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Nigerian Criminal Jurisprudence: Proliferation of Criminal Laws Opens Pandora's Box?

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Abstract

The upsurge of criminalities across Nigeria in recent years is overwhelmingly alarming. The despicable acts of terrorism, banditry, rape, hostage taking, kidnapping, torture, armed robberies, and general violence against persons within the country over the years have forced many to accept the fate as the new normal. Paradoxically, while Nigerians keep witnessing unabated upticks of criminalities ravaging the country, the National Assembly is contemporaneously proliferating criminal laws which are apparently nomenclatural variance devoid of practical and jurisprudential substance. Between 2011 and 2021, the National Assembly had enacted and amended different criminal laws which never had any commensurate positive effects in curbing the rampant criminalities in the country. This article is an overview of the jurisprudential and practical values of: Terrorism (Prevention) (Amendment) Act, 2013; Prevention of Crimes (Amendment) Act, 2016; Violence against Persons (Prohibition) Act, 2015; Same Sex Marriage (Prohibition) Act, 2013; Anti-torture Act, 2017; Compulsory Treatment and Care of Victims of Gunshot Act, 2017 and Nigeria Police Act, 2020. It founds that the proliferations rather opens Pandora's Box by creating more conflict of laws; jurisdictional challenges and prosecutorial difficulties which expose escape loopholes for obvious criminals. The article recommends, inter alia, concerted efforts in training Nigerian criminal law practitioners and security agencies to galvanize toward effective applications and enforcement of these criminal laws. The article concludes that the spiral of criminalities in Nigeria require more formidable measures than volumes of enacted laws. Hermeneutical and comparative approaches constitute our methodology.

Keywords: Crimes, Crime Control, Criminal legislation, Criminal Prosecution

Introduction

Nigeria is a federation where the vast majority of criminal prosecutions take place in states' courts, while the federal government has jurisdiction over a few group of federally defined crimes.[1] In the past decades, especially since Nigeria returned to an acclaimed "democratic rule"[2] in 1999, the country has witnessed profuse enactments of plethora of laws from the National and States Houses of Assemblies as "dividends of democracy" contrary to military decrees. Wending through the Nigerian criminal jurisprudence in the last two decades reveals that Nigeria at the federal level had rolled out quite a number of criminal laws either by amendment of existing laws or enactment of new ones. However, the upsurge of horrific criminalities within Nigerian territory over the years

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[1] Paul Bergman and Sara J. Berman, 'The Criminal Law Handbook, Know Your Rights, Survive the System' (12thEdn) (Nolo, California 2011).

[2]This is because there has never been any evidence of free, fair and credible election in Nigeria. All the elections at various levels since 1999 have been marred with violence and irregularities.

is precarious and unprecedented, creating unimaginable fear, uncertainty and depressing situation across the country.[3]

The manifest acts of terrorism that engulfed the country in recent years prompted the Nigerian National Assembly to enact: the Terrorism Prevention Act, 2011 which was subsequently amended in 2013, just two years after its original enactment because of the escalation of terrorists activities despite the law. The tenet of the Act is to prevent terrorism or nip it in the board. However, Nigeria continues to record cases of hostage taking and territorial control by Boko Haram terrorists[4] and other insurgent groups unabated. In the league of laws under discourse, Prevention of Crimes Act, Chapter P27, Laws of the Federation of Nigeria, 2004 which was amended by Prevention of Crimes (Amendment) Act, 2016 is an omnibus law which seems to have covered the field. Despite the captivating title of this Act and all encompassing provisions therein crafted to enable and empower the law enforcement agencies towards ensuring that crimes and criminalities are prevented or minimized in the country, unprecedented records of criminal activities has been the experience of Nigerians over the years.

Violence against Persons (Prohibition) Act, 2015 is an Act to prohibit or eliminate all forms of violence in private and public life, prohibit all forms of violence against persons and to provide maximum protection and effective remedies for victims and punishment of offenders, among other matters covered by the Act. Where a law provides for prevention of an act, it presuppose that enabling environment for the implementation and necessary human and material resources are provided for effective enforcement of the provisions of the law. However, in Nigeria, the existence of preventive laws rather attracts the commission of the crimes sought to be prevented in the enactments. The reason is simply that the perpetrators of crimes understand the country as lacking the proportional implementation mechanisms to actually prevent or checkmate commissions of crimes.

The erosion of African and indeed, Nigerian core moral values over the years have led to superimposition of African cultures and values with 'western" lifestyles and idiosyncrasies. Same Sex Marriage (Prohibition) Act, 2013 was a reactive enactment against a trend that was already penetrating the nooks and crannies of the country. Anti-torture Act, 2017 is another law that was apparently enacted to justify the busy schedule and emoluments of the National Assembly. There is virtually no form of crimes in Nigeria or anywhere in the world without torture – physically, mentally, emotionally and psychologically. Torture is an integral part of crimes and criminalities. Only threat or perceived threat of criminal activities can amount to mental and psychological torture. Nigerians have never suffered torture less from any person or organization than in the hands of officers and men of the various law enforcement agencies.[5] In the same rubrics, it may not be acceptable to many that some of the laws enacted seemingly to prevent or control crimes ironically aids commission of crimes or further crimes, but such is the reality of Nigerian criminal jurisprudence. There is a disconnection between the quests to promulgate criminal laws and the

[3]Anthony Adoyi, "Responsibility to Protect amid Human and National Security Challenges: North-East Nigeria in Perspective" [2020] (3)(1)*Nigerian Army Resource Center Journal*, 83-113.
[4]*Ibid.*
[5]Ijeoma Brigid Ochi And Kingsley Chinonso Mark, "Effect Of The Endsars Protest On The Nigerian Economy"[2021] (9)(3) *Global Journal Of Arts, Humanities And Social Science*, 1-15

reality of addressing triggers of crimes which are abject poverty, unemployment, susceptibility to criminal initiation and general lack of human security in Nigeria.

Compulsory Treatment and Care of Victims of Gunshot Act, 2017 is another law that the intention of the law makers is between the lines of its provisions. Enforcement of criminal laws entails every method reasonably considered to decapitate crimes and criminality in totality from the society. Where medical practitioners are under compulsory statutory obligation to treat any "victim of gunshot" irrespective of who shot and why, then criminals are not to be shot at crime scene in the first place. There have been arguments forth and back on the viability of the Compulsory Treatment and Care of Victims of Gunshot Act, 2017. However, applying the mischief rules, this paper further shed brighter light on the legislative intent of the enactment below. Police Act, 2020 was enacted to further enhance the fight against crimes and to provide some forms of consolations to victims of criminal activities in Nigeria. The Act equally streamlines the scope of police officers' operations in order not to descend into the arenas of pure civil rifts.

There is a world of difference between law enactments and law enforcement. The dynamics lies in the ability of the government, policy makers at various levels, law enforcement agencies, criminal law practitioners and the general populace to synergize and collectively combat the menace of criminalities in Nigeria. Although, references were made to other penal laws in and outside Nigeria, this article attempts to examine the jurisprudential values of some of the recent laws in Nigeria, particularly: Terrorism (Prevention) (Amendment) Act, 2013; Prevention of Crimes (Amendment) Act, 2016; Violence against Persons (Prohibition) Act, 2015; Same Sex Marriage (Prohibition) Act, 2015; Anti-torture Act, 2017; Compulsory Treatment and Care of Victims of Gunshot Act, 2017 and Nigeria Police Act, 2020.

Conceptual Clarifications

Crime

Crime is an illegal action or omission or activities for which a person can be punished by law. It is an act or omission which must have been proscribe and prohibited, the commission of which is an offence[6] under existing substantive law. Crime is any anti-social behavior, which falls not only within the general disapproval of the community,[7] but also supported with "punitive sanctions."[8] Crime has been described as "a human conduct which the state decides to prevent by threat of punishment, liability of which is determined by legal proceedings of a special kind."[9] Statutorily, section 2 of the Criminal Code defines an offence as "An act or omission which renders the person doing the act or making the omission liable to punishment under this code or under any Act or

[6]Both Criminal and Penal Codes use the word "offence", not Crime. However, the word 'Criminal" was used in both codes and in the Constitution of the Federal Republic of Nigeria, 1999 (as amended). Hence, the word "offence" is synonymous with "Crime" under the Nigerian criminal Laws. See also, *Okonkwo and Naish, Criminal Law in Nigeria,* (2nded, Spectrum books Ltd Ibadan 1980)

[7]Adamu Ibrahim, 'Reapraising the purpose of Criminal Law under the Nigerian Justice System: Alegal Critique of the Contemporary issues' in Adamu Ibrahim and others (eds), *Contemporary Issues in Law Security and Human Right Developments in Nigeri*a (Constellation Books, 2018), 341 - 368

[8]Karibi-Whtye, A.G., Criminal Policy: *Traditional and Modern Trend,* (Adeyemi Press Ltd 1988)

[9] Gledhill A. The Penal Codes of Northern Nigeria and the Sudan (London 1963) cited in Adamu Ibrahim and others (eds), *Contemporary Issues in Law Security and Human Right Developments in Nigeri*a (Constellation Books, 2018), 341 - 368

law."[10] It is imperative therefore to wend through the concept of crime, being the crux of this discourse. Over the ages, the moral wrong theory has been the centerpiece of all commentaries on crimes and criminalities across all jurisdictions, including Nigeria.[11] The English word "crime" and the Geek expression "crimes" are all synonymous to the Latin word 'criminis" which means "social disorder"[12]

Adamu Ibrahim[13] in aligning with other authors,[14] posited that, while it is generally acceptable over the centuries that immoral acts such as murder, armed robberies, causing hurt without justification, stealing and the likes have been considered as criminal, there are quite a number of conducts or behaviors which deviate from cherished moral values of the community such as ingratitude, hardheartedness, that are not considered as crimes.[15] These have been trivialized over the years without criminal sanctions and are left to be corrected by the social, educational and religious institutions. It is therefore apparent that the steep rising of criminalities in Nigeria is self evident that the social system also failed to correct the anomalies of behavious that are repugnant to natural justice, equity and good conscience by the teaming population and sequel to which the country is experiencing the upsurge of criminalities unabated. Criminality therefore means any behaveior that is contrary to or forbidden by criminal law.

Crime Control

Before delving into this discourse, it is noteworthy that "no matter what the definition of crime may be, an adequate understanding of unlawful behavior requires paying attention not only to the offender(s) but also to the victim(s) and the bystander(s).[16] Crime control and prevention has a chequered history all over the world.[17] Like Nigeria, it is now imperative for many countries to "recognize that prevention of crime and treatment of offenders is necessarily required to protect the society and provide its citizens a secured environment."[18] Crime control is beyond institutional correctional centers for suspects and convicts. Sustainable control measure to curtail the spiral of crimes and criminalities in Nigeria and many parts of the world entails more formidable proactive steps by government at various level, civil society organizations and religious bodies to engage the teaming youths in an engaging and sustainable employment and inculcation of morals.

The reactive method of crime control in Nigeria through enactment of criminal laws and "stand by" waiting for culprits to be arrested and prosecuted has obviously failed by virtue of the steep rising of criminalities in Nigeria in recent years despite avalanche of criminal laws. It posited that the struggle have a crime free society does not end in the prosecution of offenders but should be

[10]*ibid*
[11]AdamuIbrahim and others (eds) (n. 7)
[12] Legislative Morals: The symbolic Process of designating Deviancy (California Law Review 1968)
[13]Adamu Ibrahim (eds) (n .7)
[14]*Ibid.*
[15]*Ibid.*
[16]Amedeo Cottino, "Crime Prevention And Control: Western Beliefs vs. Traditional Legal Practices" [2008] (90)(870), *International Review of the Red Cross*, 289.
[17]*Ibid.*
[18]FatihÖzdemir and BengiÖner-Özkan, "The Nature of Crime: Different Approaches Toward the Causes of the Criminal Act" (2017)(11)(5), *NesnePsikolojiDergisi* (Npd), 345. Available At: <Www.Nesnedergisi.Com> Accessed on 13 June, 2021

sustained through incarceration of convicts to their release and afterwards[19]. The old belief that harsh and lengthy punishments are necessary for the security of the society has become obsolete in the present context[20]. Typical of Nigerian criminal laws tends toward crime control than prevention. The development of social justice globally has spurred the quest for protection of the public and the reform of the offender which Nigeria must embrace in practice.

Criminal Legislation

Legislation consists of a law or laws enacted by a government for administrative or punitive purposes. A nation who prioritizes internal security and well being of her citizens would agree with Thomas Jefferson[21] who postulated that: "A society that will trade a little liberty for a little order will lose both, and deserve neither."[22] The legislature has been described as the womb of the law which creates the legal and institutional framework for the society.[23] Criminal legislation is of a peculiar nature as the pivot of every society's corporate existence and development.

The efficacy of every criminal justice system depends on the existing law(s) of the nation. The law prescribes the acts that are prohibited the commission of which may led to an arrest, prosecution, and punishment.[24] Criminal legislation entails a purposeful delineated acts or omissions that causes or threatens public interest; defines and warns people of such acts; distinguishes between serious and minor offenses; and imposes punishment to protect society and to satisfy the demands for retribution, rehabilitation, and deterrence.[25] There are fundamental features of a sustainable criminal law worldwide which include the actual criminal acts, criminal intention, the contemporaneous of acts and intentions, the victim(s), responsibility, and defenses.

An overview of the New York criminal code set out the basic purposes of criminal law as follows:

- *Harm.* To prohibit conduct that unjustifiably or inexcusably causes or threatens substantial harm to individuals as well as to society
- *Warning.* To warn people both of conduct that is subject to criminal punishment and of the severity of the punishment
- *Definition.* To define the act and intent that is required for each offense
- *Seriousness.* To distinguish between serious and minor offenses and to assign the appropriate punishments
- *Punishment.* To impose punishments that satisfy the demands for revenge, rehabilitation, and deterrence of future crimes

[19]Chidubem Ezeilo And Princewell Akinseye-George, "A Review of the Nigerian Correctional Service Act" 2019 [2020] (4)(1), *Unilag Law Review*, 138 – 147.

[20] *Ibid.*

[21] The 3rd United States President and author of the Declaration of Independence

[22]Meško, Gorazd, 'Crime policy, crime control and crime prevention – Slovenian perspectives' GorazdMeško and Helmut Kury (eds) (Ljubljana Tipografija, 2009).

[23]OlufemiAbifarin and Florence U Masajuwa, 'A Critical Appraisal of the Role of the Legislature in Combating Terrorism and Insurgency' in Adamu Ibrahim and others (eds) *Contemporary Issues in Law, Security and Human Rights Development in Nigeria* (Constellation Books. 2018), 86-103

[24]*Ibid.*

[25]*Ibid.*

- *Victims.* To insure that the victim, the victim's family, and the community interests are represented at trial and in imposing punishments[26]

Over the years, the above characteristics have always constituted the integral parts of criminal legislation.

Thematic Analysis of the Selected Criminal Laws in Nigeria

Terrorism (Prevention) (Amendment) Act, 2013

Like every other concepts, terrorism has been defined by various scholars and organizations based on their experiences and peculiar situations. Ekaterina[27] viewed terrorism as a sort of one sided violence directed at civilians or involving confrontation against perceived stronger adversary such as a state or group of states. On the other hands, terrorism was described as "the use of coercive means aimed at populations in an effort to achieve political, religious, or even other aims."[28] According to US State Department, terrorism is a "premeditated, politically motivated violence perpetrated against non-combatant targets by sub-national groups or clandestine agents, usually intended to influence an audience."[29] Amid the turmoil and precipitating insecurity and criminalities created by terrorists and insurgent groups in the last decade, the Nigerian legislatures in 2011 enacted the Terrorism (Prevention) Act which was amended in 2013.

The crux of the Terrorism (Prevention) (Amendment) Act, 2013 (TPAA) is to provide "…for extra-territorial application of the Act and strengthening of terrorist financing offences; and for related matters."[30] It would be observed that there was nothing wrong nor lacuna in the 2011 Terrorism prevention Act, except for proper implementation by the agencies saddled with the responsibility to enforce the provisions of the law. The preambles to the 2011 Terrorism Prevention Act, unequivocally provided thus:

> *This Act provides for measures for the prevention, prohibition and combating of the acts of terrorism, the financing of terrorism in Nigeria, and for the effective implementation of the convention on the prevention and combating of terrorism and the convention on the suppression of the financing of terrorism. It also provides penalty for violating any of its prohibition.*[31]

From the inception of the Terrorism (Prevention) Act, it has specifically used the word; "prevention" of terrorism and not defence to terrorists' attacks, yet, Nigeria in her reactive style of

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[26]The Nature, Purpose, and Function of Criminal Law, Contemporary Criminal Law, available at: <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwiV7t6vkYnxAhUIDcAKHdBoABYQFjAHegQIChAE&url=https%3A%2F%2Fwww.sagepub.com%2Fsites%2Fdefault%2Ffiles%2Fupm-.binaries%2F30388_1.pdf&usg=AOvVaw1NpkiIUyJlLyjGtj_6xMoC; see also: Howard A. Levine, The New York Penal Law: A Prosecutor's Evaluation, (1967) 18 Buff. L. Rev. 269-283. Available at: <https://digitalcommons.law.buffalo.edu/buffalolawreview/vol18/iss2/5> accessed on 8 June, 2021

[27] Ekaterina Stepanova, Terrorism in Asymmetrical Conflict: Ideological and Structural Aspects (Oxford University Press 2008).

[28] Noam Chomsky, Terrorism Personifies (Seven Stories Press 2001) .

[29]Ayuba Isyaku, "Terrorism: A New Challenge to Nigeria's Stability in the 21st Century", (International Affairs and Global Strategy 2013) (12) 16-24.

[30]Preambles to the TPAA 2013

[31]Preambles to the Terrorism (Prevention) Act, 2011

addressing criminalities in the country has always neglected all forms of "early warning signs"[32] until terrorists activities have engulfed the whole country. Law enforcement agencies that can investigate cases of terrorism under the TPAA, 2013 are: (a) Nigeria Police Force; (b) Department of State Security Services; (c) Economic and Financial Crimes Commission; (d) National Agency for the Prohibition of Traffic in Persons; (e) National Drug Law Enforcement Agency; (f) National Intelligence Agency; (g) Nigeria Customs Service; (h) Nigeria Immigration Service; (i) Defence Intelligence Agency; (i) Nigeria Security and Civil Defence Corps (NSCDC); and (k) Any other agency empowered by an Act of the National Assembly. The TPAA, 2013 included the Nigerian Armed Forces and Nigeria Prisons Service as law enforcement and security agency.[33] Notwithstanding the provision of the TPAA, 2013 that expanded the institutions charged with the responsibility of investigating terrorism, while the Police stand as the traditional driver of ensuring internal security of Nigeria. In spite of the enormity of the provisions of this Act, Nigeria was ranked third on the Global Terrorism Index, 2019, with Afghanistan and Iraq ranking first and second respectively.[34] These facts therefore led credence to the fact that there is a wall or difference between enactment of laws and implementation and enforcement of their provisions.

Prevention of Crimes (Amendment) Act, 2016

The core of the 2016 amendment of the Prevention of Crimes Act[35] was only the increment of the prescribed penalties.[36] This law has been in existence for decades, yet, there is no commensurate indication that any form of crime was prevented or minimized in the country, rather, exponential increase and sophistication of criminalities have been the case. It is particularly bizarre that the only major amendment made on the Act under review was to substitute the word "President" with the word "Commissioner of Police"[37] and "Inspector General of Police" respectively. The question remains whether these amendments were necessary when the President is the Commander-in-Chief of the Armed Forces while Police is under the exclusive list under the Constitution of Nigeria and within the control of the Executive (President).[38]

Violence against Persons (Prohibition) Act, 2015

This Act[39] begins like every other enactment with the prohibition of all forms of violence against persons in private and public life, and provides maximum protection and effective remedies for victims and punishment of offenders and for related matters. The uniqueness of this Act lies in its elaborate provisions, covering a wide range of offences and punishments for culprits.[40] The

[32]Anthony Adoyi, (n. 3)

[33]TPAA 2013, s40, as it added to the Terrorism (Prevention) Act, 2011

[34]Global Terrorism Index 2019: Measuring the Impact of Terrorism, *Institute for Economics and Peace. Available at* <*https://tradingeconomics.com/nigeria/terrorism-index*>accessed on 10 May, 2021

[35] Cap. P27, Laws of the Federation of Nigeria, 2004

[36] prevention of crime amendment Act 2016

[37]Chineze Sophia Ibekwe and Onyeka Nosike Aduma, "Presidential Control of the Nigeria Police: Constitutional Reforms for Organizational Performance Development and Political Neutrality"", (2020)(8)(2), *Global Journal of Politics and Law Research, ECRTD-UK*, 65-79; ss 4 and 6, Prevention of Crimes Act, Cap. P27, LFN, 2004 were amended in the Prevention of Crimes (Amendment) Act, 2016.

[38] CFRN, ss4(2) and 214(1)(a) and (c),

[39] Preambles to VAPPA, 2015.

[40]Sections 1 provides for Rape, 2 for inflicting physical injury, 3 for coercion, 5 for offensive conducts, 7 for frustration of investigation, 9 for forceful ejection from home, 12 for force financial dependence or economic abuse, 13 for

greatest milieu of the Nigerian criminal jurisprudence has always been the North-South dichotomy in terms of application of *Sharia* and common laws, Penal and Criminal Codes. For instance, Section 15 of the Violence against Persons (Prohibition) Act, (VAPPA) 2015 provides against Abandonment of Spouse, Children and other Dependandents without Sustenance. The streets of most Northern States in Nigeria are littered with abandoned children and young adults (*Almajiris*) in the guise of "seeking knowledge."[41] Islamic Scholars and experts have advocated that this practice is no longer fashionable in this 21st century.[42] The challenges remain whether any or many Northern States have domesticated the Violence against Persons (Prohibition) Act, 2015; whether anyone suspected of having committed the offence of abandonment under this Act can be prosecuted according to the tenets of the law or according to Sharia doctrine?

In the Act under discourse, "Political Violence" means any act or attempted act of violence perpetrated in the course of political activates, such as election which include thuggery, mugging, and use offeree to disrupt meetings or the use of dangerous weapons that may cause bodily harm or injury.[43] Political and electoral activities have been marred with horrendous violence, thuggery, mugging, incitement of violence over the years, yet, there has been no remarkable arrest, prosecution and incarceration of culprit to serve as deterrence.[44] Criminals are having field day of violence against persons in different forms even officers and men of the various security agencies with impunity, some of which led to "#End SARS" protest in Nigeria in 2021. However, the panels of enquiries set up by the government across the country in respect of the horrible acts of state actors against the citizenry were mere cosmetics.[45] This abuse is well documented in the #End SARS campaign, which has lasted for three years with little success.[46] #End SARS protest was basically against the unbearable and unabated police brutality on Nigerian citizens, a peaceful demonstration that was scuttled by the Nigerian government and her agencies.[47] Where then is the hope of criminal prosecution and criminal justice in Nigeria when the perpetrators are state actors enjoying the backing of the government?

Same Sex Marriage (Prohibition) Act, 2013

This is an act to prohibit a marriage contract or civil union entered into between persons of same sex, solemnization of same, and for related matters. This act was a reactive step taken sequel to an ugly trend of "public show of same sex amorous relationship."[48] It has been argued, albeit

Emotional and Physical Abuse, 15 for Abandonment of Spouse, Children and other Dependandents without Sustenance, 17 Intimidation, s22; Political violence and its Incitements, s23; Violence by State Actors (Police, Army, and the likes, s23, among other laudable provisions of the Act.

[41]Ezeani Emmanuel Onyebuchi and Chilaka Francis Chigozie, "Islamic Fundamentalism and the Problem of Insecurity in Nigeria: The Boko Haram Phenomenon", (2013) (15)(3), *IOSR Journal Of Humanities And Social Science (IOSR-JHSS), 43-53* , available at:*www.Iosrjournals.Org, accessed on 14/6/2021*

[42]*ibid*

[43]Definition of "Political Violence" under Part VI – Interpretation to VAPPA, 2015

[44]Nkwachukwu Orji and NkiruUzodi, "The 2011 Post Election Violence In Nigeria" (Policy and Legal Advocacy Centre 2012)

[45]Tamar Haruna Dambo and others, 'Nigeria's #EndSARS Movement and its Implication on online Protests in Africa's most Populous Country (John Wiley & Sons Ltd 2020) 1 – 11 available at https://www.researchgate.net/publication/347330172_Nigeria%27s_EndSARS_movement_and_its_implication_on_online_protests_in_Africa%27s_most_populous_country> accessed on 10/06/2021

[46]*Ibid.*

[47] *Ibid,* 3-5.

[48] SSMPA, 2013, s4(2).

bizarrely, that the prohibition of same sex marriage in Nigeria has adverse effects on the fundamental rights guaranteed under the constitution and economic benefits of allowing the same sex marriages and civil unions in the country.[49] The accolade that greeted the enactment of Same Sex Marriage (Prohibition) Act, (SSMPA) 2013 by the Nigerian National Assembly was remarkable because the trend was inimical to Nigerian and indeed African values, culture and morals. The Act criminalizes any form of same sex marriage or civil union or registration, operation or participation directly or indirectly in public show of same sex amorous relationship.[50]

It was equally argued that some of the provisions of the Act were already contained in another statute,[51] where enforcement has always been the challenge which lends credence to the core of this article on the proliferation of criminal laws devoid of practical substance. More heated argument was further posited by eminent scholars[52] yet on the constitutionality of the Act "that if homosexuality was caused by genetic factors, then it would be protected by the phrase 'circumstances of birth' under section 42(2) 1999 CFRN (as amended)."[53] The authors went further to show "that lesbian cannot be guilty of anal inter course under sections 214, 284 and 81 of the Criminal Code Act, Panel Code Act and the Armed Forces Act respectively", while recommended "that the Nigerian National Assembly should take steps to repeal the Act."[54] With all sense of humility, the present article posits that the argument on the existence of other laws on the same subject is unsustainable as the society itself is dynamic and the laws are subject to the people and not the other way round.

Flowing from the preceding argument, the elementary understanding of crime is that it is an offence against the state. Crime has been described "as an act, default or conduct prejudicial to the community, the commission of which by law renders the person responsible liable to punishment, fine or imprisonment."[55] The state (community) has the right to prohibit an act or omission which it deems harmful, injurious and inimical to the wellbeing of its citizenry and such exercise of state rights for public benefits supersede individual rights.

Anti-torture Act, 2017

This Act penalizes the acts of torture and other cruel, inhuman and degrading treatment and prescribes penalties for such acts and for related matters.[56] The hallmark of this Act was the responsibility place on the government of Nigeria "to ensure that the right of all persons including

[49] Human Dignity Trust, 'Briefing on Same Sex Marriage (Prohibition) Act, 2013' 2014, available at: <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwjSo_SJppbxAhUQ-hQKHXYuC0UQFjACegQIBRAD&url=https%3A%2F%2Fwww.humandignitytrust.org%2Fwp-content%2Fuploads%2Fresources%2FBriefing_on_Same_Sex_Marriage_Prohibition_Act_2013_final.pdf&usg=AOvVaw1JyqGWFj_td9t5Znhpv9yv> accessed on 14/06/2021.

[50] SSMPA, 2013, s5.

[51] Criminal Code Act, Cap. 77, ss 214 and 352, LFN 2004, for 'carnal knowledge … against the order of nature' and 'Acts of 'gross indecency' between males carry a maximum sentence of three years' respectively.

[52] Anthony N. Nwazuoke, and Chinedu Akam Igwe, "A Critical Review of Nigeria's Same Sex Marriage (Prohibition) Act", [2016] (14), *Journal of Law, Policy and Globalization*, 179 – 184, available at: <www.iiste.org> accessed on 14/06/2021

[53] *Ibid.*

[54] *Ibid.*

[55] Adamu Ibrahim, and others (eds) (n. 7).

[56] Preambles to ATA, 2017.

suspects, detainees and prisoners are respected at all times…"[57] The entire gamut of Anti-torture Act, (ATA) 2017 are merely paraphrase and highlight of some provisions of the constitution of Nigeria.[58] Section 1 of this Act began with the duty of Government that (t)he Government shall-

a. Ensure that the right of all persons including suspects, detainees and prisoners are respected at all times and that no person placed under investigation or held in custody of any person in authority shall be subjected to physical harm, force, violence threat or intimidation or any act that impairs his free will; and

b. Fully adhere to the principles and standards on the absolute condemnations and prohibition of torture set by the constitution of the Federal Republic of Nigeria and various international instruments to which Nigeria is a state party.

The flaw of this Act is the apparent contradiction and limitation of its application. While saddling the responsibility on the government to ensure respect for the "right of all persons", it went further to list the category of persons.[59] More so, the people that would be bound by the provisions of this Act those "in authority" conducting investigation or holding other persons in their "custody." Apparently, the Act does not apply to non-sate actors who are having the field day of hostage taking, violence, sexual torture, killing and destruction of lives and properties[60] because they are not "person in authority." Besides, all the offences listed in the Act are being committed across the states of the federation daily, however, the question of charging any suspect on the basis of the provisions of this Act cannot arise because non or many of the states have not domesticated the Act or having a similar law criminalizing those offences. The reason is obviously because the "person in authority" referred to in the Act is obviously officers of the Federal Government security agencies. Hence, action(s) based on this Act can only be maintained before a Federal High Court with its attendant jurisdictional and strict procedure rules.

Compulsory Treatment and Care of Victims of Gunshot Act, 2017

Compulsory Treatment and Care of Victims of Gunshot Act, (CTCVGA) 2017 is one of the laws of the National Assembly of Nigeria that attracted nationwide public criticisms and rejection by the citizens and especially the medical practitioners, both in private and public sectors.[61] This is "An Act to provide for the compulsory treatment and care for victims of Gunshots and for related matters." The Act makes it compulsory for all hospital in Nigeria, whether private or public to "accept or receive for immediate and adequate treatment with or without police clearance…"[62] and "with or without monetary deposit."[63] It may seem, from a cursory look at the provisions of the Act that the law intends to victimize or indict innocent medical practitioners than focusing on curbing crimes and criminalities in the country. The diction of the Act is more of command,

[57] ATA 2017, s1.
[58] CFRN, ss14, 35 and 36 provide for security of citizens and against inhuman and degrading treatment of suspects by law enforcement officers.
[59]The provisions are contrary the rules of interpretation: *Expressiouniusestexclusioalterius* ("*the express mention of one thing excludes all others" or "the expression of one is the exclusion of others").*
[60]Anthony Adoyi, (n. 3).
[61]Preambles to CTCVGA, 2017.
[62] ss1 and 2, CTCVGA, 2017.
[63]*Ibid.*

directive and compulsion contrary to the purpose of criminal laws of deterrence and instilling fear of punishment in the mind of the people.

The Act is more abysmally draconian in its language when the provisions create opportunity for mischief and political victimization where an innocent medical practitioner can be cited for criminal negligence or conspiracy when he lacks the facilities to commence "immediate and adequate treatment"[64] on "walked-in" or "rushed-in" patient with gunshot who may die or escape. Similarly, where a criminal who was shot at crime scene by security officer(s) and escapes with gunshot wound into a hospital; misrepresents himself; gives false information and access medical care until he or she recovers and discharge before investigation reveals that the criminal actually came to such hospital, what would be the fate of the medical officers of the hospital? Would the Nigerian security agencies believe their innocence without victimization and ridicule?

Nigeria Police Act, 2020

Repealing the Police Act, Cap. P19, Law of the Federation of Nigeria, 2004 and the enactment of a Nigeria Police Act, 2020 brought some innovations aimed at minimizing the anxieties and agitations over the wild provisions of the repealed Act as the National Assembly incorporated some contemporary issues into the law.[65] The general objective of the Act is to provide an effective police service anchored on the principles of accountability and transparency, protection of human rights, and partnership with other security agencies.[66] The new Act has specifically prohibited the Police from arresting any person on the bases of pure civil wrongs such as tenancy matters or breach of contract without criminal connotation.[67] This provision further gives to the provisions of Section 8(2) of the Administration of Criminal Justice Act, 2015 which has similar effect.

Beyond detection, prevention of crimes and protection of rights, lives and properties, Section 4 of the new Act has extended the duties of the Nigeria Police to vet and approve the registration of private detective schools and private investigation outfits. Like every other contemporary laws, the Act also provides for the right to the dignity of the human person aligning with the fundamental rights guaranteed in the 1999 Constitution of Nigeria, particularly against torture,[68] cruel, inhuman, or degrading treatment.[69] Despite the enactment of the Nigeria Police Act, 2020, police brutality and other atrocities are still been committed by Police and officers of other security agencies in Nigeria. The Act is mere worthless a garbage where the Police who is to enforce the tenets and provisions of the Act turns out to be the perpetrators of the crime being prohibited under the Nigeria Police Act.

In his analysis, Tamar Haruna,[70] stated that:

> *Amnesty International has reported on and campaigned against the use of torture by law enforcement agencies for years in Nigeria. In November 2014, it released*

[64] CTCVGA 2017, ss1 and 2.
[65] *Arrest on Civil Wrong, Information about Rights when making an arrest, Notification of Next of Kin, Arrest in lieu, Torture and Inhumane Treatment prohibited among others were all new innovations of the Act*
[66] *Police Act 2020, s.5.*
[67] *Ibid, s32(2).*
[68] Anti-Torture Act, 2017.
[69] *ibidSection 37;* This provision is also similar to s.8(1) of the Administration of Criminal Justice Act, 2015.
[70] Tamar HarunaDambo, (n. 51).

> *the report "Welcome to hellfire": Torture and other ill-treatment in Nigeria. This report revealed that the use of torture and other forms of ill-treatment is widespread and routine in military and police custody across Nigeria*[71]

On the issue of bail of a suspect which has been an issue of controversy, legal debates and judicial pronouncements,[72] the Act still made ambiguous provisions and ascribed wild discretionary powers to Nigeria Police. Section 62[73] provides that any suspect arrested by police officer and taken to custody for an offence other an offence punishable with death shall be released on bail upon entering recognizance with or without sureties. It is commonplace that this provision is always being flouted by police officers with impunity. Suspect keep paying money before being released on bail in addition to stringent conditions of sureties even for minor offences. Therefore, as salutary as the provisions of the Nigeria Police Act, 2020, it would be an exercise in futility if there is no effective independent mechanism to checkmate the excesses of Police officers.

Criminal Laws and Stabilization of Social Norms in Nigeria

In modern times, more rationalistic views have dominated the debates on the crux of criminal law which is the prevention of crimes. Nigerian criminal laws are in tandem with this philosophy as all the recent laws discoursed above primarily focused on protection of the public but are lacking in the reform of the offenders. It is not by nomenclatural changing of "prison" to "correctional Service,"[74] but also the provision of facilities and human resources to effect the needed corrections on the inmates. The protection of the right to life as an inherent objective of every society includes an obligation on States to take all appropriate and necessary steps to safeguard the lives of those within their jurisdiction.[75] As part of this obligation, States must put in place effective criminal justice and law enforcement systems, such as measures to deter the commission of offences and investigate violations where they occur; ensure that those suspected of criminal acts are prosecuted; provide victims with effective remedies; and take other necessary steps to prevent a recurrence of violations.[76]

The tenet of criminal prosecution is essentially for representing not only the interests of society at large, but also those of victims of crimes, including persons suspected of a crime and witnesses.[77] The core of criminal prosecution should be not only for retribution but also for restoration of social order and rehabilitation of offenders. In Nigeria however, prosecutors act like a loose cannon at their whims and caprices despite avalanche of laws. The institutional impunity and unscrupulous politicking in Nigeria has eroded the independence of judiciary and criminal prosecution is now at

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[71] *Ibid.*

[72] In the case of *Josiah v. State* [1985]1 NWLR (Pt. 1) 125, the court held that "…justice is not a one-way traffic. It is not justice for the appellant only. Justice is not even only a two-way traffic. It is really a three-way traffic – justice for the appellant accused of a heinous crime of murder; justice for the victim, the murdered man, the deceased, 'whose blood is crying out to heaven for vengeance' and finally justice for society at large – the society whose social norms and values had been desecrated and broken by the criminal act complained of."

[73] *Police Act, 2020.*

[74] Nigerian Correctional Service Act, 2019 repealed Nigerian Prison Act, Cap P29 Laws of the Federation of Nigeria, 2004

[75] s 14, CFRN, 1999 (as amended).

[76] Instances of this are contained in: "Updated Set of principles for the protection and promotion of human rights through action to combat impunity" (E/CN.4/2005/102/Add.1). See also Human Rights Committee, views on communication N° 195/1985, *Delgado Páez*v. *Colombia*, 12 July 1990 (A/45/40 (vol. II), annex IX, sect. D).

[77] *Josiah v. State* [1985]1 NWLR (Pt. 1) 125; (n. 74).

the mercy of political dictations.[78] Criminal prosecution cannot be effective where it is riddled with clogs and discretion of political appointees. In such instances, the Judiciary who is bound by the law cannot do substantial justice where the whole institution, an independent arm of government is subject to the discretion of individual political appointees.

Stabilizing social order and decapitating criminalities in Nigeria requires whole lots of considerations such as the environmental factors (including physical, social, economic, cultural and political environments) which shape people's behaviours and poor physical, social and family environments which influence intentions toward criminal acts.[79] Living in poverty, lack of social support and negative family experiences definitely increase the possibility of crime. The awful unemployment situation and lack of productive educational drive in Nigeria constitute other catalysts for criminal act.[80] To this end, volumes of enacted criminal laws cannot be the effectual solution to the dastardly criminal rampage in Nigeria without a formidable interoperability among the various security agencies, the judiciary and political actors in the Country.

Recommendations

1. The government should be proactive in heeding to early warning signs and taking practical steps to quell triggers of criminalities such as arm proliferations, drugs and porous borders.
2. In line with the preventive tenets of the laws reviewed above, the government should be committed to providing enabling environment such as training, intelligence and ammunitions gathering for the various security agencies for effective crime prevention and control.
3. Sustainable economic and political policies aimed at reducing poverty and unemployment
4. Deradicalization and sensitization of the youths on dangers of criminalities to the society and economic development.

Conclusion

This article appraised different criminal enactments by the Nigerian National Assembly particularly: Terrorism (Prevention) (Amendment) Act, 2013; Prevention of Crimes (Amendment) Act, 2016; Violence against Persons (Prohibition) Act, 2015; Same Sex Marriage (Prohibition) Act, 2013; Anti-torture Act, 2017; Compulsory Treatment and Care of Victims of Gunshot Act, 2017 and Nigeria Police Act, 2020. While the laws are pragmatic steps on the part of the legislature with the view to minimizing criminalities in Nigeria, only enactments cannot be the panacea to the endemics crimes in the country. There is need for a sustainable synergy among the various stakeholders toward galvanizing the letters of the laws to practical prevention and control of crimes. Independence of the judiciary is sin qua non to effective and efficient criminal adjudication.

[78]For instance, the prosecutorial powers of Nigeria Police under Section 66(1) of the Nigeria Police Act, 2020 is subject to unfettered power to institute, takeover, continue or discontinue a criminal case by Attorney-General of the Federation or State under ss 174 and 211 of the CFRN, 1999 and s 106 of Administration of Criminal Justice Act, 2015.

[79]FatihÖzdemir and BengiÖner-Özkan (n. 18).

[80]*Ibid.*

The wild exercises of discretion by Attorneys-General who are political appointees of the Executive arm of Government are, more often than not, detrimental to the quest for a crime free society by politicizing criminal prosecution. The power of *nolleprosequi* of the Attorneys-general or discretional latitude to prosecute or not should be watered down by judicial pronouncement in interpreting the laws. The age long agitations against police brutality, the use of excessive force by the military at every spike of civil unrest and general security deterioration across the country are sequel to disregards of the rule of law by the government and citizens and not lack of adequate legal framework.