acquittal because a reasonable clause has been introduced to determine the view of the defendants' belief and whether it conforms to the jury's belief. Thus, anyone accused of rape is guilty unless they can provide convincing evidence that they had consent. The 2005 Domestic Violence National Action Plan sets out the proposals to reduce the prevalence of domestic violence, increase victim reporting to police, improve support to victims and bring more perpetrators to justice.[986]

In the United States, some legal changes were prompted over a particular serious crime: a 7 year old girl, Megan Kanka from New Jersey, was assaulted and killed in 1994. There was outrage over the incidence and the discovery that a convicted sex offender, unknown to the parents, lived across the street, who was eventually charged with the crime. In 1996, Megan's law was signed into law and contained two components; sex offender registration and community notification. The sex offender registration component was a revision of the Jacob Wetterling Act, which required states to register individuals convicted of sex crimes against children, also established a community notification system. The community notification component entails that states are compelled to make private and personal information on registered sex offenders available to the public.

In Nigeria, Ekiti and Lagos States have signed executive orders opening sex offender registers and have recognised the need for sex offender registration as a form of background check for organizations and individuals in need of information. They have also created a specialized group in the Directorate of Public Prosecutions to handle the issuance of legal advice for cases of gender and sexual based crimes.[987] At the national level, on the other hand, there is no legislation to that effect as at the time of this research.

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[986]Finney, A. 2006. *Domestic Violence, Sexual Assault and Stalking: Findings from the 2004/2005 British Crime Survey"Home Office Online Report. Retrieved* August 22, 2017, from http://www.homeoffice.gov.uk/crime-victims/reducing-crime/

[987]Ibekwe, N. 2014. Lagos establishes sex offenders' register. *Premium Tiems. Retrieved, 12 July, 2016 from https://www.premiumtimesng.com/news/mone-news/172223-lagos-establishes-sex-offenders-register.html*

viii. Assisted suicide: assisted suicide can be regarded as the act of deliberately assisting or encouraging another person to kill himself: for example where A obtains medicine for B, knowing that B intends to use the medicine to kill himself; he can be considered to be assisting suicide. Assisted suicide is regarded generally in the three jurisdictions as illegal, because the right to life is intrinsically embedded in the constitution of the respective countries[988]save in certain circumstances, such as, in the execution of a sentence of a court following conviction for a crime which is the penalty provided by law in jurisdictions where the death penalty subsists, where death results from the use of force which is absolutely necessary.[989] Just as there is a right to life, the question that pushes the issue of assisted suicide and euthanasia is whether or not there is also conversely a right to die.[990] The Suicide Act 1961 of the United Kingdom prohibits assisted suicide; however, there have been attempts to overturn in the UK, the prohibition against assisted suicide as the European Court on Human Rights was petitioned to overturn the law. However, the Strasbourg Court rejected the attempt. According to the Strasbourg court, the assessment as to the risks and likely incidence of abuse if the prohibition on assisted suicide were to be released, was made by parliament in enacting Sec 2 (1) of the Act of 1961, a provision which to the Court, has been reconsidered several times by parliament in recent years.

ix. Clarifications on rape laws: In the US and UK the laws have been changed to clarify the definition of the crime and to suppress public discussions about the limit of the law in a bid to identify when bad behaviour crosses the line into criminality, and when it merely remains bad behaviour. The Sexual Offences Act 2003 of the UK replaced the older sexual offences law with more specific and explicit wording and made changes to the sexual crime laws. For instance, rape now includes penetration of the mouth and changes the way in which lack of consent can be proved.[991]It also makes significant changes to the legal definition of consent and sections 64-65, 74,75,76 provide further clarification. The Act

[988]Section 33, Constitution of the Federal Republic of Nigeria, 1999 (as amended);
[989]Such as, in defence of a person from unlawful violence, in order to effect a lawful arrest or to prevent the escape of a person lawfully detained, in action lawfully taken in order to control a riot or insurrection. See Article 2 of the Universal Declaration of Human Rights, Section 33 (1) Constitution of the Federal Republic of Nigeria. See also the European Convention on Human Rights, Section 4 of the African Charter of Human and Peoples Rights
[990] See Oniha, B.E. "Legality of Euthanasia and the Right to Die in Nigeria" http://edojudiciary.gov.ng
[991] See Part I of the Act and Section 75 and 76

also includes provisions against sexual tourism,[992]decriminalizes group homosexual sex, consolidates the provisions of the Sex Offenders Act 1997, changes the definition of a child and extends the age from 16 to 18, creates offences relating to prostitution,[993]it contains provisions on dual criminality[994] and creates the offence of assault by penetration.[995]There are also provisions on soliciting in the Police and Crime Act 2009.

In the US the Department of Justice and the Federal Bureau of Investigation (FBI) have changed their definition of rape to become more inclusive of all forms of penetration, no matter how slight, of the vagina or anus with any body part or object. However, it is mainly for the purpose of obtaining crime statistics[996] as different states have different laws and penalties for the offence of rape. Siegel and Worrall[997]explain that in several states, including California and Maryland, it is now considered rape if (a) the woman consents to sex, (b) the sex act begins, (c) she changes her mind during the act and tells her partner to stop, and (d) he refuses and continues. Eight states include all forms of sexual penetration under their legal definition of rape, half of the states decline to define rape in their laws at all and instead defer to the general cover of terms such as 'sexual assault' or 'sexual battery' which encompasses a variety of sex crimes such as 'nonconsensual object penetration, oral sex, and anal sex which can then be classified as different level of offences such as felony, or misdemeanor.[998]

In Nigeria, rape is generally regarded as nonconsensual intercourse between a man and a woman and only females are identified as capable of being raped.[999] Sexual assault is differentiated from rape and defines all other forms of sexual contact or behaviour that

[992] People who travel abroad with the intent to commit sexual offences.
[993]Prohibiting child prostitution, pimping for financial gain, sex trafficking, prohibiting and covers brothels. See Sections 47-50, 52-53, 57-59, 33
[994] Section 72
[995] Section 2.See generally, http://www.legislation.gov.uk/ukpga/2003
[996] The data is obtained from University, college, county, state, tribal and federal law enforcement agencies who voluntarily report data on crimes brought to their attention. See "Rape" https://www.circa.com/story/2017/02/05/politics/the-fbi-changed-its-definition-of-rape-but-some-states-still-dont-recognize-male-victims accessed on 22 July, 2017
[997] Siegel, L.J. and Worrall, J.J. 2014. Introduction to Criminal Justice, 145
[998]See generally, Cocca, C. Jailbait: The Politics of Statutory Rape Laws in the United States, State University of New York Press, Albany, USA; Lyon, M.R. "No Means No: Withdrawal of Consent During Intercourse and the continuing Evolution of the Definition of Rape" Vol. 95 No. 1 2004-2005, Journal of Law and Criminology 277.
[999]See Section 357 and 358 of the Criminal Code

occurs without the explicit consent of the victim. However, the Violence Against Persons Prohibition Act (VAPPA) 2015, defines rape as the intentional penetration of the vagina, anus or mouth of 'another person' with any other part of his/her body or anything else without consent, or with incorrectly obtained consent.[1000]Admittedly, the VAPPA is a progressive piece of legislation in terms of the definition and scope of rape in Nigeria; however its applicability is still in question as it is yet to be domesticated into the laws of the various states and as such, is only applicable to the Federal Capital Territory, Abuja.

Summary

The content of criminal law in the three jurisdictions has also been influenced by judicial decisions, thus, a criminal statute may no longer be enforceable when a superior court rules that it is vague, deals with an act that is no longer of interest to the public or is an exercise of state control over an individual.[1001] A judicial ruling could also expand the scope of an existing criminal law, thus allowing control over behaviours and procedures that were beyond its reach. Regardless of how a law comes about, criminal law in the three jurisdictions must conform to the rules and dictates of the respective constitutions, and any criminal law that appears to conflict with the provisions of the respective constitutions must indicate a compelling need to protect public safety or morals.[1002]

From an analysis of criminal law provisions in the three jurisdictions, it was observed that the criminal justice systems have examined their substantive criminal law, amended laws and enacted new laws in line with prevailing moral and security circumstances, with a view to continuous improvement because criminal law, to an extent, reflects public opinion and morality regarding different forms of behaviour and liability for actions committed.[1003] As such, what was considered criminal several years back may not be considered criminal

[1000] Such as: through threats force or intimidation, by means of false and fraudulent representation as to the nature of the act, by the use of substances capable of taking away the will of that person, by impersonating a married woman's husband in order to have sex

[1001]Siegel, L.J. and Worrall, J.J. 2014. Introduction to Criminal Justice, op. cit. pg.133

[1002] Siegel, L.J. and Worrall J.J. 2014. op. cit. pg. 134

[1003]Crimes such as murder and rape, are generally prohibited, but others such as substance abuse, prostitution, trafficking, female circumcision, tribal marks, domestic violence and gambling reflect present moral values and can undergo changes according to social conditions and attitudes, and criminal law was used to codify changing social values and educate the public about what is expected of them and their behaviour.

today and a defence to a criminal offence that may not have been established previously could become recognised. These changes in opinions, amendments to laws, and prevailing moral circumstances have in one way or the other, been influenced by advocates of the criminal justice approaches. It would be wrong to say that any of the approaches have existed at only one point in time in criminal justice history as there is evidence to show that there are elements of the criminal justice approaches in various legislations. A brief overview of dominant criminal justice approaches in the three jurisdictions from the 1900s till date will be highlighted below:

The rehabilitative approach is concurrent with the development of American Democracy in consonance with social contract theories and in recognition that all human life is valuable, and that government has an affirmative obligation to help offenders return to society and live a normal and productive life.[1004]The rehabilitative ideal has been in operation in the US since the design of the modern American prison.[1005] As explained by Rothman,[1006] the prison system was designed to distance the offender from contact with what was perceived as corruption within and outside the prison. Although other goals of punishment still held sway for convicted persons – general deterrence, special deterrence, just deserts and retribution- research indicates that the US operated a rehabilitative approach to criminal justice, similar to the UK welfarist approach to criminal justice of the 1900's up till the 1970s and 1980s.[1007] Although rehabilitative ideals brought about alternatives such as drug treatment or house arrest, Rubin asserts that rehabilitation has however, rarely been used in America as an approach to criminal justice, rather just deserts, proportionality (equal justice), denunciation and degradation are the primary considerations in administering criminal justice.[1008] The crime control and crime preemption approach to criminal justice held sway based on America's "tough on crime stance."[1009]

[1004] Ibid. pg 376
[1005] The United States is generally credited with the invention of state administered modern prison systems.
[1006] Rothman, D. 1971. The discovery of the asylum: social order and disorder in the new republic.
[1007]Rubin, E.L. 2001. The inevitability of Rehabilitation. *Law and Inequality: A Journal of Theory and Practice.* 19.2. Art.5:343-377
[1008] ibid
[1009] ibid

By the 1980s and 1990s, legislators repudiated the principle of rehabilitation based on their assertions that the purpose of prison was just deserts, punishment and incapacitation based on crimes committed, the need to keep them away from society and prevent further wrong doing.[1010] There was also a general consensus that nothing worked in rehabilitating inmates,[1011]and that families and communities were unable to impart the moral fibre necessary to resist criminal temptation. Thus "…*if social disorder was at the root of the crime problem, then the solution to crime was to place the wayward in an orderly environment.*[1012] The move was based on research by scholars who developed approaches to justice such as the justice approach and humane containment, canvassed the acceptability of retribution and denounced rehabilitative ideals.[1013] The system had reverted to the practice of criminal justice of the 1920's and 1930s where police tactics was aggressive and focused on African American suspects with prosecutors "flexed discretionary muscles,' introduced law and order crusades, passed stiffer laws, closed loop holes, initiated massive prison building programs, limited the power of the juries and expanded federal law enforcement in a frenzied 'war on crime' stance.

Adler explains that:

> …conviction rates soared and prison populations skyrocketed even as crime levels plunged. While the rate of capital crime decreased, the rate of executions increased. At the same time, law and order became radicalized, and conviction and incarceration rates for African Americans jumped disproportionately...[1014]

At that time, there were reports of legislators invoking the 'war on crime' to reduce the power of judges and juries, and ward off criticism of racial bias and police brutality to support racial hierarchy.[1015] Towards the end of the 20th century however, there was the realization that rehabilitative ideals were still relevant and important and restorative justice, non intervention, managing offender approaches to the criminal justice approach and

[1010] Allen, F.A. 1981. The decline of the rehabilitative ideal. *Penal Policy and Social Purpose*.
[1011]Phelps, M.S.
[1012] Ibid.
[1013] Rubin F.A. 1981 ibid. pg. 343
[1014]Adler, J.S. 2015. Less crime, more punishment: violence, race, and criminal justice in early twentieth-century America. Journal of American History:34-46
[1015] Ibid.

respect for due process began to flourish. It also allowed the crime-preemption approach to flourish in response to domestic and international terrorism.

Nigeria is a multiethnic nation of over 350 ethnicities. Prior to colonization, the different ethnic groups operated systems of governance that varied from centralized administrations and hierarchical organizations to societies with no real discernible political organisation.[1016] Although the territory in general lacked statehood, the various societies had recognised methods of administering criminal justice[1017] which were along the lines of restorative justice, due process, denunciation and degradation and just desert approaches to criminal justice. Crimes majorly ranged from stealing, lying, fighting, sex-related offences, witchcraft and murder. Punishment ranged from restitution, corporal punishment to ostracization and the death penalty for particularly heinous crimes.[1018]Crime control was thus not the primary concern of the society. This is not to say that the pre-colonial criminal justice administration was perfect as there are indications that sometimes there could be abuse of power reminiscent of the power model of criminal justice, there were however, examples of check and balances; for example, in Yoruba land, the *Oyo-mesi* acted as a form of check against the abuse of power by the Alaafin of Oyo by presenting the Alaafin with an empty calabash or parrot's egg as a sign that he had to commit suicide since he could not be deposed.[1019]

The Nigerian state as we currently know it did not emerge from the general will of the constituent ethnic groups but was imposed by imperialists after colonization. The measure of pluralism and flexibility in the administration of criminal justice by the indigenous

[1016]Ajayi, J.O. and Owumi B. 2013. Ethnic Pluralism and internal cohesion in Nigeria. *International Journal of Development and Sustainability. 2.2:926-940*
[1017]*Williams, C. 1974. The destruction of black civilization: great issues of a race from 4500 BC to 2000 AD*. *Illinois, Chicago:* Third World Press
[1018]Kouassi, C.N. 2016. Modern Nigeria and the roots of corruption: a historic-philosophical reflection. *Journal of Philosophy Culture and Religion. 17:6-11*
[1019]Anon. 2011. The Political Organization of the Oyo Empire Situated in the present day Nigeria. African History. Retrieved May 22, 2017 from www.historyafrica.blogspot.com ;Morton, C. 2016. The function of the Oyomesi in the pre-colonial Oyo kingdom. Virtual Kollege. Retrieved July 22, 2018 from www.virtualkollege.com

tribes of the territory,[1020]was ignored in favour of a criminal justice system built on common law foundations. This did not abolish the traditional systems as the colonial administration utilized indirect rule to administer justice.[1021]However, the aim of the government was antagonistic; geared towards exacting obedience of the natives, enforcing debilitating colonial laws, including forced taxation and trade laws, segregation and quelling of anti-colonial uprising in their quest to harvest the bounties of the land, all reflective of the power approach to justice.

The administration of criminal justice internalized a culture of oppression of the natives, use of violence and weapons against them, and extortion. It was thus designed to inflict terror on the natives who then developed the habit of buying their way out of government harassment.[1022] This led to corrupt practices such as favouritism, nepotism, extortion and obtaining. The government in power politicized the criminal justice system and utilized the system to retain its hold on power against the natives. This is reflective of the fact that the most heinous crime of the period was treason and treachery; crimes against the survival of the British colonial administration.[1023]

Post colonial administration of criminal justice; from when Nigeria gained independence on 01 October, 1960 till date,[1024]still retains the vestiges of the power approach to criminal

[1020]Nwankwo, P.O. 2010. *Criminal justice in the pre-colonial and post-colonial eras.* Maryland: University Press of America
[1021] Ibid.
[1022] Nwankwo, P.O. 2010.op. cit.
[1023] Ibid.
[1024]This collapses post independence till date: after Independence, Nigeria had a ceremonial President and a Prime Minister, after the British Parliamentary system. The first republic came into being in 1960 and lasted till 16 January, 1966 as a result of the military coup which ended the fragile democracy obtained after independence. A counter coup occurred in July 1966 and subsequently led to a civil war from 1967 to January, 1970. After the civil war, there was a period of reconciliation and rehabilitation and military rule, though ousted by a military coup on 29 July, 1975, which was further ousted on 13 February, 1976 and continued till 1979, when the second republic came into being after an election in 1979. The Second republic which ushered in the American style Presidential system over British Parliamentary system lasted till 31 December, 1983 when a military coup spearheaded by Muhammadu Buhari took over and installed military government. The military administration was short lived: it instituted draconian decrees, was authoritarian, repressive and highhanded. It was ousted in 1985 by a military regime that sought to abrogate some of the harshness of the previous regime. The military rule went on till 1993, when the "Military President" stepped aside after nullifying what was considered to be the freest and fairest election in Nigeria's history. An interim government was installed on 26 August 1993. On 17 November, 1993 the interim government was overthrown and a military government was installed. Following the demise of the head of state, a new head

justice. In particular, the police, did not shed the mantle of colonial enforcers, but assumed the mantle of enforcers of the law for the indigenous leaders in their new administration. Furthermore, military administration and occupation of the country led to the tightening/introduction of criminal sanctions, military tribunals, firing squad, massive arbitrary arrest and detention supportive of a power model of justice, not necessarily to favour the rich but the powerful – the military dictatorship in power. There was also an upsurge of corruption, lack of accountability, disregard for the rule of law and due process, torture, inhuman and degrading treatment of suspects who were detained at the whim of the government in power. With the return to democracy in 1999 till date, the situation has not changed as issues of lack of transparency, corruption, lack of accountability, disregard for the rule of law and due process, police brutality amongst a host of other problems are still hot topics in the Nigerian criminal justice sphere.

Thus, Nigeria appears to primarily operate the power model of justice reminiscent of the colonial style of criminal justice administration, particularly in the law enforcement and prisons sub-systems of the criminal justice system, with varying degrees of recognition of the crime control, due process, crime preemption, just desert, denunciation and degradation approaches to criminal justice.

The criminal justice system of the United Kingdom on the other hand is regarded as a unique mix of traditional and modern institutions, agencies and procedures. Based on the welfare system adopted by the country, the UK's primary focus for a long time was admittedly rehabilitative, which led to the introduction of rehabilitative centres, and diversion of minor offenders and youth offenders out of the criminal justice

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of state was installed on 09 June, 1998. A presidential election installed a democratic regime on 29 May, 1999 which was re-elected in 2003-2007. Which led to the 2007 election of President Musa Yar'adua who died in office in 2010. His Vice-President assumed office in his place and was elected in 2011. He handed over the reins of office to President Muhammadu Buhari in 2015, who is still president at the time of this research. See generally on Nigeria's political history, **Adamolekun, L. 1985.** ***The Fall of the Second Republic.*** **Ibadan: Spectrum Books; Ademoyega, A. 1981.** ***Why we struck.*** **Ibadan: Spectrum Books; Ikeme, O. (ed.) 1980.** ***Groundwork of Nigerian history.*** **Ibadan: Heineman; Oluleye, J. (1985)** ***Military Leadership in Nigeria.*** **Ibadan: University Press Limited.**

system.[1025]This does not indicate that the system did not seek to deter and punish crime, however, there was no attempt to degrade offenders despite sentences that were punitive and sometimes regarded as harsh. Admittedly, there was a wane in the rehabilitative ideals in the late 1980s and 1990s and incarceration rates increased; however, this was not as sharp as those of Nigeria and the US. There have been valiant efforts to address perceived problems with their criminal justice system. In particular, in 1984 the Police and Criminal Evidence Act (PACE) was enacted as a comprehensive body of rules for the actions of the police. It introduced the PACE Codes which cover police stop and search, questioning of suspects and detention in police custody, in a bid to improve police practice. Also the Human Rights Act 1998, which incorporated the European Convention into law was enacted and the Criminal Justice Act 2003 which covers wide ranging reforms in all aspects of the criminal justice system. There is an active interest in improving public confidence whilst also improving the system in terms of effectiveness, efficiency and fairness which are all hallmarks of a regard for the rule of law and due process in their administration of criminal justice.

4.3.2 Procedural fairness and public behaviour of agents of the criminal justice system

Substantive criminal law principally define crimes whilst the law of criminal procedure consists of the rules and procedure that are used to administer justice such as; processing criminal suspects and the conduct of criminal trials, sentencing of convicts, processing and remand of convicts. In the context of this research, the rights guaranteed suspects and persons awaiting trial like the right to be silent, the right to legal representation, and the right to a fair and speedy trial are all important rudiments of criminal procedure. Much of the criminal justice literature refer to studies pointing out perceived errors in the criminal justice system such as; overcrowded prisons, increased crime rates, the death penalty,

[1025]The Criminal Justice Act 1948 Abolished penal servitude, prison with hard labour and whipping. Introduced corrective training, preventive and detention centres. The Children and Young Persons Act 1969. Introduced care and supervision orders and replaced approved schools and remand homes with community homes and the Rehabilitation of Offenders Act 1974 was enacted to enable some criminal convictions to be ignored after a rehabilitation period. Its purpose was to ensure that people do not have a lifelong blot on their records of minor offences committed in their past.

torture, inhuman and degrading treatment, lack of access to justice in the myriad ways that it can happen and finding ways to fix them such as; reducing prison sentences that are perceived to be too harsh, decriminalizing offences, altering sentencing policy, improving prisoner rehabilitation and introducing alternate dispute resolution into the criminal justice process in the form of restorative justice and introduction of alternate sentences such as fines, community sentences, suspended sentences, amongst others.

One area that does not receive adequate attention is the effect of criminal justice approaches on the actions of agents of the criminal justice system and the ability of criminal justice agencies to regulate the conduct of agents of the system in order for them to accomplish the mission of the agencies, which is crucial to the successful administration of criminal justice. An agency's code of ethics-usually embedded within the agency's rules- sets out the expected agency goals and officer conduct: In consonance with international jurisprudence, they provide the framework for transparent, responsive and accountable institutions, aimed at strengthening peoples' trust and confidence in the criminal justice system. In doing so, they aspire to promote peaceful societies, protection of citizens and property as well as development, which is the cornerstone of stability, peace, security, law and order. Procedural responsibility is not just about agents, carrying out their respective duties in the day to day administration of criminal justice, it is about a commitment to justice-social as well as legal.

The purpose of regulating criminal procedure is to provide agents with sets of principles and standards of behaviour while they are on and off duty. It is intended to be used by criminal justice agents in determining what is right and proper in all their actions. The constitutions of the three jurisdictions, Acts of Parliament and Legislature, judicial interpretation and due process of the law are essential tools to use in setting standards and guidelines for fair procedures in the criminal justice system. Criminal Procedure laws seek guarantee that fundamental fairness exists in each individual case. Where there is procedural justice, people will support and respect the criminal justice system as long as they believe that the procedures are fair and objectively applied. This also brings in the actions of criminal justice agents as objectivity and fairness in the actions of agents will

allow people believe that the agents are acting with integrity and treating people with respect. Below is table 1, which briefly outlines the sources of the law of criminal procedure in the three jurisdictions and touches on issues important to criminal procedure:

Sources of criminal procedure	**United States**	**United Kingdom**	**Nigeria**
Constitutional	The original Constitution of 1788 and the ten amendments added in 1791 is a primary source of criminal procedure	No	The current constitution, the 1999 constitution as amended is a primary source of laws criminal procedure
Acts of Parliament /Legislature	Such as federal status which	Primary source of Law on criminal procedure	
State Laws/Statutes	The Fifty state constitutions establish criminal procedure laws		The thirty-six states laws establish criminal procedure laws
Judicial Interpretation	Case law is an important source of criminal procedure laws as major statutory provisions have a plethora of case law that explain and interpret them. Also, case law alone regulates areas of criminal procedure such as abuse of process and evidentiary issues that are not covered by statutes and legislation. These decisions are also binding on lower courts	Same	Same
Criminal Procedure	The American Law Institute's non	No However, in the	The Criminal Procedure Act (for the Southern part

Codes	binding Model Code of Pre-Arraignment Procedure of 1975 addresses pretrial investigations	absence of a criminal procedure code, procedures are deduced from historical sources such as: the History of the Pleas of the Crown by Sir Matthew Hale (1609-76), A Treatise of the Pleas of the Crown by William Hawkins (1673-1746), Pleas of the Crown by Sir Edward Hide East (1764-1947) and The History of Criminal law in England by Sir James Fitzjames Stephen (1883). There is also the five volume history of English criminal law by Sir Leon Radinowicz (1906-1999)	of Nigeria and the Criminal Procedure Code for the (Northern part of the Country) were the primary codes on criminal procedure. However the Administration of Criminal Justice Act 2015 has merged the two codes into one act with federal application.
Rules of Federal Courts	Rules adopted by federal judges and approved by Congress that detail the required steps in federal criminal procedure	Rules adopted by federal judges and approved by Parliament that detail the required steps in federal criminal procedure	Rules adopted by federal judges and approved by the National Assembly that detail the required steps in federal criminal procedure
Rules of State Courts	Rules adopted by state judges and approved by congress that detail the required steps in state criminal procedure	Rules adopted by state judges that detail the required steps in criminal procedure	Rules adopted by state judges that detail the required steps in state criminal procedure
Delegated Legislation	Official Documents that do not have high legal status but have to be	The Rules Committees makes rules such as the Magistrate Court	Official Documents that do not have high legal status but have to be obeyed by agents of the

	obeyed by agents of the criminal justice system, Circulars issued by the Police, practice directions issued by senior judicial officers to supplement rules of court.	Rules, the Crown Court rules and the Criminal Appeal Rules. Ministers such as the Home Secretary also make rules. Official Documents that do not have high legal status but have to be obeyed by agents of the criminal justice system, Home Office circulars issued by the Police, practice directions issued by senior judicial officers to supplement rules of court. Official advice to judges on the conduct of cases by the Judicial Studies board	criminal justice system, practice directions issued by senior judicial officers to supplement rules of court.
Internal regulations	Internal regulations of the Department of Justice and other agencies involved in the administration of the criminal justice process	Internal regulations of the agencies involved in the administration of the criminal justice process	Internal regulations of the agencies involved in the administration of the criminal justice process

Table I. Sources of Criminal Procedure

In the US and Nigeria, federal laws do not mandate a uniform standard as each state is free to adopt its own laws. In terms of criminal procedure, there is not necessarily a degree of uniformity in the laws of the states in the US as criminal procedure is not under pressure to achieve uniformity. This is more so when one contrasts criminal procedure with other fields of law such as commercial law. In particular, in Nigeria, the individuality in each

state's criminal procedure code cannot be eliminated until they adopt the ACJA and domesticate it as state law.

The rules of criminal procedure are very important for suspects, accused and awaiting trial persons because they are designed to ensure the constitutional and fundamental human rights of individuals charged with a crime. This is because of the effect/consequences of a criminal conviction, such as loss of liberty, stigma, imposition of fine and in some instances, deprivation of life (except in jurisdictions where there in place, a moratorium on the death penalty or the abolition of the death penalty), criminal procedures are designed to ensure that defendants are processed through the criminal justice system in consonance with the rule of law and due process and in doing this, it is expected that the constitutional and fundamental human rights of the accused/awaiting trial person will be respected.

4.3.4 Work Culture

In the exercise of their duties, agents of the criminal justice system (CJS) particularly the police and other law enforcement agents tend to exercise discretion which is often affected by the occupational culture which includes the informal rules which affect how agents behave in any number of situations. In the three jurisdictions, the various occupations in the agencies of the CJS have associated cultures, where members use a 'special language' and tend to have a similar approach to the discharge of their duties and the society in general. Davies et. al. explain that from the point of recruitment, a new staff quickly learns the distinctions between how things are done and how they are really done. Schein[1026]explains that a lot of problems encountered with the manner in which people carry out their duties has to do with traits associated with the socialization process than with education prior to a job or training obtained after the job. Thus the job socialization process develops an agent of the criminal justice system and affects his/her motives, values, ethical standards, and norm or where, how and on whom to practice.[1027] Siegel and Worrall[1028] also explain that perceptions of work environment tend to have a unifying

[1026]Schein, E.H. 1970. Occupational Socialization in the Professions: the case of role innovation. A work paper of the Alfred School of Management, Massachusetts Institute of Technology, Massachusetts.
[1027] Ibid. pg. 2
[1028] Siegel , L.J. and Worrall, J.L. 2014. Introduction to criminal justice op. cit. pp. 328-340.

effect on work subculture of agents of the CJS and joining a subculture helps adjust to the work and social climate. Thus, work culture is developed in response to the insulated lifestyle of agents of the various agencies based on their perception of danger on the job, society perception of them, their perception of the individuals they process. Adding that a negative work culture can divide agents of the system from the citizens they are charged with serving and protecting, thus creating an 'us' versus 'them' mentality.[1029]

Hence, the expectations of the job and what constitutes success, attitudes about the role of the occupation in the agency in relation to the society, are part of the job culture. Davies et. al. explain that the occupational culture can make heavy demands on agent, can involve high levels of stress and danger and the jobs can be regarded more as vocations as well as jobs. They add that work culture can also affect how agents carry out their duties, for example, with regard to the police. Holdaway explains that:

> …the police must display authority in order to handle some situations, especially where large numbers of people are involved, Police can 'handle' situations only if the public respect the authority of the police. This may affect decisions about suspects to the extent that those who appear to challenge authority may be more likely to be stopped, arrested or charged. Authority is reinforced by the symbols of the job- cars, radios and uniforms all signify the authority vested in the role of police officer.[1030]

Holdaway, Reiner[1031] and Foster[1032] explain that all the above factors give rise to a strong occupational culture, adding that there are certain themes that tend to characterize work culture of agents of the CJS. Although their research was focused on the Anglo-American societies, it holds true of not only the police in Anglo-American societies, but of all agents of the CJS.

Davies et al, assert that whatever variations, work culture can be perceived in the day to day administration of criminal justice of the agents. It is an important factor to consider

[1029] Ibid.
[1030] Holdaway, S. 1983. *Inside the British Police.*
[1031] Reiner, R. 2000. *The Politics of the Police*.
[1032] Foster, J. 2003. Police Cultures

when policy reforms and new laws are being considered as agents may resist efforts which may be seen to curtail their posers and discretion in the course performing their duty. This is more so where a culture of corruption, disregard for the rule of law and due process, lack of accountability and transparency and lack of respect for the human rights of citizens are at the fore front of the policy changes being considered. This does not in any way imply that work culture cannot change, it is however an important point to consider as the actions of agents of the criminal justice system are more often than not, greatly influenced by the predominant work culture of the agents.

4.3.5 Form and process

Criminal law does not and cannot enforce itself, it requires that criminal justice agencies interpret their roles and responsibilities and carry out their duties in consonance with laid down rules and established procedures. When one refers to the rules of criminal procedure, reference is being made to the rules which guide the criminal justice process: police detection and investigation of crime, the detention of suspects, directions to the prosecutors and defence counsel and judges in the prosecution of the case, punishment of offenders, remand of convicts and appeal of court ruling. Rules of criminal procedure do not generally define what a violation of the law is, but rather, set out how any given criminal case should be treated as it progresses through the criminal justice system.

In the three jurisdictions, the laws governing the criminal justice process come from different sources and the criminal justice process can begin either by the receipt of information on a crime and the police can arrest the suspect based on probable cause after an investigation, or the police can apprehend the suspect in the cause of committing a crime. Once a suspect is arrested, the suspect should be arraigned and informed of the charges against him. The suspect has a recognised right to request for legal representation and this (legal assistance) applies in various forms, to the criminal justice process.

The three jurisdictions identified in this research have different ways of investigating and prosecuting criminal cases based on different rules, principles and procedures which govern such matters as the investigation of a crime, the arrest and interrogation of a suspect, decisions to prosecute, procedures for bail, arraignment, trial procedures, rules of

evidence and the role of the jury (where there is one). They also have different methods of arriving at the decision of guilt or otherwise of the accused person by the courts. Davies et. al. aver that this is because the jurisdictions have different agencies dealing with the various issues in the criminal justice process.[1033]

The English criminal justice system has evolved over a period of time and is a mix of traditional and modern institutions, agencies, and procedures. The United States and Nigeria have adopted and modified in one way or the other, the UK system of criminal justice. For example, in the UK, the police, prosecutors and judiciary have distinct responsibilities despite the interconnectedness of the system, and the system utilizes practice directions for criminal practice. In US the agencies of the criminal justice system operate semi-independently and each of the 50 states has its own penal code and its county within a state has its own criminal justice agencies such as district attorneys and sheriffs, in addition to state and federal agencies.

The rules of criminal procedure are in place to protect the rights of the suspect/accused person and ensure that the agents of the criminal justice system perform their duties in consonance with the laid down rules and regulations. To this researcher, this indicates a recognition – at least normatively- of the due process approach to criminal justice, as where the rules of criminal procedure are not followed, an accused person can lose valuable protections and remedies available to him, and will thus be unable to access justice. The main components of procedural law which delineate the effect of criminal justice approaches on the actions of agents of the criminal justice system will be discussed subsequently.

i. Limits on investigative powers and use of evidence

This is the principal means of restraining police conduct. It is the rule that illegally obtained evidence, whether obtained by unreasonable searches and seizures and illegally

[1033]Davies, M, e. al. 2005. Criminal Justice (3rd ed.) op. cit.

obtained confessions cannot be used in a court of law.[1034] The US is the only country that applies an exclusionary rule that protects individuals from illegal searches and seizures which is considered limiting the powers of the police in favour of the suspect or accused person. In the US, the fourth amendment to the constitution[1035] was an exclusionary rule effective against unreasonable searches and seizures while the Fifth Amendment excludes the use of illegal confessions under its prohibitions. Arguably Siegel and Worrall explain that evidence obtained by unreasonable searches and seizures had been admitted in courts and that the only criterion for admissibility was whether the evidence was incriminating and whether it would assist the judge or jury in ascertaining the innocence or guilt of the defendant. However, in the 1914 case of *Weeks v. United States,*[1036] the Supreme Court held that evidence obtained by unreasonable search and seizure must be excluded in a federal criminal trial. Thus the exclusionary rule which was not based on legislation but by judicial decision was established. It was further extended to state courts in the case of *Mapp v. Ohio*[1037] where police officers used a fake warrant to forcefully search a home and found contraband. Justice Tom Clark, in delivering the opinion of the majority stated as follows:

> There are those who say …that under our constitutional exclusionary doctrine "the criminal is to go free because the constable has blundered." In some cases this will undoubtedly be the result. But…there is another consideration-the imperative of judicial integrity…The criminal goes free, if he must, but it is the law that sets him free. Nothing can destroy a government more quickly than failure to observe its own laws, or worse, its disregard of the charter of its own existence.

There was also the exclusionary rule called the "Fruit of the poisonous tree"[1038]which incorporated secondary or derivative evidence into the rule, to the effect that evidence

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[1034] Yue M. 1999. Comparative Analysis of exclusionary rules in the United States, England, France, Germany and Italy. In Travis III, L.F. (ed) 1999. *Policing*. 22.3:280-303

[1035] which provides that: "*The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures shall not be violated and no warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized"*

[1036] (1914) 232 U.S. 383

[1037] *(1961) 367 U.S. 643*

[1038] *Silverthorne Lumber Co. v. United States (1920) 251 U.S. 385*

indirectly obtained from a violation of the exclusionary rule is also excluded. The current state of affairs though since the 1980 in the US is the limiting of the scope of the exclusionary rule and the creation of three main exceptions to the rule:

i. **Independent source exception**[1039]which is to the effect that evidence is admissible where it has been discovered by a means that is completely independent of any constitutional violation.[1040]
ii. **Good faith exception**[1041]which provides that evidence obtained with a less than adequate search warrant may be admissible in court if the police officers acted in good faith when obtaining court approval for their search.[1042]
iii. **Inevitable discovery rule**[1043]which is to the effect that evidence obtained through an unlawful search or seizure is admissible in court if it can be established 'to a very high degree of probability' that the police investigation would be expected to lead to the discovery of the evidence.[1044]

In Nigeria and the UK, the courts are vested with broad discretionary power when it comes to exclusion of evidence illegally obtained as provided in Sections 14 and 15 of the Nigerian Evidence Act 2011[1045] and Section 78 of the Police and Criminal Evidence Act 1984 (PACE 1984). Section 14 of the Nigerian Evidence Act 2011 allows the admissibility of evidence illegally obtained unless the court opines that the "…*desirability of admitting the evidence is outweighed by the undesirability of admitting the evidence that has been obtained."*

Section 78 of PACE provides that the court may exclude evidence based on submissions that the evidence has been obtained under circumstances where there has been a substantial

[1039] *Segura v. United States (1984) 468 U.S. 796*
[1040] Ibid.
[1041] *Herring v. United States(2009) 555 U.S. 135*
[1042] ibid
[1043] *Nix v. Williams (1984) 104 S. Ct. 2051*
[1044] ibid
[1045]See also on the admissibility of illegally obtained evidence in Nigeria, Gaji v. State (1975) 1 All NLR 266; Musa Sadau v. State (1968) ANLR 125 at 129; Kim v. State (1991)2 NWLR (Pt. 175)622; Oguonzee v. State (1997) 8 NWLR (Pt. 518)566; .

and significant breach of the PACE code of practice and where the breach affects the fairness of the proceedings. However, in contrast to the Nigerian provision, the exclusionary rule applies in cases where confessions are obtained illegally.[1046] Although there is no explicit provision for the protection of the rights of persons awaiting trial and defendants, it can be inferred that the courts are expected to balance the interest of the public and the interest of the accused.

The exclusionary rule issue is a topical one as there have been arguments for the expansive use of the rule in the interest of deterring police illegality, which is being shown to be compromised by criminal procedure rules.

ii. Searches and seizures

The search for incriminating evidence and the seizure of the evidence in order to use it during trial is a major element of the police investigation. Search and seizure rules have to do with preventing and detecting crime, processing suspects and presenting said evidence before the courts to buttress the points of the prosecution. The Police need powers to be able to stop people on the street where there is a suspicion of a crime, to be able to enter private residences and businesses where there is suspicion that they are hiding stolen or illegal goods. On the other hand, individuals also need to be able to go about their daily lives without the fear that they will be arbitrarily stopped, searched, and have their properties seized. Suspects and persons awaiting trial also need to be protected from police brutality and illegal confiscation of their properties by criminal justice agents. It would be limiting to assume that the search and seizure laws apply to only the person of a suspect to tangible possessions. Searches, in the 21st century range from basic police searches of the individual and his possessions such as a car or a home to the technological including wiretapping, electronic surveillance, radar scans and thermal imaging.

The major difference between legal provisions on searches and seizure in the US, UK and Nigeria is that in the US, illegal search and seizure of evidence may bar the use of such

[1046] Section 76 and 78 PACE and the Criminal Justice Act 2003

evidence in court.[1047] Whereas in the UK and Nigeria, the law provides that in determining the legitimacy of the search and seizure of property of a suspect, the major consideration is the relevance of the evidence to the matter and not necessarily how the evidence was obtained. Thus, even if evidence is illegally seized by agents of the criminal justice system; the evidence is admissible at the discretion of the court.

The police thus apply the laws on searches and seizures based on their understanding of the legal and constitutional provisions on search and seizure while the courts decide whether their actions are in line with legal and constitutional provisions. In the US the Fourth Amendment protects criminal suspects and individuals from unreasonable searches and seizures by placing limitations on what the police can do in their effort to catch offenders and collect evidence.[1048] Where an arrest is properly made without a warrant, searches incidental to the arrest do not require a warrant, and where a warrant is issued, it does not need to specifically authorize the search which is now incidental to the arrest. Other exceptions to the search warrant to search include jail booking searches, searches in the course of investigatory stops and administrative searches such as regulatory inspections, roadblocks, school and work place searches and consensual searches. Where search warrants are required for residential and private office searches, there are particularity and staleness limitations that grant protection to individuals. However, in the U.S. the police may rely on a warrant that does not describe particularly, the things to be seized, unless the defect would have been obvious to a well trained officer,[1049] and there must be separate "articulable suspicion of danger for search for weapons.

In the UK, Sections 1-7 of PACE provide the power for search, also Code A[1050]provides the modalities for search and seizure for the purpose of collecting evidence where is a reasonable basis for suspicion that there are stolen goods, weapons or articles for use in offences such as theft, burglary, and criminal damage. In Nigeria, Sections 28 of the Police Act permits a Superior Officer authorise a police officer to enter into any premises whether

[1047] Called the exclusionary rule.
[1048] Seigel, L.J. and Worrall J.L. 2014. Introduction to Criminal Justice, 274.
[1049] See Massachusetts v. Sheppard (1984) 468 U.S. 981
[1050] PACE Code of Practice dealing with the minutiae of the implementation of the PACE

private or public and authorise the search and seizure of property **he believes to be stolen** based on a warrant obtained from a judge or based on 'his belief' that they are contained in the premises. However, in light of the absence of a set of regulatory codes for the powers of search and seize as contained in the US and UK, what obtains in Nigeria is a tendency to conduct arbitrary searches as contained in Section 29 of the Police act in flagrant disregard of the right to privacy of individuals and with flagrant disregard for the rule of law and due process of the average citizen.

iii. Identity checks

Here, the issue of racial profiling, inappropriate use by criminal justice agents, particularly the police, of race or ethnic or nationalistic characteristics as an indicator of propensity towards criminal activity such as terrorism, kidnapping, petty crimes, illegal immigration, cross border and in-border drug trade is delved into. Although, the use of race or ethnic profiling is highly researched in the US to a lesser extent in the UK, it is much less if rarely researched in Nigeria. However, it is not uncommon for the Nigeria police to randomly stop and question individuals for various reasons such as age, wealth status, ethnic orientation; in particular bus drivers and motorcyclists popularly known as 'okada riders' who are extorted daily for 50 naira or more.

Since the late 1990s, in the US and UK, advocates campaigning against racial profiling - particularly by police agencies - achieved great political strides in their advocacy against racial profiling which according to Bill Clinton, President of the United States of America(as he then was), is a "*...morally indefensible and deeply corrosive practice..."* which is "*...the opposite of good police work, where actions are based on hard facts..."* In the UK, concurrently, the Stephen Lawrence Inquiry which was concluded in 1999 summarised their report that institutional racism existed as a corrosive disease in the UK police. These findings led to a series of policies and monitoring strategies to combat the profiled stop and search of people based on race and ethnicity.[1051]

[1051] Justice Initiatives. 2005. Ethnic Profiling by Police in Europe. Open Society Justice Initiative. Retrieved May 12, 2017 from https://www.opensocietyfoundations.org/publications/justice-initiatives-ethnic-profiling-police-europe

However, post the 2001 terror Attack in the US, racial profiling has increased in the US and the UK and, though by law, identity checks ought to be based on individualized suspicion and need to identify the suspect; where police rely on generalizations about the ethnic, racial or national origin of an individual, there is a tendency to wade into profiling of individuals that amount to discrimination. Stone[1052] explains that racial or ethnic profiling is situated at the convergence of three distinct but related fields which are essential to tackling the challenge of ethnic profiling viz:

a. Discrimination- the negative and differential treatment that minorities tend to suffer at the hands of police and other law enforcement agents;
b. Quality of Policing – this relates to crime prevention and criminal justice and how to improve policing practice; and
c. Data – this relates to the gathering and securing of reliable data about police activity, including patterns of potentially discriminatory conduct, without compromising individual rights to privacy or self-discrimination.

People subjected to racial or ethnic profiling tend to be subjected to insulting and abusive speech, ill-treatment, torture, degrading treatment, abuse, violence and arbitrary arrest and detention. This ultimately leads to impunity and arbitrariness in the actions of agents of the system, disenchantment with the agents of the criminal justice system and loss of respect. The only way to battle racial/ethnic profiling is by strengthening training of agents of the criminal justice system on racial or ethnic tolerance, promoting human rights principles and ensuring independent investigation and prosecution of complaints of racial/ethnic profiling.

iv. Surveillance

The right to privacy is constitutionally and legally recognised in the three jurisdictions.[1053]However, in order to apprehend criminals, particularly those who have

[1052] In his foreword, "Preparing a fresh assault on ethnic profiling." Pg. 1-5. Open Society Justice Initiative. 2005. Ethnic Profiling by Police in Europe. Retrieved May 23, 2018 from https://www.justiceinitiative.org>
[1053] Viz: Section 37 Constitution of the Federal Republic of Nigeria, the fourth Amendment to the United States constitution and the Protection of Freedom Act 2012 of the United Kingdom.

committed crimes of a grievous nature, surveillance in the course of investigation is an important means of obtaining evidence against them, thus infringing on the right to privacy. In modern times, electronic and other technological means of surveillance has a broad range of uses which extend beyond the criminal justice system to assist numerous organisations, both private and public, in their day to day functions such as the police, healthcare and education providers, retail businesses, manufacturers and other authorities of the government. Surveillance, particularly cameras[1054] are used in public places with the aim of keeping people safe, investigating and deterring crime and anti-social behaviours, protecting property, monitoring traffic. They are also used to ensure access control into places, management of properties and buildings.

In the investigation of crimes, particularly organized crimes such as trafficking, terrorism, slave trade, organ trade and drug trade, amongst other surveillance has proved to be valuable as it allows for obtaining information that would otherwise be unattainable by other means.[1055] However, in the pursuit of covert surveillance, there are constant concerns about the unjustified invasion of privacy and other non-approved surveillance. In Nigeria, Section 37 of the constitution provides that the privacy of citizens in the home, of their correspondence, telephone conversations and telegraphic communications are guaranteed and protected. However, Section 45 (1) of the Constitution allows for interference of the right to privacy in the interest of the public and for the protection of the rights and freedom of other persons. The question then should be what constitutes public interest and what rights of citizens would be curtailed to "allow for the protection of the rights and interests of other persons? Who are these persons? These are pertinent questions that the federal government is saddled with the responsibility of answering in the interest of sustaining democracy, the rule of law and due process in Nigeria.

[1054] Section 29 (6) of the United Kingdom's Protection of Freedom Act 2012 defines surveillance camera systems to include CCTV, IP enabled video surveillance systems, body worn cameras, automatic number plate recognition systems, UAV (drone) mounted surveillance systems, and the associated software which can be applied to analyse the data collected from the surveillance cameras

[1055] See generally, United Nations Office on Drugs and Crime. 2009. Current Practices in Electronic Surveillance in the investigation of serious and organized crime. New York: United Nations Publication for a worthy elucidation on Surveillance and attendant issues. See also Reidenberg, J.R.2014. The data surveillance state in Europe and the United States. *Wake forest Law Review. 49:583-608*

Surveillance technology was utilized unrestrainedly by agents of the Department of State Security (DSS) to track and arrest suspected judges who had "allegedly" been involved in corrupt practices in contravention of the right to privacy.[1056] In comparison with the UK and the US, there is no privacy legislation and there is also a perceived, paucity of a legal framework to provide for competent legal authority to authorise and guide the use of surveillance technology in Nigeria. Although governments have contended that the use of surveillance is necessary to sustain a democratic society and prevent crime, the UK and US have guidelines and an established framework to guide surveillance.[1057] Also, the trend in the US and UK tends to be as much about overt surveillance as well as covert surveillance, whereas in Nigeria, the trend appears to be more towards covert surveillance than overt surveillance.

It is worthy of note that the United Nations advocates that covert electronic surveillance should be an investigative tool of last resort where other less intrusive means have been proved to be ineffective or where there is no reasonable alternative to obtain important information or evidence.[1058]It further added that there is a need for a balanced system for the use of electronic evidence, and this balance needs to be struck between the effective use electronic evidence gathering and the protection of citizens' rights,[1059]and the rights of persons suspected of committing crimes or awaiting trial. There also needs to be a balance in the cost of utilizing electronic surveillance as against the ultimate public benefit that can be gained from securing a conviction, adding that these considerations need to be weighed carefully by legislators, prosecutors, law enforcement and other agents of the system.[1060]

[1056]Nwakanma, O. 2016. *The DSS Arrest of Judges*. 06 October, 2016 Vanguard Newspaper. Retrieved March 23, 2017, from http://ww.vanguardngr.com/2016/10/dss-arrest-judges/

[1057] See the UK, the Protection of Freedom Act 2012 and the Surveillance Camera Practice Code as obtained from https://www.gov.uk/government/publications/surveillance-camera-code-of-practice. The Surveillance Camera Practice Code's use falls within the jurisdiction of the Crime and Disorder Act 1998, the Data Protection Act 1998, the Human Rights Act 1998, the Freedom of Information Act 2000, the Regulation of Investigatory Powers Act 2000, the Private Security Act 2001 and the Investigatory Powers Act 2016.

[1058]Anon. 2009. Current practices in electronic surveillance in the investigation of serious and organized crime. United Nations Office on Drugs and Crime.

[1059] Ibid.

[1060] Anon. 2009. Current practices in electronic surveillance in the investigation of serious and organized crime. United Nations Office on Drugs and Crime.

v. Arrest and pretrial detention

The police and other law enforcement agents are charged with the power to arrest and detain suspects. In the criminal procedure laws of the three jurisdictions, there is a general presumption that an arrest should be done after a crime has been committed or in certain exceptions, such as where a crime is committed in the presence of the officer or there are grounds for reasonable suspicion that a crime has been committed. In the US as with the other two jurisdictions, the Fourth Amendment imposes a presumptive judicial warrant for arrest. However there are exceptions to the requirement and most arrests are conducted without a warrant such as; when the police are in 'hot pursuit', when a person is arrested in a public place and where there is probable cause.[1061] In the UK, though the arrest must be based on reasonable suspicion of involvement in crime, the police have the power to arrest a suspect anywhere, and at any time. In the course of arrest, the police are expected to identify themselves as police officers, inform the suspect of the arrest and the crime committed, explain why the arrest is necessary and that you are not free to leave. The police are also authorized to use reasonable force[1062]to restrain a suspect who becomes violent or tries to escape.[1063]

In Nigeria, the arrest stage of criminal justice is a thorny issue that has been the subject of intensive debates with the practice of police brutality at the point of arrest- beating and dragging suspects on the ground, arrest before searching for evidence and police dabbling into the area of debt recovery and arresting of friends and families of suspects in lieu of suspects amongst others. Akinseye-George explained that the CPA, CPC, Police Act and Evidence Act had provided 'legal' backing for unlawful arrest.[1064] For example, Section 27 of the Police Act,[1065]provides that "…*when a person is arrested without a warrant, he shall be taken before a magistrate who has jurisdiction with respect to the offence with which he is charged or is empowered to deal with him under section 484 of the Criminal*

[1061] Seigel L.J and Worrall J.J. 2014. Introduction to criminal justice, 277
[1062] Such as holding down or handcuffing a suspect.
[1063] Ojukwu, E. et.al. 2012. Handbook on Prison Pretrial Detainee Law Clinic. Op cit.
[1064] Akinseye-George, Y. 2015. Innovative provisions of the Administration of Criminal Justice Act 2015. The Nation. Retrieved 12 May, 2017 from http://thenationonlineng.net/innovative-provisions-of-administration-of-criminal-justice-act-2015/
[1065]Cap P LFN 2004

Procedure Act as soon as practicable after he is taken into custody.[1066]The phrase, 'as soon as practicable' as contained in Section 27 of the Police Act is not in line with the constitution and encourages arbitrary arrest. Section 35 (4) of the Constitution provides that:

> ...any person who is arrested…in accordance with subsection (1) (c) of this section shall be brought before a court of law within a reasonable time, and if he is not tried within a period of –(a) two months from the date of his arrest … or (b) three months…he shall without prejudice to any further proceedings that may be brought him, be released either unconditionally or upon such conditions as are reasonably necessary to ensure that he appears before trial at a later date.[1067]

In the case of *Nwadiogbu v. Anambra Imo River Basin Dev. Authority*[1068] the Supreme Court observed that the police used their powers of arrest in a totally unnecessary manner and underscored the urgent need for building and nurturing a strong institution. Also, Achara[1069]asserts that:

> The policeman has no discretion in the situation of the arrest with warrant…the situation is different in an arrest without a warrant. The CPA provides 10 scenarios in which a policeman may, on his own initiative, arrest or decline to arrest somebody…the police powers of arrest without warrant display an insensitive disregard for the right of the individual. They could have been justified when they were made as an alien oppressor's necessary weapons to suppress the reaction of subdued natives. But how can Nigerians possibly explain these tools of degradation against their fellow citizens?

Although courts had pronounced on the issue of illegal arrests such as the case of *Oceanic Securities Int'l Ltd v. Balogun*[1070]where Mbaba JCA remarked as follows:

> It has been stated many times that the police has no business in the enforcement of debt settlement or recovery of civil debts for banks or anybody…I have to add that the resort to the police by parties for recovery of debts outstanding under contractual relationship had been repeatedly deprecated by the court. The police have also been condemned and rebuked , several times, for abandoning its

[1066]See also Section 17 of the CPA whose provision is similar to Section 27 of the Police Act
[1067] But the phrase 'reasonable time' was defined in S. 35 (5) of the CFRN as 24 hours or 48 hours as the case may be.
[1068](2011) ALL FWLR (Pt. 562) 1612-1632
[1069]Umukoro, M. 2016. Emerging Trends in Criminal Proceedings. A paper delivered at the 2016 refresher course for judicial officers at the National Judicial Institute, Abuja on Wednesday, 16 March. 2016 pp.1-24.
[1070](2012) All FWLR (Pt. 643) 1880-1907

> primary duties of crime detection, prevention and control to dabbling in enforcement or settlement of debts and between quarrelling parties and for using its coercive powers to breach the citizen's right and/or promote illegality and oppression. Unfortunately despite all the decided cases on this issue, the problem persists and the unholy alliance between aggrieved contractors/creditors with the police remains at the root of many fundamental rights breaches in our court.

However, the ACJA 2015 has put a stop to the practice of debt recovery, and arrests of relatives and friends of suspects in lieu of the suspects[1071]and deleted the provisions of Section 10 (1) of the Criminal Procedure Code which allowed the police to arrest without a warrant, any person who has no apparent means of work and cannot satisfactorily account for himself; a provision that had been seriously abused by the police.

vi. Frequency in the use of arrest and pretrial detention

The exercise of police powers in the course of arrest and detention has been the subject of controversy in the three jurisdictions. In the US, the major problem appears to be racial profiling in the course of arrest and detention,[1072] while in Nigeria, the major problem appears to be arrest on probable cause without sufficient evidence and detention on holding charge orders in order to look for evidence or lack of ability to pay bail.[1073]It should be noted that although the detention and remand rates in Nigeria is very high, when compared to the US, the actual figures of arrest and pretrial detention comparatively reflect that Nigeria has the lower arrest and detention rates as compared to the US while the UK has the lowest as indicated in the table below.[1074]

Country		**No. in Pretrial Remand**	**% of Total Prison Population**	**Estimated National Population**	**Pretrial/Remand Population per 100,000 of National Population**
Nigeria	2017	45,263	71.7%	182.25m	25
	2010	35,000	72.0%	---	22
	2005	28,363	74%	---	20
	2000	27,959	62%	---	22

[1071] Section 7 ACJA 2015
[1072] Seigel, L.J. and Worrall J.L. 2014. Introduction to Criminal Justice (14th ed.) op. cit.
[1073] Ojukwu, E. et.al. 2012. Handbook on Prison Pretrial Detainee Law Clinic. Op cit.
[1074] As obtained from Walmsley, R. 2017. World Pre-trial/remand imprisonment list (3rd ed). Institute for Criminal Policy Research (ICPR). Op cit;

United States	2017 2010 2005 2000	467,253 457,500 463,200 349,800	21.1% 20.2% 21.1% 18.1%	320.1m	146 147 156 123
United Kingdom	2017 2010 2005 2000	9,228 13,004 12,864 11,433	10.9% 15.3% 16.9% 17.5%	58.36m	16 24 24 22

Table 2. Pretrial remand comparison.

International norms recommend that detention pending the outcome of trial should be an option of last resort. However, it appears to be an overused and automatic response to criminal offences. Although the remand conditions in the US and UK are reportedly poor and degrading, the conditions of remand of pretrial and awaiting trial detainees in Nigeria are much worse and persons awaiting trial are often remanded with convicted prisoners.[1075]

Siegel and Worrall explain that the costs of pretrial detention are very high on two sides, the state and the individual.[1076] The state spends money on the remand of persons awaiting trial who constitute a majority of persons in remand based on statutory provisions that allow judges have complete discretion on pretrial detention based on unexplained factors, thus making the practice subjective to uniquely subjective bias.[1077] Thus inconsistent decisions lead to a high number of persons awaiting trial. Baughman[1078] in his research on the cost of pretrial detention compared the risk posed by each defendant and the cost of any crime they may potentially commit during their pretrial release and found that the costs of pretrial detention far outweigh the benefits, as there are many other options that states can

[1075]Seigel, L.J. and Worrall J.L. 2014. Introduction to Criminal Justice op. cit. Ojukwu, E. et.al. 2012. Handbook on Prison Pretrial Detainee Law Clinic. Op cit.https://www.fairtrials.org;Prison Insider. Global Prison Trends https://www.prison-insider.com/en/resources/analyses/rapports/tendencies-mondiales-de-l-incarceration-2017

[1076] Ibid.

[1077] Vogler, R and Shahrzad. 2016. Standards for making factual determinations in arrest and pre-trial detention: a comparative analysis of law and practice. Ross, J. and Thaman, S. C. Eds. Comparative Criminal Procedure, 191-216

[1078] Baughman S.B. 2017. Costs of pretrial detention. *Boston University Law Review. 97.1:1-20. See also* Schonteich, M. 2014. Who are the world's pretrial detainees? in Presumption of Guilt; Schonteich, M. 2010. The Socio-Economic Impact of Pretrial Detention op.cit.

consider in securing the presence of persons awaiting trial during trial. Also, there are research studies which indicate that persons waiting trial in detention tend to be convicted of crimes alleged or get higher remand time on conviction than those who are out on bail during the trial process.[1079]

vii. Interrogation

After the arrest and move to the police station, the next step in the criminal justice process is that the suspect is questioned about his involvement in the crime. Here the police hope to obtain information from the suspect. Seigel and Worrall explain the effect of the process on persons awaiting trial as follows:

> …This is a particularly unsettling time, and the arrestee may feel disoriented, alone, and afraid. Consequently, he may give police harmful information that can be used against him in a court of law. Exacerbating the situation is the fact that the interrogating officers sometimes use extreme pressure to get suspects to talk or to name their accomplices…[1080]

In light of this, in the three jurisdictions, legislations and court rulings have sought to protect criminal suspects from police intimidation. In the US, the case of *Miranda v. Arizona*[1081] is most instructive of the rights accorded suspects as the Supreme Court held that suspects in custody must be told that they have the following rights:

a. They have the right to remain silent
b. If they decide to make a statement, the statement can and will be used against them in a court of law
c. They have the right to legal representation at the time of the interrogation, or they will have an opportunity to consult with one
d. If they cannot afford legal counsel, one will be appointed for them by the state.

In the US, the police are mandated to give the above information collectively known as the "**Miranda warning**" to any person arrested and placed in police custody before questioning. In the UK, the PACE and the Criminal Justice Act 2003 provide a

[1079] Baughman S.B. 2017. Costs of pretrial detention. *Boston University Law Review. 97.1:1-20. See also* Schonteich, M. 2014. Who are the world's pretrial detainees? in Presumption of Guilt; Schonteich, M. 2010. The Socio-Economic Impact of Pretrial Detention op.cit.
[1080] Seigel, L.J. and Worrall J.L. 2014. Introduction to Criminal Justice, 300
[1081] (1966) 384 U.S. 346

comprehensive framework for handling suspects and those arrested at the police station, much like the Miranda rights. However, it appears to be much stricter than the powers of the police in the US as the police are required to advise the criminal suspect that he has a right to silence as soon as a person is suspected of committing an offence even without arrest and being taken to the police station. Also, where a suspect chooses not to speak, the court is permitted to draw adverse inferences from the suspect's silence.[1082] In Nigeria, Section 35 (2) of the constitution provides rights similar to the Miranda warning.[1083] However, Sections 5 of the CPA and 38 of the CPC had curtailed the rights of the suspect by providing that where a suspect is arrested in the course of committing an offence or pursued immediately after committing an offence or had escaped from lawful custody, he was exempted from the rights. However, Section 6 of the ACJA 2015 has reaffirmed Section 35 (2) of the constitution and now informs suspects that they are entitled to free legal representation by the legal aid counsel, albeit, where such aid is applicable.

Thus, police are expected to ensure that the "Miranda rights" of suspects are read/said to them at the point of arrest and interrogation. In Nigeria, in terms of procedure, this right is very important as it goes to the root of any trial and affects evidence adduced in support of the claims of the state against the accused person. Thus, where criminal procedure is not followed, an accused person has the right to challenge the admissibility of evidence adduced by the state. For example, where the police take a statement from an accused person without informing him of his right against self incrimination, or by coercion, the evidence could end up being suppressed or thrown out. Therefore, where the statement of the accused has been suppressed or dismissed, the success or failure of the case will depend on the admission or denial of guilt by the accused based on the charges, the nature of the violation and other evidence (legally obtained) adduced against the accused person.

It is important to point out that there are situations where some suspects choose not to speak and remain silent or where suspects waive their rights to protection. In the US and

[1082] Davies,M. et. al. op.cit.
[1083] See the case of Daniel Sugh v. State (1988) NWLR (pt. 77) 475 on the implications of exercising the right to silence.

UK, it has been held that simply remaining silent is not the same as invoking the "Miranda rights, also, where a suspect does not assert his Miranda rights and provides self incriminating statements in response to police questioning, such information is admissible in court, however, the state must first show that the statement was given voluntarily and that the defendant was aware of all his Miranda rights. The law in the US and UK on the rights of the suspects are not static, as there are two sides to the issue: law enforcement in their aim of crime control tend to view procedural protections with a jaundiced eye, while advocates of suspect's rights continue to fight for it. It is obvious that Miranda rights present a due process protection of criminal suspects from the overwhelming power of the police and serves to caution police in their handling of criminal suspects who at the end of the day are still human beings with inalienable rights.

viii. Prosecutorial charging discretion

The exercise of discretion is often discussed as if it is a single decision at a single point in time in the criminal justice process. However, the exercise of discretion in the criminal justice system arises from the point of arrest up till the outcome of trial - arraignment where the charge is read against the accused, the accused pleads to the charge and is either remanded or released pending the outcome of the trial or remanded in prison awaiting trial.

In the course of this study, this researcher came across many research materials that covered the topic of discretion in terms of various aspects of the criminal justice system from the decision to stop and search, arrest, release unconditionally, release on bail, arraign, charge, what to charge, remand pending the outcome of trial, bail pending the outcome of trial, conviction, acquittal, sentencing options, remand in corrections facilities, amongst others. Discretion is thus, the leeway permitted officials to act under the formal set of rules and in a public capacity in the criminal justice system.

This aspect of the research is however more concerned with prosecutorial discretion and its effect on the criminal justice process in the three jurisdictions. Prosecutorial discretion is generally linked to the adversarial system of criminal justice as practiced in the three jurisdictions where criminal cases are regarded as disputes between the state and the

individual(s) accused of a crime. As with civil disputes where the plaintiff has the option of withdrawing his claim or settling out of court, so also the prosecutor as the representative of the state, can decide that it is in the best interest of the state to pursue or not to pursue a course of action. Ohlin and Remington[1084] assert the central importance of discretion in the functioning of the criminal justice system, and as in the US and UK, Prosecutors in Nigeria wield broad discretionary power in the exercise of prosecuting accused persons. Although prosecutorial discretion is usually structured by legal and policy guidelines and is regarded as a central component of most criminal justice systems,[1085] the discretionary power of prosecutors is regarded as practicable unreviewable.

In the UK, the Crown Prosecution service[1086]is a recent creation[1087]which employs legal practitioners and is comprised of 14 regional teams to prosecute cases. Up till the late twentieth century, theoretically speaking, crime prosecution was by private means. This was because, although the Attorney General could dismiss ongoing prosecution by *nolle prosequi*, the state did not have public prosecutors to control criminal prosecution routinely[1088] and autonomous police forces were the main public prosecutors. In contrast to the UK, federal prosecutors in the US have had exclusive prosecutorial discretion since 1789;[1089] this is because American criminal law developed a system of public prosecutions that was unknown to the English legal system of private criminal prosecution.[1090] The

[1084] Ohlin, L. E. and Remington, F. J. 1993. *Discretion in criminal justice: the tension between individualization and uniformity.* New Albany, State University of New York Press.

[1085] Kraus, R. 2009. The theory of Prosecutorial Discretion in the Federal law: origins and developments. *Seton Hall Circuit Review 6.1:1-28.* Retrieved on 09 February, 2018 from https://scholarship.shu.edu/cgi/viewcontent.cgi?refere

[1086] Herein after referred to as CPS

[1087] Ashworth, A. 1987. The "public interest" element in prosecutions. *Criminal Law Review: 595-606.*

[1088] Rogers, J. 2006. Restructuring the exercise of prosecutorial discretion in England. *Oxford J. Legal Stud.26*:775-798

[1089] Judiciary Act of 1789 Ch.20, & 35, 1 Stat 73, 93 which provides as follows "*And there shall be appointed, in each district a meet person learned in the law to act as attorney for the United States in such district…whose duty it shall be to prosecute in such district all delinquents for crimes and offences, cognizable under the authority of the United States…"*

[1090]Jacoby explains the combination of factors that allowed the American legal system to develop its own unique style, such as the independent spirit of the American colonists, the geographic distance between the American colonies and England, and England's apparent inertia in enforcing British norms once the judiciary was established by authority of the crown. Thus, from the 1600s to 1750, the colonies began to adopt and adapt the English and Dutch judicial systems to suit local needs. Thus, the Dutch judicial officer (the *schout),* whose duties in court were to present criminal charges against alleged criminals, served as the foundation for Attorney General and the duties were then merged with that of the English sheriff, after the merger, the

Nigerian criminal justice system appears to have combined the English and American systems by having Attorneys General[1091]and police prosecutors.[1092]However, courts have encouraged police prosecution in superior courts of record in Nigeria to be by legally qualified police officers.[1093] This is particularly because of the complex nature of criminal proceedings in superior courts of record which require knowledge and proficiency in criminal procedure and the law of evidence amongst other laws. Adebayo[1094]explains that law enforcement agents who are not qualified lawyers, prosecuting criminal cases tend to lose cases due to incompetence and their inability to match the professionalism and legal skills of defence counsel. The ability to institute criminal proceeding is vested in the Attorney General[1095]whose prosecutorial powers are exercised by the Director of Public Prosecution[1096]and by the Police and other law enforcement agencies or private legal practitioners on behalf of the country.[1097]

Attorney General then functioned as a police-prosecutor hybrid and this position was by appointment. Over the years, democratisation and localization in state government led to an increase in the power and duties of the local deputy state attorneys general. When appointments began to replace elective officers, the current public prosecutor emerged. Jacoby, J. E. 1980. *The American prosecutor: a search for identity*. See also, Krauss, R. 2009. The theory of prosecutorial discretion in Federal Law: Origins and Development. op.cit.

[1091] Section 174 and 211 of the CFRN 1999 (as amended)

[1092]See Section 23 of the Police Act, Section 56 (1) of the Federal High Court Act Section 174 and 211 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) make separate but identical provisions for conferment of power to commence, continue and discontinue any criminal proceedings on the Attorney General of the Federation and each of the states. Although there are contentions that the police ought not to prosecute cases, it appears to be a settled case that police are empowered to prosecute criminal cases in Nigeria. See Section 23 of the Police Act. Also F.R.N. v. Osahon (2006) All FWLR (Pt. 312) 1975 where the Supreme Court held as follows "…f*rom the colonial period up till date, police officers of various ranks have taken up prosecution of criminal cases in Magistrate's Courts and other Courts of inferior jurisdiction. They derive their powers under Section 23 of the Police Act...*

[1093]The position of the Nigerian constitutional law on the power of the Attorney General over public prosecution seems to have been settled long ago following the decision of the Supreme Court in the case of State v. Ilori and Ors. (1983) 14 NSC 69, where it was held that the provision in Section 191 (3) of the 1979 Constitution to the effect that the Attorney General should have regard to public interest was not a curtailment of the absolute discretion of the absolute discretion of the Attorney General, but merely declaratory of those powers. See generally, Nwadialo, F. 1987. The criminal procedure of the southern states of Nigeria, *368-370.*

[1094]Adebayo, A.M. 2012. Administration of criminal justices system in Nigeria, 91

[1095] Sections 174 and 211 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) make separate but identical provisions for conferment of power to commence, continue and discontinue any criminal proceedings on the Attorney General of the Federation and each of the states.

[1096] See Sections 174 (2) and 211 (2) of the 199 Constitution. It is important to note that the office of the director of public prosecutions was provided for in Section 104 of the 1963 Constitution, but has been omitted from subsequent Constitutions. However, this has not removed the powers of the Directorate of Public Prosecutions. See generally Adebayo A.M. 2012. *Administration of Criminal Justices System in Nigeria.*

[1097] See Section 23 of the Police Act

Ideally, in the discharge of their duties, prosecutors are presumed to merge accountability for public prosecution services as needed in modern democratic societies with the adaptability and reactivity needed to apply the law. For example, the Abuja Affirmation of the Role of Public Prosecutors was adopted in Nigeria on 11 August, 2000.[1098] It affirmed the importance of prosecutorial ethics and integrity, ensuring discipline and accountability amongst prosecutors. It further recognised the need to establish equitable mechanisms for processing persons awaiting trial; ensuring case flow management and the right to trial without due delay; ensuring high standards in the prosecution of political, high profile, economic and human right crimes.

Cass[1099]points out that the prosecutor has the ability to utilise the power of the state against individuals in ways that threaten the rights and freedoms of citizens. However, there are constitutional and policy restraints which seek to check and restrain prosecutors. Also, institutional and financial resource strictures, public relations considerations, hierarchies, judicial control and personnel regulations can limit prosecutorial discretion.[1100]Other considerations can also affect the prosecutor's decisions to charge or not to charge suspects; such as sufficiency of legally admissible evidence, the purpose of the criminal statute, the legal responsibility of the accused, the possible resulting publicity, potential martyrdom of the criminal defendant.[1101] This is because too many acquittals can question the respect for the law and the validity of the court process.[1102] Prosecutors also have broad prosecutorial discretion to halt prosecutions –also known as *nolle prosequi.*[1103]

[1098] Obiagwu, C.E. 2001. The Prosecutor. *Legal Defence Assistance Project (LEDAP) for Directors of Public Prosecutors Forum*, No 1 April-June 2001. .5-6

[1099] Cass, R. A. 2015. Power failures: prosecution, power, and problems. Engage Criminal Law and Procedure 16.3:29-37. Retrieved on 22 May, 2018 from https://fedsoc-cms-public.s3.amazonaws.com/updade/pdf/g98h8vZFGLamqn8g3; Frase, R.S. 1990. Comparative criminal justice as a guide to American law reform: how do the French do it, how can we find out, and why should we care? *California Law Review* 78.3: 545-682. Retrieved September 22, 2016 from, http://scholarship.law.umn.edu/faculty_articles/456MgrxxszRLMF2fm7RxXct.pdf

[1100] Ibid.

[1101] Cates, A. M. 1961. Can we ignore the laws? Discretion not to prosecute. *Alabama Law Review.* 14.1:1-10

[1102] Ibid.

[1103]Ibid. Some jurisdictions have modified prosecutorial discretion in the area of discontinuing prosecutions by requiring that the permission of the court must be sought before discontinuing a prosecution.

Prosecutors tend to make different charging decisions as cases come up[1104]and this require measures of discretion as the situations and issues in the cases that are before them which are diverse and varied. The discretion entrusted in public prosecutors require that they exercise their powers impartially to conform to the basic constitutional rights of equality before the law, non discrimination for the defendants and respect for due process. In the US, UK and Nigeria, prosecutors are perceived as having broad discretionary powers and their overwhelming dominance of the criminal trial tends to have far reaching consequences on PATs and the criminal trial in general. In Nigeria, judicial decisions indicate support of the notion of absolute discretion of the Attorney General to institute or discontinue criminal proceedings irrespective of the constitutional provisions that the Attorney General should have regard to public interest, the interest of justice and the need to prevent abuse of legal process as contained in Section 174 (3) and 211 (3) of the constitution.

Generally, prosecutorial discretion can be regarded as divided into three broad areas; (a) the decision not to file any charges or to dismiss all charges, (b) the decision to decline or drop additional charges, and (c) the decision not to file more charges or to reduce charge severity. These will be briefly outlined:

a. The decision not to file any charges or to dismiss all charges, the decision to decline or drop additional charges, and the decision not to file more charges or to reduce charge severity.

In the US and Nigeria, prosecutors have broad discretion over both the decision to charge and to decline to file charges.[1105] In the case of post filing decisions to dismiss or drop all charges – known under common law as *nolle prosequi,* the position is not uniform in the US. Some states retain the *nolle prosequi* power which gives the prosecutor complete

[1104] Frase, R.S. 1990. Comparative criminal justice as a guide to American law reform: how do the French do it, how can we find out, and why should we care? *California Law Review* 78.3: 545-682. Retrieved September 22, 2016 from, http://scholarship.law.umn.edu/faculty_articles/456

[1105] One must take into cognisance that there are discretionary limits to discretionary powers of the Attorney General, such as Rules of professional conduct of the legal profession in the three jurisdiction which can refrain a legal practitioner from engaging in professional misconduct, conduct prejudicial to the administration of criminal justice and prosecuting a charge that is unknown to criminal law.

discretion, whilst other states require leave of court to dismiss serious charges[1106] In the UK, legislation sets out guidelines for prosecutors to follow in the exercise of the their prosecutorial duties.[1107] Where the case before prosecution does not meet the guidelines, no further action will be taken against a suspect or the police can be asked to carry out further investigations. Like the American prosecutor, the Nigerian prosecutor is granted broad powers over the decision to prosecute a suspect. However, in contrast to the US and UK, the Nigerian Attorney still enjoys broad powers to discontinue criminal proceedings at any stage before judgement and for whatever reason.[1108]Such discontinuance must be done by the Attorney – General himself or by his written authority, the power cannot be exercised on behalf of the Attorney-General,[1109]and is not reviewable by the courts.[1110]

Implicit in the powers of the powers of prosecutors to charge or decline charging suspects, is the broad discretion to decline to file or drop additional charges. Prosecutors can also exercise broad pre-and post-filing discretions over the gradation of charge (severity) by amending the information or complaint or by filing a *nolle prosequi* and re-filing with less serious charges. Frase[1111]explains that the ability of prosecutors to reduce charges leads to overcharging in the first charge because this removes the need to sift through the case files at the beginning of criminal proceedings. Thus, prosecutors have a motivation to embellish initial charges so that there is room for plea bargain concessions and reduction of charges in the face of unsustainable evidence. The practice of overcharging and subsequent re-filing of charges is more beneficial to the US and UK where plea bargaining is fully entrenched in the criminal justice process.

From the analysis of the three jurisdictions, it appears that the UK is better able to achieve a balance between accountability and the exercise of discretion. In the US and Nigeria, although democratic and hierarchal accountability channels are well developed

[1106] Cates, A. M. 1961. Can we ignore the laws? – discretion not to prosecute. op. cit.. See, in support of *nolle prosequi, Hollowell v. State, 773 N.E. 2d 326 (Ind. Ct. App.2002); Maxey v. State, (1976) N.E. 2d 353-461*
[1107] Code for Crown Prosecutors
[1108] See Section 174 (1) (c) and 211 (1) (c) of the Constitution.
[1109] *Attorney General of Kaduna State v. Hassan (1985) 2 N.W.L.R. (Pt. 8) 488*
[1110] *State v. Ilori (1983) (2001) FWLR (Pt. 52) 2812*
[1111]Ibid.

theoretically, there is weak oversight due to political influences. In the UK, public prosecutors are part of a highly technical and centralized structure that rigorously enforces consistency in prosecutorial decision and sacrifices some discretion and autonomy for individual prosecutors whose duty is now seen as limited to narrow and repetitive tasks due to the fragmenting of the prosecution process. There appears to be a balance of power in support of the Police which prevents prosecutors from making decisions seen as unpopular with the hierarchy of the prosecutors or the police.

Prosecutorial discretion has been a point of controversy in the three jurisdictions, and in order to address questions on identification of the problems and how it can be solved. Sklansky[1112]posits seven problems with American prosecutors which can be identified in the United Kingdom and Nigeria as well:

a. The power of prosecutors
b. The discretion they exercise
c. The illegality in which they often are found to have engaged
d. The punitive ideology that shapes many of their practices
e. Their often frustrating unaccountability
f. Organisational inertia within prosecutors offices, and
g. The ambiguity of the prosecutors role

However, as prosecutorial discretion has been the subject of abuse, due to its being exercised to suit the political agenda of the reigning government. An example such abuse is selective prosecution. This happens when some violators of criminal laws are well know and only a select few are prosecuted and other known violators are not and in the course of prosecution, it becomes obvious that the selection of defendants was intentional and serves an intended purpose that is not contained in law. Such selection could be as a result of arbitrary classification such as race, ethnicity, religion, sex, or any other suspect classification that does not have a rational relationship to legitimate criminal justice objectives.

[292] Sklansky, S.A. 2017. *The Problems with Prosecutors.* Annual Review of Criminology. 1:451-469. Retrieved April 27, 2018 from https://doi.org/10.1146/annuer-criminlol-032317-092440

Selective prosecution is a violation of the right of an accused person to due process and equal justice as contained in international jurisprudence on access to justice, constitutional provisions and judicial pronouncements. There is also a need for more accountability, transparency and regard for due process in the exercise of prosecutorial discretion and as such, the issue of prosecutorial discretion is a veritable area of research that will bring about recommendations that will benefit the criminal justice process. This will not only reflect government's commitment to upholding the rule of law and due process, it will engender confidence in the criminal justice system and improve access to justice for awaiting trial persons.

ix. Plea bargaining

A plea bargain can be regarded as an agreement between a prosecutor in his capacity as a representative of the state a criminal defendant, it can be seen as an off shoot of the broad discretionary powers of the prosecutor to institute and stop prosecutions. Olatunbosun and Alayinde[1113]explain that a plea bargain is a process by which a prosecutor negotiates with the defence and reaches an agreement as to what will happen to the defendant in return for a plea of guilt. Krauss[1114]explains that as prosecutors decide which cases to pursue, and plea bargains to accept and as such, determine the fate of a large number of criminal defendants who decide not to stand trial. In the US and UK, as a result of pressure on resources and a drive for efficiency, there is more bureaucratisation of the criminal justice process with part of the prosecutor's workload being discarded through plea bargaining arraignments.[1115]

Although Plea bargaining is a recent development in Nigeria, before its provision in Section 270 of the ACJA 2015, it cannot be said to have been absent from Nigerian legislation as Section 14 (2) of the Economic and Financial Crimes Commission Act, Section 72 of the Administration of Criminal Justice Law of 2010, Section 167 of the

[1113] Olatunbosun, A. and Alayinde, Z.O. 2015. Plea bargaining: a mockery of Nigerian criminal justice system. *Perspectives on criminal law and criminal justice. O. A.* Fatula. Ed. Chapter 2:23-38
[1114] Ibid.
[1115] Krauss, R. 2009. The theory of prosecutorial discretion in Federal Law: Origins and Development. *op.cit.*

Anambra State Administration of Criminal Justice Law 2010, and Section 339 of the Criminal Procedure Code Act all provided for the compounding of offences. However, there are [1116]

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The three jurisdictions recognise a formal plea of guilty by a criminal defendant as a conclusive resolution of a case, because an admission of guilt reduces the expense of state resources and saves time, there is a general move towards plea bargaining. In the US and UK, plea bargaining is deeply entrenched in the US and UK criminal justice systems as most criminal cases are resolved by plea bargaining.[1117] In the UK, over ninety percent (90%) of all cases in the magistrate courts and approximately two thirds of all cases in the higher crown court were resolved through a guilty plea or a finding of guilt based on failure of the defendant to appear in court.[1118]In the US as well, plea bargaining enjoys federal and state recognition[1119] and plays an important part in the criminal justice process. As with the UK, as much as ninety percent (90%) of cases are settled by plea bargain rather than by trial. Also, in the US, Plea bargains have the capacity to limit a prosecutor's discretion to file criminal charges, as plea agreements are regarded as binding contracts between the State and the defendant which binds not only the parties to the case and the courts, it also binds prosecutors in other states, districts or counties in the jurisdiction concerned.[1120] Plea bargain agreements are also regarded as binding when prosecutors agree to dismiss or refrain from prosecuting unrelated charges where it is ascertained that a plea leans to any significant degree on a promise or agreement of a prosecutor, such that it can be said to be part of the inducement or consideration of the agreement.[1121]

The flip side of the use of plea bargains in the US and UK is that prosecutors are regarded as having unchecked dominance in plea bargaining to an extent that is inconsistent with the

[1116] Idahiarhi, S. Feb. 09, 2017. Practice and procedure of plea bargain under the ACJA. Law Digest, The Punch. Retrieved March 17, 2018 from https://punchng.com/practice-procedure-plea-bargain-acj-act/
[1117]Siegel L.J and Worrall, J.L. 2014 op cit. 279-385, Vogel, M. E. 1999. The social origins of plea bargaining: the conflict and the law in the process of state formation, 1830-1860. *Law and Society Review. 33.1.:161-246; Vogel, M. E. 2008.* The social origins of plea bargaining: an approach to the empirical study of discretionary leniency. *Journal of Law and Society. 35:201-232.*
[1118] Ibid.
[1119] See Rule 11 (e) which recognises an agreement between the prosecutor and the defendant.
[1120] Richardson v. State (1983) N.E. 2d. Ind. Ct. App. 456 at 1063
[1121] *Santobello v. New York (1971) 404 US.257, 262*

principles of fairness and accountability.[1122] This does not fully recommend plea bargaining to the Nigerian criminal justice which is just recognising and encouraging the use of plea bargaining. Plea bargaining also denies an accused of a fair trial and the benefits that it accords, it aslo limits the exercise of the rights of the accused during the criminal trial process and limits judicial supervision within the criminal justice process.

x. Defence discovery rights

In consonance with the purpose of a criminal trial, which is to ascertain the facts of a case, discovery is regarded as an attempt by the court to improve the criminal justice process by allowing the defendant to receive information from the prosecution about the evidence against him, and enable him to defend himself. Discovery can be the difference between a good defence and a bad one in similar cases; this is because, where the discovery process is hindered in one case and unhindered in another, it can lead to conviction of one defendant and an acquittal for the other. Recognition of criminal defence discovery rights has had a chequered history, particularly in the US where full discovery rights for the defendant is still in contention. However, it is informative that defence discovery rights, whether partial or unhindered, has come a long way.

As an important feature of the criminal trial; defence discovery of evidence alluded to by the prosecution is predicated on the concept of equity. It is the procedure by which a criminal defendant is able to compel the prosecution to avail the defendant of all or some of the evidence in the possession of the prosecutor available for examination in the course of a criminal proceeding.[1123] There is what is commonly known as the discovery period, which occurs before trial (pre-trial discovery); it is however not limited to this period as

[1122] Ma, Y. 2002. Prosecutorial discretion and plea bargaining in the United States, France, Germany, and Italy: a comparative perspective. *International Criminal Justice Review* retrieved on 22 October, 2017 from https://doi.org/10.1177/10575677020120012

[1123] The prosecutor can also be allowed to obtain all information in the care of the defendant as well. For example Sections 6 (a-e) of the English Criminal Procedure and Investigations Act 1996 requires the defence to provide statements in advance of the trial to the prosecution. See generally, Krantz, S. 1962. Pretrial discovery in criminal cases: a necessity for fair and impartial justice. *Nebraska Law Review* 42.1. Art. 5: 127-154.; Gaynor, B. E. 1971. Defendant's right of discovery in criminal cases. *Cleveland State Law Review20:31-42*

evidence can surface subsequently. Thus, discovery can be extended into the trial period.[1124]It involves the exchange of any information that a prosecutor plans to use against a defendant during a trial. As an important feature of the criminal trial process, the discovery process allows counsel for the defendant to review materials to be used by the prosecution to prove their case: this includes crime scene evidence, testimonies from witnesses, police and other law enforcement agents, the defendants testimonies, as well as the names and addresses of all intended witnesses at a given trial. It also includes police reports, written or oral testimony from witnesses, booking reports and DNA evidence offered by defendants. Discovery rights have been described as *essential to elemental justice,* [1125]and are also regarded as playing an important role in keeping witnesses and counsel honest.[1126]Section 36 of the Nigerian constitution provides for the right to "facilities for defence" which include proofs of evidence to be supplied by the prosecution[1127] whose case would fail if no evidence were adduced[1128]

In the US there have been strong arguments for and against criminal discovery right for criminal defendants. In the US Discretionary powers are recognised as a discretionary power of the courts to compel pre-trial inspections.[1129] The American case of *State v. Tune*[1130] gives a clear indication of the issues that surround criminal discovery rights. Justice Brennan, in his dissent alluded that:

> …if the defendant were presumed to be innocent, as the law provides, then there would be little reason to anticipate perjury, witness-tampering and suppression of

[1124]Gaynor, B. E. 1971. Defendant's right of discovery in criminal cases. *op.cit*; Black, A. C. 1978. Discovery in Great Britain: the evidence (proceedings in other jurisdictions) Act. *Cornell International Law Journal 22.2: 323-342*. Retrieved on 22 January, 2018 from http://scholarship.law.cornell.edu/cilj/vol11/iss2/8 ; Oshodi, O. H. 2016. The use of pre-trial conferences, discoveries and interrogatories as tools for speedy dispensation of justice. *Proceedings of the Induction Course for Newly Appointed Judges.* 26 May, 2016: 1-24*;* Degrandpre, D. O. 1960. The bases for pre-trial discovery in criminal cases. *Montana Law Review 21.2: 198-*

[1125] State v. Tune (1953) 13 N.J. 203, 98 A. 2d 881, 897

[1126]Clarke J. 2014 (Foreword to Commercial litigation Association of Ireland Good Practice Discovery Guide) retrieved on 16 September, 2017 from www.clai.ie

[1127]Section 379 of the ACJA provides information on what consists of proof of evidence

[1128]Section 136 and 141 (3) (a) Nigerian Evidence Act 2011. See also Nweke v. State (2017) LPELR- 42103 (SC); Okoye v. C.O.P (2010) SC 279.

[1129]Degrandpre, D. O. 1960. op.cit.

[1130] Op cit.

> evidence. The result is that defence counsel must fight in the dark, without adequate knowledge essential to the proper preparation of the defence…

This is as a result of the giant strides made in the direction of broad discovery rights in the area of civil procedure.[1131] However, in spite of the recognition of the broad discovery rights in civil cases, broad discovery rights are not extended to criminal cases.[1132]There are arguments for broad discovery rights for both parties in the criminal trial process based on concepts of equity and reliance on the presumption of innocence, this will have the effect of allowing the defence counsel have access to the entire dossier of the prosecution prior to the trial. This can require:

i. the existence of detailed pretrial depositions and other recorded witness statements and ease of gaining admission of the statements at trial if a witness fails to appear or recants;
ii. the possibility of unhindered interrogation that is not limited by restricting arrest and interrogation rules such as the Miranda rights, which will elucidate detailed pretrial statements from the defendant that can be used to impeach him if he subsequently tries to modify his testimony at trial to the evidence contained in the prosecution's evidence; and
iii. the possibility of trial in absentia for defendants who run away after realising the strength of the prosecution's case.

Discovery laws in the three jurisdictions, while similar, contain some differences. For example, English discovery law contains a number of political and legal pitfalls that are unexpected in practice such as:

i. considerations of the validity of the request for evidence
ii. the availability of the evidence sought
iii. the question of privilege; privilege arising from laws that affect discovery proceedings: in the US, the fifth amendment privilege against self –incrimination

[1131] Gaynor, B. E. op.cit.
[1132] Ibid.

In the Nigerian case of *Nweke v. State*,[1133] it has been held that the right to discovery is not absolute as there may be competing interests, such as national security or the need to protect witnesses who are at risk of reprisals or to keep secret the method used by Police in the investigation of crimes. It was however opined that these bars against complete discovery must be weighed against the right of the accused person and as such, only such measures that restrict the rights of the defence which are strictly necessary are permissible, and any difficulties caused by the limitation on the rights of the accused must be sufficiently counter-balanced by the procedure which the judicial authorities followed. [1134]The importance of obtaining access to all records that may help a defendant facing criminal charges cannot be underscored as this is one important means of ensuring access to justice for persons awaiting trial as some evidence that may not seem necessary at the time of discovery, may become material later in the course of the trial and will prove important in a person awaiting trial's defence.

xi. Trial

The trial process starts with the attendance of the accused in court, and this can be by invitation to appear in court- where the accused is awaiting trial in the community, presentation of the accused from the police station or from prison where they have been remanded in prison. In the three jurisdictions, criminal trials tend to be public and designed to examine the facts of the case preferred by the state against the accused person[1135] and the accused person/defendant is afforded the opportunity to assert his innocence. Below, is an abbreviated comparative analysis of trial procedures in the three jurisdictions, bringing out some salient points for comparison:

a) Preliminary inquiry/hearings

In the US, UK, and Nigeria, charging the defendant is an important stage in the criminal justice process. The prosecution selects the charge, taking into consideration the facts of the case, the strength of the evidence available, and the witnesses amongst other factors.

[1133] supra
[1134] Per Nweze JSC at pp. (23-26, paras d-b)
[1135] However, the trials of juveniles are not necessarily public as a result of the perceived need to protect young persons.

The beginning of the trial process in the three jurisdictions differs in terms of process. In the US, the process starts with either a grand jury[1136] or a preliminary hearing which is usually held in open court before a judge or magistrate. It serves two functions i. it acts as an independent investigating body directed at general criminal conduct and ii. It serves as the community's conscience in determining whether the accusation by the state justifies a trial. The grand jury examines evidence and decides whether there is probable cause for prosecution. Where there is, it does an indictment or **true bill,** where there isn't, a **no bill** is passed. The Preliminary hearing on the other hand is designed such that the prosecutor presents the case before the judge who determines whether the defendant should answer the charge preffered against him. The preliminary hearing can actually be waived by the accused,[1137]but is advantageous in the sense that it can result in a dismissal of the case or avail the defence of the opportunity to learn about the evidence the prosecution has.[1138]

In contrast to a grand jury which is not held in public, most probably in the judge's chamber, a preliminary hearing takes place in public with the defendant and counsel for both the prosecution and defence present. Here, a lower court judge reviews the prosecution's evidence to see if there is enough evidence to support the criminal charges and the standard for testing the evidence is probable cause. Due to the fact that the prosecution and defence counsel are represented in a preliminary hearing, it is considered an adversarial proceeding and the accused's counsel can challenge the prosecution's evidence and introduce evidence on behalf of the accused person. Where the judge finds probable cause, the case is sent forward to the trial court by the judge.

In the UK, the trial process starts with a mode of trial decision where it is not a summary case[1139] which is governed by the Criminal Procedure and Investigations Act 1996. The process works such that advance disclosure is made to the accused person in the form of a summary of the statements or other evidence on which the prosecution intends to rely. The

[1136] Usually made up of thr16-23 individuals depending on the requirements of the jurisdiction.
[1137] This may be for a variety of reasons such as; avoidance of negative publicity, a decision to plead guilty or a desire to speed up the trial process.
[1138]Siegel L.J and Worrall, J.L. 2014 op cit pp. 375-377
[1139] Which can only be tried by indictment.

accused person and his counsel can consider the information or choose to decline to see the information where he is clear about his course of action, and asked to indicate a plea of guilty or not guilty. The outcome will determine whether the case will be tried in a Magistrate or Crown Court depending on the severity of the offence.[1140]

In Nigeria, the preliminary inquiry begins with a *prima facie* establishment of a case against the accused person: an application for consent to prefer a charge or file a complaint –depending on the part of the country- against a suspect which must be accompanied by the proof of evidence which the prosecution intends to rely on at the trial. The judge examines the proof of evidence and where the proof does not disclose a prima facie case, the judge refuses consent. Where the judge decides to grant his consent on an application to prefer a charge or file an information based on a sufficient finding of linkage of the accused person to the offence, there will be need for the accused person to respond.[1141] The consent of the judge cannot be challenged nor can the judge be sued for his exercise of discretion.[1142] Also, where the prosecutor is not satisfied with the decision of the judge, he may make the same application to as many judges as possible and the merit of the judges consideration will not be whether it has been made before another Judge.[1143]

b) Charge and arraignment

A charge is a formal accusation of an offence as a preliminary step to prosecution, while an arraignment is the process of bringing the accused person before the court to hear the charges preffered against him and to allow him to enter his plea.[1144]In the US, UK, and Nigeria where a case survives the screening of the preliminary hearing or the grand jury review, Mode of Trial decision or the prima facie establishment of a case against the accused person, the case goes to a trial court. There the case begins with an arraignment and at the arraignment, the judge informs the defendant of the charge and asks for the plea.

[1140] Davies, M. et al. 2005 op cit. 251-255
[1141] Ukety. FRN (2008) All FWLR (Pt. 411) 923; State v. Emedo (2001) 12 NWLR (Pt. 726)131
[1142] Egbe v. Adefarasin and Anor. (1985) 1 NWLR 549
[1143] Gali v. State (1974) 5 S.C
[1144] Osamor B. 2004. *Fundamentals of criminal procedure law in Nigeria*, 271

The defendant pleads guilty or not guilty or *nolo contendre* (no contest).[1145] Where the defendant pleads not guilty, the judges then set the cases for trial proper. It can be seen that the grand jury /preliminary hearing of the US and the Mode of trial decisions of the UK bear an adversarial similarity and involve the suspect in the process while the Nigerian process is independent of the accused person.

c) Trial and judgement

The role of the trial court in criminal proceedings is to hear evidence, evaluate the evidence, hear the witnesses, make findings of facts based on the testimony of the witnesses and their credibility and decide the case on its merits based on its findings.[1146] The criminal trial is said to symbolize the administration of objective and impartial justice. In the US and UK as opposed to Nigeria, criminal trials are more of the exception rather than the rule as most cases tend to be settled via plea bargaining during the pretrial stage of the criminal justice process.[1147]

In the US and UK where it is not a summary trial, the case proceeds before a jury, although in the US, a defendant can waive his constitutionally right to be tried before a jury of his peers and request a bench trial, much like the Nigerian court trial where the judge hears the case and renders a verdict. In consonance with the above rights in a trial process, the trial starts. In the US and UK where there will be a jury, they will first be selected. In the US, the judge and legal counsels question potential jurors in a bid to weed out jurors who might not be able to come up with a fair and impartial verdict in the case, till a panel of 12 is agreed to by all sides. In the UK, the Jury Central Summoning Bureau randomly selects jurors and check that they do not have criminal records, the group summoned, constitute the jury panel and 12 jurors are randomly selected in the trial court.

Then brief statements are given by the prosecution counsel, followed by the defence counsel, outlining their view of the facts of the case and what they hope to prove. Then witnesses for the prosecution testify, followed by witnesses for the defence, and then

[1145] A no contest plea has the same effect as a guilty plea, except that there is no formal admission of guilt.
[1146] See Idiok v. State (2008) All FWLR (Pt. 421 797 at 811.
[1147] Siegel L.J. and Worrall, J.L. op.cit. pp. 387

rebuttal witnesses testify. There is then a direct examination, cross examination and re-examination of witnesses. The prosecution attempts to convince the jury- where applicable- and judge to find in his favour. The defence counsel follows with his arguments, in an attempt to convince the court of his position as well. Where there is a jury, the judge instructs the jury on the law to be applied in the instant case, they retire from the court room to deliberate secretly, reach a verdict and return to read it out to the parties. Where there is no jury, the judge considers the evidence and facts presented. Where the defendant is found guilty, the judge then imposes a sentence in line with the legal provisions on appropriate sentences prescribed for the crime committed.

The principle of presumption of innocence and the application of the adversarial model of justice is the same in the three jurisdictions. However, despite the fact that the rules are largely the same in the three jurisdictions, there are differences that take into account, different practices in the trial process. However, underlying every criminal trial are constitutional principles, legal procedures which are considered complex, rules of court, and interpretations of statutes which are all designed to ensure a fair trial for the accused person. Below is the analysis of the major legal rights of persons awaiting trial in the criminal trial in the three criminal justice systems which are essential to a fair trial and help ensure access to justice for persons awaiting trial:

Impartiality of the judge

In the three jurisdictions, although not constitutionally guaranteed, the right of the accused to a trial by an impartial judge, is an important component of a fair trial. There are judicial codes of ethics such as the Nigerian Code of Conduct for Judicial Officers which prescribes a standard of conduct for judicial officers. Where there are allegations that a judge is partial or compromised, it can affect the credibility of the case and the judiciary process as a whole. In the three jurisdictions, a judge can excuse himself or herself where there is a perceived conflict of interest as contained in judicial codes of ethics.

Mental competence of the accused person

Recognition of the mental capacity of a person awaiting trial is an important component of the criminal trial process as it affects the *mens rea* of the accused person. It is important that a criminal defendant should be considered mentally competent to understand the nature and extent of legal proceedings. In the US and UK there are broad legislations that guide the mental competence of the accused and protect vulnerable individuals from the risk of unfair convictions due to their lack of ability to engage with various crucial aspects of the trial process. In 2009 in the US, Terry J. Sedlacek walked into the First Baptist Church of Maryville on a Sunday morning and shot the pastor dead with a '.45' calibre handgun while he was preaching. He was found not guilty by reason of insanity in July 2015 and has been in the custody of the Department of Human Services since not long after the incident. He was repeatedly found not fit to stand trial and as such, an order was made for his hospitalization in a state-run mental health facility since the day after the incident.[1148] This information indicates how mental competence is generally treated in the US and even in the UK. In the US, where a defendant is considered mentally incompetent to stand trial, his trial must be postponed until treatment renders him capable of participating in his own defence as was held in the case of *Riggins v. Nevada*.[1149] In the UK, the procedure for establishing fitness to plead is governed by the Criminal Procedure (Insanity) Act 1964 (as amended).[1150] It provides that before reaching trial, a defendant may be found unfit to plead by way of either physical or mental incapacity. It also allows for diversion from the criminal process or compulsory detention and treatment of the accused person even though full criminal responsibility has not been established[1151]

Although criminal law in Nigeria recognises mental incompetence of the accused person, the law is not as developed as that of the US and UK. For instance, Section 27 of the Criminal Code presumes the sanity of the accused person until the contrary is proved. There appears to be a lacuna as most information and research focus on the insanity plea of an accused person, rather than postponing the criminal trial of the accused until treatment

[1148] Horrell, S. 2015. Sedlacaek, man who shot Maryville pastor, found not guilty by reason of insanity. *The Intelligencer*. Retrieved 12 May, 2017 from www.theintelligencer.com
[1149] (1992) 504 US. 127
[1150] By the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991
[1151]Peay, J. 2005. Mental incapacity and criminal liability: redrawing the fault lines. *International Journal of Law and Psychiatry: pp1-11. Retrieved 22 March 2018 from, http://eprints.lse.ac.uk/61854/*

allows him to be capable of participation. [1152] The case of Mr. Clifford Orji was a prominent one: he was arrested in on 03 February, 1999 at the Apapa-Oshodi expressway in Lagos state for allegedly preying on unsuspecting passersby. He was arrested and evaluated to be mentally ill, however he was arraigned at the Ebutte Magistrate Court and remanded at Kirikiri prison where he died on 03 August, 2012 without medical care or a trial.

Right to confront witnesses

In the three jurisdictions, the criminal defendant has the right to see and cross-examine all witnesses against him or her, it is intended to prevent the conviction of the accused person on the written evidence such as depositions or ex parte affidavits without the defendant having an opportunity to face his or her accuser. In the US, the right to confrontation is violated where an out-of court testimony is used to convict an accused person such as a pre-recorded video and decisions of state forensic analyst laboratory reports. These are now considered testimonial and the defendant is allowed to confront and question analysts at trial. However, in child abuse cases where the court is of the opinion that the child victim would suffer irreparable harm by being forced to appear before the offender, a confrontation can be waived.[1153] Also in the case of *Giles v. California*[1154]the Supreme Court held that where a witness is made unavailable because the defendant made it so, the confrontation clause as contained in the Sixth amendment would not be violated. The courts can also limit the defendant's ability to cross-examine by exercising reasonable judgement in determining when a subject of cross-examination has been exhausted. The courts have a duty to protect witnesses from questions that exceed the bounds of proper cross-examination solely to harass, annoy or humiliate them.[1155]

Right to an impartial jury

[1152]Abiama, E.E. 2015. Mental illness and insanity in the Nigerian Law. *IOSR Journal of Humanities and Social Science. 20.1:58-66*
[1153] Maryland v. Craig (1990) 497 U.S. 836
[1154] (2008) No. 07-6053
[1155] Smith v. Illinois (1968) 390 U.S. 129

The US and UK have practices that differ from the Nigerian criminal justice process, for instance; the role of lay jurors in criminal cases which was abolished in Nigeria in 1986 by the military government. In the US and UK most formal cases are heard by a jury which is constituted of men and women drawn from the register of electors who are from the area where the trial is to take place. Although there have been assertions that the jury system is unwieldy and antiquated, it is still a recognised formal part of the criminal justice system in the three jurisdictions. However, in the two jurisdictions, there are still differences in matters such as jury selection, access to jurors, the roles of participants and the culture of the courts –such as the amount of access by the media to the courtroom during trial.

Right to legal representation at trial

The right to legal representation at trial is important to the protection of persons awaiting trial as this ensures that they have the assistance of someone who understands how to navigate the complex criminal justice system. In the US the right to legal representation applies throughout the criminal process from custodial interrogations of trial- as in *Miranda v. Arizona*[1156]- to the first appearance before a judge[1157]outcome of trial. As far back as 1932 the Supreme Court decided that indigent defendants enjoy the right to legal representation particularly in capital cases.[1158] However, currently, state courts are expected to provide counsel at trial to indigent defendants where there is a possibility of remand in prison which may not even be immediate or a sentence of probation.[1159]

In the UK, the criminal defendant has the opportunity to legal assistance and where they do not have sufficient resources to pay for one, the UK the duty solicitor scheme - much like the one funded by the Open Society Justice Initiative in select states of Nigeria in conjunction with the Legal Aid Council-[1160]undertakes defence work in police stations and courts and provide legal advice and representation. The scheme is administered by the Criminal Defence Services, established by the Legal Services Commission. There are also

[1156] supra
[1157] Rothgery v. Gillespie County (2008) N0. 07-440
[1158] Powell v. Alabama (1932) 287 U.S. 45
[1159] Shelton v. Alabama (2002) 122 U.S. 45
[1160] It applies mainly at police stations.

modalities for indigent defendants to apply for full legal aid for more complicated matters; however, legal aid and representation do not apply to very minor incidents such as motoring matters. In Nigeria, Section 36 of the Constitution provides for the right to seek legal counsel and be defended by a legal practitioner of one's choice. However, there are limitations to the right as it does not extend a right of choice where a defendant is indigent and will be provided counsel by legal aid.

Right to a speedy trial

The right to a speedy trial is a recognised right which mandates a prosecutor to not delay the trial of a criminal suspect/accused arbitrarily and indefinitely. In the three jurisdictions, congestion of courts is a major problem of judicial administrations which conflict with constitutional guarantees of the right to a speedy trial.[1161]In the US, speedy trial rights are protected by the Speedy Trial Clause of the constitution. This a provision allows that the consequence of a speedy trial violation can be the dismissal of the case, although depending on the circumstances of the case, it may be possible for the state to initiate a criminal charge against a defendant again, despite a violation of the right to speedy trial. A defendant is allowed to activate the speedy trial clause and the appellate court will measure the length of the delay, the reason for the delay, when the defendant made the request and what damage the delay caused.[1162]

In the UK as in the US, the right to a speedy trial is as much as possible judiciously adhered to as their criminal justice system has recognised the accused persons right to a speedy trial as far back as 1679 in the Habeas Corpus Act and the Assizes Relief Act of 1889and the courts are constantly trying to ensure speedy trials by adopting procedures that will facilitate speedy trials. The Prosecution of Offences (Custody Time Limits) Regulations of 1987, as amended, regulates the length of time of a criminal trial from arrest to the outcome of the trial. Where time limits are not adhered to, the case against the

[1161] In the US the Sixth Amendment guarantees the right to a speedy trial.
[1162] Barker v. Wingo (1972) 407 U.S. 514

defendant is not necessarily dismissed, however the defendant is entitled to be released on bail.[1163]

In Nigeria, Section 36(4) of the Constitution guarantees the right to speedy trial within a reasonable time, but this has not really been adhered to and there have been criminal cases that have lasted as much as 10 years.[1164] Section 396 of the ACJA 2015 however, makes some innovative provision to ensure the reality of the right to a speedy trial. It provides for day-to-day trial of criminal cases and where this is not possible, provides that part to the trial are only entitled to five adjournments each which must not exceed fourteen days. It also provides that where it is not practicable to conclude a criminal proceeding after the parties have exhausted their five adjournments each, the space between each adjournment and another should not exceed seven days and permits the court to award costs in order to discourage frivolous adjournments. However, the reality on ground is that although there are constant efforts to improve the criminal justice system, the system is yet to catch up to the innovative provisions of the ACJA.

Right to a public trial

In the three jurisdictions, the right to a public trial is constitutionally and legally guaranteed and this means that all trials must be open to the public and anyone who wants to view the criminal proceedings is free to do so. However, there are instances where the court can bar certain members of the public from the court room. For example in the US in *Sheppard v. Maxwell*[1165]the Supreme Court reversed the defendant's conviction and cited the "carnival atmosphere" of the court because the courtroom was packed with people, including members of the media who also handled evidence for the nine weeks of the trial. In *Press Enterprise Co. v Superior Court*[1166]it was held that adverse pretrial publicity can

[1163]Dickson, B. The Right to a Fair trial in England and Wales. Retrieved August 26, 2018 from www.hrlibrary.umn.edu
[1164] Schonteich, M. 2014. Presumption of Guilt: The Global Overuse of Pretrial Detention op. cit.
[1165] (1966) 384 U.S. 333
[1166] (1986) 464 U.S. 501

prevent a defendant from getting a fair trial as extensive and critical reporting by the news media and vivid and uncalled-for details in indictments can all prejudice a defendant's case. Although there been concerted efforts to shape pretrial publicity in the US, the media are allowed to attend public trials.[1167]

In Nigeria, Section 36 (4) of the Constitution provides for a fair trial in public. However, there are recognised instances where a public trial may not be permitted during a criminal trial:[1168]

i) Where the court considers the interest of defence, public safety, public order or public morality;
ii) Where the case concerns persons who have not attained the age of 18 years;
iii) Where there is a need to protect the private lives of the parties to the proceedings;
iv) Where the Minister of Government of the Federation or state satisfies the court that it would not be in the public interest for a matter to be tried publicly;
v) Where a juvenile is being tried; and
vi) Where there is an enactment that expressly requires that a trial should be held in camera.

In the UK, although the members of the public are allowed into a public trial, there were recognised restrictions on the ability of the media to make notes in court without permission of the judge.[1169]However, as at 2005, broadcasting was allowed from the Supreme Court by virtue of Section 47 of the Constitutional Reform Act 2005 and since 2010, media representatives and legal commentators have been allowed to send written reports of court proceedings from the courtroom using email or other services such as twitter.[1170]

[1167] Chandler v. Florida (1981) 499 U.S. 560.
[1168] Section 34 (4)
[1169]Section 41 of the Criminal Justice Act 1925 and Section 9 of the Contempt of Court Act 1981. Section 41 of the Criminal Justice Act 1925 prohibits the taking of photographs, or making sketches in or around court, and the publishing of any such photograph or sketch. Section 9 prohibits the recording of sounds except with leave of the court and Section 9(2) makes it a contempt of court to broadcast recordings of court proceedings to the public.
[1170] Rozenberg, J. 2016. Reporting restrictions: when can you take notes in court. Retrieved April 22, 2018 from www.bbc.co.uk

d) Defence and prosecutorial appeal rights

A post conviction appeal in the three jurisdictions is a request for an appellate court to examine the lower court's decisions in order to ascertain if proper procedures were followed in the course of the trial. This can be as a result of perceived trial court errors such as a denial of a fair trial and objections on specific legal issues made at the pre-trial and trial stages of the criminal justice process by the defence counsel.

Summary

In the US and the UK, research on the criminal justice process since the 1970's in particular, have been active and numerous with the introduction of new legislation and amendments to existing legislation and procedures. For instance, in the UK, the Royal Commission on Criminal Procedure which was set up in 1978, found that the law on police powers was not contained in one source, as different provisions that allowed the police process suspects and arrested persons were contained in about 70 different statutes. They recommended the separation of criminal investigation from prosecution and this led to the birth of the Crown Prosecution Service which separated the police from criminal prosecution. Subsequently, the Police and Criminal Evidence Act 1984 (PACE) rationalized the law governing police powers, reformed aspects of the law relating to criminal evidence and also modernized criminal procedure by introducing safeguards for suspects such as; tape recording of interviews in police stations, provisions requiring the police to keep records of their dealing with suspects at all stages of the criminal justice process amongst other reforms. In order to secure the effectiveness of PACE, the Act created Codes of Practice to deal with the finer points of implementing PACE. These codes are easier to amend than Acts of Parliaments and are regularly updated and amended in light of developing practice and new technology. Subsequent review of pace was incorporated into the Criminal Justice ACT 2003 which further sets out the powers of the police in different circumstances.[1171]

[1171] Davies, M. et. al op. cit.

In Nigeria on the other hand, although the ACJA 2015 has been implemented at the Federal level, States have to domesticate it at the state level. As at this research, 11 states have implemented Administration of Criminal Justice Laws[1172]which contain innovative provisions -some of which had existed in the constitution - related to innovations in criminal justice procedure and processes in the US and UK which has positive implications for persons awaiting trial and suspects, such as, removing the gender clause in being a surety,[1173]introduction of professional bondspersons,[1174]treating issues of unlawful arrests,[1175]illegal arrests,[1176]introduction of Miranda like clause on cause of arrest,[1177]mandatory inventory of properties seized[1178]recording of personal data of arrested person, similar to the UK and US style of booking suspects,[1179]establishment of a Police Central Criminal Records Registry (CCRR),[1180]electronic recording of confessional statement[1181]and plea bargain.[1182] However, unlike the UK, Nigeria did not enact Codes of Practice to deal with the finer points of implementing the ACJL which would then be subject to periodic review. This will inevitably slow down the progress of these reforms and retain heretofore unacceptable practices of some of the agents of the system.

The battle is still being waged on the issue of police prosecution of cases, as Section 106 of the ACJA 2015 stipulates that the prosecution of all offences in any court shall be undertaken by the Attorney-General of the Federation or a Law officer in his Ministry or Department, a legal practitioner authorized by the Attorney-General of the Federation and a Legal practitioner authorised to prosecute by law. Scholars assert that this is a deliberate attempt to lay to rest the issue of lay prosecution as endorsed in the Supreme Court

[1172] Lagos State ACJL, 2007/2011, Oyo State 2016, Ondo State ACJL 2016, Kaduna State ACJL 2017, Abuja ACJA 2015, Anambra State ACJL 2010, Cross River State ACJL 2017, Delta State ACJL 2017, Ekiti State ACJL 2014, Enugu State ACJL 2017, Rivers State ACJL 2016 and Akwa Ibom State ACJL 2017
[1173] Sec. 167 ACJA 2015
[1174] Sec 187 ACJA 2015
[1175] Section 7 ACJA 2015
[1176] Section 8 ACJA 2015
[1177] Section 6 ACJA 2015
[1178] Section 10 ACJA 2015
[1179] Section 15 ACJA 2015
[1180] Section 16 ACJA 2015
[1181] Section 15 (4) ACJA 2015
[1182] Section 270 ACJA 2015

decision of Federal Republic of Nigeria v. Osahon[1183] which clearly permits police officers to prosecute criminal cases in any court, and pointed out as follows:

> …police officers …have taken up criminal cases in Magistrate's Courts and other Courts of inferior jurisdiction. They derive their powers from section 23 of the Police act. But when it comes to superior courts of record, it is desirable, though not compulsory that the prosecuting police officer, ought to be legally qualified…it maintains an age long practice of superior courts having counsel rather than ordinary persons in most cases prosecuting matters…Previous Constitutions before 1979 provided for the post of director of public prosecutions, an independent officer, with powers in a statute. The absence of this vital office from subsequent constitutions has created this dilemma. But the worrisome side of this is case is the failure of the Attorney-General to take over the prosecution…"

However, it must be noted that Section 106 of the ACJA 2015, does not specifically bar Police officers, some of whom are legal practitioners from prosecuting criminal cases. Thus, Section 234 of the Police Act, Section 56 (1) of the Federal High Court Act and Section 174 (1) of the Constitution, still serve as a basis for police officers to prosecute criminal cases. When one contrasts the Nigerian situation with that of the US and UK, it is clear that there was an obvious effort to completely remove criminal prosecution totally from the police, such as with the setting up of the Crown Prosecution Service in the UK.

In terms of admissibility of evidence, there appears to be broader limitations in the admissibility of evidence in the US and UK than in Nigeria, however, the three systems seem to share some trial procedures and rules of evidence such as: the defendant's prior criminal record is almost nearly inadmissible, hearsay testimony and documents are frequently not admitted and in general, there are more formal rules governing the form or scope of admissible evidence. It has been advocated that broader admission of pretrial statements by absent witnesses would lessen-intimidation problems caused by expanded pretrial defence discovery, and that a general relaxation of trial evidence rules would make trials more affordable, thus reducing the dependence of the US on plea bargaining, however, this is an ambitious aim at best.

[1183] (2006) All FWLR (Pt. 312) 1975

4.4 Identification of lapses (if any) in the pretrial/trial process as a result of lack of access to justice in Nigeria

Access to criminal justice is said to exist if people, particularly the poor and vulnerable who are awaiting trial, have the ability to obtain proper treatment and processing from the point of arrest, interrogation, arraignment, detention/bail, trial, conviction/acquittal on the basis of the normative law, procedure and practice in consonance with the rule of law and due process. Where there are shortcomings in the criminal justice system, it is imperative that they are identified and discussed with a view to proffering a viable and workable solution.

In spite of the time, resources and energy expended on ensuring access to justice, in the United Kingdom, it has been averred that the justice system of the United Kingdom has become unaffordable to many. This impacts access to justice and inevitably will have wide-ranging implications for the society as a whole as a report by the Citizens Advice reports that only 39% believe that the justice system works well for citizens and only 17% believe that it is easy for people in low income to access justice.[1184]

Although the United States has a defined structure for access to justice, it is not all peaches and cream as in March, 2010, the United States Department of Justice established the Office for Access to Justice (ATJ) to address a perceived crisis in their criminal and civil justice system. The Office for Access to justice serves as the Government's central authority on access to justice and is reputed to have served as a catalyst within the United States Department of Justice to harness the power and resources of the federal government to secure fair outcomes for all in the justice system. The Access to Justice Office works within the Department of Justice across federal agencies and with state, local and tribal

[1184] Falconer, C. and Bach, W. Jan.16, 2016. *The lack of access to justice is a national disgrace.* The Guardian. Retrieved May 03, 2017 from https://www.theguardian.com/commentisfree/2016/jan/16/legal-aid-review-lack-of-access-to-justice

justice system stakeholders to increase access to counsel and legal assistance, and to improve the justice system.[1185]

The criminal justice systems in the three jurisdictions were instituted on the premise of curbing the proliferation of crime, apprehending offenders, deterring potential offenders, processing those accused of crimes and punishing those found guilty of offences. The three jurisdictions of the United States of America, United Kingdom and Nigeria, make use of police enforcement organizations, court systems, detention, remand and prison facilities. This is where the similarities end as the systems have varying structures, methods, procedures and facilities for the administration of criminal justice.

The United States (U.S.) government is based on a free market economy supported by a representative democracy. The United Kingdom's government is based on an advanced capital economy supported by a parliamentary democracy with a constitutional monarch and the Nigerian government is based on middle income mixed economy (socialist and capitalist) supported by Federal republic with a presidential system of government. In terms of demographic figures, the U.S. has a population of 326, 651, 973,[1186]the United Kingdom has a population of 65, 648,000,[1187]and Nigeria has an identified estimated population of One hundred and ninety two million, one hundred and fifty seven thousand, seven hundred and forty five (192, 157, 745)[1188]

Research indicates that academics and scholars in the U.S. and the United Kingdom have taken time to identify and discuss criminal justice approaches that they relate to in terms of the various agencies in the system, and they acknowledge the importance and impact of these approaches on their legislation, policy, principles, practices and procedures. In Nigeria on the other hand, there have been agitations for reform in the justice system with

[1185] See generally Anon. Accomplishments, Office for Access to Justice. The United States Department of Justice. Retrieved May 05, 2017 from https://www.justice.gov/atj/accomplishments
[1186] Figure obtained as at July 30, 2017. Retrieved July 31, 2017, from http://www.worldometers.info>us-population
[1187]Figure obtained as at June 22 , 2017, Retrieved July 30, 2017, from https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/populationestimates
[1188] Figures obtained as at July 03, 2017. Retrieved August 01, 2017 from http://wwwometers.info/world-population/nigeria-population/

a slant towards alternative dispute resolution and other means of punishment than incarceration.

4.5.0 Current state of access to justice in Nigeria

It has been said that the capacity, structure and operation of a country's justice system all impact access to justice and that the shortcomings in the justice system create barriers to access to justice.[1189] In this respect, commenting on the Nigerian criminal justice system, Professor Yemi Osinbajo[1190]said:

> …in many ways the success of other human engagements in the society largely depends on the extent of law and order, and or the assurance of personal and corporate safety. The failure of the criminal justice system is consequently a failure of the state itself. Indeed one of the most reliable indicators of a failed state is a criminal justice system that cannot deliver law and order.

An effective criminal justice system is critical to the successful maintenance of law and order, because criminal justice addresses behavioural issues as well as crime control, punishment and where possible, rehabilitation, it must be dynamic and proactive. Unfortunately, many of the provisions, structures and facilities set up for the administration of criminal justice in Nigeria are outdated and in some cases archaic. Although, some legislations for the administration of criminal justice appear to be in tandem with a progressive move towards upholding the rule of law and due process,[1191]the reality on ground with regard to the institutional provisions and mechanisms which ought to lend credence to the legislative improvement tends to indicate otherwise. This is liable to cause institutional barriers to access to justice such as inadequate physical infrastructure, administrative structures without sufficient capacity to manage systems, limited judicial capacity, a legal profession and legal aid that is unable to service the full population,[1192] and a flagrant disregard for the basic fundamental human rights of citizens.

[1189] Beqiraj, J. and McNamara, L. International access to justice: barriers and solutions, 21
[1190] Osinbajo, Y. The State of Criminal Justice" Tenth Justice Idigbe Memorial Lecture, Friday 11 December, 2009 at Akin Deko Auditorium, University of Benin, Nigeria
[1191] Particularly with the Enactment of the ACJA, 2015 and the VAPPA, 2015.
[1192] Beqiraj, J. and McNamara, L. International Access to justice. op.cit.

The most glaring cases of the flagrant disregard for the rights accorded in the Constitution and the Administration of Criminal Justice Act (2015) can be seen in the manner of arrest of Judges of Federal High court, and Justices of the Supreme Court[1193]which is regarded as patently offensive to the authority, integrity, sanctity and independence of the judiciary. It is also seen as an abject disdain for the principles of separation of powers and undermining the rule of law. On the one hand, the Department of State Services, which made the arrest over alleged corrupt practices of the judges, claimed that its action was in line with its core mandate, whereas it is alleged that the Economic and Financial Crimes Commission (EFCC) and the Police are the agencies saddled with the responsibility of investigating and arresting suspected offenders.

4.5.1 Normative and procedural laws

The problems facing the criminal justice system in terms of access to justice can be identified as normative, jurisdictional, institutional and functional:

- **Normative problems:** these are the goals, values and limitations provided by criminal and procedural laws at the state and federal levels; relative to roles, functions, decisions, rights and opportunities, obsolete and archaic laws which operate as obstacles to access to justice because inadequate laws are unable to meet the current realities of crimes committed.[1194]

[1193] Uproar Trails Arrest of Judges by Independent Newspapers Limited 10 October, 2016 accessed on 20 March, 2017 from http://independent.ng/uproar-trails-arrest-of-judges/ ; See also, Akosile, A. and Enumah, A. "NJC Recalls Justices Okoro, Abba Aji, Ademola, 3 other Suspended Judges," 04 June, 2017, THISDAYLive, accessed on 04 July, 2017 on https://www.thisdaylive.com/index.php/2017/06/04/njc-recalls-justices-okoro-abba-aji-ademola-3-other-suspended-judges/ As a result of the arrest of the judges, they were suspended pending the outcome of the investigations. However, the National Judicial Council, under the chairmanship of Hon. Justice Walter S. N. Onnoghen, GCON, at its 82nd meeting, which held on 31 May and 01 June, 2017, considered the case of the eight judicial officers and recalled that only three of the judges had been charged to court. The case against Justice Ademola had been concluded in his favour and decided that Hon. Justice John Inyang Okoro of the Supreme Court, Hon. Justice Uwani Abba Aji of the Court of Appeal, Hon Justice Hydiazira A. Nganjiwa of the Federal High Court, Hon Justice A.F.A. Ademola of the Federal High Court, Hon Justice Musa H. Kurya of the Federal High Court and Hon Justice Agbadu James Fishim of National Industrial Court should resume their duties from Wednesday 07 June, 2017.

[1194] The police, legal profession, the courts and prisons utilize regulatory instruments to ensure access to justice, and when laws which proscribe actions and provide for the punishment for offences committed– such as the Criminal Code and the Penal Code- are archaic, the criminal justice system will be unable to successfully prosecute crime. Also, an offence is what the law defines it to be, and where society condemns an action but the law does not, arresting a perceived offender becomes an effort in futility because the police and prosecution will be unable to successfully prosecute an accused person to a successful conclusion.

- **Jurisdictional problems**: this refers to the federal and state systems of the agencies of the criminal justice system. For example, the Nigeria Police Force and other law enforcement agencies are federal. There are State courts and federal courts, and the prisons are under federal jurisdiction.
- **Institutional problems**: this refers to the officials, agencies and other actors in the criminal justice system who handle the various stages of the criminal justice process
- **Functional problems:** this refers to the internal efficiency of the system such as; lack of accountability, lack of cooperation between different bodies within the criminal justice system, and in general, the activities that typically occur at the various stages of the criminal justice process
- **Societal and cultural barriers**: this refers to the social, cultural, and economic characteristics that hinder access to justice such as average income, inequality gaps, economic structure of the country, the homogeneity/heterogeneity of the population (the set up of the population such as on the basis of ethnicity or religion), mode of familial structure and levels of illiteracy and education.

It must be pointed out that no barrier operates independently of another; rather, they interact, with joint effects that increase their effect on the criminal justice system. The combination of the above mentioned obstacles has led to the systemic inability of the criminal justice system to guarantee access to justice. In terms of the normative barriers, the problem in Nigeria is not just a question of a lack of ability to manage the criminal justice system or whether the existing laws are adequate, but also, how the laws are given effect and the application of the principles of access to justice to the daily realities of the administration of criminal justice. Thus, although the institutional, jurisdictional and functional framework of the administration of criminal justice is established, it appears inadequate to meet the realities of the moment. Also, the political and economic system, the level of illiteracy and the conditions of existence in the country make people place issues of access to justice and respect for human rights in the background. In an article discussing the issue of the problems of the criminal justice system, Okogbule[1195] refers to Professor Claude Ake[1196] who put the importance of the above mentioned obstacles in context and perspective when he observed as follows:

[1195]Okogbule, N.S. 2005 Access to justice and human rights protection in Nigeria op. cit
[1196]Ake, C. 1989. The African context of human rights. A paper presented at the International Conference on Human Rights in the African Context held in Port Harcourt from 9-11 June, 1989.

> …For reasons which need not detain us here, some of the rights important in the West are of no value to most Africans. For instance, freedom of speech and freedom of the press do not mean much for a largely illiterate rural community completely absorbed in the daily rigors of the struggle of survival… if a Bill of Rights is to make sense, it must include among others, a right to work and to a living wage, a right to shelter, to health, to education. That is the least we can strive for if we are ever going to have a society which realizes basic human rights…in Africa, if liberal rights are to be meaningful in the context of a people struggling to stay afloat under very adverse economic and political conditions, they have to be concrete. Concrete in the sense that their practical import is visible and relevant to the conditions of existence of the people to whom they apply. And most importantly, concrete in the sense that they can be realized by their beneficiaries.

Okogbule further adds that to a large majority of citizens, issues of human rights protection appear to be luxuries that they can hardly afford and the result of this is that human rights are often seen as an elitist past time designed to attract attention, even when the underlying objective is the promotion of corporate good.[1197] In light of the improper application of the principles of access to justice, a number of obstacles now conspire against access to justice in Nigeria and some of them will be highlighted below:

4.5.2 Disregard for the fundamental human rights of persons awaiting trial

Human rights in Nigeria are provided for under chapter four of the Nigerian constitution and supported by a plethora of international and regional jurisprudence as discussed earlier in this chapter. The arrest and detention of suspects does not in any way detract from their basic rights and this is particularly because by virtue of the adversarial nature of the Nigerian criminal justice system, there is a presumption of innocence in favour of the suspect or person awaiting trial. Although by virtue of arrest and detention, some rights of the individual may be curtailed, this does not in any way imply the loss of basic fundamental human rights guaranteed by the constitution. Although the presumption of innocence is well established and recognised in Nigerian criminal jurisprudence, it is widely flouted.[1198]

[1197] Okogbule, N.S. 2005. Access to justice ibid
[1198] Okogbule, N.S. 2005. Access to justice. op.cit. ; Ojukwu, E. (et. al.) 2012. Handbook on Prison Pre-trial Detainee Law Clinic op.cit

Reports of disregard for the rights of persons awaiting trial are well documented and discussed with recommendations for reform constantly presented. However, it has yet to yield an acceptable level of reform in the criminal justice system. Admittedly, the disregard for the constitutional provision is not limited to developing nations alone, it goes widely unnoticed and is sometimes even encouraged by a largely ignorant populace who, thanks to the media, assume that once it has been published in the newspapers or announced on the television, that a person, has been arrested in connection with a criminal wrong and will be prosecuted, such a person must be guilty.

4.5.3 Arbitrary arrest and detention

The right to personal liberty is central to the enjoyment of human rights in any country and is guaranteed under Section 35 of the Constitution. It is generally recognised that there are instances where this right can be curtailed, such as where a suspect is arrested and detained in line with the law. Law enforcement agencies have a very important role to play in the success or failure of the administration of criminal justice in a country and this is as a result of the quality of investigation, arrest and interrogation methods, assembling of facts and evidence before the court. However, in the exercise of their duties, there has been ample evidence that Nigerian law enforcement agents tend toward arbitrary arrest and detention of citizens.[1199] Arbitrary arrest and detention of persons is a constant phenomenon. A 2010 Human Rights Watch report documented abuses by Nigerian law enforcement, ranging from arbitrary arrest and unlawful detention to acts and threats of violence including physical and sexual assault up to extrajudicial killings.[1200] A prime example of the habit of arbitrary arrest and detention in Nigeria can be seen in the arrest and detention of journalist such as, Jones Abiri of the Weekly Source Newspaper in Yenagoa, Bayelsa by State Security Service Agents since 26 July, 2016. He is reportedly

[1199]Olomojobi, Y. 2017. Right to personal liberty in Nigeria. *Social Science Research Network. Retrieved February 09, 2018*, from http://dx.doi.org/10.2139/ssrn.3062580

[1200] Anon. 2010. Everyone's in on the game: corruption and human rights abuses by the Nigeria police force. John Emerson/ Human Rights Watch

held incommunicado at an undisclosed location and efforts by family members, lawyers and the Nigerian Union of Journalists to gain access to him have been futile.[1201]

Due to the inability of the criminal justice system to ensure accountability, respect for the rule of law and due process, the average citizenry are unable to access justice. Further, these actions have seriously undermined the confidence of the average citizen in the ability of the criminal justice system to protect them.[1202]

4.5.4 Legal aid: Legal aid[1203]Council (LAC) in Nigeria has the statutory duty of providing legal representation, assistance and advice, together with alternative dispute resolution services. It operates in all 36 states. It claims that its services are geared towards reducing to the barest minimum, incidents of Human Rights Abuses perpetrated against the citizenry by either law enforcement agents or the affluent in the society. Thus the LAC should be the vanguard for social justice and emancipation of the oppressed, the weak and the vulnerable groups, thus, "*Giving Voice to the Voiceless."*[1204] However, in the light of the recent economic downturn in the country, the criminal justice system has become unaffordable to most citizens, especially indigent citizens awaiting trial. Although, even before the current economic downturn, litigation was expensive and out of the reach of the common man, and unfortunately, government has not created a safety net for the most vulnerable and indigent members of the society. According to Ojukwu and others,[1205]there is a general consensus that the existing legal aid system in Nigeria is grossly underfunded and as a result, unable to cope with the demand for legal aid services in the country. As

[1201] Anon. 2017. 474 days in Nigerian prison # free Jones Abiri # free the press. Alternative Africa, 03 November, 2017. Retrieved March 03, 2018, from https://alternativeafrica.com/2017/11/03/471-days-nigeria-prison-free-jones-abirifree-press/

[1202] Anon. 2010. Everyone's in on the game

[1203]The Legal Aid Council(LAC) of Nigeria was established under the Legal Aid Act No. 56 of 1976 which was amended by Cap 205, 1990, L9, Laws of the Federation of Nigeria, 2004 and repealed in 2011 by the Legal Aid Act 2011.which is more in line with international Standards on legal aid. Sections 9 and 10 of the Act provide that legal aid shall only be granted to a person whose income does not exceed the national minimum wage and those whose income exceed the national minimum wage may in exceptional circumstances be granted legal aid on a contributory basis. See also Ojukwu, E. (et. al.) 2012. Handbook on Prison Pre-trial Detainee Law Clinic op.cit. pp. 139-146

[1204] Legal Aid Council (LAC) of Nigeria, Lagos accessed on 04 July, 2017, through http://logbaby.com/directory/legal-aid-council--l_15677.html#.WWZByno1gtA

[1205] Ojukwu, E. (et. al.) 2012. Handbook on Prison Pre-trial Detainee Law Clinic op.cit.

such, most awaiting trial persons who cannot afford legal representation, resort to self help or rely on non-governmental agencies to come to their aid, and where aid in not obtainable, they cave in to the pressures of being on remand and plead guilty to crimes so that they can be released based on the amount of time already spent in remand.[1206]

4.5.5 Undue delay in the administration of justice: Ojukwu and others posit that the delay in the administration of criminal justice can happen as a result of varied reasons such as:

- the volume of cases to be processed
- the limited number of courts and/or judges/magistrates,
- limited access to lawyers especially for those in rural areas
- an inefficient court administrative system
- frivolous requests for adjournment of proceedings
- inability of judges and magistrates to deliver judgments on time
- failure of the police or prison authorities to produce detained defendants in courts for trial and
- the rule that once a judge is transferred and a new one takes over, a case trial must start de novo.

As a result of the above, it is common knowledge that the criminal justice process in Nigeria more often than not moves at a slow speed. This situation has been going on for decades and has seen serious efforts to address the situation, most especially from the courts. However, the delay in the criminal justice process cannot be adduced to the courts as they are bound to follow the rules, and the law enforcement agents and the prosecution who ought to process the case speedily, are the ones who delay the processing of the awaiting trial suspects by the use of the holding charge and the delay in arraigning and charging the accused person. There are also the issues such as. The non-availability of vehicles to bring suspects to court for trial, the incessant strikes by the Judiciary Staff Union of Nigeria, lawyers adjourning cases, the police or prison authorities failing to

[1206] Ibid.

produce accused persons in court for trial and the rule that once a magistrate or judge is transferred and a new one takes over a case, it has to start de novo.[1207]

4.5.6 High cost of litigation: the cost of litigation is unarguably high and practically out of the reach of the average Nigerian, who is currently finding it difficult to survive and where possible, take care of spouses, dependants and the extended family dependent on the individual for their very existence. Where such a person, runs afoul of the law, more often than not, there is very little available, if any at all, to secure legal representation, and in the end, the criminal justice system ends up deepening poverty.[1208]

4.5.7 Reliance on technical rules: Law is essentially a technical subject and this technicality is manifested in the various rules and procedures utilized by the courts. Laws and rules of evidence practiced by the courts are more often than not, incomprehensible or misunderstood by many people and the language of the courts is also foreign to them. Thus, for a litigant to successfully maneuver the criminal justice system, he has to retain the services of a legal practitioner to be able to successfully navigate the system.[1209]

4.5.8 Illiteracy: One significant factor affecting access to justice in Nigeria is the high level of illiteracy in the country and with the current economic downturn, the situation is further worsened. However, the importance of education, whether formal or informal cannot be underscored as education leads to empowerment and the ability to demand for one's rights, whilst opening up opportunities for maximizing resources available in the environment.[1210]

Education also has the ability to free individuals and groups of people from ignorance, poverty and disease, and where it is lacking, it can have serious political, economic and social implications which in turn affect the ability of the individual to access justice. Lack of education has also been claimed to breed poverty, docility, and even forced connivance

[1207] See also Okogbule, N.S. 2005. Access to justice. op.cit.
[1208] Ibid.
[1209] ibid; Ojukwu, E. (et. al.) 2012. Handbook on prison pre-trial detainee law clinic. op.cit.
[1210] Ibid.

with the very same people oppressing and marginalizing the people.[1211]Besides, where an individual is educated and knowledgeable about his/her rights, it is harder for such a person to get lost within the criminal justice system as there are always so many ways/avenues of ensuring that his voice gets heard.[1212]

4.5.9 Digital technology: Information technology and modern technical equipment drive the 21st century and can help facilitate access to justice. Where these are lacking, the agents of the criminal justice system and the accused are unable to access information, process evidence speedily, store information and data that can ensure fair hearing, reduce backlogs, and reduce the delay in the administration of justice.

4.5.10 Poverty: Poverty is regarded as both a cause and consequence of insufficient levels of access to justice.[1213]Nigeria is currently experiencing an economic recession which has reduced the purchasing power of the financial allocations to all agencies and the purchasing power of the naira to meet the needs of the average Nigerian. The result of the recession on criminal justice institutions is that it inevitably reduces the financial power of a system that is already underfunded.

Another effect of poverty is that people living in poverty are unable to enforce their economic and social rights in order to avoid exploitation; it reduces the ability to attain literacy, information, prevent discrimination and enforce political will. A large proportion of Nigerians are poor and illiterate, and the situation has not been helped by the security problems in various parts of the country (such as the North East with Boko Haram Insurgency activities, the South East, in particular, the Bakassi Peninsular and the displacement of people as a result of Nigeria ceding the land to Cameroon, and the Militia activities in the Niger Delta over resource control) which has displaced people, deepened poverty and made such areas hotbeds of criminal activity.

[1211] Okogbule, N.S. 2005. Access to justice ibid.
[1212] Ibid.
[1213] Beqiraj, J. and McNamara, L. International Access to justice, 14.

Although it has been claimed that there is no causal link between poverty and pretrial detention, it can be seen that there is a mutually-reinforcing relationship between the two,[1214] as the majority of people awaiting trial on remand are poor, disadvantaged and unable to afford the "three B's- Bail, Barrister or Bribe.[1215]Research[1216] indicates that majority of awaiting trial inmates live below the poverty line and are also of poor education status with little formal employment. Securing the right pretrial release depends not only on the nature of the charges, but also being able to argue for that option and those with little or no financial capability are less likely to understand and advocate for their rights, secure non-custodial options, including bail, obtain legal representation and meet conditions for securing bail if granted.[1217]

4.6 **Impact of lack of access to justice**

A strong and reliable criminal justice system is key to a secure society and growing economy that will have the ability to attract investors and ensure sustainable development. The success of the Nigerian society relies in no small measure on the trust placed in the rule of law and the knowledge that the courts will be there to enforce rights should something go wrong and when that trust breaks down, the fundamental principle of the rule of law has been eroded. This goes for both citizens and non-citizens. Lack of access to justice can affect an awaiting trial person in various ways as it more often than not goes beyond the awaiting trial person and has an impact on spouses, friends, relatives, children, dependants and the community at large. This is because lack of access to justice can cause and deepen poverty, stunt economic development, spread disease, and undermine the rule of law. As earlier stated in this research, lack of access to justice does not just affect those awaiting trial in detention-although their situation can be really pathetic- it also affects those who are awaiting trial within the community. It affects the awaiting trial person,

[1214] Schonteich, M. The Socioeconomic impact of Pretrial Detention op. cit
[1215] Schonteich, M. Presumption of Guilt: The Global Overuse of Pretrial Detention op.cit.
[1216] Schonteich, M. Presumption of Guilt: The Global Overuse of Pretrial Detention op.cit; Schonteich, M. The Socioeconomic impact of Pretrial Detention op. cit
[1217] Society Foundations. The Socioeconomic impact of Pretrial Detention op. cit

particularly the poor and marginalized, families, communities and states. [1218] The effect of lack of access to justice in these areas will be discussed below:

4.6.1 The awaiting trial person

The decision to remand a person in detention before he is found guilty of a crime is one of the strongest an individual or state can make. This decision starts the criminal justice process from the point of arrest and can have long lasting effects and adverse effects on the awaiting trial person. It starts with the loss of freedom which can be temporarily reprieved by bail or not. Where bail is granted the awaiting trial persons goes back into the community and from there, prepares for trial. Where bail is not granted, the awaiting trial person loses his freedom. In detention, the awaiting trial person can be exposed to torture, extortion and disease. This is because they can become subject to the arbitrary actions of police and other law enforcement agents, corrupt officials, and even other detainees. They may be barred from seeing a lawyer and more often than not, have no information or knowledge as to their basic rights. As a result of the long duration awaiting trial, they tend to come under considerable strain and have a lower likelihood of obtaining an acquittal than those who remain at liberty before their trial.[1219]

The awaiting trial person can also lose his/her family, health, home, job and community ties: more often than not, the awaiting trial person may be forced to abandon their education, be pushed towards unemployment, uncertainty and the edge of poverty, while those who were already on the edge of poverty, into destitution. In terms of the health implications of remand Aduba[1220] posits that:

> …those detained in Nigerian prisons and needlessly contributing to overcrowding, are yet to be convicted of crimes. Inmates are housed in

[1218] Reliance will be placed on the research conducted by Schoenteich, M. 2010. The socioeconomic impact of pretrial detention.
[1219] Working Group on Arbitrary Detention, 2006. Report of the Working Group on Arbitrary Detention. UN Commission on Human Rights, Geneva, (E/CN.4/2007/7,2006), para. 66
[1220] See generally Aduba, J.N. 2011 .“The Right to Life Under Nigerian Constitution: The Law, The Courts and Reality” S.M.A. Belgore Chair, Nigerian Institute of Advanced Legal Studies, Lagos, Nigeria.

> dilapidated and poorly ventilated structures dating back to colonial era and lacking basic facilities. They are poorly fed, with most of them relying on outside sources-family and friends for sustenance. Improper nutrition, in addition to lack of potable water, poor sanitary conditions and severe congestion contribute to unhealthy conditions in the prison system…there is a chronic shortage of medical supplies and equipment in prisons throughout the country. The little that is available is quite often misappropriated by corrupt prison officials and treatment is frequently withheld from sick inmates as a form of punishment or graft solicitation technique. Consequently, there is an alarmingly high rate of morbidity and mortality among inmates…[1221]

Remand in prison can also affect the mental health and well being of the awaiting trial person. This can be because they can experience multiple situational stressors associated with their confinement such as disassociation from familiar social and familial environments, loss of control over their lives and insecurity about the prison environment[1222]. Other factors that can contribute to this include overcrowding, violence, intimidation, enforced solitude, lack of privacy, a dearth of meaningful activities, and inadequate mental health services.[1223] Thus the stress of pretrial and awaiting trial remand has the tendency to exacerbate mental disorder and can even lead to suicide.[1224]Inmates exposed to diseases and suffer physical and psychological damage that lasts way beyond the period of detention.

Whether awaiting trial on remand or convicted of an offence, majority of the inmates on remand tend to come from the lower levels of society and as such, where they already have health problems, the conditions of prison such as overcrowding, poor nutrition, lack of exercise, torture, violence and sexual assault make remand a perfect place for the spread of

[1221] Aduba, J.N. 2011 .“The Right to Life Under Nigerian Constitution: The Law, The Courts and Reality” op.cit. pg. 22-23
[1222] Schonteich, M. 2008.The scale and consequences of pretrial detention around the world in reducing the excessive use of pretrial detention, 19. Retrieved March 23, 2017 from http://www.opensocietyfoundations.org
[1223] Ibid.
[1224] Ibid.

infectious diseases[1225]such as tuberculosis, HIV/AIDS, sexually transmitted diseases/infections, diarrhea and other diseases.

4.6.2 Families

As a result of a member of the family facing trial or being kept in remand pending the outcome of their trial, the families of the awaiting trial person are not left out of the equation. They have to source for funds to maintain the awaiting trial person while on remand in terms of feeding, the legal fees associated with legal defence and appeals, where they can afford counsel and maintain the family and maintain contact with the awaiting trial person. Sometimes, as a result of the loss of income of the awaiting trial person, members of the families may forfeit jobs, educational opportunities and suffer a reduced standard of living particularly as the State does not provide financial assistance to the indigent. Remand can also sever the bonds of marriage and family as a result of the uncertainty of the duration of detention/remand.[1226]

Schonteich discusses the effect of pretrial detention on the children of inmates and says that although there is little research undertaken to explore the affect of parental detention on minor children, what information exists reveals that children experience the loss of a parent –irrespective of the cause-as a traumatic event and depending on the child's age it may lead to a child's inability to form attachments with others, anger, and antisocial behaviour, stunted development, low-self esteem, depression, emotional withdrawal and inappropriate or disruptive behaviour and risk of future delinquency and/or criminal behaviour.[1227]Also, inmates when released from remand and they return home, can infect members of their family with diseases contracted while remanded in prison.

4.6.3 Communities

[1225] See generally Status paper on prisons, drugs and harm reduction (WHO: Europe, EUR/05/5049062, May 2005.
[1226] Schonteich, M.2008. The scale and consequences of pretrial detention around the world, 23
[1227] See generally Travis, J. and Waul, M. 2003. Prisoners once removed: the children and families of prisoners, 15.

In a developing country like Nigeria, the effect of awaiting trial, particularly on remand can be multifarious. It can limit the development of the community as neighbours, known to each other and involved in each other's lives and the lives of their children, offering support and advice can suddenly have a member of the family awaiting trial, thus disrupting their lives and family structure and damaging the relationship amongst community members and producing a social transformation in the community where awaiting trial persons reside.

Where awaiting trial persons or convicted inmates are released into the community with untreated communicable diseases, the community is at risk of an outbreak. This is particularly so, in light of the poor health care afforded persons remanded in prisons. Where an awaiting trial person in poor health is released to a family or community, this causes untold hardship for a community that is reliant on the good health and labour of members of the family or community. Communicable infectious diseases can therefore have a debilitating effect on the financial and social fabric of the community.[1228]

4.6.4 State

Remand of inmates also affects the state in the sense that it wastes human potential and misdirects State resources because funds that could be put to better use, are utilized for the feeding and upkeep of persons awaiting trial. When considering that 70% of Nigeria's prison inmates are awaiting trial persons, it shows that a lot of the resources of the state is directed toward feeding, medical care and containment of people who should be presumed innocent.

Schonteich posits that the actual cost of pretrial detention on the state is often hidden and that assessing the cost of pretrial detention requires considering the full impact of pretrial detention on not just the detainees, but their families and communities and to him, that is a calculation that is both difficult to make and unpalatable to most governments.[1229]The

[1228] Schonteich, M. 2008. The scale and consequences of pretrial detention around the world, 24; See also Thomas, J.C. and Torrone, E. 2006. Incarceration as forced migration: effects on selected community health outcomes. *American Journal of Health.* 96.10:1762-1765.
[1229] Schonteich, M. 2010. The socioeconomic impact of pretrial detention, 31

remand of awaiting trial persons can lead to stunted economic development as a result of lost productivity of working members of the community which also results in the loss of tax revenue. Another effect of a large number of awaiting trial person on remand for long durations of time is the erosion of public trust, enabling abuse of and condoning of power and corruption undermining of the rule of law and the directing of State revenue towards maintaining an unnecessarily large number of remanded detainees.[1230]

4.7 Vulnerable groups in the criminal justice system

Arguably, all persons are equal before the law and should be entitled to equal protection before the law. However there are some groups of people who are easily neglected or not adequately provided for when they come into contact with the law. The identified vulnerable groups are women, children, minorities and the handicapped. Such people tend to require extra care because although detention should only be used as a last resort, where these groups are remanded, it is necessary to carry out their remand with greater caution and care in order to reduce the effects of remand on their human rights.[1231] Where there is inefficient access to justice, vulnerable groups are at the receiving end of the short stick, in particular, women, children (juveniles), the handicapped and ethnic minorities and the indigent are the most affected. There are a number of reasons why they are more likely to be the most hit by an inefficient system of access to justice which invariably leads to pretrial detention, some of which will be discussed below:

4.7.1 Women

Female detainees constitute a small minority of the pretrial detention population in the world[1232]and as such, most prisons are organized mainly around the male prison population. In Nigeria, as with most African countries, women constitute an even smaller number of detainees when compared with countries like the United States of America

[1230]As obtained from "Circumstances of detention and impact on detainees and their communities." in Schonteich, M. 2014. Who are the world's pretrial detainees?, 57-92

[1231] Ojukwu E. (et.al.) 2012. Handbook on prison pre-trial detainee law clinic op. cit. pg. 113

[1232] As at 2015, about 700,000 women and girls were held in penal institutions throughout the world either as pretrial detainees/remand prisoners or having been convicted and sentenced. Female prisoners constitute between 2 and 9% of the total prison population. See Walmsley, R. 2015. World Female Imprisonment List, World Prison Brief (3rd ed.). Institute For Criminal Policy. Retrieved July 03, 2017 from http://www.prisonstudiens.org

which is reputed to have the highest number of females on remand.[1233]In Nigeria, as with most countries, women are the primary care givers in the family and where a female, particularly a mother is remanded or imprisoned, the family tends to feel the effect of her absence. Moreover, as a result of the fact that women constitute a minority in the prisons, they tend to face neglect in the system which is ill-equipped to deal with the challenges that women face in the criminal justice system.[1234]These challenges can be physical, emotional, mental, or social and the consequences of remand on women can be acute and have long term effect.[1235]For example, women and girls, as a result of their genetic makeup tend to require better healthcare and in the case of family women, tend to need to maintain contact with their spouses and children.[1236]

4.7.2 Children

Children who come into conflict with the law are particularly exposed and vulnerable when they enter the criminal justice system; this is particularly so as they are at an additional risk of exploitation as a result of the inefficient system of justice set up to address their particular needs. The welfare system in Nigeria is substandard at the best and provisions for the remand of juveniles are limited with three borstal institutions nationwide and marginal if non-functional remand homes. Thus, juveniles are more often than not, detained with adults and as a result, come under all forms of physical, emotional and psychological abuse. Ensuring access for children who come before the law is core to ensuring that children in contact with the law are able to obtain justice and is a means of guaranteeing children's rights. Where children come into contact with the law and are unable to obtain redress, it can have the unintended consequence of pushing them further into criminal activity, pulling them out of school and consequently, they may fall into further poverty.

[1233]The median level of female detainee population in Africa is 2.8% (Nigeria has an estimated female prison population if 1, 156 -2.0% of the total prison population) and the highest is in Asian countries where the median level is 6% and the world median is 4.4%. The United States of America had an estimated 205, 400 female inmate population, the highest in the world and 9.3% of the American total prison population. See generally Walmsley,R. World Female Imprisonment List. ibid.

[1234]See Raphael, J.T. Aug. 19, 2016. Female inmate population skyrockets in the US. *Across Women's Lives*. Retrieved July 09, 2017 from https://www/pri.prg/stories/2016-08-19/female-inmate-population-skyrockets-us

[1235] Schonteich, M. 2010. The socioeconomic impact of pretrial detention, 19.

[1236] Ojukwu E. (et.al.) 2012. Handbook on prison pre-trial detainee law clinic, 113-116

The inadequacies of the criminal justice system affect children in the sense that inadequate justice and institutional facilities, limited legal assistance and lack of enforcement of decisions can have a damaging effect on their future prospects of becoming responsible members who will contribute positively to society. Also, practical barriers to access to justice such as corruption and or lack of confidence in the criminal justice system provide a complex blockade. Ideally, detention of children should be a measure of last resort as very few young persons' commit very serious crimes and pose a threat to society by being kept within the community. They also require special arrangements to ensure that they maintain family relationships, are trained and developed.[1237]

4.7.3 Ethnic minorities and non-nationals

Ethnic minorities and non-nationals are represented in pretrial detention and they face detention more often than not because they lack a fixed address or residence permit and are considered more likely to abscond and/or reoffend. In the case of foreign nationals, they require special attention because they are alien to the culture and environment in which they are remanded.[1238] They face little or no chance of being visited by family or friends and often times need to make special arrangements to communicate with their diplomatic representatives (for foreign nationals) and prepare for trial.

3.7.4 Other vulnerable people

Many people who commit minor crimes such as petty theft or antisocial behaviour are handicapped people, people with poor health/mental health/untreated medical conditions, and those who engage in risky activities such as drug users and commercial sex workers. In

[1237] See Article 37 (1) (c) of the Convention on the Rights of the Child(op. cit), which provides that every child deprived of liberty shall be treated with humanity and respect or the inherent dignity of the human person and that efforts should be made to provide juvenile offenders with good accommodation, clothing, feeding and sanitary conditions; Rule 13 of the United Nations Standard Minimum Rules for Juvenile Justice (op. cit.) provides that juveniles under detention pending trial should be kept separate from adults and should be detained in separate institutions or in separate parts of institutions that hold adults, so as to ensure that they are monitored in order to be reformed and rehabilitated.

[1238] See Article 6 of the Vienna Convention on Consular Relations (VCCR) 1963 500 U.N.T.S. 95; 23 U.S.T. 3227, which provides amongst others that foreign prisoners and detainees should be allowed to make contact with diplomatic representatives of their country, communicate with, and be visited by diplomatic representatives. See also Rule 38 of the Standard Minimum Rules for the treatment of Prisoners op. cit

a fully functional criminal justice system, arrest and remand can provide a means of identifying health and social needs of detainees and enable access to appropriate treatment, care and if possible, diversion from the system (particularly for those with mental health issues).[1239]People with physical and mental disabilities and mental health conditions who come into contact with the criminal justice system can find the system overwhelming; more often than not they require treatment and diversion out of the system.[1240]However, considering that the Nigerian welfare system is not well established, such people will find it difficult to obtain the help they need. More often than not, they are detained and lost in the system along with others and the criminal justice professionals do not have the necessary skills, training or resources to support or process them adequately.[1241]

4.8 Rights violated/ rights respected

Whether awaiting trial on remand or convicted of crimes committed, it must be kept in mind at all times that those on remand in prisons are human beings who retain some rights, as such, their civil and fundamental human rights ought to be respected and protected. Incarceration /remand in Nigerian prisons does not mean that inmates are without basic human rights, as even convicted hardened criminals have basic human rights which are protected by the Nigerian Constitution. Chapter IV of the Constitution contains the fundamental human rights which are not just mere rights, they are regarded as fundamental because they belong to the citizens and…*have always existed even before orderliness prescribed rules for the manner they are to be sought...*[1242]In the context of criminal justice, not all the rights contained in chapter iv of the Constitution apply to awaiting trial persons, for example, they lose their right to privacy[1243]and liberty,[1244] they can be searched without their permission and without a warrant, they may not keep personal possession. However, they do retain some fundamental human rights which should not be

[1239] Bubb-McGhee, M. and Rhodes, L. 2016. Homelessness and the criminal justice system.. Retrieved July 09, 2017 from www.qni.org.uk
[1240]O'Hara, M. Sept. 09, 2015. Why is our justice system failing vulnerable people? *The Guardian.* Retrieved July 10, 2017, from https://www.theguardian.com/society/2015/sep/09/prison-system-failing-vulnerable-people
[1241] O'Hara, M. ibid.
[1242] See Saude v. Abdullah (1989) 4 NWLR Pt. 116 pg. 387 at 419.
[1243] Section 37
[1244] Section 35

derogated from, which are designed to ensure that the accused is guaranteed a fair trial. Those rights that relate to persons on remand, in particular, awaiting trial persons will be discussed below:

4.8.1 Right to presumption of innocence:

The presumption of innocence is regarded as one of the bedrock principles of the criminal justice system and the foundation of a fair trial.[1245] The effect of the presumption of innocence is that the burden of proof is on the prosecution, thus relieving the accused of any burden of proving his or her innocence and until an accused person is convicted, his legal rights and privileges remain intact and as such, the awaiting trial person should not suffer from any disability. Dada and Opara[1246]argue that the presumption of innocence has been exploited and abused, especially in relation to Politically Exposed Persons (PEP), especially in connection to corruption cases. They claim that the presumption of innocence has given rise to a situation where a large number of people who are "*devoid of morality, decency, civility, transparency and accountability*."[1247]permeate the political system. However, in the light of the global endorsement and application of the presumption, it is apparent that it is here to stay.

Section 36 (5) of the Constitution provides that:

> *Every person who is charged with a criminal offence shall be presumed to be innocent until he is proved guilty;*
> *Provided that nothing in this section shall invalidate any law by reason only that the law imposes upon such person the burden of proving particular facts*.

However, there are constant reports of accused persons remanded in prisons for very long periods of time without trial and sometimes suspects are remanded on a holding charge.

[1245] Okonkwo, C.O. "The Nigerian Penal System in the Light of the African Charter of Human and Peoples' Rights", in Kalu, A.U. and Osinbajo, Y. (eds) Perspectives on Human Rights , Federal Ministry of Justice Law Review Series, Lagos Vol. 12 pg. 103
[1246] Dada, J.A. and Opara, E.A. "Application of Presumption of Innocence in Nigeria: Bedrock of Justice or Refuge for Felons" Journal of Law, Policy and Globalization Vol. 28. 2014 accessed from http://www.iiste.org
[1247] Ibid. pg. 69

The practice of treating awaiting trial persons like convicted felons is unconstitutional and the courts hold this position as well.[1248]

4.8.2 Right to life

Uchegbu[1249]posits that the right to life presupposes the existence and availability to all of certain basic facilities such as food, health, shelter and education, the right to life to be maintained, needs food which has to be produced by members of the society all of whom have this right to life. Thus the right to life is linked to the right to work in order to obtain means of subsistence to procure food and shelter…

The right to life is the most important right guaranteed by the Constitution. It has worldwide recognition and should be the priority of the government to protect and preserve this right. Section 33 of the constitution provides for the right to life as follows:"*Every person has a right to life and no one shall be deprived intentionally of his life save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria*."[1250]

The section recognises situations when a person may not be regarded as being deprived of this right.[1251]Thus the right to life is not absolute but rather qualified[1252]and may be derogated from in certain instances. It imposes on an individual, the obligation not to deprive another intentionally of his life except in the defence of self, suppressing a riot or mutiny or to prevent a lawful arrest. In the instances listed, the State is obligated to

[1248]See, Oloruntosin v. The State (2007) All FWLR (pt. 396) 702 and Femi Oladotun v. The State (2010) All FWLR (Pt. 532) 1686; Kazeem v. The State (2009) All FWLR (Pt. 465) 1749; Olabode v. The State (2007) All FWLR (Pt. 389) 1301

[1249] Uchegbu, S. "The Concept of Right to Life Under the Nigerian Constitution" in J.A. Omotola (Ed.) 1987. Essays in Honour of Judge T.O. Elias, Faculty of Law, University of Lagos, Nigeria. pg. 136

[1250] Section 33 (1)

[1251] See Section 33 (2) (a-c)

[1252] See Kalu v. State (1998) 13 NWLR (Pt. 583) pp. 531 at 583

investigate deaths caused by actions or omissions of state agents or deaths for which the state may be responsible. [1253]

The flip side of this is that the state and by extension, the criminal justice system, in particular, law enforcement custody, remand homes, borstal institutions and prisons have a duty of care as regards people on remand with regard to the right to life. As such, they are regarded as under an obligation to protect the lives of persons held in detention or on remand in prison and where a person dies while in custody (where the person is received into custody in good health), the state is required to provide a good explanation for the death.[1254]

4.8.3 Right to fair hearing

The right to a fair trial within a reasonable time comprises of two important components, that is, the right to fair hearing and the right to speedy trial. The right to a fair hearing as contained in Section 36 (4) of the constitution provides for the right to fair hearing which is comprised of several component rights, namely; presumption of innocence,[1255]right to be informed promptly and in detail, the nature of the offence charged in the language which the suspect understands,[1256] the right to be given adequate time and facilities to prepare for the defence,[1257] the right to defend himself in person or by counsel of his choice[1258]and the right to examine in person or by his legal practitioner, witnesses called by the prosecution or by the defence.[1259]The right to a trial within a reasonable time is important because delay could be fatal to the case of the defence as evidence may be lost and witnesses could die or become difficult to locate.

[1253] See generally, the case of Joshua v. State (2009) 6-7 NMLR 78 at 79 where the Court of Appeal condemned the killing by the police of two suspects who were under police custody before they were charged to court. As a result of the killing, the court pronounced strongly against the actions of law enforcement agents who take the law into their hands. See also Maiyaki v. State (2008) 15 NWLR 173 at 220
[1254] See generally Aduba, J.N. 2011. The right to life under Nigerian constitution: the law, the courts and reality.
[1255] Section 36 (5)
[1256]Section 36 (6) (a)
[1257] Section 36 (6) (b)
[1258] Section 36 (6) (c)
[1259] Section 36 (6) (d)

The Courts have the duty of ensuring a fair trial which should be independent and impartial, and undue delay in the trial process of an accused person can only inflict harm on a person who is still presumed innocent by law.

4.8.4 Right to counsel

The right to counsel lends credence to the right to fair hearing and all other rights of the awaiting trial person. Section 36 (6) (c) of the Constitution provides that everyone has the right to defend himself in person or by legal practitioner of his own choice. From the provision of the constitution, it can be observed that the right applies to all those awaiting trial and facilitates the ability to access and obtain justice by enabling that the accused person has legal representation at all stages of the criminal justice process and is not left to his own devices in the interpretation and application of the law. Ojukwu and others[1260] assert that the right of an accused person to defend himself in person is capable of negating the right to fair hearing as allowing self representation is like setting a trap for the accused person because the accused person will have difficulty comprehending the rules of procedure, evidence and pleadings. They point to the American Supreme court case of Powell v. Alabama[1261]where the dangers of an accused person defending himself without the assistance of counsel was pointed out as follows:

> The right to be heard would be in many cases of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small, sometimes no skill in the science of law. If charged with crime, he is incapable generally of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence: Left without the aid of counsel he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible.[1262]

It has been pointed out that the right to counsel is a qualified one as it requires that counsel must be freely chosen by the defendant and in the instance where the defendant cannot afford counsel and one is assigned to him by the court or legal aid, can it be said that such

[1260] Ojukwu, E. 2012. Handbook on prison pre-trial detainee Law clinic, 105.
[1261] (1982) 287 U.S. 45:53:77 L.Ed, 158
[1262]See also Akinseye-George, Y. 2011. Improving judicial protection of human rights, 203-206

counsel is of the defendants choosing? In response to this, it has been pointed out that the defendant is free to reject the counsel assigned to him, particularly where counsel is considered lackadaisical in the discharge of his duties towards his client.[1263]

4.8.5 Right to dignity of the human person

The concept of dignity expresses the idea that a human being has the right to be valued, respected, and to receive ethical treatment. In the context of inalienable rights[1264]it is used to allude to "respect" and "status" and is often used to suggest that someone is not receiving a proper degree of respect. Although there is no universally accepted definition of dignity,[1265] Ploch,[1266]writing on the importance of dignity submits that humans must treat others with respect and dignity even when others do not necessarily deserve such respect. Thus one can view dignity as:

> …individual's possession of self-control or autonomy...dignity is …closely tied to the rationality and moral capacity which humans have a potential to exhibit, and which makes us unique compared to other living creatures. In a sense, we have dignity because we can be rational, and in this dignity accompanies us regardless of how we act in reality…Innate human characteristics-including inner worth and capacity for rationality-provide the justification for being treated with dignity, apart from the conscious decisions we make.

Section 34 of the constitution provides that everyone is entitled to respect for the dignity of his person, and accordingly no one should be subject to torture, inhuman or degrading

[1263] See generally, Ojukwu, E. 2012. Handbook on prison pre-trial detainee law clinic, 104-106. See also Udofia v. The State (1983)3 NWLR (Pt. 84)583.

[1264] Although the concept of dignity can also be used in proscriptive and cautionary ways; it can be used as a means of critiquing the treatment of a person or in application to cultures and sub-cultures, religious beliefs and ideals, to animals used for research and to plants.

[1265] See Emmanuel Kant's writings on dignity as discussed in Bayefsky, R. "Dignity, Honour, and Human Rights: Kant's Perspective, Political Theory Vol. 41, No.6. (December 2013), pp. 809-837, Sage Publications Inc.; Sensen, O. 2011. Kant on Human Dignity.Kantstudien-Erganzungshefte Series, Degruyter, Germany

[1266] Ploch, A. 2012. Why dignity matters: dignity and the right (or not) to rehabilitation from international and national perspectives. *International Law and Politics*. 44:887-949

treatment, held in slavery or servitude, required to perform forced or compulsory labour.[1267] Awaiting trial persons on remand and prisoners tend to face violations of the right to dignity in various ways. The major ones are humiliation; instrumentalisation or objectification, degradation, dehumanization. Under these, practices that degrade the human person and violate human dignity include torture, rape, social exclusion, forced labour, exploitation and slavery. The Nigerian prison and detention conditions are such that persons who are detained or remanded there undergo physical and mental torture which can cause mental and health problems and even lead to death. There are indications that some detainees are subjected to various degrees of torture, including beatings, chains and sexual assault and starvation and denial of medical treatment.[1268]

4.8.6 Right to freedom of thought, conscience and religion

Remand and prison inmates include a range of religious groups comprising the major religions of Christianity, Islam and sects within them as well as indigenous beliefs. The right to freedom of thought, conscience, and religion including the right to change religion or belief is a universal one with wide recognition and acceptance. It is of importance in the Nigerian context because the country is a multi-religious one and respect for this right by the State and individuals is necessary to ensure harmony. Section 38 (1) of the constitution provides that:

> Every person shall be entitled to freedom of thought, conscience and religion, including freedom to change his religion or belief, and freedom (either alone or in community with others, and in public or in private) to manifest and propagate his religion or belief in worship, teaching, practice and observance.

This right also applies to awaiting trial inmates and remanded prisoners and it is commendable that Nigerian prison authorities recognise the right and give opportunities and facilities to inmates, particularly to practice their religion, more so, because it tends to encourage good behaviour of the inmates.[1269]

[1267] Section 34 (1) (a-c).

[1268] See generally Ojukwu, E. 2012. Handbook on Prison Pretrial Detainee Law Clinic. Op.cit. See also the case of Odafe and Ors. v. AG. and Ors. (2004) AHRLR 205 where it was held that failure by the prison officials to access to medical attention and medical services to confirmed HIV/AIDS applicants/prison inmates while in prison custody violated their rights to human dignity and health.

[1269] Ojukwu, E. op.cit. pp. 97-98

4.8.7 Right to freedom of expression

The right to freedom of expression, a universally acknowledged fundamental human right, is regarded as not only the cornerstone of democracy but indispensable to a thriving civil society.[1270] Section 39 (1) of the Constitution provides that every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference. However, the right to freedom of expression is not absolute and can be narrowed in certain circumstances[1271]which must meet a strict three part test.[1272]Laws prohibiting contempt of court, child pornography, voter intimidation are recognizable restrictions on freedom of expression.[1273]

Detainees and those on remand in prisons also retain their right to freedom of expression which can be exercised by writing and receiving letters, access to counsel and visitation by family and friends. It has been claimed that the enjoyment of this right is important to the maintenance of the sanity of the prisoners because of their basic human need to express their thoughts and feelings about the situation on which they have found themselves.[1274]

4.8.8 Right to freedom from discrimination

Section 42 (1) of the constitution provides that the awaiting trial persons should be treated fairly irrespective of race, tribe, sex, religion, political opinion/affiliation. However, it has been alleged that there have been discriminatory practices of favouring some prisoners

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[1270] See Resolution 59 (1) , of the first session of the United Nations General Assembly of 14 December, 1946 where it was declared that the Freedom of Information(which inheres in the Freedom of Expression) is a fundamental human right and …the touchstone of all the freedoms to which the United Nations is consecrated. See also Article 19 (2) of the ICCPR op.cit.

[1271] (a) for respect or the rights or reputation of others;
(b)for the protection of national security or of public order, or of public health or morals.

[1272] i. it must be provided by law, which is clear and accessible to everyone;
ii. it must pursue one of the purposes set out in Article 19 (3) of the ICCPR; and
iii. it must be necessary and the least restrictive means required to achieve its purported aim. See generally Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, Frank La Rue, Human Rights Council, 16 May, 2011, at para.24

[1273] See generally "The Right to Freedom of Expression: Restrictions on a Foundational Right" Global Trends in NGO Law (a quarterly review of NGO legal trends around the world) Vol. 6 No. 1, International Centre for Not-For-Profit Law (ICNL) accessed on 14 May, 2017, from ? http://www.icnl.org

[1274] Ojukwu, E. (et.al.) 2012. Handbook on Prison Pre-Trial Detainee Law Clinic op. cit. pg. 98-99

over others contrary to constitutional provisions in Nigeria, The case of *Odafe and Ors. v. Attorney General of the Federation and Others*[1275] is instructive as the sphere of the right to freedom from discrimination was considered as a result of the applicants' claim that acts of discrimination against them by both prison officials and inmates as a result of their HIV/AIDS status was a breach of their right to freedom from discrimination under 34 (1) (a) and Section 42 (1) (a) of the Constitution. The Court held that the right to freedom from discrimination as contained in the Constitution did not cover discrimination by virtue of illness, virus or disease and the applicants could not invoke Section 42 (1) on the argument that they have a right not to be discriminated against.

From the above, it can be observed that the right to freedom from discrimination is not an absolute one; one exemption to the right to freedom from discrimination is that a person or groups of persons can be segregated on the grounds of infectious or contagious diseases.[1276]

4.8.9 Right to remain silent

The right to silence goes hand in hand with the right against self incrimination. This is because more often than not, anything an accused person says can be used against them in the course of the criminal justice process. In view of the presumption of innocence in favour of the accused person, no responsibility should lie with the defendant to prove his innocence. Section 35 (2) of the constitution provides that a person arrested or detained has the right to remain silent or avoid answering any questions until after consultation with a legal practitioner or any other person he chooses. This provision serves as a form of protection for the accused person against any unauthorized means (whether physical or psychological) of coercion. Thus a form of caution should be issued to the accused person at the point of arrest or interrogation. It is worthy of note that the accused is not obliged to give evidence at any criminal court and may not be compelled to do so, and the failure of the accused person to give evidence should not be made the subject of any comment by the prosecution, but the court may draw inferences as it thinks fit.

[1275] (2004) AHRLR 205 (NGHC 2004)
[1276] Ojukwu, E. (et.al.). op.cit pg. 99-100

The right to silence is particularly important in the Nigerian criminal justice process because there have been allegations of extraction of confessions from suspects under torture in police stations and law enforcement agencies, but the courts in Nigeria base the admissibility of confessions on the common law based Judges Rules and Evidence Act 2011 without linking it to the constitutionally guaranteed right to silence and therefore allow for the systematic extraction of confessions from suspects and accused persons in custody. This ends up negatively impacting the right of the accused to a fair trial.[1277]

4.8.10 Right to adequate time and facilities to prepare for defence

The right to adequate time and facilities to prepare for defence is an important component in the right of a person to fair trial. It is also a pre-trial right available to persons awaiting trial. This is because trial is deemed to commence from the time of arraignment.[1278] Section 36 (6) (b) of the constitution provides that every person charged with a criminal offence should be entitled to adequate time and facilities for preparation of his defence. It is an important right because during the period between arrests, arraignments and the prosecution of an accused person, a person may be granted bail or remanded in prison for the duration of the trial process and in either situation, the accused person should have adequate time and where he requires information on the case in order to properly prepare his defence, be able to obtain it by request. In the course of ensuring this right, the courts may need to grant an adjournment to the accused person, so that he can obtain the service of counsel, call witnesses material to the case, cross-examine the prosecution witnesses, be supplied with the extra-judicial written statements of the prosecution witnesses before the trial

[1277] See generally, Onoja, E.O. 2014. The relationship between the constitutional right to silence and confessions in Nigeria. *African Journal of Legal Studies*. 6.2-3:189-211
[1278] See Asakitipi v. The State (1993) 5 NWLR (Pt. 296) 641

The right to adequate time and facilities to prepare for defence is not an absolute one as in order to enforce this right, an accused person would need to apply formerly to the trial court for an order compelling the respondent to make available the facilities he requires for his defence.[1279]Thus, the right to adequate time and facilities to prepare for defence is not self-executory.

4.9.1 Arbitrary arrest and detention

It must be pointed out at the onset that the right to personal liberty and the presumption of innocence are constitutionally provided for and criminal justice agencies and institutions should carefully adhere to the legal provisions before arresting and detaining an accused person. Admittedly, pretrial detention serves a very important purpose in the administration of criminal justice;

- To ensure that arrested suspects who pose a flight risk are made to stand trial
- To ensure that arrested suspects who pose a danger to the community do not commit further serious offences pending the outcome of trial
- To ensure that ruthless arrested suspects do not interfere with the lawful collection of evidence or interfere with witnesses by intimidating or harming them.

However a significant number of persons in Nigerian prisons are awaiting trial, they are more often than not held in conditions worse than those of sentenced prisoners. Torture, overcrowding, and disease are rampant as few resources are dedicated to pretrial detention. As such, access to food, healthcare, a bed, or exercise is cruelly restricted. Although the disregard for the presumption of innocence and indecent conditions of pretrial detention is not limited to Nigeria- in the world at large there are an estimated 3.3 million pretrial detainees-it presents a clear reflection of the high-handed attitude of government against the presumption of innocence of the awaiting trial person.[1280]

[1279] See generally Okoye and Ors v. COP and Ors. (2015) LPELR – 24675 (SC) 69-70; R v. Adebanjo (1935) 2WACA 315; Layonu and Ors v. State (1967) 1 All NLR 198; Ohwovoriole v. F.R.N. (2003) 2 NWLR (Pt. 803) 176; Uwazurike V. AG. Federation (2013) All FWLR (Pt. 691) 1520

[1280]This is also reflected by the penchant of government of convicting people in the pages of the newspapers, tarnishing their images and feeding the frenzy of the already teeming masses that are looking for culprits of the financial, economic, social mess that successive governments have left the country in. See for example Okonjo Iweala, Diezani Allison Maduekwe, Judges arrested for corruption charges

This is mainly to guard against abuse of the awaiting trial person's rights. Although detention of persons pending trial is constitutionally recognised, it can give rise to uncorrectable damage for the awaiting trial person and their families because the trial process can result in more than one outcome; it can result in a finding of guilt or innocence and discharge. But despite a finding of innocence for an awaiting trial person, the criminal justice process can have unintended consequences which can include:

a. Loss of reputation of the unconvicted detainee and sometimes even loss of reputation of persons closely connected to them;
b. Severance of family ties;
c. Loss of work, jeopardizing of a career, bankruptcy, insolvency-which can lead to financial strain;
d. Undermining of the detainees mental health and balance.

The Rapporteur of the Socialist Group in Greece[1281]in his proposal presentation based on queries made about pretrial detention which he sees as a matter of utmost gravity as an accused person is detained pending trial provisionally or for preventive reasons. He made the proposal because detention pending trial can cause irreversible or irreparable damage for the following reasons:

1. Untried prisoners of a sensible nature, unable to endure the humiliation of the stain on their honour, can commit suicide without waiting to prove their innocence before a competent court.
2. Awaiting trial persons, overcome by an all too understandable excess of grief, distress, anger, and indignation over their wrongful detention, can contract painful, serious and sometimes incurable physical and in many cases, mental illness.
3. It can lead to shattered academic or professional careers, lives in ruins, companies made hopelessly insolvent as a result of the loss of reputation suffered by individuals forcibly uprooted from their social environment.

[1281] Rokofyllos, Report on the Detention of Persons Pending Trial, presented to the Parliamentary Assembly, Greece on 03 June 1994, (Report of the Committee on Legal Affairs and Human Rights) Doc. 7094, 1403-30/5/94-1-E accessed on 24 April, 2017 from http://www.assembly.coe.int/nw/xml/XRef/x24-xref-ViewHTML.asp?FileI.D=8093&Lang=en. See also "Detention of Persons Pending Trial" Parliamentary Assembly Recommendation 1245; Assembly Debate on 30 June, 1994 (22nd Sitting) (See Doc 7094, report of the Committee on Legal Affairs and Human Rigths, Rapporteur: Mr. Rokofyllos) accessed on 04 May, 2017, from http://assembly.coe.int/nw/xml/XRef-XML2HTML-EN.asp?fileid=15279&lang=en

4. It can also affect the inmate's family members as their reputations may suffer because the suspicion engendered by the alleged act of the awaiting trial person which was regarded as serious enough to warrant detention in prison.
5. It affects the ability of the awaiting trial person to adequately prepare their defence; such as gathering evidence and witnesses.
6. As a result of the remand of the awaiting trial person, there is a high likelihood that such a person is more readily sentenced to periods not exceeding the duration of the detention pending trial. To him, there is every reason to believe that if the individual in question had not been remanded, he/she would have been found innocent or given the benefit of the doubt. To him, this does not adequately reflect discredit on the investigating Judge who ordered the detention or the other judicial authorities who continued it.
7. The media, by bringing the arrest and detention of the awaiting trial person tend to exacerbate the situation by spreading the information to all and sundry. Thus, the slur cast on the individual's honour and self-respect becomes public knowledge and from then on, without ascertaining the veracity or otherwise of the case, the suspect/accused is condemned as guilty, and even if the suspect is released or the accused acquitted, most people will never hear of it and will often doubt the circumstances or motives surrounding the release of the suspect/accused which could be attributed to indulgence on the part of the victim, shortcomings of the law enforcement agents, prosecution and courts or the shrewdness of the legal adviser to the accused/suspect. The end result is that people rarely accept in all fairness that and humility, that a decision to place a person in custody pending trial was a mistake.

Based on the above and the presumption of innocence in favour of the suspect/accused, there is wisdom in the general opinion that anyone who has served time in prison, even if such a person is subsequently found to be innocent, remains tarnished and discredited. It has been alleged that where the police have the motive and means to arrest illegally, they will often have subsequent reason and ability to detain a person, and often, they act outside the legal norms. This is because they tend to flout the rules of arrest and detention by arresting friends and families of suspects in their quest for a suspect or just to extort money from people they accost on their rounds. In Nigeria, the recent highly publicized arrests and detention of those that are claimed to have committed crimes can be regarded as conviction in the court of the media and this is because they are more often than not, unable to secure the conviction of those arrested due to the regular failure to properly formulate charges against accused persons who have been publicly arrested and alleged to have committed crimes on questionable grounds.

This does not mean that arrest and detention do not have a place in the criminal justice system. On the contrary, they serve a very important function in the administration of criminal justice but where the police and of recent, other law enforcement agents such as the Department of State Service (DSS) and the Economic and Financial Crimes Commission (EFCC) arrest an individual and present such a person before a Magistrate with limited jurisdiction who lacks the capacity to handle the case. The Magistrate issues a 'holding charge' particularly because the law enforcement agents do not have concrete evidence with which to charge the suspect; the holding charge thus permits the law enforcement agent to conduct their investigation and obtain legal advice from the Department of Public Prosecutions after arrest, and where the suspect is denied bail, unable to perfect bail conditions, bribe to secure their release, or the police and prosecutors are unable to move the case forward, they are left to rot in the prison. It must be pointed out that the 'holding charge', although controversial,[1282]is legal and binding remand order.[1283] The case of *Lufadeju v. Johnson*[1284] is instructive in terms of the holding charge in Nigeria, the Supreme Court upheld the constitutional validity of pre-charge detention of criminal suspects in Nigeria. *inter alia* it also held that:

> …the fact is there was strong suspicion that the respondent and some others have committed an indictable offence –to wit treason. After their arrest by the police, there was the need to properly and lawfully keep them in custody, and the only way to do this was to take them to a Magistrate Court who would in turn remand them in custody. They couldn't possibly continue to remain in police custody without the order of a court. Police investigations sometimes take time, and sometimes there is the fear of a likelihood of continued committal of the same or other offences. There is also a likelihood of interference with investigations. What is reasonable time is subjective, and since this is dependent on the completion of investigations; all factors will be taken into consideration.
>
> On the presumption of innocence as laid down in Section 35 (5) of the (supra) constitution, I fail to see anything in the record before us that there was a contrary presumption in respect of the appellant. The appellant and his co-accused were taken before the Magistrate Court for the purpose of lawful remand in custody; and that was exactly what the Chief Magistrate did. She did not ask him of

[1282] See generally Sconteich M. The presumption of guilt, the global overuse of pretrial detention, 121.
[1283] See the case of *Lufadeju V. Johnson (2007)* op.cit.
[1284] ibid.

whether he was guilty or not, so the issue of his innocence did not come to play at that stage of the proceedings.

From the above, it can be seen that the holding charge is not regarded as an arraignment proceeding. As such, the detainee cannot yet be considered an accused person because no formal charges have been read and he has not pleaded to any charges. Observers, such as Open Society Justice Initiative, Prison Reform International and the Nigerian Bar Association have described the holding charge as a grant of unregulated power, which permits the police and other law enforcement agents to detain suspects for as long as the state authorities want, even where the delay in the investigation and receipt of advice from the Director of Public Prosecutions with which to arraign and charge the suspect is the fault of the above agencies.[1285] There are also allegations that the threat of the holding charge is a means of extorting money from individuals.[1286] Although it is also possible to obtain relief against a holding charge but this is often a costly venture which a lot of detainees cannot afford.

Another effect of arbitrary arrest and detention is that sometimes as a result of their overlong detention, awaiting trial persons plead guilty to crimes they have not committed just to secure their release.[1287]It is thus harmful to the rule of law and due process especially because it is done before charges are filed and as such the suspect has not been arraigned nor charged before a competent court.

4.9.2 Duration of pretrial detention

It is agreed that there are time limits on pretrial detention and the Nigerian legal framework provides that an individual should be brought before a Magistrate/Judge within a few days of arrest. Although, data on duration of pretrial detention is not readily available, the

[1285] Sconteich M. The Presumption of Guilt, op cit.
[1286]Ibid.
[1287]Human Rights Watch has linked a high percentage of crimes solved by the police to confessions and incriminating statements made by awaiting trial persons under duress. See generally, Human Rights Watch. 2011. "Neither Rights nor Security," Human Rights Watch, New York. Pg. 78 accessed on 13 February, 2016 from http://www.hrw.org/node/102793/section/4

average length of pretrial detention in Nigeria has been given as 3.7 years.[1288]This figure is very high compared to that of member States of the European Union which is 5.5 months.[1289]Open Society; in their report on the socio-economic impact of pretrial detention also provide that:

> Developed countries tend to have more total pretrial detainees as well as a higher pretrial detention rate. The United States, for example, has the world's highest total number of pretrial detainees (approximately 476,000), and the fourth-highest rate of pretrial detention (158 per 100,000). But the average pretrial detention duration and the percentage of all prisoners who are pretrial are relatively low in the U.S. and throughout the developed world.
>
> Conversely, in the developing world, the rate of pretrial detention may be comparatively low, but the average duration of all prisoners who are pretrial are relatively high. In some countries, over three quarters of all prisoners are pretrial detainees. This includes Liberia (where 97 percent of all prisoners are awaiting trial), Mali (89 percent), Benin (80 percent), Haiti(78 percent), Niger (c.76 percent), Bolivia (74 percent) and Congo-Brazzaville (c.70 percent)[1290]

The above information provides a window into the effectiveness of a particular State's criminal justice system, as well as its commitment to the rule of law. It has been posited that in the developed world, the lower percentage of all prisoners who are pretrial and the shorter average duration of pretrial detention indicate a relatively efficient criminal justice system; because people move through the system quickly and are generally released pending trial. In developing countries on the other hand, the great majority of all detainees are pretrial and they can be remanded in prison for years on end. This indicates, at best that the criminal justice system is inefficient and overwhelmed, and at worst, that there is a lack of commitment to the rule of law.[1291]

4.9.3. Lack of redress and accountability

The criminal justice system has an obligation to provide effective redress for all who come to the system, whether as an accused person or as a victim and ensure accountability in the discharge of their duties. The criminal justice system in the country at present, has not

[1288] Nwapa, A.2008. 'Building and Sustaining Change: Pretrial Detention Reform in Nigeria,' in Justice Initiatives: Pretrial Detention. Pg. 11
[1289] Ibid.
[1290] Schonteich, M. 2010. The Socioeconomic Impact of Pretrial Detention. Op.cit. pg. 11
[1291] Ibid.

served awaiting trial persons whose right to presumption of innocence pending the outcome of the trial is being frustrated by alleged investigative, prosecutorial, judicial and remand impunity and lack of adherence to the rule of law and due process in the discharge of their duties. It has been alleged that most of the problems of the criminal justice system stem from a lack of adequate safeguards to ensure professional accountability and a perceived bias in favour of the State as opposed to the awaiting trial persons who have become victims of the criminal justice system.

Accountability plays an important role in the administration of criminal justice, and it is deeply rooted in human nature that when things go wrong, people look for someone to blame.[1292]Where a culprit has been identified to attach a moral responsibility for an infraction or a perceived fault, it is possible to prevent a recurrence of the undesired act by attaching responsibility for the infraction or undesired outcome. Where for example, a police officer can be identified as having flouted the police code of conduct in the manner of arrest and investigation of a suspect, such an officer can be held accountable, hence the set up of the Police Force Disciplinary Committee (FDC), the National Judicial Council, the Legal Practitioners Disciplinary Committee e.t.c.

In recent times, there has been concern about abuse of office by agents of the criminal justice system –corruption, brutality, torture, discrimination, inefficiency and violation of the fundamental human rights of citizens.[1293]In connection with this, it is necessary for agents in the criminal justice system to be held accountable because abuse of power threatens the freedom of all citizens and undermines the legitimacy of government as well as the various institutions of the criminal justice system. It would be a general consensus that brutality, corruption and abuse of due process are recurring problems in Nigeria. There is therefore a need to identify and address challenges faced in ensuring redress and accountability for awaiting trial persons in the criminal justice system, in order to

[1292]Semin, G.R. and Manstead, A.S.R. 1983. The accountability of conduct: a social psychological analysis.
[1293]Osasona, T. April 29, 2017. Fighting crime: President Buhari's criminal justice burden. *The Republic.* Retrieved June 22, 2017 from http://www.republic.com/april/may-2017/buhari-crime-justice/

strengthen the rule of law, due process and ensure respect for the fundamental human rights of awaiting trial persons.[1294]

Ideally a public complaints procedure for dealing with criticism and dissatisfaction with the actions or conducts of agents of institutions of the criminal justice system is one means of formally addressing the issue of accountability in the criminal justice system. Criminal prosecutions, disciplinary processes and civil action provide other channels for addressing concerns of this nature. In principle at least, there are also political channels for challenging criminal justice action and seeking redress. In addition, the media can also play a significant role in contributing to the sense of scandal and urgency that prompts other accountability mechanisms into life.

In the absence of all the above mentioned procedures for enabling accountability of the agents and institutions of the criminal justice system, the public and even experts and researchers can be led to the conclusion that the agents of the criminal justice system, particularly the police and other law enforcement agents and other agents of the criminal justice system are above, or do not respect the rule of law which inevitably weakens the criminal justice system and leads to a cynical perception of the criminal justice system.[1295]

4.9.4 Mass release due to overcrowding

Overcrowding occurs where policies, practices and lack of adequate facilities result in the arbitrary and excessive use of pretrial detention which leads to overcrowding in the prisons. This invariably causes problems for the criminal justice system; such as a barrage

[1294] Adapted from "Challenges to accountability for human rights violations in Sri Lanka" (a synopsis of findings from a meeting with lawyers and human rights defenders in Colombo, November 2016) A Discussion Paper, March 2017, International Commission of Jurists, Geneva, Switzerland

[1295] See generally, Stenning, P.C. (ed.). 1995. "Accountability for Criminal Justice: Selected Essays" University of Toronto Press

of pending cases to be tried in court, financial/budgetary concerns, or the threat of enforcement actions against the conditions of arrest[1296], detention and treatment while in the overcrowded prisons. In order to release the pressure that the overcrowding of the prisons cause, authorities such as a sitting President, Governor or Chief Judge releases prisoners who are determined to fit the legal criteria for continued custody. Sometimes awaiting trial persons who have spent above the prescribed time for the crime alleged to have been committed can also be considered for release.

An effect of the overcrowding in prison is that sometimes, in response to the concerns that arise over the health and safety of the prison, authorities sometimes release prisoners and detainees who may otherwise not be fit by legal standards. Their releases are often not based on merit or a desire to conform to international norms and standards. It is more often than not portrayed as a gesture of goodwill.[1297]It must be pointed out that the release due to the overcrowding of prisons does not mean that there is an improvement in the detention/remand of persons; it tends to reinforce the view of inmates and the community at large that remandees can be released as a result of pressure from external sources.

4.9.5 Erosion of Public Confidence

The main aim of the criminal justice system is to ensure the safety and security of citizens. In carrying out this mandate, the perception of the public of the actions of criminal justice agents, in particular, the police, prosecution and the judiciary can have far reaching effects on the trust placed in the individual agencies and the system as a whole. Indermaur and

[1296] The Human Rights Law Service (HURILAWS) initiates Fundamental Rights Action Against AGF, others on behalf of All Awaiting Trial Persons in Nigeria This is due to the fact that although awaiting trial persons are presumed innocent, they are detained in old and dilapidated prisons with poor sanitary conditions, prison conditions which are harsh and life threatening, pervasiveness of diseases and inadequate medical and transport facilities. Accessed on 05 July 2017 from The News Accelerator 06 June, 2017, http://www.themewsaccelerator.com/2017/06/awaiting-trial-persons-in-nigeria.html

[1297] See for example, Daniel, S. June 26, 2017. Governor Ganduje Frees 550 Inmates to Mark Ed-El-Fitr. *Vanguard*. Pg. 8. Kano Minister of Interior, Abdulrahaman Dambazzau confirmed on Sunday, 07 June, 2017, that 70% of inmates in Nigerian Prisons are awaiting trial. This was disclosed during a visit with Governor Abdullahi Ganduje of Kano State to Kano State to Kano Central Prisons. He averred that some awaiting trial persons were detained for up to 15 years awaiting trial.

Roberts[1298] are of the opinion that public confidence is fundamental to the operation of the criminal justice system. They examined how confidence in the criminal justice system needs to be understood as a multidimensional construct with distinct differences in levels of confidence between the three major components of the system-the police, the courts and prisons and explain that public confidence declines from the police to the courts to prisons.[1299]

Indermaur and Roberts explain that public knowledge and direct experience with the three parts of the criminal justice system declines with progress through it. That police are highly visible and the first point of contact with the criminal justice system, that the public has less direct knowledge of prisons than other parts of the criminal justice system and that where members of the public do not have direct experience or knowledge of the criminal justice institutions, they rely on media portrayals. To them, an analysis of the movement through the criminal justice system from a psychosocial perspective also aids understanding of the evaporation of public confidence and claim that the public is more aligned to the crime control model/perspective/ paradigm of criminal justice than the due process or any other model/perspective/paradigm. This is because the public is more concerned about the effectiveness of the system in controlling crime and less with legal process, especially the rights of the accused. Thus, the public is less concerned with legal balance and more interested in crime control.

Public attitudes and perceptions about criminal justice agents are influenced by procedural legitimacy[1300], this is because the citizenry recognize the legitimacy of the criminal justice

[1298] Indermaur, D. and Roberts, L. 2009. Confidence in the criminal justice system: trends and issues in crime and criminal justice. *Trends and issues in criminal justice*. No.387:1-6. Retrieved June 02, 2017, from www.aic.gov.au

[1299] Indermaur and Roberts. ibid. See also Smith, D.2007. Confidence in the criminal justice system: what lies beneath? *Ministry of Justice Research Series*,; Roberts, J. 2007. Public confidence in criminal justice in Canada: a comparative and contextual analysis. *Canadian Journal of Criminology and Criminal Justice*. 49.2:153-184

[1300] Procedural justice is the fair and respectful treatment of citizens. It is associated with trust in the agents and institutions of the criminal justice system and viewing them as legitimate, while legitimacy is associated with greater willingness to cooperate with the system and assist in preventing and responding to crime, and greater compliance with the law. See generally, Resig, M.D 2007. Procedural justice and community policing: what shapes residents willingness to participate in crime prevention programmes*? Policing.*

system and as such submit to it. It is expected that the system will operate in a fair manner. According to Tyler,[1301]in his classic study, people obey the law if they believe it is legitimate, not because they fear punishment. He suggests that lawmakers and law enforcers would do much better to make legal systems worthy of respect than to try to instill fear of punishment. This is because his findings revealed that people obey law primarily because they believe in respecting legitimate authority. The challenge the result of his research poses, is how to adapt his findings to suit the Nigerian conditions because his studies were related to the United States of America.

However, Bottoms and Tankebe,[1302]placing reliance on political science, argue that even if legislation cleverly cloaks self-serving or abusive behaviour in an acceptable manner, people are generally not fooled, particularly those who witness corrupt officials in action, and that people will view the practice as legitimate only to the extent that it is perceived to serve the public interest and not the corrupt practices and behaviour of the officials. Not surprisingly, the main focus of the erosion of public confidence in the criminal justice system is the police; this is because the police interface with the public on a daily basis and in large numbers. Schonteich[1303]posits that people tend to share widely their encounters with the police, and as they spread their encounters, these accounts shape the perceptions of the police among third parties who may never have experienced any, or similar encounters.

This does not meant that the citizenry do not have negative perceptions about other agencies of the criminal justice system. On the contrary, there have been media publications which point to the poor perception of citizens about the administration of criminal justice in Nigeria. In recent times the Judiciary has come under a wave of negative publicity with the public arrest of some Federal High Court Judges and Honorable Justices

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1.3:356-369; Myhill, A. and Kristi, B.2008. Public Confidence in the Police. *National Policing Improvement Agency Research*, Analysis and Information.

[1301] Tyler, T.R. 2006. *Why People Obey the Law*

[1302] Bottoms, A. E and Tankebe, J. 2013. Beyond procedural justice: a dialogic approach to legitimacy in criminal justice. *Journal of Criminal Law and Criminology* 102.1:119-170. Retrieved April 23, 2017, from http://www.scholarlycommons.law.northwestern.edu/jclc/vol. 102/iss1/4

[1303] Schonteich, M. 2014. *Presumption of Guilt: The Global Overuse of Pretrial Detention*, 128.

of the Supreme Court[1304] by the Department of State Services (DSS). It should be pointed out at this juncture that officers and agents of the criminal justice system are themselves human and subject to the vagaries of human nature; which means that there will always be bad eggs lumped in with the good. However, it appears that at present, the negative behaviour far outweighs the good that the system is doing.

Where the public perceives that the criminal justice system, the bastion of safety of society is unfair, it has the tendency to undermine public confidence in the agents, processes and institutions of the criminal justice systems. Abuses relating to awaiting trial persons, particularly pretrial detainees have been identified in all stages of the criminal justice process from the police and other law enforcement officers to the prosecution and defence counsel, the judicial officers and the court system and prison officials and the prisons. Open society foundations point to research which indicates that as the public is aware of the systemic abuses attendant in the criminal justice system, particularly towards pretrial detainees, it results in deep mistrust, apathy and even perhaps, a lack of confidence in the broader legal system.[1305]The research further asserts that public attitudes towards law enforcement are influenced by the concept of procedural legitimacy in the sense that the public is more concerned that the outcome of the criminal justice processes are fair, than it is with the way in which agents of the criminal justice systems act.

The growing scale of dishonest and self-serving actions of agents of the criminal justice system has seriously affected the trust and confidence of the average Nigerian in the system. There are constant reports of abuses of power and privilege by actors and agents of the system which is potentially damaging because, the entirety of the citizenry depend on the criminal justice system to an extent for security and a reasonable quality of life. But where the public see the criminal justice agencies as corrupt, they regard the system with

[1304]Nwakanma, O. Oct. 16, 2016. The DSS Arrest of Judges. *Vanguard Newspaper*. Retrieved March 23, 2017, from http://ww.vanguardngr.com/2016/10/dss-arrest-judges/ ; Anon. 2016. List of Judges That Have Been Arrested by DSS Over Allegations of Corruption. Retrieved April 23, 2017, from http://www.nigerianmonitor.com/list-of-judges-arrested-by-dss-over-allegations-of-corruption/; Babalola, A. Nov. 23, 2016. DSS Midnight Arrest of Judges: Legal Issues and Recommendations (3). The Vanguard Newspaper. Retrieved April 23 , 2017 from http://www.vanguardngr.com/2016/11/dss-midnight-arrest-of-judges-legal-issues-and-recommendations-3/

[1305] Schonteich, M. 2014. *Presumption of Guilt: The Global Overuse of Pretrial Detention*, 127.

suspicion and will not cooperate with and support the system. This raises serious questions about dependence of the populace for justice.

Promoting public confidence in the agencies of the criminal justice system is recognised as one of the primary goals of good government.[1306]According to Roberts,[1307]most survey reveal low levels of public confidence in the criminal justice system relative to other public institutions such as the health care system, the armed forces or the educational system. Ideally, reports of low levels of public confidence in the system lead countries to launch initiatives to promote public confidence in the criminal justice system[1308] and Nigeria is no different. It led to the enactment of the Administration of Criminal Justice Act 2015, the Violence Against Persons (Prohibition) (VAPPA) Act, 2015, the introduction of community policing and other policing initiatives, reform in the judiciary, the Nigerian Bar Association and the Prisons. This supports the assertion of Indermaur and Roberts[1309]that the best way to improve confidence in the criminal justice institutions and the system as a whole is to enhance the perception that the institution is acting on behalf of citizens and representing their interests and this is best done within recoginsed criminal justice approaches which are not just based on rhetoric, but are backed by complementing institutional frameworks and ethically responsible agents of the criminal justice system who respect the fundamental human rights of every one and respect the rule of law and due process.

[1306]Roberts, J.V. 2004. Public Confidence in Criminal Justice: A review of Recent Trends 2004-2005. Report for Public Safety and Emergency Preparedness Canada. Retrieved May 02, 2017, from www.publicsafety.ge.ca
[1307] Ibid.
[1308]Roberts, J.V. and Hough, M. 2001. Public opinion, sentencing and parole: international trends. Roesch, R.C. and Dempster, R. Eds. *Psychology in the Courts: International Advances in Knowledge*.
[1309]Indermaur, D. and Roberts, L. *Confidence in the Criminal Justice System* op.cit.

CHAPTER 5

FINDINGS, RECOMMENDATIONS AND CONCLUSION

5.1 Introduction

This study examined the concept of criminal justice approaches and their effect on the actions of agents of the criminal justice system in Nigeria in comparison with the United States of America and the United Kingdom. An overview of the criminal justice system and the Administration of Criminal Justice Act 2015 was also delineated in the thesis. This thesis posits that the right criminal justice approaches can help ensure access to justice, which is critical to the enjoyment of human rights of persons awaiting trial: Criminal justice approaches are entrenched in policy and as such, agents of the criminal justice system have a responsibility- being constitutionally entrusted with the power not only to determine the rights and obligations of citizens - but to ensure access to justice for citizens in their day to day actions, by carrying out their duties in an efficient and responsible and ethical manner.

This study revealed that criminal justice approaches can be inferred and even perceived in substantive law, procedural law, the structure in place, and the day-to-day practice of criminal justice agents in the three jurisdictions at both the Federal/Central government level and in their respective states and territories. It reveals that the competing logics of the different criminal justice approaches exercise varying influences on the operations of the criminal justice processes in the three jurisdictions. For instance, a successful a crime control approach is indicated by successful detection, prosecution and conviction of offenders, however, where it is unchecked, it leads to abuse of power and disregard for the rule of law and due process. The due process approach places great emphasis on protecting the presumption of innocence of suspects and persons awaiting trial and ensuring respect for their rights, it is far less worried about convicting the guilty and more focused on protecting individual rights against the power of the state. The rehabilitation approach is more focused on countering habitual offending and recidivism with the ultimate aim of reintegrating convicted persons into the society as law abiding individuals. The non intervention approach places greater emphasis on less intrusive treatment and its central

policies include decriminalization of lesser offences, decarceration and diversion, of law violators out of the formal criminal justice system in a bid to help them avoid stigma and formal labels as convicts.

The Restorative approach aspires to maintain peace and order by placing emphasis on peacemaking processes; it incorporates alternative means of justice resolution and asserts that violent acts of punishment by the state are analogous to the violent acts that they are supposed to be discouraging. The Just Deserts approach to criminal justice believes that criminals should be punished because they deserve it, it tries to reduced discretion in the criminal justice processes and recommends specific actions and sentences for criminal acts without regard to the individual defendant. The Equal justice approach to criminal justice asserts that consistent consequences for crime should be meted out and seeks to rule out discretion, rehabilitation and deterrence in the quest for criminal justice based on its belief that people should be treated similarly before the law, based on their current behaviour and not on their past behaviour and future aspirations for them. The Bureaucratic approach reflects the pressure on criminal justice agents to implement the rules and procedures under constraints imposed by limited resources and public pressure to solve crimes which leads agencies of the system to establish measures of bureaucratic efficiency; the approach also adopts a pragmatic approach that identifies the rights of the person awaiting trial to a range of recognised rights that should be respected, but that these rights have limits which deter defendants from excessively asserting their rights.

The crime preemption approach is linked to preventive justice and is focused on averting crimes before they occur in order to prevent disastrous consequences. The Status Passage approach recognises public shaming as an integral part of criminal justice; a necessity to underline the law-abiding values of the community. The Power approach argues that criminal justice systems are designed to enforce the role of the powerful; as such, the criminal justice systems in the State are regarded as acting in the interest of the dominant ruling group who use the law, its machinery and agents to further their interests. The Managing offender behaviour approach to criminal justice on the other hand, combines criminal justice approaches – crime control, rehabilitation – with surveillance and relies on

monitoring, supervision and controlling offenders while they try to rehabilitate them and reduce crime.

The thesis also explored the area of criminal justice research and discovered that there is a propensity to incorporate criminal justice studies into criminology, while observing that crime theories of the criminological field are insufficient to provide adequate answers to criminal justice issues because they have been constituted specifically to explain crime. It discovered that a theoretical infrastructure unique to the study of criminal justice which explains the behaviour of the state, public agencies, the criminal law apparatus, trends in crime control thinking and practice, private crime control organizations, and trends in control is necessary and thus supported Bernard and Engel[1310] and Hagan's[1311] assertions that criminal justice as a field of research has come into its own and should be separated from criminological studies.

The main questions which this study sought to answer were; whether criminal justice approaches were important and reflected in existing criminal justice system in Nigeria? What effect they had on the administration of criminal justice and access to justice in terms of the normative and procedural framework? Could the Nigerian criminal justice approach(es) be identified? If the current criminal justice approach is not effective, what criminal justice approach(es) can improve efficiency and service delivery of the system. This thesis further explored the international jurisprudence on access to criminal justice and connected international jurisprudence to criminal justice approaches, noting the importance of international jurisprudence in setting a standard that national legislations and practice can aspire to.

This study examined the policy, procedural and practice framework in Nigeria to ascertain the effect that criminal justice approaches had on the criminal justice system and determine the extent of similarities and differences in contrast with the administration of criminal justice in the United States and United Kingdom to identify areas of similarities with what

[1310] Bernard, T.J. and Engel, R.S. 2001. Conceptualizing Criminal Justice Theory. *Op.cit.*

[1311] Hagan, J. 1989. Why so little criminal justice theory: neglected macro and micro-level links between organization and power. op cit.

operates in Nigeria, in order to identify areas in law and practice in the two jurisdictions that can influence the Nigerian administration of criminal justice and identify the inadequacies or limitations in the Nigerian normative and structural framework and practice that may negatively affect the effective administration of criminal justice. The argument of this thesis is that based on the successes recorded in the administration of criminal justice in the two jurisdictions, Nigeria is likely to benefit from their wealth of experience garnered from their approaches to criminal justice. Flowing from the above, the thesis was able to identify the criminal justice approaches which had influenced policy and practice in Nigeria.

The thesis set out to prove that the common law backgrounds of the three jurisdictions justify the comparative analysis and that a more concerted effort to focus beyond policy making to establishing an institutional and structural framework that encourages and enforces the right practice of criminal justice can be achieved as was done in the two countries. What is most important is the will to make a change. This thesis argued therefore that in the United Kingdom and the United States, research has helped shape criminal justice policy making and the way criminal justice agents think about issues, how they identify problems that need attention, which alternatives they consider for dealing with problems that come up and their sense of what can be accomplished. This is further aided by constant assessment and reassessment of the goals of the criminal justice system over periods of time which has had a beneficial impact on their administration of criminal justice and improved access to justice in the two jurisdictions. If the same method is adopted in Nigeria, there will also be improvements in the administration of criminal justice in Nigeria,

The study further revealed that in the United States and the United Kingdom, the legal framework for the administration of criminal justice is supported by rules of court and implementation policies which leave room for timely assessment and reassessment of the actions of agents of the criminal justice system and the ability of persons awaiting trial to access justice. This can be explained by looking at their method of implementation of criminal justice policy. There were widespread national stakeholder discussions on the

advantages or otherwise of adopting a criminal justice approach, then there were pilot programmes to test the approaches in specific situations to ascertain the effect of these approaches on the administration of criminal justice. The approaches were evaluated and the results influenced the amendment of existing policy and incorporated into practice and procedure in the systems. When compared with Nigeria, it is clear that their criminal justice systems are more evidence based, result driven and focused on improving their criminal justice systems in the context of current good practices.

This research further outlined the effect of the current practices in the administration of criminal justice in Nigeria on a range of issues and rights of persons awaiting trial and the subsequent impact on access to justice, painting a dismal picture of the situation of persons awaiting trial in Nigeria. In particular, Chapter Four of this thesis comparatively analysed the effect of criminal justice approaches on policy, procedures and practice in the three jurisdictions using federal legislation, the criminal justice structure and framework as the basis of comparison. It highlighted the influences of criminal justice approaches on legislation and policy initiatives, particularly in the United Kingdom and the United States of America in order to identify gaps as well as other factors that might influence the actions of agents of the Nigerian criminal justice system. This concluding chapter addresses the issues raised in the thesis and makes recommendations on how to positively affect the actions of agents of the criminal justice system in order to improve access to justice for persons awaiting trial in the Nigerian criminal justice system. A summary of the major findings of this thesis is presented in the subsequent part of this chapter.

5.2 Summary of thesis

The major question posed by this thesis was how criminal justice approaches affected actions of agents of the criminal justice and access to justice for persons awaiting trial in Nigeria? Flowing from this main question are the following sub-questions i.e. identification of criminal justice perspectives in Nigeria; and identification of the consequences of lack of access to justice in Nigeria. By focusing on these questions, it is expected that there will be an improvement in the administration of criminal justice for

persons awaiting trial through a detailed analysis of the improvements in methods of administering criminal justice drawing from the experiences of the other jurisdictions which constantly assess and reassess their method of administering justice with a view towards utilizing the right approach to criminal justice that presents their agents in a positive light and improves the confidence of the citizenry in the administration of criminal justice.

The specific objective of this study was to comparatively examine the effect of criminal justice approaches on legislation, principles and practice in Nigeria, the US and UK and exploration of successful reformative changes and interventions in the criminal justice system of the US and UK. This was done in order to identify areas where the laws and practice in the two jurisdictions could influence the normative and procedural framework of criminal justice in Nigeria and identify the inadequacies or limitations in legislation and practice that adversely affect the administration of criminal justice and access to justice for persons awaiting trial in Nigeria.

This thesis approached the above questions by first tracing the developments in the field of criminal justice. It outlined conceptions and core values of criminal justice, expounded on the rationale for separating the field of criminal justice from criminology and analysed the criminal justice process. The thesis also examined the theoretical framework of access to justice: it elucidated the elements of access to justice and lack of access to justice. International and regional jurisprudence on access to justice was discussed and a comparative analysis of the effect of criminal justice approaches was undertaken. Below is a summary of the study:

- The history of criminal justice shows the evolution of punishment, rights of offenders and victims, the introduction of policing, courts and prisons. The evolution of these components reflect the changing customs, political ideals and economic conditions of societies
- The criminal justice system in Nigeria and the US are adaptations of the British system of criminal justice. In particular, Nigeria's criminal justice system was introduced as a result of colonial rule.

- Prior to the introduction of the British system of criminal justice in Nigeria, the indigenous tribes of the geographical location now called Nigeria, practiced law for social order and had evolved authorities and institutions which were aimed at regulating society.
- The introduction of the British system of criminal justice was to govern the natives, prevent uprising and enable the exploitation of the region for its wealth and resources. The system introduced was not guided positively and was considered repressive.
- The effectiveness of the criminal justice system is dependent on the activities and decisions of actors in the agencies of the criminal justice system. Also, the effectiveness of an agency of the criminal justice system is determined by available resources as well as the organisational culture that has developed over a period of time.
- The adversarial nature of the criminal justice system in the three jurisdictions affect the way criminal justice is enforced as well as respect for the rule of law and due process. Thus it is the burden of the prosecution to establish that a crime has been committed and the court must be persuaded beyond reasonable doubt that the accused person carried out the alleged act and was mentally capable of committing the act.
- Criminal justice comprises numerous objects of study and is very broad. Criminological theories are insufficient to provide answers to questions of the administration of criminal justice because they have been constituted specifically to explain crime. Thus a theoretical approach that is unique to the study of criminal justice which can explain the behaviour of the state, public agencies, the criminal apparatus, trends in crime control thinking and practice are necessary.
- The field of criminal justice is fairly recent-just over sixty years- and there are differences as regards the goals, purposes and directions of the criminal justice system. It has been asserted that the competing logics of crime control and due process exercise varying influence on the operation of the criminal justice process and gave birth to the other approaches to criminal justice.

- Although crime control and due process were developed in the context of the US, the study by Packer influenced research in the UK and can be considered in the context of the Nigerian criminal justice system. Also, in order to understand the criminal justice system as it operates in the current dispensation, it is necessary to understand the roles, institutions, processes, substantive rules and administrative procedures of the system.
- In spite of research and analysis, criminal justice is a not unified field because practitioners, academics and the society at large have conflicting opinions as to the goals, directions and purpose of the criminal justice system. Thus there are a plethora of issues and problems as well as emerging social problems that the criminal justice system has to contend with.
- The twentieth century has brought a lot of legislative reforms in the three jurisdictions such as attempts to control new crime, modernisation of the criminal justice system, shifts in the political and economic environment, public concern about crime and in the UK, integration as a result of joining the European Union and disintegration issues as a result of exiting the European Union (Brexit).
- In the UK, a review of legislation showed a marked recognition of rehabilitative ideals up till the 1970s which led to reform and procedural changes in their administration of criminal justice. Over time, there was a shift towards a more crime control and crime preventive approach to the administration of criminal justice. However as a result of constant assessment and reassessment, there appears to be a shift towards a more due process approach with the introduction of the management of offenders approach, the nonintervention and restorative approach and a resurgence of the rehabilitative approach to criminal justice.
- In the US, in spite of civil rights concerns facing the country, particularly from the 1950s-1970s, there was a recognised focus on a rehabilitative approach to criminal justice. It was based on the belief that trained experts could administer individualised assessment and treatment that could address the causes of criminality in the way that medical doctors could cure illness. However, around the 1970s there was a decline of rehabilitative ideals towards a more punitive approach to justice based on an academic consensus that '*nothing worked'* when it came to

rehabilitating inmates. Examples of these were; the move to determinate sentencing, habitual offender laws and the abolition of discretionary parole. Deterrence and incapacitation became specific goals of criminal justice.

- In Nigeria within that same period, the country moved from colonial rule to a democratic one after gaining independence in 1960. The period since then has been interspersed with military rule as a result of which the country is in its fourth republic. During the periods of military rule, the rule of law and due process were trampled upon and laws and military decrees which were geared towards crime control, denunciation and degradation and status passage dominated. Subsequently, with the successful handing over of power in 1999, Nigeria returned to civilian democratic rule with a resurgence of efforts at restoring the rule of law and due process. Efforts were made to improve the administration of criminal justice with the enactment of the Child Rights Act 2003, Administration of Criminal Justice Act, 2015, the Violence Against Persons (Prohibition) Act 2015 amongst others. These indicate a move towards a more rehabilitative, due process, restorative justice approach to criminal justice.
- Nigeria however seems to have a penchant for rhetoric as the institutional and structural frameworks do not give effect to new legislation, thus reflecting panceaphilia, a situation where new ideas are enthusiastically embraced without any consideration for the financial resources needed or staff training amongst other considerations. For instance, Sec 468 of the ACJA 2015 provides for the option of parole and requires the Comptroller General of prisons to make arrangements. Yet there is no structural provision for parole officers and the allocation of funds to the prisons has not been increased to accommodate them.
- In their bid to prevent crime and control criminal activities, the actual practice of criminal justice has seen the prevalence of crime preemption, status passage and denunciation and degradation approaches to criminal justice. One major form of this practice is the recognition of the holding charge, which is a violation of the constitutional guarantee of the presumption of innocence of persons awaiting trial.
- International jurisprudence affirms tenets that prisoners and accused persons retain fundamental human rights and seek to protect these rights. There can be perceived

in international jurisprudence, the influence of the due process, equal justice, rehabilitation and restorative approach to criminal justice.

- There is recognised regional intention to deal with human rights violations through judicial processes. However, there is also a recognised failure of the African regional commission to impact meaningfully on the development and maintenance of human rights in Africa as a result of politicking, and power hunger by its leaders who have a tendency to sacrifice individual liberties in order to safeguard their perception of national independence, resulting in disregard for human rights.
- The establishment of a court empowered to legally condemn state parties for human rights violations has not been a guarantee of success. The problem lies in the enforceability of judicial decision in domestic courts. For instance, the African Charter has been incorporated into the body of Nigerian municipal law, however, as a result of claw back and non derogation clauses, it cannot be preferentially treated but is regarded as being at par with other municipal legislations and is thus subordinated.

5.3 Research findings

In Nigeria, the actions of agents in the criminal justice system have come under increasing scrutiny of the public within and outside the country. The many problems beleaguering the system can be attributed to two things:

i. the inability of agents/actors of the system to efficiently administer criminal justice within a recognised approach to criminal justice, or;
ii. the effect of the actions of agents of the criminal justice system on the manner in which suspects, accused persons, defendants and convicts within the system are processed.

The result of the above is lack of access to justice which has strong implications not only for awaiting trial persons, but also the society at large. Below is a summary of the research findings as it relates to the research questions:

1. Prior to the colonization of the region of West Africa now known as Nigeria, the people of the various indigenous tribes lived under different political or traditional arrangements based on their ethno linguistic differences. For example, the Yoruba and

Hausa/Fulani systems operated a centralized or Chieftaincy society while majorly in the Eastern parts of the current Nigeria their systems were acephalous in nature with chiefless societies, such as the Igbo clan system. However, there was no absolute rulership in these systems and there were evidences of checks and balances. For example, institutions like the Yoruba "Oyomesi," the Ogboni Cult and war lords existed as a system of checks and balances, thus evincing vestiges of democratic ideals.

The current criminal justice structure operating in Nigeria can be traced to colonial antecedents. During the colonial administration, the criminal justice system was introduced and organized such that the system protected the colonial administrators from the natives while the wealth of the country then known as "Protectorates" was exploited. In the course of this research it was observed that the system established under colonial administration was built on over the years and expanded into what currently operates as criminal justice today.

The administration internalized a culture of oppression of the natives and violence and extortion were major tools of suppression. This led to the manifestation of corrupt practices such as favoritism, nepotism and extortion, all of which are indicative of a power model and a denunciation and degradation approach to justice. The colonial government politicized the criminal justice system in order to retain its hold on power. Post independence, the criminal justice system still retains vestiges of the power and denunciation approaches to criminal justice, particularly law enforcement and the prison administration.

The military occupation and administration of the country which supported tightening/introduction of criminal sanctions, firing squads, massive arbitrary arrest and detention, support the power and denunciation and degradation approach to criminal justice. There was an upsurge of corruption, lack of accountability, disregard for the rule of law and due process and police brutality which still flourish in the Nigerian criminal justice system. Thus Nigeria appears to primarily operate a power

and denunciation approach to criminal justice with varying degrees of crime control, due process, crime preemption and just deserts approaches to criminal justice.

2. A comparative analysis of criminal justice in the three jurisdiction reveals that the US and UK are a mix of traditional and modern institutions. Although there are strong elements of crime control and crime preemption. They are tempered by a strong recognition and adherence to the due process, equal justice, rehabilitation, equal justice, restorative, nonintervention and managing of crime and criminals approach to criminal justice. There is also a strong adherence to the rules of criminal procedure which has yielded positive results for suspects, accused persons and persons awaiting trial unlike the Nigerian criminal justice system which has established criminal procedures but fails to adhere to them.

   There have also been more active research on criminal justice processes which have affected existing legislation and resulted in the introduction of new legislation. In Nigeria, for example, domestication of laws such as the Administration of Criminal Justice Act 2015 into state law has been slow. This will have negative implications for the criminal justice system as majority of criminal cases are heard at magistrate courts which are state courts.

3. Lapses in the Nigerian criminal justice system were identified in the pretrial and trial processes which result in lack of access to justice. This invariably leads to injustice, human rights abuses and undermine the rule of law and due process. Examples of such are poor police/public relations, broad powers of agents of the criminal justice system, particularly the police and public prosecutors which leave room for manipulation of the criminal justice process, delays in the criminal justice process, corruption, procedural factors such as the holding charge, lack of coordination between criminal justice agencies, limited resources and inadequate legal representation and assistance, failure of government to address pressing security issues and the plight of those remanded in prison whether awaiting trial or convicted.

Also, agents of the system are accused of being insensitive, unresponsive, corrupt, unethical and rigid. There are assertions that the agencies of the criminal justice system are understaffed, overworked and undervalued for their performance in the face of difficulties they face daily in the administration of criminal justice. Both positions outlined are correct, however, the administration of criminal justice must conceive of an effective means of addressing the problems of the criminal justice system in order to meet the current realities of the system and the people.

4. The consequences of lack of access to justice for persons include health issues, recidivism, remand of a large proportion of awaiting trial persons in prisons, increase in crime rates, introduction of awaiting trial persons to criminal activities, violations of the constitutionally recognised and protected rights of suspects and persons awaiting trial, mass release of inmates due to overcrowding, arbitrary arrest and detention, and long duration of pretrial/trial detention. The implications of lack of access to justice on the rule of law is that there is harm done to the ideas of basic fairness, due process and equality before the law, there is constant fear of retribution where people speak up against human rights infractions. The ultimate effect of lack of access to justice is the loss of confidence in the criminal justice system which can lead to jungle justice and vigilantism.

5. An integrated approach to criminal justice which encompasses the crime control and crime preemption, due process, nonintervention, managing offender, bureaucratic, rehabilitation and restorative approaches to criminal justice is recommended for the criminal justice system.

5.4 Conclusion

From the above findings, it can be concluded that a successful criminal justice system must ensure that modalities are put in place to ensure that it is possible to regulate the actions of the agents of the system. This research was aimed at a more rational criminal justice system that is efficient, just and humane. An ambitious attempt was made to assess the effect of criminal justice approaches on policy and practice: on the actions and inactions of

agents of the system. The study showed that criminal justice approaches give meaning to what different members of the society see and experience in the criminal justice system. The approaches tend to focus on the various actors in the criminal justice system; that is agents, victims, witnesses or specialists and even the community as a whole. As such, each approach focuses on the different needs and consequences of the system. As stated earlier, no one perspective answers all the needs of the system or the particular agencies for that matter.

This research was premised on the fact that the manner in which the functions of the agents of the criminal justice system are executed in line with recognised criminal justice approaches is a clear indication of the recognition of the need to ensure access to justice. To this researcher, this research does not answer all questions about ensuring access to justice. If anything it raises even more questions and is hoped to be a spring board for further research on criminal justice approaches and how to ensure access to justice not just for awaiting trial persons but victims of crime, witnesses, the families of victims and awaiting trial persons and the society at large in the context of modern day realities.

From this research, it can be observed that the relative success enjoyed by the U.S. and UK criminal justice systems is not by luck but by constant assessment and re-assessment in terms of recognised justice appraisal mechanisms and recognition of various approaches to criminal justice and the enactment of complementing policies to give effect to substantive and procedural laws. For instance, Nigeria's anti corruption laws are more stringent than that of the US and UK, however, the main problem is enforcement, respect for the rule of law and due process.

What is the attitude of actors of the criminal justice system to issues like integrity, corruption, accountability? Rather than answer these pertinent questions, people take sides based on tribal, religious or political affiliations or worse still, pecuniary benefits. There are constant agitations for strong institutions but the reality is that strong institutions do not sprout from the ground, neither are they automated; strong institutions have to be built and nurtured. In the words of Dr Martin Luther King "*...somewhere we must come to see that*

human progress never rolls on the wheels of inevitability. It comes through the tireless efforts and persistent work of dedicated individuals…"[1312]It is only through persistence, hard work and accountability that there can be actual progress on the problems experienced by the criminal justice system. The reality in Nigeria is that there is a belief in 'laws' as against good faith implementation. There are really no conscientious attempts to implement the laws passed as even the Government is constantly accused of selectively implementing laws and court decisions.

For a country that preaches the importance of reform: rehabilitation and restorative justice, it is necessary to set up the framework for the attainment of these noble aspirations. A criminal justice system that does what it professes to do: serve and protect the citizens, is crucial to the sustainment of democracy and its ideals. On the other hand the nation cannot continue to utilize obsolete laws because they have a basis in the history of the people. It can be agreed that the greater good of the people must be considered in the administration of criminal justice, at the same time balancing the needs of the awaiting trial persons and the resources available and the needs of the agents of the system.

There are always going to be agents/actors in the criminal justice system who will rail against change. Rather than devoting time and effort to trying to beat them, or prove them wrong, it would be much better to figure what is most important. Also, the legislature is very important to any agenda for change in our approach to criminal justice as the quality of our laws determine the quality of policies, which will further influence procedures and practice and ultimately lead to the desired reform. The administration of criminal justice involves organizing and supervising organizations and institutions. Procedures for administering criminal justice refer to a set of actions which is the accepted way of doing things. In short it is about the agents of the system obeying rules, being fair and equitable and displaying standards and values which are expected to be adhered to and maintained in the discharge of duties.

[1312] King, M. L. (Jnr). April 09, 1968. Remaining awake through a great revolution. A sermon Delivered at the National Cathedral, Washington, D.C. Congressional Record. Retrieved 03 March, 2018 from https://kinginstitute.stanford.edu/king-papers/publications/knock-midnight--inspiration-great-sermons-reverend-martin-luther-king-jr-10

Currently, there is a recognition of the importance of focusing on the manner in which criminal justice is administered on awaiting trial persons. This increased attention derives from the realization that due process and respect for the rule of law promotes discipline, accountability, efficiency and high ethical standards which when aspired to, can help the criminal justice system achieve its goals of crime control, crime prevention and the security of lives and properties of citizens and this is what is most important for the success of any endeavour. Attaining a standard criminal justice system is like an Olympic medal; nothing beats the feeling of being able to beat your chest proudly about your standard achieved through hard work and persistence.

5.5 Recommendations

At present, the Nigerian criminal justice agencies are being criticized for their perceived inability to expand and adapt to the needs of the society in terms of protection of citizens and crime control as a result of the failure of government to address the pressing security threats and plights of those remanded in prison either as convicts or awaiting trial. Opponents of the current administration of criminal justice accuse actors and agencies of the system as being insensitive, unresponsive and corrupt, unethical and rigid, while their advocates aver that they are understaffed, overworked and undervalued for their performance in the face of the difficulties they face daily in the administration of criminal justice.

Depending on one's point of view, both positions are correct, but realizing that the problem of crime prevention, crime control, security of lives and property of the citizens and problems faced by the administration of criminal justice will not go away, means that an effective means of adjusting the criminal justice system in order to meet the current realities of the circumstances in which they must function is a necessity.

There is a need to recognise that enacting laws alone will not solve any problem, as effective reform requires an integrated approach to criminal justice. The following recommendations are proffered:

i. Government should recognise the need to consider the recognised approach(es) to criminal justice that best suits our nation's administration of criminal justice.

ii. Government should recognise that access to criminal justice is linked to the recognition of other rights, whether civil, political, economic, social or cultural in line with the sustainable development goals

iii. Government should recognise the importance of working, planning and coordinating the affairs of the criminal justice system within recognised approaches as this plays an important role in protecting and fulfilling economic, social, cultural or civil rights;[1313]

iv. Government should recognize the need for timely assessment and reassessment of the administration of criminal justice in consonance with the recognised criminal justice approaches.

v. Government should improve the criminal justice system's capacity to provide justice by releasing more funds and equipping all the agencies of the criminal justice system for the purpose of building and establishing the institutional framework to support the normative framework, which includes infrastructure to match the criminal justice needs of an estimated population of 190 million plus, in order to be able to function in the 21st century.

vi. Government and the agencies of the criminal justice system should recognise the need to ensure respect for the rule of law and due process rights of awaiting trial persons by not just paying lip service to respect for constitutional provisions on the treatment of accused persons in line with recognised international and regional jurisprudence, but give effect to them.

vii. Agencies of the criminal justice system, particularly the officers and prison officials, need to pursue ethical enforcement mechanisms as contained in their respective code of conduct.

viii. Tertiary institutions concerned with teaching criminology and criminal justice should consider the recommendation that criminal justice studies is distinct from criminology and that criminal justice studies, if recognised and broadened in scope,

[1313]Akinbola, B.R. (2015) "Prioritization of the Protection of Economic, Social and Cultural Rights: A *Sine Qua Non* for Achieving a Holistic Human Rights Protection" in Akinbola, B.R. et al (ed.) University of Ibadan Journal of Public and International Law Vol. 5 (2015) Department of Jurisprudence and International Law, University of Ibadan, Ibadan.

can enhance critical systems based approach to the study of the agencies and actors in the administration of criminal justice.

ix. Government and administering bodies of the agencies of the criminal justice system should encourage training and retraining of actors in the administration of criminal justice on the need for good practices and procedures that foster confidence in the criminal justice system; particularly the police and other law enforcement agents who are recognised as constantly flouting the established rules and regulating the behaviour of law enforcement agents. This does not detract that there needs to be a reorientation of agents of the criminal justice system to be professional in their actions.[1314]

x. Government should recognise the need for an efficient and well funded criminal justice system in line with the bureaucratic model of justice which is in essence about the management of resources allocated to the system. Where there is mismanagement and looting it goes against the bureaucratic model of criminal justice which is an important component of any criminal justice system. Admittedly, the amount of financial allocation allotted to the criminal justice system is a sore point in a lot of criminal justice systems and Nigeria is one of the worst hit in terms of resources and financial allocation when compared to the U.S and the U.K.

xi. Government should recognise that rehabilitation is an important aspect of corrections and there is a need to acknowledge that rehabilitation goes beyond religious admonition and skill acquisition. There is also a need for monitoring of convicts to prevent reoffending or better still, to monitor them and keep them in good behaviour. From the other jurisdictions, it is apparent that parole officers complete the rehabilitation approach and indeed any approach that seeks to reduce recidivism.

xii. Government should introduce more technological advances to aid criminal justice such as information bank for facial recognition, fingerprint, DNA samples and data

[1314]For instance, this researcher recalls a fellow counsel who was called to the police station to bail a young man who had been arrested for beating his wife. On getting to the police station, he was informed that the couple had been sent home to settle the matter as it was a "domestic one" This disregards the provisions of the VAPPA 2015 Act which details prompt action for domestic cases. On interacting with the law enforcement agents, it was discovered that they were not aware of the VAPPA, 2015 and even the administration of criminal justice act 2015.

bank that stores all other information that might be pertinent to the administration of criminal justice.

5.6 Limitation of study and areas of further research

This study examined the effect of criminal justice approaches on legislation and the actions of agents of the criminal justice system on persons awaiting trial and access to justice. The study argues that a legislative framework that is not complimented by a structural and policy framework and practice of agents of the criminal justice system in line with the rule of law and due process is bound to make a mockery of the system as a whole. Thus, although it is necessary to improve the normative framework of the Nigerian criminal justice system, any improvements would be rendered ineffective if the structural framework and actual practice of the agents of the criminal justice system do not compliment the normative framework.

This thesis recommends that future studies on improvement of access to justice in the criminal justice system in Nigeria should focus on both the practice and the theory. Key areas of necessary reform in Nigeria include:

1. More careful selection and supervision of criminal justice agents, which utilizes psychological evaluation in job selection amongst other uses.
2. Devising training that orients all agents of the criminal justice system to the fact that their duty is first and foremost to citizens and not to the affluenced, the influential and those in power;
3. Improving the financial and infrastructural support of the administration of criminal justice in Nigeria to meet the realities of the twenty-first century, the growing population and the rhetorical affirmation of rehabilitation, restoration, equal justice and respect for the rule of law and due process;
4. improving substantive law to meet the current realities of criminal justice; improving facilities that will allow for frequent use of pretrial detention as a means of ensuring appearance in court; addressing holistically, the issue of holding charge;
5. a more effective control of prosecutorial charging; moderate use of plea bargaining and seeking modalities that allow for judicial approval of plea bargaining;

6. introduction of more secure non-custodial remand arrangements for minor offences that utilizes the technological advances of the twentieth century; increased funding of the criminal justice system in light of the current population needs of the country and the security agencies;
7. improving the investigative capacities of law enforcement and enforcing recognition of the accused person's right to the presumption of innocence, informing the accused persons of their rights to silence and legal representation, this is particularly so, in view of over-reliance on confession as the main stay of the prosecutor's armoury against the defendant, particularly as there are constant allegations of the use of torture, degradation amongst other infractions to ensure confession.

An ineffective criminal justice system can only eventually lead to complete loss of confidence in the criminal justice system, law and order and subsequently affect sustainable development of the country. It is ardently hoped that this study will benefit policy makers in considerations of improving the administration of criminal justice and access to justice for persons awaiting trial and the criminal justice system as a whole. It view of its scope, it is also hoped that it will be beneficial to comparative and global researchers with respect to the issues examined in it. Although this study may not have addressed every issue related to the criminal justice processes and the administration of criminal justice, it is hoped that it has helped deepen the understanding of the subject and will provoke other researchers to pursue further research in this area.

5.7. Contribution to knowledge

The contribution to knowledge of this research work cannot be over stated. It includes understanding and appreciating criminal justice approaches within the framework of political, economic and cultural factors that shape the views and actions of actors in the criminal justice system. The research informs that the criminal justice system is indeed very large and multifaceted. In the light of its plentiful manifestations, objectives and the day to day nature of the criminal justice system, ensuring access to justice for awaiting trial persons actually requires more than one approach to criminal justice.

The research highlights the multifaceted nature of the criminal justice system and recommends the adoption of more than one approach to criminal justice in order to ensure access to justice for persons awaiting trial. Thus, an integrated approach to criminal justice which encompasses the due process, equal justice, non intervention, managing offender, bureaucratic, rehabilitative, and restorative approaches are recommended. These are actually best utilized interchangeably, as the system demands. This is not in any way a denunciation of all the other approaches- they have their moments, particularly when it comes to sentencing and management of convicted persons in prisons.

At the end of the day, laws without the proper infrastructural support and given effect by practice reflective of the rule of law and due process are useless. The true effectiveness of any legal framework lies in the actions of actors in any agency who give effect to laws. This is because although the primary aim of the criminal justice system is to apprehend offenders, secure the life and property of the citizenry and ensure security, it is the actions of the agents in the day to day administration of criminal justice that gives a true indication of the approach to criminal justice.

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