

WOMEN AND THE NIGERIAN CRIMINAL JUSTICE SYSTEM: A HUMAN RIGHT PERSPECTIVE*

Abstract

There are criminal tendencies in both males and females. However, in Nigeria and Africa generally, women involvement in crime whether as victims or offenders is modern. Traditionally, female criminality was almost unimaginable because women were known for their biological roles as carriers and nurturers of life only. The reverse is the case now, as it appears that gender roles are shifting and other factors suspected to have encouraged women in crime have developed in recent times. Crime tends to stripe women of their peculiar human dignity and exposes them to the harsh realities of the law. The administration of criminal justice in Nigeria is gender insensitive especially in the face of the recent surge in crime. This research takes women through the various stages of the criminal justice in Nigeria. It concludes that the way female deviants are being treated in the course of justice is yet to achieve the laid down standards as provided by international legal instruments among other things. In this light, certain recommendations were made; one being that the bureaucrats of the Nigerian justice system should be gender sensitive and government should employ proactive steps to curb the recent rise in women criminality by empowering women.

Keywords: women criminality, female offenders, Nigerian criminal justice system, gender sensitivity, empowerment

1. Introduction

Female offenders are affected differently in Nigeria by dint of applicable laws. The criminal justice system in Nigeria gained its roots from the Common law through colonialism. In the period of colonization, a legislative council formed by the British Consuls made laws overseeing the justice sector in Nigeria.¹ Courts and an armed police squad were formed to adjudicate and enforce laws for the orderliness of society. Between 1861 and 1874, four criminal courts were fashioned to preside over criminal matters, these courts include, the Privy Council, the West African Courts of Appeal (WACA), the Supreme Court and the Police Magistrates Court.² All the legislative enactments used to oversee the colonies were rooted in the values, customs, laws, court systems, rules and regulations of the colonialists.³ This is evident by the introduction of a 'Criminal Code' in the North in 1904.⁴ This Code was ready-made after the Queensland Code of Australia, which in turn came from the Jamaican Criminal Code.⁵ This Code later applied to both the north and south Protectorates at amalgamation in 1914. This was the case until 1956 when this Code ceased to apply in the northern part of Nigeria and a Penal Code to protect the Moslem ideologies, values, standards and various interests was introduced. This Penal Code was adopted from the Penal Code of Sudan.⁶ The Penal Code breached the gap between the Muslim and non-Moslem laws and applied to all the Northern region of Nigeria. This Code agrees with the requirements of the Quran,⁷ while the Criminal Code continued in the Southern region of Nigeria resulting in two different laws running side by side in one Country. One cannot effectively talk about how the criminal justice affects women offenders in Nigeria without mentioning the operation of these two laws as they both affect women differently.

The administration of criminal justice in Nigeria involves three main *dramatis personae*. These are the Police force, Court of law and Prisons. This each represents the three stages in the justice process which are- the arrest stage, the trial stage and the correction stage. The Police detect arrests, investigates and arraigns in a court of law, if the case is not withdrawn. The Courts trials, discharges, acquits, or sentences for punishment, wherein the prisons execute the verdict of the Court, rehabilitates and turns the convict back to society or detains convict for life or executes the convict. All rest on the pronouncements of the judge. The society is simply the point of entrance and exit into and away from entire system. All the key players of the system- the police, the courts and the prisons are presented after the British design.

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¹ Anyogu, F., *Access to Justice in Nigeria: A gender Perspective*, 2nd Ed. Ebenezer Publishers, 2013.

² Elias, Oluwale Taslim., *The Nigerian Legal System*. (Routledge and Kegan Parel Ltd. London 1963)

³ Supra, note 1

⁴ Arikpo, Okoi, *The Development of Modern Nigeria*. (Penguin Books Inc. Baltimore 1963)

⁵ Ibid.

⁶ Ebbe Obi N., *World Fact Book of Criminal Justice System* State University of New York at Brockport.
<http://www.ojp.gov/bjs/pub/ascii/wfbcjng.txt> accessed on 16/06/08 and culled from Anyogu supra, note 1.

⁷ Elias Oluwale Taslim, *The British Commonwealth : The Development of its Law and Constitution in Nigeria*, Vol. 4 (London: Stephen and Sons Ltd 1967)

The criminal justice system oversees certain misconducts, which the law proscribes as crime against society. The state through the instrumentality of law prosecutes and punishes such acts or omissions. For an act or omission to be criminal, it must be clearly 'defined' and a penalty prescribed to it in print as law.⁸ A landmark case on this law was given in the case of *Aoko v. Fagbemi*⁹ where the court held to the effect that there is no provision of the law, which provides punishment for adultery in the Criminal Code as applicable in the south. For an offence to be criminal, it must be prescribed by written law, such law must be an Act of the National Assembly or a law of the State House of Assembly or other subsidiary legislation under the law. This only shows that crimes are made criminal by a printed law. This nullifies local customs and traditions which are largely not codified as law. The Nigerian criminal justice is all about certain written laws proscribing certain actions or inactions as criminal, providing punishment and or rehabilitation for offenders. The Nigerian criminal justice operates under two laws. They are the Criminal Code which operates in the South and the Penal Code which operates in the North under the Criminal Procedure Acts (CPA) and Criminal Procedure Code (CPC) respectively. These Codes were coalesced by the Administration of Criminal Justice Act (ACJA) in 2015. The new Act is to oversee the procedures of the Nigerian criminal justice system from the arrest stage to the correction stage.

Nevertheless, the fact remains that the administrators of justice made up of the police, the courts and the prisons are yet to apply the provisions of the timely antilogous Act that has brought hope to the people as far as the criminal justice system is concerned. The ACJA was particularly a welcome development to curb the anomaly of the former Criminal Procedure Codes.¹⁰ However, the police force and Nigerian prisons are still doing things the old way, only the Federal High Court so far has begun to observe new Act. At this point, one may look into women and criminality. Crime subjects women to the mercy and harshness of the criminal justice system.¹¹

2. Female Criminality and the Surge of Crime in Society

In the past, criminality was exclusively associated to the male gender. Women were noted by their subjective, harmless and innocent nature, easily yielding to tears and generally fearful. This is particularly the case with African women. This notion has changed in modern times. Women are now involved in crime, and presently, the rise in female criminality in Nigeria is worrisome. This may be due to westernization, alterations in the old-fashioned roles of women, poverty and quest for better standard of living. In addition, women are now economically independent and criminal justice bureaucrats are dispassionate as they carry out their duties, etc.¹² According to Ameh,¹³ the increase of females in crime no doubt has grave implications on society. It will not only affect the social construction of the people but will heighten anarchy in the country. This calls for immediate solution, which accomplished through proper education, job creation, poverty alleviation, reviving good African values and dignity in labour.

It is true that no particular sex is immune to crime. Nevertheless, the fact remains that women do not generally have criminal tendencies in their nature like men. There are still more men in crime than women. In the United States of America, the rate of men to women in arrests is in the ratio of 5:11, conviction 10:1 and actual committal to prison is 15:1.¹⁴ In Nigeria, following a study conducted in Enugu prison in 1988 by Igbo¹⁵ statistics show that women make up only 4% of the total inmates of 1,700, while men were 96% of the total population. This gives the impression that, as at three decades past, men were still more into crime than women were. Nevertheless, this impression is changing, as women seem to be leading in criminality daily. According to Jacobson,¹⁶ young female offenders rose to 17% in 2005 as against 4.5% for males. The increase was visible particularly in traffic offences and offences against justice like jumping bail and bail bonds, obstructing the police, and such other victimless offences like prostitution and drug related offences. Also, on record now is female involvement in armed robbery¹⁷ and kidnapping.¹⁸ Notwithstanding this development, it is commonly alleged that females commit less crime than males and crimes continue to centre on males. Conversely, the surge in crime in the society today does not exempt

⁸ Section 36 (12) of the Constitution of the Federal Republic of Nigeria (CFRN)

⁹ [1961] 1 NWLR 400; also, *Udokwu v. Onuoha* [1941] ANLR 400

¹⁰ The Criminal Procedure Acts (CPA) and Criminal Procedure Codes (CPC)

¹¹ Proverbs 14:34. The Bible says that that righteousness exhausts a nation but sin a reproach.

¹² Ameh, S.O., 'The Implications of the Upsurge of Female Criminality in Nigeria', *International Journal of Advanced Legal Studies and Governance*, Vol. 4, No. 2, (2013) 74

¹³ *ibid*

¹⁴ Sutherland, E.H. and Cressey, D.R. (1978). *Criminology*. Philadelphia: Lippincott.

¹⁵ Igbo, E.U.M., (2007). *Introduction to Criminology*. Nsukka : University of Nigeria Press Ltd

¹⁶ Jacobson, G. (2009). 'Ladettes Lead Upsurge in Female Crime. Crime Editor. Retrieved 07/02/2013 from <http://www.smh.com.au/news/national> and cited by Ameh, supra, note 11

¹⁷ 'Two Female Armed Robbers Intercepted Along with others in Kogi' retrieved from www.informationng.com>2018/07/31 accessed 2018/08/27

¹⁸ All-female Armed Robbery, Kidnapping Gang Nabbed in Rivers State, retrieved from www.nigerianmonitor.com> accessed 2018/08/27

any gender and includes children. Traditionally, women criminality was centred on witchcraft, prostitution, infanticide, minor thefts, abortion and child trafficking. These were previously not regarded as heavy crimes but are now upgraded to capital offences. For example, abortion is felony in the Criminal Code; ¹⁹adultery is punishable with death for the married under the Penal Code,²⁰ prostitution,²¹ child trafficking etc. these are all criminalized with heavy sanction. These days, female criminality has progressed to include sophisticated crimes such as armed robbery, drug trafficking, kidnapping, corruption in the office, ²²etc. which were all male crimes in the past.

Criminologists have tried to explain female criminality by ascribing it to natural and psychosomatic factors.²³ While Igbo²⁴ saw it as *penis envy*. Some other Scholars saw female criminality in the light of societal and fiscal modifications in the society. It is alleged that the same socio-cultural influences on male criminality also influence female criminality.²⁵ This means that criminal tendencies are common in all humans whether male or female depending on social, cultural and economic influences in the society of which the individual may be subject. The issue of female criminality and its present surge gives cause for worry because naturally women being carriers of children and nurturers of the upcoming generation of humanity only play these social and biological roles effectively by exhibiting worthy behaviour.

Many societies throughout the globe over are battling with crime. They device various means to regulate wrong doing and chastise offenders who go against the norms and values of the people. Before westernization and modernization, women were restricted to their social and biological roles in the society, with the communal living of the people functioning as inside and outer checks on crimes on every member of society. Crime was seen as not just a disgrace to oneself but an indelible stain on the image of one's family, irrespective of who the offender maybe, whether men, women or children. This some worth kept the criminal tendencies of women very low and almost unimaginable.

Colonization and modern ways of doing things brought economic and public awareness, which leave many including women clamouring for wealth and high economic status. The society today has much respect for wealth and adores the affluent irrespective of how they acquired their wealth. Women are now competing with men to enrich the family whereas some women by circumstances of life are breadwinners of the home. Women increased participation in the labour force, has also amplified their involvement in crime.²⁶ In addition, modern technologies, for instance, the internet and movies, encourage people into criminal activities. So, even a sitting woman who stays at home to care for her family can be tempted into crime with such technology.²⁷ From Parsons Theory (1937) as cited by Igbo,²⁸ roles seem to have changed between genders as many men stay back at home to take care of the children and home chores while many women go out to work to support the home. In the essence of joint marital roles as seen in the society, female criminality cannot be exclusively criticised on female roles alone. Neither is it censured on the early mentoring of girls into fitting into their caring and gentle roles, nor because they are more closely watched all through their youth than the male child, accounts for the lower figure of women criminality over male criminality.²⁹ Ferdinand³⁰ alleged the view that the current surge in female adventurous attitude, is due to changes in traditional ideals. Traditionally, a woman will count the cost on her family name and that if caught, her children will be wholly affected. Nevertheless, such attachment and commitment cannot daunt criminal conduct entirely. Perhaps, as Freud theorized, criminality amongst the womenfolk is a rebellion against traditional, social, biological and cultural female roles, which were constructed no doubt upon motherly qualities.³¹ On the other hand, it could be female envy towards male dominance.³² This researcher agrees to the fact that each of these theories is not completely without its merits as each has weight in its specific right. Female criminality can

¹⁹ Section 38

²⁰ Section 387 – 390

²¹ Section 43(2)(a)

²² Chukuezi, C. (2009). 'Changing in Pattern of Female Crime in Owerri, Nigeria' 1980-2000. *Current Research Journal of Social Sciences*, Vol. (2): 9-13.

²³ Freud, S. (1927). *The Ego and the Id*. Translated by Joan Riviere. London: Hogarth Press

²⁴ *Supra*, note 4

²⁵ Steffens Meier, D. and Schwartz, J. (n.d). *Contemporary Explanations of Women's Crime*. Retrieved 2019/07/10 from [http://cooley.libarts.wsu.edu/schwartz/pdf/schwartz%20%2520\(Contemporary\).pdf](http://cooley.libarts.wsu.edu/schwartz/pdf/schwartz%20%2520(Contemporary).pdf)

²⁶ Alder, F. (1975). *Sisters in Crime: The Rise of the New Female Criminal*. New York: McGraw-Hill Book Co. Also, Simon, R.J. (1975). *Women and Crime*. New York: Holt; Rhinehart and Winston Publisher

²⁷ *Supra*, note 4

²⁸ *Supra*, note 15

²⁹ *Ibid*.

³⁰ Ferdinand, J.N. (1970). Demographic Shifts and Criminality: An Inquiry. *Britain Journal of Criminality*, 10:169-175

³¹ *Supra*, note 9

³² *Supra*, note 4

be expounded from the blend of all these theories. Nevertheless, despite how it is understood, criminality is generally a constraint and has no constructive influence on society. Polluck-Byrne³³ summed female involvements in crime in these words, female crimes probably approach that of males but because it has a concealed character, female crimes are most probable to go undetected. Moreso, the nature of offences women tend to commit, such as domestic thefts, larceny, prostitution, adultery, abortion, perjury, etc. are under evaluated in criminal statistics. Such misconducts are easily obscured and undocumented; even if they are reported, women are less probable to be arrested and prosecuted because women are more favoured in this regard than the men folk and females usually play overt roles or are mere partners in crime when co-offending with men.

Nevertheless, the administration of justice seems harsher on women offenders expressly through its laws or impliedly during implementation by agents of the criminal justice system because of the traditional notion of *taboo* for a woman to involve in crime or by mere indifference of the bureaucrats of the justice system.

3. Discriminatory Laws against Women Offenders in the Nigerian Criminal Justice

The Nigerian criminal justice sees the interest of society as primary and supersedes gender or class. This is perceived from the datum that the ACJA scantily mentioned gender in its provisions. Besides its provisions on the married woman as regard her property, the sentencing of an expectant woman and women as sureties, not much is said on gender. The Act specifically provided that all defendants of same transaction might be charged conjointly.³⁴ The Act provided method for trying child offenders³⁵ and persons with mental anomaly³⁶ but no particular procedure is given on female offenders. This may be in furtherance of fairness before the law and the seriousness placed on crime. The criminal justice is aimed at protecting the society from certain undesirable conducts which otherwise can disrupt the peace, safety and general wellbeing of the society. The primary duty of government to its citizens is that of protecting and creating an empowering environment for the existence, survival and progress of the people. Both the state and the society frown at crime, which cannot be compromised for any reason. Thus, offenders are punished in line with the weight of crime committed and other incidental factors.

However, the family being a unit of the society is not undermined. For instance, a married woman is not criminally responsible for a criminal act she committed in the presence of her spouse if it is substantiated that she acted under compulsion of her husband.³⁷ Nonetheless, if an offence involves death or where grievous harm results to another person, it becomes immaterial whether or not she committed the felony in the presence of her spouse, she will be legally responsible. This may be under the notion that she may have acted under intimidation or threat from her spouse of which she should be acquitted. Such an argument is though not acceptable in the case of a misdemeanour such as homicide, treason and such grievous offences³⁸ nor is it stated in the ACJA. According to Aguda and Okagbue, such an argument is limited only by the facts of the case.³⁹ This view is in line with the court decision in *R. v. Pierce*⁴⁰ where the court held in effect that the defendant in relying on this defence, unsuccessfully proved coercion, which is the main ingredient in the defence. In *R. v. Richman*,⁴¹ it was held that the wife was forced against her will to join in the crime. Under the Criminal Code, this defence is not as eclectic as established by the 1925 Act.⁴² One should recall here that wife as recognised under the Criminal Code Act is a wife of Christian marriage only. This provision, be it as it may, is discriminatory against husbands and against women married under other arrangements of marriage like wife under customary law union since customary law is a recognized and acceptable source of law in Nigerian. As Anyogu⁴³ rightly pointed out, where the defence of coercion is successfully pleaded, it exonerates the woman, does it now make the husband liable?⁴⁴ On the other hand, is he exculpated also? A crime is a wrong done to society and regarded very seriously. It should not be rational to trivialize it. Moreover, Anyogu reiterated that in line with the gender-neutral declaration, this endowment of the law should either indict or protect both spouses considering also the fact that a wife can also coerce her spouse into committing a crime. It will also be fair to extend this aspect of the law to other marital arrangements as

³³ Pollock-Bryne, J.(1990), *Women, Prison and Crimes*. Pacific Grove, CA: Brooks/Cole

³⁴ Section 208 ACJA

³⁵ Section 452, Part 43, ACJ, Act

³⁶ Sections 278-292, Part 29 of the ACJ, Act

³⁷ Section 33 Criminal Code Act Cap C. 38 LFN 200

³⁸ Akintola, Aguda and Isabella Okagbue, *Principles of Criminal Liability in Nigerian Law* (2nd edition-Heinemann Educational Books Nigeria Plc., 1990) p. 219

³⁹ Ibid, at pg. 220

⁴⁰ [1941] 5 J. Cr. L. 124

⁴¹ [1982] Criminal L.R. 507

⁴² The Criminal Justice Act, 1925 came into force on 1st June 1926 and abolished the presumption of coercion by the husband as a defence but provides that such a defence may be acceptable for offences other than murder or treason.

⁴³ Supra, note 1 at pg. 162

⁴⁴ Section 7 (d) Criminal Code Act

recognized under extant law not just a Christian marriage as stated under the Act.⁴⁵ A good law is fair to all, non-discriminatory or pose unnecessary hardship on any group. Following this provision of the CPA strictly means that a crime committed by one spouse of a Christian marriage against the other, the aberrant spouse is not criminally responsible if both are live together was the case in *R. v. Car*⁴⁶ where a husband out of intense jealousy burnt the wife's property. It means she cannot enforce her rights in law unless she leaves the marriage. It is likewise a problem to protect one type of matrimony when indeed the country recognizes three types of matrimonies under the law.⁴⁷ All three-marriage arrangements are equal before the law, so this provision of the CCA⁴⁸ ought to apply to spouses the three types of marriages in Nigeria. In addition, both the CCA and the CPC affect women in different ways. For example, while adultery is not provided in the Criminal Code as an offence, it is a principal crime punishable by the death penalty for a married offender and 100 lashes for an unmarried offender.

As earlier pointed out, the Nigerian criminal justice system is comprised of three stages in the bureaucratic process. It is a known fact that at each stage, women's rights are extremely debased. This article will take women through each stage.

The Police Stage

The police stage is the preliminary aspect of the criminal justice system in Nigeria. When a crime is committed or about to be committed, the police swing into investigation and arrests through information got by their detective skills or through complaints from the public. The police are officially allowed to search a suspect with reasonable force as may be necessary during arrest⁴⁹ and to place any article found on him other than necessary clothing in safe custody.⁵⁰ However, the extent of force to be applied during arrest and search is subjective and depends on the discretion of the particular police officer. It is a known truth that the police in Nigeria take this discretion too far most times.⁵¹ Cases abound where the police in the cause of arrest and search have inflicted grievous injury on suspects. Women suspects are not spared this cruelty. Women are fragile and can be debilitated by police brutality. The Nigerian police over exercise this discretion on suspects, notwithstanding that at this phase, suspects are still presumed innocent.⁵² It is true that woman police officers search female suspects while males search male suspects no doubt to protect the privacy of suspects but this certainly is not enough. This rudimentary method of search ought to be replaced by scientific devices to avoid mistreatment by police officers.

The Police Act⁵³ provides for search on the premises of a suspect during arrest. Provision is made that where the property to be searched houses a female who is not supposed to be seen by the public,⁵⁴ especially where that woman is not the individual to be arrested, she should be pre-informed and allowed time to vacate the place before the search.⁵⁵ Besides these little considerations, there are no special privileges given to female suspects at the arrest stage. Both men and women suspects are treated alike. This is also the case with juvenile offenders; both female and male young felons are treated alike. However, women police officers handle cases involving female suspects and female suspects are kept away from male suspects. While the male suspects are detained in the police cells, the female suspects are kept behind the counter in the police station. Arrest may end in bail or arraignment of the accused in a court of law. Bail may be granted at the arrest stage or at the trial stage but certainly not in the prison. The right to bail is provided by the ACJA.⁵⁶ Bail can be granted on health grounds like in the case of *Unigo v. State*;⁵⁷ where the applicant is a first offender with a known record of good conduct or where the issues at stake involves substantial grounds of law as in *Mohammed v. Olawunmi*.⁵⁸ Nevertheless, generally, granting of bail at any stage depending largely on the type of offence committed. A female suspect who is pregnant is not given any special consideration for bail. Pregnancy is not reflected as a good ground for bail. This is unfair to women. This

⁴⁵ Section 36 Criminal Code Act

⁴⁶ [1913] Q.W.N. 8

⁴⁷ The law recognizes three valid marriages that may be contracted under the law, these include- marriage under the Act (Christian marriage), Islamic marriage and customary marriage.

⁴⁸ Sections 7(d), 33 and 36 CCA

⁴⁹ Section 9 ACJA

⁵⁰ Ibid, section 9 (b)

⁵¹ A typical example is the way the Special Anti-Robbery Squad (SARS) (a division of the police force) victimize suspects.

⁵² Section 36 CFRN

⁵³ Section 24

⁵⁴ For instance, in Islam, women are known to be in *Purdah* and forbidden to be seen by the public. The law respects their privacy and beliefs, during search.

⁵⁵ Section 79 Criminal Procedure Code (CPC)

⁵⁶ Section 158; sections 17 and 18 of the CPA

⁵⁷ [2000]11 NWLR pt. 677 pg. 197

⁵⁸ [1993] 4 NWLR (pt. 287) at pg. 254 SC

may not encourage liberality in line with the Constitution.⁵⁹ With the innovations of the ACJA,⁶⁰ women can stand as sureties. This has put to rest that long-term discrimination against women.⁶¹

The Court Stage:

This involves trial, judgement and sentencing of the offender. Bail is not the termination of a matter but precludes trial. The trial stage is solely concerned with the courts. All the requirements of the Constitution on the rights of a defendant apply to all suspects. The female offender by that establishment of the Constitution of Nigeria has her constitutional rights all through the stages of the justice system. She is entitled to defend 'herself in person or through a legal practitioner of her choice. This however, is hard on women majority of who are of low means and may not be able to involve the services of a legal representative in Nigeria. The charge of litigation in Nigeria is high. Their redeeming feature may be through FIDA,⁶² the Legal Aid Council or other Human Rights groups in Nigeria. This may not without its antecedent problems, as many lawyers are not enthusiastic to engage in free services because of the economic situation of Nigeria. The few lawyers, who accept to assist in this regard, do not really show much commitment in the mean time they are not expecting any remuneration in return. This is often seen in divorce matters, while the woman engages in these *pro bono* services, the man in question gladly gets a paid lawyer who shows more commitment to protect the interest of his client and this may have a negative impact on the woman's case. At the expiration of trial, comes the judgement and subsequent sentence of the judge. The long-awaited moment could decide the fate of the convict within a few minutes.⁶³ Sentencing is no other than the sentence of the judge as provided by the written law guiding that offence.⁶⁴ There are various forms of punishment in the Nigerian law. This include, death penalty, imprisonment, fine, caning, *haddi lashing*,⁶⁵ suspended sentencing, probation, etc. the Nigerian courts habitually use imprisonment and fine more than any other method of punishment. Most often than not, women go to jail for the reason that they cannot meet up with the fines owing to their low means. Offences such as armed robbery,⁶⁶ treason,⁶⁷ murder⁶⁸ etc. attract the penalty of death. The ACJA⁶⁹ provides that the death punishment should not be pronounced on an expectant woman but she should be sentenced to death according to the provisions of section 404, which states that the verdict of death shall be handed out to her but execution deferred until the baby is delivered and weaned. This is in conflict with the provisions of the CPA,⁷⁰ which provided that the verdict of death on a expectant woman should be converted to life imprisonment. This may be *owing to the* need to employ drastic measures to control crime, which is now a danger to the society but this no doubt is harsh on women.

The death punishment *is* constitutional⁷¹ as a method of sentence for capital offences such as homicide, armed robbery, treason, kidnapping (in some states) etc. Besides the Constitution, both the CPA⁷² and CPC,⁷³ and the *Sharia* Penal Code⁷⁴ all provides for the death punishment as a form of sentence in Nigeria. The Penal Code has wider range of offences that could be punished with the death sentence, such as rape, incest⁷⁵ and adultery (*zina*).⁷⁶ Any male or female who commits adultery is liable to death by stoning if the accused is married or 100 lashes if the accused is unmarried.⁷⁷ This punishment is applicable in Moslem states only as adultery is nowhere found in the Criminal Code in the South but regarded as a mere moral wrong or sin.⁷⁸ Prove of adultery for a male is confession or confirmation by four male eyewitnesses who actually caught the criminals in the act. While for a

⁵⁹ Section 36 (5) CFRN

⁶⁰ Section 167 (3)

⁶¹ Supra, note 1 at pg. 170

⁶² Female Lawyers Association of Nigeria are a body of female lawyers with passion for the welfare of women and children, this they do through *pro bono* services

⁶³ Jackson, R.M.. Machinery of Justice in English- cited in Okonkwo C.O. 'Sentencing' unpublished lecture Mimeograph in Criminal Law

⁶⁴ Section 33(12) CFRN; also, *Aoko v. Fagbemi* supra, note 9

⁶⁵ Section 17 Criminal Code; section 68(1) of the Penal Code

⁶⁶ Section 1 Robbery and Firearms Tribunal (Special Provision) Act, Cap. R11 Laws of the Federation of Nigeria (LFN), 2004

⁶⁷ Section 37(1) CCA

⁶⁸ Section 319(1) CCA

⁶⁹ Section 415 ACJA; Section 36(2) CPA

⁷⁰ Section 368 (2) of the Criminal Code; section 272 (1) of the Criminal Procedure Code

⁷¹ Section 33 (1) CFRN

⁷² Section 208

⁷³ Sections 221, 302, 214 and 159 (2)

⁷⁴ Sections 126, 127 and Penal Code Laws of Sharia States

⁷⁵ Sections 10 and 131 Zamfara State Penal Code Laws; sections 132 and 133 of the Sokoto State Penal Code Law; sections 125 and 126 of the Kaduna State Penal Code Law; and sections 126 and 127 of the Kano State Penal Code Law

⁷⁶ Sections 125 and 127 of the Sharia penal code law of Zamfara state

⁷⁷ Quran 24:2

⁷⁸ Exodus Chapter 20: 14

woman, prove of adultery includes pregnancy outside marriage. In the case of rape, the woman who *is* raped must produce four male eyewitnesses or eight female witnesses to prove that it was rape not adultery. Since rape is carried out in secret, it becomes difficult for the victim to verify rape. This is an invasion of privacy of the woman and gross human rights abuse of the dignity of the human person as well as violation of her procreative health rights.

The Prisons

Women in the prisons are not spared the human rights violations, which all Nigerian prisoners are subject. They are not treated differently from the male prisoners. The prison is congested, dirty, dilapidated, unhygienic and generally unfit for human habitation. Female inmates are visible to infections expected to have long-term consequences on their reproductive health during and after incarceration. Prisoners are faced with hunger. Even the pregnant and nurturing mothers are starved and medically neglected. The children of female inmates are exposed to these perilous conditions of the prison yard. To be fair to the police, courts and prisons in Nigeria, it is worthy of note that apart from the human and women's rights violations mentioned above, women generally enjoy the sympathy of the law from the police arrest to the correction stage in the criminal justice than the men. For instance, women enjoy greater leniency at the different stages of the justice system. They are readily protected from prosecution. They are less likely to be awarded prison sentences than male offenders are. At every stage of the criminal justice system, women are more probable to be granted bail. However, considering the nature of the female gender, much is desired in the way women are treated and handled at every stage of justice especially when they are pregnant or nursing a baby.

4. International Best Practices on the Treatment of Female Offenders

International law is encouraging the abolition of the death penalty as a form of punishment.⁷⁹ On the other hand, limit its use to offences involving death of the victim.⁸⁰ There are several calls for the abolition of the death penalty in the Nigerian criminal justice in recent times.⁸¹ Nigeria being a member state has ratified the International Covenant on Civil and Political Rights (ICCPR) in 1993, Convention on the Rights of the Child (CRC) in 1999 and the African Charter on Human and Peoples Right (ACHPR) in 2004.⁸² All International instruments guarantee 'right to life' and the need to avoid random taking of human life. The accused has right to fair hearing by a competent court or tribunal.⁸³ This right is recognized by the Constitution.⁸⁴ The accused also reserves the right to be presumed innocent pending when it will be otherwise proven.⁸⁵ It is her right to be told the nature of offence, which she is charged with⁸⁶ and allowed sufficient time to defend herself;⁸⁷ the right to get a legal representative of her choice;⁸⁸ right to appeal and forgiven.⁸⁹ Besides the general rights due to an accused and a convict as applicable to everyone under the law, the *Geneva Convention III* relative to *the Treatment of Prisoners of War* places an obligation on state members to ensure women are accorded equal treatments with the men folk and 'treated with all regard due to their sex.'⁹⁰ *Geneva Convention IV* relates to *the Protection of Civilian Persons in Time of War* provides that women should be 'protected against any attack' against their honour, such as rape, prostitution, and other forms of indecent assault.⁹¹ This could be construed to apply to female offenders from the Police stations or the prisons. The Convention also provides specifically for the protection of expectant and nursing mothers.⁹² The Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)⁹³ places an obligation on states to ensure that women are given unhindered access to justice and right to fair hearing to condemned women convicts like their male counterparts. Similarly, ACHPR encourages access to justice and equality before the law. Nigeria seems not deterred by the international call for the elimination of the

⁷⁹ Article 6(2) of the ICCPR

⁸⁰ *ibid*

⁸¹ Amnesty International- The Death Penalty in Nigeria available in <http://www.amnesty.org>>Documents accessed 2018/08/24; the sentences and executions 2013-Amnesty International USA available at <http://www.amnestyusa.org.files> accessed 2018/08/24; FDFA Action Plan for the Universal Abolition of the Death Penalty available at <http://www.eda.admin.ch>>publications accessed on 2018/08/24

⁸² The ACHPR was domesticated as the Human and Peoples Right (Ratification and Enforcement Act Cap 19 LFN 2004

⁸³ Article 14(1) of ICCPR

⁸⁴ Section 36 CFRN

⁸⁵ Section 36(5) CFRN

⁸⁶ Section 36(6) (a) CFRN

⁸⁷ Section 36(6) (b) CFRN

⁸⁸ Section 36 (6) (c) CFRN

⁸⁹ Section 36 (10) CFRN

⁹⁰ Article 14, 88 and 97

⁹¹ Article 27

⁹² Articles 14, 16, 23, 38, 50 and 76

⁹³ Article 15

death punishment. It has rather increased the amount of felonies punishable by the death.⁹⁴ Besides, the denial of the right to life through the death sentence, other rights of the female offenders are denied under the Nigerian criminal justice. For instance, ‘the right to freedom of association and expression;’⁹⁵ ‘right not to be discriminated upon;’⁹⁶ ‘right to privacy;’⁹⁷ ‘right against torture or heartless and debasing treatment’⁹⁸ and ‘right to parity before the law.’⁹⁹ Both the CPA¹⁰⁰ and CPC¹⁰¹ regard abortion and abortion related offences as principal offences. This impedes on the woman’s sexual and reproductive health rights to ‘decide what happens to her body’¹⁰² as humans especially in circumstances of rape and sexual assaults. Although, some abortion related offences are punishable with imprisonment¹⁰³ but more often viewed as culpable homicide punishable with the death punishment under the Penal Code.¹⁰⁴ Under international law, states are encouraged to make abortion safe, legal and accessible where pregnancy is because of rape and other sexual assault.¹⁰⁵ Women are the scapegoats in abortion related offences while those who impregnated them are never talked about,¹⁰⁶ rape and adultery charges are mostly against the illiterate low-slung class of women who cannot afford legal representation, nor are they conscious of their rights in international law and no proper medical evidence to prove their guiltlessness. Thus, women are mostly at the receiving end. All human right treaties, some of which Nigeria has accented to through ratification and domestication, but without implementation, upholds the issue of impartiality before the law and non-discrimination for all humans. CEDAW¹⁰⁷ is against any distinction, restriction or exclusion on foundation of sex capable of impairing the enjoyment of women notwithstanding their marital status. It also encourages the social, economic, cultural and governmental rights and liberties of women.¹⁰⁸

5. Conclusion

In Nigeria, women involvement in crime has been unknown until very recently. Every society thrives to defend and respect women and children. Some over protective practices seen today as discernment against women were actually meant to protect them, although crudely. Before women were more anxious about their biological roles and their social obligations to society and crimes were more associated with men. Female crimes were mostly victimless petty crimes, which are not considered serious in the society. However, with westernization, women emancipation, changing gender roles, quest for better living, female economic independence, technology, drug abuse and socio-cultural and political factors, women are visible to criminality. Moreover, with this awareness, women have continuously gathered momentum hence the recent surge in women criminality in Nigeria. The Nigerian criminal justice system does not consider gender in dealing with offenders. This, coupled with some discrimination in our laws, place women offenders in a very perilous position in the criminal justice system. Culturally, female criminality is seen as a *taboo* and unheard of. This mentality sometimes influences the law enforcements agencies, judges and prisons warders, as they look upon female offenders as evil and deadly. Female offenders are also not spared the sympathy of the civil populace either. This cultural background influences the sexual, emotional and physical abuses, which female offenders encounter in the criminal justice system. They are sometimes sexually mistreated in police and prison custodies. More so, the disparate aggregate of female officers at the various stages of the criminal justice system is not inspiring. The few women in the police force, judges and prison wardens lack strong voice to take decisions concerning female offenders. Sexual abuses in the police stations and prison yard are not reported or documented.

⁹⁴ Some states like Akwa Ibom, Enugu, Rivers have made kidnapping a capital offence, adultery in the north which used to be offence punishable by flogging is now a capital offence under the Penal Code

⁹⁵ Sections 39 and 40 CFRN; for instance, where sexual relations was between two consenting adults in a case of adultery

⁹⁶ Section 42; pregnancy is enough evidence to condemn a woman for the offence of adultery, while for a man it requires the evidence of four men only

⁹⁷ Section 37 CFRN

⁹⁸ Section 34 (a) CFRN

⁹⁹ Section 17 (2) (a) CFRN ; adultery is only an offence in the Penal Code but not in the Criminal Code

¹⁰⁰ Sections 233, 234, 235 and 239 CCA

¹⁰¹ Sections 83 and 98 PCA

¹⁰² Article 14 ACHPR, Protocol was adopted in Maputo in 2003, empowering women the right to control their fertility

¹⁰³ The Penal Code and Criminal Code Act imposes 14 years and 7 years imprisonment respectively for offences causing miscarriage or attempts to procure abortion.

¹⁰⁴ Section 222 of the Penal Code

¹⁰⁵ Article 14 (2) (c) Protocol to the ACHPR on the Right of Women, CEDAW General Recommendation A/55/38 2000 Para. 180 (Jordan)

¹⁰⁶ John 8: 1-30, the woman who was caught in the act of adultery was to be stoned to death, no mention was made on the man with whom she was caught in the act. This is the same in many traditional settings. The woman is made to bear the full brunt of the law while the man with whom she was caught escapes or is not mentioned

¹⁰⁷ Article 1; see also, article 1 Universal Declaration of Human Rights (UDHR)

¹⁰⁸ *ibid*

It is the submission of this research that the treatment given to female deviants in Nigeria does not reflect the international best practices.¹⁰⁹ The ACJA brought commendable innovations to the Nigerian criminal justice and has somewhat unified the CPA and CPC, much is still desired in the way women offenders are treated in the criminal justice especially when for 3 years after the ACJA was passed into law, not much has changed at the police stations, courts and prisons.¹¹⁰ Women still face arbitrary arrests, human rights exploitations and gender based discrimination. The ACJA is commendable in recognizing women standing as sureties.¹¹¹ However, it did not pay much attention on gender as all defendants are to be charged jointly in the same or related crimes.¹¹² The poor are still denied justice and especially the police officers and prison wardens do not protect the inherent rights of women. The Nigerian police should to be trained and reformed to meet the international standard. Victims, offenders and the entire civil society complain about the Nigerian police. They not only abuse procedures but also abuse the human rights of offenders.¹¹³ Women are human beings and not immune to crimes. Female deviance is not an *taboo* as believed. Crime is crime irrespective of who committed it.

Consequently, it is recommended that the law enforcement agency should be trained to be gender sensitive in the release of their duties. Women should continue as role representations for the sake of the yet unborn generation and wellbeing of humanity. They should desist from acts or omissions likely to erode their human dignity. Women should be helped to access justice whether as victims or as offenders. Issues that boost female criminality should be looked into. Statistics have shown that women constitute 49.6 % of world's entire population¹¹⁴ and 50% of the people in Nigeria.¹¹⁵ This notwithstanding, women are deprived access to property, political power, adequate education, employment opportunities and information and technology. Women all over the globe are exposed to poverty and several of them are in informal employment.¹¹⁶ They are predominantly traders, hairdressers, tailors and food vendors. The importance of women in the society is crucial. For this reason, they need to be empowered not exposed to inequalities detrimental to their physical, mental, economic and political wellbeing. Prejudicial laws against women should be annulled. Lawyers and judges as *ministers in the temple of justice* should also be gender sensitive in the release of their roles. Government should empower women through provision of jobs and skills. There should be more gender recognition in the party-political arena. Religious leaders must be additional to encourage righteousness and good morals among women. Women should remember that they are first known as mothers and nurturers of humanity before their current modern roles as workers in any establishment. African women and indeed Nigerian women should not overlook their virtues and unique values, which mark them as role models in the society and must strive not to allow divergent acts, which may depict their criminal reproach. They must continue to nurture a better society and a sustainable future for the human race.

¹⁰⁹ Walklate, S. (2004) *Gender Crime and Criminal Justice*. William publishing, Portland, USA

¹¹⁰ The police and prisons are still doing things the old way. Only the Federal High Courts has started observing the provisions of the ACJA.

¹¹¹ Section 167 (3) ACJA

¹¹² Section 208 ACJA

¹¹³ Ojukwu, C.N. and Onimim, E.B. (2005). *Developing Justice in Developing States-The Nigerian Experience*. ISRCCL Edinburgh 2005

¹¹⁴ Population, Female (% of total)- World Bank Open Data, 2018, available at <https://data.worldbank.org/indicator>s...> Accessed 26/09/2018

¹¹⁵ Ophelia Umunna, 'Progress of Women in Political Voice in Nigeria' and unpublished seminar paper presented in partial fulfilment of the award of PhD degree at the Nnamdi Azikiwe University, Awka in September, 2018

¹¹⁶ Naila, K. (2003). Gender Mainstreaming and Poverty Eradication and Millennium Development Goals. London: *The Commonwealth Secretariat*