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CRIMINAL JUSTICE ADMINISTRATION

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MODULE 1

UNIT 1: INTRODUCTION TO THE ADMINISTRATION OF CRIMINAL JUSTICE IN NIGERIA

Content

1.0 INTRODUCTION

Language has both communicative and emotive functions, it transmits information and creates attitudes. For this reason, it becomes important that you get acquainted from the outset with the meaning of certain terms and expression which you may come across in your study of the Administration of Criminal Justice. This has an added advantage of preparing your mind for the general views and the scope of the subject.

2.0 OBJECTIVE

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

1. Definite some legal terms
2. Explain the scope of the causation, correction and prevention of crime.
3. Identify particular events which have impacted the historical development of the Administration of Justice generally and Criminal Justice in particular.

3.0 MAIN CONTENT

Certain words and expressions are multi-dimensional. There is therefore the need to define our terms and be *ad idem* from the outset.

3.1 DEFINITION OF TERMS

Criminology;

The study of crimes and criminals as social phenomena. The study of causation, correction, and prevention of crime.

Security;

The state of being secure, especially from danger or attack be it internal or external; Any of various means or device designed to guard persons and property against a broad range of hazards, including crime, fire, accident, espionage, sabotage, subversion and attack.

Justice;

The fair and proper administration of laws.

Social Justice;

Justice that conforms to a moral principle, such as that all people are equal.

Substantive Law;

The part of the law that creates, defines and regulates the rights, duties, and powers of parties. Examples are the Criminal Code, the Penal Code, the Sharaih Law etc.

Substantive Justice;

Justice fairly administered according to the rules of substantive law, regardless of any procedural errors not affecting the parties substantive rights;
a fair trial on the merit.

Administration of Justice

An enterprise of subjecting human conduct to the governance of rules.
A juristic delivery system or a machinery, apparatus or arrangement designed to ensure justice in the society.

Judiciary:

The branch of governance invested with judicial powers, the system of courts in a country.
The body of judges, the bench, that branch of governance which is intended to interpret, construe and apply the law.

3.2 ABOUT NIGERIA

Modern Nigeria is a Federation of 36 States and a Federal Capital Territory. She has a population of 140 million, surface area of 923.768 sq km, demographic growth per cent of 2.4, life expectancy of 44.9 years, index of human development of 158/177, GDP of USD 390 per capita; and growth rate per cent of 3.9. There are about 45.0 per cent

Moslems, 40.0 per cent Christians and 10.0 animists. The official language is English.

Activity
Pause for a moment. Mediate over the little we have so far spoken of Nigeria. When you have assimilated this, try to cast your mind back to some 200 years ago, and attempt to visualize what the same territory was like. Attempt to describe a picturesque view of how the territory now called Nigeria would have been say in 1800 AD and before.

When the early explorers and missionaries arrived at the territory, what could they have found?

3.3 PRE COLONIAL CRIMINAL JUSTICE

Administration
Prior to the advent of Europeans in Africa, what is today Nigeria comprised pockets of tribal settlements and societies. Such settlements and societies probably began with one man, then his family. They would have expanded by marriages, births, migration, conquest and annexation among other factors. Commerce would have accelerated the growth. There would have been other characteristics:

They were organized;
each of them had its own legal system, and methods of dispensing justice, however differently or deficient; for example, Customary Law;
each had its varieties of customs and they are innumerable;
in the Northern parts, the Hausa-Fulani Caliphate had firmly established an Islamic system of justice especially the Maliki School brand;
in the South and some parts of the middle belt, Christianity held sway;
each had its procedure for adjudication and enforcement; and
each had its correctional measures, methods and institutions.

What can we then say of the set up. Is it an Administration of Justice System or Systems?

3.3.1 What is a System?

A System presupposes that its constituent parts are working towards the corporate interest of the whole. Examine the example of human beings, it can be called a system. Every part of the human body works for the good of the whole and any affliction of its smallest part affects the whole body. In the same way, the Society is a System. The function of the law and indeed, criminal justice administration is to ensure equilibrium and stability. It restores a balance when crime and criminals

attempt to distort it, it calls in aid, its agents – the Police, the Courts and the Prison to reconcile disputants and restore law and order, whenever instability or disorder is noticed.

Self Assessment Exercise 1

To what extent does the Pre-Colonial legal order meet the description of "a System", if at all?

3.3.2 Were there Criminal Justice Administration Systems?

The different tribes had (and still have) their individual systems of customary law and criminal justice administration.

The Sharia System was established in the North before the advent of the British Colonialists. In this system, the Holy Qu'ran is the embodiment of both the substantive and procedural laws and offences committed determine the sanction and standards of proof. Its laws are seen as divine, higher and superior to legislations.

In some parts of the South and Middle Belt, customary and Criminal Justice Administrative System was in operation. The customary law was unwritten. It reflected different kinds of rules, beliefs, folkways, norms and values which over time transformed into Rules and Conduct. There were many different kinds

In other parts, Goldie's National African company and the consulate in the Niger Coast Protectorate made their laws which they enforced with military might.

Self Assessment Exercise 2

1. Can you describe the legal order as a system or systems?
2. Compare and contrast what obtained before and after the advent of British Colonialists.

3.3.3 Foreign Incursion

The initial independent settlements expanded by birth, marriages, migration conquest and by other factors and grew more complex. From the fifteenth century, foreign traders and missionaries also came into different parts of the entities now known as Nigeria. As at then, the entities had grown into kingdoms and empires, with diverse cultures and families from other parts of Africa and Europe.

Aside from the co-existing customs and customary laws, there were added, innumerable foreign customs, customary laws, Islamic families of law, **Neutical** laws, foreign commercial laws etc.

Following the Treaty of Cession, 1861, a British Colonial Administration was established over the kingdoms, and Empires. The common law of England, doctrines of Equity in force in England, Statutes of General application, local statutes, and those specially enacted for the colony or British dependencies were added to the already complex families of Laws that were in part Roman-Germanic.

New Court Systems were established. Examples were (a) Consular Courts, Courts of Equity to regulate trade and settle trade disputes (b) Supreme Court with Civil and Criminal jurisdiction, Court of Civil and Criminal Justice, to enforce the received foreign laws among others. (c) Appellate Courts were also created. Examples are the West African Court of Appeal (WACA) and the Judicial Committee of the Privy Council (JCPC).

The Royal Niger Company (1866-1899) and the Oil Rivers Trading Firms (1885-1900) ruled over the Oil River and Niger Coast Protectorates. They waged wars against the people; made laws to protect their commercial interest. The protectorate of Southern Nigeria was in 1900 set up to annex the areas comprising the Royal Nigeria Company and the Nigeria Coast Protectorate(or Oil Rivers) South of Idah. The Protectorate of Northern Nigeria similarly absorbed the territories of the Royal Niger Company north of Idah. New laws, new Courts, new court personnel, new process of administration were evolved to serve the needs of the emergent political set-up. The colony of Lagos and the Southern Nigeria Protectorate merged in 1906 and with further amalgamation of the Northern Nigeria Protectorate there emerged in 1914 what is now known as Nigeria. At every stage, the laws hitherto existing were repeated and were re-enacted to conform with the political structure and recruitment of court personnel were amended to reflect the political developments and serve the economic needs of the imperial government.

The Nigeria Order-in-Council, *(Statutory Instrument N0. 1146 of 1954)* declared Nigeria as a Federation of three Regions and a Federal Territory of Lagos. The Court Systems were reformed in 1933 and 1943. The reforms were profound and they introduced the structure of courts as they exist today. The Court System was reconstituted, from time to time providing for a Federal Supreme Court, a High Court for Lagos Colony and each Region, and a System of Magistrates' Courts, among others. Also created were Statutory Customary Courts in the Western and Eastern Regions and Statutory Native Courts in the Northern Region. Two years later, the Northern Region created a Moslem Court of Appeal to determine appeals from the Native Courts on matters governed.

Following the recommendation of the Panel of Jurists on the Reform of the Legal System in relation to the application of Moslem Law to non-Moslem, further changes were made on the eve of Independence.

Examples of such changes are:-

The Sharia Court of Appeal was set up on 30 September, 1960 to replace the Moslem Court of Appeal.

Penal Code, 1959 was enacted to replace the Criminal Code and absorbs more of sharia'h in the Northern Region

High courts were to hear appeals from Native Courts on issues that are non-Moslem. Sharia Court of Appeal heard appeals on other matters

A court of Resolution was established (1960) to resolve jurisdictional issues between the High Court and the Sharia Court of Appeal.

Certain changes also took place in other parts of the Federation. Examples are:-

The Western and Eastern Regions set up new customary courts system

Western Region repealed all the foreign laws and re-enacted then into 6 volumes

The laws of the Federation were published in 12 volumes

Post-Independence Nigeria:

Nigeria became an Independent Country under the Monarchy (1960) and a Republic within the Commonwealth (1963). The laws and the Courts systems were reconstructed accordingly.

Other fundamental changes had occurred which impacted the administration of Justice. Examples are:

A declaration of a state of Emergency over the Western Region and

The abolition of the Customary Court Grade D (1962) in Western Region

Appeals to the Judicial Committee of the Privy Council (JCPC) were abolished (1st October, 1963) and the SCN became the final Court of Appeal.

The mid-Western State was created on August 9, 1963 and operated the laws of Western Region until they were repealed or annulled.

Military Intervention

The Armed Forces in Nigeria seized Political power in 1966-79 and 1983-99 and also carried out some changes to wit:-

It suspended the Constitutions

It ruled by Decrees and Edicts
It set up a Federal Court of Appeal (1976)

Federal Court of Appeal heard appeals from the High Court, the Federal Revenue Court, Sharia Court of Appeal and from certain Tribunals (e.g. Robbery and Firearms Tribunal).

It conferred upon itself the power to appoint the Justices of the Court of Appeal and the Supreme Court after consultation with the Advisory Judicial Committee.

Self Assessment Exercises

Account for the different laws that operated in what is now called Nigeria in the 19th Century

Challenges

The Administration of Criminal Justice has passed through a number of phases;

1. Pre-Colonial times characterized by religious structure, law, customs and customary laws
2. Colonial phase featuring legal law, to wit foreign laws, rule of law and codified laws
3. Contemporary times of Technology afflicted with technical rules and the problems of harmonizing the techno-structure of modern times with a living law and legal system or other social structures
4. The high rate of development and the lower speed of the legal System and failure of the Law as an effective counter balancing measure
5. The limitations inherent in Criminal Justice Administration during the different phases of political development and the relationship between the different actors.
6. The Subordinate status or rejection of the customary law and problems relating to the nature of law.
7. Law, Social change and emergent legal structures in Nigeria: problems and prospects.
8. Influence of Modern Global Trend
9. Problems relating to adjudicatory system in criminal justice Administration
10. Penal policies and administration.

4.0 CONCLUSION

This is an over-view of the historical development of the process of administration of justice. Criminal justice Administration before 1862 was in accordance with the Customary Law. Colonialism marked the establishment of the English System of Criminal Justice Administration

and persistent subordination or rejection of the Customary Law and practices. The aim had been to define, establish and protect British administration and what it considered necessary for achieving maximum strategic and economic interests. The Post independence democracies (1960-65, 1979-83, 1999 to date) and the Federal Military governments (1966-79, 1984-99) in the main perpetuated the colonial legacy. At the same time, there were significant changes and challenges. The changes were not imbibed by any gradual process but were imposed by force.

5.0 SUMMARY

You have explored the transformational impact of formal criminal justice administration from pre-colonial to modern times. The Colonial Legal System brought about major changes especially in the courts system. The question remains: was the Pre-Colonial justice system able to meet the requirements of natural justice and the needs of the people? Has the Modern System of administering justice met the needs of modern age and natural justice? Is it possible to combine the best of both systems? You will be able to form your opinion on these issues as the lesson progresses.

6.0 TUTOR MARKED ASSIGNMENT

Write brief Notes on the Criminal Justice System in the period:-

(a) Before 1862
(b) 1862-1899
(c) 1900-1913
(d) 1914-1960.

7.0 REFERENCES/FURTHER READINGS

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UNIT 2: PRE-COLONIAL MODEL OF CRIMINAL JUSTICE ADMINISTRATION

Content

1.0 INTRODUCTION

In Pre-colonial times, there were no written laws, court systems and procedures as you have today. The early pre-colonial societies were pre-literate. However, there were juridical structures, which performed the very functions of Judicial organs of modern government. This is what we shall attempt to unveil in this Unit.

2.0 OBJECTIVES

When you have studied this Unit, you should be able to:

1. Critique the Traditional System of Criminal Justice Administration
2. Highlight the "barbaric" as well as the "excellent" aspects of the pre-colonial practices
3. Assess the extent to which traditional practices co-exist with modern practices, the consequence and impact.

3.0 MAIN CONTENT

Western philosophies have argued that customary law is no law *stricto sensu*. The reasons for this are:

1. Customary law does not emanate from a Command
2. There is no laid down machinery or apparatus for enforcing its judgment
3. It lacked procedural rules.

There were also a number of counter arguments by writers who have accepted customary law as law. They have argued that the law does not

necessarily have to be a command, it felt obligated to obey it. You will learn more about these controversies in the subsequent units.

3.1 SUBSTANTIVE CUSTOMARY RULE

In reality, there existed before the European advent, the customary law system. It was not common law. It was not made by any competent legislature. It was there, binding the parties who were subject to it and was enforced by social pressures.

The Customary Law recognizes criminal behaviour and civil wrongs. It has different and varying modes of punishment for crimes or redress for other wrongs. Customary Law is passed down from one generation to another, what the Monarchs did was merely to declare it. Where in doubt, they consulted the oracle.

According to *Narebo, (19..),* Criminal acts are public **delits**, acts or omission which bring about reactions from the whole community, almost amounting to a collective feeling of indignation, which inflict a penalty on the perpetrator and everyone can take part. Examples are homicide, witchcraft, adultery,(in chiefly societies), stealing, assault etc.

A crime is a wrong other than a civil wrong. A civil wrong attracts a domestic or family proceeding relating:

to the investigation of disputes between family members, -the selection of a successor to the property of a deceased member,
the distribution of the property of a deceased,
the appointment of a new head of family
adjustment of family and residential rights and -questions relating to marriages and divorce.

3.2 PROCEDURAL RULES

Customary law had its machinery of justice, and established methods of compensating civil wrong or punishing the criminals.

Liability
Under the Customary Law, liability may be total or partial. The general principle of responsibility is that an adult of full discretion bears full liability for wrong committed by him.

Partial Liability may lie where the wrong doer or offender is under the age of puberty or insane or where he/she acted under a reasonable mistake or self defence. Intoxication is not a defence in the customary criminal law. Rather, it is a crime.

Arrest and detention
The Customary law has established organs that perform the duties of arrest and detention. Members of the secret societies, age-grade, 'dangorai', 'olopa' etc served as the 'Police' and they could search, arrest and detain in the way custom had laid done, not otherwise or arbitrarily.

Personnel
Persons who administer Criminal Justice vary. The monarchs, chiefs, Imam or Village heads preside over serious crimes. Elders and Arbiters preside over less serious wrong doing. Arbiters may include Islamic legal Scholars. Sometimes Diviners, witch doctors, members of secret societies and oraclists are involved. They are all persons well known to the parties and in the community.

Venue
Generally, trial proceedings hold in the village squares or under a big tree or some part of the monarch's palace. They may take place in the component of the most senior chief. Often they hold at night under the moon light.

3.3 TRIAL PROCESS

Trial process is open; participatory and inquisitorial. The presumption of innocence is not prominent. The belief is that there is no smoke without fire. All the parties in the dispute are heard and no arbiter, elder or chief sits on his own case. The present day rule of law obtained and still obtain. A powerful chief could influence a matter in which a member of his family was involved by securing adjournment. The idea is to give room to mend the fences. The required standard of proof is higher in serious offences than in the minor. In trying serious offences like brigandage, (robbery)adultery, fornication, theft or apostasy (i.e. Offences classified as Huddud), Islamic law demands that there must be at least evidence of three competent male witnesses, whose testimonies are similar and corroborative. In essence, the nature of offence dictates the acceptable standard of proof.

Trial is by ordeal. Confessions may be extracted or obtained under threat of force or of evil spell. A criminal charge is proved upon strong suspicion. A person accused of criminal behaviour has a right to keep mute, but such a response is construed as an admission of guilt.

Verdict
If the evidence adduced is overwhelming, the accused is guilty and is punished. Otherwise he/she is not guilty and set free. Where the

evidence is not conclusive, as is sometimes the case, the accused person may be required to:

Drink the sasswood,
Drink water used to wash the body of the murder – victim, and
Walk on a rope across a deep pit.

The belief is strong that the innocent person would sail through unhurt but the guilty person would sink, die or be forced to confess. These extremes are resorted to if the accused is difficult and commonly in capital crimes.

The general defences open to an accused person facing trial comprise:-

insanity,
self defence,
mistake,
infancy etc.

At times, they serve as partial defences only. Intoxication may be a defence in some jurisdictions. In Islamic Law, intoxication is not a defence (partial or total). Rather, it is crime per se, and therefore compounds the case of a defendant seeking to mitigate the consequence of his/her criminal behavour by such a plea.

Specific wrongs attract particular sanctions based on whether such a wrong is civil or criminal. Criminal behaviour which affect lives are often capital crimes. Examples are intentional killing, killing arising from witchcraft, other serious crimes like sorcery, and adultery with the Queen.

The reason is that offences of this nature torch on the physical welfare of the community. They constitute gross disrespect to the supernatural powers and so endanger the whole community. Other less serious offences or offences against property or reputation are compensated.

The sanctions, which exist under the traditional legal system mostly are negative sanctions and they include the following:

Supernatural punishment
Offer of sacrifice
Compensation
Marriage between a deceased female and male offender
Marriage between male victim and the female offender
Undertaking funeral expenses of the deceased
Free herbal expenses (eg. where a victim is incapacitated, and the offender or his family feeds him/her)
Tendering of a slave, pawn or sale of a male member of offender's family.

Collective responsibility
Suicide (opening the calabash)
Banishment
Revenge
Magun (casting a spell to kill male Adulterer)
Corporal punishment
Fines, restoration, compensation
Holding a debtor's whole family liable for debt.
Psychological sanctions e.g. reproach, ostracism, imprisonment.
Loss of limb and death by stoning under the Sharia'h

Positive rewards, to wit;

Praise
Recognition
Conferment of honours, prestige or title.
Privileged marriage e.g. gift of a monarch's or an honoured chief's daughter for a wife
Sanction is apportioned depending on whether or not the criminal behaviour was intentional, unintentional, or permissible. There is seldom recourse to imprisonment thus the penalties available in the customary law are largely non-custodial. They are mostly reconciliatory, reformative, rehabilitative or restitutive.

There may be substituted sanction, whereby a guilty man could earn a substituted sentence of farming for a victim.

Narebor explains that the customary distinction is discernible from the variety of sanctions consistently imposed on what custom recognizes and identifies as criminal acts in contra – distinction with civil wrongs. In all these things, the Judge is a peace maker, anxious to effect reconciliation, if possible, by making one to pay a fine or compensation to the other or to restore such other's property being illegally withheld.

3.4 APPEALS

An aggrieved person can appeal against the decisions, from the family court to the Elders Council, and thence to the chiefs' council and finally to the Monarch who is the fountain of Justice. His court is the highest court under the customary law.

The traditional criminal Justice administration is cheap, quick, convenient, and convincing. It meets the goal of Justice and serves the purpose of the society. The native justice reflects the values, beliefs, and aspirations of the people.

In some cases, the penal philosophy may be that the offender must be punished. The measure of punishment is "not less and not more" than initial injury. Huddud offences are grievous; they carry a mandatory capital sentence. Examples of such offences are rebellion, adultery. Death sentence is executed by stoning the convict to death. Drinking alcohol attracts flogging. It is loss of a limb for theft. The punishment for less serious offences is discretionary and may range form admonition, fines, seizure of property, threat or reprimand.

Western philosophers have criticized the penal sanctions as "barbaric" and "savagery", "repugnant to natural justice". The Judges were Europeans; the standard of reference was British. Conversely, Islamic Scholars argued that the penalties under the Sharia'h are prescribed by Allah and should not be judged by human reasoning and standards.

The Islamic Legal System observes the doctrine of separation of powers as follows:

Ijma: exercises legislative powers

Imam: exercises spiritual and intellectual powers and perform executive functions

Kadis: Exercise judicial functions

The Caliph and Sultan of Sokoto is the head of the Islamic Caliphate.

The Holy Qu'ran is the Supreme law over all persons, who observe it and over all issues to which Islamic law applies.

4.0 CONCLUSION

Administration of Criminal Justice is concerned with adjudication process, application of remedies to violated rights. Criminal process is concerned with punishment of offenders. You saw how the traditional society processed the offenders. In the next Unit, you will see how the Western Model and Colonial Africa began to do the same thing in a different way. You are equipped to be able to see the impact of the conflicts on crimes and criminals, public order and security. This Unit is particularly relevant to you as a student of criminology and security studies whose major pre- occupation is the study of crimes and criminals as well as the internal and external security of the state.

5.0 SUMMARY

In this Unit you have learnt

The way our fore fathers processed offenders and kept the community secure from internal and external threats, and maintained socio-legal order

That substantive and procedural laws existed in pre-colonial times, although they were not in the form known to the early Western philosophers

Early western writers did not recognize the customary law as law for different reasons.

Some condemned the customary law as 'barbaric', repressive, and characterised by many repugnant features without reference to the moral convictions and values of the people which gave rise to it.

The penal philosophy of the pre-colonial criminal justice system was reformation, restitution, and rehabilitation. Sanctions **were** essentially non-custodial, and this is what obtains in the contemporary world order.

Trial is by ordeal, threat of force or evil are employed to bring out the truth. Trial is open and participatory.

6.0 TUTOR MARKED ASSIGMENT

Critique the traditional criminal Justice Administration.

7.0 REFERENCES/FURTHER READINGS

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Narebor, **???**

UNIT 3: CRIMINAL JUSTICE ADMINISTRATION IN NIGERIA, (1861 – 1960)

Content

1.0 INTRODUCTION

The encounter with Europeans in the empires and kingdoms which later combined to become Nigeria began to be noticed in the 15th century. It became more prominent in the 18th and 19th centuries. As you saw in the last Unit, the territories had well established traditional forms of law rooted on their belief system. At the same time, they faced diverse problems and challenges ranging from conflicts of foreign religious systems, commerce mercantilists slave trade, capitalist slave trade, internal political division, hostilities and revolts. In fact wars were an enduring feature within and outside Europe and Africa from the 16th century through the 19th century. Europe acquired territories and won colonies by conquest.

In the same way, the Fulani's, Moslem Scholars and Merchants from Mali established foothold in some parts of the Hausa land. The Sokoto **jilhsd** overthrew the Hausa kingdoms, established the great Shehu Othman Dan Fodio Dynasty and Caliphal traditions and introduced Islamic Code of Law. The British formally acquired the port of Lagos and declared it a Colony in 1861 and the sovereignty of the various independent settlements (or native states) became vested in the British Crown. The British Government assumed the Legislative, executive and Judicial powers over the area and people. Two years later, English laws and courts system had been established in the colony.

The objective was not to promote native justice. Perhaps, it was in consonance with colonial administration in all dependencies to supplant the natives. Perhaps it was to promote efficiency and economy or

enhance a farther ambition of Europeanising the globe under the guise of humanity, civilization and the rule of law.

The thrust of this Unit therefore is the impact of foreign legal systems and administration on the existing traditional criminal justice administration.

2.0 OBJECTIVES

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

1. Critique the colonial criminal Justice Administration
2. Identify areas of conflicts between the traditional and the colonial Criminal Justice Administration
3. Analyse possible impact of foreign legal system in relation to criminology and security systems and studies
4. Define the limitations of the colonial Administration of Criminal Justice.
5. Identify the "good" and the "bad" aspects of Colonial Criminal Justice Administration.

3.0 MAIN CONTENT

At the annexation of Lagos in 1861, the structures of the legal order as you may have observed, which co-existed and operated side by side included the following:

Ethnic criminal justice practices and habits peculiar to the tribal settlements or indigenous people.

The already imposed criminal Justice System, e.g., Islamic legal System

The super-imposed European Criminal Justice System e.g. by chartered corporations.

Part ethnic, part-religio-legal system and/or part European systems.

3.1 BRITISH PERCEPTION OF TRADITIONAL LEGAL ORDER.

The British perception of the traditional society was that it had no law. Let us consider few authorities on this issue:

3.1.1 John Austin:

What *Austin (19,,)* considered as law was a rule laid down for the guidance of an intelligent being by an intelligent being having power over him. The characteristics of law are:

command of a sovereign
sanction for disobedience or non observance.

Certainly, the Customary law is not a rule. It is not enacted like any piece of legislation.

3.1.2 H.L.V. Hart

Hart (19..) described law as nothing but a set of rules and its function is law itself; not morality. By set of rules, he meant its rules of obligation (primary rules) and its rules of procedure (secondary rules). He denied that customary law had any procedure and rules and for this reason, it is no law.

3.2 CONTRARY VIEWS: CUSTOMARY LAW IS LAW:-

There are, however, contrary views about the nature of traditional legal system. Let us examine some of them:

3.2.1 Hans Kelsen (19..)

He disagreed with Hart. His argument is that law is a norm, not a rule. A norm is an ought proposition, deriving validity from a higher norm, and ultimtely from the grundnorm.

3.2.2 Von Savigny (19..)

Savigny said that Law is not the creation of a legislature, or any sovereign but emanates form the popular consciousness of a nation and exists for the purpose of regulating the actions of individuals and the whole community.

3.2.3 Oliver Holmes (19..)

Holmes wrote from the American perspective. He said that the life of the law has not been logic; it has been experience of real sound existence, which the juridical process can not over look. Law embodies the study of a nation's development and cannot be dealt with as if it contains only axioms and corollaries of the book of mathematics

3.2.4 Justice Stone (19..)

To Justice Stone, law is necessarily an abstract term and a definer is free to choose a level of abstraction, but by the same token, in these as in other choices, the choice must be such as to make sense and be significant in terms of the experience and present interest of those who are addressed.

3.2.5 Sum Total of Arguments

The Priests and poets, philosophers and kings and the masses have given a host of answers to the question; what is law? *(Adam, 19..).* Nothing convincing enough to be recognized as a definition could provide a satisfactory answer (either in Europe or Africa) *(Hart, 19..).* The answer remains one of the most persistent and elusive problems in the whole range of thought *(Adam).*

As *Coolidge Carter (19..),* has explained that law, custom, conduct are life-different names for the same thing and so inseparably blended together that one cannot be thought of without the other; improvement cannot take place in one without the other.

As a student of Criminology and Security Studies, your understanding of this discordance is extremely important for a good understanding of the complexity of the law of crime and also of crime as well as the general sociological situations which give rise to the proscription of a particular conduct. This consideration led Jhering (19..), a German Jurist to argue that the lawyer had not merely to grasp the technical principle of his subject, but had to bring to it a genuine understanding of the underlining sociological implications of the legal rule with which he operates and how these could be used to resolve and harmonize rather than provoke or exacerbate conflicts. This caveat is relevant to you, who are in the business of crime combat and the scientific enforcement of the criminal law.

It cannot be denied that customary law existed. It was (and still is) not divorced from its milieu; it exists to serve certain social interests; it seeks to satisfy, reconcile, harmonise, adjust overlapping and conflicting claims, so as to give effect to the greatest total interest of the community. It encapsulates obligatory rules of conduct, practices and beliefs that are so vital and intrinsic a part of socio-economic order that they are treated as law, and applied by the community in the administration of criminal and civil Justice. There were traditional forms of religious, and the indigenous belief system rooted in them. The empires, and kingdoms turned multi-religious and the operative legal orders were being affected.

3.3 THE BRITISH APPROACH

As a dependency, the colony of Lagos fell under the hammer of British Rule. The British Administration had promulgated Ordinance No. 3 of 1863 introducing into the Colony, the English type of Courts and laws. We shall refer to these laws as “received Laws”.

The received laws were the Common Laws of England, the doctrines of Equity and Statutes of General Applications that were in force in England on 1st July, 1874 *(later varied to 1 January, 1900)*.

The reception of Statute laws was not automatic. Rather, the statute law applied in the colony if they were expressed to be 'Paramount Force Legislation' (i.e. Act of Parliament extending to the Colony).

The Colonial Administration, and the Chartered Corporation and Consuls either made or developed and enforced their own laws to suit their objectives and missions. At the loss of their charter, the chartered corporations lost their possessions to the imperial administration and its legal systems.

The Colonial laws validity Act 1865 had provided that Colonial laws would only be void or inoperative on the ground of repugnancy to the laws of England or if they were repugnant to some act of Parliament (i.e. Paramount Force Legislation).

The Supreme Court Ordinance No.4 of 1876 authorise the Supreme Court to apply the following laws in the colony:

the rules of Common Law
doctrines of Equity
the Local Laws and Customs that were "not repugnant to justice, equity, and good conscience".

The Native Courts were permitted to apply local laws and customs which ere "not opposed to natural morality and humanity".

3.3.1 Territorial Jurisdiction

The Ordinances were from time to time repealed and re-enacted to confer territorial jurisdiction in response either to the local political development or to the changes or improvements in the British legal System and the law and application. For example, the Supreme Court Ordinance No. 4, 1876 was repealed and re-enacted as the Supreme Court Ordinance, 1914 to make the law applicable to the whole of Nigeria, following the amalgamation of the Protectorate of the Northern and the Colony and Protectorate of Southern Nigeria. The Magistrates Court Act, 1933 or the High Court Act, 1933 were passed to establish for Nigeria, the English type of Magistrates and High Courts as we know them till the present day.

One other statute of importance you need to know is the Statute of Westminster, 1931. This English statute expressly provided that the

request and consent of Nigeria would be a prerequisite for a new statute to apply to her, thenceforth.

Self Assessment Exercise 1
Discuss the extent and scope of internal interpretation and implications of the statute of Westminister 1931?

COURT PROCESS

3.4.1 Personnel of Court

The Native courts, which applied native laws and custom, were presided over by chiefs or alkalis, but the supervisory jurisdiction over these courts lay with the Residents or District Officers who were British. The British Administrative Officers also presided over early Supreme Courts and Provincial Courts.

Up till 1906 (South) and 1914 (North), the Governor was the sole Executive. All the legislative and judicial powers were vested in him and were exercised by him.

3.4.2 Venue

Courts sessions held in permanents places and structures

3.4.3 Trial

Trial was accusatorial or adversarial. There was a presumption of innocence; verdict was guilty or not guilty. He or she was guilty if the offence charged was proved beyond 'reasonable doubt', rules of evidence were rigid.

3.4.4 Sentence

The range of sentences, which the imperial courts imposed include the following:

Death
Imprisonment
Flogging
Fines
Forfeiture
Seizure or recovery of public property
Disqualification
Probation
Discharge(absolute or Conditional)

Compensation
Restitution
Costs
Damages
Reconciliation
Deportation
Binding over
Destruction

3.4.5 Appeals

In the early times of British Dependency, appeals lay from the decisions of the Native Courts to the Resident and in some cases to the Lieutenant Governors. Appeals in other cases and in capital offences went to the British High Commissioner.

The Supreme Court (Amendment) Ordinance, 1933 removed from the jurisdiction of Administrative Officers, matters which were judiciary and vested them in the Judiciary. Later Appeals began to lie from the Supreme Court to the West African Court of Appeal and ultimately to the Judicial Committee of the Privy Council.

The period also began to provide for, execise and experience privileges of *Nolle Prosequi*, prerogative of mercy, Administrative or Judicial Tribunal of Inquiry for certain matters and other exceptionality of the Criminal Law

Self Assessment Exercise 2
How do you justify the application of English principles of justice to so many different peoples, whose outlook and mentality vary so much from your own?

3.5 THE CRIMINAL LAW

The Criminal law is the principal law on crimes it can be found in numerous federal Acts and state laws. Examples are:
1. The Criminal Code
2. The Penal Code
3. The Customary Law
4. The Sharia Law

At the beginning, the policy of the British Administration was one of non-interference with the indigenous institution and the customary laws. The Native Courts Proclamation, 1899, No. 9 and the Native Courts Proclamation, 1900 set up Native Courts to administer the customary

law. Indigenous Courts were allowed to function only in areas where statutory Native Court did not exist.

3.6 CODIFICATION OF THE CRIMINAL LAW

At the same period, a Commission had been set up in Britain to formulate a codified common law for England. A draft criminal code was produced but the British Parliament rejected it. It was then modified and 1879 adopted for Nigeria in 1904-1916 and several other British Dependencies. The Criminal Code (S.4) provided that only offences provided for in the code shall be triable in the Courts, other than in a Native Tribunal.

The Native court Ordinance was also passed vesting criminal jurisdictions in the Native Courts in respect of offences not provided for in the Criminal Code. The Native Courts and Customary Courts were reformed from time to time.

The independence Constitution, 1960 provided that with the exception of contempt of court at common law, no person was to be convicted of an offence unless the offence was defined by a written law and the penalty for it is also prescribed in a written law. This marked the withering away of unwritten customary law and criminal jurisdiction and authority of indigenous Courts.

4.0 CONCLUSION

The new wine in the old wine skin did not burst the skin by reason of its resilience. The basis of this is the flexibility and capacity of the customary law (Old wine) for adaptation to accommodate or accord with changing socio-economic conditions and rapid development (*Kinney and others v. Military Government of Gongola State & others*).

The Criminal justice Administration under the unwritten customary law and Under the Islamic Legal System are largely identical but there are important differences, you must note. Britain treated her legal system and Criminal Justice Administration as superior, and relegated the indigenous ones to inferior and subordinate statuses.

5.0 SUMMARY

In this Unit, you have learnt about the introduction of British type of Criminal Justice Administration in pre-independent Nigeria. The systems and sub-systems that then existed included:

Customs and Tradition ethnic/Tribal groups

Islamic legal System

British legal System
Alien Legal System and Culture distinct from the official British and Islamic Legal Systems.

The different systems nd sub-systems, cultures and values operated within one and same geographical area and at the same time.

6.0 TUTOR MARKED ASSIGNMENT

1. Describe the Criminal Justice Administrative System in Pre-Colonial Nigeria.

2. Compare and Contrast the Criminal Justice Administration during the following periods.
   (a) Before 1861
   (b) 1863 – 1960

7.0 REFERENCES/FURTHER READINGS

Ogwurike, C. (1979): Concept of Law in English –Speaking Africa, NOK Publishers International, London.

Obilade, A. (1979): The Nigerian Legal System Sweet & Maxwell, London

Elias, T. (1972): The Nature of African Customary Law, Manchester University Press, Manchester.

Austin

Hart, HLV

Hans Kelsen

Von Savigny

Oliver Holmes

Justice Stone

MODULE 2

UNIT 1: ADMINISTRATION OF JUSTICE: COURTS STRUCTURE

Contents:

1.0 INTRODUCTION

In Nigeria, most issues between parties do not get to the court. In many cases, parties recognize and do perform their legal obligations. Where there are controversies parties involved often settle, or resolve and dissolve them without recourse to the courts. Some certainly do get to the court. In deciding such cases before the court between parties involved in the controversy, judges determine certain rules of conduct which may turn out to become case law. In this unit, we shall examine the Court System, how cases get to courts, which exercise the responsibility to interpret the laws, and apply them to the issues in dispute.

2.0 OBJECTIVES

At the successful completion of this unit, you should be able to;

Describe, explain, illustrate and critique the term "jurisdiction".

Describe and explain the Nigerian Criminal Court System.

3.0 MAIN BODY

3.1 JUDICIAL POWERS

The judicial powers of the federation and of the states of the federation are vested in the court. *See CFRN, 1999 Section 6*. The term judicial powers include the inherent powers of a court of law, and the sanctions they can lawfully impose.

Subject to the provisions of the 1999 Constitution the Courts exercise powers over

1) All matters between persons, or between government or authority and any persons in Nigeria
2) All actions and related proceedings. *See CFRN 1999 Section 6(5)*

3.2 COURT SYSTEM

The court system is the channel through which laws are interpreted and applied. You have already learnt about our Court System. The earlier discourse did not include every court. However, it suffices for your present purpose. Note the courts and whether they have original and appellate jurisdiction. Note also that the courts are not a series of Appeal Courts as students often misconceive them to be.

Self Assessment Exercise 1

1. Can you attempt to sketch the courts structure in your state?
2. Indicate the courts, their titles, original and appellate jurisdictions where applicable.

It is important that you recognize that the courts are not a series of appeal courts.

3.3 JURISDICTION

Jurisdiction is a very crucial issue in the Courts System. You understand it from the outset.

3.3.1 Jurisdiction: General or Limited

Some courts exercise general jurisdiction, and powers to hear all kinds of cases. Other courts have special or limited jurisdiction and are limited in the types of cases they hear and decide. For example, a court may only hear a matter within a specified geographic area over which the judgment of the court will have effect. Decisions of courts in Nigeria are ineffective outside the Nigerian borders. In the same way, judicial

decisions of foreign courts, are not general principles binding on Nigerian courts.

3.3.2 Jurisdiction as a question of law:

Jurisdiction is not conferred by the parties; it cannot be implied; it derives from the law. The jurisdiction of each court is expressly prescribed in the instrument, (Constitution or Statute) which brings the court into existence.

A legislation may expand the jurisdiction of the court but it can not derogate from it, save by constitutional amendment.

3.3.3 Jurisdiction Defined

The often quoted jurisprudential expression which defines or descries the term: Jurisdiction, is by *Bairamien, F.J* who said:
A court is competent (i.e has jurisdiction) when:-

a) It is properly constituted as regards members and qualification of the members of the bench and no member is disqualified for one reason or another and
b) The subject matter of the case is within its jurisdiction (i.e space of authority) and there is no feature of the case, which prevents the court from exercising its jurisdiction (i.e Power or authority) and
c) The case comes before the court, initiated by due process of law, and upon fulfillment of any condition precedent to the exercise of jurisdiction (i.e Power's or authority)

Read the case *of Madukolu v. Nkemdilim* (1962).

In essence, a court has jurisdiction if:-

a) It has power to pronounce authoritatively and conclusively what the law is
b) It has power to determine the legal rights and liabilities of parties in dispute.
c) The subject matter and the parties and or property involved in the dispute are within the purview of the court.
d) The controversy has arisen within the state or area over which the court exercises its powers.
e) The parties in the case, (in particular the defendants) are available within the geographic area

3.3.4 Classification of jurisdiction

Jurisdiction may be classified into (a) jurisdiction, (b) Original or appellate jurisdiction, (c.) Federal or State Jurisdiction in *persona* or *in rem*

***(a). In persona or in rem* jurisdiction**

(i) In persona jurisdiction.

This is jurisdiction over the parties involved in the lawsuit. A court has jurisdiction if;

a) The parties can be served within the state or territorial jurisdiction of the court.
b) The parties are resident in the state.
c) In case of a corporation, it is incorporated in, has an office or does business within the boundaries of the courts jurisdiction. .

If a party submits to the jurisdiction of court, he can not be heard to complain later that the court lacked jurisdiction. A person is deemed to submit to the jurisdiction of a court as soon as he files a law suit.

(ii) *In rem* jurisdiction

This obtains where the property, which is the subject matter of the lawsuit is within the jurisdiction of the court.

(B). Original and Appellate Jurisdiction

(i) Original Jurisdiction

This refers to the powers of a trial court to hear and determine a controversy when it is first brought for adjudication or trial. It is the Courts power to entertain a matter, which can originate or be commenced in the particular court.

Appellate Jurisdiction

(C). Federal and State Jurisdiction

Federal Courts are established by the Constitution or Act of the National Assembly. The High Courts, (Federal and State) have unlimited jurisdiction over matters assigned to them.

The Federal High Court may be regarded as a specialized court because the controversies which come before it involve federal questions. The state high courts can not hear the cases which fall within the purview of the Federal High Court. To that extent also these courts are limited.

Certain offences are federal and may defy state boundaries, Others are states and are limited by state boundaries. In order to mitigate the

inconveniences at the court level which may arise from the Federal System and division of powers between the states and the federal governments,, state courts generally are empowered to exercise federal powers over federal offences partly or fully occurring within the state except where otherwise expressly provided. This is eminently a sensible scheme.

i) Federal Courts

The Federal Courts are the Supreme Court of Nigeria, the Court of Appeal, the Federal High Court, the Customary Courts of Appeal and the Sharia Court of Appeal of the Federal Capital Territory. Also included in the list of Federal Courts are other courts authorized by the law to exercise jurisdiction on matters within the federal legislative competence.

ii) State Courts

State courts include the High Court of the State, Sharia Court of Appeal of a state, the Customary Court of Appeal of a State and such other courts as may be authorized by law to exercise jurisdiction on matters within the legislative competence of the state like Magistrates'.

3.4 VENUE

A particular court has power to hear and entertain a case only within a specified geographic area. A court in Lagos can not sit in Kaduna over a matter in Kaduna State or any other state and vice versa. The Federal High Court is an exception to this general rule.

General:

Issue of jurisdiction strikes at the competence of court. It is fundamental and once there is a defect in competence, for example, where a court entertains a matter over which it lacks jurisdiction, the entire proceeding is a nullity, however well conducted or brilliantly decided. Hence jurisdiction has been variously described as the "life wire", 'blood' 'bedrock' and 'foundation' of adjudication.

For the same reason also, any challenge of jurisdiction of court over a matter must be first settled before taking any or further step in the matter.

The following cases are instructive and are recommended for your reading.

Ojo-Ajao v Ors v. popoola Ajao & Ors (1986),

Attorney-General (Anambra State) v. Attorney-General (Federation) 1993,

Gafar v. Government of Kwara State & Ors (2007)

4.0 CONCLUSION

Jurisdiction may mean:

The general power of court, or exercise of authority over persons and things within its competence;

The matters to which the court has authority to hear (i.e courts powers to decide a case)

The geographic area where the court operates.

5.0 SUMMARY

The judiciary has the primary responsibility to interpret and apply laws through the court system in the process of settling controversies, trying offenders brought before the court. You have been acquainted with the different courts in which criminal matters are administered. In both civil and criminal matters, jurisdiction has been described as the life wire, blood, bedrock and foundation of adjudication. Anything done outside it is a nullity.

6.0 TUTOR MARKED ASSIGNMENT

Jurisdiction has been described as "the life wire, blood, bedrock and foundation of adjudication "Discuss with illustrations and in reference to decides cases".

7.0 REFERENCES/FURTHER READINGS

The Constitution of the Federal Republic of Nigeria, (CFRN), 1999

Barbara E. Behr (1980); Study Guide to Accompany West: Business Law, West Publishers G. New York.

Gary Slapper (2004), *The English Legal System*, 7th Edition, Convendish Publishing, Limited, London,

UNIT 2: THE HIERARCHY OF THE COURTS

Content

1.0 INTRODUCTION

The Federal Republic of Nigeria is based on the principle of democracy and social justice. Accordingly, the purpose of Government is the Security and Welfare of the people. To this end, the courts exercise judicial powers of the state. In this unit, you will learn about different courts and their locations in the scheme of things.

2.0 OBJECTIVES

When you have read this Unit, you should be able to:-

1. sketch the hierarchical order of courts
2. trace the origin of the courts and its development
3. identify the changes in the Court System since independence
4. critique the hierarchy of courts

3.0 MAIN CONTENTS

3.1 COURT REFORMS, 1933-43

The Superior courts are products of the Constitution of the Federal Republic of Nigeria but the inferior courts are established by the law of the state where they operate. Thus, the High Court of a state or of the Federal Capital Territory, the Court of Appeal and the Supreme Court are created by the Constitution, whereas the Magistrates, District, and Area Courts in the states are created by the Laws of the particular state.

You will recall that the reforms of 1933 – 1943, brought about the Magistrates and the High Court Systems as we know them to day with minor modifications. These reforms were embodied in:

1. the Supreme Court (amendment) ordinance, 1933
2. the Protectorate Courts Ordinance, 1933
3. The West African Court of Appeal Ordinance 1933
4. The Native Courts Ordinance, 1933.

In 1943, the following statutes were also passed to reform the courts system:

the Native Courts (Colony) Ordinance, 1943 No. 7
the Magistrates' Courts Ordinance, 1943 No. 43
the Supreme Court Ordinance, 1943, No. 33
the West African Court of Appeal Ordinance, 1943, No. 30
the Children and Young Persons Ordinance, 1943 no. 41.

The effect of these legislations were:

establishment of uniform system of Magistrates' Court for the country

the abolition of Courts of the Commissioners of the Supreme Courts in the Protectorate; the abolition of the Supreme Court and the High Court of the Protectorate; setting up of the Supreme Court of Justice for Nigeria.

the establishment of Juvenile Courts to commence a systematic administration of justice for Children and Young Persons. In this context, Children are persons who have not attained the age of 14 years. Young persons are those who are 14 years of age or above but are under the age of 17years.

In response to the adoption of a Federal System of government in 1954, the Courts systems were also regionalized. Each of the regions (Northern, Western and Eastern) and the Federal Capital Territory had its Courts System with the High Court as its apex in the region. The High Courts of the Regions were subject to the Supreme Court.

After independence on 1st October 1960, the Court systems remained basically the same. The Judicial Committee of the Privy Council (JCPC) was still the highest court of Appeal but in 1963, it was replaced by the Supreme Court of Nigeria.

3.2 THE CONSTITUTIONAL PROVISION

The Constitution of the Federal Republic of Nigeria, 1999 has vested in the Courts, the judicial powers of the Federation and of the state. *See Section 6(1) and (2).*

3.2.1 The Scope of Judicial Powers

The judicial powers vested in accordance with the Constitution extends to:-

a. All inherent powers and sanctions of a court of law, notwithstanding any thing to the contrary in the Constitution.
b. All matters between persons, or between government or authority and to any person in Nigeria, and
c. All actions and proceedings relating thereto, for the determination of any question as to the civil rights and obligations of that person. *See section 6(a) and (b)*

3.3 THE SUPERIOR COURTS

The courts to which the Constitution relates which are established for the Federation and for the states are the only superior courts of record in Nigeria. Each of the courts has all the powers of a superior court of record, save as otherwise prescribed by the legislature.

The Courts are:

a. the Supreme Court of Nigeria
b. The Court of Appeal
c. The Federal High Court
d. The High Court of the Federal Capital Territory, Abuja
e. The High Court of the State
f. The Sharia Court of Appeal of the Federal Capital Territory, Abuja
g. The Sharia Court of Appeal of a State
h. The Customary court of Appeal of the Federal Capital Territory, Abuja
i. The Customary Court of Appeal of a State
j. Such other courts as may be authorized by law to exercises jurisdiction on matters with respect to which the National Assembly may make laws; and
k. Such other Courts as may be authorized by law to exercise jurisdiction at first instance or on appeal on matters with respect of which a House of Assembly may make laws.

The Constitution further provides that the National Assembly or any House of Assembly is not precluded from establishing courts other than those created by the Constitution, with subordinate jurisdictions to that of the High Court. In appropriate cases, the National Assembly or any House of Assembly may abolish any court which it has power to establish or which it has brought into being.

3.4 INFERIOR COURT

In exercise of their Constitutional powers, the state Houses of Assembly have created a number of courts. The jurisdictions of these courts are subordinate to those of the High Courts. They are inferior courts for reasons you shall know shortly. Meanwhile let us see examples of these courts;

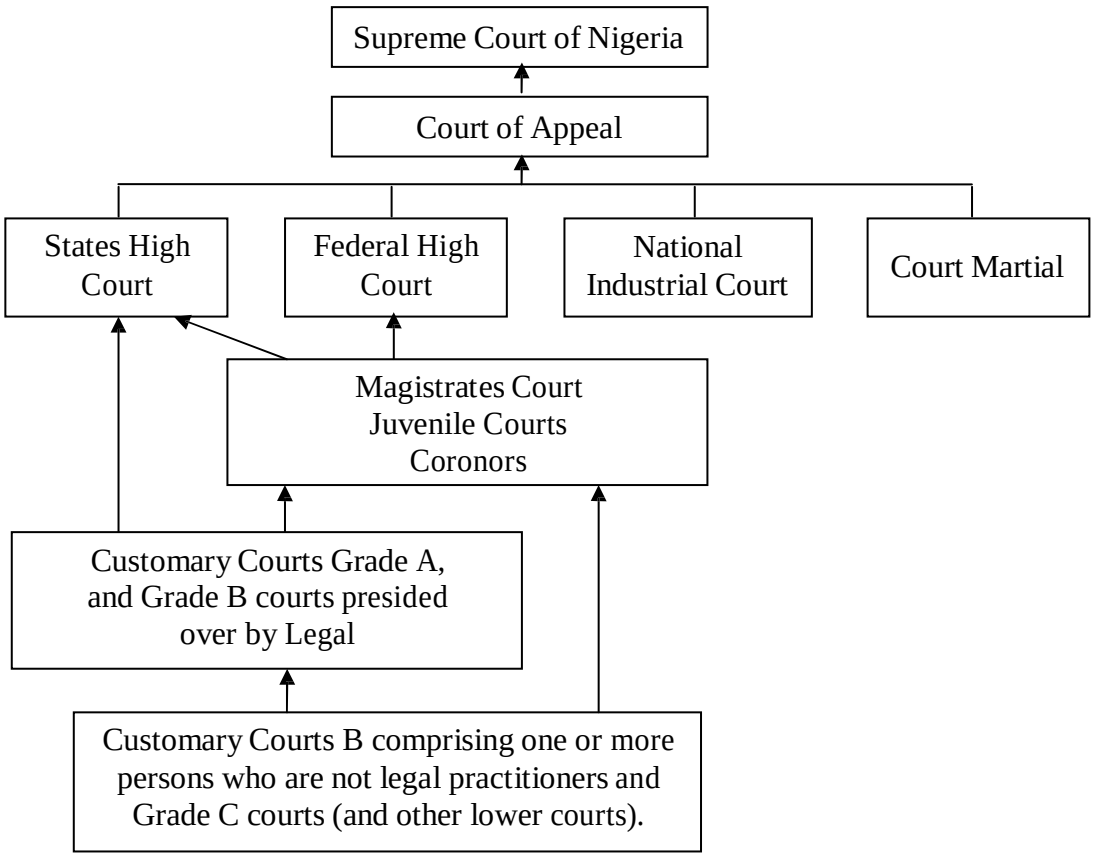
The Magistrates Courts
The District Courts
The Area Courts
The Alklali Court
The Customary Courts

3.5 HIERARCHY OF THE COURTS

The hierarchy of Courts is closely related to the doctrine of judicial precedent (also called the doctrine of *Stare decisis*.) Judicial precedent is a common law doctrine under which it is necessary for a court to follow earlier judicial decisions when the same points arise again in litigation. For it to apply, there must be:

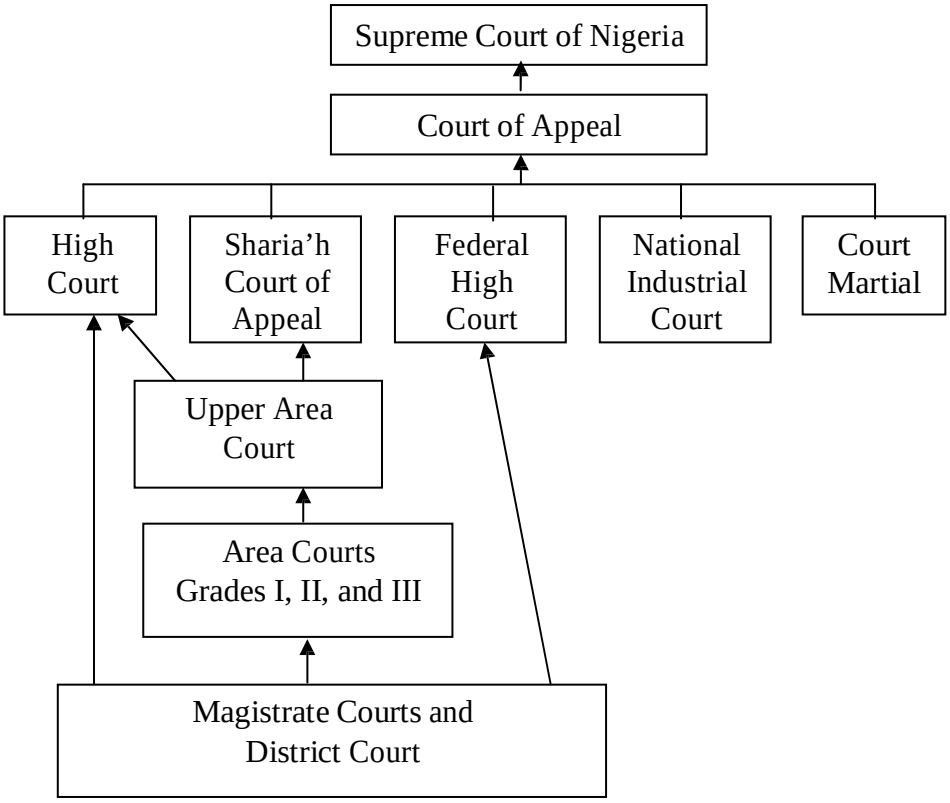
1. a settled hierarchy of the Courts
2. a *ratio decidendi* which has been efficiently reported.

There are variations in the structure and types of inferior courts among the states. In some states in the South, the court System would probably look as follows. ***Diagram A***



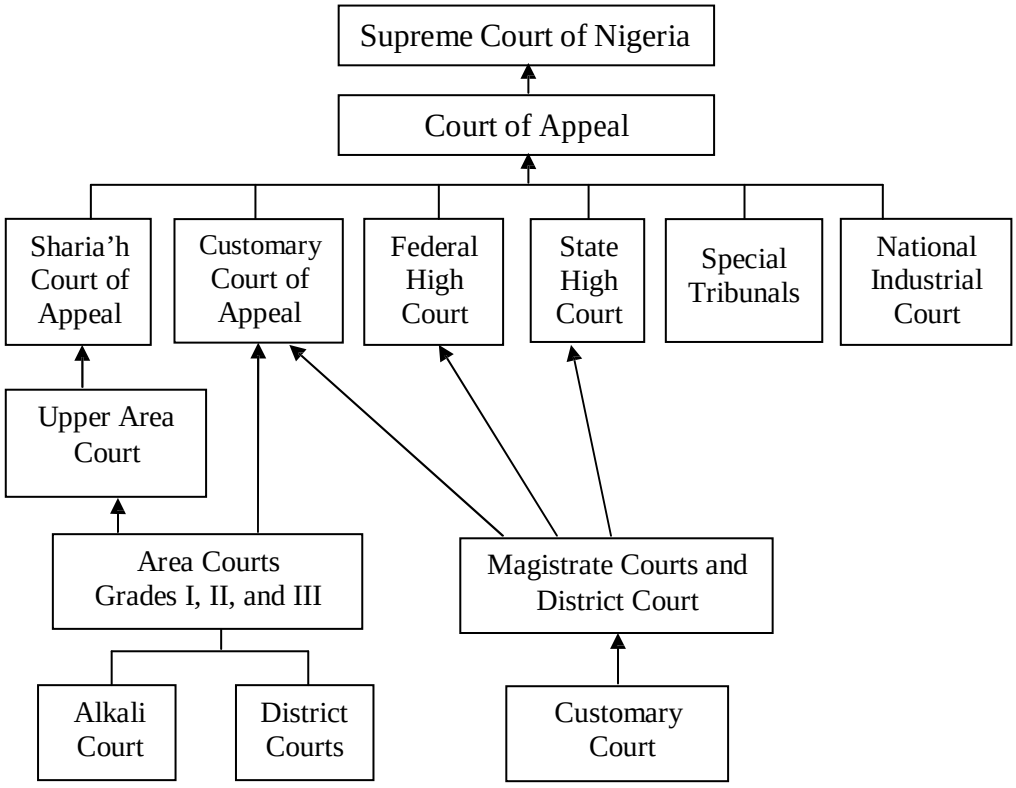
A typical hierarchy of Court in the North would probably be this:

Diagram B



A wholistic view of the hierarchy of Courts at present in Nigeria is probably as follows:

Diagram C



4.0 CONCLUSION

The structure of courts in Nigeria is not one of series of Appeal Courts. For example, there is no Court from which an appeal may lie to the National Industrial Court.

Similarly, appeal does not lie from the decision of the Magistrates' Court to the Sharia'h Court of Appeal. You will find it useful and instructive to be able to sketch the diagram of courts hierarchy. The arrows indicate the direction of appeals from a lower to a higher court within the same hierarchy.

5.0 SUMMARY

In this unit, you have learnt about the establishment and hierarchical order of modern courts in Nigeria. Attention has been drawn to the differences in the structure among the states. Federal Courts also differ from State Courts.

6.0 TUTOR MARKED ASSIGNMENT

Describe, using a diagram, the hierarchy of Courts in modern Nigeria.

7.0 REFERENCES/FURTHER READINGS

Ogwurike, C. (1979): Concept of Law in English – Speaking Africa, NOK Publishers International, London.

Obilade, A. (1979): The Nigerian Legal System Sweet & Maxwell, London

Elias, T. (1972): The Nature of African Customary Law, Manchester University Press, Manchester.

UNIT 3: SUPERIOR COURTS

Content

1.0 INTRODUCTION

In this Unit, you will learn, in greater detail, about the Supreme Court of Nigeria and the Court of Appeal. They are the two highest among the Superior Courts in Nigeria. Both courts serve the whole of the federation. Their divisions are merely for convenience.

Their respective Constitution and Jurisdiction are discussed appropriately but you need to complement this by reading the chapter seven of the Constitution of the Federal Republic of Nigeria, 1999.

2.0 OBJECTIVES

When you have read through this Unit, you should be able to:

1. Give a picturesque view of the Court system in Nigeria
2. Account for the jurisdiction of the Supreme Court and the Court of Appeal
3. Critique the structure and hierarchy of Courts in Nigeria.

3.0 MAIN CONTENT

The exposition and development of legal principles lies within the province of the superior courts, and particularly, the higher courts. Their judgments peculiarly contain full exposition of the law, and careful review of earlier relevant judicial decisions. They also explain, distinguish or apply such decisions to instant cases. In some cases, their *obiter dicta* are so carefully considered that they receive a high degree of persuasive authority. All what was previously an obiter may

subsequently develop into a *ratio decidendi*. All these have greatly enhanced the development and quality of legal science.

The courts in Nigeria may be classified as follows:

- Superior and Inferior Courts
- Courts of Record and Courts other than Court of Record

3.1 SUPERIOR COURTS

Superior Courts are courts of unlimited jurisdiction. More appropriately, they are courts of minimal jurisdictional limits. Although they may be unlimited in respect of the value of the subject matter, there are limits, however, minimal in respect to the type of the subject matter they may deal with.

Generally, nothing is intended to be outside the jurisdiction of a superior court, unless it is so specified.

(a) Supervisory Jurisdiction

Superior Courts exercise supervisory jurisdiction over inferior courts and for that purpose they may make prerogative orders of certiorari, mandamus, prohibition, and injunction.

(b) Court of Records

Superior courts are courts of Records. They keep records of their acts and of judicial proceedings. They exercise powers to punish contempt of court whether in *in facie* or *ex facie curia*.

The term 'Court of Record' is not restricted to superior court. The Magistrate Courts exercise the power to punish only contempt in *facie curia*. For that reason, it is a court of records although it cannot contempt out of court summarily. It does so only if the contemnor is formally charged, tried and convicted.

Activity

The Constitution of the Federal Republic of Nigeria, 1999 expressly declares that certain courts shall have the powers of a superior court of Nigeria. You learnt this in the previous Unit. Do not turn to that unit until you have attempted this exercise.

Self Assessment Exercise 1

Enumerate the Superior Courts or the Courts vested with the powers of the Superior Court in Nigeria that you know.

When you shall have done so, turn to Unit 2 – and confirm how well you have done. If you get nine (9) right, beat your chest. Well done. If you get less, try again.

Evolution of Formal Courts of Nigeria

The British Colonial Administration promulgated Ordinance No. 3 of 1863, establishing the first Supreme Court for the colony of Lagos. It had both civil and criminal jurisdiction. It was replaced in 1866 with the court of Civil and Criminal Justice, and re-established by the Supreme Court Ordinance, 1876. The Court applied the common law of England, doctrines of Equity and Statutes of General Application that were in force on 24th July 1874. They were empowered also to apply local laws and customs, which were not repugnant to justice, equity and good conscience. Following the proclamation of the Protectorate of Northern Nigeria (1900), a Supreme Court, similar to that in the colony of Lagos, was established for the North. A new Supreme Court emerged when the Northern and the Southern Protectorates were amalgamated in 1914.

The early Supreme courts were no more than Magistrate Court. But in 1933, sweeping reforms were carried out. The Protectorate Court Ordinance 1933 was proclaimed, setting up the High Courts and the Magistrate Courts System. The jurisdictions of the Supreme Court and of the High Court were identical, except that the Supreme Court had exclusive jurisdictions in matters of Probate, Divorce and Matrimonial Causes and Admiralty.

Appeals from both the High Court and the Supreme Court lay to the West African Court of Appeal (WACA). Ten years later, the Supreme Court ordinance 1943 was enacted. It set up one Supreme Court for the whole of Nigeria. This metamorphosed into the Federal Supreme Court under the Lythleton Constitution, 1954.

Appeals lay from the Federal Supreme Court to the Judicial committee of the Privy Council(JCPC) at independence until 1963, when the supreme court of Nigeria was constituted as the final court of Appeal.

3.2 THE SUPREME COURT OF NIGERIA

The Constitution of the Federal Republic of Nigeria, 1999 provides as follows;

(a) *Appointment*:

- there shall be a Supreme court of Nigeria (SCN) (S.230)
- the SCN consists of a chief Justice and not more than 21 Judges
- the power of appointment of a Chief Justice of Nigeria (CJN) and other Judges of the Supreme Court (JSC) is vested in the

President and Commander-in-Chief of the Armed Forces of the Federation.

- the President in exercise of his power, appoints a chief Justice of Nigeria on the recommendation of the National Judicial Council and subject to the Confirmation of Senate(S.231)

(b) *Removal from Office*

- the President may remove the CJN or other JSC from office on the address supported by two-thirds majority of the senate (S.232)

(c.) *Constitution of Court*

- for the purpose of determining a cause or matters, the Supreme Court is constituted by a minimum of five judges.
- A Seven-member panel of Judges of the Supreme Court hears and determines very important matter
- A single JSC may exercise the powers of the court but he/she cannot determine a cause or matter.
- If, in a criminal matter, a single JSC refuses an application, applicant may apply to be heard by the court.

(d) *Jurisdiction of the Supreme Court*

- The Supreme Court has no original jurisdiction in criminal matters, except in cases of contempt of itself
- Original jurisdiction lies in disputes between Federal Government and the State or between States in specified matters
- The Supreme Court hears appeals from decisions of the Court of Appeal as of right on:
  questions of law,
  interpretation of the Constitution,
  contravention or likely contravention of Political and Civil rights,
  sentence of death,
  whether the President or Vice President is validly elected or whether his office has ceased or is validly vacated.
- In other cases, appellant must obtain leave of either the Court of Appeal or the Supreme Court.

(e) *Relationship between SCN and JCPC*

While Both the Supreme Court and the JCPC co-existed, the decision of the latter was binding on the former. After 1963, the decision became merely persuasive. The question you should now ask is this: after 1963, how would the Supreme Court treat the decisions of the JCPC which were made prior to that 1963?

Such decision would be binding as at 30 September, 1963. What is the position after 1st October 1963?

The preponderance of judicial decisions is to the effect that the Supreme Court do not, anymore, regard the decisions of the JCPC as binding upon it. See: *Johnson v Lawanson* (1971); *Odeneye v Savage* (1964), *Williams v Akinwumi*(1966), *John v Adebayo* (1969).

In arriving at this conclusion, the Supreme Court drew inspiration from the decision of WACA in *Re Sarah Adedavoh and others* (1951) where Verity, CJ (as he then was) held;

> "I am fully alive to the fact that grave inconvenience may arise from a judgment of this court in such a matter which reverses a view of the law which had been held for upwards of ten years, but when the Court is faced with the alternative of perpetuating what it is satisfied is an erroneous decision, which was reached *per incuriam* and will, if it is followed, inflict hardship and injustice upon generations in the future or of causing temporary disturbance of rights acquired under such a decision, I do not think we should hesitate to declare the law as we find it".

Obilade (1979) has expressed the view that the Supreme Court would normally treat its previous decisions and those of the JCPC with great respect but it would depart from a previous decision if it is of the opinion that the decision was wrong and that following it would lead to injustice.

The attitude of the Supreme Court is consonant with the Practice Direction, 1966(UK) which also empowered the House of Lords to over-rule itself in appropriate cases. The direction is as follows:

> "Their Lordships regards the use of precedence as an indispensable foundation upon which to decide what the law and its application to individual cases. It provides, at least, some degree of certainty upon which individuals can rely in the conduct of their affairs, as well as a basis for orderly development of legal rules".

Their Lordships nevertheless recognize that two rigid adherence to precedence may lead to injustice in a particular case and also unduly restrict the proper development of the law. They propose therefore to modify their present practice and while treating former decision of their House as normally binding, to depart from a previous decision when it appears right to do so.

In this connection, they will bear in mind the danger of disturbing retrospectively the basis on which contracts, settlements of property and fiscal arrangements have been entered into and also the special need for certainty as to the criminal law.

This announcement is not intended to affect the use of precedence elsewhere than in this House".
Think over the following activity and consider what the possible implications are:

The Supreme Court over-ruled a decision of the JCPC which had subsisted and had been followed for, say, 12 years. See *Johnson v Lawanson*

A situation of inadequate or imperfect system of law reporting

Cases decided *per incuriam*

Conflicts in cases decided in the Federal Supreme Court, JCPC and the Supreme Court

Where there is an element of uncertainty in law

Slavish adherence to precedence perpetuating an error, which if not connected, would result in injustice

In the case of Supreme Court decision where the court is constituted by:

1. one Judge
2. five Judges
3. Seven Judges

3.4 APPEALS TO THE SUPREME COURT

Ordinarily, the Supreme Court has no exercise of appellate jurisdiction over matters emanating other than from the Court of Appeal. Its decisions cannot be over-ruled by any other court. It may depart from its own decision by reason of:

1. Broad issue of justice
2. Where its decision was per *incuriam*

Finality of the Supreme Court

No appeal shall be to lie any other body or person from any determination of the Supreme Court. It is final and for this reason, it infallible.

The President and Commander-in-Chief of the Armed Forces, or the Governor of a state may exercise his statutory powers of the prerogative of mercy, but he does not do so as an appellate authority.

3.5 THE COURT OF APPEAL

(a) Establishment

The Federal Court of Appeal Decree No. 43, 1976 provided for the establishment, composition and procedure of the Federal Court of Appeal and for the remuneration and tenure of the Justices of the Court of Appeal. The Court subsequently became known simply as the Court of Appeal. It has a president and 49 Justices of Appeal. Of this number, not less than three each must be learned in Islamic law and in the Customary Law.

(b) Appointment

The President and Commander-in-Chief of the Armed Forces of the Federation appoints the President and Justices of Appeal following the recommendation of the National Judicial Council but the appointment of the President, unlike that of the other justices, requires a confirmation by the Senate (CFRN 1999: 237-238).

(c) Jurisdiction

(i) Original Jurisdiction

The Court of Appeal is essentially a court to which appeals lie. It has no original jurisdiction in criminal matters. CFRN. 1999 Section 6(6) does not confer any. It does have original jurisdiction on matters involving the following:

- validity of election of the President or the Vice President, and on questions as to whether their offices have ceased or IS vacant(S.239).

(ii) Appellate Jurisdiction

The Court of Appeal hears and determines appeals from the decisions of the following courts:

The Federal High Court
The High Court of the Federal Capital Territory
The High Court of a State
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
The Customary Court of Appeal of a State
The Court Martial
Other Tribunals prescribed by the Act of the National Assembly e.g. code of Conduct Tribunal, National Assembly Election

UNIT 4: SUPERIOR COURTS (CONT'D)

Content

1.0 INTRODUCTION

You have learnt about the Supreme Court, which is the highest Court of law in Nigeria. Because of its finality, the Supreme Court is infallible. You have also learned about the Court of Appeal. It is an intermediate Court between the High Courts (Federal and States) and the apex court. Both the Supreme Court and the Court of Appeal break into Divisions for convenience and to enhance efficiency but their geographical jurisdiction is the Federation as a whole. In the same way, there is only one High Court of a State, although it may have a number of divisions. In this unit, you will learn about more of the Superior Courts to wit: the Federal and State High Courts as well as the Sharia'h and the Customary Courts of Appeal.

2.0 OBJECTIVES

When you have studied this Unit, you should be able to;

1. Define or describe the establishment, Constitution, jurisdiction etc of the Superior Courts studied in this Unit.
2. Locate the position of each of the Courts in the hierarchy of Courts in Nigeria.

3.0 MAIN CONTENT

Unlike the Court of Appeal and the Supreme Court, there is a High Court for each State of the Federation, exercising jurisdiction over the particular State. There is also one for the Federal Capital Territory, Abuja. The Sharia'h and Customary Courts are similarly state-based, as you shall know shortly.

3.1 FEDERAL HIGH COURT

The Federal High Court (FHC) consists of a Chief Judge (CJ) and such number of Judges as the National Assembly may prescribe

(a) *Appointment*: The President and Commander in Chief of the Armed Forces of Nigeria appoints the Chief Judge of the Federal High Court on the recommendation of the National Judicial Council, subject to confirmation of such appointment by the Senate. Other Judges are appointed by the President on the recommendation of the National Judicial Council.

(b) Jurisdiction: FHC has exclusive jurisdiction in matters involving:
- Revenue of government
- Federal Taxation
- Customs and Excise
- Banking and financing Institutions
- Operation of Companies and Allied Matters Act (CAMA)
- Copy right, patents, trademarks, industrial designs, monopolies, combines and Trusts, industrial standards etc.
- Admiralty matters
- Diplomatic, Consular and Trade Representation
- Citizenship
- Bankruptcy and Insolvency
- Aviation and safety of Aircraft
- Arms and Ammunition and explosions
- Drugs and poisons
- Mines and minerals
- Weight and measures
- Administration or the management and control of Federal Government or any of its agencies
- Operation and interpretation of the Constitution as it affects the Federal Government or its agencies
- Validity of any executive or administration actions or decision by the Federal Government or any of its agencies
- Other civil or criminal jurisdiction prescribed by statute of the National Assembly
- Treason, Treasonable Felony and allied matters
- Criminal causes and matters in respect of which jurisdiction has been conferred above.

The FHC succeeded the Federal Revenue Court which was set up by the Federal Revenue Court Decree No. SA, 1973. This court has ceased to exist and its functions have been transferred to the Federal High Court (FHC).

FHC has all the powers of a State High Court. It may be constituted by one judge of that Court.

3.2 THE HIGH COURT

(a) Establishment

The Protectorate Court Ordinance, 1933 established the High Court for Nigeria. It exercised original jurisdiction other than in matters of Title to Land and interest in land which were subject to the jurisdiction of the Native Court, except in cases where the Governor General directed otherwise. Appeals then lay from the magistrate to the High Court from where appeals lay to the West African Court of Appeal (WACA) and finally to the Judicial Committee of the Privy Council (JCPC). A High Court was set up for each of the three Regions and Federal Capital Territory when Nigeria adopted a Federal structure in 1954.

This Federal structure has been retained up till the present day where by each state of the Federation and the Federal Capital Territory (FCT) has a High Court. The Chief Judge of a State Change of Title Act, 1976 provided that the most senior Judge of a state shall be designated "The Chief Judge of the State".

The Constitution provides that the High Court shall consist of a Chief Judge (CJ) and such number of Judges as may be prescribed by statute.

(b) Appointment

The President of the Federation appoints the Chief Judge of the High Court of the Federal Capital Territory (FCT) on the recommendation of the National Judicial Council subject to confirmation of such appointment by the Senate. The Governor appoints the Chief Judge of the State on the recommendation of the National Judicial Council subject to confirmation of such appointment by the House of Assembly of the State.

Other Judges are appointed by the President or Governor as the case may be on the recommendation of the National Judicial Council

(c) Jurisdiction

The High Court hears and determines

Civil proceedings relating to legal right, power, duty, liability, privilege, interest, obligation or claim

Criminal proceedings involving penalty, forfeiture, punishment or other liability in respect of an offence or offences

The court entertains matters which originate in the High Court or in exercise of its supervisory or appellate jurisdiction

(d) Constitution

The Court is constituted by at least one judge of the court. The High court of a State may exercise jurisdiction over federal causes and appeals arising out of such causes. A state High Court may investigate,

inquire into or try a person for a federal offence and hear and determine appeals arising out of the trial or proceedings.

In this context, 'federal cause' means civil or criminal cause and 'federal offence' means an offence contrary to a federal Act.
The high court may give an opinion on a case stated on a magistrates own motion, or at the request of the Attorney General. This takes the form of 'case stated'. This occurs where;

The Attorney General is of the opinion that the decision of the magistrate in any criminal case is erroneous at law

The magistrate at the request of the Attorney General is required to state a case on a point of law for the opinion of the High Court.

In the same way the High Court may adopt the procedure of 'case stated' and if so requested by the Attorney General, state a case on a point of law for the opinion of the Supreme Court. The High Court may refuse to state a case if it considers that the request is frivolous.

(e) Supervisory Jurisdiction:
The High Court exercises supervisory jurisdiction over the lower courts. For instance, it can call for and examine the record of any criminal proceedings before a magistrates' court.

The Supervisory Jurisdiction of the High Court allows the Court to call for and examine the record of any criminal proceedings before a Magistrates court in order to satisfy itself that the decision reached by the magistrate is correct, legal or proper.

The various High Court Laws have vested in the State High Court such jurisdiction and powers as "are vested in or capable of being exercised by the High Court of justice in England. Accordingly, the High Court in Nigeria has all the jurisdiction of the High Court in England to make an Order of:

Mandamus: requiring any act to be done.

Prohibition: Prohibiting any proceedings or matter

Certiorari: removing any proceedings, cause or matter into the High Court for any purpose.

The Court in Nigeria would make such orders in the circumstances in which the High Court of Justice in England would. The High Court in Nigeria may make such an order, not necessarily because an English judge, however eminent, has done or would do so in a similar situation. It does so because it is persuaded, and in its opinion, it is not only proper, it also meets the ends of justice in the particular case.

3.3 THE SHARIA COURT OF APPEAL AND THE CUSTOMARY COURT OF APPEAL

3.3.1 Constitution and Establishment

The Constitution, 1999 provides for the establishment of:

The Sharia Court of Appeal, FCT
The Sharia Court of Appeal of a State
The Customary Court of Appeal, FCT
The Customary Court of Appeal of a State

3.3.2 Sharia'h Court of Appeal, FCT or of a State

(a) Establishment:

The Northern Region of Nigeria first established a Customary Court of Appeal in 1956. It was called the Moslem Court of Appeal. It had both original and appellate civil and criminal jurisdiction. The Court was replaced by the Sharia'h Court of Appeal on 30 September, 1960 a day prior to Nigeria's Independence. Under the 1999 Constitution, the Sharia'h Court of Appeal consists of:-

A Grand Kadi who is appointed by the President on the recommendation of the National Judicial Council, subject to confirmation by the senate

Such number of Kadis as may be prescribed by the statute or law, who are appointed by the President of the Federation or the Governor of a state (as the case may be) on the recommendation of the National Judicial Council.

A Grand Kadi or Kadi must be either a legal practitioner with not less than 10 years experience or a distinguished Islamic scholar or one experienced in the practice of Islamic law.

(b) Jurisdiction

The Sharia Court of Appeal has appellate and Supervisory Jurisdiction involving Islamic personal law. Including questions relating to:-

i. Marriage
ii. Wakf, gift, will or succession
iii. Special group e.g. infant, prodigal persons of unsound mind
iv. Proceedings referred to the court on both parties request

The jurisdiction of this court, like that of any other superior court of Record, is expressly stated in the Constitution. See *Section 277, CFRN, 1999*. Where any claim does not fall within the ambit of these sections, it is outside the jurisdiction of the court.

You should not be confused when you find the same writers talk of jurisdiction in terms of "Islamic Law" or Islamic Personal Law". The addition of "Personal" in one or its omission in another does not in any way alter the scope and extent of the jurisdiction of the Sharia Court of Appeal.

The Sharia'h Court of Appeal is empowered to administer Moslem Law of the Maliki School as customarily interpreted at the place where the trial at first instance took place.

(c) Constitution

At least three Kadis of Appeal are required to constitute the court.

3.4 THE CUSTOMARY COURT OF APPEAL, FCT OR OF A STATE

This Court Consists of:

(a) Establishment

A president. He is appointed by the President in case of FCT or the Governor on the recommendation of the National Judicial Council, subject to confirmation of the Senate, or State House or Assembly as the case may be.

Such number of Judges as may be prescribed by statute. A Judge of the Customary Court of Appeal is appointed by the President or the Governor of the state on the recommendation of Senate or that State House of Assembly.

The President or Judge of the Customary Court of Appeal is a legal practitioner of not less than 10 years and/or of considerate knowledge and experience in the practice of customary law.

(b) Jurisdiction

The Customary Court of Appeal exercises appellate and supervisory jurisdictions in civil proceedings involving questions of customary law

(c) Constitution

The Customary court of Appeal is duly constituted if it consists of at lest three judges of that court.

4.0 CONCLUSION

The High Courts are Superior Courts of Record. They have minimal limitations within that state of operation. All the High Courts are courts of coordinate jurisdiction. The Sharis'h Court of Appeal and the Customary Court of Appeal have specified functions.

5.0 SUMMARY

The High Court is the highest Court in a state or in the Federal Capital Territory. Appeal from their decisions to the Court of Appeal that covers the whole of the federation.
The powers are specified in the Constitution of the Federal Republic of Nigeria, 1999. See particularly, sec. 6 and Chapter 7.

6.0 TUTOR MARKED ASSIGNMENT

1. Distinguish between the Federal High Court and the High Court of the Federal Capital Territory.

2. Describe the similarities and dissimilarities of
a. Sharia'h Court of Appeal and
b. Customary Court of Appeal

7.0 REFERENCES/FURTHER READINGS

Aguda, T. FGN (1999); Constitution of the Federal Republic of Nigeria

MODULE 3

UNIT 1: INFERIOR COURTS

Content

1.0 INTRODUCTION

Inferior Courts are courts other than Superior Courts. All superior courts, and only some inferior courts, are courts of Record. Both Superior and Inferior courts are equally entrusted with the determination of disputes between the citizens and the state or between two or more persons whatsoever. They are all courts of justice. The instruments which brought superior and inferior courts into existence are different. The quality of their immunities is not equal. Their judicial powers vary. Incidentally the inferior courts are closer to the common man and they attend to nearly 80.0 per cent of criminal cases that happen to be charged to the court.

2.0 OBJECTIVES

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

1. Establish the categorization of courts into "Superior" and "Inferior" Courts.
2. Identify the powers exercisable by the inferior courts especially the Magistrates' court.
3. Distinguish the Coroner from the Magistrate Courts.

3.0 MAIN CONTENT

The Constitution of the Federal Republic of Nigeria (CFRN), 1999 provides that the court to which section 6 relates "shall be the only superior courts of record in Nigeria". You have already learned about these Superior Courts. In this unit, you will be learning about the courts

that are not *directly* indicated in section 6 of the Constitution, which by implication are 'not Superior Courts'.

You must have noticed that there is nothing in the Constitution, which precludes the National Assembly or any House of Assembly from establishing additional courts or from abolishing such courts that they, in exercise of their powers have created. Indeed, all the states of the Federation have exercised their Constitutional Powers and have created additional courts to which we shall now turn.

Generally, superior courts have wider powers than inferior courts and have minimal limitations. There is nothing intended to be outside the jurisdiction of superior courts. They record their proceedings and actions. They punish summarily any person for contempt in the face of the court or outside it.

Inferior Courts are generally limited in their powers and jurisdiction. Note that 'power' and jurisdiction' mean two different things.

Power means Authority to make certain orders and decisions with reference to the matter before the court. Jurisdiction is the right in the court to hear and determine disputes between parties.

An inferior court may record its proceedings and actions. To that extent, it is a Court of Record. Every court has power to punish contempt in the face of the court but not one outside the court. This is one of the factors that distinguish inferior from superior courts. Another is the supervisory power of the higher courts over the inferior courts. The Superior Courts do this by means of the prerogative orders of certiorari, mandamus, prohibitions and injunctions. The Courts generally referred to as inferior courts are created by the state and they include the following:

The Magistrates' Court
The Juvenile Court
The Customary Court
The Area Court
The Tribunals
The National Industrial Court
Court Martial
Public Complaints Commission etc.

Only a few of these Courts need to be treated in any detail here. You are advised to then read up the rest of them.

3.1 THE MAGISTRATES' COURT

The term Magistrates' Court means any Justice or Justices of the Peace acting under any enactment or by virtue of his/her or their commission.

The term covers courts of summary jurisdiction such as juvenile courts, and examining justices. Among the inferior courts of record in the Nigerian legal system, the Magistrates' Court is the most important and most widely-spread.

a) Historical Development

The Protectorate Court Ordinance No. 47, of 1933 established for the Protectorate of Nigeria the High Court and the Magistrates' Court Systems. Appeals lay to the Magistrates' Court from the decisions of Native Courts. It was in 1943 that a unified system of magistracy emerged following the promulgation of the Magistrates' Court Ordinance No. 43 of that year. At the time, appeals lay from the Magistrates to the Supreme Court from where further appeals were heard at the West African Court of Appeal and ultimately by the Judicial Committee of the Privy Council. When Nigeria was split into three regions on October 1, 1954, the regionalisation of the magistracy like other courts followed. Ever since, magistracy had followed political division of the country.

Every State of the Federation has its Magistrates' Court Law as well as its Magistrates Court (Civil Procedure) Rules which provide for the establishment of the Magistrates Court System of the State, as well as the appointment and removal of magistrates, their practice and procedure and other issues relevant to the administration of justice as the National or State Assembly deems fit and proper within its area of authority.

The Governor, by notice in the Gazette, appoints or removes from office, the Chief Magistrates and other magistrates. A State is divided into a number of Magisterial districts. A Magistrate has jurisdiction within its magisterial district. In some cases, the jurisdiction may cover the whole of the state, but it does not exist as a single entity.

Every Magistrate is ex-officio, a justice of Peace. Accordingly, he exercises the following powers and functions:

- Preservation of the peace,
- Suppression of riots and affray
- Dispersal of all disorderly and tumultuous Assemblies call in aid and assistance of Police and others.
- Issuing summonses and warrants to compel attendance of accused person or witness before the court or process in civil causes and matters
- Remand accused persons or grant bail
- Take solemn affirmation and statutory declaration
- Administer oath
- Other duties as may be conferred.

- Summary trials, criminal matters over which the Magistrate has powers. Determination and punishment of offences other than offences trial on indictment to wit:
- Non-indictable offence
- Indictable offence, not being capital offence with the consent of parties.
- Inquiry into charges of offences triable on indictment
- Execution of writs and order or process issuing from the High Court

3.2 APPLICABLE LAW

The Magistrates' courts are empowered to administer

Common law and equity concurrently with the Equity prevailing in certain cases

Legal and equitable remedies

Native law and Custom that is not repugnant to natural justice, equity and good conscience and not incompatible with any local statute

Local statutes: Criminal Code, Penal Code, and any other law or statute

3.3 THE ROLE

It is incumbent on a magistrate to ensure as far as practicable, that all matters in controversy are completely and finally determined and all multiplicity of legal proceedings are avoided. The magistrate may legitimately encourage reconciliation in the following circumstances.

1. Civil causes or All civil matters or cases
2. Criminal cases,
3. Example
   a. common assault
   b. simple offences and misdemeanor not aggravated in degree

3.3 PREVENTIVE ROLE OF THE MAGISTRATE

You should note one very important jurisdiction of the magistrate – its preventive role. Under certain circumstances, a magistrate may bind over a person, not charged with an offence by means of recognizance for a specified period to keep the peace or to be of good behavior.

3.4 TRIAL IN THE MAGISTRATE COURT

The trial in the magistrates' court is summary. The law creating certain crimes permits the magistrate to try some indictable offences but there

are limitations which vary according to the grades or rank of the magistrates.

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

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

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

Another difference of note is that jurisdiction has no relation with grades of Magistrates' Court in, say, Lagos State. It does in the Northern States. In Lagos state every Magistrate Court has the power to try any non-indictable offence. Every grade of the Magistrates Court, other than a Magistrate Grade III, may try indictable offences except capital crimes, with the consent of the accused person, and of the prosecutor, if he is a law officer.

Self Assessment Exercise 1

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

3.5. APPLICATION OF THE CRIMINAL PROCEDURE ACT OR CODE

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

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

The jurisdiction of the magistrate to punish is as follows:

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

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

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

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

He may appoint guardians *ad litem* and make orders, issue and give directives relating thereto. He can grant in any action instituted in the court, an injunction or other order. A person who has been convicted by a Magistrates' Court for an offence may appeal as of right to the High

Court against conviction or sentence on a question of law or fact. However, if he had pleaded guilty or admitted the truth of the charge preferred against him/her, he/she can appeal only against sentence.

4.0 CONCLUSION

The magistrates' Court as we know them today were established in 1933-1943. There are several grades of Magistrates and they differ from state to state, they try criminal cases through out the Federation and civil matters only in the South. District courts exist only in the North and they hear and determine civil matters only. Powers to punish and power to entertain matters are not congruent in all cases. Magistrates play preventive roles, but the exercise of such powers is not prominent.

5.0 SUMMARY

Magistrate Courts are most widespread. They handle over 80.0 percent of criminal cases charged to court. The Laws of the states which call them into existence determine their grades, powers and jurisdiction and they may vary sometimes widely from one state to another.

6.0 TUTOR MARKED ASSIGNMENT

The Magistrates' Court subsystem in Nigeria is archaic and calls for reform. *Discuss*.

7.0 REFERENCE/FURTHER READINGS

FGP: The Magistrates' Court Act.

UNIT 2: INFERIOR COURTS (CONT'D)

1.0 INTRODUCTION

In the last unit you learned about the Magistrates' Court. It is the most wide spread across Nigeria of all the Courts in existence. It also accounts for a vast majority of criminal charges in respect of crimes known to the police. In this unit, you will learn about additional inferior courts which are still closer to the people, particularly those in the rural areas. Examples are the area Courts. Additionally you will learn about certain important special Courts.

2.0. OBJECTIVES

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

1. Distinguish the jurisdiction of the Area Courts from Magistrate Courts
2. Discuss meaningfully, the role of these Courts in presenting crimes.
3. Demonstrate an understanding of the Juvenile criminal Justice administration and the coroners' inquest.
4. Identify the limitations of the Courts which are seemingly closest to the 'rural man'.
5. Critique the role, powers and functions of the inferior Courts studied.
6. Critique the Juvenile Criminal Justice administration
7. Justify the creation and existence of the Court Martial

3.0 MAIN CONTENT

3.1 AREA COURTS

Area Courts are established in the Northern States by the State Area Court Laws (e.g. Area Court Law of the particular state). Public officers preside over them. An area court is constituted by a lone Judge or at times by a Judge and one member or two members.

3.1.1 Classes of Area Courts

There also classes of Area Courts, namely:

Upper Area Court
Area Court Grade I
Area Court Grade II
Area Court Grade III

3.1.2 Jurisdiction of Area Courts

The Jurisdiction of each Grade of Area Court is specified in the instrument that brought the court into existence. However, matrimonial causes and the custody of children under the customary law are within the purview of every Area Court regardless of its Grade. The sanction which an Area Court may impose varies with its grade.

3.2 CUSTOMARY COURTS

A number of States have customary courts consisting of a President and at least two or other four members as the case may be: and it is constituted by the President and any two members.

3.2.1 Jurisdiction

Customary Courts have unlimited jurisdiction in matrimonial cases or other matters relating to non-Christian marriages as well as in matters of guardianship and custody of children under customary law.

The jurisdictions of customary courts in criminal proceedings are severely limited. They may exercise power on:

offences against the provision of any enactment which expressly confers jurisdiction on them
Offences against rules and bye laws.
Contempt of Court in the face of the court

A Customary court may impose a term of imprisonment of one month or a fine of twenty naira.

3.2.2 Powers

The powers of the Customary Law vary from one state to another. In the Western States, and Edo State, there are grades of customary courts: e.g.
Customary Court Grade A (also called Customary Court Grade I or Chief Customary Court)
Customary Court Grade B (or Grade II or Senior Customary Court)
Customary Court Grade C (or Grade III)
The President of Grade A and some Grade B customary Courts are legal Practitioners. Others are not. In many of such courts, the presiding officer is often a retired police officer or other public officer.

The maximum penalty which the various classes of the Customary Court are empowered to impose vary and increase from Grade C upwards.

3.3 JUVENILE WELFARE COURTS

One of the functions of the Magistrates is to sit as a Juvenile Welfare Court to hear charges against children and young persons. Juvenile Welfare Courts are Courts of summary jurisdiction which are established under the Children and Young Persons Act 1933-1943. The Juvenile Court is constituted by a Magistrate and two Assessors, one of whom is a woman. In some states, the Chief Judge appoints the Assessors.

Approved schools, Remand Schools and Probation Officers were specially instituted for the welfare of the delinquent, and to enable the Juvenile welfare Courts to function effectively.

3.3.1 Functions of the Juvenile Welfare Court

The functions of the Juvenile Welfare courts include:
1. Treatment of juvenile delinquents other than those charged with homicide
2. Hearing applications in respect of children and young persons in need of care or protection, beyond parental control and in truancy cases.
3. Dealing with applications for adoption of children where the law of a state so provides

3.3.2 Who are children and young persons

Many States now have their Children and Young Persons Law and definition of children and young persons. In the Southern States children are persons who have not attained the age of 14 years. A young person is

one who has attained the aged of 14 years but is under the age of 17 years.
The children and Young Person Law (Northern Nigeria Laws) 1963 defines a Young Person as a person who has attained the age of 14 years but has not attained the age of 18 years.

3.3.3 Trial of Delinquents

Children and young persons must be tried summarily for any offence, except homicide. Strict rules have been laid down vis-à-vis the hearing in the Juvenile Welfare Courts against youngsters. There are also special provisions for the correction or other treatment of such young offenders.

The Juvenile offender may be committed for trial for an indictable offence if: the Court considers that, if found guilty, he should

1. be detained for a long time
2. he /she is charged jointly with an adult and in the interest of justice, the court considers it necessary to commit both for trial.

3.3.4 Procedure of the Juvenile Welfare Court

Juvenile Welfare Courts are special Courts. They have special procedures. They sit as often as may be necessary. They must sit in a different room or building from that in which courts for adults and criminals are held or on different days. They shall not sit in a room in which sittings of a court other than a Juvenile Welfare Court are held. If the sitting of that other Court has been or will be held there, the Juvenile Welfare Court shall not sit within one hour before or after the sitting of the adult court.

3.3.5 Parties to Trials

Persons who may attend the Juvenile Welfare Court session are:

- members and officers of the Court
- Parties to the case
- Parties' Counsels
- Persons specially authorised
- Newspaper Reporters with leave of Court
- Others who may be directly concerned

3.3.6 Language of Courts and Orders

The Juvenile Welfare Court has its own vocabulary. Certain terms are not applicable to Juvenile offenders e.g. "Accused" "Conviction" etc. Juvenile offenders are delinquents not offenders or accused persons. If their 'delinquency' is proved, the court makes an 'order' he is not

sentenced. Before it makes any order, the court must consider the antecedent of the delinquent, his/her home life, associates etc. The order which the court may make includes:

a. Dismissal

The Court may make an order dismissing the charge.

b. Fine

The court may impose a fine and order the parent or Guardian to pay a fine, cost or damage.

c. Probation or Supervision

This order, which the Court may make, requires a person having attained the age of 17 years and found liable of an offence, the sentence which is not fixed by law, is to be under the supervision of a Probation Officer for a period from one to three years. The Court may include requirements as to residence, mental treatment, and/or securing the probationer's good conduct generally.

The Children and Young persons Act sets out what the Court must consider before making a Probation order and the consequence of any breach.

d. Discharge

The Court may make an order discharging the delinquent. A discharge may be;

a. absolute
b. Conditional e.g. that he commits no "further offence" for any period not exceeding three years.

One may ask: *'What does "further offence" mean in this context'*?
Does it mean the same offence for which he/she is brought to court or a different type of offence?
Will he/she now be dealt with for the latter offence only or for both the past and the present?

e. Caning

Caning is most widely used in Nigeria; followed by fines, probation and binding over in that order. Canning must not exceed 12 strokes. Female delinquents are not caned. The desirability or otherwise is beyond the scope of this present syllabus, it is topical.

f. Imprisonment

A young person may be sent to jail if there is no other means of dealing with him/her. A person under the age of 17 years at the time of offence cannot be sentenced to death.

g. Committal (or corrective) orders (or mandate)

The Court can make an order committing the delinquent to;

1. the care of a fit person
2. an approved school
3. the custody in a place of detention provided under the children and Young Persons Law.
4. any other method.

Some state laws qualify these orders as "corrective orders", "committal orders" or "mandate"

Self Assessment Exercise 1

1. Discuss exhaustively, committal or Corrective orders in relation to juvenile delinquents.
2. "Borstal Institutions and Remand Homes or Approved School should be abolished". *Comment.*

3.3.7 Juvenile Offenders and the Police

The Nigeria Police bears the burdens of ensuring that delinquent children do not associate with adults charged with or convicted of any offence other than an offence with which the child or young person is jointly charged. This should be the order while the delinquent is in custody or child being conveyed to or from the court.

a. Police Juvenile Welfare Branch

The Police has a Juvenile Welfare Branch for prevention of youthful offences and treatment of juvenile delinquents. The Branch is made up mostly of Women Police Officers. Is this adequate? Would you recommend a full fledge special Police command responsible for Juvenile Justice Administration?

b. Detention of Juvenile Delinquents

A Juvenile Delinquent is not to be detained by the Police unless

1. The charge is one of homicide or other grave crime
2. It is necessary in the interest of the delinquent to remove him/her from association with a reputed criminal or prostitute or
3. The Police officer has reasons to believe that the release of such a delinquent would defeat the ends of justice.

Often the Delinquent is released on self recognizance or to his parent or guardian with or without surety. Otherwise, he is detained. Detention must be in a place approved for detention under the Children and Young Persons Act unless:

- it is impracticable to do so
- the delinquent is so unruly or depraved a character that he cannot safely be detained or

- by reason of his state of health or his mental or bodily condition, it is inadvisable so to detain him.

A certificate to the above effect shall be produced to the court before which the juvenile is brought. Perhaps it may be important to distinguish between children and young persons who;

a. violate the criminal law
b. are maladjusted, anti-social or rebellious
c. are orphans, deserted by relations, persons wandering, having no settled home or visible means of subsistence
d. Beggars

It cannot be sufficiently stressed that in matters affecting children and young persons, the paramount consideration is the welfare, reformation, and rehabilitation of the juvenile.

Self Assessment Exercise 2

What is the place of National Open University of Nigeria in the Scheme of Juvenile Criminal Justice Administration?

3.4 THE CORONERS COURT

a. Who is a coroner?

A coroner is a person empowered to hold an inquest on the body of a deceased person, who appears to have died a violent or an unnatural death or on the body of a deceased person belonging to any other class, specified by the appropriate Coroner's Law.

b. Who may be a coroner?

Persons who serve as coroners are:

(1) Magistrates
(2) Other fit persons so appointed.

In some jurisdiction a coroner must be a barrister, solicitor or a general medical practitioner of at least 5 years standing in their profession.

When an Inquest may be held

The Coroners Law of each state lays down procedures for holding an inquest. The duty of the Coroner is to hold an inquest when a person has died in the following circumstances:

a. A violent or unnatural death
b. A sudden death of which the cause is unknown
c. In confinement in a lunatic asylum, Prison or Police custody

A Coroner is not bound by rules of Evidence, but he may receive evidence on oath. An inquest may hold on any day, in public or in private.

Finding and Aftermath

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

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

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

3.5 The Courts Martial

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

3.5.1 Constitution

(a) Court Martial may be composed of

i. a President who holds the rank not below a Major
ii. Two other officers.

This type of a Court Martial has power to sentence an offender to imprisonment not exceeding two years.

(b) A Court Martial may also be constituted by:

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

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

3.5.2 The Convener

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

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

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

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

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

The sentence is also subject to review by the Following:

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

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

3.5.3 Appeals

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

3.5.4 Other Matters

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

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

When a person who is subject to military law, has been tried by a Court Martial or dealt with by his Commanding Officer for an offence, a civil court is debarred from trying him/her subsequently for the same, or substantially the same offence as that offence. If for example a soldier has been dealt with for theft by a Court Martial, he/she cannot be subsequently charged with that same theft before a civil court.

4.0 CONCLUSION

The Magistrates Courts deal with 80% of crimes charged to court. The Area or Customary Courts are closest to the rural man, while the Juvenile Welfare Courts deal with delinquent Youth. There are other Special Courts which are established for particular purposes. Examples are the Coroner's Court and the Court Martial. Their powers and functions are contained in the Law setting them up.

5.0 SUMMARY

In exercise of their Constitutional Powers, states Assemblies have established a number of inferior courts in their respective States. Get acquainted with these courts operating in your state. The Magistrates Courts are particularly important since they deal with a vast majority of criminal matters.

6.0 TUTOR MARKED ASSINGMENT

1. Examine the doctrine of fair hearing in relation to courts martial.
2. Write brief notes on either
   a. the Customary Courts System or
   b. The Area Courts System.
3. Write an essay on Juvenile Justice Administration in Nigeria.

7.0 REFERENCES/FURTHER READINGS

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

Slappper, G. (2004): The English Legal System, Cavenish, 2004

UNIT 3: OTHER COURTS

Content

1.0 INTRODUCTION

You have already learnt about the Superior Courts, which are creations of the Constitution of the Federal Republic of Nigeria. Your attention has specially been drawn to its chapter VII. The same Constitution empowers any state to create additional courts and to annul such creation as it deems fit.

In exercise of that power, the states have created a miscellany of courts. It may be unwieldy to cover all of these courts. Only a few need to be learned. However, there are special courts which require mention. Examples are the Court Martial, and the Coroners Court and tribunals. A Tribunal is a court or an adjudicatory body or a place where a judge sits. Hence a discussion of other courts must necessarily extend to Tribunals. Tribunals impacted the Administration of justice system especially during the Military era. Now, however, there are only a few of them and they will be treated in outline only.

2.0 OBJECTIVES

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

1. Define the jurisdiction of a Court Martial,
2. Describe a Coroner's Court
3. Discuss the roles and functions of any of the Tribunals for the time, in existence
4. Justify the creation and use of Tribunals as an adjudicatory body in the Criminal Justice Administrative System
5. Critique the Court Martial and the ends of Criminal Justice System.

3.0 MAIN CONTENT

Section 6 of the Constitution of the Federal Republic of Nigeria 1999, (CFRN, 1999) vested the judicial powers of the Federal and of the States on the Courts. The Courts to which the section relates are set out in section 6, subsection (5). Refer to your study material if you still have problems in identifying the courts.

3.1 CONSTITUTIONAL PROVISION FOR SETTING UP OTHER COURTS

For our present purpose, section 6 subsection 5 provides:

3.1.1 Subsection (5). This section relates to:

(a) Such other courts as may be authorized by law to exercise jurisdiction on matters with respect to which the National Assembly makes laws, and

(b) Such other Courts as may be authorized by law to exercise jurisdiction at first instance or on appeal on matters with respect to which a House of Assembly may make laws.

3.1.2 In Subsection 4, the Constitution States:

Nothing in the foregoing provisions of this section (6) shall be construed as precluding;

a. the National Assembly or any House of Assembly from establishing courts, other than those to which this section(S.6) relates, work subordinate jurisdiction to that of a High Court.

b. The National Assembly or any House of Assembly, which does not require it, from abolishing any court to which it has power to establish or which it has brought into being.

3.2 ELECTION TRIBUNALS

3.2.1 Election Tribunals for the Federation and for the States

(CFRN) 1999 provides as follows

285: Establishment and Jurisdiction of Election Tribunals

1. These shall be established for the federation one or more election tribunals to be known as the National Assembly Tribunals which shall, to the exclusion of any court or tribunal have original jurisdiction to hear and determine petitions as to whether:
   a. any person has been validly elected as a member of the National Assembly

b. the term of office of any person under the Constitution has ceased
c. the seat of a member of the Senate or a member of the House of Representatives has become vacant, and
d. a question or petition brought before the election tribunal has been properly or improperly brought.

3.2.2 Election Tribunal for the States

1. There shall be established in each state of the federation one or more election tribunals to be known as the governorship and Legislative House Election Tribunals which shall, to the exclusion of any court or tribunal have original jurisdiction to hear and determine petitions as to whether a person has been validly elected to the office of Governor or Deputy Governor or as a member of any legislative house.

2. The Composition of the National Assembly Election Tribunals, Governorship and Legislative Houses Election Tribunals shall be as set out in the sixth schedule to the Constitution

3. The Quorum of an election tribunal established under this section shall be the chairman and two other members.

3.2.3 The Sixth Schedule provides as follows:

National Assembly Election Tribunal

A National Assembly Election Tribunal shall consist of:

A chairman: the chairman shall be a Judge of a High Court.

Four other members: these members are appointed from among judges of :

- a High Court
- Kadis of a Sharia Court of Appeal
- Judges of a Customary Court of Appeal

Other members of the judiciary not below the rank of a Chief Magistrates'

The Chairman and members of the Tribunal are appointed by the President of the Court of Appeal in consultation with the Chief Judge of the State, the Grand Kadis of the Sharia Court of Appeal of the State, the President of the Customary Court of Appeal of the State, as the case may be.

3.2.4 Governorship and Legislative Houses Electoral Tribunal:

1. A Governorship and Legislative Houses Election Tribunal shall Consist of :
   - Chairman who is a judge of a High Court
   - Four other members appointed from among judges of a High Court
   - Kadis of a Sharia Court of Appeal
   - Judges of a Customary Court of Appeal. Or
   - Members of the Judiciary not below the rank of a Chief Magistrates'

2. The Chairman and other members are appointed by the President by the Court of Appeal in consultation with the Chief Judge of the state, the Grand Kadis of the Sharia Court of Appeal of the State or the President of the Customary Court of Appeal of the State, as the case may be.

3.3 CODE OF CONDUCT TRIBUNAL

The Code of Conduct Tribunal (CCT) consists of a chairman and two other members.

The chairman must have held or is qualified to hold office as a judge of a Superior Court of record in Nigeria.

The President appoints the chairman and other members of the Tribunal on the recommendation of the National Judicial Council. Other members of staff are federal public servants.

The retiring age of the chairman and members is 70 years when their tenure ends. Any one of them who has served for a period of 10 years and retires at 70 is entitled to pension at a rate equivalent to his last annual salary for life. This is without prejudice to other retirement benefits.

The Chairman or any of the members may be removed from office upon an address supported by two thirds majority of each House of the National Assembly for inability to discharge the functions of the office. Inability to function may arise from;

- Infirmity of mind or body
- Misconduct
- Contravention of the Code of Conduct for Public Officers.

Powers of the Code of Conduct Tribunal

The Tribunal is set up to try the following offences:

- Conflict of personal interest with official duties and responsibilities
- Maintenance or operation of foreign accounts

Receiving any other remuneration in addition to pensions from public funds (This does not apply to members of the National Assembly or any Cadre of public officers, the assembly may exempt)

Demanding or accepting gifts or benefits in kind in the discharge of his duties

Accepting a loan except as permitted by law from a recognized institution.

Bribery

Abuse of power

Membership of societies which are incompatible with the functions or dignity of his office.

False declaration of assets (The National Assembly may exempt any cadre of public officers from this)

Breach of the code of conduct for public officers

Power of the Tribunal

Any public officer found guilty of contravening any of the provisions of the Code by the code of Conduct Tribunal may be:

a. required to vacate his/her office or seat in any of the legislative houses as the case may be or
b. disqualified from membership of a legislative house and from holding any public office for a period not exceeding ten years
c. liable to seizure and forfeiture to the state of any property acquired in abuse of, corruption of office or, AND
d. subject to the penalties that may be imposed by any law where the conduct is lso a criminal offence.

Appeals

Any aggrieved party may appeal to the Court of Appeal as of right from

a. the decision of the Tribunal
b. the punishment imposed on such persons

Appeals are required to conform with the acts of the National Assembly and rules of Court for the time being in force regulating the powers, practice and procedure of the Court of Appeal.

A public officer who has been punished by the Tribunal may additionally be prosecuted or punished for an offence in a court of law.

The President or Governor is precluded from exercising his/her power of prerogative of mercy in so far as it relates to any punishment imposed by the Code of Conduct Tribunal.

The Code of Conduct Tribunal exercises jurisdiction over Public Officers. In this context a public officer means a person holding any of the following offices.

The President and Vice President of the Federation and Governors and Deputy Governors of States.
Senate President and Deputy President
Speakers and Deputy Speakers of the House of Representatives and States Houses of Assembly
All judicial officers and all staff of the court of law
Attorney General of the Federation and of states
Federal Ministers and Commissioners of the Government of the States
All members of the Armed Forces, the Police and other government security agencies established by law
All persons in the Civil Service of the Federation or the State
All officer in Nigerian Mission abroad
All staff of the Universities, Colleges and Institutions owned and financed by Federal or State Government or Local Government Councils
Chair persons, members and staff of :

a. Code of Conduct Bureau and Code of Conduct Tribunal
b. Boards or other governing bodies or statutory corporation and of companies in which the Federal or state government has controlling interest.

Permanent Commissions or Councils appointed on full time basis.

3.4 CORONERS AND INQUEST

The Establishment, Constitution, Jurisdiction and powers, among other things, are governed by the Coroners Act. Refer to the Act and note the following

Coroner defined
A coroner may be defined as a public official whose duty is to:

1. investigate the causes and circumstances of nay death that occurs suddenly, suspiciously or violently and
2. hold inquests

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

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

Early History
The office of coroner was first established in England in 1194. They were “keepers of the Pleas of the Crown”. Their duties were

administrative or inquisitorial in nature and consisted of holding inquest upon dead bodies among other things.

When an Inquest may be held

An Inquest shall hold when a coroner is informed that the dead body of a person is lying within his jurisdiction and there is a reasonable cause to suspect that such a person has died:

a. a violent death
b. an unnatural death
c. a sudden death of which the cause is unknown
d. in prison,
e. in such a place or under such circumstances as to require an inquest in pursuance of an Act (e.g. Death in the Hospital, Mental Hospital, Police Custody).

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

Mandatory Inquests:

The Coroner must conduct an inquest in the following circumstances

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

Discretional Inquest

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

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

Suspension of Inquest

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

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

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

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

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

Powers
The Coroner is empowered to:

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

It is an offence to inter (bury) or cremate a body without lawful authority or excuse where:

- the coroner has prohibited the burying or cremation
- a person died in Police custody or in any prison
- a person died in circumstances where inquest must be held.

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

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

Duty to Report
Where death has occurred in such circumstances that an inquest is necessary or desirable, a report must be made to the nearest Local/Native Authority or the Police by:

1. Any person who finds such a body
2. Any person becoming aware that death has occurred in circumstances demanding an Inquest.

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

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

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

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

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

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

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

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

1. There are no suspicious circumstances surrounding the death nor are there any marks of violence on the body
2. In his/her opinion, an inquest ought to/need not be held

3. the body has been viewed and buried at ….(place where deceased is buried) having been satisfied that the body viewed was the body of ….(name of deceased)
4. the body has been sent to
5. the following persons have been arrested (or are about to be arrested) in connection with the death on the charges (set out)

4.0 CONCLUSION

Tribunals are special courts. An example is the Code of Conduct Tribunal. Its establishment, functions and powers are specified in the CFRN, 1999. The Electoral Tribunal also are courts but they, unlike the Code of Conduct Tribunal, lack criminal jurisdiction. Included in this discourse on other courts is the coroner court. Some follies frown at the institution of coroners, based on their belief that post mortem enquiries or examinations amount to disturbance of the deceased's soul. The powers, functions, rules and regulations governing the coroners inquest are contained in the coroners Act.

5.0 SUMMARY

A Coroner's inquest is necessary where the deceased has died a sudden, violent or unnatural death, in the Police custody, prison or asylum or in circumstances where inquest is necessary or desirable. Coroners are not bound by rules of evidence. They may issue a warrant or summons following or in the course of an inquest.

6.0 TUTOR MARKED ASSIGNMENT

A coroner is invaluable in the administration of criminal Justice. Discuss

7.0 REFERENCES/FURTHER READINGS

Kasumu, A (1977): The Supreme Court of Nigeria, Keinemann, Ibadan.

Slappper, G. (2004): The English Legal System, Cavenish, 2004

MODULE 4

UNIT 1: PERSONNEL OF CRIMINAL JUSTICE ADMINISTRATION

Contents:

1.0 INTRODUCTION

This Unit is devoted to judicial offices and their holders. It is not meant to be exhaustive; neither are you required to know the names of the incumbents. You should at least be aware of the various titles of judicial offices and officials, the courts in which they operate, and their Tenure. As a student of Criminology and Security Studies, you should try at every stage to picture the position of the Criminal and the impact which your study is likely to have on him or her or on the state of crime in general.

2.0 OBJECTIVES

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

1) Identify the titles of various judges in Nigeria.

2) Demonstrate an understanding of the pre-requisite, qualifications, appointment procedure, the tenure, removal from office and effects of incapacitation of specific judicial officers who functions at various levels within the judicial hierarchy.
3) Identify the roles of other judicial officers, law enforcement agents etc. who may be involved in any judicial process.

Visualize the position of the offender or accused person before the Criminal Justice personnel and critique the Criminal Justice Administration in relation to him or her.

3.0 MAIN CONTENT

3.1 CONSTITUTIONAL POSITION OF JUDGES

This discourse about Judges is based on the provisions of the Constitution of the Federal Republic of Nigeria, 1999.

3.1.1 Appointment of Chief Justice of Nigeria

The Chief Justice of Nigeria and other judges of the Supreme Court are appointed by the President of the Federal Republic of Nigeria on the recommendation of the National Judicial Council, subject to confirmation of such appointment by the Senate (CFRN, 1999: Section 231)

3.1.2 Qualifications

The qualifications for appointment into the offices of the Justice of Nigeria and Judges of Supreme the Court are as follows:
i) The person must be qualified to practice as a legal practitioner in Nigeria.
ii) He/she must have been so qualified for a period of not less than 15 years.

3.2 PRESIDENT AND JUSTICES OF APPEAL

The President or a Judge of the Court of Appeal must be a qualified legal practitioner in Nigeria for not less than 12 years. In making appointment to the office of the judges of the Supreme Court and the Judges of Court of Appeal, the President of the federation shall have regard to the need, to have among them, persons learned in Islamic personal law and in customary law.

As to who is learned in Islamic or Customary law, see CFRN 1999. Section 288) (b) – (c).

3.3 JUDGES OF HIGH COURT (FEDERAL OR STATE)

Qualified legal practitioner in Nigeria for a period of not less than 10 years.

3.4 PRESIDENT AND JUDGES OF THE SHARIA COURT OF APPEAL;

A (i) Legal/Practitioner in Nigeria; qualified to practice as a legal practitioner for not less than 10 years
(ii) Possess recognized qualification in Islamic law from an institution acceptable to the National Judicial Council
or

B (i) A recognized qualification from an institution approved by the National Judicial Council,
(ii) A considerable experience in the practice of Islamic law.
(iii) Distinguished Scholar of Islamic law.

3.5 PRESIDENT AND JUDGES OF THE CUSTOMARY COURT OF APPEAL

(i) A Legal Practitioner in Nigeria and qualified to practice as a legal practitioner for not less than 10 years and
(ii) A considerable knowledge and experience in the practice of customary law in the opinion of the National Judicial Council, or
(iii) Considerable knowledge of and experience in the practice of customary law.

3.6 APPOINTING AUTHORITY

The authority who appoints, recommends or confirms judicial appointments are shown below:-

Office	**Recommendation By**	**Confirmation By**	**Appoint-ment By**
1.Chief Justice of Nigeria	National Judicial Council	Senate	President
2. Justices of Supreme Court	National Judicial Council	Senate	President
3 President of the Court of Appeal	National Judicial Council	Senate	President
4 Chief Judge of Federal High Court	National Judicial Council	Senate	President

5.Grand Kadi of The Sharia Court Of Appeal, FCT	National Judicial Council	Senate	President
6.President of the Customary Court of Appeal, FCT	National Judicial Council	Senate	President
7. Justice of the Court of Appeal	National Judicial Council	Senate	President
8.Justices of the Federal High Court	National Judicial Council	Senate	President
9. Kadis of the Sharia Court of Appeal, FCT	National Judicial Council	Senate	President
10. Judges of the Customary Court of Appeal, FCT	National Judicial Council	Senate	President
11. Chief Judge of State High Court	National Judicial Council	State House of Assembly	Governor
12. Judges of the State High Court	National Judicial Council	State House of Assembly	Governor
13. President and Judges of the Sharia'h/Customary Court of Appeal of a State	National Judicial Council	State House of Assembly	Governor

Activity

1 "Any of the judicial officers indicated in serial 1-13 above may be removed if he is incapacitated and unable to function". *Comment*. Indicate the authority for your answer.

3.7 REMOVAL FROM OFFICE

A vacancy may occur in a Judicial Office in the following ways:

(a) If the judicial officer dies, resigns or retires

(b) If, for any reason, he/she is unable to perform the functions of the office or appointment (whether arising from infirmity of mind or of body) or for misconduct or contravention of the Code of Conduct.

Note what follows:-

In case (a), the next most senior Judge assumes the vacant office pending the recommendation, and confirmation of appropriate authorities.

In case (b) the President may remove the Judicial Officer upon address supported by two-thirds majority of the Senate where the Judicial officer is one of the following:-

i) the Chief Justice of Nigeria,
ii) President of the Court of Appeal,
iii) Chief Judge of the High Court of the Federal Capital Territory, Abuja,
iv) Grand Kadi of the Sharia Court of Appeal of the Federal Capital Territory, Abuja and
v) President of Customary Court of Appeal of the Federal Capital Territory, Abuja.
   If he/she is the Chief Judge of a State, Grand Kadi of a Sharia Court of Appeal or President of a Customary Court of Appeal of a State, the Governor may remove him/her upon an address supported by two-third majority of the House of Assembly of the State.
vi) In any other case, the President or the Governor (as the case may be), may remove the judicial officer on the recommendation of the National Judicial Council. See CFRN 1999, sections 230 (4), 238 (4), 250 (4), 261 (4), 266 (4), 270 (4) and 288-293.

3.8 DISQUALIFICATION

Certain persons are excluded from appointment to certain judicial offices. Here are some examples

3.8.1 Disqualification from Judicial Offices

The following persons may not be appointed into Judicial offices:-

a) Serving member of the National Judicial Council
b) Serving member of the Federal Judicial Service Commission.
c) Serving member of Judicial Service Committee of the FCT.
d) Serving member of the State Judicial Service Commission.

A disqualification lapses three years after he/she ceases to be such a members

3.8.2 Disqualification from Legal Practice.

A judicial officer, who ceases to be a judicial officer for any reason is disqualified from appearing or acting as a legal practitioner before any court of law in Nigeria.

3.9 JUDICIAL IMMUNITY

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

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

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

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

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

3.10 IMMUNITY FROM CRITICISM

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

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

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

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

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

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

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

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

There is some authority also that;

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

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

3.11 OTHER CONSIDERATIONS

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

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

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

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

Activity

1. What is the position of the law in the following situations;
    a. Where a Judge/Magistrate does a thing before he/she takes a judicial oath and the oath of allegiance.
    b. If the judge/magistrate delivers judgment when he/she ceases to be a judicial officer.
    c. For anything done outside his/her jurisdiction

4.0 CONCLUSION

The Judge has the ultimate responsibility in Nigeria of declaring, interpreting and applying the provisions of the Constitution and statutes. He, and the Law, stands for the future as they stood for the past as the sustaining pillars of society. No wonder the Constitution meticutiously provides for his/her appointment, the qualification he must possess, tenure, conditions for removal from office, and immunity while carrying out judicial functions. Whether these Constitutional provisions are adequate or inadequate is a perennial subject of debate. Be prepared to subscribe your views but such views are to be founded on legal authorities and good reasoning.

5.0 SUMMARY

We have discussed the constitutional provisions relating to appointment and removal of judges among other things. You have earlier learnt about the attempt by the military to change the posture. Please refer to the Unit.

6.0 TUTOR MARKED ASSIGNMENT

Do you consider that the Constitutional provisions of a judge suffice to secure his impartiality in the dispensation of criminal justice in Nigeria?

7.0 REFERENCES

Karibi-Whyte A.G. (19..): the Relevance of the judiciary in the Polity in Historical Perspective.

The Constitution of the Federal Republic of Nigeria, 1999

UNIT 2: PERSONNEL OF COURT OTHER THAN JUDICIAL OFFICERS

Contents:

1.0 INTRODUCTION

In the proceeding unit, we learnt about the appointment and removal of judicial officers. In this unit, we shall focus on some officers, who hold Legal Positions, which are not necessarily court officers.

2.0 OBJECTIVES

When you shall have completed this unit, you should be able to:

i) Distinguish between judicial positions and legal offices.

ii) Explain, illustrate and critique the legal position of the Attorney-General, the Legal Practitioner and the Police in the administration of justice system.

3.0 MAIN BODY

The personnel in the Criminal Justice system include;

i) Judicial officers, i.e. Judges and Magistrates.

ii) Legal officers other than judges and magistrates without whom the machinery for administration of criminal justice may not function properly. Examples are the Attorney-General, the Legal Practitioner, the Police, Prison etc.

3.1 ATTORNEY- GENERAL

Teslim Elias (19…) informed us that the exact date of the origin of the office of Attorney-General before 1900 was obscure. The office of Attorney-General was introduced to modern Nigeria by the British Colonial Administration. The chronology of Attorneys-General of the Federation, showed that one R.M Combe probably first served as Attorney-General from March 1918 to August 1918. In its remote beginning, the Attorney-General maintained the interest of the crown before the courts. He subsequently emerged as the states chief legal representative in the court. He appeared on behalf of the State, whether the proceedings involved civil or criminal matters.

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

3.1.1 Constitutional Position

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

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

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

The Attorney-General of the Federation is also;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Self Assessment Exercise 1

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

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

3.2 SOLICITOR GENERAL

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

3.3 DIRECTOR OF PUBLIC PROSECUTION (DPP)

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

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

3.4 REGISTRAR

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

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

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

3.5 SHERIFF

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

3.6 BAILIFFS

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

3.7 LEGAL PRACTITIONERS

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

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

A legal practitioner has a right of audience in any court sitting in Nigeria. But there are exceptions namely:
(a) Except where the law expressly excludes him
(b) Where he defaults in paying practice fess,
(c.) Where the nature of his employment constitutes a disability.
The court is a Temple of Justice and the Bench or Inner Bar (Magistrates and Judges) as well as the Outer Bar (legal practitioners) are Ministers in that Temple of Justice. The object that is common to both, is the attainment of justice and what is right *according to law.*

Legal Practitioners represent parties and assist them to prosecute or defend their cases. Every person has a right to a Counsel of his choice

provided such a Counsel is available and is not under a disability. This right to counsel is at the root to fair hearing and its necessary foundation. A denial of the right to a counsel on absence of legal representation leads the court to a conclusion that the accused has been denied a right to fair hearing and this can be fatal to the judgment of the Court.

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

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

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

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

Activity

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

3.8 THE POLICE

There is a Police Force for Nigeria. It is known as the Nigeria Police Force. The Constitution provides that no other police force may, in law be established for the federation or any state of the federation. The duties of the police are specified in section 4 of the Police Act. The Police in Nigeria fights crimes, maintains law and order, detects and investigates crimes, conducts prosecution in court, arrests, and searches, detains or release on bail suspected offenders, summons or serves summonses, executes warrant of arrest, protects persons and property among other things. Some members of the Police Force serve in quasi-judicial capacities when they are appointed members of Tribunals, or special Court-Martial. They serve as orderlies to the court, judge or Chief/Senior Magistrate. They render foreign services as the President may direct them to do.

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

Self Assessment Exercise 2

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

Legal Responsibility and Status of Police Officers

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

As *Lord Denning* (19…), MR, explained "I hold it to be duty for the Commissioner of Police to enforce the law of the land…….. but in all these things he is not the servant of anyone, save of the law itself. No Minister of the Crown (Federation or State) can tell him that he must or must not keep observation on this place or that, or that he must or must not prosecute this man or that one nor can any police authority tell him so. Responsibility for law enforcement lies on him; he is answerable to the law and the law alone."

Police Liability for Wrongful Act

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

Complaints against the Police

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

Violence against the Police

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

Violence against the police may be component of the declining respect for the way the police operates, implying that the rate of operational changes and strategies lad behind social change. Quoting *Nunn, Okonkwo (19…)* enumerated other complaints against the police, namely;

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

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

Self Assessment Exercise 3

How do you react to the observations above with justification?

3.9 PRISONS

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

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

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

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

Self Assessment Exercise 4

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

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

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

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

4.0 CONCLUSION

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

5.0 SUMMARY

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

6.0 TUTOR MARKED ASSIGNMENT

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

7.0 REFERENCES/FURTHER READINGS

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

MODULE 5

UNIT 1: MODERN ADMINISTRATION OF JUSTICE

Content

1. INTRODUCTION

In the last Module you learned about the emergence and development of the received Systems of administering justice especially the criminal justice. The Modern Legal System and its criminal justice administration, which is the subject matter of this Unit, is a record of development in the subsystems, if any, since independence in 1960.

2. OBJECTIVES

When you have studied this Unit, you should be able to:-

1. Outline the post independence changes in the Administration of Criminal Justice
2. Sketch the hierarchy of Courts Subsystem at the Centre
3. Evaluate the Modern Criminal Justice Administration

3.0 MAIN CONTENT

Let us consider the changes, if any, in the law governing the Criminal Justice Administration following independence. You will remember that the modern Criminal Justice Administration has its origin in the Common Law of crime and at the close of the 19^{th} century, the following 'laws' operated in Nigeria;

The Common Law of England

The principles of Equity

The Statutes of General Application in force in England as at 24 July, 1874 (later varied to January, 1900)

Statutes specifically enacted to apply in Nigeria
Local Enactments The
Customary Law Islamic
Law- the Sharia'h Judicial
Precedents
Mixture of law, custom, morals etc

The list is not exhaustive.

3.1 20th Century Development

During the Second half of the 19th century, there was clamour for the codification of the common law. In response Lord Blackburn's Commission produced the first England Draft Code of Criminal Law in 1879, which was intended to replace the common law, but the British Parliament rejected it. The Draft Code was then recommended for the continent and the British colonies. After undergoing some minor modification, the Criminal code Proclamation, 1904 was promulgated, adopting the Draft Code of Criminal Law for the Northern Protectorate of Nigeria.

The piece of legislation became known as the Criminal Code Act. It contains in the schedule the Criminal Code, the principal law on crime. It is exhaustive in respect of the matters with which it deals, to the exclusion of the common law and of imperial statutes other than those which apply to Nigeria. Thus where the words of the Criminal Code Act are clear and unambiguous, no reference to the Common Law is necessary. No text book on Criminal Law of authority or in a judgment is necessary or even useful for the understanding of the criminal code.

Following the amalgamation of the Colony and Protectorate of Southern Nigeria and the Protectorate of Northern Nigeria, the Criminal Code Proclamation, 1904 was repealed and re-enacted in 1916 to make the Criminal Code, 1904 applicable to the whole of Nigeria.

On September 30, 1960, the Northern Region legislature passed into law, the Penal Code Law contained in the Schedules to the Penal Code Law, 1959. The Federal Parliament also passed into law the Penal Code (Northern Region) Federal Provisions Act 1960. The effects of both legislations were:

1. The Criminal Code Proclamations, 1904-1916 ceased to apply to the Northern Region.
2. The Criminal Code contained in the Criminal Code Proclamation (1904-1916) ceased to be law with effect from 1 October, 1960 in Northern Region.
3. The Penal Code Law became the applicable law of crime in the Northern Region at Independence.

4. The Criminal Code Act remained in force in other parts of Nigeria.

Self Assessment Exercise 1

1. Justify the rejection of the Criminal Code and adoption of the Penal Code by the government of Northern Region on 30th September, 1959.
2. What impact, if any, do the differences in the Criminal Law operative in the Northern and Southern States respectively have on the state of Crime and Security in those areas in particular and in Nigeria generally?

3.2. THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA (CFRN), 1999

The Judicial powers of the Federation are vested in the courts, which are established for the federation, in the same way, the judicial powers of a state are vested in the courts established for a state, subject as provided by the Constitution.

Judicial powers extend to the following:

3.2.1 Inherent Powers and Sanctions

Inherent powers and sanctions refer to those powers and sanctions that necessarily derive from an office, position or status. They are matters between persons, or between governments or authorities and/or any persons(s) in Nigeria, and all actions and proceedings relating thereto, for the determination of any questions as to the civil rights and obligations of that person.

Note the restrictions on judicial powers. For example, the following are beyond judicial powers:

- any issue or question as to whether or not any act or omission, law or judicial decision, is in conformity with the Fundamental Objectives and Directive Principles of State Policy as set out in Chapter II of the Constitution
- any action or proceedings relating to any existing law made on or after 15 January, 1966 for determining any issue or question as to the competence of any authority or person to make any such law.

Self Assessment Exercise 2

1. What are the implications of removing Chapter II from judicial powers?
2. Justify the ouster of judicial powers to inquire into anything done on or before January 15th, 1966.

3.3 THE ROLE OF THE JUDICIARY

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

3.3.1 Interpretation of Statute

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

3.3.2 Enforcement of Individual Fundamental Rights

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

3.3.3 Defence and Maintenance of the Rule of Law

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

3.3.4. Sustaining Peace and Order

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

> "*The importance of the function discharged by the (courts) in sustaining order, peace, harmony and happiness in our society is best appreciated through an analogy with the saying of the Holy Prophet Muhammad. He is reported by established authorities to have said; 'there is a small organ in the body of man. If it is in perfect condition, then the whole of the body will be perfect and function well, if it is faulty, damaged or weak, then the whole of the rest of the body shall likewise be sick and in disarray'. That organ is the heart. Government, which is the functional expression of the living statement, like the living body, has its own perfect heart if is to function well. The dispensation of justice which is the task of the courts is the heart and soul of all*

good governance. When the Holy Prophet spoke, his concern was definitely not human biology. He was echoing the same wisdom revealed to Jesus of Nazareth … of the need, most absolutely, to maintain and do justice to all men. Indeed, there is hardly any human society known to recorded history, which does not make justice the absolutely essential condition of order, survival, happiness and good relation among men".

3.3.5 To uphold Fundamental Human Rights

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

3.3.6 To determine Justice

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

the defender of the rights which the Constitution has guaranteed the citizen.

an insurance against arbitrariness in the exercise of power

a vehicle for settlement of disputes whether person to person and person and person(s) and state within accepted principles of law and procedure, obviating the need to resort to self help measures

a guarantee for the maintenance of law and order, and

a democratic society.

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

In the determination of justice:

"there can be no balance of forces, no opportunism, no bargaining. A judicial decision derives its authority not from the fact that it is well adapted to the requirements of a particular temporary situation but from its being founded on reasons, which have general force and universal cogency apart from the particular case in point. All judicial institutions are based on two principles, which are spiritual in nature: legal logic, as a rational element and justice, as a moral element. These two

principles, these two mainstays of the judicial functions, raise it above the rough and tumble in which the interests and passions of people, parties, classes, nations and races (ethnic groups) clash with one another". (P.C.I.J. Series C No. 7-1, Pg. 18)

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

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

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

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

3.4 CRIME

As a student of criminology and Security Studies, you are already familiar with the definitions of crime. Here, you are looking at crime from the criminal justice perspectives (i.e. its technical meaning).

3.4.1. Crime under the Customary Criminal Justice Administration

Generally, Crime is a taboo. The Customary Law recognizes both crimes and civil wrongs. What distinguishes one from the other is the variety of sanctions. In this regard, there is no uniformity due to the heterogeneous nature of indigenous societies. Thus what may be regarded as a crime by one custom, tribe or clan may be mere moral wrong in another. Furthermore, there are different and varying modes of sanctions for different crimes.

In *Aoko v Fagbemi, (1961),* the Court acquitted a person accused of adultery in Oshogbo because the act had not been proscribed in any written law. But a similar conduct came before at the Ilorin Magistrate's

Court in *R V. Soluade* and the accursed was convicted because the Penal Code proscribed it under pain of punishment.

3.4.2. Crime and the Constitutions

The Independence Constitution and subsequent post Independence Constitutions have all provided expressly that no person shall be convicted of a criminal offence, unless that offence is defined and the penalty therefore is prescribed in a written law.
The implication of this constitutional provision is as follows.

Crimes which are recognized under the unwritten customary criminal Law automatically ceased to be crimes except those that have been enacted into law.

Crimes recognized under the written customary law remain crimes in the new regime

Crimes under the Sharia'h subsist as crimes.

3.4.3. Written Codes

There are crimes under the Sharia which are no crimes under the Criminal Code while it lasted. Intoxication is a partial defence in the Criminal Code. Under the Sharia,h, it is not a defence at all, rather it is a crime.

Suppose there was murder by a drunken person. He is charged to court for murder. He pleads ***not*** guilty; Testifies that he acted at the spur of intoxication. The Court is satisfied with this defence, what follows?

Under the Criminal Code, the accused would be acquitted of murder and convicted of manlaughter and imprisoned or fined instead of being hanged. If the trial is before a Sharia'h, the accursed would be convicted of murder and hanged, because intoxication is not a defence, but a crime in itself.

Judicial decisions were equally in confusion. In *Gubba v Gwandu Native Authority (1947)* it was held that Native Courts could apply native laws and Custom only to those offences not covered by the Criminal Code.

The following year, the Native Courts Ordinance was passed restoring to the Native Courts, the power to try cases according to the customary law.

Ten years after *Gubba's* case, a similar problem came before the court *Maizobo v. Sokoto* Native Authority (1957). The Appellate Court held

that in such cases the Native Court were required to consider two different sets of laws

1. The Native Law and Custom to ascertain guilt
2. The Criminal Code to ascertain the punishment and sentence.

4.0 CONCLUSION

The 20th century changes were designed to install in Nigeria, the British Judicial institutions, law and practices, to replace the Indigenous laws and institutions. There were conflicts as you have learned in *Aoko v. Fagbemi, R. v. Maizobo v. Sokoto NA* and were such that an Emir could say": *"Any where the white man went, there was confusion"*. The people did not seem prepared for the change.

5.0 SUMMARY

The 20th century was an era of codification and consolidation of laws. The common was codified in 1879 but the Westminister Abby rejected it. The Draft Code was then modified and imposed on Nigeria, 1904-1916, The Northern Nigeria repeated it in 1960 and substituted the Penal Code which was modified after the Supreme Penal Code. The Independence and post-independence Constitution 1960-99 successively vested the judicial process of the State in the courts. Among other functions, the Courts intepretes the statutes, enforce fundamental rights, and maintains the rule of law, peace, order and justice.

6.0 TUTOR MARKED ASSIGNMENT

What were the conflicts in the administration of Criminal Justice between the Indigenous and the Received English Systems? Support your answer with decided cases.

7.0 REFERENCES/FURTHER READING

Kasumu A. (1977): The Supreme Court of Nigeria, Keinemann, Ibadan.

Slappper, G. (2004): The English Legal System, Cavenish.

UNIT 2: CRIMINAL JUSTICE ADMINISTRATION IN THE MILITARY REGIME

Contents

1.0 INTRODUCTION

There was what looked like a Mutiny in the Nigeria Army. A group of Majors killed some Senior Military Officers and Civil rulership. The Prime Minister and Premiers of Northern and Western Regions were among them. In the confusion, the Senate President handed over the reins of government to the Military which accepted the offer on 15th January, 1966. The Armed forces of Nigeria subsequently by series of coup d'etat and Counter Coup d'etat ruled Nigeria from 1966-79, and 1983-1999 except for a brief diarchy in 1992, which period was a considerable portion of post independence dispensation. In this unit, you will learn the impact the military regime exerted on the administration of criminal justice, and the judiciary.

2.0 OBJECTIVES

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

1. Critique the administration of criminal justice in the military era
2. Compare and contrast criminal justice administration in democratic and dictatorial regimes.

3.0 MAIN CONTENT

3.1. PREAMBLE

The traditional role of the Armed Forces is to protect the internal and external security of Nigeria, defend her territory and ward off fears of foreign attack or threats.

From this perspective, the coup of 'majors' on 15th January, 1966 and subsequent military intrusion into politics and active governance, was a departure from its traditional role. But it has been contended that the coup d'état was defensive in nature. General Afrifa of Ghana explained: "Where there was no constitutional means of offering a political opposition to the one party government, the armed forces were automatically made to become the official opposition to the government".

Different views obtained in India and USSR. When the Supreme Court in India nullified the election of Indira Gandhi as Prime Minister of India, there was a lacuna. The India Army was invited to take over the Government; but it declined on the ground that its role is to defend not to rule. In the same vein, the Russian Army stood by during the Country's political impasse and would not intervene.

3.2 DEPARTURE FROM THE DOCTRINE OF SEPARATION OF POWER

On assumption of Political Powers and government, the Federal Military Government promulgated the Constitution (Suspension and Modification) Decree No. 1, 1966. The decree suspended some and modified other provisions of the Constitution of the Federation, 1963. It conferred upon itself, the power to make laws for the peace, order and good government of Nigeria by decree. It also provided that;

a. The validity of Decrees and Edicts shall not be enquired into
b. The Executive authority of the Federal Republic of Nigeria shall be vested in the Head of the Military Government
c. There shall be a Supreme Military Council and a Federal Executive Council comprising Military and Police Personnel and the Attorney General.
d. There shall be an Advisory Judicial Committee.
e. Any court of law, authority of office as well as any appointment before 16 January 1966 under the Constitution, the provision of which were not suspended were deemed to be duly established.

The Executive and legislative organs of government were fused. There was no express recognition of the Judiciary. It was not abrogated. Eso, JSC, in *Government of Lagos State v Ojukwu (1986)* explained that:

> *"by virtue of the Constitution (Suspension Modification) Decrees, a good number of the provisions of the Constitution were suspended. Indeed, what was left was what had been permitted by the Federal Military Government to exist. All the provisions relating to the Judiciary were saved. Section 6 of the Constitution, the most important provision in so far as the*

institution known as the Judiciary is concerned, which vests in courts the judicial powers of the Federation was left extant".

3.2.1 Military use of Ouster Clauses

The successive military dispensations jealously preserved the policy of preventing their administration from being made subject to litigation in the regular courts. See for example, the following;-

The Constitution (Basic Provision) Decree, 1975 (No. 32)

The Constitution (Suspension and Modification) Decree 1973 (No. 107)

The Federal Military Government (Supremacy and Enforcement of Power) Decree 1994, (No. 12).

These decrees and several others repeatedly provided that

"No question as to the validity of this Decree or any other decree, made during the period 31st December 1983 to 20 August 1993 or made after the commencement of the Decree or an Edict shall be entertained by any court of law in Nigeria."

"No civil proceedings shall lie, or be instituted in any court for/or on account of/or in respect of any act, matter or things done, or purported to be done under or pursuant to any Decree or Edict and if such proceedings are instituted before, on or after the commencement of this Decree, such proceedings shall abate, be discharged or made void".

The questions of validity of an Edict may be entertained only on the ground that it is inconsistent with a Decree and the consequence is that such an Edict is void only to the extent of inconsistency".

The consistence with the policy of the Military, the constitution of the Federal Republic of Nigeria, 1999, (CFRN) provided that:

"The Judicial powers shall not, extend to any action or proceedings relating to any existing law made on or after 15th January, 1966 for determining any issue or question as to the competence of any authority or persons to make any such law (CFRN, 1999 Section 6(6) (d))."

3.2.2 Nature of Military Intrusion

There was an initial dual interpretation as to the nature of the Military Government:

(a) Constitutional Government

The Supreme Court of Nigeria held that it was a Constitutional Government and bound by the Constitution of Nigeria, 1963 and the Rule of Law. The Apex Court was of the view that what happened on 15th January 1966 was a transfer of Power. See the case of *Lekanmi v Attorney General (Western States)* (1967)

(b) Revolution

The Federal Military Government considered that the event of 15th January, 1966 was a revolution.

The Supreme Court rejected this contention in Lekanmi's case. The Government reaction to the Supreme Court decision was swift. It promulgated the Federal Military Government (Supremacy and Enforcement of Powers) Decree, 1970 (No.28), asserting itself as a product of a revolution. It also declared the Supreme Court decision void.

According to *Obaseki, JSC,* the Constitution of Nigeria is founded on rule of law, the primary meaning of which is that everything must be done according to law. It means also that government should be conducted within the framework of recognized rules and principles which restrict discretionary power which Coke colourfully spoke of as 'golden and straight **metwand** of law as opposed to the uncertain and crooked cord of discretion'. More importantly, rule of law means that disputes as to the legality of acts of government are to be decided by judges: *Government of Lagos State v Ojukwu (1986)*

Self Assessment Exercise 1

1. Read carefully the case of *Lekanmi v AG (Western State) 1967* and answer the following;
   a. who are the parties in the case?
   b. what are the facts of the case as found by the court?
   c. what was the decision by the court of first instance and the reasons for the decision?
   d. what were the grounds of appeal?
   e. what defence did the other side present in opposition to the ground of appeal?
   f. what was the decision of the Supreme Court and the reasons?

2. Write a critique of Decree No. 28 of 1970.

3.3 THE CIVIL WAR

A Civil War broke out in Nigeria between 1967 and 1970 when the Eastern Region, attempted secession and declared Eastern Region a sovereign and independent State of Biafra. Shortly before then, Nigeria was subdivided into 12 states, in place of the three Regions. The State which attempted secession corresponded to the geographical area of one of the States called: the East Central State.

Activity

You are already conversant with situations where different laws co-exist in a society at the same time. You can easily visualise the portion of secessionist Region having also conflicting laws. E.g.:

a. Laws of Nigeria
b. Laws of Eastern Nigeria prior to secession
c. Laws existing in the Region after secession; which can be into two:
   (i) Laws necessary for peace and good order among the citizens which regulates ordinary social life of the people.
   (ii) Laws primarily geared to foster the rebellion.

The above laws were administered in the courts of Eastern Region of Nigeria, now renamed the Courts of Biafra by Magistrates and Judges, Court Officials and the Police who were:

1. First appointed by the government of the Federation and posted to the Eastern Region
2. Deserters from their duty post from other parts of Nigeria absorbed by the Biafran Government
3. Persons directly appointed by the Biafran government.

3.3.1 Cessation of Secession

The Civil War ended in 1970. There was “no victor, no vanquished”. The Republic of Biafra ceased to exist.

The legitimate government of East Centre State (the defunct Republic of Biafra) passed into law, the Judicial Acts Validity Edict 1970 validating the decisions or orders of the courts in the secessionist region, but the Supreme Court declared the Edict void on the ground that it usurped federal functions. (*Ogbuagu & Anor v. Ota Ukaeji* (1971)); In answer to this, the Federal Military Government passed the Marriage (Validation) Decree, 1971, No. 46, which validated all marriages purported to have been celebrated before a duly appointed Registrar of Marriages during the Civil War.

The High Court and other Courts of Biafra declared illegal; but acts and judgments which had been fully executed in "Biafra" were *fait accompli* Matters that were inchoate were a nullity.

3.4 MILITARY TRIBUNALS

The Military Government established an unprecedented number of Special Tribunals – both administrative and Judicial – and vested them with enormous judicial powers particularly in the field of criminal justice administration. The Tribunals complemented the existing Courts. An example of a special Military Tribunal with wide powers was the Recovery of Public Property (Special Military Tribunal).

3.5 RETROACTIVE LEGISLATION

In a democratic dispensation, no person shall be convicted, tried, processed or indicted for crime, if the written law in force at the particular time the facts occurred, does not give it the qualification of crime. During the Military regime, a number of retroactive legislations were passed by decrees and edicts. An example is the Special Tribunal (Miscellaneous Offences) decree, 1984 which was made to take effect form December 1983.

3.5.1 Legislative Judgment

No person is to be convicted or condemned without a previous jurisdictional trial that is legal and regular. There must be a prior trial, and a declaration of criminal responsibility expressed in a firm pronouncement. Once again s*ee the case of Lekanmi.*

3.5.2 Separation of Powers

You read earlier that there was a complete fusion of legislative and Executive powers and functions. In a number of cases, appeals from decisions of Tribunal and Courts lay to the Military Governor of a State or the Supreme Military Council instead of the regular Courts. In other cases, the Right of Appeal is restricted. An example is the judgment of the Fire Arms and Armed Robbery Tribunal.

3.5.3 Appointment of Judicial Officers.

The Supreme Military council, acting after Consultation with the Advisory Judiciary Committee, appointed the Chief Justice of Nigeria and Justices of the Supreme Court and could also dismiss the Chief Justice and Justices of the Supreme Court without any advice or consultation with anyone.

3.5.4 Judicial Attitude

Attitude of judges were not consensual: The approach of different judges could be classified into;

1. Those who insisted that the military was constitutional and a continuation of the Constitutional Government
2. Those who accepted that there was a change but that the existing legal order remained what it had always been
3. Those who recognised the military government and its unlimited legislative powers but contended that the Government was under the law
4. the conformists

The courts did not question Decrees and in obedience to Decree No. 1 of 1966, but they did not hesitate to declare Edicts void for inconsistency with the Constitution. See the case of *Council of the University of Ibadan v. Adamolekun (1967).*

The courts did not question the Armed forces and Police (Special Powers) Decree, 1967, No. 4. but they upheld application for Habeas Corpus.

See *Agbaje v. IGP* (1969), *Balla Rabe & Anor V. IGP* (1996), *Olayori & Ors v. COP* (1969).

Also see *Lekanmi v. AG* (WS) (!968) and *Ogunlusi v. AG*(Fed) (1970).

In this way the Judiciary in the Military Regime did what it could to protect the citizen form improper executive *cum* military encroachment on their civil and human rights.

4. CONCLUSION

The Judiciary is a powerful and visible organ of government. It decides matters before it impartially, on the basis of facts and in accordance with the law, without any restriction, improper influences, inducement, pressure, threats or interferences, direct or indirect, from any quarter for any reasons. Perhaps for this fear, the Military adopted ouster clauses to remove certain of its action from the purview of the Courts. The Military tampered with the constitutionally protected security of tenure, physical security and freedom from interference with judicial decision outside the appellate process.

The much used Military Tribunals produced quicker dispensation of justice and provided some useful social services. At the same time, they threatened the status of the formal judiciary and militated against its ability to perform its important functions.

5.0 SUMMARY

In this unit, you learnt about the nature of Military intervention into governance from 1966-1979 and 1983-1999. It was a revolution and change. There were further considerations when the Eastern Region attempted to secede, and with the creation of East Central, South Eastern and Rivers States out of the Region, as well as the Civil War from 1967-1970. The reconciliation process extended to the Judiciary. The Military did not directly recognize it as an independent organ of government. It was one of cautious approach.

6.0 TUTOR MARKED ASSIGNMENT

1. The aim of the Military Government was to fight crime and instill accountability by public officers. Discuss with particular reference to *Lekanmi & Anor v Attorney General (Western States)* and incidence of Military Tribunals.
2. Evaluate Judicial Independence during the Military Regime.
3. Write an essay on "The Military, the Judiciary and Crime and Security" in Nigeria.

7.0. REFERENCES/FURTHER READINGS

Kasumu A. (1977): *The Supreme Court of Nigeria*, Keinemann, Ibadan.

Slappper, G. (2004): *The English Legal System*, Cavenish.

UNIT 3: ADMINISTRATION OF JUSTICE; THE CRIMINAL PROCESS

Contents:

1.0 INTRODUCTION

No person shall be convicted of a criminal offence in Nigeria unless the offence is defined and its punishment is prescribed in a written law. The only exception to this rule is contempt of court. It is also presumed in law that every person (including one suspected of crime or even facing a charge before the court) is innocent until he is proved guilty. Each state of the federation has its machinery of criminal justice for determining the criminal liability for ones acts or omissions. This is the focus of this unit.

2.0 OBJECTIVES

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

1. explain, illustrate and critique the machinery for criminal justice in Nigerian
2. explain the rights of persons accused of crimes.
3. identity the problems in the criminal justice system and
4. attempt to proffer solutions.

3.0 MAIN BODY

The Constitution provides that all authorities and persons exercising legislative, executive and judicial powers should conform to, observe

and observe and apply the provisions of the chapter 11 of the CFRN, 1999. It also stipulated that the independence, impartiality and integrity of courts of law and easy accessibility shall be secured and maintained. *(Sections 13 and 17).*

3.1 COMMENCEMENT OF A CRIMINAL PROCESS

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

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

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

The Police may arrest for the following reasons:
1. To prevent the person arrested from continuing with his/her offence or from committing further offences
2. To protect the offender against likely harm or danger
3. To punish the offender.

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

3.2 CHARGE ROOM

At the Charge Room, the officer in charge (Charge Room Officer) hears the complaints, records it, and attaches a label to his summation of facts in the light of his knowledge of law. If the label is other than a crime, he dismisses the complaint. The charge room officer may dismiss any complaint on the ground that it is false, trivial, vexatious, frivolous or civil. Otherwise, he admits the case, records it and refers both the complaint and the complainant and the suspects, if any, to the Crime Branch for investigation accordingly. As a matter of practice, the Charge Room Officer must record the name and address of the complainant, time, date, place and nature of every complaint he/she receives in the course of his/her duty, as well as his actions, and decisions on each.

3.3 CRIMINAL BRANCH

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

Judges Rules

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

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

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

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

Bail

Arrest is the beginning of imprisonment. The first thought of a person under arrest is how to secure his/her release. The suspect may be released on bail if the crime is bailable or within police powers to grant

bail. Otherwise, he may be remanded pending arraignment "as soon as practicable". Where the arrest is by warrant, it is usual to find the bail terms endorsed on it. Otherwise he is taken before the issuing Magistrate of Judge, Complaints against juvenile delinquents or women are generally assigned to female investigating Police Officers (W/IPO).

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

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

Self assessment Exercise 1

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

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

3.4 ARRAIGNMENT AND TRIAL PROCESS

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

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

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

What is a Criminal Proceeding?

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

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

The true nature of the proceedings, taking into account the severity of the penalty which may be imposed, looking especially at whether imprisonment is a possible penalty *(Smith and Hogan) 2005 (9)*

Whether the rule applies only to a specific group or to the public generally.

Whether the imposition of any penalty is dependent upon a finding of culpability

Whether in law, the particular conduct has been defined as criminal.

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

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

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

3.5 MODE OF TRIAL

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

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

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

Note: Lord Parker's caveat: "there is above all, the proper administration of criminal justice to be considered, question such as the protection of the society and the stamping out of the sort of criminal enterprise, if it is possible. In serious cases therefore, it may not be acting in the best interests of the society by inviting summary trial".
See *Coe (1969*), Also *Broad (1979*)

3.6 APPEARANCE IN COURT

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

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

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

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

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

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

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

3.7 TRIAL

That is the hearing of evidence by a Magistrate or Judge and the full inquiry into a case culminating in a verdict. Parties and their witnesses are present in court. The case is called, the accused enters the dock while the witnesses leave the court and out of hearing. The prosecutor opens his case. He may or may not make a statement. He calls his first witness, leads him/her in evidence-in-chief. The accused or his counsel cross examines and the prosecutor re-examines. The process is repeated for

each witness until the case witness is examined in chief, cross examined and re-examined. That is the case of the prosecution. The court turns to the accused to open his/her case, and warns him/her of his/her rights, namely:

i.) The right to elect to keep mute, remain at the dock, not saying anything.

ii.) The right to elect to give evidence from where he is at the dock and he will neither be sworn nor questioned.

iii.) The right to elect to testify on oath in the witness box and be cross- examined.

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

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

3.8 VERDICT

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

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

Note the following:

No person shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under a written law at the time when it was committed.

It is a general principle of law that only the law and the law alone can define a crime and prescribe a penalty

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

3.9 SENTENCE

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

The sentence of court may be one or more of the following;

Death sentence (under 17 or pregnant women cannot be sentenced to death)
Imprisonment
Flogging (i.e. caning)
Fines
Forfeiture
Seizure
Disqualification
Probation
Discharge (absolute or conditional)
Compensation
Restitution
Costs
Damages
Reconciliation
Deportation
Binding over
Destruction

Except where it is mandatory, the choice and question of sentence is discretionary. In theory, the objective of sentence ranges from retribution, deterrence, to reformation and rehabilitation, or reparation. In practice the magistrate or judge considers such factors as;

Where the crime was planned
Whether offender is an habitual criminal
Prevalence of the particular form of crime
Whether violence was employed
Public interest

Nature of the crime
Previous conviction for similar offence (if any).

The sentence is the gist of criminal proceedings and *Stephen **(19…)*** tells us "it is to a trial what the bullet is to a gun". *Smith* and *Hogan **(19…)*** have advised that any court dealing with an offender in respect of an offence must have regard to the following:

a. The punishment of offenders
b. The reduction of crime (including its reduction by deterrent).
c. The reform and rehabilitation of offenders
d. The protection of the public, and
e. The making of reparation by offenders to persons affected by the offence(s)

The court will not impose a heavier penalty than one that was applicable at the time the crime was committed.

Activity

As a Judge, consider critically, how you can have in mind all of the purposes of sentencing in any one case; and apply each appropriately and consistently.

Fundamental Principles in the Administration of Justice

A few of the fundamental principles in the administration of criminal justice need to be mentioned:

1. The court must consider every defence open to an accused person on the evidence
2. The whole account which a person gives of the transaction must be taken and considered as a whole. The Magistrate or Judge cannot take the unfavourable parts of the case and refuse to consider the defence raised by him in the same statement and other defences which surface in the evidence before the court however slight or minor.
3. The burden of proving a fact, which if proved would lead to the conviction of the accused is on the prosecution who should prove such fact beyond reasonable doubt.
4. Any doubt as to the guilt of the accused person, arising from the contradictions in the prosecution's evidence of vital issues must be resolved in favour of the accused
5. The findings of facts and conclusions from facts of a trial court should be based on evidence adduced before the court and not on speculations or possibilities. No court of law is entitled to draw conclusion of a fact outside the available legal evidence before it.

The appraisal of oral evidence and the ascription of probative values to evidence is the primary duty of a trial court. The Court of Appeal would interfere only in the following situations:

1 Where the trial court made imperfect or improper use of the opportunities of hearing and seeing the witnesses
2 Where the trial court has drawn wrong conclusions from accepted or proved facts which those facts do not support

This is a reasonable expectation; for where a trial Judge draws mistaken conclusions from indisputable facts or wrongly arranges or presents the facts on which the foundation of the case rests, the appeal court would not abdicate its responsibility and rubber-stamp the error, but would intervene and do what justice demands.
See *Lawal v Dawodu (1972); Omoregbe v Ehigiator* and *Fatoyinbo v Williams (1956)*

Limitation on the Role of the Prosecutor
*Herbert Stephen **(19…)*** emphasized that the object of the prosecutor is "not to get a conviction, without qualification, but to get a conviction only if justice requires it".

Ideally, the Prosecutor takes no part or takes only a minimum part in the sentencing process. His proper role is to see that the prosecution case is fairly presented and that all weaknesses in the defence case are identified and fairly exposed to court".

The Prosecutor is to state all the relevant facts of the case dispassionately, whether they tell in favour of a severe sentence or otherwise. *Crompton **(19…)*** likened the proper motivation of a prosecution to that of a Minister of Justice. Nonetheless, the Prosecutor is entitled to present a strong case, to hit hard, but with blows that are scrupulously fair. Note the difference between the two sides:

1. The state (represented by the Prosecutor) is interested is justice.
2. The defence is interested in obtaining an acquittal within the limit of lawful procedure.

Holding Charge
When a person is accused of committing an indictable offence, he may be arraigned upon a "holding charge" before a magistrate court for the purpose of remanding him to custody pending his appearance before a High Court which has jurisdiction to try the offence.

An illustration is where a person is accused of robbery, the Police investigation may have been concluded or on-going, it may be pending DPP's legal advice or other. Meanwhile the prosecutor prefers a charge, and arraigns the suspect before a Magistrate. The Magistrate Court has

no jurisdiction to try the offence charged. All it does is to remand the accused.

In the opinion of the Court of Appeal, 'holding charge' is unknown to the Nigerian Law. *(Enwere v Cor (1993)).*

The Court has said:
Where the jurisdiction to try offenders is exclusively vested by law in the High Court, the arraignment before a Magistrate Court is tantamount to a holding charge, which has been described as unconstitutional and illegal".

Holding charge may be or may not be Constitutional or legal in legal theory. But it is there and it accounts for a sizeable number of persons incarcerated in the prisons.

4.0 CONCLUSION

A Criminal process may be initiated by arrest, complaint, information or first information Report depending on statute, convenience, expedition, public interest and proper administration of criminal justice. A summary offence is tried summarily, and an indictable offence either summarily or on indictment. Appearance in court of parties is indispensable. So also is the observance of certain rights conferred on an accused person.

5.0 SUMMARY

We have discussed the process of Criminal Justice Administration. You now know the different ways in which a person charged with a crime may be brought before the court, his pleas and his rights. The trial process must lead the court to enter a verdict of either acquittal if he is not guilty or a sentence if he is.

6.0 TUTOR MARKED ASSIGNMENT

1.) What are the rights of a person charged before the court for an offence?

2.) Write a critique of the administration of criminal justice in Nigeria.

7.0 REFERENCES/FURTHER READINGS

Slapper, G. (2004): *English Legal System*, Cavendish, London.

Obilade, O. (1978): *The Nigerian Legal System*, Sweet & Maxwell, London.

UNIT 4: JUVENILE COURTS AND PROCEDURE

Content:

1.0 INTRODUCTION

The objective of Juvenile Justice Administration is the reformation, and rehabilitation of the Juvenile delinquent. The law meticulously lays down rules, regulations, dispositional and treatment methods of children in trouble or in need of care and protection or in moral danger. You have already learned what we mean when you say a child or young person is in need of care and protection or is in Moral Danger. In this unit, you shall learn about the specially laid down procedures and treatment methods.

2.0 OBJECTIVES

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

1. Define Juvenile Offences
2. Sketch the different stages in the treatment and disposition of cases involving Juvenile Delinquents
3. Give a concise comparison between what Juvenile Justice Administration is and what it ought to be.

3.0 MAIN CONTENT

You have learnt about Adult Criminal Process. As you proceed with this unit, you are equipped to note the differences between Adult and Juvenile Justice Administrations and compare them objectively with the requirements of the United Nations.

3.1 JUVENILE COURTS AND PROCEDURE

Before court appearance, the parent or guardian of the juvenile may be required to attend the court.

3.1.1 Juvenile Court

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

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

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

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

3.1.2 Procedure in the Juvenile Court.

After the court has been set,

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

When the last prosecution witness has finished his evidence, and the court is satisfied that no *prima facie* case has been made out, the matter ends.

Conversely, where a prima facie case has been established, the delinquent and his/her defence witnesses are heard. The juvenile may give evidence or make a statement. His/her witness or the juvenile delinquent may make an unsworn statement. But if he/she chooses to give evidence or testify on his/her own behalf he/she may be required to subscribe to an oath as follows:

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

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

does not understand the nature of the oath

understands the duty of speaking the truth

has enough intelligence to justify the reception of his/her evidence.

An unsworn evidence must be corroborated by a sworn evidence, implicating the juvenile delinquent in a material particular. If the juvenile delinquent admits the allegations or where the offence is proved, the court hears information of and gives due consideration to:

juvenile Delinquent's Allucutus

his/her antecedent:

- General Conduct
- Home Surrounding
- School Record
- Medical History

3.2 DISPOSITIONAL METHODS

If the delinquency preferred against the child or young person has been proved or admitted, and the reports of his antecedents, Allucutus and plea for leniency have been given due weight, the court makes an order. The order may be one or a combination of two or more of the following:-

- Admonition
- Imposition of a fine
- That he be caned (female delinquents are not caned)
- An order of probation
- Commitment of the Juvenile to a fit person
- Repatriation
- Binding over
- Discharge (absolute or conditional)
- Commitment to Borstal or Approved School.

A child or young person who has been found liable for homicide or certain other grave crimes may be ordered to be detained during the State pleasure.

3.3 JUDICIAL ATTITUDE AND LANGUAGE

3.3.1 Attitude

Judicial attitude is positive, creative and therapeutic. It is one of a shift from movement away from Law of "an eye for an eye" to one of "Love your neighbour". The juvenile court may impose a fine in order to serve as a deterrent or restitution, rather than imprison him/her and run risks of contamination. In imposing a fine, the court takes into consideration the economic circumstance of the child or young person and may order the delinquent's parent to pay the fine. A reasonable chastisement and flogging inflicts fear and pain but they are part of Nigerian culture aimed at pressing home that delinquency does not pay.

3.3.2. Language

Use of certain terms is not encouraged in the course of investigation and prosecution of juvenile delinquencies. See below for some examples:

Unusable Terms	Preferred Terms
Accused/suspect	Subject, Delinquent
Crime or offence charged	Delinquency, allegation
Guilty, conviction	Proved
Sentence	Order

3.4. JUVENILE OFFENCES

Stealing is the predominant juvenile delinquency. The children and young persons are also victims of a number of offences which may be committed against them. Examples are:

- Cruelty to children and young persons under sixteen years of age
- Allowing persons under sixteen years of age to be in a brothel
- Taking a pawn from a person under fourteen years of age
- Acquiring scrap metal from a person under sixteen years of age.
- Abandoning or exposing a child under two years of age.

3.5. EXCEPTIONAL CASES WHERE JUVENILE MAY APPEAR BEFORE ADULT COURTS:

A child or young person who is charged alone or jointly with another or other juveniles must be dealt with by the juvenile court. However, a Juvenile may appear before an adult court in the following extreme situations:

1. when he/she is charged jointly with an adult
2. when he/she is a principal offender, aided and abetted by an adult
3. when he/she is found to be a juvenile during the proceedings

4. when an application for remand or bail is made
5. when he/she aids and abets an adult
6. when he/she and an adult are charged at the same time with different offences arising out of the same or connected facts.

Care Proceedings

In addition to criminal proceeding, children and young person may also face "Care Proceeding". Both the criminal proceeding which we have so far dealt with and care proceeding to which we shall now turn should be distinguished one from the other.

Any Local Authority, police officer, or authorised person, reasonably believing that there are grounds for making an order, after giving appropriate notice, bring a child or young person before a juvenile court, if the court is of the opinion that:

- His/her proper development is being avoidably prevented or neglected or his/her health is being avoidably impaired or neglected or he/she is being ill-treated, or
- The above is probable where another child of the same household is not or was so placed, or
- He is exposed to moral danger, or
- He is beyond control of parents or guardians
- He/she is not receiving efficient full time education (a matter for local education authority only), or
- He/she is guilty of an offence, excluding homicide and
- He/she is in need of care or control, which he/she is unlikely to receive unless the court makes an order.

Order

The order which the court may make in this circumstance includes:

- An order binding over the parents to take care and exercise control over him or her (ONLY IF THE PARENTS CONSENT)
- Supervisory order
- Care order
- Hospital order
- Guardianship order

3.6. REFRACTORY JUVENILE

Action by parent/guardian

The third category of proceeding is where a parent brings his/her child or young person before a juvenile court on the ground that he/she is unable to control him/her. Such a child or young person is a refractory juvenile.

There are set preconditions;

1. The Parent must first give notice in writing to the Local Authority within whose area the child or young person resides to bring the child or young person before the juvenile court and
2. The Local Authority has declined to do so.
3. Then the parent or guardian may apply by Complaint to a juvenile court for an order directing them to do so.

Action by any person.

Any person who is acting in the interests of a juvenile, may by information on oath, depose to the justice that there has been reasonable cause to suspect:

- That the juvenile has been or is being assaulted ill-treated, or neglected in a manner likely to cause him unnecessary suffering or injury to health,
- That a first schedule offence has been or is being committed against the juvenile.

First schedule offences include:

a. offences against the person (Homicide, Abandonment, Assault, child Stealing)
b. infanticide
c. sexual offences
d. offences against children and young person (See above)

4. CONCLUSION

The Juvenile Justice Administration in Nigeria is characterized by minimum use of detention ranging from a period of not more than three months of pre-trial detention, to a maximum of three years post-trial detention. Juvenile courts are headed by Magistrates and they deal exclusively with cases involving juveniles. Juvenile delinquents are not allowed to get in contact with adult offenders. The Remand Homes serve as pre-trial detention centers. The institutionalized centres are Approved Schools and the Borstal Institutions. In exceptional cases where the juvenile is sentenced, he/she serves the term in the Juvenile Wing of the Prison. In some States, there are separate Approved Schools for girls, intermediate boys and senior boys. Available vocational training differs between Approved Schools and Borstal Institutions. Trials are in camera. A main characteristic of the juvenile justice administration in Nigeria is its heavy reliance on the non formal system e.g. intervention of parents, peers, religious leaders, community leaders, title holders, age-sets and age-grades. There also is a great use of non-institutional measures – repatriation, discharge, fines, compensation, binding over, and fostering. Both Laws and culture favour caning. The belief in the efficacy of caning is expressed in the adage: “spare the rod,

spoil the child", it is probably a worse violence not to cane an earring child than to cane him.

5. SUMMARY

The Administration of Criminal Justice in relation to adult crimes and criminals differ significantly from that in relation to juvenile delinquencies and delinquents. The discrepancies can be observed in the language and attitude of the police and the courts, the cadre and treatment of parties involved before, during and after trial, choice of venue of trial, prescription as to the constitution and procedure of court and disposition methods. In administering juvenile criminal justice, the court can be seen to make conscious efforts to correct and to reform the delinquent child or young person. The Care and Protection proceeding and protection from Moral Danger are unique. Generally the end of justice appears better served in the Juvenile Justice Administration than in Adult's Justice Administration. The Juvenile courts, in reliance of reports of Probation Officers, and presence of lay Assessors is compelled to consider excruciating circumstances which may surround the delinquent/delinquencies – be they parental or environmental, which may have precipitated the proscribed behaviour or situation. Common in the administration of criminal justice, both in the adult court and in the juvenile courts is the fact that both, always look at the law, the prescribed sanctions and justice of the case.

6.0 TUTOR MARKED ASSIGNMENT

1. Write a critique of the Juvenile Criminal Justice Administration in Nigeria.

7.0. REFERENCES/FURTHER READINGS

Kasumu A.(1977): The Supreme Court of Nigeria, Keinemann, Ibadan.

Slappper, G.(2004): The English Legal System, Cavenish.

FGN: Children & Young Person's Acts.

UNIT 5: JUVENILE JUSTICE

Content:

1.0 INTRODUCTION

Juvenile Justice Administration is a global concern. In 1985, the United Nations General Assembly formulated a general minimum standard of Administration of criminal Justice in relation to children and young persons. This partly was a response to the world-wide traditional, religious or cultural policies, incompatible with domestic laws and policies negate children's' right in an adult dominated world. As you learn the United Nations prescriptions, focus your mind on the objectives and be prepared to evaluate the extent of fulfillment.

2.0 OBJECTIVES

When you have studied this, you will be able to:

1. determine the extent of Nigeria's conformation with the prescribed standard.
2. determine whether or not the injustices in the criminal justice system as it relates to children have been eliminated by the UN prescription.
3. differentiate between injustices to children that are not in the hoards of the criminal justice system as a result of the family Justice system.

3.0 MAIN CONTENT

3.1 GENERAL

3.1.1 Standard Minimum Rules for the Administration of Juvenile Justice

The United Nations General Assembly, following the recommendation of the 7th Congress, has adopted a "Standard Minimum Rules for the Administration of Juvenile Justice". This is contained in Resolution 40/33 of November, 1985 and it provides as follows:

Part

1. General Principles
2. Investigation and Prosecution
3. Adjudication and disposition
4. Non- institutional Treatment

A. General Principles

Fundamental Perspectives

Member states shall seek to further the well-being of juvenile and their families.

Member states shall try to develop conditions to ensure meaningful lives in the community for juveniles

Sufficient attention should be given to positive meanings involving mobilization of resources, such as the family, volunteers and community groups to promote the well-being of juveniles.

Juvenile justice shall be an integral part of the national development process of each country.

B. Age of Criminal Responsibility

In legal systems, recognizing the concept of an age of criminal responsibility for juvenile, such an age level shall not be fixed too low, bearing in mind emotional, mental and physical maturity.

Activity

Write a research on 'Comparative Study of Criminal Responsibility'. *(Make reference to Nigeria and at least 2 other countries)*

C. Aims of Juvenile Justice

Any reaction by the Juvenile Justice System to juvenile offenders shall be in proportion to both the offenders and the offence

D. Scope of Discretion

Appropriate scope for the exercise of discretionary power shall be allowed at all levels of legal proceedings affecting juveniles.

E. Rights of Juveniles

Basic procedural safeguards shall be guaranteed at all stages of proceedings, namely:

presumption of innocence
the right to be notified of charges
the right to remain silent
the right to Counsel
the right to the presence of a parent or guardian
the right to confront and cross examine witnesses
the right to appeal

F. Protection of Privacy

The Juvenile right to privacy shall be respected at all stages

G. Investigation and Prosecution

Initial Contact

Upon apprehension of the Juvenile, the Police shall notify his/her parents as soon as possible and the competent authority shall consider his/her release without delay.

Detention Pending Trial

The Police dealing frequently with juveniles shall be specially instructed and trained. Consideration should be given to dealing with the juvenile offenders without resort to trial. Detention pending trial shall be as a last resort and for the shortest possible period of time. While in the custody, juveniles shall

be kept separate from adults
receive care, protection and all necessary assistance that they may require in view of their age, sex and personality

3.2 ADJUDICATION AND DISPOSITION

Juvenile offenders shall be treated by the competent authority according to the principles of fairness.

Juvenile proceedings shall be conducted in an atmosphere of understanding, allowing the juvenile free self- expression

Prior to sentencing and final disposition, the background and circumstances of the offender shall be properly investigated.

The reaction taken shall always be in proportion not only to the circumstances and gravity of the offence, but also to the needs and circumstances of the juvenile and society.

Restrictions on the personal liberty of juvenile shall be imposed only after careful consideration and shall be limited to the minimum.

Deprivation of liberty shall not be imposed except in cases of serious acts involving violence against another person or of persistence as committing other serious offences

3.3 DISPOSITIONAL METHODS

Capital punishment shall not be imposed for any crime committed by juveniles

Juveniles shall not be subjected to corporal punishment

To provide flexibility so as to avoid institutionalism to the greatest extent possible, a large variety of dispositional means should be made available, including probation, community services, supervision, financial practices, group counseling, foster care etc.

No juvenile shall be removed from parental supervision unless due to necessary circumstances.

Least possible use of institutionalization

The placement of a juvenile in an institution shall always be a disposition of last resort and for the minimum necessary period.

Each case shall be handled expeditiously

Records of juvenile offenders shall be kept strictly confidential and limited to duty authorized personnel. They shall not be used in subsequent adult proceedings

Non – Institutional Treatment

Efforts shall be made to provide necessary assistance, such as lodging, education, vocational training, and employment, to facilitate the rehabilitation powers. Help from volunteers shall be sought

3.4 INSTITUTIONAL TREATMENT

Measures shall be taken, within institutions for juveniles to provide care, protection, education, and vocational skills to assist offenders in assuming constructive and productive roles to society.

Conditional release from institutions with appropriate support and assistance shall be used to the greatest extent possible.

Research as a basis for planning, policy formulation and evaluation.

Efforts shall be made to review and appraise periodically, the causes and problems of juvenile delinquency and crime and needs of juvenile custody.

Nigeria's Response to the United Nations Standards

Nigeria is among the countries that ratified Resolution 33/40 of 1985. In response governments of Nigeria have taken the following measures.

a.) Creation of more juvenile courts in the states of the federation to deal with cases involving juvenile delinquencies.

b.) Employment and training of Probation Officers and Assessors to assist Juvenile Court in ensuring the protection and observance of the rights of the juvenile offenders.

c.) Periodic conferences, seminars and workshops for Magistrates with a view to acquainting them with modern principles and practices in Juvenile Justice Administration.

d.) Employing various agencies, bodies and other stake holders to review the children and young persons Laws. The idea is to make the applicable Law more realistic, relevant and functional in contemporary Nigeria and fully incorporate the UN prescriptions.

Self Assessment Exercise 1

To what extent are the children and young persons not realistic, relevant and functional in contemporary Nigeria?

4.0 CONCLUSION

The minimum standard laid down by the United Nations offers an interesting reading and will enable you hazard a comparison between international and local standards.

5.0 SUMMARY

You have heard about the prescribed international standards required as a matter of general process in the investigation of, prosecution, Adjudication and disposition of juvenile delinquencies.

6.0 TUTORED MARKED ASSIGNMENT

1. The United Nations Organization has laid down a "Standard Minimum Rules for the Administration of Juvenile Justice". To what extent have the norms and standards been met in Nigeria?
2. The children and young persons Act application in Nigeria is inadequate. *Discuss*.

7.0 REFERENCES/FURTHER READINGS

Kasumu A.(1977): The Supreme Court of Nigeria, Keinemann, Ibadan.

Slappper, G.(2004): The English Legal System, Cavenish.

UNIT 6: JUVENILE JUSTICE ADMINISTRATION

Content

1.0 INTRODUCTION

Children and Young persons are a vulnerable and special group in the society. Special arrangements have accordingly been made for them in the Administration of Criminal Justice at both national and international levels in our present focus.

2.0 OBJECTIVES

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

1. Distinguish between the Administration of Criminal Justice in relation to Adult offenders from that in relation to Juvenile delinquents.
2. Critique the Juvenile Justice Administration.

3.0 MAIN CONTENTS

The principal law governing the treatment of Juvenile offences and offenders is the Children and Young Persons Act. You should read it.

3.1 DEFINITION

3.1.1 Child:

A Child means a person under the age of fourteen years.

3.1.2 Young Persons:

A young person means a person who has attained the age of fourteen years and is under the age of seventeen years.

In Street Trading Offences, a young female is a girl between the age of fourteen and sixteen.

3.1.3 Juvenile

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

3.2 DETERMINING THE RELEVANT AGES

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

Age of a victim of sexual offences

A child whose written statement is tendered in evidence.

3.3 CRIMINAL RESPONSIBILITY

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

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

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

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

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

3.4 ARREST OR CUSTODY OF CHILDREN AND YOUNG PERSON

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

The charge is one of homicide or other grave crime or

He/she ought in his/her own interests to be further detained (e.g. to remove him from association with any reputed criminal or prostitute) or

The police officer has reason to believe that the release of the /juvenile would defeat the ends of Justice.

If he/she was arrested without warrant, he/she would fail to appear.

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

It is impracticable to do so

The juvenile is of so unruly or depraved a character that he/she cannot be safely so detained

By reason of his state of health and his mental or bodily condition, it is unadvisable so to detain him/her. In this case, a certificate shall be required to that effect.

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

3.5 POWER TO DETAIN OTHERWISE THAN FOR AN OFFENCE.

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

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

Orphans or juveniles deserted by relatives

Juveniles who have been neglected or ill-treated by persons under whose care and custody they are.

Juveniles whose parents or guardians does not exercise proper guardianship

Juveniles who are found destitute and have both parents or surviving parent, undergoing imprisonment

Children and young persons under the care of a parent or guardian who, by reason of criminal or drunken habits, is unfit to have the care of the child.

Daughter of a father who has been convicted of defilement of girls in respect of any of his daughters.

Persons found wandering and have no home or settled place of abode or visible means of subsistence.

Persons found begging or receiving alms, whether or not this is any practice of singing, playing, performing, offering anything for sale or otherwise, or is found in any street, premises, or place for the purpose of so begging or receiving alms.

A child or young person who accompanies another person when that other is begging or receiving alms, whether or not there is any pretence of singing, playing, performing, offering anything for sale or otherwise.

One who frequents the company of any reputed thief or common or reputed prostitute. If however, the only common or reputed prostitute is the mother of such child and it is proved that she exercises proper guardianship and due care to protect the child from contaminations, the latter will NOT be regarded as in need of care and protection

A child or young person who lodges or resides in a house or the part of a house used by prostitutes for the purpose of prostitution, or is otherwise living in circumstances calculated to cause, encourage or favour the education or prostitution of the child.

A child or young person in relation to whom any of the offences against morality under the Criminal Code has been committed or attempted. (Offences against Morality includes unnatural offences, indecent treatment and practices, defilement, seduction

or prostitution, keeping or frequenting brothels, procuration, Abduction, Abortion, obscenity etc).

Children and young person, who having been born or bought within the Republic of Nigeria, would but for the provisions of the law relating to the legal status of slavery, be a slave or

Children and young persons, who are otherwise exposed to *Moral Danger*

3.5.1 Moral Danger

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

Found destitute

Wandering without any settled place of abode and without visible means of subsistence

Found begging or receiving alms, whether or not there is any practice of singing, playing performing or offering anything for sale

Found loitering for the purpose of so begging or receiving alms.

4.0 CONCLUSION

In the classical age, everyone was responsible for his acts or omission and the consequences that followed. The thought was that everything done was a matter of choice and by freewill. The neo-classicalists recognized that there exists certain extenuating circumstance which may negate the concept of freewill. One of such is non-age or immaturity. Today it is an irrebuttable presumption of law that a child who is under seven years of age cannot commit any crime in Nigeria. The liability as to punishment of one who is seven but under twelve years in age, however, is rebuttable: for he cannot commit crimes in the absence of any evidence of mischievous discretion. Their conduct may have been *reus* but the perpetrators are not.

The law is strict as to the treatment of juvenile delinquents and their delinquencies.

5.0 SUMMARY

Children are different from young persons by definition. In both cases, their delinquencies are subject to the children and young person's legislation unlike the adult offences and offenders who are subject to the criminal code or the penal code, among others. They face two classes of treatment:

One for care and protection from moral danger.

The other for juvenile delinquencies.

You have learnt about the former in this unit. You will learn what juvenile delinquencies are and their dispositional methods in the next unit.

6.0 TUTOR MARKED ASSIGNMENT

1. Define the term Moral Danger
2. Who may be in need of care and protection?
3. Under what circumstance may a young person be detained?

7.0 REFERENCES/FURTHER READINGS

Kasumu A.(1977): The Supreme Court of Nigeria, Keinemann, Ibadan.

Slappper, G.(2004): The English Legal System, Cavenish.

FGN: Children and Young Persons Legislations

MODULE 6

UNIT 1: WOMEN AND OTHER SPECIAL GROUPS: CRIME AND JUSTICE

Content

1.0 INTRODUCTION

In the classical age, man was responsible for all the consequences of his conduct. It was believed that he had free choice and he exercised it. The neo-classicist departed from this stand point. They recognized certain circumstances which could deprive a man of freewill. An example is insanity; immature age. This represents the modern trend, **such** that in Modern Nigeria certain groups of people are treated specially and differently from others because of their peculiarity. Examples of these groups are:

Children and Young Persons
Mental Defectives
Women
Prisoners
The Poor Class

These class of people is the focus of this Unit.

2.0 OBJECTIVES

When you have read this Unit, you should be able to;

1. Identify the special groups.
2. Explain the reaction of the Criminal Justice Administration System to each group.
3. Critique the treatment of the Group.

3.0 MAIN CONTENT

You have learnt about some of the special groups. We are not going to repeat them here and it would suffice to a new things add a few things.

3.1 THE WOMEN

The Women groups are treated like children and young persons in some cases and like male adults in other cases. We shall be concerned with the modern law.

3.1.1 Right of freedom from discrimination:

Under the CFRN, 1999 no citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his/her birth, ethnic group, place of origin, sex, religion or political opinion. (s.42)

3.1.2 Criminal Responsibility.

Modern statutes make no distinction between a married woman and any other adult with regard to criminal responsibility. Note the following exceptions;

a.) Accessory after the fact

The criminal code provides that a wife of Christian marriage does not become an accessory after the fact to an offence to which her husband is guilty by receiving or assisting him in order to enable him to escape punishment, nor by receiving or assisting, in her husband's presence and by his authority another person who is guilty of an offence in the commission of which her husband has taken part in order to enable that other person to escape punishment; nor does a husband become an accessory after the fact to an offence to which his wife is guilty by receiving or assisting her in order to enable her to escape punishment. *(s.10)* But a wife commits a crime if she shields her husband who has deserted from the Armed forces.

b.) Compulsion of Husband

A married woman is not free from criminal responsibility for doing or omitting to do an act merely because the act or omission takes place in the presence of her husband. But a wife of a Christian marriage is not criminally responsible for doing or omitting to do an act which she is actually compelled by her husband to so or omit to do, and which is done or omitted to be done in his presence, except in the case of an act or omission which would constitute an offence punishable with death; or an offence of which grievous harm to the person of another, or an

intention to cause such harm, is an element, in which case the presence of her husband is immaterial. *(s.33)*

c.) No Conspiracy between Married Couple

A husband and wife of a Christian marriage are not criminally responsible for a conspiracy between themselves alone. *(s.34)* the reason is that the husband and wife are one in law and conspiracy can only be committed if there are at least two independent persons.

d.) Crimes between Husband and Wife

When a husband and a wife of a Christian marriage are living together, neither of them incurs any criminal responsibility for doing or omitting to do any act with respect to the property of the other, except in the case of an act or omission of which an intention to injure or defraud some other person is an element and except in the case of an act done by either of them when leaving or deserting or when about to leave or desert the other.

Subject to the foregoing provisions, a husband and wife are, each of them, criminally responsible for an act done by him or her with respect to the property of the other, which would be an offence if they were not husband and wife, and to the same extent as if they were not husband and wife. In essence it is a crime for a spouse to take the others property if they are living apart or if the property is taken with the intention of leaving the other. But in the case of the Christian marriage, neither of them can institute criminal proceedings against the other while they are living together. Hence there is no criminal label between spouses concerning each other.

e.) Rules of Evidence

The *several rule* is that every person charged with an offence is a competent witness for the defence at every stage of the proceedings whether he/she is charged solely or jointly with other person. Examples,

> A spouse is competent to give evidence if the accused so applies;
> A statute stipulates that a spouse shall be competent to give evidence for the prosecution or the defence. E.g. Child destruction; Bigamy; Sexual offences other than battery, indecent assault or a man assault with intent to commit battery;

In exceptional cases however, a witnesses is competent and compellable both for the prosecution and for the defence in criminal matters. For example; spouses of parties are competent and compellable to give evidence in a relatively few cases. E.g. Offences against the spouses property, and offences of violence against the spouse.

3.2 CHILDREN AND YOUNG PERSONS

Please read over the earlier unit on the subject. What we need to add are the following matters of:

Juvenile 'at social risk': They are handled by a specialist arm of the Nigeria Police Force called the Juvenile Welfare Branch, comprising mainly specially trained female Police Officers

Having fully investigated the complaints, and in appropriate cases, the Juvenile in trouble are not also taken to the ordinary courts but to the Juvenile Welfare Court, also a specialized court.

Juvenile in trouble or at social risks include:

Juvenile delinquents

Juveniles who are not in conflict with the law but are:

- in moral danger
- in need of care and protection
- abandoned, abused, neglected, homeless, or marginal and vulnerable circumstances
- beyond parental control.

Beijing Rules

Issue of abolition of Canning has been revived in recent time. The Beijing Rules recommend that "Juvenile shall not be subjected to corporal punishment". In its place, the following are being advocated:

- deprivation of privileges
- withdrawal of love and affection
- engagement in productive community service
- order to participate in groups counseling and seminar activities
- other intervention strategies.

Argument in favour of Canning:

- it is a form of judicial benching
- culturally it is not seen as an abuse
- it is preferred to institutionalization
- it is still in use etc.
- it instils fear and so it deters
- it is swift
- it costs less to the state etc

There are also arguments against corporal punishment

- It is primitive, inhuman, most depraved
- it inflicts pain
- It makes the juvenile bitter and callous towards parents, guardians and society

- It is harmful to children's life and makes them incorrigible and revengeful.
- It has potentials of making the subjects hardened criminals
- It has not achieved its aims
- It does not attempt to and cannot remove the root cause of the juvenile delinquencies.

The reasons for or against may or may not be valid. However, the main advantage seems to be that it does not, waste time and it costs less. Its main disadvantage is that it does not remove the root cause of juvenile delinquency. It may stigmatize

Self Assessment Exercise 1

1. 'Juvenile shall not be subjected to corporal punishment (Beijing Rule). *Discuss exhaustively*.
2. What do you understand by "Other intervention strategies"? Mention any five.

Activity

Discuss the essence of contributions and challenges of:

Juvenile detention centre
Approved School Borstal
Institution Motherless
Babies Homes

3.3. MENTAL DEFECTIVENESS

These are a special group and are recognized as such at law. The early notions of, causes of crimes and criminals were based on;

- Prepotency of biological factors
- Concept of freewill, rationality of man and equality of sanctions regardless of age, sanity position and circumstances

Modern philosophers have rejected the former and modified the latter, having recognized special groups who lack free will. Examples are psychopath, lunatics and children; and by reason of their excruciating circumstances, enjoy certain concession in criminal justice administration.

3.3.1 Insanity

A person is not criminally responsible for an act or omission if at the time of doing the act or making the omission he is in such a state of mental disease or natural mental infirmity as to deprive him of capacity to understand what he is doing, or of capacity to control his actions or of

capacity to know that he ought not to do the act or make the omission. *(Criminal Code s.28)*

In Some delusion/Diminished Responsibility
A person whose mind at the time of his doing or omitting to do an act, is affected by delusions on some specific matter or matters but who is not otherwise entitled to the benefit of the foregoing provisions of this section is criminally responsible for the act or omission to the same extent as if the real state of things had been such as he was induced by the delusions to believe to exist. *(s.28, cc)*

Criminal Justice Administration gives due insanity, anything bordering on insanity, or inability to form a rational judgment or exercise will-power to control one's actions. This insanity is a general defence to criminal responsibility. Diminished responsibility may reduce responsibility for murder to that of manslaughter.

3.4. THE PRISONS

The Persons in prison are a special group. Their freedoms are restricted. Prisons exist among other things, to identify the reasons for the anti-social behaviour of offenders, teach and train them to become useful citizens in a free society after discharge.

The Government of Nigeria is nearer achieving this objective with the establishment of the following:
1. Open Prison System
2. National Open University of Nigeria (Prisons Special Center)

The objectives of the National Open University of Nigeria (NOUN), Prisons Special Centre may be subsumed as follows:
1. To encourage the advancement of learning and to hold out to all persons without discriminating the opportunity of acquiring a higher and liberal education.
2. To provide courses of instruction and other facilities for the pursuit of learning especially to those who may not, by nature of their circumstances, enroll for residential full time university education.
3. To relate the activities to the social, cultural and economic needs of the citizenry.

In his study of Capacity Building and Rehabilitation of Prison inmates and crime control through Open and Distance Learning (2008), Oyakhiromen found from a sample of 390 male and 114 female prison

inmates that the programmes which appeal most to prison inmates (male and Female) in order of preference are:

Computer literacy	12.8%
Enterpreneurship/small scale business management	21.8%
Cell phone repairs and maintenance (male)	8.7%
Source and Agro based Food Technology(female)	12.3%

All were unanimous in their first or second choice but differ in their third preferences. Given the necessary official political will, public and family support, it is believed that the NOUN has the potential of being able to train, teach and empower prison inmates to be useful citizens and afford them the chance of putting their acquired skills into the services of the society.

3.5. THE POOR

The criminal Justice System recognizes the Poor as a special group and has the Legal Aid Scheme to their rescue.
The CFRN, 1999 Section 46 provides special jurisdiction of High Court and Legal Aid. Subsection 4 provides as follows:
The National Assembly shall make provision;

i. for the rendering of financial assistance to any indigent citizen of Nigeria where his right under chapter IV of the Constitution (fundamental Rights) has been infringed or with a view to enabling him to engage the services of a legal practitioner to prosecute his claim and;
ii. for ensuring that allegations of infringement of such rights are substantial and the requirement or need for financial or legal aid is real.

4.0 CONCLUSION

The Children and Young Persons Legislations apply equally to both male and female delinquents. The adult male and adult female are both subject to the Criminal and Penal Codes. The major difference is that they are kept in separate cells or prisons if they are to be detained. Women who are married under the Act enjoy partial defences to criminal liability for specified crimes. Persons under incarceration are special groups. So also are the poor, and mental defectives. The state provides Legal aid for the poor and in appropriate case to deserving members of the public.

5.0 SUMMARY

You have learned about the favourable disposition of the state towards the vulnerable members of the public. Examples of such special groups are: the children and Young Persons, mental defectives, women, prisoners and the poor.

6.0 TUTOR MARKED ASSIGNMENT

Compare and Contrast the criminal justice administration of adult offenders/offences and the special groups offenders/offences.

7.0 REFERENCES/FURTHER READINGS

Kasumu A.(1977): The Supreme Court of Nigeria, Keinemann, Ibadan.

Slappper, G.(2004): The English Legal System, Cavenish.

FGN: Children and Young Persons Legislations

UNIT 2: WOMEN: VICTIMS AND AGENTS OF THE CIRMINAL JUSTICE SYSTEM

Content

1.0 INTRODUCTION

Women's involvement in crimes whether as offenders or victims is a recent phenomenon in Nigeria. The information on sex distribution of offenders and crime victims is scanty. Statistics from Europe may not be of much help because of the differences in terminology, definitions, and classification of crime types, reporting and recording practices and operations of the criminal justice system from time to time. You may be consoled by *Clifford **(19..)*** who says that in the light of little knowledge of crime including (women offenders and women victims) at this time, even simple observation have some value.

The categories of offenders and crime victims cut across sex barriers. Both men and women have been disgraced at probes and tribunals; arrested at home or abroad for fraud or for pushing and trafficking dangerous drugs. More perplexing has been the growing involvement of women in drug offences, robbery and other serious crimes of violence and financial fraud, which have until quite lately been the prerogative of adult males.

2.0 OBJECTIVES

When you have studied this Unit, you should be able to:

1. analyse feminine involvement in crime
2. examine women victimization
3. explain the role of women generally in the criminal justice system

3.0 MAIN CONTENT

In his study of prison population, *Oyakhiromen(2008)* found that the ratio of female to male convicts has been 1:5. The ratio of convicts to arrests among male offenders is 1:7. That of women is 1:6. Prison population percentage distribution is 96.4 (male) 3.6 (female). The implications are as follows:

1. women enjoy more leniency in the court,
2. women are protected more readily from prosecution,
3. women are less likely to earn custodial sentences than men are,
4. male suspects are still more likely to be arrested, charged and prosecuted than female suspects,
5. female suspects are relatively easier convinced than males, implying perhaps higher morality, and
6. males are predominantly the delinquent sex

The ages of convicts were as follows:

Age	***Male%***	***Female%***
Under 20 years	25.3	14.3
21 – 25 years	23.7	21.9
26 – 50 years	48.1	61.3
51 and above	2.9	2.5

This is consistent with the characteristics of male convicts except that the data show that females retire much earlier from crimes. Scholars have explained that as they approach 40 years, females tend to concentrate more on family living or in crimes of cunning e.g. unlawful possession, cheating etc.

Oyakhiromen's (1999) analysis of suspects in all the police stations in Lagos State on one weekend is as follow:

Offence Category	**Total No. (M & F)**	**Male %**		**Female %**	
		Total	**Male**	**Total**	**female**
Offences against property	281	43.8	47.5	3.2	40.4
Offences against persons	211	32.6	35.4	2.7	34.1
Other offences	106	15.7	17.1	2.0	25.5
Total	**598**	**92.1**	**100.0**	**7.9**	**100.0**

The ratio of Male: Female suspects found in the Police custody were 12:1 (total offenders), 14:1 (Property offenders), and 13:1 (personal offences). Female suspects appear to enjoy bail while the males are more likely to be remanded. Both in aggregate number and proportion, both sexes are frequently in trouble with the police with regard to the laws governing property than any other.

The preponderance of property offenders in Police and Prison custody have been explained in terms of differential attitude, policies and official responses.

Some Scholars have argued that one might be nearer to comprehending the cause of crimes and therefore able to proffer effective control if only one can discover whey there are so few female offenders and overwhelming number of male offenders.

Some have countered, arguing that the greater conformity among women is a myth. The reason are that:

a. women's participation in crime is not less significant , but the double standards in law enforcement is
b. women criminality wears a masked character and defy reportability and detection

Causes of feminine criminality are beyond the scope of this course. You will learn more of that in the manual on criminology proper. It is significant to point out that female criminality has the potentiality to generate juvenile delinquency because children and young persons are closest to their mothers. This raises the hazards of female convicts with their children in the prisons. The Nigeria Prison Services Annual Report, 1984 recorded 240 children with their mothers in Prisons and 75 babies, were, in fact, born in the prisons.

3.1 VICTIMIZATION OF WOMEN

Women have been victims of crimes also. Examples are;

a. state violence
b. domestic violence
c. female crimes (e.g. rape etc)

Off springs of female convicts and even of female victims suffer outright rejection and hostility. *Esemede **(19..)*** in his study of off-springs of female convicts found as follows:

Hostility and rejection by families		53.6 per cent	
"	Teachers	43.0	"
"	Friends	56.0	"
"	Other Children	32.0	"

This kind of victimization has a multiplier effect in criminality rate among children and young persons. The trauma of maternal deprivation at the critical age and during incarceration is capable of hardening the minds of the vulnerable age group as they grow and inflict pains of retardation of a healthy emotional and moral development.

3.2 ARREST AND INVESTIGATION PROCESS

There are no special laws or privileges for women suspects unlike the case of juvenile offenders. Female juvenile delinquents are subjected to the same treatment as male juveniles just like female and male adults.

However, as a matter of practice, the cases involving females are often assigned to female law enforcement officers. Female suspects under arrest are not detained in the police cells where male suspects are. They are usually found behind the counters at police stations.

Women convicts have separate Prisons. Where there is only one prison, female convicts are kept in one wing separate from other wings for male convicts. Women convicts cannot be flogged. Pregnant ones cannot be sentenced to death.

4.0 CONCLUSION

Clifford ***(19…)*** is nearly right when he says that in the light of little knowledge about crimes in Africa (Nigeria inclusive) even simple observations have some value; number of offenders/victim, and even simple accumulations of evidence in known cases all are useful. This is particularly true of feminine criminality. Women involvement in crimes has been unknown in Nigeria until quite recently and since it was noticed, the momentum had accelerated crucially. To a large extent, the criminal justice system has had little gender consideration in processing offenders and crime victims.

5.0 SUMMARY

Women participation in crimes, women victims and responses of the criminal justice system are green field. As women get emancipated, and take up what was formerly men's work position, they have also become exposed to criminogenic situations also exercising the choices in diverse ways.

6.0 TUTOR MARKED ASSIGNMENT

1. Account for Female involvement in Crimes and Criminality in Nigeria.
2. The Criminal Justice Administration in Nigeria does not adequately protect the interest of Nigerian women. *Discuss*.

7.0 REFERENCES/FURTHER READINGS

Kasumu A.(1977): The Supreme Court of Nigeria, Keinemann, Ibadan.

Slappper, G.(2004): The English Legal System, Cavenish.

FGN: Children and Young Persons Legislations

Clifford (19..)

UNIT 3: VICTIMS OF CRIME

Content

1.0 INTRODUCTION

Victims have constituted a neglected side of the criminal justice Administration. Much of the available literature on the subject and even the Constitution of Nigeria and the principal laws on crime bear scanty references and have shown little consideration for victims of crimes. The reason perhaps is that the outcome of crime has been considered solely in terms of the punishment of the offender. To as a student of Criminology and Security Studies, the subject is sine qua none because an understanding of the relationships between all the parties to crimes and their roles is of tremendous assistance in identifying the criminal properly so called, bearing in mind that crimes are responses to specific situations.

2.0 OBJECTIVES

When you have studied this Unit, you should be able to:

1. define the term "Victim" of crime
2. describe or explain the position of crime victims in the administration of criminal justice system
3. show the neglected side of the criminal justice system
4. critique the criminal justice system as it relates to Victims of Crimes.

3.0 MAIN CONTENT

3.1 CRIME AND PUNISHMENT

In the Criminal Justice System, a victim of crime is a person harmed by crime. Incidentally crime has often been defined in terms of punishment of the offender; which also is public initiated.

(a) *The Constitution:* The Constitution provides that a person shall not be convicted of a crime unless it is defined and its 'punishment' is prescribed in a written law.

(b) *Statutes:* The Criminal Code defines crime as an act or omission which renders the person doing the act or making the omission liable to punishment under the code, or under any order in council, ordinance, law or statute. A criminal liability is also described as liability as to punishment. Criminal law is assumed to be a set of prohibition and duties coupled with penalties.

(c) *Legal Writers:* Legal philosophies have referred to crime as:
violations of public rights and duties, (Blackstone), or
an act subversive to the society (Driberg).

According to Beccaria **(18..)**, the aim of the Criminal Law is to punish offenders and to curb passions excited by vivid impression of present objects. One may add that it is also and to protect the deposit of public security. All these have greatly influenced public outlook and orientation and acceptance that punishment is the major (if not the sole factor) in the characteristic of crime and criminality.

Development of Crime

The development of crime itself is instructive. In the earliest time, all wrongs were civil, first redressible by vengeance, then by extraction of 'Bot' as a form of compensation. Subsequently some wrongs became "botless" and those who committed such offence were not merely fined but were punished severely by the state. In place of private vengeance, the king exacted royal vengeance, in place of exaction of compensation as in other wrongs like tort, the crown confiscated the felon's property and exacted outrageous fines to enrich the treasury (crime). Thus in criminal proceedings, parties became the state and the offender, to the exclusion of other crime victims.

The trend was fortified by the social contract theory as enunciated by Hobbes, Lockle, and Rousseau. The king, on behalf of the people extended his "peace" to all and sundry. The generality of people were, in return, obliged to observe the peace. Its breach by any individual entitled the king, on behalf of the people, to use state power to restore the equilibrium.

You will recall also that the objective of the customary justice administration is reconciliatory and restitutive. Following the introduction of the British type of police and prisons, the British Colonial Administration warned the Native Courts that it was no longer sufficient to order that stolen property be restored to its owner but that the offender should additionally be punished. There was a shift to punishment as the object of Criminal Justice System. In other parts of Africa, it was not different. Blood money which provided a little 159ictim to victims of murder or manslaughter gave way to imprisonment which only provided labour for the state with no benefit to the crime victims.

3.2 DEFINITION OF VICTIMS

The term victim, means any person who, individually or collectively with another person or other persons, has suffered injury, loss, or damage in consequence of a criminal offence, regardless of his/her relationship with the offender, and including filial, parental, spousal or other relationship.

The term includes, where appropriate, any other lawful complainant by reason of his/her familiar relationship, dependency or the relationship of guardian and ward.

3.2.1 Classes of Victims of Crime

There are direct and indirect crime victims.

A. Direct Victims of Crime

This refers to persons immediately 159ictimize159 by the conduct of the offender. If Audu slaps Abubakar or injures, or robs him, or steals his property or breaks into his home at night, Audu is an active offender. Abubakar is a direct victim of Audu's criminal conduct.

B. Indirect Crime Victim

This is a person other than the direct victim who suffers some loss or pain as a result of crime. In the hypothetical cases above, the relatives of Abubakar are indirect victims of crimes. So also is the state as a whole because she suffers "shock" whenever any of her citizens is traumatized. In the instant case, the pains of the indirect victims are often psychological.

3.2.2 Intermixture of Direct and Indirect Victimisation

Often, it is not clear cut who a victim is:
Example:

Abdullahi drives his car without due care and attention. He knocks sown Uzodinma a Traffic Police Officer on duty. He is seriously injured and rushed to the Hospital. Mary his pregnant wife is informed. She runs to the hospital, meets her husband in a comma. She suffers severe nervous shock, and threatened abortion resulting in an immature delivery of their only baby who turns out to be an idiot. Mary is also declared medically unfit to bear any child any longer in consequence of the shock and treatment. Here, the dichotomy between the offender and the victims (direct and Indirect) are fairly determinable.

In many cases, however, the dividing line between the victims and active offenders may be blurred. The reason is that the parties to crimes do at times react and cooperate with one another; the complaining party may have the major characteristics of the offender, having precipitated the crimes, by **eking** the potential offender.

Activity

Examine the following situations and identify who the victim of crime really is:

a). Ngozi taunts Chukwu with impotency. Chukwu is at his wits end; he slaps Ngozi. Chukwu is arrested.

b). Juliet and Romeo fiddle and curdle intimately. Romeo makes advances; Juliet declines abruptly; and was forced into carnal connection. Juliet is aggrieved.

c). Ada grabs Husaini, her husband, by the neck, because she fears he was going out for a girl friend. Husaini pulls her off; Ada gets up rushes at Husaini ferociously. He pushes her off. Ada falls, hitting her head on the edge of a table and dies on the way to the Hospital.

In many cases too, the external precipitate factors and excruciating circumstances, if properly analysed, may even bring about a complete acquittal of the accused persons or at worst a finding of partial liability. Unfortunately, unlike in tort, contributory negligence is not a valid defence per se, although it may provide the basis for the partial defences of accident, self-defence and provocation in Criminal Justice Administration.

3.2.3 International Crime Victims

A crime committed in one country can victimise people in other countries at the same or at different times. Examples are:

1. victims of computer fraud and money laundering.
2. crimes against natural environment like illicit disposal of nuclear and other forms of toxic waste or negligence in large scale transoceanic transport of petroleum

3. theft of cultural patrimony e.g. object of historical, religious or artistic value).
4. trafficking in persons including adult and child prostitution.

3.3 CRIME VICTIMS AND CRIMINAL ADMINISTRATION OF JUSTICE

Crimes offenders and victims known to the police represent a mere tip of the iceberg. The Police or other investigating agencies obtain statements from the aggrieved victims, and also summon them to testify as prosecution witnesses. That completes the role of crime victims in the criminal justice continuum.

In the pre-trial, trial and post trial process, the rights of the offender are strictly enforced. Appeal against conviction may be allowed if the prisoner's rights are violated. Conversely, the rights of the victim to protection of law, redress, or restitution receive little consideration if at all. This is not peculiar to the Nigerian Legal System and its criminal justice administrative machinery. It is universal. Yet a Criminal Justice System and law enforcement mechanism can only be fair and effective where they are able to protect the rights of people (offenders and Crime Victim) to a secure existence and to develop their economic and social potential without discrimination.

It is important therefore to strike a balance between the rights of crime victims on the one hand and the rights of the offender on the other.

3.4 VICTIMS' REMEDY

Some of the characteristics of the Modern Criminal Justice administration may be stated as follows:

It apportions blame to a party

It involves punishment

It leads to strained relationship and bitterness since the belief is strong that parties do not take themselves to court and become friends again.

It is a European conception of criminal justice.

It denies the victims of crimes any remedy or compensation

3.4.1 Victim Remedy approach

a. Dichotomy approach

The theory of dichotomy of the parties denies victim remedy, identifies the state and the offender as the only parties in a criminal justice administration.

3.4.2 Victim Impart Statement Approach

This is a counterpoise to the theory of dichotomy of parties. It demands that criminal proceedings should contain "Victim Impact Statements"

3.5 MILAN PLAN OF ACTION, 1985

The Seventh United Nations Congress on the Prevention of Crime and the Treatment of offenders held in Milan, Italy in 1985, considered among other things the issues of Criminal Justice Process and Perspectives in a changing world and Victims of Crime.

The congress addressed the rights of the Victims of Crime and abuse of powers; and unanimously adopted the Resolution (GA/Res/40/34) on 'The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Powers'. The declaration recommends measures to be taken at the International and regional levels to improve access to justice and fair treatment, restitution, compensation and social assistance for victims of crime.

This Resolution was approved by the United Nations General Assembly. The highlights of the Resolutions are: as follows:

1. Victims should be treated with compassion and respect for their dignity and are entitled to prompt redress for harm caused.
2. Judicial and Administrative mechanisms should be established and strengthened to enable victims to obtain redress.
3. Victims should be informed of their role and timing and progress of their cases.
4. The views and concerns of victims should be presented and considered at appropriate stages of the process.
5. Steps should be taken to minimize delay and inconvenience to victims, ensure their privacy and protect them from intimidation and retaliation.
6. Offenders should, where appropriate make restitution to victims or their families or dependants. Where public officials have violated criminal laws, victims should receive restitution from the state
7. When compensation is not fully available from the offender, states should provide compensation to victims or their families in cases of significant physical or mental injury.
8. Victims should receive the necessary material, medical, psychological, and social assistance through governmental and voluntary means
9. Police, justice, social and other personnel concerned should receive training to sensitise them to the needs of victims.

10. States should consider incorporating into national law, norms proscribing abuses of power, including political and economic powers. They should also provide remedies to victims of such abuses, including restitution and compensation.

Self Assessment Exercise 1

To what extent has Nigeria entrenched the 'Declaration of the Basic Principles of Justice for Victims of Crime and the Abuse of Power' in the Nigerian Criminal Justice System?

Courts of Criminal Jurisdictions

You have learnt about courts hierarchy generally. Since our course focuses on Criminal Justice Administration, we shall now direct our attention to the courts which exercise criminal jurisdictions. These courts include:

1. Customary Courts
2. Area Courts
3. Magistrate Courts(Including Juvenile Courts and Coroners Court)
4. High Court of the State
5. Federal High Court
6. Court Martial
7. Court of Appeal
8. Supreme Court of Nigeria.

Since the year 2002, there has been an International Criminal Court, which as the name suggests, hears and determines limited criminal matters.

Doctrine of *Stare Decisis*

The Doctrine of Stare decisis (ie "to stand by things decided") or "keep to the rationes decidendi of past cases" is that when a principle of law has been once officially decided or settled by the ruling of a competent court in a case in which it is directly and necessarily involved, it will no longer be considered as open to examination or to a new ruling by the same tribunal or by those which are bound to follow its adjudication, unless it be for urgent reasons and in exceptional cases.

Ratio Decidendi

Granville Williams ***(19,,,)*** explained that English Courts (and Nigeria Courts also) are obliged to your previous decision within more or less widely defined limits. This is what is referred to as the doctrine of precedent or *stare decisis*. The part of a case that is said to possess authority is the *ratio decidendi* that is to say, the rule of law upon which the decision is funded – the reason for deciding.

Finding the *ratio decidendi* of a case is an important aspect of legal training. It is not a mechanical process but an art gradually acquired through practice and learning. For this reason, no further details is attempted here. However, one may add that legal writers have identified two steps that may lead to ascertaining a *ratio decidendi*;

1. the first step is to determine all the facts of the case as seen by the presiding Judge
2. the second step is to discover which of those facts are treated by the judge as material.

In some cases the only authority you may find in what they actually decide and all that is binding is the decision. Examples are cases where the *ratio decidendi* of the previous case is:

- obscure
- out of accord with authority or established principle
- too broadly expressed.

Obiter Dictum

Obiter Dictum (by the way) may be described as:

- 'chance of remark' (Glanville William)
- Rule of law stated merely by way of analogy or illustration or a suggested rule upon which the decision is not finally rested.
- What is left after a *ratio decidendi* has been extracted.

Obiter dictum is not binding upon future courts though it may be respected according to the reputation of the judge, the eminence of the courts and the circumstances in which it came to be pronounced. What was an obiter dictum in a previous case may grow into a *ratio decidendi* in a later case.

Law Reports

A System of Law Reporting is essential to judicial precedent and the hierarchy of the courts. Cases are reported, for example in:

Nigerian Law Reports
Selected Judgment of the West African Court of Appeal
Selected Judgments of the Federal Supreme Court of Nigeria
Judgments of the Supreme Court of Nigeria
Nigerian Weekly Law Report
Law Reports of Court of Nigeria
Federation of Nigeria Law Report
Human Rights Law Report of Africa

These are examples only.

Some states have their Law Reporting System. Examples are found in

Edo State Law Reports
Law Reports of Northern Nigeria

Law Report of East Central State.
Western Nigeria Law Reports etc.

Some Newspapers also report cases
Examples are:
- The Vanguard Newspaper
- The Guardian Newspaper
- This Day Newspaper

Hierarchy of Authority
The rank of each of the Courts is important in judicial precedence and hierarchy of the Courts, and authority. The general rule is that every court binds lower courts in the same hierarchy. For examples, the Supreme Court is the highest court in Nigeria; all its decisions enjoy peculiar sanctity and authority and bind all other courts in Nigeria. The Court of Appeal binds all courts except the Supreme Court.

There may be no difficulty where the judgment of the Supreme Court is unanimous or is by an overwhelming majority or in the court of Appeal that delivers on judgment as the judgment of court. There may be a problem where, for instance, the justices of the Supreme Court express different opinions, showing a great diversity; and there is no majority for any particular view. Such cases are exceptions rather than the rule.

4.0 CONCLUSION

Traditional criminal justice system accorded due consideration to the rights of all the parties to crime. It tried to restore parties as far as practicable to the original positions they were before the crime took place. The offenders were fined and the fine or part of it given to the victims. The offender might be required to work for the victims for specified days. Where murder has occurred, the murderer would be fined, and the fine distributed among the deceased family. If the deceased is a young girl, bride price might be paid. In appropriate cases a marriage might be contracted between both families to save the victimized family from extinction. There was community support for the right to life, and security of person for all. Under the Modern Criminal Justice System, customary criminal law system has ceased to exist. Punishment and imprisonment are predominant and these are contrary to custom and only the state benefits to the exclusion of the direct crime victims.

5.0 SUMMARY

The Victims of Crime are a wide category. There are direct and indirect victims. There is a dichotomy between the rights of an offender and those of the victims and this has begun to attract global attention.

6.0 TUTOR MARKED ASSIGNMENT

Evaluate the position of Criminal Justice Administration as a course in the CSS Programme.

7.0 REFERENCES/FURTHER READINGS

Kasumu A. (1977): The Supreme Court of Nigeria, Keinemann, Ibadan.

Slappper, G. (2004): The English Legal System, Cavenish.

FGN: Children and Young Persons Legislations

Glanville Williams