

**LEGAL IMPLICATIONS OF WRONGFUL CONVICTION UNDER THE  
NIGERIAN CRIMINAL JUSTICE SYSTEM**

**BY**

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**A Thesis in the Department of Public Law**

**Submitted to the Faculty of Law in partial fulfilment of**

**the requirement for the Degree of**

**DOCTOR OF PHILOSOPHY**

**of the**

**UNIVERSITY OF IBADAN**

**March 2019**

## **ABSTRACT**

Wrongful conviction occurs where a court pronounces guilty verdict and sentences a person for an offence not committed. This phenomenon, which is becoming more apparent in the Criminal Justice System of Nigeria (CJS), contravenes the basic principle of justice that no one should suffer for offences not committed. Previous studies have focused more on causes of wrongful conviction in Nigeria and other jurisdictions with little attention paid to its effects on victims and their reintegration into society. This study was, therefore, designed to investigate the causes, effects and legal implications of wrongful conviction in Nigeria with a view to enhancing the reintegration of victims.

Due Process and Justice theories were adopted. The Constitution of the Federal Republic of Nigeria 1999 (as amended), Criminal Procedure Act, Penal Code Act, Evidence Act, Administration of Criminal Justice Act 2015 and some judicially determined cases were the primary sources used. Legal text, journal articles, newspapers, magazines (digital and prints) were the secondary sources. In-depth interviews were conducted with three victims of wrongful conviction, two members of victims' family, eight police officers, five legal practitioners, three non-governmental organisation officials, four law officers from the Ministry of Justice, one officer each from three government establishments (Legal Aid Council, National Human Rights Commission and Office of the Public Defender), four magistrates and four forensic experts. Data were subjected to content and comparative analyses.

Prosecutorial misconduct and underutilisation of forensic evidence were the leading causes of wrongful conviction in Nigeria. Different levels of inefficiency and misconducts by the police, prosecutors, defence counsel, judicial officers and other stakeholders in the CJS gave rise to incessant occurrence of wrongful conviction in Nigeria. In one of the case studies, the court convicted and sentenced the victim to death on the sole basis of confessional statements involuntarily obtained from the victim by the investigating police officer. In another case, the prosecutor falsified inculpatory evidence and suppressed exculpatory evidence to obtain conviction against the victim. Wrongful conviction causes social, psychological, physical and financial harm to the victims. It ruined victims' lives, destroyed their careers and led to their separation from family. Even after exoneration, victims of long-term wrongful imprisonment found it difficult to fit back into the society due to the resultant permanent physical,

psychological and emotional disorders. These amounted to a violation of the victims' fundamental right to freedom guaranteed by the Constitution. Consequently, citizens lose confidence in the CJS.

Wrongful conviction occasioned by criminal justice actors' misconduct and forensic inefficiency impacted negatively on victims' lives, break family bonds and undermines the Nigerian Justice System. There is the need to increase access to modern forensic test in crime investigation, ensure the preservation of evidence, properly apply relevant laws and introduce compensation schemes for victims wrongfully convicted.

Keywords: Nigerian criminal justice system, victim of wrongful conviction, Reintegration of Wrongful convicts

Word count: 452

## ACKNOWLEDGEMENT

My gratitude goes first and foremost to Almighty Allah who granted me good health without which I could not have completed this Thesis. I can never thank you enough for being my source of motivation, inspiration and guidance, thank you my protector.

I am very grateful to my amiable and hardworking supervisor, Professor Israel Adeniyi Olatubosun for willing to supervise my work despite his very busy schedule. I thank him for the time and industry which he put in to give this work a professional outlook and for his keen interest and the time devoted to the supervision of this Thesis. May the Almighty God continually enlarge your coast and answer your prayers whenever you call on Him, enrich your family, keep and grant you long life and success in all your future endeavours, amen. Thank you very much.

I am highly grateful to Doctor Abiodun Oshuntogun for accepting to co-supervise this Thesis and for going beyond the call of duty to see that the work is successfully completed as soon as possible. The Almighty God Himself will reward you. Thank you very much. My sincere appreciation goes to my Internal-External supervisor, Professor Rasheed Okunola who made so much sacrifice of time, dedication and intellect for the success of this Thesis. May God reward you richly for the sacrifices. My profound gratitude goes to the Head of Department of Public Law, Doctor Marcus Araromi for his encouragement and contributions to the success of this Thesis. To all my lecturers in the Faculty, thank you all for your support throughout the years of this research. God bless you all richly. I acknowledge the Sub-Dean Postgraduate Dr, Kehinde Anifalaje and former Sub-Dean Postgraduate, Dr, Kunle Aina for their support to see that the work is successfully completed. To Professor Yemisi Bamgbose SAN, Mr. Kazeem Olaniyan, Dr. J.O.A. Akintayo, Mrs Folake Tafita (my good friend of many years), Dr. Muyiwa Adigun, Dr. Peter Oniemola, Dr. Oluwatoyin Akintola, Dr. Olomola, Dr. Adewumi, Dr. Ruth Akinbola, and everyone else, I say thank you all for your encouragements and contributions. I also thank other members, of staff of the Faculty of Law, the non-academic staff especially the staff at the Dean's office for their assistance. I wish you all success in life.

I am particularly grateful to the Secretary to the Sub-Dean Postgraduate, Mr. Nurudeen Ademola Ibraheem and my good friend and brother, Mr. Eti Best Herbert for the unflicking

support and endless guidance they offered me all through the research process. Thank you for lifting me up at one time or the other in my academic endeavours. I am very grateful.

I am indebted to the following people for the various positive ways in which they contributed towards this thesis; Professor Idowu Adegbite, Professor Olapegba, Pastor Yemi Olaitan, my colleagues in the Faculty, Mrs Temilade Jolaoso, Mrs Abosede Dairo, Mrs Bukola Ogunlade, Mr Jide Oyemakinde, Mr Folarin Arowojolu, Mrs Chioma Olumide Ajibola. I thank them and God bless them all. I thank Dr. Oluwasegunota Bolarinwa (my brother from another mother), who having gone through my proposal offered many useful suggestions, he always inquired about my progress of work with the Thesis.

I am deeply grateful to my friends, Mr Yemi Adegbite, Alhaji Moruff Adu-Buraimoh, Mr Ramon Akinpelu, Miss Folake Martins, Mrs Ronke Olanipekun, Mrs Ifeyinwa Okafor, Mrs Ayo Ayobolu, Alhaji Olabode, Mr Gbenga Ajayi, Mr Yusuff Abijo Ibrahim, Mr Taiwo Raji, Chief Nureni Ogunsola and others too numerous to mention. Thank you for your sustained concern in the completion of this work. May God reward and bless you all. My heartfelt gratitude also goes to my family members for their support especially my mother Alhaja Silifat Abebi Ayanyoyin Olalere and my sister, Mrs Adejoke Okedele nee Olalere, Kabiru Olalere, Sulaiman Ajibola, Alhaja Serifat Olanrewaju, Mrs Temitope Oladejo, my uncle, Alhaji Hammed Titiloye and others too numerous to mention. God knows the contributions of each one and may He reward you abundantly. I appreciate and wish you all the best.

I profoundly appreciate my son, Mr Abdulwakeel Babatunde Oluwadamilola Raji for all he means to me. May God bless you richly for your support and encouragement throughout this project, you are simply an adorable son. I thank God for the privilege of being your mum. May God Almighty deepen your knowledge all days of your life. You will never misstep or tumble. God shall make you greater than I in all rational dimensions of life. I love you my son.

## **DEDICATION**

I dedicate this study to Almighty Allah, the inventor of all things and bestower of all forms. Without Him, this project would not have been possible. To my late father, Alhaji Jimoh Ajao Eleha Olalere, for showing me that anything in life is possible with faith, hard work and determination, though daddy, you have gone on to a better life but you are always close in heart.

**CERTIFICATION**

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## LIST OF ABBREVIATIONS

ACHPR	African Charter on Human and Peoples' Rights
ACJA	Administration Criminal Justice Act
ACJL	Administration of Criminal Justice Law
AG	Attorney General
ALLNLR	All Nigeria Law Report
ASFF	Avocats Sans Frontiers France
ATP	Awaiting Trial Person
CACD	Court of Appeal Criminal Division
CAP	Chapter
CCA	Criminal Code Act
CCL	Criminal Code Law
CCRC	Criminal Cases Review Commission
CID	Criminal Investigative Department
CJ	Chief Judge
CJA	Criminal Justice Act
CJMR	Centre for Justice, Mercy and Reconciliation
CJN	Chief Justice of Nigeria
COP	Commissioner of Police
CPA	Criminal Procedure Act
CPC	Criminal Procedure Law
DNA	Deoxyribonucleic Acid

DPO	Divisional Police Officer
DPP	Director of Public Prosecution
DW	Defence Witness
E.A	Evidence Act
ECHR	European Convention on Human Rights
EFCC	Economic and Financial Commission
FRN	Federal Republic of Nigeria
FWLR	Federation Weekly Law Report
HRC	Human Right Commission
HRWR	The Human Right Watch Report
ICCPR	International Covenant on Civil and Political Rights
ICPC	Independent Corrupt Practises Commission
IPO	Investigative Police Officer
JCA	Justice of Court of Appeal
JDPC	Justice Development and Peace Commission
JSC	Justice of Supreme Court
JSC	Justice of Supreme Court
LEDAP	Legal Defence and Assisted Project
MOJO	Miscarriage of Justice Organisation
NGO	Non-Governmental Organisation
NWLR	Nigeria Weekly Law Report
OGSLR	Ogun State Law Report

PCA	Penal Code Act
PCA	Penal Code Act
PCR	Post-Conviction Relief
PT	Part
PW	Prosecution Witness
RS	Rome statutes
SC	Supreme Court
SCNJ	Supreme Court of Nigeria Judgement
SDNY	Southern District of New York
UDHR	Universal Declaration of Human Rights
UK	United Kingdom
UNDP	United Nations Development Programme
UniAbuja	University of Abuja
USA	United States of America
Unibadan	University of Ibadan

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## CHAPTER ONE

### GENERAL INTRODUCTION

#### 1.1 Background to the Study

In Nigeria as at 3<sup>rd</sup> of December, 2018, the total number of prison population (including pre-trial detainees/remand prisoners) are 75,772 out of which 67.8 percent are pre-trial detainees, while 2.1 percent are female prisoners and 1.7 are Juveniles/minors/young person's, foreign prisoners 0.3 percent compared to the prisoners' figure in year 2016 which was 63,142.<sup>1</sup> The prison population increases every year which might be due to increase in the crime rates, delay in judicial process or systemic errors. People are being exonerated on appeal every year due to systemic failure which produces wrongful conviction of innocent persons. There are more than 200 inmates of Agodi prison and more than 50 inmates on death row list in both Abeokuta and Lagos who are complaining of being innocent of the crimes they are convicted of.<sup>2</sup> In U.S.A. as at March 31, 2018 the National Registry of Exoneration recorded more than 2,000 known exoneration since the first exoneration in 1989<sup>3</sup>. Various studies estimates that in US between 2.3 and 5 percent of prisoners are innocent and that 10,000 innocent people are convicted each year.<sup>4</sup>

Wrongful conviction is the conviction of someone who is factually innocent of the crime he is convicted of; a conviction of a person that was not involved in the commission of the crime he is convicted of. It does not translate to mean innocence arising from a defective legal proceeding, but it means factual innocence. Wrongful conviction occurs where a court pronounces guilty verdict and sentences an innocent person for offence not committed. Wrongful conviction in this context concerns those appellants who are factually innocent rather than those appealing their conviction on the basis of technical irregularities. Wrongful conviction contravenes the basic principle of justice that no one should be punished for the offence not committed. The problem of wrongful conviction is a global one and it cuts across board, it is universal problem as a result of ignorance and poverty gap especially in Nigeria as

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<sup>1</sup>Prison – Nigeria/World Prison Brief. Retrieved in December, 2018, [www.prisonstudies.org/country/nigeria](http://www.prisonstudies.org/country/nigeria)

<sup>2</sup>Olujobi, H. 2013.Help 10 wrongful conviction in Nigeria prison. *Report by Centre for Justice Mercy and Reconciliation in December, 2013.*

<sup>3</sup>The US National Registry of Exoneration. March 7, 2017

<sup>4</sup>The Result is derived from a survey carried out on 188 persons comprising of Judges, Prosecuting Counsel, Defenders of the Public, Sheriffs and Heads of Police units in Ohio and the Attorney Generals of 41 states.

reported by the United Nations Development Programme (UNDP) report in 2008 in Nigeria.<sup>5</sup> There exist a vast difference in justice accessibility between the rich and the poor.<sup>6</sup> The police and judicial system are ill equipped to timely dispense with criminal cases thereby causing an increase in the number of awaiting trial persons (ATP) in prison custody which results in justice denial because justice delay is justice denied.<sup>7</sup> The government agencies like the police and other security agents continue to abuse the fundamental rights of defendants<sup>8</sup> which the defendants are sometimes ignorant of; coupled with widespread corruption within the police force and judiciary which permeates every facet of Nigerian society which increases abuses on the common citizens and seriously impinges on the rule of law and adherence to human rights.<sup>9</sup> The judicial system works at such slow pace that a defendant may spend up to 3–5 years in jail pending the determination of his trial. All these are inherent problems within the criminal justice system that are largely triggered by the operators of the justice system<sup>10</sup>. There are a numbers of constitutional and statutory provisions in Nigeria designed to guarantee fair trial of any person accused of committing any crime to avoid the situation where an innocent person would be convicted of a crime not committed. Most Sections of some of the Nigeria Laws deal with the issue of fair trial to avoid wrongful conviction of innocent persons. The Nigerian Constitution<sup>11</sup> assures the right to fair hearing of a person accused of a crime. Section 36 of the Nigerian 1999 Constitution<sup>12</sup> guarantees the right to fair hearing when it provides inter alia that a person accused of a crime shall enjoy the presumption of innocent until proven guilty by a court of competent jurisdiction”.

By virtue of this position of the law, a defendant is to be assumed innocent of the offence he is standing trial, notwithstanding his bad character, criminal antecedent and the gravity of the

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<sup>5</sup>United Nations Development Programme in Nigeria. 2008. Retrieved on March 3, 2018 from: [http://hdr.undp.org/en/reports/national/africa/nigeria/NHDR\\_Nigeria\\_2008-2009.pdf](http://hdr.undp.org/en/reports/national/africa/nigeria/NHDR_Nigeria_2008-2009.pdf)

<sup>6</sup>Ehigbalua D. 2012, Nigerian issues in wrongful convictions, *University of Cincinnati Law Review* 80.4: 4.

<sup>7</sup>Olujobi, H. 2013. Help 10 wrongful conviction in Nigeria prison. *Report by Centre for Justice Mercy and Reconciliation in December, 2013* or <http://www.cjmr-ng.org>

<sup>8</sup>The recent trend has been a substitution of the term “Accused Person” For a less derogatory term “defendant”. Recent legislative enactments in Nigeria have reflected this change. See, for instance, Evidence Act 2011, Administration of Criminal Justice Law (ACJL) Lagos State, Administration of Criminal Justice Act (ACJA) 2015, ACJL Oyo State 2016 etc. This thesis shall reflect that global trend.

<sup>9</sup>Ehigbalua, D. 2012. Nigerian Issues in Wrongful Convictions. *University of Cincinnati Law Review* 80Vol. 80.4:4:

<sup>10</sup>Amnesty International. State of the world human rights report. Retrieved on Sept.16, 2017, from [www.report2009.amnesty.org/nigeria](http://www.report2009.amnesty.org/nigeria)

<sup>11</sup> Constitution of The Republic of Nigeria, 1999 (as amended)

<sup>12</sup> *ibid*

offence which he is accused of.<sup>13</sup> Also Section 36(6) of the same constitution enumerates other rights which a defendant is entitled to, as follows: Every person who is accused of a criminal offence is entitled to-

- (a) prompt and detailed information, in a language of his comprehension, of the kind of offence;
- (b) suitable time and amenities to enable him prepare his defence;
- (c) prepare his defence by himself or through legal practitioner(s) he chooses;
- (d) cross examination of prosecution witnesses during trial, by himself or his counsel and equal leverage to call and examine witnesses to testify in his defence; and
- (e) have, at no cost, the service of an interpreter if he lacks understanding of the language of the court.

Section 36(8) also protects the interest of the defendant when it provides that a person shall not be pronounced guilty of an offence based on any act or omission, during which time of its occurrence, did not constitute such offence; similarly, no sentence higher than the stipulated penalty in force at the time of the offence shall be imposed on such person.

Section 36(11) also prohibit compulsion of a defendant to give evidence when it provides to the effect that a person a defendant shall not be compelled to testify at his trial. In other words, he can rest his case on that of the prosecution. Section 34 (1) (a) further provides that a person is guaranteed the respect for the dignity of his person and as such, shall not be subjected to torture, dehumanised or demeaning treatment. All these rights are restated in the Criminal Procedure Code, (CPC) applicable to Southern Nigeria and Criminal Procedure Law, (CPL) applicable to Northern Nigeria. Section 5 of the CPA and Section 38 of the CPL provides that a person effecting an arrest must duly communicate the reason for the arrest to the arrested person.

The ACJA 2015 also recognised the fair hearing principle. Sections 6 (1), (2), (7), (8), (9) and (14) addressed the right to fair trial. Section 6(1) states that apart from a situation when a suspect is actually caught in the act of committing the offence or if he is apprehended shortly after the committing the offence, or if he fled from lawful custody, a police officers or any

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<sup>13</sup>Ibid.

other person effecting the arrest must straightaway provide reasons of arresting the suspects after the arrest.

Section 6(2) further mandates the police officer or any one effecting the arrest or principal police officer of the police unit involved to notify the suspect of the following:

(a) that he reserves the right to keep silent or refrain from giving answers to question put to him until after making consultation with his counsel or such person he chooses;

(b) that he may brief any lawyer he wishes to before he makes, sign or write down any statement or give answer to interrogations put across to him after arrest, and

(c) that there is available pro bono legal representation provided by the Legal Aid Council of Nigeria which he can assess.

The Evidence Act, 2011 also recognises this constitutional provision of fair hearing. Section 132 of the Evidence Act 2011 places the general burden of proof on any person whose case would fail for lack of evidence provided by either party to the suit.

The African Charter on Human and Peoples' Rights (ACHPR) recognises this principle of fair trial and presumption of innocence when it provides in Article 7(1) that any one accused of a crime shall continue to enjoy the presumption of innocent until pronounced guilty by the trial court in a procedure that observe and adhere strictly to the rights of the defendant.

The Presumption of innocence is also recognised globally. It is imperative to set out the relevant provisions which guarantee this right. The Universal Declaration of Human Rights (UDHR) enshrined fair trial provisions such as presumption of innocence in Articles 6, 7, 8, 10 and 11. The prominent provisions are Articles 10 and 11. Article 10 provides that each person is fully entitled to their equality in a trial that is fair and open to the public by an autonomous and neutral tribunal which determines his civil rights and obligations and any criminal offence levelled against him. While Article 11 (1) recognises the right of everyone charged with a crime to enjoy the presumption of innocence until proven guilty in accordance with the law in an open trial that ensures his right to defend himself.

These rights are also enshrined in Article 6 (2) of the European Convention on Human Rights (ECHR). It provides that any one accused of an offence shall enjoy the presumption of innocence until proven otherwise in accordance with the law.

Article 66 of Rome Statute (RS) also recognises this presumption of innocence when it provides that:

1. Each person shall enjoy the presumption of innocence until proven guilty by the Court according to the law in force.
2. The burden of proof of guilt of the defendant rest on the Prosecutor.
3. The standard of determination of the guilt of the defendant is a proof beyond reasonable doubt

The right to fair trial and presumption of innocence are also guaranteed in the International Covenant on Civil and Political Rights (ICCPR). Article 14(1) provides for the fundamental rights to a fair trial, while Article 14(2) establishes the right to presumption of innocence.

The emphasis on the presumption of innocence in the various legal instruments examined above shows the obligation on the prosecution to prove each element of the crime beyond every reasonable doubt. The defendant is entitled to the benefit of doubt in his favour and a duty only to disprove the case of the prosecution or prove any defence otherwise available to him.<sup>14</sup> A defendant should not be presumed guilty on the basis of mere accusation to avoid miscarriage of justice and wrongful conviction of an innocent person. This is to safeguard against the erroneous conviction of an innocent defendant. However, that is not to say that the enjoyment of presumption of innocence reliefs or absolves the defendant of the burden of proving particular facts if so required by any law.<sup>15</sup> One instance is Section 139 (1)(c) of Evidence Act 2011 which places the burden of proof of insanity and intoxication on the

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<sup>14</sup>Hanson, M. D. 2014. The philosophy of criminal law: How fair so far with victims of crime in Nigeria. *Juris Insight* 1.1: 24-36 at 34. Ocheme, however, adds that unlike the prosecutor, the standard of proof required of the defendant is on the balance of probability. See, Ocheme, P. A. 2008. *The Nigerian criminal law*. Kaduna: Liberty Publications Ltd. 57.

<sup>15</sup>Lateef, M. A. 2013. Historic, jurisprudential and philosophical backgrounds of bail administration in criminal justice system. *UniAbuja LAWSAN Jurist* 14. 132-142 at 139.

defendant.<sup>16</sup> The prerequisite of the law on the burden of Proof where the defence of insanity is pleaded is the same in Nigeria, USA, England and Uganda.<sup>17</sup>

There are instances when it is discovered that a defendant is wrongfully convicted of a crime and upon further investigation into the matter, either by revelation of DNA evidence or testimony from eyewitness such defendant is found to be innocent. Examples that readily come to mind are the British cases of the Birmingham six and the Guildford four<sup>18</sup> who were at one time or the other exonerated on appeal because they were later found not to be the actual offenders. It turns out to be more hurtful when a person has already partly served some years in prison as a result of the flaw in the judicial process. As noted earlier, this discovery could become obvious when new evidence arises, either due to the use of forensics evidence or technology. It may also emanate from evidence obtained from the person who directly witness the crime that were for certain reasons, not considered during the process investigation; or where new supporting piece of evidence exonerating the victim comes to limelight or the emergence of material evidence or legal technicalities that were not considered during the trial.<sup>19</sup>

The use of DNA evidence had proved the innocence of so many accused persons who had been wrongfully prosecuted, convicted, and erroneously incarcerated for so long and on death row for decades.<sup>20</sup> In certain cases, innocent persons have been released from prison custody after spending several years on death row. Some individuals who allegedly made confessional statement and were convicted of serious offences have had their convictions upturned and declared factually innocent as a result of DNA test and released from prison.<sup>21</sup> If DNA evidence is unavailable, the wrongly convicted individual has small chances of receiving exoneration especially in Nigeria where the use of DNA evidence has not really found its feet as there is only one government owned DNA Forensic laboratory in Lagos State.

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<sup>16</sup>See the case of *Airforce v. James*, (2003) FWLR (Pt. 143) 257 at 283.

<sup>17</sup>Jonathan, E. A. 2010. Defence of insanity: A basis for Exculpation from Liability/Responsibility for Crimes in Commonwealth Jurisdictions. *Abuja Journal of Public and International Law* 1.1: 153-181 at 77.

<sup>18</sup>Bihler R. 2016. Miscarriage in the British Legal system, the Guildford Four and the Birmingham Six. Grin Publishing 10

<sup>19</sup>Shobola, A. and Ajeigbe, T. 2015. Inmates Incarceration and Family Support as Precursors of Prison Recidivism in Nigeria. *European Scientific Journal*, December 2015 edition 11.34: 1857 -7881

<sup>20</sup>Drizin, S. A. and Leo R.A.2004.The problem of false confessions in the post DNA world. *North Carolina Law Review* 82. 891-1007.

<sup>21</sup>Gould, J. B., Carrano J., Leo R., & Young, J. 2013.Predicting erroneous conviction: A social science approach to miscarriages of justice. *A Research Report Submitted to the U.S. Department of Justice* 1.



The numbers of wrongly convicted persons in most countries are on the increase at alarming rates and this makes people to lose confidence in the justice system. Some countries, like Nigeria,<sup>22</sup> have adopted an ‘out of sight, out of mind’ stance as regards prisoners once convicted because they believe that once pronounced guilty and convicted they can never be innocent again. This is compounded by the ‘get tough on crime’ approach adopted by some of these countries after experiencing huge increase in crime rate. Such instances include the case of US after 9/11 Al Qaeda terrorist attack<sup>23</sup> and the *Boko Haram* insurgencies in Nigeria. Some of them have increased their efforts to identify, apprehend and prosecute criminal activities in order to reduce high crime rate in those countries. But this apprehension and anxiety to tackle the increasing crime rate may have created the unforeseen consequences of increased rate of wrongful convictions.<sup>24</sup> Ever since DNA evidence started exonerating death row inmates in America since 1989 when the DNA first exonerates a convict as person wrongly convicted of the offence not committed, public concern about wrongful conviction has been on the rise. It has been such a source of worry that people have been calling for the abolition of death penalty entirely in most part of the world citing wrongful convictions as an example.

The alarming rate of wrongful conviction suggest a flaw in the criminal justice system which is originally meant to protect citizens’ rights. Mistakes are being made every day and the ultimate tragedy is when an innocent man is convicted and executed for an offence committed by another person. The major actors in the administration of criminal justice are sometimes responsible for causing these anomalies because they are not being thorough in their assigned duties. Justice is far from been done when a wrong person is arrested, prosecuted and convicted and the real offender remains free to commit more crimes and constitute a threat to the society at large and make the society unsafe for people to live in. This undermines the credibility of the criminal justice system. It affects the willingness of ordinary citizens to support the criminal justice system as crime reporters or witness; people are afraid of reporting

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<sup>22</sup>Once a person has been convicted, even the Court starts referring to such person as a prisoner or convict even if the decision of the trial Court is still subject to appeal.

<sup>23</sup>Posner, S. 2009. Human rights and U.S. national security post 9/11: A comprehensive analysis of U.S. human rights policy during the ‘war on terror’. Thesis. School of Arts and Sciences, University of Pittsburgh.xv+55 at 43.

<sup>24</sup>Huff, C. R., Rattner, A., & Sargarin, E. 1986. Guilty until proven innocent: Wrongful conviction and public policy. *Crime and Delinquency* 32. 518-544, 532.

crime for fear of being arrested.<sup>25</sup> Some innocent persons are on death row for years if not for decades. Some people believed that it is impossible to convict an innocent man. Judge Learned Hand<sup>26</sup> of America had stated in 1923 that in America, the judicial process had even been haunted by the ghosts of innocent persons who were erroneously convicted. According to him, the idea of wrongful conviction is nothing other than an “unreal dream”.<sup>27</sup> Unfortunately, we cannot rely on these reassuring words considering the rate of occurrence of wrongful convictions in America and other parts of the world within a decade after this statement.

Many factors are responsible for the incidence of wrongful convictions. These include the possibility that the relevant laws are not correctly laid down before the court or the failure of people responsible for the administration of justice to strictly follow the guidelines, rules, procedure and evidence. However, some of the causes of wrongful convictions include but not limited to the following: Mistaken identity, ineffective representation by defense lawyers, police misconduct, false confession, improper forensic evidence, plea bargaining or justice without trial, mass media and so on. Once a person is convicted by the court, reversing such conviction becomes more difficult. To convince the court after conviction to reopen and reexamine the case is always difficult, costly and consume a lot of time even with the availability of evidence to prove innocence. The criminal justice professionals believe that as soon as a verdict is entered, beginning a new trial is an uncommon occurrence unless specific conditions have been satisfied.<sup>28</sup> So research on this study will lay emphasis on preventive measures that will reduce the incidence of wrong convictions.

The two major causes of wrongful conviction according to Jim Petro are inadequate eyewitness testimony and false confession, the technique used by the police. Petro and Petro believed that false testimony by eyewitness is the major factor why defendants are convicted of the offence not committed. The criminal justice actors like the police officers who often have first encounter with suspects usually apply force in extracting confessional statements from the suspect which the courts eventually place reliance on in reaching a conviction. The use of force and torture compels suspects to take guilty plea even though they are innocent.

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<sup>25</sup>Olatunbosun, A. I. 1998. Public attitude towards reporting crimes in Nigeria. *Nigeria Law and Practice Journal* 2.2: 105-111 at 107.

<sup>26</sup>United State v. Garrison, 291 F 646 at 649 (SDNY 1923).

<sup>27</sup>He believes that the prospect of unjust imprisonment is a terrifying plight and he wonders how people might fare in such grim circumstances. See, *United States v. Garrison*, 291 F.646, 649 (S.D.N.Y.1923).

<sup>28</sup>Petro, J. and Petro, N. 2010. *False justice: Eight myths that convicts the innocent*. New York: Kaplan Publishing 52.

Faulty eyewitness testimonies is another major reason why people are find guilty of the crime they did not do.<sup>29</sup>

The wrongful convictions violate the most fundamental principles of justice that persons should not be punished for crime they did not commit;<sup>30</sup> it has been seen as a flaw in the administration of criminal justice. Wrongful convictions can be used as a window through which we can detect and examine all sorts of imperfection in criminal justice. These are lapses that arise in criminal trials. In some instances, a wrongful conviction remains unreversed for several years or until after the convict dies in custody, hence the need for corrective reforms. This study will focus on the effects, prevention and more emphasis will be placed on the safeguards which are aimed at limiting the likely occurrence of wrongful conviction. A comprehensive study is needed to improve the performance of police officers' involvement in the criminal justice process pertaining to false confession and eyewitness testimony, especially in Nigeria. We shall also consider post-exoneration reliefs and compensation otherwise available to victims of wrongful conviction.

## **1.2 Statement of the Problem**

The essence of criminal justice process is to determine the guilt of a defendant through fair hearing procedure and appropriately punish those who have been found guilty. The principles of punishment are to retribute, deter, educate/reform and rehabilitate offenders. But in reality, the justice system is sometimes manipulated by the key actors in the administration of justice,<sup>31</sup> to punish even the innocent along with the said guilty due to the ineffectiveness of the administration of criminal justice system. What are the innate shortcomings in the Nigerian justice system that give rise to wrongful convictions? In Nigeria the problem of this aberration of justice called wrongful conviction may be located at various levels and stages of the justice system. It starts from when someone is arrested, investigated, prosecuted, up through to the trial process, conviction and sentencing. The defendant suffered the consequences of these lapses when they pass through humiliating circumstances including the deprivation of their liberty. Members of their family also encounter hurt and misery for a long duration. In this

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<sup>29</sup>Ibid.

<sup>30</sup> Section 7 Criminal Code Act creates the category of persons that are parties to an offence. Under Section 7 Administration of the Criminal Justice Act, a person ought not be arrested in lieu of a suspect to a crime.

<sup>31</sup> A Senior Advocate of Nigeria was recently convicted for bribing a Federal High Court judge. See, Ezeamalu, B. Judge sentences convicted senior lawyer to one month in prison. Premium Times Nigeria, 30 April 2018

circumstance, the system is said to have totally failed a defendant. Some of the troubling issues under the legal system will be considered.

More often than not, the police is the initial point of contact a defendant has with the criminal justice system, as most prosecution begins from the arrest and detention of suspects by the police. Amongst the methods adopted by the Nigeria Police in the apprehension of criminal suspects is the practice of effecting mass arrest in areas reasonably believed<sup>32</sup> or suspected to be crime prone. This archaic method of unlawful arrest by raids, or based on suspicion is the usual practice of police operational system in Nigeria.

The Criminal Investigation Department of the Police saddled with the duty to gather evidence whenever a crime is committed seems to have overlooked the use of undercover strategy to obtain information and evidence before and after occurrence of criminal activities.<sup>33</sup> This could be attributed to the failure of the system to provide effective and intelligence gathering basis of police investigation. Just like the use of net by the fisherman to fish, where the net would certainly trap different species of aquatic animals, such corporal and illegal arrest usually leads to the wrongful arrest of innocent persons. Also, this style of wanton arrest by police officers are borne out of desperation to please superior officers laced with a need to be given the impression that veritable efforts are being made to tackle the prevailing rate of crime in the society. A report by Amnesty International has it that certain police officers do arrest group of young people arbitrarily and demand up to N10,000 (US\$65) before they can be released.<sup>34</sup> According to the report, the police can move to a place where youths are gathered, arrest and detain them in police cells. In fact, one lawyer in Nigeria told Amnesty International researchers of how the police frame people up. He said they will demand money from their families or stand the risk of being charged for armed robbery. Those who fail to comply risk being labelled “armed robbers”. Lack of money also deprive suspects of the ability to procure the services of a lawyer, get access to their family members or even receive medical

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<sup>32</sup>The Court, in *Chukwuka v. COP*, (1964) NNLR 21 at 24, admonished that: “the test as to what is reasonable belief that a suspect has committed an offence is objective. It is not what the policeman himself considered reasonable but whether the facts within the knowledge of the policeman at the time of the arrest disclosed circumstances from which it could be reasonably inferred that the Appellant had committed the offence”.

<sup>33</sup>Obi-Anike, H. O., Ekwe, M. C., & Ogbo, A. I. 2014. Strategies for Effective Management of Police Services in Nigeria. *European Journal of Business and Management* 6.32: 173.

<sup>34</sup> Amnesty International. 2009. *Killing at Will: Extrajudicial Executions and Other Unlawful Killings by the Police in Nigeria*. London: Amnesty International. 23.

treatment.<sup>35</sup> What is more, after arrest there would be need for prosecution of the suspects. Suspects arrested in this manner are often required to part with money as bail.<sup>36</sup>

Suspects who fail or do not wish to comply with the demands of the police are bundled to court for prosecution. No doubt, the act of taking them to court within a required period is compatible with the provision of the Constitution. Section 35 (4) of 1999 Constitution<sup>37</sup> provides that a suspects must be taken before a competent law court within a reasonable time. The term reasonable time according to subsection 5 is a period of 24 hours in the case of an arrest or detention between a range of forty kilometres (40km) to a court of competent jurisdiction and in other circumstance, a duration of two (2) days or an overdue period the court may contemplate rational in the circumstances. Although the intent of the drafters of the constitution with reference to S. 35(4) of the Constitution attempts to correct the injustice that can be occasioned by the misuse of police power. However, this constitutional provision adds pressure on the police to quickly arraign these suspects even without having sufficient time to obtain proper evidence. The police are left with the option of either carrying out shoddy investigation to meet up with the constitutional timeline or continue to detain the accused pending the conclusion of investigation. This on the other hand amounts to an infringement of the fundamental right of the suspects.

In a rush to prosecute the case in court or buy more time not to run foul with the above cited constitutional provision they hastily arraign the suspects before courts lacking jurisdiction to try such matter. This kind of attitude of the police would qualified under malicious prosecution. The result is that courts, especially Magistrate Courts and other inferior courts, often make order for the remand of the defendant in what is referred to as ‘holding charge’ even after finding that it lacks jurisdiction to determine the matter.<sup>38</sup> The Supreme Court had been quick to denounce this practice in the matter of *Olawoye v. Commissioner of Police*<sup>39</sup>

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<sup>35</sup>ibid

<sup>36</sup>In the case of *Dr. Omirin v. Owolabi & Ors*, (2013) OGSLR (Pt. 1) p. 114 at 125 where an applicant, in the enforcement of his fundamental right, amongst other relief, wanted the refund of fifty thousand naira the police collected from him before he was granted police bail saw the failure of his application. In refusing to grant the relief, the court held that: “bail is not a commodity for sale; it should not be given in exchange for money. It is free. And where it is found to have been bought, as in this instance, both parties are liable. The court will not be a party to an illegality. As such, an order for the refund of such sum collected for bail, if any, must be refused”.

<sup>37</sup> ibid

<sup>38</sup>Jurisdiction is the life and blood of adjudication. Whereas, a court finds out that it doesn’t have jurisdiction to determine a matter, it ought not to exercise any judicial powers in respect of that case as such would amount to a nullity. See, the case of *Otukpo v. John*, (2000) 8 NWLR (Pt. 669) 507 at 524.

<sup>39</sup>(2006) 2 NWLR (Pt. 96) at p. 442.

where it decided that: “where jurisdiction to try offenders is exclusively vested in the High Court, the arraignment before a Magistrate Court is tantamount to a holding charge which has been described as unconstitutional and illegal”.<sup>40</sup> For the unlucky defendants who have been put in prison on holding charge, their fate hang loosely on the thread as they await the “DPP’s advice” which usually take a long time, before any action can be taken to determine their case. Under this pretext, so many innocent persons have found themselves behind bars for years awaiting trial.<sup>41</sup> This has to a great extent contributed to the congestion of prisons.<sup>42</sup>

There is hardly anytime the police prosecute an offence without resorting to confessional statement of the defendant. Since it is their major tool of investigation, they go to any length to obtain it including the use of force and oppression. In most cases, where the confessional statements do not conform with the provision of Section 29 Evidence Act 2011 and recently the provision of Section 1 ACJA<sup>43</sup> when the voluntariness of the statement of a suspect is put to question and it is not admitted as evidence by the trial court, then the prosecution might find it difficult to establish the charges against the defendant. This is because they often do not have further evidence to place before the court in proving their case. The Human Right Watch Report (HRWR) aptly captured most of these challenges with the Nigerian criminal justice system when it stated thus:

The criminal justice system in Nigeria is in a state of paralysis, effectively unable to dispense justice in a fair and speedy manner. Every aspect of the system from law enforcement (Police) to the judiciary, through to the prison is characterised by a combination of inefficient, corruption and lack of resources. A characteristic feature is the shocking disregard to due process as guaranteed under the 1999 Constitution. To one extent or the other, every case of torture and ill-treatment by the police and other law enforcement agency documented... was accompanied by serious violation of due process of the law including

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<sup>40</sup>See also the following cases for more on holding charge *Enwere v. COP*, (1993) NWLR (Pt. 299) 333; *Jimoh v. COP*, (2004)17 NWLR (Pt. 902) 391.

<sup>41</sup>See, Daji, M. P. 2008. Compliance with due process in the administration of criminal justice in Nigeria. *The Legal Issues: Essays in Honour of Hon. Justice Belgore*.75-95 at 88, where the author tells the story of his client who had been affected by the evils of holding charge and had awaited trial for over 5 years in prison.

<sup>42</sup>According to Quadri, as at 2011, the total population of prison inmates was about 48,632; 34,819 of which were awaiting trial persons. Some of them have been awaiting trial for up to 16 years or more. See, Quadri, F. 2013. Prison inmates: Advocating for total reforms of Nigeria prisons. *UniAbuja LAWSAN Jurist*14. 116-122 at 118.

<sup>43</sup>Administration of Criminal Justice Act 2015

acceptance of forced confessions, failure to be informed of the grounds of arrest, absence of legal representation and prolonged pre-trial detention.<sup>44</sup>

The infrastructural and ethical decay in the judiciary is another factor that compounds the issue of wrongful conviction. The recent wave of arrest and corruption cases instituted against judicial officers illustrates this point. In expressing regret over this state of affair, the court of Appeal per Saulawa JCA(Justice of Court of Appeal) in *FRN v. Fani Kayode*<sup>45</sup> quoted the lamentation of Justice E. O. Ayoola JSC (Rtd.), the former Chairman of Independent Corrupt Practices Commission (ICPC), as saying:

The present question being raised is a concern we always had about the apparent breakdown of criminal justice system in Nigeria. The decay in the judiciary is something that has been on for decades, it started from the infrastructure- bad court halls, lack of logistics and others. What signalled the decay of the criminal system was the means of transporting the accused persons from the prison to court, now things have gone worse; from poor infrastructure to poor attitude of the legal professionals: lawyers, judges and judiciary workers. If it had been only infrastructure you can throw in money into that and get rapid results, but when it goes down to the human factor, it creates more problems. Complaints about corruption in the judiciary are now a common case. In our time, it was unheard of or to see what we see now.<sup>46</sup>

The role of applied science and technology at the pre and post-conviction stages of criminal procedure cannot be over emphasised. Scientific complexity arising from improper forensic techniques can lead to wrong finding of facts and contribute to wrongful conviction of an innocent individual. Improper analysis and evaluation of evidence such as bite mark, shoe print comparison, firearm tool mark, autopsy report and so on as a result of forensic misconduct and poor forensic testing by experts may lead to wrong conclusions and findings. The conclusion of a judge would also be wrong where reliance is placed on such expert findings. All these lapses are inherent problems that produce wrongful convictions.

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<sup>44</sup>Human Right Watch. *Lack of due process of the law*. Retrieved on Nov. 18, 2017, from <http://hrw.org/reports/2005/Nigeria705/9.htm>

<sup>45</sup>(2012) All FWLR (pt. 630) 1407-8.

<sup>46</sup>The court quoted this statement from *Tell Broad Street Journal* No. 25, June28, 2010 edition 19.

In addition, the failure of the court to apply the relevant laws to criminal trial can lead to wrongful conviction. At times accused are convicted of the offence committed by another person or offence that was not a crime as at the time the act or omission was done. Section 36 (12) of 1999 Constitution<sup>47</sup> provides that no one shall be held liable for an offence that is not well-defined or its punishment prescribed in any written law. In the case of *Olabode George & Ors v. Federal Republic of Nigeria*,<sup>48</sup> the Supreme Court held that the allegation of contract splitting over which defendants were convicted of, had not become an offence during the time the alleged incident took place. The Supreme Court maintained that from its findings, the convictions were based on the alleged failure of the NPA officials to obey the provisions of a circular on the award of contracts and the said failure to obey the provisions of the circular does not amount to a criminal offence during the time the appellants were charged to court and were subsequently convicted. The Public Procurement Act which was to criminalise the offence of contract splitting, for which the appellants were convicted of was enacted in 2007 before the incident occurred. Supreme Court held that the appellants were wrongly convicted and sentence by the trial court.<sup>49</sup>

Another factor associated with wrongful conviction is with legal representation. Many accused persons in Nigeria are either illiterates or poor and therefore not able to employ the services of lawyers to defend their cases. At times when lawyers are employed, due to competing interests, these lawyers often write to the Court pleading for adjournment of cases to enable their clients perfect their brief. At times some lawyers might not even attend court proceeding again until the end of that case and this could lead to the erroneous conviction of the defendant and its attendant devastating effect on not only the innocent and their loved ones but also the criminal justice system. The public good as well, public safety is put at risk and the ends of justice is not well served. In *Udo Akpan Udofia v. The State*<sup>50</sup>, the Supreme Court reiterated this position when it stated that:

when a legal practitioner does accept a and in fact any brief, he should urge any and everything that can be honourably urge in favour of the accused. It is essential to the

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<sup>47</sup> *ibid*

<sup>48</sup> (2014) All FWLR (Pt. 718) 879.

<sup>49</sup> See also, the case of *Aoko v. Fagbemi & Anor.*, (1961) 1 All N.L.R. 400 where the conviction of the defendants for adultery was upturned as such offence is not contained in the Criminal Code.

<sup>50</sup> (1988) LPELR-SC. 132/1987 pg 18-19 or (1988) 3 NWLR pt 84 pg 533 Per Oputa JSC (Justice of the Supreme Court)



ethics of the profession that accused's case be conducted with the same serious and dedication required of counsel in criminal cases generally and in serious, like murder in particular.

Even the Legal Aid Council cannot fully assist in handling the legal challenges of wrongful conviction. This is because their financial and personnel capacity does not match up with the demand of indigent defendants that require legal aid.

The inordinate and undue waste of time in justice administration by courts in Nigeria is another problem that produce wrongful conviction. This delay can be attributed to workload of cases courts have to handle, coupled with unnecessary or avoidable adjournment sought by the counsel.<sup>51</sup> Accordingly, justice delayed is said to be justice denied. The excess of the criminal justice actors is not being monitored and checked by those in authority in ensuring that innocent individuals are not convicted.

Corruption in the judiciary which has reached an alarming stage in Nigeria is also a problem which may leads to miscarriage of justice that produces wrongful conviction. The Judicial corruption allows undue external influences to access and determine the outcome of judicial decisions. The decision will remain unfair and unpredictable and the consequence of it is that the rule of law will not prevail. A judge who takes bribe cannot be impartial or fair and these can lead to conviction of an innocent person.<sup>52</sup>

Another issue associated with wrongful conviction is in the area of compensation. Even after exoneration, many victims of these judicial errors are not adequately compensated and some of them are not even aware of the amount of compensation they deserve or whether they are entitled to compensation at all especially in Nigeria. This could be due to a lack of scheme to create awareness among accused and their families to ensure that they can claim compensation for wrongful incarceration/imprisonment through civil action as it is done in advanced countries. Some would not even bother about compensation because of the fear that their case might be reopened to their disadvantage. Wrongly convicted persons can only receive compensation if the legislature creates the enabling law and appropriates requisite fund thereto. Nigeria has no compensation scheme incorporated in its law that ensures

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<sup>51</sup>Adedeji, A. O. Problem of justice – Nigerian experience. *Indian Law Institute Journal* 39. 2-4

<sup>52</sup>Egbewole, W. and Imam, I. 2015.Nigeria judiciary and challenges of corruption: Islamic option as panacea. *Journal of Islam in Nigeria* 1.1: 10.

compensation to the wrongfully convicted person. Unlike the practice in other countries like USA and UK. Even the newly enacted Administration of Criminal Justice Act, 2015 only make provision for compensation for the victims of crime not victim of wrongful conviction.

### **1.3 Aim and Objectives of the Study**

The aim of this research is to raise awareness of the public on the issue of wrongful conviction which is widespread in the Nigerian justice system and occurs at post-conviction stage. This study will enable major stakeholders of the justice system to appraise the nature, extent and causes of wrongful convictions.

The specific objectives of the study are to:

- i) discuss the legal policy and institutional challenges encountered in the course of administration of criminal justice that produce wrongful convictions in Nigeria;
- ii) examine the impact of wrongful conviction, vis-a-vis the imposition of capital punishment, on the lives of the exonerated convicts, their loved ones, society and the criminal justice system;
- iii) consider means of preventing wrongful conviction and the role of various public and private institutions in that regard; and
- iv) analyse the existing legal remedies available to victims of wrongful conviction in Nigeria and advocate for adequate compensation in the absence of none.

### **1.4 Research Questions**

Following the numerous issues connected with wrongful conviction generally, the research questions that capture these problems are as follows:

1. Are there legal, policy or institutional issues which encourages wrongful convictions in Nigeria?
2. What is the impact of wrongful conviction and retention of capital punishment in Nigeria on the lives of victims, their loved ones and the Criminal Justice System?
3. What public and private institutional changes might help prevent the occurrence of wrongful convictions?
4. Are there existing legal frameworks to ensure adequate remedy and compensation for victims of wrongful conviction?

## **1.5 Justification for the Study**

The above statement of problem shows that there are defects in the existing legal framework on the administration of the criminal justice system that produces wrongful convictions in Nigeria. The fact that it is not broadly studied in Nigeria shows that it is almost, if not completely ignored. This study therefore aims at examining these issues and drawing the awareness of this problem amongst audience, towards the eventual limitation, prevention and control of the effects of wrongful conviction in Nigeria. This study may be beneficial to key actors in the justice sectors, such as police, prosecutors, forensic experts, witnesses, judges, and other judicial officers, to enable them improve their effectiveness in performing their functions in such a way as to avoid errors and procedural defects that leads to wrongful convictions. It would also be of beneficial to citizens of Nigeria who have been the victims of this aberration of law called wrongful conviction in the criminal justice system by potentially reducing wrongful conviction rates by way of looking into the lapses in the Nigerian Criminal Justice System that cause this aberration and also suggest possible remedies. For each innocent person wrongly convicted, there is a guilty individual roaming free to commit more crimes thereby endangering the public at large while the innocent person is being punished for the offence not committed. This is what makes research into wrongful conviction worthwhile. This study further canvasses strongly for the rights of the of victims of wrongful conviction to compensation, rehabilitation and reintegration into the society.

## **1.6 Research Methodology**

The study adopted a library based doctrinal approach, (qualitative analysis approach) in which research judgment was made through the study of available Literature. The study of current judicial practices and past wrongful conviction cases. The study also concentrates on the theoretical framework of wrongful conviction and the method used in doing this include research questions and instruments through unstructured interview to collect data for the study. The study used both primary and secondary sources of data. The primary sources of data the study relied upon are the laws in form of principal legislation, supplementary legislation and case laws from Nigeria and other jurisdiction for comparative purposes. Particular reference was made to the Constitution, Criminal Code Act (CCA), Penal Code Act (PCA), Criminal Procedure Act, Criminal Procedure Code, Evidence Act, 2011, the Administration of Criminal

Justice Act 2015, Administration of Criminal Justice Law of Lagos State and other relevant Nigerian and foreign case laws. The Secondary sources of data relied upon include legal texts, journal articles, newspaper reports, magazines (digital and prints) from all over the world especially in the UK and in the USA, law reports from both local and foreign authors. The research also embarked on field work to enrich the study. In order to get the feedback and first-hand information on the problem of wrongful conviction, causes and its effects, the researcher conducted an unstructured interview with the victims of erroneous conviction, their family members, the criminal justice players and relevant legal authorities/stakeholders in the administration of criminal justice.

### **1.7 Structure of the Study**

Chapter one is the introduction and the background to the study. It gives background information and challenges that otherwise gave rise to this study. The incidences of wrongful conviction such as miscarriage of justice are also discussed therein. The aims, objectives, research questions, scope, methodology, and significance of the study are also laid out. The researcher also makes thesis statement of means of addressing these problems.

Chapter two is basically literature review. Herein, existing literatures related to this area of study were reviewed. The various authors whose works are under review have made significant contributions to this subject matter. However, in course of the review, the shortcomings of these existing efforts were pointed out, thereby identifying the gap this works intends to fill up. Also in this chapter, clarification was given to concepts which are recurring decimals and germane to the subject matter of research.

Chapter three discusses the theoretical framework and underlying concept of criminal trials that otherwise necessitates this study. The researcher adopted justice and due process theories. This chapter also examined the causes of wrongful conviction arising from the conduct of various stakeholders of the criminal justice system. The impact of capital punishment on wrongful conviction and the overall effect of wrongful conviction on the victims, their loved ones and the society at large were extensively discussed.

Chapter four is remedial in nature. It begins with looking at possible means of prevention of wrongful conviction. It also examined existing post-conviction remedies and post exoneration reliefs available in Nigeria. Comparative analysis is also made of the remedies and reliefs

available in other jurisdictions such as USA and UK which serve as sources to draw lessons which could be applicable to the Nigerian situation. The chapter also contains the report of the findings of unstructured interview conducted by the researcher.

Chapter five is the conclusion and recommendations in view of the evaluation and critical analysis of the phenomenon, wrongful conviction.

### **1.8 Scope and Limitation of the Study**

The major challenge with this study is that it sought to interrogate the propriety of the findings and decisions of court exercising criminal jurisdiction. Wrong decisions of court are reached on different considerations and grounds. In trying to evaluate these decisions we were careful by limiting ourselves to wrongful conviction reach on judicial misinterpretation of law and facts. Hence, we shall view wrongful conviction in terms of factually innocent rather than reliance on technical irregularities.

The wrongful conviction being a global issue, comparative analysis was made with other countries like UK and USA because some observations and procedure of these other countries on wrongful conviction can be used as blueprint to understand the problem of wrongful conviction in Nigeria, being a global issue it has such received a global attention by everyone who cares about justice. However as at today the true number of people wrongfully convicted remains unknown because no federal or state agency in Nigeria keeps record of those exonerated, let alone wrongfully convicted. This might be seen as a greatest set back to this study.

The contribution of forensic science in exposing wrongful conviction through re-examination of evidence that identified the suspect as the perpetrator of the crime that led to his conviction has not really taken effects in Nigeria as the Government has not really focused on this area, there is no willingness on the part of government to invest in this area. Only few DNA centers exist in Nigeria and these centers are performing below expectation because of lack of equipments to carry out the forensic analysis, equipment like genetic analyser because in countries like US and UK, most of the evidence gathered from crime scene like finger print, hair comparism, blood spatter, saliva analysis that was pointing to the guilty of the convict were later re examined if there is any doubt to the validity of the analyses of the DNA test and several innocent persons have been later exonerated through this processes. There are also no

compensation statutes especially in Nigeria to remedy the harm inflicted upon a wrongfully convicted person.<sup>53</sup>

## **1.9 Contribution to Knowledge**

The study provides for information on the incidents and effects of wrongful convictions and miscarriage of justice under the criminal justice system with particular reference to Nigeria. In addition, the study further provides information on how to improve the justice system in Nigeria with specific emphasis on ways of enhancing diligence of prosecutors in order to curb incidents of wrongful convictions. It also contributes to ongoing debate on the efficacy of capital punishment as a punitive measure in view of irreversibility in a situation where a person is convicted of a crime, executed to death and later found out to be innocent after the execution. No monetary compensation statute and social services exist in Nigeria unlike other countries like U.S.A. and U.K. To this end this study identified the existing gap, try to fill the major gap in literature and make recommendations for the reforms needed to prevent future occurrence of wrongful convictions

## **1.10 Expected Outcome**

It is expected that this study lead to the following:

- 1) The proper understanding of the causes and effect of wrongful conviction in Nigeria
- 2) The study contributed to existing knowledge by filling some gaps in the existing literature of wrongful conviction and miscarriage of justice with a comparative analysis of practice, law and procedure in other selected jurisdiction like UK and USA.
- 3) Creation of awareness about issues of wrongful conviction in Nigeria
- 4) Eventual findings to limit or completely eradicate cases of wrongful conviction in Nigeria

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<sup>53</sup>Innocent Project. *Compensating the wrongly convicted*. June 4, 2015Report.

## CHAPTER TWO

### LITERATURE REVIEW AND CONCEPTUAL FRAMEWORK

#### 2.1 Literature Review

There have been a lot of contributions on the issue of wrongful conviction by the academic criminologists and legal scholars in UK and USA but none of the leading criminology textbooks have a dedicated chapter on wrongful convictions and some do not even mention wrongful conviction at all. Even if wrongful conviction is mentioned are mentioned in criminology textbooks they are apt to be just concluded without any serious consideration or analysis on the subject matter ]which is wrongful conviction. But this is not to suggest that there is not a rich literature from academia and legal scholars which seek to expose the reasons why criminal justice processes cannot reliably distinguish the innocent individual from the guilty ones<sup>54</sup>. This researcher has not been able to access much material in this area of study by Nigerian authors but that does not mean that Nigerian authors have not researched in this area. In country like US and UK, there are has been avalanche of legal scholarship on wrongful convictions, reflecting a growing concern about the problem. This study by other countries could be researched in-depth and related to the growing concerns of wrongful convictions in Nigeria. The growing literature on wrongful conviction in other countries emphasizes the multiple and overlapping forms] of harm that can befall victim, their family, friends and wider society at large when justice goes wrong.<sup>55</sup> However, this work observed that much work has not been really done on the issue of compensation as a post conviction relief to the victim of wrongful conviction and their loved ones who have in one way or the other been affected by the conviction, incarceration or execution of the victim of wrongful conviction. The causes of these judicial error are not being dealt with extensively by the previous publications on this topic. Much work has also not been done in the past about the effects of wrongful conviction on the victims, friends, their families, and loved ones. We shall now look into some existing literatures on this area of study.

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<sup>54</sup> Ibid

<sup>55</sup> The British Journal of Criminology: An International Review of Crime and Society , Volume 34 Number 6 of November, 2014 p. 1151

Edwin M. Borchard<sup>56</sup> identified the legal causes of wrongful convictions and the elements responsible for the incidence of wrongful convictions, he advocated for the compensation for the victims of wrongful conviction when exonerated and proposed reforms to reduce or eliminate the problem. This is the first book published in USA that identified key factors contributing to the conviction of innocent persons. It was a breakthrough historical work on the subject matter under study. Borchard suggested some reforms to minimise the effect of those factors and the occurrence of a wrongful conviction. Borchard's analysis of the causes of wrongful convictions, and his suggested reforms, are as relevant today as when "Convicting the Innocent" was originally published in 1932. This is because Borchard's work also provides an invaluable resource for understanding the history of indemnifying a wrongful conviction in US, Europe and countries throughout the world. Borchard's writings continue to provide valuable insights into the causes of wrongful convictions and reforms that may help minimise their occurrence in those countries and other countries, and that the generally inadequate indemnification of exonerated persons has been of concern for years. But Borchard could not have foreseen many of the modern reforms that have occurred though he advocated for legislation to compensate the wrongfully convicted. The modern day innocence movement has, however, gone far beyond what he might have foreseen; although some of his ideas, according to Zalma,<sup>57</sup> are connected to some of the modern day reforms.

Forst<sup>58</sup> acknowledges the serious effect of erroneous convictions on the lives of accused, their family members, friends and anyone that depends on them for support as well as on public approbation for the justice system. This learned scholar argued that for every wrongful conviction, there may be over 700 failures to convict in felony cases and hundreds to get convicted in all other cases. He discussed other miscarriage of justice like wrongful arrest made by the police, violence against unarmed innocent people by the police (police Brutality), shoddy investigation by the police, jungle justice and other forms of injustice. He then focused on how to manage these errors of justice and to reduce the social cost of wrongful convictions including recommendations for the police, prosecutors, judges, jurors and corrections about how to manage wrongful convictions carefully. A careful analysis of this book reveals that it

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<sup>56</sup>Borchard, E. M. 1932. *Convicting the innocent: Sixty-five actual errors of criminal justice*. New Haven, CT: Yale University Press.

<sup>57</sup>Ibid.

<sup>58</sup>Forst, B. 2013. Wrongful Conviction in a world of Miscarriage of Justice. *Wrongful Convictions and Miscarriage of Justice: Causes and Remedies in North American and European Criminal Justice*. Eds. H. Ronald and K. Martin. Routledge Publishing Inc.



does not have answer to the issue of wrongful conviction as it does not talk about possibility of eradicating wrongful conviction to guide against sentencing and execution of innocent person.

Brants<sup>59</sup> focuses on confirmation bias and related cognitive factors which is another type of error that frequently contributes to the conviction of innocent persons. He provides a careful re-examination of four cases of wrongful conviction in Netherlands. He explains that those cases illustrate a number of errors, including police misconduct and incompetence, unethical prosecutors and incompetent experts, failure to disclose potentially exculpatory evidence, false confessions, misunderstandings about expert evidence and courts that believed improbable theories. Brants describes errors like believe perseverance and confirmation bias as they affect cases in both the adversarial and inquisitorial system of justice and analyse them in the context of Dutch system. He also revealed the vulnerability of both kinds of system due to human cognitive biases. She ironically noted that the legal cultures that surround both types of criminal justice systems also produce tunnel vision of their own. This conclusion makes it impossible to effect any reforms that are not based on their existing fundamental uniqueness

Gross<sup>60</sup> attempted to estimate the frequency of wrongful convictions and exonerations. He argues that it is not easy for anyone to know the exact figures of how many errors are made and how often these errors and exoneration of the innocent are discovered and recorded. He reviews recent efforts by the government to estimate the frequency of wrongful convictions. He agreed with Forst that reducing wrongful convictions as one type of error can increase the other type of error, failure to convict the guilty, as both have serious consequences for public safety and confidence in the criminal justice system. But his work does not discuss the causes and effects of wrongful conviction or how to prevent its occurrence. In our view, the failure to also discuss the issue of compensation to the victims of wrongful conviction and failure to suggest the ways out of these judicial errors is a shortcoming of this book.

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<sup>59</sup>Brants C. 2013, Tunnel Vision, Belief, Perseverance and Bias Confirmation Only Human Human? in Chapter 9 of *Wrongful Convictions and Miscarriage of Justice: Causes and Remedies in North American and European Criminal Justice*. Edited by Ronald H. and Killias M. Routledge Publishing Inc. ]p.161

<sup>60</sup>Gross, S. 2013. How many false convictions are there? How many exonerations are there? *Wrongful Convictions and Miscarriage of Justice: Causes and Remedies in North American and European Criminal Justice*. Eds. H. Ronald and K. Martin. Routledge Publishing Inc.

In his work, Garret<sup>61</sup> was of the view that there are other factors apart from coerced self-confessions, eye witness evidence and jail house informant that significantly contribute to the production of wrongful convictions and subsequent exoneration. These factors include flawed forensic evidence, incompetent defense counsel, prosecutorial misconduct, police misconduct and judicial error. He maintained that prosecutorial misconduct is one of the frequent factors that cause wrongful convictions. Whereas the prosecutors are morally bound to pursue justice, but they are too often focused on protecting convictions instead, even when they are confronted with clear proof that some of those convictions were erroneous. As a result, innocent persons are often sent to prison for many years. Although his work focused extensively about the causes of wrongful conviction, it failed to discuss the effects of this error on the victim, their family and friends, to the society at large and also failed to suggest ways out of these judicial errors by making suggestion to the reforms to wrongful convictions.

Naughton<sup>62</sup> had a glowing effect on how people conceive the criminal justice system when he argues that the criminal justice process on its own creates miscarriage of justice and is capable of preventing the overturning of conviction. He construed judicial error as the normal and incidental to the legal system. The learned scholar explained why earlier efforts to stage a reform process of the system in order to prevent wrongful conviction have proved unattainable. He went on to provide a new viewpoint on how to prevent the occurrence of mistakes. He critically appraised the fundamental feature of the legal system but failed to suggest ways to reduce or eradicate this problem. Rather than investigate the factual predicates of wrongful convictions or trace the pattern of discriminations inscribe in the operation of criminal justice, he made knowledge/power effects of wrongful convictions itself the subject matter on the inquiry in a central way. He examined the consequences of how wrongful convictions were being problematised and explored how those effects might be expanded considerably by problematising them in different ways and fields.

Olatunbosun<sup>63</sup> was of the view that it is possible to have a situation where apart from effecting wrongful arrest, a person is prosecuted, convicted and executed or spent years in prison, or placed on death row for decades for the offence not committed. He noted that there are

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<sup>61</sup>Garret, B.L. 2013. Trial and Error. *Wrongful Convictions and Miscarriage of Justice: Causes and Remedies in North American and European Criminal Justice*. Eds. H. Ronald and K. Martin. Routledge Publishing Inc.77

<sup>62</sup>Naughton, M. 2007. *Rethinking Miscarriages of Justice Beyond the Tip of the Iceberg*. Palgrave Macmillan xii.

<sup>63</sup>Olatunbosun, A. I. 2014. *Tough on crime, soft on justice*. An Inaugural Lecture delivered at the University of Ibadan: University of Ibadan Press p. 63

instances in which an appellant could have spent a larger part of his sentence before the determination of his appeal and may eventually be discharged and acquitted. However, his work did not adequately address the factors responsible for these judicial errors and its effects on the victims.

Cook and Westervelt<sup>64</sup> in their work focus on the consequences of wrongful convictions and other miscarriages of justice and remedies that might be considered to reduce such errors and their impact on the victims of those injustice. They examined the lives of some death row exonerees, what happened after their exoneration? Were they truly free? They believed they were only free from prison but not free from the imprisonment of poverty, joblessness, isolation and homelessness. These authors observed that much attention is always on causes of wrongful conviction and how to reduce such errors. The question they asked is exoneration really the end of the story? Are they truly free or are they free only to be re-victimised by an unfair society and its criminal justice system? They helps understand the strategies that can be used to cope with these challenges based on the indepth interviews with some death row exonerees. But unfortunately they did not talk/suggest other needs that remains unmet by an inadequate system of criminal and social justice.

Hambali<sup>65</sup> tends to view wrongful conviction from the foundational perspective. He drew a relationship between wrongful conviction and non-compliance with legal safe guards by police officers during investigation. According to him, the non-compliance by the police with certain requirements of the law in course of pre-trial investigation, which naturally throws up a number of incidences,<sup>66</sup> may affect the trial to the extent that an innocent person may be wrongfully convicted or the acquittal of the actual offender.

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<sup>64</sup> Westervelt D. D. and Cook J.K. 2013, Life After Exoneration: Examining the Aftermath of a Wrongful Capital Conviction Spain in Chapter 13 of *Wrongful Convictions and Miscarriage of Justice: Causes and Remedies in North American and European Criminal Justice*. Edited by Ronald H. and Killias M. Routledge Publishing Inc.p.261

<sup>65</sup>Hambali, Y. D. U. 2013. *Practice and procedure of criminal litigation in Nigeria*. Lagos: Feat Print and Publish Ltd. 80-1.

<sup>66</sup>According to him these incidences include: How a complaint is received and investigated; accused statement to the police; confessional statement; alibi; police bail; searches; taking of finger prints; medical examination of suspects; identification parade; the use of case diary; use of threats, inducement or promise in the course of investigation; power to summon persons in the course of investigation; obtaining Attorney-General/Director of Public Prosecution's advice.

Smith in his work<sup>67</sup> observed that since DNA evidence started exonerating death row inmates, public concern about issue of wrongful conviction has been on the rise and source of worry in some states in US and other countries and people have called for the total abolition of death penalty. He revisited three tragic stories of wrongful executions in the UK where justice was shift and limitless appeals were not supported. He cited an instance case when someone was actually exonerated forty-six years after being executed. He observed that it is too late to save this victim of wrongful conviction but regardless of our individual feeling about death penalty, we must proceed with the knowledge that innocent people have been put to death. He did not suggest ways of preventing this error in the future so that innocent persons will not continue to be executed for the offence not committed having in mind the irreversibility of death penalty because once executed, it is impossible to bring back to life people executed.

Ehigalua<sup>68</sup> observed that wrongful conviction is secured around the ineffective mechanism of the administration of criminal justice, and depends mostly on the conduct of the police in the exercise of their official function contrary to the provisions of the law they are duty bound to observe. He also talked about corruption in the Judiciary. To him the Nigerian judiciary has the reputation of partial independence, but with the issues of corruption which has pervaded the entire system, it become a tougher bet to expect defendants to receive just, fair and equal treatment in court. He sees funding as a fundamental challenge which prevents legal practitioners from playing the role of the defending suspected or convicted persons. To him, change should be demanded by the legal practitioners in collaboration with NGOs.

Petro and Petro<sup>69</sup> examined the role of the Prosecutor; discussed prosecutorial misconduct including violations related to withholding of potentially credible evidence; review court ruling on prosecutorial immunity and offer potential wide ranging remedies designed to reduce wrongful convictions. They noted that prosecutors are possibly the most powerful agents in the criminal justice system and argued further that their power has increased tremendously as proportion of conviction via plea bargain has increased. These authors are very right, in their view, because major causation of wrongful convictions is centered on prosecutorial

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<sup>67</sup>Smith J. *Wrongful Convictions: True Murder Cases Unbelievable Miscarriages of Justice*. Printed in Great Britain by Amazon

<sup>68</sup>Ehigalua, D. 2012. Nigerian issues in wrongful convictions. *University Cincinnati Law Review* 80.4: 4.

<sup>69</sup>Petro, J. and Petro, N. 2010. *False Justice: Eight Myths that Convict the Innocent*. New York: Kaplan Publishing 50-72.

misconduct even though there are other factors contributing to erroneous conviction which they however, did not mention.<sup>70</sup>

Vuille J., Biedermann and Taroni<sup>71</sup> in their work provide that Forensic science play a critical role in both adversarial and inquisitional justice systems, with greater emphasis on inquisitional justice systems, where deference is granted to professionals. They cited the most apparent recent case of Amanda Knox, an American citizen studying in Italy who was convicted of murdering her British roommate. Joelle Vuille, Alex Bierdeman and Franco Taroni provided a helpful insight of the role of forensic analysis and DNA testing in that case which later served as an evidence introduced by the prosecutor towards Knox's conviction. This serves as an excellent case study on the argument by Cole and Thompson that forensic scientists and legal actors should work together and reach a logical framework for using forensic examination as evidence to aid justice and reaching accurate conclusions.

Kahn<sup>72</sup> pointed to another tragedy related to wrongful conviction, which is the social branding of a person as an ex-convict even though wrongfully convicted. It is an uphill task for victims of wrongful conviction to salvage their reputation in the society, apart from the physical, financial and psychological consequences associated with wrongful conviction. He pointed out that when wrongful convictions arise from a court process, even for lesser offences, it does not only cause pain on the ethos of citizens, but also wear out the victim and others', who are convinced of the victim's innocence, reverence for the law. To make worse the social implication of wrongful conviction, whereas an innocent person becomes a victim of wrongful conviction, the person who actually committed the crime evades justice and may continue in further criminal activities. In fact, this emboldens the actual offender to commit more crimes as he goes with the impression that justice and criminal consequences can always be avoided.

Poveda<sup>73</sup> endeavoured to focus on 'wrongful conviction' and acclaims that they are created by mistakes of the 'justice-system' and it varies from persons who face false accusation to those

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<sup>70</sup>For example, the role of defense lawyers, judges and jurors, the eye witness identification and host of others.

<sup>71</sup>Vuille J., Biedermann and Taroni F., 2013. The Importance of Having a Logical Framework For Expert Conclusions in Forensic DNA Profiling in Chapter 8 of *Wrongful Convictions and Miscarriage of Justice: Causes and Remedies in North American and European Criminal Justice*. Edited by Ronald H. and Killias M. Routledge Publishing Inc.137

<sup>72</sup>Kahn, D. S. 2010. Presumed guilty until proven innocent: the burden of proof in wrongful conviction claims under State compensation statutes. *University of Michigan Journal of Law Reforms* 44.1: 123-168.

<sup>73</sup>Poveda, T. G. 2001. Estimating Wrongful Convictions. *Justice Quarterly* 18.3: 689-708.

persons that are convicted and imprisoned and in extreme cases, to those who are irrationally put to death. The approach taken by Poveda when defining the subject of wrongful conviction is to distinguish ‘wrong person errors’ from procedural errors. Although he accepted that this in itself can be a problematic dissimilarity because it is hard to know when someone is actually innocent. For the mere fact that a person’s conviction is overturned upon appeal and that the person is acquitted in subsequent trial does not on that fact establish innocence. It basically means that the prosecution was unable to prove the guilt of such person beyond any reasonable doubt.

Marcelo Aebi and Claudia Campistol<sup>74</sup> in their work while discussing general knowledge that false confessions are an important cause of wrongful conviction introduced another important type of false confession that is voluntary false confessions that are motivated by a desire to obtain personal intangible benefits. They also consider claims that the latter type of confessions have frequently been employed by some terrorist group, by juveniles, and by members women but unfortunately they found no convincing empirical evidence to support those claims. The analysis presented by Aebi and Campositol raises interesting questions that one might contemplate, for example, what if a member of a terrorist group falsely confesses to a crime in order to divert attention from another active member of a terrorist cell, who may be planning major terrorist incident. And such an act was referred to as a “and wonder if the police might drop their investigation due to such a false confession voluntary wrongful.

The CCRC, Criminal Cases Review Commission was established in UK to refer wrongful conviction of the innocent persons to the Court of Appeal Criminal Division (CACD). It is to review alleged or suspected cases of wrongful conviction with intent that they shall be referred again to the CACD and give endorsement to the fruitful appeals filed by guilty offenders upon the finding that their convictions suffered some procedurally infraction. It is noteworthy that CCRC was not initially set up to correct the errors made by the system and cannot guarantee the exculpation of victims of wrongful conviction. They are subject to the authority of the CACD as they can merely refer cases.

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<sup>74</sup>Aebi M.F. and Campistol C. 2013: Voluntary False Confessions As a Source of Wrongful Convictions, The Case of Spain in Chapter 10 of *Wrongful Convictions and Miscarriage of Justice: Causes and Remedies in North American and European Criminal Justice*. Edited by Ronald H. and Killias M. Routledge Publishing Inc. 193

The Innocence Project is a not-profit legal organisation that is dedicated to exculpate wrongly convicted persons with the assistance of DNA testing and improving the criminal justice system to avoid imminent injustice. The effort of Innocent Project has seen to the exculpation of 243 wrongly convicted person with the use of DNA. This number includes 20 persons who had spent several years on death row and the discovery of 147 actual offenders.<sup>75</sup> The Innocent Project is a non-profit legal organization in USA that is committed to exonerating wrongly convicted people through the use of available DNA testing and also help to reform the Criminal Justice System to prevent future injustice but what of other persons whose cases DNA analysis is not possible to resolve? Their case remains helpless. That is the problem with Innocent Project. Nigeria situation is the worst because we have only few DNA centres and the level of ignorance and poverty will not make people explore the utilization of DNA evidence to exculpate people who are wrongly convicted.

Another Scholar, Simon Cole,<sup>76</sup> is of the view that forensic science also leads to wrongful conviction of innocent defendants. It performs a vital role in both adversarial and inquisitorial Criminal Justice Systems. He argues that forensic scientists and legal actors need to work together towards a general and reasonable agenda for communicating the strength of forensic examination to assist the tip of fact in reaching accurate condition at pre conviction stage. The scholars before him did not really mentioned forensic Science as a possible contributor to wrongful conviction until lately because they believe that science could not cause such “terrible errors”.

Marvin Zalma<sup>77</sup> provided a careful assessment of the innocence movements Progress and offers a realistic appraisal of current reforms and impediments to reform in policing, prosecution, courts, laws, and forensic science. He concludes that meaningful innocence reforms require complex changes in policies and practice that will necessitate changes in political and institutional cultures.

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<sup>75</sup>The National Registry of Exoneration. Michigan Law School.

<sup>76</sup>Cole, S.A. 2012. Forensic science, and wrongful convictions: From exposé to contributor to corrector. *New England Law Review*46. 711-736.

<sup>77</sup>Zalman, M. 2011. An Integrated Justice Model of Wrongful Convictions. *Albany Law Review*74.3: 1465-1524.

Ronald Huff<sup>78</sup> introduced another type of miscarriage of justice that he terms as “conviction based on politics repression” and then argued that such convictions are certainly miscarriage of justice though such conviction may not be technically be wrongful in the sense of actual innocence since the defendant did not violate the laws on the books. He also discusses the impacts of wrongful conviction on the victims, their families and on public safety because the actual offender still roams the street committing more crimes and thereby making the society unsafe for citizens and this affects public confidence in the criminal justice system. Unfortunately, his work did not consider the obligation of states to address the problem of wrongful conviction and what can be done to reduce the judicial errors.

Kathryn Campbell<sup>79</sup> was of the view that the emergency and prevailing circumstances in some countries might make them to have adopted legislation and policies that might have led to new form of miscarriages of justice that have not received much scholarly attention in criminology. He cited, for example, 9/11 terrorist attack in US which forced the country to introduce some legislative and policy initiative to prevent such attack in the future. These measures led to harsh immigration condition, long detention without charges or trial, and deportation without substantial allegation. But it should be noted that all these policies have negative impact on the presumption of innocence and also on respect for due process with respect to individual rights because they rely on a militant response and the criminal prosecution was abandoned as a means of dealing with terrorists. But what he forgot to understand is that war on terror is not over and the nation state will continue to require power to pursue, charge those who represent a threat to national security, thereby negating the government’s responsibility to respect and acknowledge the right of citizens and non-citizens. Only through the recognition of those rights can further miscarriage of justice be prevented.

Kent Roach<sup>80</sup> compared the US and Canadian system approach to dealing with wrongful convictions question whether merely providing more procedural rights coupled with growing public concern automatically translates into justice for wrongfully convicted individuals. He discussed the legal and cultural system of each nation and how these factors affect their

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<sup>78</sup>Huff, R. 2001. Wrongful conviction and public policy. *The American Society of Criminology, 2001 Presidential Address first published: 7th March, 2002, 16*

<sup>79</sup>Campbell, K.M. 2013. The Changing Face of Miscarriages of Justice. *Wrongful Convictions and Miscarriage of Justice: Causes and Remedies in North American and European Criminal Justice*. Eds. Huff, R. & Killias, M. Routledge Publishing Inc.

<sup>80</sup>Kent, R. 2011. *The 9/11 Effect: Comparative Counter-Terrorism*. Cambridge: Cambridge University Press 5



respective approach to the problem of wrongful conviction. Though both countries have documented concerns about wrongful conviction, they maintained different approach on the post-conviction relief. He believed that US is more resistance to post-conviction relief than their Canadian counterparts because the Canadian system is more flexible and generous in providing relief to those who were wrongly convicted. His work did not really discuss the causes of wrongful convictions as an aberration of justice and how to prevent it but only show concern about the post-conviction relief.

Spero Lappes'<sup>81</sup> work discussed the major battles that go on when a state decides to look into wrongful conviction and how it might be prevented. They expressed the efforts made by the prosecutors to “delegitimise” the critics of false conviction and discretion reform efforts because even when the prosecutors are faced with overwhelming evidence of actual innocence, they would still believe that once convicted a defendant is “never innocent again”. He did not talk about the relevance of DNA in establishing the innocence of the defendant or a situation DNA identifies the real offender. In that case, will the prosecutor still be in doubt as to the innocence of the person wrongly convicted?

Morton's<sup>82</sup> work exposes wrongful conviction and acquittals as a result of the chicanery of some forensic experts, over-zealous or negligent police officers under pressure to get results, incompetent legal representation, witnesses lying on oath, juries involve in bribe taking, judicial blunders and feeble politicians. These and many more are considered as the factors responsible for wrongful conviction. It further explored the mistakes that can be reached when the prosecutorial and judicial system is confronted with baying press, mistakes which have caused guilty pronouncement on innocent persons, sometimes leading to their execution and lengthy prison sentences. All these errors demonstrate critical flaws with the criminal justice system.

Leo's<sup>83</sup> “The criminology of wrongful conviction: A decade later”, is a build up of his 2005 article, titled: “Rethinking the Study of Miscarriages of Justice”.<sup>84</sup> The later study by the author is an attempt at re-examination scholars' empirically perception of the phenomenon,

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<sup>81</sup>Lappas, S. 2006. The embarrassment of innocence. *The Champion* August, 2006, 12.

<sup>82</sup> Morton, J. 2015. Justice denied. London: Constable and Robinson Ltd.

<sup>83</sup> Leo, R. A. 2017. The criminology of wrongful conviction: A decade later. *Journal of Contemporary Criminal Justice* 33.1: 82-106.

<sup>84</sup> Leo, R. A. 2005. Rethinking the study of miscarriages of justice: Developing a criminology of wrongful conviction. *Journal of Contemporary Criminal Justice* 21. 201-223.

causes, and effect of wrongful convictions in America, ten years after his former study. The author further examines the impending challenges towards developing a more broad criminology of wrongful conviction. The authors findings in the 2005 article is that ‘the study of wrongful convictions constituted a coherent academic field of study and set forth a vision for a more sophisticated, insightful, and generalizable criminology of wrongful conviction’. In the later study, the authors finds that there has been noteworthy theoretical, methodological, and substantive advancement in the study of wrongful conviction, ten years after his previous study, even though root cause analysis of wrongful convictions is yet to be achieved. Thus, the author implored empirical scholars to engage other avenues for error and inaccurate findings of the criminal justice system. In other words, Scholars should be equally concerned with erroneous outcomes as well as erroneous convictions in the criminal justice system. This would, to a large extent, guarantee reduction of errors and accuracy in outcomes of judicial process.

Mirabella<sup>85</sup> studied the murder trial and conviction of Amanda Knox, an American student and the consequential vast interest and criticisms, especially from the Americans, which it brought to the Italian criminal justice system. The huge media involvement of the American press in the trial gave the Italian system a colouration of a defective system which is prone to wrongful imprisonment of the innocent. The major grounds for the criticism that trailed the Knox trial was the Italian justice system which allows concurrent criminal and civil trial in a case; admission of character evidence; and failure of the system to insulate members of the jury from sensational media reportage of the trial. Heavy criticisms, especially from American scholars, have trailed the Amanda Knox trial, thereby putting question marks on the Italian criminal procedure and the whole Italian criminal system. The author is of the view that these criticisms are fuelled by the lack of appreciation and understanding of how the Italian criminal justice process works. The author counselled that, before reaching a hasty denigration of the system, it is essential for critics to have a proper understanding of the background of the Italian code and become familiar with the biases that are at work when one is undertakes comparative analysis of systems.

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<sup>85</sup> Mirabella, J. G. 2012. Scales of justice: Assessing Italian criminal procedure through the Amanda Knox trial. 230 *Boston University International Law Journal* 30. 229-260.

In his PhD thesis, Kendall<sup>86</sup> examined how the foreign political and economic pressure influenced the U.S. domestic policy on death penalty. This pressure, the author canvassed should be shifted to States like Texas which is well known for its retention of death penalty and execution of capital offenders. The procedural defects in the Texas Criminal Code (TCC), it is contended, could lead to wrongful convictions and execution of innocent persons. The author pointed out recent findings which show that despite the advancement in forensic sciences, such as the DNA testing in a bid to avoid wrongful conviction, it is still widely recognised that wrongful convictions still occurs, notwithstanding the application of these safeguards to ensure the protection of the innocent. The major grouse which the author held against capital punishment is its transcendence beyond recall and possible correction of errors which could occur in the criminal justice process.

The wrongful conviction should not only be reduced, but should, ideally, cease to occur and totally eradicated. A wrongful conviction is mainly a failure to achieve the expected end of justice. In Nigeria, every individual should be treated equally and justly as our legal institutions have their foundational basis legal system is both the neutrality and impartial, as all persons ought to be viewed as equal before the law. The race, culture, language, color, gender should be of no significance in deciding the end of justice in our society. If this is the case, why do we still have miscarriage of justice? The legal system is rooted on the understanding that each person deserves a fair and equal treatment during trial. Ideally this is possible; but due to human nature, mistakes will always take place and these will always lead to erroneous conviction.

The study will focus on the several factors that leads to wrongful convictions and miscarriage of justice in Nigeria and some other countries such as the United States of America and United Kingdom; the role of stakeholder in the administration of criminal justice ranging from prosecutors, defence lawyers, witnesses and judicial officers. We shall also discuss the effects of this miscarriage of justice on those wrongly convicted and their loved ones; and measures to adopt in preventing future occurrence of wrongful conviction.

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<sup>86</sup> Kendall, W. E. 2012. The death penalty and U.S. foreign policy. PhD Thesis: RMIT University viii+287.

## 2.2 Conceptual Examination of Major Terms

The following terms as listed below has been defined in the manner stated here under for the purposes of this study:

*The criminal justice system:* Federal, state, and local governments establishment conferred with the task of administering justice to citizens with the aim of upholding law and order in the society. They get involved in the series of actions and procedures towards the control of crime and imposition of penalties on defaulters of the law. The aim of the criminal justice system is to use the instrumentality of the law to see to it that citizens enjoy peaceful living within the society. the system is primarily comprised of three segments, which includes- law enforcement, the courts, and the corrections. This constitute the framework set to carry out criminal investigation, the arrest of suspected offenders, ensure the prosecution/defence of persons accused of crimes and the prescribe suitable punishment for persons pronounced guilty.

*DNA technology:* It is the study and handling of genetic materials. The science of discovery of genetic material for the purpose of proper criminal justice process of ascertaining criminal culprits and to exculpate the innocent.

*Eyewitness identification:* The physical recognition of offenders by crime victims or other persons who witnessed the act.

*Exoneration:* The setting aside of a previously pronounced guilty decision. Exoneration ensues when evidence is adduced to show that a convicted person was in fact innocent of such crime. In such a case, the court admits a prior judicial error, corrects it and uphold the innocence of the convict and frees the wrongly convicted person from detention.

*Factual innocence:* A condition where a convict is completely innocent of the offence for which he was convicted– that is, someone else committed the crime.

*Miscarriage of justice:* A legal trial resulting in an injurious outcome. It is the failure, omission, commission or negligence of a judicial process or tribunal in course of the administration of justice; especially when it leads to the conviction or sentence of innocent person by a court. This comes up when the judicial decision is reached through the infraction of the basic rights of a party as guaranteed by the law.

*False confession:* The situation where a suspect makes involuntary admission to a crime he did not commit as a result of undue influences during a police investigation and interrogation.

*Interrogation:* The questioning or interrogation of a criminal suspect by the security agents with the intent to extract incriminating statements from such suspect.

*Criminal justice professionals/actors:* Persons who perform certain function in the criminal justice system. These include police officers, prosecutors, forensic experts, defence attorneys, judicial officers, correctional officers etc.

*Legal innocence:* A state of affairs where a convicted person may (not) have culpable of the crime he was convicted of. This may have arisen from due-process error(s) in course of the investigative or trial proceeding which amounted to the violation of the defendant's rights. Such person ought to be exonerated of such offence and the conviction and sentence set aside upon appeal.

*Wrongful conviction:* The entry of a guilty on a defendant who in fact did not commit the offence. This definition excludes those that are exonerated on legal technicalities but those persons who are actually not the perpetrators of crime which they were charged are convicted.

### **2.3 Structure of the Interview**

As part of the research methodology, unstructured interview was conducted to obtain first hand information from various stakeholders which are connected with issues of wrongful conviction. Stakeholders which were contacted and interviewed are as follows:

1. The victims of wrongful conviction and members of their families
2. The Nigeria Police, Ogun State Police Command,
3. Magistrates in Ogun State,
4. The Law officers in the ministry of justice, Ogun State
5. The government Establishments like Legal Aid Council, Office of the Public Defender,  
National Human Rights Commission
6. Solicitors/Legal Practitioners

7. Non-Governmental Organizations like Legal Defense and Assistance Project (LEDAP), Centre for Justice Mercy and Reconciliation (CJMR), Miscarriage of Justice Organisation (MOJO) in Scotland, UK, Innocence Project UK.

8. Forensic Experts

The information from these sources were examined and subjected to content analysis.

**The following questions were asked while on the field**

The questions for the victims of wrongful convictions (i.e. those who had their conviction quashed are:

1. What is your impression about the (criminal) justice system in Nigeria?
2. What are your experiences regarding the wrongful conviction of an innocent person?
3. How has your attitude changed towards the justice system since your incarceration?
4. What factors led to your wrongful conviction?
5. How did you cope with being imprisoned for such a long period of time?
6. What specific incident did you encounter in prison that will change your life forever?
7. Were you given any support by the government upon your release from prison?
8. How can you be compensated for the number of years lost while you were in prison?
9. What are the effects imprisonment has had on you?
10. If you were not imprisoned, what do you think you would be doing differently?
11. What institutional changes might help to prevent or rectify wrongful convictions?

**Interview questions for family members of victims of wrongful convictions:**

1. Why do you think your loved one was wrongly convicted?
2. What factors do you think are responsible for the wrongful conviction of your loved one?
3. Do you have any hope in the justice system in Nigeria?

4. In what way has your loved one incarceration changed your life?
5. How have you handled the miscarriage of justice that was suffered by your loved ones?
6. What effects has the imprisonment of your love one had on your family?

**Questions for other participants like the police, prosecutors, NGOs, Judges, Magistrates, Lawyers, Legal Aids Council and others:**

1. What is your view about administration of the criminal justice system in Nigeria?
2. Do you think people are being wrongly convicted and if yes what are the factors responsible for this problem?
3. What roles can your office play in reducing the occurrence of wrongful conviction in Nigeria?
4. What role do you think members of public and other stakeholders in the justice system play especially the law enforcement agencies, prosecutors, judiciary and defence lawyers in causing and correcting and reducing wrongful conviction of an innocent person?
5. How can we improve on the use of forensic analysis to solve to solve criminal problems and prevent wrongful convictions?
6. How do we adequately compensate victims of wrongful conviction and reintegrate them back into the society they have left for so long?

The aim of these interviews is to generally evaluate the application of the law in practical terms, produce an articulate research foundation and effective reform materials for future legislative review

The interviews were conducted in the offices of the most participants because they agreed to grant the interviews in their various offices, especially the police and law officers which offices are located in the Ogun State Police Command and Ministry of Justice, Abeokuta Ogun State of Nigeria. The Magistrates' interview was conducted in the chambers of the most senior Magistrate with other magistrates in attendance at Magistrate court of the Abeokuta Magisterial District of Ogun State. The group discussions were conducted in the board rooms of most of the NGOs in Lagos with some of their officers in attendance. The interview for the

victims and their family were conducted in their respective house in Lagos and office in Glasgow in Scotland, UK. The Legal practitioners interviewed were conducted in Ogun State in Nigeria and London in United Kingdom and the interviews were conducted in their respective law firms. The unstructured interview was conducted on 35 persons including victims of wrongful convictions, their families, criminal justice actors and other stakeholders. The study recognizes the confidentiality of interviewed persons and shall refrain from mentioning names. Reference to these people is indicated by the abbreviations in brackets below:

### **Research Participants**

<u>Type of Participant</u>	<u>Numbers of participants</u>
1. Victims of wrongful convictions (EX)	3 = (EX 1 – EX 3)
2. Family members of victims of wrongful convictions (EXF)	2= (EXF 1 – EX 2)
3. Solicitors, Attorneys and Advocates (SOL)	5 = (SOL 1 – SOL 5)
4. Police Officers (PO)	8 = (PO 1 - PO 8)
5. Magistrates (MAG)	4 = (MAG 1 – MAG 5)
6. Law Officers (LO)	3 = (LO 1 - LO 4)
7. Non-Governmental Organisation (NGO)	3 = (NGO 1 - NGO 3)
8. Forensic Experts (FE)	4 = (FE 1 – FE 4)
9. Government Establishment Officers (GEO)	3= (GEO 1 – GEO 3)

The interviewees in the table above were asked questions about the cases they had individual engagement and the roles they played. The interview varied in time, with the least being 60 minutes and the lengthiest spanning up to 3 hours. 8 females and 27 males participated. Some of them had been directly or indirectly take part in the wrongful conviction cases relating to robbery or murder at one point or the other.



### **2.3.1 Discussion Topics and Procedure**

#### **Informed consent**

The discussion topics arose from the questions listed above for both the stakeholders and the victims of wrongful conviction and their families. All the participants were informed that participation in the interview was voluntary, and they were greatly assured of maintain their confidentiality, privacy and anonymity because as a researcher it is important to respect the privacy of research participants, and as such they were informed that only vital information useful to the research would be published and that the published information would also be anonymous so as to respect their privacy before they agreed to grant the interview. I conducted the interview; audio recorded most of the interview with the consent of the participants/interviewees while taking notes at the same time. After introducing myself and the purpose of the research, they were all happy to participate and made their own contribution towards the success of the research especially the NGOs, Law Officers, victims of wrongful conviction, their family members and Police Officers.

#### **2.3.2 Analysis**

Sufficient time was allotted for thorough evaluation of the interviews. On complete collection and transcription of data, the researcher went through each transcript severally to familiarise herself with the shades of each interview before logically analyzing the data to attain the aim and objectives of this research.

## CHAPTER THREE

### THEORITICAL FRAMEWORK AND UNDERLYING CONCEPT OF CRIMINAL TRIALS

#### 3.1 Theoretical Framework

The end of law is justice. The courts whether exercising civil or criminal jurisdiction aims at dispensing justice in cases brought before it for determination. In the operation and administration of the criminal justice system, there are two contending value systems that strive for priority. These are the crime control and due process theories. This study favours the due process theory as opposed to the crime control model. The due process theory, in our view, is compactible with the attainment of justice for the defendant in a criminal trial. Due process is, thus, viewed as a form of preventive justice. Where due process is not followed in the process of criminal trial, it usually leads to injustice in form of wrongful conviction of the defendant. Where this is the case, the theory of restorative<sup>87</sup> or rectification justice requires that the wrongfully convicted defendant be adequately compensated for his/her loss. This study, hence, leans in favour of due process and justice theory to explaining the phenomenon of wrongful conviction in Nigeria and making a case for restoration of such victims by way of adequate compensation thereto. We shall now examine these two theories in some details.

##### 3.1.1 Crime Control Model and Due Process Theory<sup>88</sup>

Crime control model holds the view that the subjugation of criminal activities to guarantee social freedom is the foremost function of the criminal justice system. This purpose can be achieved by laying emphasis on the efficiency of the criminal process; that is, its ability to apprehend, prosecute, convict, and put a large number of offenders behind bars.<sup>89</sup>

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<sup>87</sup>Restorative justice is often viewed as advocating compensation scheme for victims of crime. See, Victim: A Juridical Approach. Retrieved on May 15, 2009, from [http://www.amicus.iupindia.org/Crls\\_VictimAJuridical\\_ovw.asp](http://www.amicus.iupindia.org/Crls_VictimAJuridical_ovw.asp) However, it is here contended that, persons who are wrongfully convicted are also victims of the crime and ought to be compensated too.

<sup>88</sup>Due process is one of the important constituent of the rule of law principle.

<sup>89</sup>Parker, H. L. 1968. *Two Models of the Criminal Process*. Retrieved on October 23<sup>rd</sup>, 2017, from <http://my.ilstu.edu/~mgizzi/packer.pdf>

Due process theory is not antithetical to the crime control model; rather it compliments it by insisting on the reliability of the process. This is to guarantee the protection of the factually innocent as much as the conviction of the factually guilty is desirable. But the protection of the innocent comes first on its scale of preference. Hence, it is better for ninety-nine guilty persons to be set free than for one innocent person to be convicted. While the crime control model is quantitative in approach, due process theory is concerned about the qualitative output of the criminal justice process.<sup>90</sup>

Due process advocates like Parker are of the view that the chiefest goal of justice system is to ensure fairness and equity in the treatment of persons accused of offences.<sup>91</sup> The model places emphasis on the rights of individual and constitutional safeguard against malicious or unfair judicial or administrative proceeding. The prominent purpose of criminal justice ought to be the provision of procedurally regular technique and ensuring authorities act within abilities duly allocated to them by law. The main concern of this theory is to ensure that no one suffers from unequal treatment of any kind; the use of discretion within the justice system should be strictly supervised by the state.<sup>92</sup> Everyone must be treated in accordance with the civil rights afforded by the constitution. The justice system must function in a just and unbiased manner to achieve the true purposes of the justice else the individual accused of a crime who lack the resources due to poverty or ignorance could be easily treated unjustly and this may lead to miscarriage of justice which produces wrongful conviction.

Scholars like Sandefer believe that this theory in its unadulterated form is referred to as the “substantial due process of law”. According to him, this is crucial as the inclusion of the clause, ‘of law’, “forbids the government from depriving individuals of life, liberty, or property, except through due process of law”.<sup>93</sup> The theory recognises the indivisibility of form and substance; as such every government action that deprives an individual of life,

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<sup>90</sup>Ibid.

<sup>91</sup> Ibid.

<sup>92</sup>The law requires judicial discretion to be exercised judicially and judiciously. In other words, it is to be based on evidence and in accordance with the law. See, the cases of: *Ukachukwu v. PDP*, (2014) All FWLR (Pt. 728) 887; *Okonkwo v. Onu*, (2014) All FWLR (Pt. 725) 395.

<sup>93</sup>Sandefur, T. 2010. Privileges, Immunities, and Substantive Due Process. *New York University Journal of Law & Liberty* 5. 115-172 at 148

liberty, or property without conforming to the formal and substantive standards of law does not qualify as law.<sup>94</sup>

Many innocent persons had been exonerated of the offences not committed after years in detention and even on death row, due to the application of DNA evidence which later identified that another person committed the offence. Many had been executed wrongly for crimes they did not commit. It is better to free a guilt person than to trample on the civil rights of the innocent.<sup>95</sup> The due process advocates are of the belief that the lead principles of fairness and due process must be upheld even if it leads to the situation that a guilty person is freed. What they are saying in essence is that, the democratic ideals of a state take precedence over the need to punish the guilty.<sup>96</sup> Due process of law is a constitutional requirement that forestall government from dealing with citizens in an abusive manner. Sections 35 (3), (4) and (5) of 1999 Constitution provides respectively, to the effect that a person must be notified in a language of his comprehension of the circumstances and reasons for his arrest or detention in not more than twenty-four hours thereafter; the person must also be arraigned before a court of competent jurisdiction within a reasonable time. The word ‘reasonable time’ in this context, must not exceed two months after the initial arrest or detention where the person is in custody or charged for an offence which is not bailable. Where the person has been granted bail such reasonable period is three months from when he was initially arrested or detained after which he is entitled to a conditional or unconditional release. However, this does not preclude the authorities from arraigning him subsequently for the same offence.

Article 10 (1) of the International Covenant on Civil and Political Rights (ICCPR) which was ratified by Nigeria on 29<sup>th</sup> of October, 1993 also affirmed and enjoined that nobody should be deprived of their personal liberty and must not be subjected to inhuman treatment and disrespect for the dignity that inheres on them by virtue of being human.

### **3.1.2 Theory of Justice**

Justice derives its origin from the Latin word ‘*Justitia*’ which connotes righteousness, equity, upright, fairness and just. Justice is defined as “the existence of a proper balance” by the

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<sup>94</sup>Ibid. at 148-149

<sup>95</sup>Ibid.

<sup>96</sup>This phrase is sometimes credited to William Blackstone and at other times Matthew Hale. See, Harold, J. B. and Charles J. R. Jr. 1996. The transformation of English legal science: From Hale to Blackstone. *Emory Law Journal* 45, 437, 482.

Oxford Concise Dictionary. Blacks' Law Dictionary 7<sup>th</sup> edition,<sup>97</sup> defines justice as “the fair and proper administration of laws”; while in the 8<sup>th</sup> edition,<sup>98</sup> justice is defined as “a just trial of a case on its merit”.

Generally, the term justice is understood in two different senses. In the wider sense, justice is synonymous with morality. In the narrower sense, it refers to the fairness and equal treatment of all. It is the responsibility of the court to apply established laws and rules for the purpose of establishing, dispensing and apportioning justice.<sup>99</sup> It was once held by the Nigerian Court of Appeal that: “Justice means fair treatment, and justice in any case demands that the competing rights of the parties must be taken into consideration and balanced in such a way that justice is not only done but must be seen to be done”.<sup>100</sup> Also, in *Bassey v. Attorney General of Akwa Ibom & Ors*,<sup>101</sup> the Court of Appeal, while illuminating on the term ‘Justice’ held that: “It is trite that the term justice fundamentally denotes the impartial and appropriate administration of justice ...”

Justice according to law implies that the law itself must be impartial, just and equitable to ensure that the innocent are set free while the actual offenders are adequately punished and not the other way round.<sup>102</sup> While it is fair that offenders are punished with commensurate sentence, it amount to injustice to convict and punish persons who are innocent of crime as the justification for punishment is that it is a reaction to the desecration of a penal law. The concept of justice states that no one should be punished except for fault done in the exercise of his will. Everyone is entitled to fair hearing and believed to be innocent until he is proven guilty by the court of competent jurisdiction upon application of due process of law in arriving at a just verdict.

Justice is a right guaranteed to all. Where there is a failure of justice leading to wrongful conviction of an innocent due to non- conformity with the due process of the law, such right has been breached. In such a case, rectification justice for the violation in form of

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<sup>97</sup>Garner, B. A. 1999. *Black's Law Dictionary* 7<sup>th</sup> ed. Minnesota: West Group 867

<sup>98</sup>Garner, B. A. 2004. *Black's Law Dictionary* 8<sup>th</sup> ed. Minnesota: West Group 881

<sup>99</sup> Ojutalayo, O. O. 2017. Effective justice delivery- A legal practitioner perspective. Being a presentation made at the Ogun State Judges Conference, held at the High Court premises Isabo Abeokuta on 26<sup>th</sup> September, 2017

<sup>100</sup>Obajinmi v. Adedeji (2008) 3 NWLR (Pt 1073) p.19-20

<sup>101</sup> (2016) LPELR- 41244(CA)

<sup>102</sup>Akanbi, M. A. A. 1996. The judiciary and the challenges of justice. 33

compensation for the loss of wellbeing is required to correct such failure.<sup>103</sup> The target is to restore the person back to his previous position before the wrongful conviction.<sup>104</sup>

### 3.2 Causes of Wrongful Convictions

It is trite to say that we are human, we sometimes make mistakes. It's also probably an understatement. It would be more accurate to say that a lot of human beings are bound to make mistakes all the time. Our preconception and biases inevitably lead us in one way, often the wrong one.<sup>105</sup>

Although the aim of every justice system is to provide fair and just judgments, more often than not, one would like to admit human nature runs its course either because of hidden evidence or unethical practices of law enforcement agencies like the police and prosecutors. People are being framed, tried and convicted of the offence they did not commit. Wrongful conviction occurs where a court pronounces guilty verdict and sentences a person for an offence not committed. Wrongful convictions cover both procedural and substantive issues, have substantial implication on the the conviction during trial. Even when a person is acquitted and discharged of criminal liability, he/she could still face consequential civil suit, and also criminal records indicating years served in prison.<sup>106</sup> A defendant needs exoneration, which according to study is granted only in few cases of wrongful conviction, to get the charges as well as prison time served disappeared<sup>107</sup>. Wrongful conviction is a social problem and remains a prominent and worrisome social problem with critical costs implication in terms of human, material and financial resources, public safety and devastation that plague the criminal justice system. It has been revealed that wrongful conviction involves huge amount of physical, pecuniary and human costs. Previous works has shown that there is a likelihood of

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<sup>103</sup>Vallentyne, P. 2011. Nozick's libertarian theory of justice. *Anarchy, State, and Utopia—A Reappraisal*. Ds. Bader, R. and Meadowcroft, J. Cambridge University Press. 145-67at 158.

<sup>104</sup>This is captured in the Latin maxim: *Restitio in integrum*. This is used as the basis for award of damages for breach of contract and tortious liability at common law.

<sup>105</sup>Clive, S. S. 2007. *Bad men: Guantanamo Bay and the secret prison*. 158

<sup>106</sup>Morgan, B. L. A. 2014. Wrongful convictions: Reasons, remedies and case studies. MSc Thesis. Appalachian State University. 1.

<sup>107</sup>Smith, B., Zalman, M. & Kiger, A. 2011. How justice system officials view wrongful convictions. *Crime & Delinquency* 57. 663-685

reaching erroneous verdict in 2 to 6 percent of convictions in USA.<sup>108</sup> No one can deny the existence of wrongful conviction of innocent persons.

Wrongful conviction can be caused by many factors and some of these factors are: mistaken eyewitness testimonies, mistaken identification of suspect resulting from defective identification parade, false confessions by the suspect, forensic errors or lack of functional forensic laboratory or incompetent scientific experts, as is the case with Nigeria. Other causes include: police and prosecutorial misconduct, inefficient defence counsel, racial disparity especially in countries like UK and USA and issues within criminal justice system like abuse, impartiality and financial issues.<sup>109</sup> Each of these reasons or combination of some of these reasons in addition with other factors creates unending impact on specific cases. We shall now examine the causes of wrongful convictions.

### **3.2.1 Faulty Eyewitness Identification**

Defective eyewitness testimony is one of the factors responsible for the instances of wrongful convictions and has been marked to be the major basis for erroneous convictions. One of the challenges encountered by prosecutors and defence counsel in criminal matters is eyewitness errors, which has continued to plague the criminal justice system. Of the 180 cases where exoneration is recorded in the US, eyewitness error was a recurring decimal in over 75 percent.<sup>110</sup> In the case of *People of Lagos State v. Umaru*<sup>111</sup> the Supreme Court quoted and relied on Kingmill Moor J.<sup>112</sup> thus:

It is necessary that in all cases where the judgement depends substantially on the accuracy of an identification, their attention should be called in general terms to the fact, a number of instances, such identification has shown to be erroneous, the possibilities of mistake in the case before it and the necessity of caution. Nor do we think such warning should be limited to cases where the identification is that of only one witness. Experience has shown that errors can occur where two or more witnesses have made positive identification.

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<sup>108</sup>Ibid

<sup>109</sup>Leo, R. A. and Gould, J. B. 2010. Studying wrongful conviction: Learning from social science. *Ohio State Journal of CriminalLaw* 7. 7

<sup>110</sup>Wise, A.R. 2014, An examination of the causes and solution to eyewitness error. *Frontiers in Psychiatry Review Article August*1

<sup>111</sup>(2014) All FWLR (Pt. 737) p. 685-6

<sup>112</sup>See the case of *People Attorney-General v. Casey*, (No. 2) (1963) IR 33 at 30-40.

Eyewitness testimony holds a position of infamy for the wrongful conviction of innocent persons due to the frailty of human memories. Memory involves a cognitive procedure. Post event facts supplied by people like the police, prosecutors or media can change an eyewitness' memory of the events of the crime and the person who actually committed the crime. For example, asking a leading question like: 'Is the perpetrator short or tall? The witness memory can be altered with this type of question and once eye witness memory is changed, it will be near impossible to clearly recall incidence of the crime or its perpetrator<sup>113</sup> and can also increase eyewitness confidence for inaccurate information which can cause wrongful convictions.

The length of the criminal process is another factor that affects the accuracy of eye witness testimony. This problem is peculiar to the Nigerian Justice System where the wheel of justice grinds slowly. Most criminal matters get protracted in court for years due to factors such as administrative bottle-necks, protracted court adjournments etc. Where this is the case, the witnesses in the case may have died, relocated or due to human mental frailty may not clearly recall the crime incident when they are called to testify.<sup>114</sup> This would definitely affect the lucidity and veracity of their testimony. In the worst case scenario, it could lead to wrongful conviction if such evidence is relied upon.

The length of criminal trial is a notorious menace affecting our criminal justice system. Attempts have been made to deal with it by successive governments to expedite the criminal justice process. The latest effort, perhaps, is the enactment of ACJA in 2015. The legislation contains provisions that require criminal matters to be determined within a certain period on a day to day basis.

Proper interview of eyewitness and identification parade procedures help the authorities to easily prevents eyewitness mistakes instead of depending on means to detect those errors after they occur.<sup>115</sup> To reduce eye witness error, proper eyewitness interviews needs to be conducted and identification procedures is essential.

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<sup>113</sup>Ibid.

<sup>114</sup>See, *Aposi v. The State*, (1971) NMLR 315 at p. 316 where the Court is quoted as saying: "it is desirable that in a case like this (offence committed 26<sup>th</sup> September, 1965, trial began 4<sup>th</sup> December, 1967, and concluded 17<sup>th</sup> July, 1968) that neither the prosecution nor the judgment should be unduly delayed, in view of the mental agony of the accused person for his life and the fact that impressions get blurred with time".

<sup>115</sup> Ibid at p. 3



### 3.2.2 Identification Parade

In *Archibong v. The State*<sup>116</sup> the Supreme Court defined identification as:

A whole series of facts and circumstance for which a witness or witnesses associate an accused person with the commission of the offences charged. It may consist of or include evidence in the form of finger prints, hand writing, voice, identification parade, photographs identity or the recollection of the features of the culprit by a witness who saw him in the act of commission of a crime or a combination of two or more of these.

This is a procedure that involves the lining up a number of persons by the police for the purpose of allowing a complaint or witness to offence make a recognition of the suspect(s). This is the most reliable way of identify suspect under common law. Elsewhere, it was referred to as “evidence showing that the person charged with the offence is the same as the person who was seen committing the crime”.<sup>117</sup> Identification parade is an extra judicial exercise carried out by the police when the proper identity of the perpetrator of the crime in question cannot be ascertained by the victim or eye-witness to the crime. However, the victim or eye-witness must be sure to have had reasonable opportunity to observe the suspect such that the suspect could be recognised or a fair recollection of how he looks if the eye-witness is given the opportunity to see him. Identification parade is essential if the victim of the crime or the eyewitness to the crime must not have previously known the identity of the suspect. It is mostly carried out where mass arrests have been made.<sup>118</sup>

There is currently no legislative framework regulating the conduct of identification parade in Nigeria. Disappointedly, the ACJA 2015 did not provide rules relating to the proper conduct of identification parade. What forms our *corpus juris* on identification parade is contained in the Nigerian Police Training Manual for Basic and Advanced Studies.<sup>119</sup> Over the years, the courts have also been pushed to developing rules to fill the existing void in this regards in our statute books. From the various decisions of the court, the proper procedure of conducting an identification parade is distilled as follows:

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<sup>116</sup>(2006) 14 NWLR (pt. 1000) 349

<sup>117</sup>*Olagesin v. The State*, (2013) All FWLR (Pt. 670) p. 1382.

<sup>118</sup> See, *Bashaya v. The State*, [1998] 4 SCNJ 202

<sup>119</sup>See generally, Police College Enugu. *Nigerian Police training manual for basic and advanced studies*. Enugu: Ferdinco Printing Press.

1. The suspect is planted in the midst of other persons of similar or closely similar description in terms of height, complexion, age bracket, status and so on<sup>120</sup>
2. The number of persons in whose midst the suspect is to be planted must not be less than 9 at a time.
3. The suspect must not have been shown to the victim or the witness prior to the parade.
4. The victim or witness will then be invited to identify his attacker or the individual he identified at the scene of crime as the case may be from the parade.<sup>121</sup>

The victim or the witness must not be assisted in any form to identify the suspect.<sup>122</sup> Neither of the suspect nor his picture should be shown to the witness prior to the parade.

There are circumstances where identification parade is required. These include circumstances where the victim or witness never knew or had any previous encounter with the offender and the crime incident presented the first acquaintance they ever had; the period of their encounter lasted for a very short time; and that due to time and circumstance, the victim or witness did not have sufficient chance to notice the features of the assailant.<sup>123</sup> There is no need for identification parade where the defendant confesses to committing the offence; where the defendant was caught in the act and where the defendant is well known to the victim or eye-witness.<sup>124</sup>

It is to be noted that the evidence of the carry out of an identification parade is usually given at the trial by the police officer who conducted it; while the victim or witness who identified the suspect has to testify to that effect. Identification parade not properly conducted creates a suspicion in the mind of the court. In appropriate cases, the defendant should be acquitted.<sup>125</sup>

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<sup>120</sup>According to the Court in *Adebayo v. The State*, (2014) All FWLR (Pt. 743) p. 2014, the process entails showing the criminal suspect and other physically similar persons to the witness to ascertain if the suspect is the perpetrator or one of the persons who committed the crime.

<sup>121</sup>See, *Ghohor v. The State*, (2013) All FWLR (Pt. 709) p. 1076-8

<sup>122</sup>See, *Mustapha v. The State*, (2007) 12 NWLR (Pt. 1049) p. 637

<sup>123</sup>*Agboola v. The State*, (2013) All FWLR (Pt. 704) p. 153.

<sup>124</sup>See, *Mustapha v. The State*, (2007) 12 NWLR (Pt. 1049) p. 637.

<sup>125</sup>See, *Aliyu Wakala v. The State*, (1991) 8 NWLR (Pt. 211) 552. In *Ikaria v. The State*, (2013) All FWLR (Pt. 671) p. 1479, the court held that: "where the quality of identification evidence is poor, the court should return a verdict of not guilty unless there is other evidence to support the correctness of identification. The evidence of identification can be poor even though it is given by a number of witnesses. The witnesses may only have had the opportunity of a glance or a longer observation made in a difficult condition". See also, *Afolabi v. The State*, (2013) All FWLR (Pt. 702) p. 1703 where the court counselled for caution and close examination of identification evidence.

The problem with identification parade is that it appears like searching at all means for something that is not lost in the first place. Another problem associated with identification parade is the inability of the witness to pick the actual person due to memory loss or close resemblance of lined up suspect. In a desperate move to pin criminal responsibility on someone, the witness may pick wrong person innocently or maliciously. For example, a rape victim who was pinned down might find it difficult to recognise the real perpetrator.

The Court of Appeal gave judicial concern to this issue, in the case of *Aichenabor v. The State*,<sup>126</sup> when it stated thus:

A person who is the victim of an unlawful act would want the culprit or culprits to be arrested, to be brought to justice to be answerable for his/her wrong deed/deeds. The courts, (particularly as it relates to evidence of identification) have recognized that a victim of a crime in the search or pursuit that the perpetrator(s) of the crime against him is punished, might be genuinely mistaken in his identification of the said suspect or might out rightly decide to accuse someone or persons of known bad characters, just as the law enforcement agencies might also want to capitalise on the crime committed, to have known or perceived miscreants put behind bars. It is against this background of the human error to which it can be put that the courts, while realizing the primary or pre-eminence of identification evidence in proof of the commission of a crime by an accused person, have consistently counseled for caution or some restraint in convicting on same where it is wholly or substantially the evidence relied upon by the prosecutor.

In *Ndidi v. The State*,<sup>127</sup> the Supreme Court counseled that to avoid wrongful conviction arising from mistaken identity, the court must take cognizance of the following:

- a. What conditions were the eye witness when they saw the accused or defendant
- b. What was the length of time the witness saw the suspect or defendant;
- c. What were the lighting conditions;
- d. Was there opportunity of close observation; and

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<sup>126</sup> (2015) All FWLR (Pt. 763) p. 2005

<sup>127</sup>(2007) 13 NWLR (Pt. 1052) p. 633.

- e. Were there previous relations between the two parties.

In US the practice is that the counsel to the defendant must be present and allowed to participate in the identification procedure. In appropriate cases of application of irregular procedures, the defence counsel may file a motion in court to prevent the prosecution from tendering of a suggestive identification at trial.<sup>128</sup> Bearing this in mind, the prosecuting authority is under obligation to follow the right procedure. This is one of the safeguards put in place to check eyewitness errors, identify it and analyse its accuracy. Legal practitioners and judges are under duty to develop further effective safeguards in this regard.<sup>129</sup>

### **3.2.3 Confessional Statement**

This is another avenue for erroneous conviction of an innocent person when not properly done according to law. Confession is a statement which a suspect makes and is averse to that person. Black's Law Dictionary explains confession to be a statement recognising all facts essential for the conviction of a crime.<sup>130</sup> Section 28 Evidence Act 2011 defines confession as: "An admission made at any time by a person accused of a crime inferring that he committed that crime"<sup>131</sup> While confession is any statement admitting or accepting all facts necessary for conviction of an offence, it would still not satisfy all the element of the offence and the requirement if the law unless the suspect takes responsibility for such act.

#### **There are two types of confessions:**

- a. Judicial Confessions- This can be defined as a plea of guilty freely made by the defendant of sound mind on arraignment<sup>132</sup> or in due course of the trial. This confession is made in court before a magistrate or judge or other criminal tribunal admitting the commission of a crime. Example of this kind of confession is instances where a defendant makes a guilty plea to a charge upon same being read over to him in

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<sup>128</sup>Devenport, J. L., Kimbrough C. D., & Cutler B. L. 2009. Effectiveness of traditional safeguards against erroneous conviction arising from mistaken eyewitness identification. in B. L. Cutler Ed. Expert Testimony on the Psychology of Eyewitness Identification. New York: Oxford University Press, 51-68.

<sup>129</sup>Wise, R. A. and Safer, M. A. 2012. A method for analysing the accuracy of eyewitness testimony. *Court Rev* 48, 22-34.

<sup>130</sup>Garner, B. A. *Blacks' Law Dictionary*. Minnesota: West Publishing Co. 889.

<sup>131</sup>It can either be written or oral. See the case of State v. Sule, (2009) All FWLR (Pt. 481) 809.

<sup>132</sup>This form of judicial confession is not available for persons arraigned for capital offences. Whereas guilty is pleaded in this circumstance, the law requires the court to record a not-guilty plea for the defendant and the prosecution would still be required to prove the defendant's guilt beyond reasonable doubt.

the language of his understanding in the court room or where the defendant admits commission of the offence upon examination-in-chief or cross examination.

- b. Extra judicial confessions- It is a confession that is made by the parties elsewhere than before a magistrate or judge in a court. These are the confessions made out of court, especially during investigation, to police officers or other law enforcement agencies or any other persons. <sup>133</sup> Confession can be oral or in writing. Extra judicial confession is further classified into two: They are voluntary and involuntary false confessions.
  - i. Voluntary false confession- This is a self-incriminating statement by a suspect free from exertion of external pressure, without any psychological cause or tangible benefit from the police or any other security agents. The main component of such a confession is the fact that it is made deliberately.<sup>134</sup> Several studies of erroneous conviction in UK and USA have shown that about 20 to 30 percent of cases appraised involved false confession and false confession when relied upon as evidence during criminal proceeding usually leads to the conviction of the innocent<sup>135</sup>. It is always very difficult to understand why individuals would admit criminal responsibility for offences they did not commit. We shall now examine the reasons why people make voluntary confessional statement.
    - a. Voluntary false confession can be made to protect someone else, especially confession made by a juvenile. Juveniles sometimes act according to a moral code that regards loyalty as one of its highest values. This can be attributed to immature moral reasoning of adolescent to protect their peers.<sup>136</sup> Children are sometimes put in incredibly tense situation and don't understand the consequence of false confession. Even adults can make a voluntary false confession to protect family, friends, spouse or fiancé. Some people take responsibility for offences committed by others. Women, for instance, make take responsibility for offences committed by their children or partners thinking that their absence would be less harmful for the survival of the family than the absence of their son or husband who are the bread winners of the family. But the consequence

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<sup>133</sup>Nnabugwu, I. T.F. 2012. Confessions in Nigeria Evidence Act. June 22, 2012.

<sup>134</sup>Aebi, F. M. and Campistol, C. 2013. 'Voluntary' false confessions as a source of wrongful convictions, the case of Spain. *Wrongful Convictions and Miscarriage of Justice: Causes and Remedies in North American and European Criminal Justice*. Eds. H. Ronald and K. Martin. Routledge Publishing Inc. 194.

<sup>135</sup> Leo, R. A. 2009. False confessions: causes, consequences and implication. *Journal of the American Academy of Psychiatric and the Law* 37.3: 332-343.

<sup>136</sup>Beyer, M. 2000. Immaturity, culpability and competency in juvenile: A study of 17 cases. *Criminal Justice Magazine* 15.2: 26-37.

is that such confessions often lead to years in prison or execution of innocent individuals.

- b. Persons might incorrectly think that they committed the crime and thereby make a voluntary confessional statement. This may be a result of mental delusions or psychological imbalance. This is common among mentally challenged people who due to their state of mind may be unable to distinguish truth from dream. It is their delusional idea to assume criminal responsibility of the offence they knew nothing about and thereby get convicted easily.
- c. To prevent further investigation of more serious offences.
- d. To gain a reduced sentence especially in countries like UK or to avoid harsher punishment, especially for offences with death penalty, even when there is no evidence against them.<sup>137</sup>
- e. To attract attention, some people might falsely confess to have done notorious criminal acts just because of the attention they could get from such a confession or conviction. For example, in 1947 about 60 people were said to have admitted criminal responsibility for the murder of Elizabeth Short, referred to as Black Dahila in Los Angeles.<sup>138</sup>
- f. Perception of material benefit- Ignorance and poverty level may make some individual voluntarily confess to the crime not committed thinking that the monetary gain attached to such crime will come to them and that their family will benefit from such money while they are in prison. Unfortunately, this assumption is always wrong. PO2 interviewed on the 27<sup>th</sup> of September, 2017 in the course of this research cited one case which he was part of the investigation team. The suspect in that case confessed to the murder of Chief Bola Ige, then Attorney General of Nigeria, because he was fascinated by the financial reward the police placed promised to pay anyone who can provide useful information that would lead to the arrest of the assassin. Because of poverty and ignorance, this man preferred to sacrifice himself for the betterment of his family but got it all wrong by voluntarily surrendering himself for prosecution. He was eventually arraigned in court for murder though innocent of the crime.

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<sup>137</sup>Ibid at 473.

<sup>138</sup>Leo, R. A. and Ofshe, J. R. 1998. The consequences of false confessions: Deprivation of liberty and miscarriage of justice in the age of psychological interrogation. *The Journal of Criminal Law & Criminology* 1.2: 88.

## **ii Involuntary or Coerced False Confession**

Errors could occur when police obtain a false confession that contributes to a wrongful conviction. False confession is a result of pressure exerted on suspects during interrogation; suspects admitting to committing an offence so as to escape police pressure and brutality. This happens when police erroneously regard an innocent person to be guilty. And when this happens, the interview and interrogation are thereafter directed by the presumption of guilt, rather of innocence as required by law. Prominent amongst the causes of wrongful conviction is confessional statement extracted by the Police by oppression. The suspect falsely confesses his guilty to the offence even though he has personal belief of his innocence but has the expectation that one day the truth will be revealed and he will be exonerated.

In Nigeria, it is not uncommon for police to use torture and ill treatment on suspects detained in Nigerian police cells. There are reported cases of police shooting suspects on the foot, beating and hang them from the ceiling for long periods to extract information and confessions. Other form of torture includes flogging suspects with whips, beating them with batons and machetes, threatening them with death, inserting sharp objects into suspects' genitals, shooting of suspect on the legs, inflicting burns on suspects with cigarette lights, giving them psychological and mental torture by denying them food and water for days.<sup>139</sup> These conditions can be described as barbaric, brutish and pure manifestation of man's inhumanity to man.

This type of torture was confirmed by EX1, a victim of wrongful conviction who was interviewed by the researcher. He recounted how he was manhandled by the police at a chamber referred to as torture room, wherein he was hanged to the ceiling with his hands cuffed behind him. He was forced to sign an already prepared confessional statement prepared by the police before he could be relieved from the torture. The pain was too much for him to bear and he signed the statement. The court based his conviction solely on the confessional statement without any other evidence from eyewitness. Consequently, he was in incarceration on death row for 13 years. The negative effect of the incarceration on his family and himself still lingers till date.

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<sup>139</sup>Okeshola, F. B. 2013. Human rights abuse by Nigerian Police in four selected States and the Federal Capital Territory, Abuja. *British Journal of Arts and Social Sciences*13.2:242-250 at 244.

False confessions frown dirt on the integrity of the criminal justice system. It result in the infliction of unnecessary harm of injustice, pre-trial denial of liberty/incarceration, the cost implication of defending their innocence and obvious damage it poses to their career and reputation and the negative effects it has on their loved ones.<sup>140</sup> When confessions are involuntarily obtained, there is an grave danger that the defendant had falsely implicated himself.<sup>141</sup>

False confessions likely lead to denial of liberty and conviction of innocent persons. The court attaches much weight to statements that it out weigh other evidence that could establish the innocence of a defendant. The courts have often held in plethora of cases that confessional statement is the most credible evidence to ground conviction.<sup>142</sup> The utility of confessional statements in criminal trials, especially the ones prosecuted by the police, cannot be over emphasized. In fact, there is hardly any criminal trial prosecuted by the police Nigeria without their reliance on confessional statements extracted from the defendant. Most times, the requirement of the law is not complied with.

In Nigeria, there are several legal safeguards and procedure for obtaining admissible confessional statements. Prominent among them is the provision of the constitution which proscribes torture and other kinds of inhuman or humiliating treatment. This is contained in Section 34(1) of the Constitution which guarantees the right of everyone to the respect towards the dignity of his status as a human being and by that fact, must not be put in danger of torture, inhuman or demeaning treatment. Article 17(2) (b) African Charter on Human Right supports the position that human dignity must be maintained and enhanced.

The court is obliged under S. 29 (2) (a) Evidence Act, 2011 not to admit any evidence obtained by oppression of the person who made it. Under sub section 5, ‘oppression’ is defined to encompass torture, inhuman or degrading treatment, and act and threat of violence irrespective of it amounts to torture.

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<sup>140</sup>Leo, R. A. and Ofshe, J. R. 1998. The consequences of false confessions: Deprivation of liberty and miscarriage of justice in the age of psychological interrogation. *The Journal of Criminal Law & Criminology* 88.2: 494.

<sup>141</sup>Ibraheem, O. T. 2013.The relevance of confessions in criminal proceedings. *International Journal of Humanities and Social Science* 3.21:(Special Issue – December)291-300 at 291.

<sup>142</sup>See the case of Ajayi v. State, (2014) All FWLR (Pt. 756) p. 418 where the court stated that: “there cannot be evidence that is stronger than an accused own direct, positive and equivocal confessional statement, which alone is sufficient to ground conviction”.



The King's Bench of England judges developed certain requirements for obtaining confessional statements for suspects in police custody. These are later to be known as Judges' Rules of 1964. They are administrative rules not rules of law.<sup>143</sup> Part of the requirement of the judges' rule is that a suspect must be brought before a superior police officer in obtaining a confessional statement. The suspect must also be cautioned by the police or any law enforcement agent interrogating him that he is at liberty to remain silent as the evidence may be put to used against him during trial. After the caution, if the suspect still wishes to make statement, the officer is expected to keep a record of the period when and place where the statement commenced and came to an end, including the identity of the persons physically present. In the case of *R. v. Ugwuora*,<sup>144</sup> the court stated that the judges' rules are to be followed as far as possible and practicable in Nigeria. Confessional statements obtained contrary to the Judges' Rules are admissible provided it is voluntarily made,<sup>145</sup> but can affect the weight to be attached to such statements by the trial judge.

In order to curtail the incidence of obtaining confessional statement by oppression, the procedure in Lagos is that the police officer is expected to make a video recording of the making and taking of a confessional statement and copies thereof may be produced at the trial of the maker. Where there is no video facility, the confessional statement must be in writing and must be made in the presence of a legal practitioner of the maker's choice.<sup>146</sup> Sadly enough, the courts have not been helpful in insisting and upholding this requirement of the law. Various decisions abound to the effect that noncompliance to this requirement of law is not grave to the admissibility of a confessional statement.

Leo contended that the damage occasioned by false confessions can be alleviated if the police were mandated to make video or audio recording of the entire interrogation.<sup>147</sup> In *Owhoruke v. C.O.P.*<sup>148</sup> the Supreme Court earnestly endorsed the practice of obtaining confessional statements from suspects only when their counsel or a legal practitioner is around. Failure to comply with this practice, the court is enjoined to consider the weight to attach to such confessional statements. This is a welcomed development. At least this would prevent the use

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<sup>143</sup>Aguda, T. A. 1999. *Law of evidence*. 4<sup>th</sup> ed. Ibadan: Spectrum Law Publishing. 55.

<sup>144</sup>(1943) 9 WACA 73.

<sup>145</sup>See, *R. v. Umo & Ors*, (1944) 10 WACA 254; Osamor, B. 2010. *Criminal procedure laws and litigation practices*. 2<sup>nd</sup> ed. Manchester: Dee-Sage Books + Prints. 101.

<sup>146</sup>See, S. 9 (3) ACJL Lagos State 2012.

<sup>147</sup>Leo, R. A. and Ofshe, J. R. 1998. *Op. cit.*

<sup>148</sup>7 SCM 242 p 255

of torture to extract confessional statements from suspects. But up till now, the police hardly abide by this recommendation. How many defence lawyers have been invited before their client is interrogated? And the courts are not helping in this situation as well, if they have been rejecting confessional statements obtained in the absence of counsel, the police would have taken the recommendation seriously and wrongful conviction of an innocent person would have been reduced.

Even on occasion where these rules are purportedly applied, law enforcement agents have a way of by-passing these safeguards. The threat or any other acts of oppression that would otherwise make the confession inadmissible would be carried out before switching on the video or audio recorder. The experience of Agaba, a learned author and legal practitioner is instructive in this regard. His client was detained in police custody for allegedly obtaining money from someone for the sale of a car but sold the car to someone else. When the lawyer visited the police station, the following conversation ensued:

**DPO:** Please tell your lawyer your confession.

**Lawyer:** Please tell me your story from the moment you came in contact with Mr. DEF up to the point you were arrested yesterday.

**Client:** (Looking with efforts at the overhead ceiling fan without blades)

**Lawyer:** Mr. XYZ, please talk to me. I am your lawyer.

**Client:** (Says nothing, intermittently looking at the overhead ceiling fan and then to the DPO).

**DPO:** Lawyer that is how dangerous some of these criminals can be. Well, let me ask him some questions. Perhaps his answer may assist you.

**Lawyer:** (Getting a bit frustrated) ok.

**DPO:** Mr. XYZ, did you collect any amount from Mr. DEF?

**Client:** (Looking at the ceiling) yes.

**DPO:** Did you promise to sell a car to him?

**Client:** (Looking from the DPO to the ceiling) yes.

**DPO:** Did you supply him the car?

**Client:** (Looking down now) No, but...

**DPO:** (Looking at the client and then at the ceiling) My friend, will you answer straight?

**Lawyer:** No, but what? Complete your statement

**Client:** No, I did not supply the car.

**DPO:** Where is the car?

**Client:** I have sold it because he...

**DPO:** That is all. You have sold it. Where is the money?

**Client:** I will get it when I leave here.

**DPO:** Lawyer, I think you can see. (turning to the IPO) Sgt, bring the form for statement for him, let him make his confession.

The lawyer later interviewed the client privately. The client informed him of the real fact of what happened.

**Lawyer:** But why did you admit before the DPO that you collected money and did not supply the car?

**Client:** Lawyer, did you see that ceiling fan in the DPO's office? I was hung there for over two hours and I was tormented. The experience was so horrible I would prefer to pay for the car twice than experience the horror again.<sup>149</sup>

Where a defendant challenges the admissibility of a confessional statement on grounds that it was not made voluntary, the prosecution is required to prove that the confession was obtained

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<sup>149</sup>Agaba, J. A. 2015. *Practical approach to criminal litigation in Nigeria*. 3<sup>rd</sup> ed. Abuja: Bloom Legal Temple. 52-54.

voluntarily before its admissibility by the court.<sup>150</sup> On its own accord, the court may require that the prosecution proves that in obtaining the confessional statement, nothing was said or done to make the confession inadmissible.<sup>151</sup> This is normally done in a proceeding that is referred to as trial within trial.<sup>152</sup>

A suspect may, in the quest to avoid the torture and pain from an interrogator, confess to the commission of the crime; hoping that he would have the opportunity to explain himself when brought before a judge. This is usually risky because the law is that: where the defendant denies ever making the statement or retracts a confessional statement, the court is required to admit the statement without going into trial within trial.<sup>153</sup> But the Court would consider the weight to be attached to such a confessional statement. In *Mohammed v. The State*,<sup>154</sup> the court emphasised on the need for the trial judge to look for corroborative evidence before acting on the statement.

Pursuant to S. 274 of 1999 Constitution (as amended), S. 116 (1) Kano State High Court Law and S. 37 (1) f, g, and (2) Criminal Procedure Code, the Chief Judge of Kano State made Practice Direction (No. 3) dated 20<sup>th</sup> July, 2009. The Direction purportedly abolished trial within trial in the state. Accordingly, where the voluntariness of a confessional statement is in issue, it is to be admitted, although the court will have to determine the weight to be placed to the statement<sup>155</sup> However, in determining the weight to be placed on the confessional statement the court must satisfy itself of certain questions. These are:

1. Is there any evidence without the confession to ascertain its truth?
2. Is the statement corroborated?
3. Are the vital statements in fact true if they are subjected to some form of truth test?

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<sup>150</sup>S. 29 (3) Evidence Act. See, *Okanlawon v. State*, (2015) 9 SCM 159, p. 184 where the Court held that for confessional statement of an accused person in a criminal case to be admissible in evidence it must be positive, direct, and unequivocal such that where there is any discrepancy in such evidence, trial within trial ought to be conducted to ascertain its authenticity.

<sup>151</sup>S. 29 (4) Evidence Act

<sup>152</sup> See, *Mohammed v. The State*, [2007] 13 NWLR (Pt. 1050) 186.

<sup>153</sup>Naughton, M. 2007. *The innocent and the criminal justice system: A sociological analysis of miscarriages of justice*. Palgrave: Macmillan Books. 72

<sup>154</sup>*Ibid.*

<sup>155</sup>Oniekoro, F. J. 2012. *Practice Notes and Guides on Litigation (Civil and Criminal Trials)*. 3<sup>rd</sup> ed. Enugu: Chenglo Ltd. 613.

4. Was the the defendant in a position of time and chance to commit the offence?
5. Is there a possibility in the confession?
6. Is the confession compatible with other prevailing and established facts?<sup>156</sup>

Trial within trial is a rule of evidence statutorily provided for in the Evidence Act. Evidential matters fall within item 23 of the Exclusive Legislative List of the Constitution; hence it is only the National Assembly can exercise legislative competence on such matters. The powers of the Chief Judge of a State or even Chief Justice of the Federation is limited to making procedural rules to enhance Court proceedings and not to limit or contradict any statutory procedure in force especially those not within the powers of the Chief Judge to make. What is more? A Practice Direction is by far inferior to an enactment of the National Assembly in the hierarchy of laws. Hence, this Practice Direction (No. 3) must bow to the Evidence Act; more so as it is made *ultra vires*.

### **3.3 Police and Prosecutorial Misconduct**

Some police officers and some prosecutors contributed to erroneous conviction through negligence and misconduct arising in course of their professional duties. The Innocent Project in US reported in 2010 that in 65 of the first DNA exoneration in US, appeals and/or civil law suits 18 percent of the cases alleged prosecutorial misconduct. The Courts either overturned the conviction or ruled the misconduct harmful. They knowingly use unreliable informants, coercing witnesses, utilizing questionable forensic science or scientists, withholding vital information or failure to timely deliver the information to the defence, accepting coerced confessions, purposely misleading the court and other unethical behaviors just to secure conviction by all means. They ignore the ethical boundaries because they are rarely held accountable for their misdeeds. Lack of sanction to discourage prosecutorial misconduct and public encouragement on prosecutors to be tough on crime contributes to this.

There is indication of malpractice by the prosecutor in course of preparing for the trial apart from the misconduct that takes place at the beginning of the investigation. In certain cases, highly placed persons take action to ensure that a defendant is found guilty regardless of insufficient evidence or where there is a clear proof of innocence. Many innocent persons have

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<sup>156</sup> Mbang v. The State, 2012 Vol. 6-7 Pt. IV MJSC 119; Galadima v. The State, 2012 Vol. 12 MJSC Pt. III 190

been wrongly accused and falsely incarcerated for decades. Some persons are on death row for years because of police and prosecution misconduct. This author has witnessed in court where a Prosecutor informed the Court that she has been directed from the office that she must oppose and make sure all bail applications in cases she is handling does not succeed. That means the prosecution is bereft of the authority and ability to evaluate cases and act accordingly in deserving circumstances

Preventing wrongful conviction requires an understanding of the institutional procedures that facilitate misconduct on the part of the prosecution.<sup>157</sup> Such misconducts are often product of institutional conditions such as: uncertainty of ethical rules which creates ambiguous direction to prosecutors; confer huge discretionary powers without transparency; and provides very little recompense for acts of prosecutorial misconduct.<sup>158</sup> In view of this, we shall now examine the institutions and personnel responsible for criminal prosecution in Nigeria.

### **3.4 The Ministry of Justice**

There is a Ministry of Justice for the Federal Government and the governments of the constituent States of the federation which are the main actors in the fore of public prosecution of criminal cases in Nigeria. The law officers in the Department of Public Prosecution (DPP) of the Federal and States government are in charge of prosecuting criminal cases under the supervision of the Chief Prosecutors of the States or Federation- the Attorneys General of a State and Federation, respectively. The Attorneys General reserves the power to begin, direct, take over, or stop any criminal proceeding against any person in any court in the country with the exception of a Court Martial. The Attorney General derives his power and appointment from the provisions of the 1999 Constitution.

Section 150 (1) (2) of the Constitution creates the position of the Attorney general and Minister of justice for the federation. The qualification for such appointment is that the person must have been called to the Nigerian Bar to practice as a lawyer for least a ten years. The Attorney General of Federal and that of states derive their powers from the provisions of

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<sup>157</sup>Prosecutorial Misconduct: Problems and Perspectives. Retrieved on May 15, 2009 from [http://www.amicus.iupindia.org/Crls\\_ProsecutorialMisconduct\\_oww.asp](http://www.amicus.iupindia.org/Crls_ProsecutorialMisconduct_oww.asp)

<sup>158</sup>Ibid.

Sections 174(1) and 211 of 1999 Constitution respectively. Section 174(1)<sup>159</sup> provides that the powers of the Attorney-General of the Federation includes-

(a) commencing and prosecute criminal actions against any one in any court in Nigeria in view of crimes contained in provisions of any federal enactment. Court in this context does not include court-martial which is meant to try service men of the armed forces;

(b) to assume and continue criminal actions instituted by another person or authority; and

(c) to bring any criminal actions to an end anytime before final decision is entered by the judge whether the action was commenced and prosecuted by him or any other person or authority.<sup>160</sup>

Section 174(2) provides to the effect that the powers granted to the Attorney-General under subsection (1) may be performed by himself or any of the officers in the Ministry of Justice. Subsection 174(3) requires the Federal Attorney-General to perform his powers and authorities under this section, having due concern to the interest of the public, justice and the necessity to avoid the abuse of legal process.<sup>161</sup> Section 211 of the Constitution applicable to Attorneys General of States is *impari materia* with S. 174 *mutatis mutandi*.

The Attorney General enjoys the cooperation and assistance of the Director of Public Prosecution and other counsel in the Ministry (law officers) who derive their authority from the Attorney General of that State or Federation, in suitable circumstances. They are obliged to discharge their duties responsibly with due respect for public interest, interest of justice on a broad basis as well as the need to avert misuse of Court process. They need to be duly and appropriately equipped as well as positioned particularly in terms of remuneration in order to effectively discharge their duties. The problem encountered in the ministry across the country is always with poor salary of staff, inadequate training levels, lack of essential working materials etc. This could be responsible for the inability of the ministries to attract competent

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<sup>159</sup>Ibid

<sup>160</sup>This power can only be exercised at the trial court or on instances where it is the state that instituted the appeal process against the decision of the trial court. It is submitted that, where the defendant has a cross appeal or any claim before the appellate court, this power cannot be exercised by the Attorney General as it would amount to an infringement of the constitutional right of the accused person to defend himself or appeal any judgment entered against him. This provision of the Constitution cannot be interpreted otherwise as it does not contemplate the Attorney General's exercise of this power in violation of the constitution or judicial process.

<sup>161</sup>In *State v. Ilori*, (1983) 1 SCNLR 94, the Court held that the powers of the Attorney General are only be subjected to public opinion or legislative enactments as the need to have 'regard to public interest, interest of justice, and prevention of abuse of legal process' are non-justiciable requirements of the law which is only declaratory and not mandatory.

lawyers due to poor remuneration and lack of other incentives to encourage staff. Their welfare has often, regrettably, been given scanty attention. The reluctance of Nigeria to adopt innovation and global best practices is another issue. Law officers are still doing things manually instead of equipping them with modern technological facilities and modern information gadgets assets to work with.

The ministry is really underfunded; sometimes lawyers in the ministry are absent from court because of lack of transportation. No good vehicle are provided to convey them to court and it is not possible for them to transport themselves to court from their little salary which is not even regular.<sup>162</sup> The LO1, during the interview conducted with him by the researcher, identified some prosecutorial misconduct that leads to erroneous sentence of an innocent person. Also the four Magistrates, Mag 1 to 4 also shared similar view with the LO1. They are all of the view that law officers do not influence cases because cases in court are determined by evidence; though such evidence might have been manipulated or tampered with, thereby resulting in wrongful conviction of innocent persons.

It is the responsibility of the prosecutor to seek the truth in view of the credibility afforded the prosecutor as the state's lawyer. In spite of our systems professed commitment to consider person's innocent until proven guilty, many presume that the state would not bring an action against a person without strong cause. This places a moral obligation on the prosecutor not to permit competitiveness or strong belief in the guilty of the suspect to prompt improper coverage of this public trust or any compromise in fair presentation of the evidence.

People believe that much of the responsibility to ensue the accuracy of the criminal justice system rightfully rests with prosecutors. They are equipped with law degrees, they are expected to make the first critical decision of whether or not evidence in a case they are prosecuting supports a criminal charge and avoid tunnel vision, which is the inclination to concentrate on a particular suspect or crime theory without considering other alternatives. A quick jump to conclusion has often contributed to wrongful convictions.<sup>163</sup> Most times, cases are often referred to the Director of Public Prosecution to give legal advice whether to charge

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<sup>162</sup>Ayeni O. 2017. Thoughts on effective justice delivery for the common benefit of society in Ogun State. Paper Presentation at the 2017/2018 Ogun State Judges Conference held on 26<sup>th</sup> September, 2017.

<sup>163</sup>Petro, J. and Petro, N. 2013. The prosecutors and wrongful convictions, misplaced priorities, misconduct, immunity and remedies. *Wrongful Convictions and Miscarriage of Justice: Causes and Remedies in North American and European Criminal Justice*. Eds. H. Ronald and K. Martin. Routledge Publishing Inc.



or not to recommend any charge and what criminal charge should be issued against a suspect. With the proper evaluation of the available evidence and issuing of the right advice, incidence of prosecuting and convicting innocent persons would be reduced. The advice should also come timeously to avoid persons awaiting trial for a very long time which more or less is a conviction in disguise.

Public pressures at times drive prosecutors to solve cases quickly by the press. High publicity given to cases by the press also contributes to wrongful conviction. These human tendencies frequently demonstrated in wrongful convictions are worthy of concern especially with police officers who are focused on investigating details and building a case. The prosecutors are to make tough decision of whether or not to pursue a conviction. We believe that the prosecutor's responsibility includes standing back and providing a fresh set of eyes on the collated evidence. They must be influenced by some human tendencies to rush to judgment; to have tunnel vision and to place a higher value on evidence that support their crime theory.<sup>164</sup> The prosecutor must make an independent evaluation of the reliability of each piece of evidence; insist upon more evidence in a case they observed to be weak and rationally question any inconsistencies with the crime theory as a law officer to avoid wrongful conviction of an innocent person. For example, police officers might rush to identify the suspect in a crime within few hours of the crime and focus their efforts on building a case for prosecuting that suspect through officer who do not even have legal training as prosecutors. It is the responsibility of that prosecutor to make independent valuation of such cases to avoid miscarriage of justice. The prosecutors should not lose sight to seek the truth at all times. The US Supreme Court has made this clear in *Berger v. United States*.<sup>165</sup>

This problem is compounded in a system that evaluates the success of a prosecutor from the number of convictions obtained. For instance, due to the prevalence of dishonesty in Nigeria and the commitment of the management to eradicate it from the system, the Economic and Financial Crimes Commission (EFCC), the commission primarily saddled with this responsibility, is under intense government and public pressure to achieve high profile convictions. Notwithstanding, criminal trials must be viewed by prosecutors as a process of three way traffic to attainment of justice<sup>166</sup> as viewed by the legendary Justice Oputa, in the

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<sup>164</sup>Ibid.

<sup>165</sup>*Berger v United States*, 295 US.

<sup>166</sup>Justice for the defendant, the state and the victim of the crime.

case of *Josiah v. The State*.<sup>167</sup> In stipulating the duties of a prosecutor in criminal cases, Olatubosun<sup>168</sup> stated that the state counsel has a duty to see to it that every facts which backings the prosecution's case or ruins the defence of the defendant. He however, added a caveat that this duty must be pursued relentlessly but with scrupulous honesty. Prosecutors must be persons who must be willing to tender evidence and make same available to the defence even though it is favourable to the defendant provided it is the truth. "The business of legal officer for the state is justly and fairly to exhibit all evidences before the trial court as the state has no special interest in convicting a suspect at all cost, but to know the actual perpetrator and do justice".<sup>169</sup>

However, where grounding conviction at all cost is the measurement of success for the prosecutors and the system, prosecutorial misconduct would persist and wrongful conviction and injustice is the natural consequence. The highest level of professionalism and ethical standards and a commitment to the overall goal of seeking the truth must be constantly reinforced in the culture of every prosecutor's office. Wrongful conviction should be considered a 'never event' and prosecutors or prosecutorial offices responsible for further wrongful convictions should be the subject of serious scrutiny.<sup>170</sup>

The legal profession must lift the professional standards of lawyers including legal officers by applying meaningful sanctions for violation of legal requirements, standards and ethical expectations. The Bar Association both at branch and National levels must undertake stronger action to restore public confidence in the integrity of all lawyers particularly those who represent the state to bring sanity to the legal profession. It appears that the Legal Practitioners Disciplinary Committee is only concerned with unethical conducts of private practitioners. They should also beam their searchlight on members of the official bar bar and bring appropriate sanctions where any is found wanting.

The underfunding of the ministry of justice encourages corruption among the legal officers. Their remuneration must be substantial; but if the government can provide the necessary machineries for personnel, vehicles for mobility and enough materials to work with as was

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<sup>167</sup>(1985) 1 NWLR (Pt. 11) 125 at 141

<sup>168</sup> Olatubosun, A. 2007. Administration of criminal justice in Nigeria: Prospects and pitfalls. *Current Issues in Nigerian Jurisprudence: Essays in Honour of Chief Adegboyega Solomon Awomolo*, SAN. 205-241 at 213.

<sup>169</sup> *Emenegor v. The State*, (2010) All FWLR (Pt. 511) p. 931.

<sup>170</sup> *Ibid*

recommended by the AG and the Director of Public Prosecution, Ogun State Ministry of Justice, , this will definitely curb and reduce the misconduct of the prosecutors.

### **3.5 THE POLICE**

The Police are the major key actors in the administration of Nigeria criminal justice system. Most times, they are the first authority a criminal suspect comes in contact with. They have powers to arrest, investigate, search, prosecute etc. With all these powers whether or not the accused person will get required justice rest on on how the police go about their lawful duties.<sup>171</sup> The Police is a division of armed forces created to ensure the observation of law and order and charged with the preservation of public order and safety.

The Nigeria Police Force was created in 1930 with its headquarters in Lagos. It functions under the broad operational and administrative charge of an Inspector General of Police who is an appointee of the President. The Inspector General of Police is the chief police officer responsible to enforce law and order, ensure public safety and attain public good. Nigeria operates a federal policing system.<sup>172</sup> In other words, there is one central police command throughout the federation. The existence and establishment of the Nigeria police is constitutional. The 1999 Constitution makes provision for the establishment of the Nigeria Police Force and the appointment of the Inspector General of Police by virtue of Sections 214 (1) (2), 215 (1) (2) of 1999 Constitution and 3 of the Police Act.

Section 214 1999 Constitution establishes the police force for the federation, known as The Nigeria Force, without which another police force can be created either for the the federation or any constituent part of the federation. Accordingly, organisation and management of the police shall be in accordance with the Constitution and any enactment of the National Assembly. Members of the Police must also exercise their powers in conformity and within the bounds of the law. Pursuant to the enactment of the National Assembly units of the Nigeria

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<sup>171</sup>Babalola, A. Power of police to prosecute criminal cases: Nigeria and international perspectives. *European Journal of Business and Social Science* 2.11: 127 -138 at 127.

<sup>172</sup>Police is contained in Item 45 of the Exclusive Legislative List in Part 1 of the 2<sup>nd</sup> Schedule of the Constitution. This means that only the federal legislative assembly has legislative competence to legislate on Police and matters connected therewith

Police Force may be drafted to form a combined squad with any of the armed forces to provide surveillance and defence of railways, waterways, harbours and air fields. Section 215 (1) of the Constitution creates the office of Inspector-General of Police who is to be appointed from serving officer of the force by the President in consultation with the Nigeria Police Council. In turn, the Police Service Commission appoint Commissioners of Police to lead the police command of each state. According to Section 215(2) the Nigeria Police Force is under the command of the Inspector-General of Police while the Commissioners of Police exercise commanding authorities of the various state commands albeit, subject to the overall supervision and command of the Inspector-General of Police.

Also the Police Act, which is the main law that deals with management, discipline, powers and responsibilities of the police, special constabularies and the traffic officers, provides in Section 3 of the Police Act in line with provisions of section 214 (1) of 1999 Constitution, reckons with the creation of the Nigeria Police. This is contained in Section 3 of the Act. From the above cited constitutional provisions, as observed by Afe Babalola,<sup>173</sup> it is conclusive that the police derive their existence and back up from the Nigerian Constitution regarded as the highest ranking law in Nigeria.

### **3.5.1 Powers and Duties of the Nigeria Police**

The general duties of the Nigeria police could be found in Section 4 Police Act. The said provision categorises these duties into the following:

- a. Crime investigation and prevention;
- b. Arrest of offenders;
- c. Sustainance of law and order;
- d. Security of lives and property;
- e. Giving effect to legislations and regulations under their charge
- f. Performance of municipal and international military duties as shall be required of them.

The Police are also conferred with authority to stop the commission of an offence, arrest of offenders, investigation of cases generally and carry out prosecution of crimes. In the course of security preservation, the police have authority to effect arrest, detain suspects, conduct search on persons and property, discover and prosecute cases in the law court especially in the lower

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<sup>173</sup>Babalola, A. A. 2017. Powers, achievement and failing of the Nigeria Police: Need for urgent attention. *Vanguard*. July 26, 2017.

courts like Magistrate Court. The power to prosecute criminal cases is conferred on the police by Section 23 Police Act. Based on this provision, a police officer is empowered to personally prosecute criminal cases in any court in Nigeria. It does not matter if the information is endorsed by the prosecuting officer or otherwise. However, this power is subject to the powers conferred on the AG in Sections 174 and 211 1999 Constitution. When the police are satisfied that a prima facie case has been made out against a suspect or based on their investigation sufficient evidence have been gathered, they may proceed to charge the suspect to court. Most cases prosecuted by the police are done in the courts of non-record. Most police prosecutors are lay prosecutors without training as lawyers. The summary trial procedure of these courts require less formal and less technical arguments hence the ability of the lay prosecutors to cope with the procedures of court.

The Court of Appeal, in *Olusemo v. Commissioner of Police*,<sup>174</sup> interpreted Section 23 Police Act to the effect that a police officer can prosecute criminal cases in superior courts of record provided that the officer is qualified to practice law as a legal practitioner. The Supreme Court, in *FRN v. Osahon*<sup>175</sup> laid to rest the controversy of whether the police is limited to prosecution of criminal offence in Magistrate Court and other inferior courts. The court held that by virtue of the combined provisions of Section 23 Police Act, Section 56(1) Federal High Court Act and Section 174(1) 1999 Constitution, a police officer can prosecute criminal cases in any court in Nigeria, even up to the Supreme Court, irrespective of whether such officer is a legal practitioner or not. This decision in *Osahon's case* now gives police officers unlimited right to prosecute in any court in Nigeria. The decision in *Osahon's case* further implies that the Attorney General does not have the exclusive right to prosecute criminal cases in Nigeria.

Another important legal question is the effect of the provisions of the ACJA 2015 on the *Osahon case*. Some persons are of the opinion that Section 106 of ACJA amounts to a legislative repeal of the court's decision in *Osahon's case* above. Further, it has been stated that the decision to relieve the police of their prosecutorial powers is a welcome development on the grounds of their gross incompetence and corrupt practices in prosecuting criminal cases.<sup>176</sup>

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<sup>174</sup>(1998) 11 NWLR (Pt. 575) 574

<sup>175</sup>(2006) 5 NWLR (Pt. 973)361 or (2006) 24 WRN 1 at p. 18-19. See also, *Tawakalitu v. FRN*, (2011) 9 WRN.

<sup>176</sup>Christian in the Educational Resources Providers. 2016. 7 thoughts on the power of the police to prosecute cases in the light of Section 106 of ACJA 2015. Reported on September 7, 2016.

It is submitted that this do not reflect the correct position of the law. It appears that the Supreme Court's decision in the *Osahon's Case* must have been misconceived by these persons hence the arrival at such conclusion. In resolving this controversy, it is pertinent to reproduce Section 106 ACJA 2015

Subject to the provisions of the Constitution, relating to the powers of prosecution by the Attorney General of the Federation, prosecution of all offences in any court shall be undertaken by:

- (a) The Attorney General of the Federation or a Law Officer in his Ministry or Department;
- (b) A legal practitioner authorized by the Attorney-General of the federation; or
- (c) A legal practitioner authorized to prosecute by this Act or any Act of the National Assembly.

Section 106 is not to be interpreted as depriving the police of its prosecutorial powers under the Police Act, in view of the provision of S. 268 (2) ACJA 2015 which provides that: "where proceedings in respect of an offence are instituted by a police officer, it shall be in the name of the Commissioner of Police or Inspector-General of Police as the case may be". This clearly suggests the law makers' recognition and intention of still retaining the prosecutorial powers of the police. Moreover, S. 268 is a later provision. By the principle of statute interpretation, where there is a conflict or contradiction between a later and former provision of a statute, the later provision shall prevail over the former.

In any case, it is to be observed that the said Section 106 is a subordinate provision to Section 174 of the Constitution which deals with the powers of the AG to prosecute offences. It is also to be noted that the *Osahon Case* deals basically with the interpretation of S. 174 of the Constitution. Thus, in arriving at its decision, the Supreme Court anchored its reasoning on the phrase, "any such criminal proceedings that may have been instituted by any other authority or person" contained in Section 174 (1) b. and c. Accordingly, the Supreme Court argued that in view of the said phrase it must have been the intendment of the constitution drafters that other than the AG, persons or authority, including the Police, can institute criminal action in Nigeria. The only edge the Attorney General has is that he can take over, continue or discontinue any such proceeding.

In view of this, Section 106 ACJA cannot be said to set aside the Osahon case as the case itself is an interpretation of S. 174 of the Constitution. Saying so would amount to saying that the Constitution can be repealed by the Act. Unfortunately, that is not the case as the said Section 106 has subjected itself to the Constitution. Going otherwise would be suicidal as it would amount to running foul with Section 1 (3) of the Constitution and void as a result. Section 106 can only be interpreted to have supplemented S. 174 of the Constitution and in that regard it does not and has not affected the decision of the Supreme Court in Osahon's case, we submit.

However, it is still desirable that persons prosecuting criminal cases in any court be legal practitioners. It is still a serious cause of concern that many police prosecutors are not lawyers. The pertinent question here is whether the Police Force has enough officers who are legal practitioners to prosecute cases in the Nigeria court? PO4 during the interview conducted with him by the researcher stated that: the police force has more than enough lawyers within the force to prosecute case in courts in Nigeria but they prefer to occupy other offices either as DPOs or head other juicy police department with favourable disposition of power and other fringe benefits. They also use their influence to get posted to where they want. He further stated that the only innovation now is that before any matter goes to court from the headquarters, the police legal department has to go through the case file and make a recommendation if the evidence gathered so far can sustain the charge in court. Another officer PO5 was of the view that due to poor funding of the police force the police cannot afford to use qualified lawyers to prosecute in the magistrate court but would rather prefer to use more experienced and well trained officers to prosecute for the force in the magistrate courts.

The Nigeria Police force has come under heavy criticism from members of the public for its reactive approach and inability to effectively fight crime and make the society safe for people to live in. People have been criticising the Nigeria police for its unprofessionalism, corruption ineffectiveness, negligent of duty and lack of co-operation with members of the public.<sup>177</sup> EX2 is of the opinion that the police engage in certain activities that might support potentially erroneous cases constructed against innocent individual such as manipulating interview content through what is termed "tunnel vision phenomenon". This is when the law enforcement officers form an opinion and come to an irresistible conclusion that it is less

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<sup>177</sup>Ibid

likely to reach a different information and setups that contradict their conclusion. The officers' emphasis on accused person and hammer on the evidence that built a case to ground conviction thereby ignoring or concealing other evidence which may be in line to establish the innocence of the defendant just in order to secure conviction by all means, which might be due to the fact that such an officer believe that the quantity of conviction he/she secures aid his/her promotion.

Another problem with the police is in the area of manipulation of witness or changing of witness or suspect statement to secure conviction. People arrested and taken to the station might be detained under the pretence that they are still conducting investigation or there is need to search the suspect's house. Suspects are sometimes detained on the ground that other persons of interest are at large.<sup>178</sup> They may even twist the facts of the case such that the complainant becomes the suspect or accused<sup>179</sup> while the real offender freely roams about out there continuing in his criminal activities.<sup>180</sup>

The extra judicial killing is another form of misconduct by the police against ordinary citizen. They commit torture, extortion with relative impunity and commit extra judicial killing.<sup>181</sup> Police officers sometime effect summary execution of accused or suspected persons; heavy reliance is place on torture as an investigative tool. Lacking the capacity to conduct proper investigation, police relies on torture to extract confessions. They, at times, overlook evidence which could have avoided a situation that would lead to wrongful conviction in the first instance; make use of incorrect evidence or concealment of real evidence or falsification of the

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<sup>178</sup> This had been the regular practice of the Police. For instance, a mother could be arrested and asked to reproduce her wanted son suspected of committing an offence. Otherwise, the arrest of the mother could compel the wanted son to surrender himself to the Police for investigation and prosecution. However, S. 4 ACJL Lagos State and S. 7 ACJA 2015 have abolished this crude method of police investigation. Ocheme criticised this legislative innovation by recognising the stumbling block which the statute may pose to the criminal investigative duties of the police as family members would be more justified in harbouring their family members who are given to criminal activities. See, Ocheme, P. 2011. The Lagos Administration of Criminal Justice Law (ACJL) 2007: Legislative rascality or a legal menu for access to justice? *NIALS Journal on Criminal Law and Justice* 1.131-149, 144. This criticism is to be rejected *in toto* on the grounds that there are more intelligent ways of investigating and effectively executing the arrest of a suspect without infringing on the rights of another. Besides such practice is unconstitutional and *ultra vires* the powers of arrest granted to the police by the constitution and any other law in force. S. 35(1) c. protects a person right to personal liberty and such may be deprived of that person by the police "upon reasonable suspicion of his having committed a criminal offence".

<sup>179</sup> See for instance, *Baruwa v. The State*, (1996) 4 NWLR (Pt. 390) 467 where the defendant went to the Police to report that he found a corpse around his compound. He was charged and convicted for murder. The Defendant was lucky to have the Supreme Court upturn the conviction after he has spent over 12 years in prison.

<sup>180</sup> Babalola A. A. Power, *op. cit.*

<sup>181</sup> Alemika, E. E. O. and Chukwuma, I. C. Analysis of Police and Policing in Nigeria. Retrieved on October 27<sup>th</sup>, 2017 from: <http://www.cleen.org/policing.%20driver%20of%20change.pdf>



relevant evidence. Coaching of witness is also common among the police which increase the chances of error that leads to convictions of an innocent individual. Witnesses are coached on what to say in court to secure conviction by all means. They carry out poor investigation and rush cases to court. There are allegations that some suspects are arraigned in court before looking for evidence to support the charges against them.<sup>182</sup>

The Nigeria police are expected by the society to be effective and efficient in the performance of their duties as an institution established to maintain law and order under the constitution. But as explained above, they have performed below expectation due to some factors. We shall now examine these factors mutilating against effective justice delivery by the police.

Under funding: Individuals and the society have high expectations from the police mostly with regards to crime prevention, safeguard of lives and property and prosecution of offenders in the law courts. But the police are underfunded; they are not well equipped for effective discharged of their legal duties.<sup>183</sup> The police still use out of date equipments, lack properly trained personnel and modern investigative equipment to facilitate credible and successful investigation. There is a lack of modern communication devices and relevant technological gadgets to police the society in response to the rise in the population and crime sophistication in relation to cybercrime, kidnapping, terrorism, financial crime, banking fraud and cross border crimes.<sup>184</sup> There is lack of training as to the use of modern investigative equipment to facilitate investigation to meet modern crime detection techniques.

Investigative Police Officers (IPO) have often complained that lack of fund as a reason for slow and delayed investigation of crimes. The bulk is often shifted to the complainant to fund investigation else the IPO stands the chance of bearing the cost himself.<sup>185</sup>. Where the complainant is the one that pays the piper, it is almost certain that the complainant will also detect the tune of investigation and prosecution. This could spell hardship and doom for the suspect.

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<sup>182</sup>Open Society Institute and the Network on Police Reform in Nigeria. 2010. Criminal forces, torture, abuse and extra judicial killings by the Nigeria Police Force. p.

<sup>183</sup>Ojomo and Okagbue 1991. Human rights and the administration of criminal justice in Nigeria. *Nigeria Institute of Advanced Legal Studies- Research Series 1*.

<sup>184</sup>Iliyasu, A. 2017. Effective justice delivery. Being a Paper presented at the 2017/2018 Ogun State Judges Conference.

<sup>185</sup>Ogunwumiju, H. M. 2013. Penal reforms and prison congestion in Nigeria. *Current Legal Issues in Contemporary Nigeria, Essays in Honour of Aare Afe Babalola*. 15-37 at 23

Poor remuneration: The police are complaining of poor salaries and lack of welfare package, motivation and logistics support from the government and this has made the police less effective in their investigative role. Some have been on the same rank for 20 years. Incentive goes a long way to inspire them to work to maximum capacity because a hungry man is an angry man. The poor remuneration has even discouraged experienced professionals like lawyers, doctors, engineers and so on from joining the force.

Corruption: Corruption plays major part in the perversion of justice by the stakeholders. Police corruption is not only about money changing hands. It starts with nepotism, favouritism, bribery, cultural differential attitude, willful perversion of what appears just and right, giving excuses based on social status, age, race and sex. All these erode justice in its purest form. It should be one law for all. It has also been noticed that funds released to the police by the government to secure good machineries are known to have been diverted into private pocket. An example is the Tafa Balogun's case. Also, the real offenders buy their way through by giving bribe to the police and escaping the long arm of justice.<sup>186</sup> The real offenders are allowed to go scot free to continue making life unsafe for the citizens; while the innocent ones who don't have the means to protect their right are arrested, detain for a long period and prosecuted. Some individuals have suffered wrongfully convicted and executed for the offence they knew nothing about. EX1 seriously pointed accusing fingers on lack of proper investigation and the use of force and torture by the police to extract confessional statement as being responsible for his erroneous conviction and incarceration on death row for 13 years.

Unhealthy police/community relationship: This can be seen from lack of co-operation by the members of public as crime reporters, complainants or as compellable witness in a criminal matter. Crime prevention and control and effective justice delivery is the collective responsibility of everyone in the society.<sup>187</sup> The police cannot do it alone. The notable basis of adverse police community relations is corruption which most times is the motive for police hostility to citizens.<sup>188</sup> Hence, Nigerians have developed a negative perspective about the police. Some members of the public have used this to their advantage by using the police as an institution or weapon to get their enemies down. A person may decide to make or frame up some frivolous complaint or allegation against an innocent individual knowing very well that

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<sup>186</sup> Iliyasu, A. *op. cit.*

<sup>187</sup> *Ibid*

<sup>188</sup> Alemika, E. E. O. and Chukwuma, I. C. *op. cit.*

they would hardly investigate the allegation before pouncing on the suspect. This could lead one to years on awaiting trial in police and prison custody.

PO4 during the interview, cited a case of a written petition referred to his office from a member of the public against a pastor and some other persons suspected of being in possession of human bones. After investigation, the suspects were charged to court. They needed sixty thousand Naira, as the costs to enable them subject the said bones to the laboratory for forensic examination. They could not raise the money in time, so they had to push the case to court. The suspects were remanded in custody. When the result from the forensic laboratory was finally obtained, the bones were identified as that of animal not human beings. This is after the suspects had spent months in custody.

### **3.6 Private Prosecution**

Criminal actions are usually viewed as offences against the state, hence the state's prosecution and subsequently conviction of such offenders. However, in Nigeria, private individuals can institute criminal action against a suspect. This view is in line with the provision of Section 174 of 1999 Constitution and the interpretation thereof by the Supreme Court in the Osahon's Case. The various statutes which regulate criminal procedures in Nigeria further have provisions recognizing the right of private persons to prosecute criminal offences.

Under S. 59 of the Criminal Procedure Act (CPA)<sup>189</sup> a person can enter a complaint against an alleged offender provided the complaint for such offences has not been designated to any class or category of persons or authority by any statute. The complainant must, however, fulfill the conditions provided under S. 342 of CPA; which is to the effect that a law officer must make an endorsement that he refuses to prosecute such offence at the public expence. Such complainant must also execute a recognisance in a certain sum and one surety in like sum to be ratified by the registrar. The recognisance is a form of undertaking that such information would be prosecuted to conclusion. By virtue of S. 343, the AG is compelled to either

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<sup>189</sup>It is to be noted that S. 493 ACJA 2015 repealed the CPA and CPC. However, the various states of the federation had localised the repealed laws to be applicable to their various states. For the purpose of convenience, we shall still refer to the repealed laws as their provisions are similar to the localised criminal procedure laws of the various states.

prosecute or endorse private prosecution of the offence. An order of mandamus may be issued against the AG in this regard upon the application in Court of an aggrieved applicant.<sup>190</sup>

S. 383 and 384 ACJA 2015 makes an elaborate provision in this regard. In addition to the provision in CPA, S. 383 limits such private prosecution to legal practitioners only. It gives the court the discretion to fix the required sum of recognisance which is to be deposited by the legal practitioner in the registry. He is further required to undertake to pay necessary cost the Court may order. Also the Attorney General is required to give reasons in writing for declining to give consent for private prosecution within 15 working days.<sup>191</sup> The position of the law in ACJL of Lagos State 2011 is similar to that of the ACJA but fixed the recognisance by such complainant at Ten Thousand Naira. However, unlike the position in ACJA, the complainant need not be a legal practitioner.

In Northern Nigeria where the Criminal Procedure Code is applicable, private prosecution of criminal offence prevails on the authority of S. 143 d. and e. of the Code. The said provision gives the court power to take cognisance of offence, amongst other things, upon the receipt of a complaint or information of fact from a person which is not a police officer upon having a reasonable ground to believe that an offence has been committed. Before taking cognisance of the offence the court is expected to make a preliminary enquiry into the offence by examining the complainant. Based on its findings, the court may either refuse to proceed or order for further investigation of the matter.<sup>192</sup> Upon the Court's satisfaction that relevant facts which compel the court to proceed have been disclosed by the complainant, a summons or warrant may then be issued to command the attendance of the suspect before the court for trial of the alleged offence.<sup>193</sup>

It is laudable and pragmatic to allow private prosecution of offence. It is to be seen as an alternative to public prosecutors' excesses, incompetence and unwarranted inactions. However, there are certain pitfalls which we have to be wary of. There is the danger of abuse and misuse of powers of private prosecution to persecute and witch hunt enemies. In the North for instance, despite the safeguard provided by the CPC in this regard, misuse of this power still prevails. Individuals institute criminal actions against their fellows at their whims and

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<sup>190</sup>See, *Akilu v. Fawehinmi* No.2, (1989) 2 NWLR. (Pt. 102) 122.

<sup>191</sup>Section 384 (2) ACJA, 2015

<sup>192</sup>S. 149 CPC

<sup>193</sup>S. 152 and 154 CPC.

caprices. Once a complaint is filed at the registry, the registrar issues out a summon which is attached to the complaint and served on the defendant. The courts do not ensure the application of the preliminary enquiry to ascertain the veracity of the complaint. In fact, the judges do not get to see the complaint until the defendant is brought before the court for arraignment. Hence, in the north, it is common place to see criminal prosecution of matters which could be clearly categorised as civil claims. This could lead to wrongful conviction.

### **3.7 Incompetent Defence Counsel**

In the study of wrongful convictions, ineffective and incompetent legal assistance of defence counsel have been cited as a tremendous causative factor to wrongful convictions.<sup>194</sup> An accused in a criminal matter is eligible to a representation by himself or through legal practitioners of his choice for his defence.<sup>195</sup> According to Section 395 of the ACJA 2015, it is mandatory that a defendant charged for capital offence must be represented by a legal practitioner. It is even mandatory for the court to provide a lawyer to prepare the defence of such person if he has none. In *Uzodinma v. COP*,<sup>196</sup> the Court held S. 390 CPC which denied the Defendant of representation by a Legal Practitioner in the Area Court to be unconstitutional and void. The conviction was thus set aside. This shows the importance of the defendant's representation by a person learned in law in criminal cases.

The right of a defendant to legal representation is believed to be the greatest safeguard against wrongful conviction.<sup>197</sup> Lawyers as ministers in the temple of justice have important and active roles to play in ensuring there is no breakdown of justice. For the wheel of justice to move smoothly and effectively, defence lawyers must defend the defendants to the best of their professional ability. Some cases of wrongful convictions arise from inefficient practice on the part of defence counsel. This ineptitude could be in the form of fundamental failure to investigate, prepare for, and ultimately defend their clients' case diligently. The devastating effect of ineffective and incompetent representation of a defence counsel could be seen from the US case of *Stinney George*. In that case, a 14-year-old boy who was tried in just 2 hours and 10 minutes of deliberation by jurors, convicted for murder, sentenced to death and was executed immediately. His lawyer, a local politician, was very busy campaigning for a

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<sup>194</sup>Bedau and Radelet, 1987. Miscarriage of justice in potentially capital cases. *40 Stanford Law Review*. 21

<sup>195</sup>S. 36 (6) c. 1999 Constitution (as amended)

<sup>196</sup>1982 (1) NCR 27.

<sup>197</sup>Naughton, M. 2007.*op. cit.* 79.

political office. He did not call any defence witness and chose not to appeal the case. The boy was posthumously exonerated seventy years after his execution.

The few successful appeal case law and research in UK suggests that defence counsel do not always provide good services to their clients. Some defence lawyers are inclined to see their clients as guilty and usually pressure them into pleading guilty for plea bargain, even though they are innocent, in the hope of obtaining a lower sentence.<sup>198</sup>

In Nigeria the defendant is entitled to a legal practitioner of his choice. Where the counsel is a private practitioner, the defendant has the duty to paying the professional fees of the lawyer before he defends the accused. Defence counsel want their brief to be perfected first before going to court in most cases and would refused to go to court where this is not done. However, most of the defendants charged for criminal offences are indigents and cannot afford the services of competent and experienced lawyers to defend them. Most of them rely on the services of Legal Aid Council created by the federal government to give free legal aid to indigent defendant;<sup>199</sup> the Office of the Public Defender<sup>200</sup>, civil society groups<sup>201</sup> and other legal practitioners.

The challenge, however is that institutions such as Legal Aid Council is financially handicapped due to lack of adequate funding by the federal government and so finds it challenging assisting the ever growing number of defendants in Nigeria. The Legal Aid Council lacks enough Legal Practitioners to effectively service the needs of indigent defendants. They have to rely on lawyers who have just been called to bar and are on their National Youth Service programme. These “new wigs” are not very experienced to represent the defendants very well. In *Udofia v. The State*,<sup>202</sup> the Supreme Court per Oputa JSC lamenting over this practice stated: “what is the country turning into when members of the NYSC will be sent to court to defend a man on trial for his life”.

The major role of the defence counsel in a criminal trial is to insist that the prosecution proves the offence the defendant is charged for beyond every reasonable doubt and within the bounds

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<sup>198</sup>Baldwin, and McConville, 1977. Negotiated justice: Pressure on the defendant to plead guilty. *British Journal of Law and Society* 5:1. 70.

<sup>199</sup>See, Legal Aid Act

<sup>200</sup>This was created by the ACJL Lagos State.

<sup>201</sup>Example of such groups include: LEDAP, Amnesty International, Innocent Project Human Rights Commission, Access to justice etc.

<sup>202</sup>(1988) 3 NWLR (Pt. 84) 533

of the law. Where a defence lawyer lacks the requisite skill and experience in criminal defence, such lawyer will not know when to object and what to object to if any of the legal safeguards to protect the defendant has been breached. For instance, where a counsel fails to object to inadmissible confessional statement that was obtained involuntarily, it is likely that a defendant will be convicted on a wrong fact. Some write several letters of adjournments to court at the detriment of their clients thereby exposing many innocents to the danger of wrongful convictions or delaying their trials for years.<sup>203</sup> Counsel who has been briefed to carry out their professional duties of defending the defendant must be ready to give their time and professional ability to the case. Some lawyers are fond of delegating their duties to other lawyers who may not have had the privilege of being fully conversant with the facts of the case. Also, the counsel the case is delegated to may not understand the case theory, strategy or line of defence the main counsel intend to adopt in defending the defendant. This would create an uncoordinated and inconsistent defence which could be detrimental to the defendant and lead to wrongful conviction. This attitude and behavior of defence lawyers brings the profession to ridicule and give room to miscarriage of justice.

Lawyers have major stake in solidifying the criminal justice system in any given society. If the lawyers are not representing their clients diligently in court, especially in a criminal matter, such a client is likely to suffer for it. A lawyer needs to devote much time to the clients' cases to ensure that justice is attained at all times. The body responsible for the discipline of lawyers too has more roles to play to ensure they investigate any misconduct by defence counsel and make appropriate sanctions/discipline whenever the need arises.

### **3.8 Jail House Informants**

“All wrongful convictions detract from the public's faith in the fair administration of justice, but the cost is especially high when wrongful convictions result from the testimony of questionable witnesses”.<sup>204</sup> Jail house informants fit into this description. A jail house informant is an inmate in prison, usually on awaiting trial or who have already been sentence who avers to have been the receiver of a confession made by another prisoner on awaiting trial and who decided to testify against that prisoner in a law court usually in exchange for

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<sup>203</sup>In *Dariye v. FRN*, (2015) All FWLR (Pt. 774) p. 97 at 118-121 the Supreme Court stated that in effectively defending a person charged for an offence does not mean that the lawyer should employ delay tactics such as the use of incessant adjournment and unnecessary application in order to delay the cause of justice.

<sup>204</sup>Jailhouse snitch testimony: A policy review. Retrieved on December 5, 2017 from: [www.thejusticeproject.org](http://www.thejusticeproject.org)

some benefits.<sup>205</sup> They are inmates on awaiting trial or pending sentencing, who assert to have heard other inmates with them in prison to have voluntarily admitted committing the offence they were accused of. Such informants then report other prisoner's confession to the authority in the hope of exchanging the testimony for better treatment or clemency in sentencing. Jailhouse informants who give information about the confessions of fellow inmates are frequently used in criminal proceedings as witnesses for the state. Jail house confessions are susceptible to fabrication.

In the US, many accused person convicted on the basis of alleged fabricated jailhouse admissions remain imprisoned because they lack the mechanism necessary to force the informant to recant his earlier evidence in habeas corpus proceedings on the basis of wrong evidence admitted at hearing. Without such a mechanism, a jailhouse informant will invoke his fifth-amendment right out of panic for prosecution for perjury due to the previous perjured testimony which may have been based totally on fabricated evidence. The use of jailhouse informant to obtain conviction has been seen as one of the most abused aspects of the criminal justice system.<sup>206</sup> Despite the criticisms against the practice, its use is still widespread. For example, more than 120 criminal cases in Los Angeles where convictions were obtained, the District Attorney's office had used informants testimonies to secure those convictions.<sup>207</sup> But some of these jailhouse informants who are always rewarded for their testimonies have been revealed to go a large extent in deceiving and misinforming the prosecutors in the hope of refining their present situation with slight or nothing to lose but so much to gain. Crafty and dishonest jailhouse snitches formulate tales and crime details that misguide prosecutors and contribute to serious miscarriage of justice.

It was reported that reliance on informant for prosecution of offences is a leading cause of wrongful convictions in cases of capital offences.<sup>208</sup> Most of the cases involving exoneration by DNA test in US revealed that in more than 20 percent of those cases, jailhouse snitch gave testimonies against the defendants.<sup>209</sup> Many informants testify against others by providing

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<sup>205</sup>Sherrin, C. 1997. Jail house informants, Part 1: Problem with their use. *Criminal Law Quarterly* 40. 106

<sup>206</sup>Rohrlich review of murder cases is ordered. *L.A. Time*, Oct. 29, 1988 Pt I. p. 1

<sup>207</sup>A Snitch's story. *Times*. December 12, 1988 p. 32.

<sup>208</sup>Center on Wrongful Conviction. 2005. The snitch system: How snitch testimony sent Randy Steidl and other Americans to death row. Retrieved on December 5, 2017 from [http://www.law.northwestern.edu/w.cs/documents/snitch systemBooklet.pdf](http://www.law.northwestern.edu/w.cs/documents/snitch%20systemBooklet.pdf)

<sup>209</sup>Innocent Project. Informants/Snitches. Retrieved on December 5, 2017 from <http://innocenceproject.org/understand/snitches-informants.php>



implicating testimony against an inmate which they shared prison cell in order to either get a favourable plea, a lesser charge or a lesser sentence or obtain amnesty or *nolle prosequi* from the state or a bargain charges. The desperation to get sentence reductions make some of them give incriminating evidence against a defendant.

There is always inherent unreliability of jailhouse snitches 'testimonies which always give rise to miscarriage of justice, as innocent persons get incriminated for offences they did not commit. Prosecution in US greatly relied on the evidence of a jailhouse informant to get a successfully rape conviction of Wilton Dedge even when he was not the actual offender. Dedge was incarcerated for twenty-two years before he regained his freedom and exonerated from the crime.

Nigeria has had its fair share of unreliable jail house testimony. In May, 2007, it was announced that one Mr. Moshood Enifeni, a drug baron, while in prison custody, had told fellow inmates that he executed the assassination of Chief Bola Ige who as Attorney General of the Federation was the chief prosecutor in a case of unlawful possession of illicit drugs against the said Moshood Enifeni. Sunday Ehindero, the Inspector General of Police, interrogated Enifeni and some hood wearing persons purported to be his cell mates in a publicly aired television programme. The aftermath of that interrogation was the declaration of Enifeni as the killer of Chief Ige. However, the family members of Enifeni described the whole scenario as a sham. They stated in a press release that the said illicit drug case was amicably settled by plea bargain in August, 2001 after which he was released. As such, there was no way their son could have harboured any resentment for Chief Bola Ige as at December 2001 when he was killed.<sup>210</sup>

There have been serious concerns about the problems caused by the jail house testimony to the defendant in a criminal case. There are processes which the state can adopt to make sure that the use of collaborating witness testimonies would not dent objectivity and accuracy of findings in criminal trial. Informants' testimonies should require corroboration to mitigate the inherent risks incentivised witness testimonies carry. Court should adopt rules requiring mandatory pre-trial determination of reliability of jailhouse snitch testimony in instances where the prosecution anticipates to adopt same. In the dependability of pre-trial hearing, the

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<sup>210</sup>Osinbajo, Y. O. 2009. The State of Criminal Justice. University of Benin Tenth Justice Idigbe Memorial Lecture delivered on December 11th, 2009. p. 13.

court is expected to perform ‘gatekeeper’ task in ensuring only credible jailhouse snitches’ testimony are admitted. Standards are to be raised by the Court which the testimony must surpass before it is admitted. By so doing, the state can increase the worth of evidence relied upon at criminal trials.<sup>211</sup> In essence if informant testimony is to be used as evidence in criminal trials, it should be carefully regulated to make sure that there are not hidden deals and prior statements are carefully documented. Judges could also assess the reliability of informants before permitting them to testify. Prosecutors themselves can adopt guidelines requiring the careful use of informants and careful documentation of their statements and consideration to be provided in exchange for their cooperation.<sup>212</sup> Proper precautions on the testimony of jailhouse informant could have stopped the injustice meted out to Wilton Dedge.

### **3.9 Flawed Forensic Science**

This is another factor that contributes to the wrongful conviction of person who did not commit any offence. This occurs in situation where forensic experts place reliance on evidence which is either founded on defective or unverified techniques, or articulated with embellished and misleading assurance and deceitful report. Evidence shows that the misapplication of forensic science is the second most contributing factors to wrongful conviction as highlighted by a recent article published by the innocent project.<sup>213</sup> The misapplication of forensic science is very rampant that it is cited in more than half percent of cases in which DNA evidence later exonerated victims. Some forensic evidence has proved to be unreliable, inaccurate and inefficient way to determine who committed a crime. For example, bite marks and shoeprints comparism may be highly unreliable.<sup>214</sup>

Some of the testimony by forensic experts in criminal cases may either be overstated or understated, with the expert withholding evidence or opinion that might support the defendant’s case; or exaggerating or twisting the important evidence that is pointing to the guilt of the suspect. Unintentional errors and some purposeful misconduct are common with forensic analysis process and when all these happen, a person’s life could be significantly and unjustly affected by wrongful conviction of such person.

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<sup>211</sup>Jailhouse Snitch Testimony: A Policy Review. Retrieved on December 5, 2017 from [www.thejusticeproject.org](http://www.thejusticeproject.org)

<sup>212</sup>Ibid.

<sup>213</sup>Mahajan, S. 2017. Flawed forensics: The Innocence Project's 25th Anniversary. <https://www.innocenceproject.org>

<sup>214</sup> Shkolni, N. K. Forensic Science Mistakes and Wrongful Convictions. Retrieved on June25, 2017 from: <https://www.napolilaw.com>

The application of forensic evidence in criminal cases has solved many crime puzzles. However, when forensic evidence is not properly or erroneously evaluated, the result will amount to misleading the court and conviction of an innocent person. A classic example is an American case of murder and rape of Nancy De Priest in Pizza Hut Restaurant in Austin Texas. Chris Ochoa, a co-worker of Richard Danziger, pleaded guilty to the murder while implicating Danziger of the rape in a confessional statement obtained by coercion. The only forensic evidence against Danziger was a hair found in the restaurant which is identical to that of Danziger. The semen sample found in the crime scene was, however, not tested. Both men were sentenced to life imprisonment. Some years later, one Achim Marino correspondence from prison disclosed that he was the actual perpetrator of the crime. The DNA samples were finally analysed and it matched with that Marino. This was 12 years after Ochoa and Danziger have been incarcerated.<sup>215</sup>

Even science is not perfect. The government should look at concerns such as the need for accreditation, carrying out of training programmes, establishment of testing standards, ensuring the independence of scientific testing techniques and the collection, preservation of a long chain of the safekeeping of evidence. There should be rigorous examination of forensic experts by the prosecutors and defence attorneys in relation to their testing technique and expert opinion.<sup>216</sup> Lawyers, courts, prosecutors and police need to maintain close tab on emerging techniques in the forensic science.

### **3.10 Improper Evaluation of Evidence by Trial Judges**

The judicial powers of the government of Nigeria are conferred on the Nigeria courts by provisions of the 1999 Constitution. Section 6 of the 1999 constitution states that these judicial powers are bestowed on courts established by law in accordance with the Constitution of Nigeria for the federation and the various states. The courts so created by Section 6 (5) (a) to (1) of the Constitution are the category of courts referred to and that can exercise powers of superior courts of record in Nigeria.

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<sup>215</sup>Momodu, B. 2013. Preparing for the trials in murder and rape cases in Nigeria: What detectives left undone. Benin: Evergreen Overseas Publications Limited p. vii.

<sup>216</sup>Center on Wrongful Conviction. Flawed forensic science. Bluhm Legal Clinic Northwestern/Pritzker School of Law.

Apart from the judicial powers of the courts, they also have inherent power to do justice by virtue of Section 6(6) 1999 Constitution.<sup>217</sup> Justice is in three ways: justice to the victim, the accused and the society at large. Justice must be done to avoid conviction of an innocent person. Wrongful conviction entails a long chain of misconduct from various quarters, some of which we have examined above, However, the court is the last authority that sanctions it. In fact, those various misconducts can never amount to wrongful conviction until it has been sanctioned by the court upon pronouncement of the guilt of the defendant. Thus, the court is in the position to correct the wrongs of other authorities that would have otherwise given rise to wrong conviction. Most wrongful conviction arising from the action or inaction of the court is usually due to improper evaluation of evidence by the trial judge. The criminal adjudication deals with proofs and proofs are a function of evidence placed before the court and the evaluation thereof. Nigerian operates the adversarial system of adjudication. This requires the judge to assume an officious position to evaluate the evidence and proofs canvassed by parties and reaching its decision thereto. The court ought not to delve into the arena of dispute<sup>218</sup>. Sometimes this could be a limitation on the part of the court to do substantial justice especially when there are weaknesses in the case of the defence which has been noticed by the court *suo motu*. It is submitted that the court should take advantage of its discretionary powers to point out certain substantial issues even when it is not canvassed before the court by parties. For instance, there is nothing limiting the court to on its own require the prosecution to prove that confessional statements are obtained voluntarily.<sup>219</sup> The court can also take advantage of powers conferred on it by Section 246 Evidence Act 2011 to ask questions from witnesses or the accused to elicit facts to help the court give a decision that will serve the ends of justice but the court power to ask such questions under the provision are not unlimited. They are rather limited by the implications of the adversary system we operate, the impartiality and fair hearing enshrined in our constitution<sup>220</sup>.

In criminal trial in Nigeria, the burden of proof is on the prosecution at a standard of proof beyond reasonable doubt.<sup>221</sup> The judges must always be conscious of that in their evaluation of evidence. Courts have, however, in recent times, held in plethora of authorities that proof

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<sup>217</sup>Obutte, P. C. 2016. Corruption, administration of justice and the judiciary in Nigeria. Retrieved on February 3, 2016 from <http://ssrn.com/abstract=2727319>

<sup>218</sup>Akinfe v. The State, (1988) 3 PLR 35

<sup>219</sup>See, S. 29 (3) Evidence Act 2011

<sup>220</sup>See Akinfe v. The State (1988) 3 NWLR (pt. 85) 729, 741

<sup>221</sup>Ss. 132 and 135 Evidence Act

beyond reasonable doubt cannot be regarded as proof 'beyond shadow of doubt'.<sup>222</sup> It is proposed that this principle must be exercised with great caution by the court. This could amount to the court aiding the prosecution discharge his onerous burden of proof imposed by law, by waiving or explaining away some inconsistencies and loopholes visible in the prosecution's case. The difficulty here is where and how do courts draw the distinction between 'shadow' and 'real' doubt. Without care, the consistent application of this principle by courts would gradually watered down the standard of proof in criminal case from 'beyond reasonable doubt' to preponderance of evidence, contrary to the requirement of the law.

Although judges are supposed to discharge their judicial functions devoid of fear or favour, bias or prejudice, there are other external factors which could, one way or the other, influence the decision of the judges. Judges may be influenced and even controlled by powerful political office holders, financial, personal and ideological consideration.<sup>223</sup> They could be involved in all manner of political maneuverings and pressures as they are product of political creations.<sup>224</sup> The impact could be felt in their judgments and rulings. The judiciary independence in Nigeria is questionable in view of the lack of autonomy of the judiciary. This may result in lack of impartiality especially with respect to matters which are of interest to the political actor.

Wrong evaluation of evidence sometimes arises from a situation where judges had already formed a preconceived impression or opinion about the defendant or the case. Such impressions are always difficult to be changed or erased or convince the court of the innocence of the defendant. According to EX1, his conviction was only based on confessional statement which he was coerced to sign. No autopsy was conducted to determine the cause of death of the victim. There was no eye witness in court to testify against him. These shortcomings, notwithstanding, the judge hurriedly sentenced him to death. Also, in *Major Hamza Al Mustapha v. The State*<sup>225</sup> the Court of Appeal held that the lower court was bent on securing

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<sup>222</sup>See, *Usman v. The State*, (2014) All FWLR (pt. 713) p. 1928; *State v. John*, (2013) All FWLR (pt. 696) 532; *Usen v. The State*, (2013) All FWLR (pt. 689) 1131; *Babarinde v. The State*, (2013) All FWLR (pt. 662) p. 1731; *Oyebode v. Gabriel*, (2013) All FWLR (pt. 669) 1162. In *Osetola v. The State*, (2012) All FWLR (pt. 647) p. 1044, the Court is quoted as saying: "By the provision of S. 138 Evidence Act, the standard of proof is required in criminal trial is proof beyond reasonable doubt. The law would fail to protect the community if it admitted to fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility, but not in the least probable, the case is proved beyond reasonable doubt, but nothing short of that will suffice."

<sup>223</sup>Sherrer, H. 2003. The complicity of judges in the generation of wrongful convictions. Retrieved on Sept. 27, 2017 from [truthjustice.readyhosting.com](http://truthjustice.readyhosting.com)

<sup>224</sup> *Ibid.*

<sup>225</sup> (2013) 17 NWLR (PT. 1383) at 351

conviction at all cost despite contradictory evidence by the 2 major witnesses. This did not deter the trial court from convicting the defendants.

The court stated in that case, per Pemu JCA, that:

No matter the suspicion and its degree, no matter the grievance or grouse, no matter the height of conjecture, no matter the depth of hatred, even the strongest SUSPICION can never found a conviction in law. There is the duty, not discretion of the prosecution to prove its case beyond reasonable doubt.

Psychological, sociological, religious and even environment factors could also influence or prejudiced the mind of the court. Imagine the difficulty a person charged for rape would have in order to escape conviction in a matter presided over by a judge who had once had similar experience in the past. A judge must thus rise above all these limitations in order to maintain and enhance the confidence of the public, the legal profession which they represent and the litigants on the impartiality of the judicial system<sup>226</sup>. The otherwise would lead to erroneous conviction of innocent persons.

### **3.11 The Role of Media in Wrongful conviction**

The media may play a major role to determine the outcome of criminal cases. The Wide media coverage is capable of influencing a high profile case; Media coverage can have a negative influence on wrongful conviction of innocent person by making disparaging headlines about a particular case and the suspect to the extent that the suspect would have been condemned in the court of public opinion before such suspect is even arraigned in court. In the case of Amanda Knox and Sollecito Raffaele in Italy, who were found guilty of murder in 2009 but were later exonerated in 2011, the media really played a major role in their conviction due to the publicity given to their case while on investigation. The headlines of newspapers spread their names all around the world long before any evidence was even collected.<sup>227</sup> In Nigeria there is the case of an alleged kidnap kingpin, Mr. *Chukwudumeme, alias Evans*<sup>228</sup>, whose arrest and arraignment in court has received wide mass media and social media publicity

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<sup>226</sup>Nigeria Broken Judicial System. *The Will*. January 10, 2017.

<sup>227</sup>Injustice Anywhere Forum Working to Correct Wrongful Conviction. Media influence on wrongful convictions by injustice anywhere forum working to correct wrongful conviction.

<sup>228</sup> Notorious kidnaper, Evans arrested in Lagos- The Sun Nigeria. Retrieved on June 11' 2017 from <https://www.sunnewsonline.com>, the Guardian Newspaper of 17 June, 2017

though yet to be found guilty by the court. In the media, he is already referred to as a kidnapper and murderer, despite his presumption of innocence under the law.

In Nigeria, the security personnel, especially the police, are fond of using the media to try suspects in the court of public opinion even before they are charged to court. When persons are arrested in connection to a crime, they invite the journalist to publicize the event where the suspects and exhibits are displayed. The suspects would even be made to make statement to the journalist. The low point of this is that the entire media jamboree could expose vital exhibits and crime scene evidence to contamination and wrong conclusion to the detriment of the suspects.

The media at times drive interest in a case and demand a quick resolution of that case. This tend to mount pressure on every person involved in the criminal process. It has been shown that news coverage of several highly published criminal convictions is later discredited. In each of those cases the defendants were sentence to death or given years' imprisonment before the errors were corrected. Examples of such cases include the *Central Park Jogger Case*<sup>229</sup> in US and *Olabode George's case*<sup>230</sup> in Nigeria. Media may affect the court's decision. Potential judges might be biased towards a suspect due to some sensational comments by the press before the start of the trial; the suspect would be subjected to dual trials at the court of law and court of public opinion.<sup>231</sup> It is likely that public opinion will affect or create certain impression on the judge to preside over such matter; after all, the judge is a member of the public. Also a judge may be compelled to ground conviction for fear of negative publicity if otherwise is done.

The high media exposure can also have negative effect on the family of the accused. For instance, in the case of Evan, his family members, especially his father, wife and children were put under media watch and scrutiny for months. Many family members of defendant view the media as adversaries.<sup>232</sup> One exonerated person, EX3<sup>233</sup> expressed the view that the media

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<sup>229</sup>Where five teenagers were charged for assault, rape, they were convicted in 1990 but their conviction and sentence was upturned in 2002 and the charges were withdrawn against them when the real perpetrator was identified.

<sup>230</sup>Olabode George v. Federal Republic of Nigeria, (2014) 5 NWLR (Pt. 1399) p. 129.

<sup>231</sup> Herbeck, D. and Michel L. 2001. *American terrorist: Timothy McVeigh and the Oklahoma City bombing*. Harper 284

<sup>232</sup> Collins, H.M.C. 2012. Court of public opinion: How the convicted perceive mass media have affected their criminal trials and personal lives. Dissertation. Mass Communication, Syracuse University. 25-40.

<sup>233</sup> The full report of the interview with EX3 is in the appendix to the main work.

coverage combined with the apparent exaggeration of most of those stories which led to his conviction disturbed him deeply; that this really affected his personal life and traumatised him as he was labeled for the offence he did not commit.

There is always extensive sympathetic media coverage of the exonerated and by so doing, the hopes of the exonerated is raised after which he would be left alone after a while. This is another traumatising experience for the exonerated. Better journalism can help prevent wrongful convictions by reducing sensational media coverage of crime and crime suspect that could result in the conviction of innocent.

### **3.12 Wrongful Conviction and Death Penalty**

Persons found guilty of an offence are liable to punishment under the law. These punishments in Nigeria ranged from caution, fine, canning, community service, forfeiture of property, imprisonment for a certain term or for life and death penalty, contingent on the magnitude of crime committed and the requirement of the law thereto. The most extreme form of punishment is death. Death penalty is the infliction of death by authorised public authority, in line with the pronouncement of a court of competent jurisdiction, as a punishment for commission of offence punishable with death under the law. It is otherwise called capital punishment; a derivation of the Latin word ‘*capitalis*’, which literally means “regarding the head” (a reference to execution by beheading).<sup>234</sup> Death penalty is a disablement theory of sentencing. This is such that the convicted person is disabled or striped of the capacity of ever committing such or any other offence.

Death penalty as stated earlier is applicable in Nigeria. Nigeria is one of the African countries that retain death penalty in her statute books.<sup>235</sup> The criminal justice system of Nigeria has always accommodated death penalty as a punitive measure for specifically defined offences.<sup>236</sup> The 1999 Constitution recognises death penalty as a form of punishment for a crime which a person has been found guilty so long as it is done pursuant to the execution of a court sentence.<sup>237</sup> Section 33 (1) of the Constitution provides thus: “Every person has a right to life,

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<sup>234</sup>Ikpang, A. J. 2014. Towards the abolition of death penalty in Nigeria. *Juris Insight* 1:1.67-73 at p. 67

<sup>235</sup>Oba, A. A. 1999. Capital punishment, the death row phenomenon and the Supreme Court of Nigeria: Onuoha Kalu v. The State [1998] 12 S.C.N.J. *Zimbabwe Law Review* 16. 45-60, 46.

<sup>236</sup>Azinge, E. 2013. A case for the abolition of death penalty in Nigeria. Retrieve on June 12, 2013 from mailarchive.com

<sup>237</sup>Onuoha Kalu v State, (1998) 12 SCNJ 1



and no one shall be deprived intentionally of his life, except in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria”.

The Supreme Court of Nigeria ruled in favour of the retention of the penalty in the case of *Onuoha Kalu v. The State*.<sup>238</sup> On the constitutionality of death penalty, the Court per Uwais C.J.N. (as he then was) stated that, ‘death penalty is a reality’ in Nigeria. The Nigeria Statutes book recognises death sentence.

Offences that attract death sentence in Nigeria are: Murder (Sections 319 of the Criminal Code and 221 Penal Code); Treasonable felony (Sections 37 and 38 of the Criminal Code and Section 411 of the Penal Code); Giving False Evidence leading to the conviction and execution of an innocent person (Section 159 of the Penal Code); Robbery with Firearms or Offensive Weapons (Section 1 of the Robbery and Firearms Act); Treachery (Section 49A of the Criminal Code); Trial by Ordeal Resulting in Death (Sections 208 of the Criminal Code and Section 214 of the Penal Code); Abatement of Suicide by a Person Below 18 years of Age or by an Insane or Intoxicated Person (Section 227 of the Penal Code); Adultery for a Muslim and Allied Offences such as Incest or Rape (Shari'a Penal Codes such as Zamfara's); Homicide where the relations of the deceased elect that the offender be put to death (Sharia Penal Statutes); Homicide Committed at an Attempted Robbery (Sharia Penal Statutes); Homicide under Islamic law where the Victim was Lured by his Assailant (Gheelah); Aiding the Enemy and Cowardly behaviour by Members of the Armed Forces (Sections 45, 46 and 47 of the Armed Forces Act).<sup>239</sup> In states like Akwa Ibom,<sup>240</sup> Kidnapping constitutes a capital offence.<sup>241</sup> Unlike other offences, these ones are not subject to the plea of *allocutus*.<sup>242</sup>

Capital punishment is applicable in the United States. It is currently in operation in 31 States and the federal government. It began from the American colonies. No execution of convicts took place between 1967 and 1977 throughout the country. The Supreme Court of United States in 1972 stop capital punishment statutes in the case of *Funman v. Georgia*<sup>243</sup> wherein it

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<sup>238</sup>13 NWLR (pt.583) 531 or (1998) 12 SCNJ 1

<sup>239</sup>Uhaa, S. T. Killing the Killer: A Re-Evaluation of the Death Penalty Discourse in Nigeria. Retrieved on October 22, 2017 from [curenigeria.org/wp-content/uploads/2015/03/KILLING-THE-KILLER1.pdf](http://curenigeria.org/wp-content/uploads/2015/03/KILLING-THE-KILLER1.pdf)

<sup>240</sup>Edo State has a law with similar provision.

<sup>241</sup>S. 2 Akwa Ibom State Internal Security Law 2009. For a critique of this law, see, Ikpang, A. J. 2010. A critique of Akwa Ibom State Internal Security and Enforcement Law 2009. *University of Uyo Law Journal* 78-87 at 80.

<sup>242</sup>See the Supreme Court in the case of *State v. John* (supra) at p. where it stated that:” “

<sup>243</sup>*William Henry Funman v. State of Georgia*, 408 U.S. 238, 1972 US LEXIS 169

commuted all pending death sentences at the time to life imprisonment.<sup>244</sup> Consequently, new death penalty statutes were passed by majority of the states and the court validated capital punishment in 1976 in the case of *Gregg v. Georgia*.<sup>245</sup> From then to 2015 not less than 1,400 capital sentence have been executed.<sup>246</sup> The capital crimes in America includes aggravated murders, robbery-murder, murder involving rape of the victim, murder of an officer on duty, kidnapping. Treason, espionage and large drug trafficking are all capital offences under federal law. Treason also carry death sentence in few states and in Missouri and Florida, large drug trafficking is also punishable with death.

In some countries, the penalty is said to be warranted by religious injunctions or by the necessity to ensure political and social stability. Public opinion in Africa mistakenly tends to see the death penalty as an effective weapon against rising criminality.<sup>247</sup> Many persons view death penalty as a cruel, degrading and inhuman treatment. In the United States case of *Suffork District v. Watson & Ors*,<sup>248</sup> the Supreme Court held that, death penalty is unacceptable and is impermissibly cruel when judged by contemporary standards of decency. Death penalty is further perceived as a universal concern that has really created so much debate over the years. It is one of the most contested issues in recent times. The penalty is popularly regarded as an ‘appropriate tool’ in the fight against serious crimes even though there is no compelling and conclusive evidence to that effect. It is argued that neither death penalty nor its severity is a chief deterrent to crime but the certainty of conviction.<sup>249</sup>

Many factors account for its retention by the majority of African countries. Other African countries that still retain death penalty as a form of punishment are Liberia, Sierra Leone, Guinea, Cameroon, Chad, Congo DR, Egypt, Lesotho, Libya, Somalia, Sudan, Uganda, and Zimbabwe. While countries like Ivory Coast, Guinea Bissau, Namibia, Mozambique, Sao Tome and Principe, Angola, Cape Verde, Seychelles, Rwanda, Mauritius, Burundi and South Africa have totally abolished death penalty in their country. Countries like Benin republic, Republic of Congo, Central Africa republic, Togo, Burkina Faso, and Senegal have not carried

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<sup>244</sup>Latzer B. 2010. Death penalty cases: Leading US Supreme Court cases on capital punishment. *Elsevier* 37.

<sup>245</sup>(1976) 428 U.S. 153, 1976 US LEXIS 82

<sup>246</sup>Execution statistics summary- State and year, March 2016

<sup>247</sup>Anyangwe, 2015. Emerging African jurisprudence suggesting the desirability of the abolition of capital punishment. *The African Journal of International and Comparative Law*.

<sup>248</sup>381 Mass. 648 or 411 N.E.2d 1274, 1290-1291.

<sup>249</sup>Hanson, M. D. 2014. The philosophy of criminal law: How fair so far with victims of crime in Nigeria. *Juris Insight*1.1: 24-36 at 31.

out any execution in the last twelve years. Some of these countries have adopted a moratorium of self-imposed suspension of execution of a condemned person in line with a resolution adopted by the United Nations.

The condemned prisoners are generally placed on the death row while awaiting to be executed. The condemned prisoners are always confined in a place called “death row”. Death row therefore refers to some part of prison where the convicts awaiting execution are kept, and it is often considered an institutionalised hell due to the tight security and minimal freedom.<sup>250</sup> Death row has been described as a “morgue”<sup>251</sup> and “tomb-like”<sup>252</sup> by the prisoners. It is aptly described as a prison within a prison where Prisoners are changed from human beings to trapped animals. The inmates on death row are rarely seen, their voices rarely heard. These conditions can definitely generate to physical and mental derailment. Some prisoners are condensed to the state of the living dead. A judge in Indian observed that such prisoner might be in a vegetative state; putting a noose around the neck of a vegetable does not amount to a death penalty. And executing such person is incompartible with the purpose of death penalty, as the stipulated punishment was death not torture before execution.<sup>253</sup>

Some people stay on death row for twenty to thirty years waiting for their execution in that kind of condition. According to Amnesty International, Nigeria has more than 750 inmates on death row and some of them have been on death row for over 15 years. These condemned criminals are treated with hatred with little or no dignity for their person and forgetting that there is still possibility that they could still be innocent after all.<sup>254</sup> Some inmates even prefer to die than to be on death row.<sup>255</sup>

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<sup>250</sup>Hudson, P. 2000. Does death row phenomenon violate a prisoner’s rights under International Law? *11European Journal of International Law* 817.

<sup>251</sup>Hunter, W.M. 2007. California's death row. *Writing for their Lives*.Ed. M. Mulvey-Roberts87.

<sup>252</sup>Deans, M. 2007. Working against the death penalty. *Writing for their Lives*. Ed. M. Mulvey-Roberts. 61.

<sup>253</sup>Schabas, W. 1996. The death penalty as cruel treatment and torture. Quoting Rajendra Prasad v. State of Uttar Pradesh, 3 SCR 78at 130.

<sup>254</sup>Bejide, F. Effect of amnesty for capital offenders on the political climate of Nigeria. *Essays in Candor and Creed*. 32.

<sup>255</sup>That is the view of Mr EX1 who was on death for 13 years before he was discharged and acquitted by court of Appeal in 2016

In Nigeria, since 2006 there had been reluctance by the authorities to execute capital sentence.<sup>256</sup> Pursuant to directive issued by the Nigeria President in June 2013 to the state governors to use their constitutional powers of signing death warrants of about 1094 which some have been reluctant to do, only Edo State governor, Adam Oshiomole signed the death warrant of four inmates a week after the directive. The execution was carried out on June 24, 2013. This was despite spirited efforts by Civil Society groups such as Avocats Sans Frontieres France (ASFF), Legal Defence and Assistance Project (LEDAP), and so on made efforts to stop the process. Due to international pressures, there has not been further execution since then.

The pertinent question about capital punishment as it concerns us here is: what if the conviction of such death row inmate is eventually overturned and was found to be innocent after spending years in such condition or have been executed before the court ruled that the initial conviction was in error. Is it possible to reverse such sentence and bring back to life the already executed individual? Such mistake cannot be put right. Unlike any other criminal punishment, the death penalty is irrevocable. Disturbingly, a preponderance of evidence from contemporary times indicates that innocent persons are often held guilty of capital offences and some have suffered executed. More innocent persons might be put on death row as many of them might not be guilty. Death penalty destroys innocent lives. Many people are put to death in error; innocent people get killed because of mistake or flaws in the justice system. The death penalty is irreversible; therefore, death penalty should be abolished in its entirety because when innocent people are executed for the offence not committed, it might be too late to reverse the judgment. In the infliction of capital punishment, judicial and executive errors cannot be fully avoided nor can it be repaired.<sup>257</sup> Hence, according to the Nigerian National Study Group on the issue of Death Penalty in its report placed before the Federal Government of Nigeria in October 2004, “all executions should be put on hold until the Nigerian justice system can deliver just trials and due process...a system that would take life must first give justice”. This assertion is what Uhaa referred to as “the execution of justice rather than the execution of people: a call for the reformation of the criminal justice system and prison

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<sup>256</sup>According to Femi Falana SAN, even most prisons find it difficult to get hangmen, as ‘it is difficult to find a Nigerian who would be proud of occupation of killing people’. Benson, D. and Abdullah, A. *Condemned criminals: waiting for Governors and hangman. Vanguard.* June 20, 2013.

<sup>257</sup>Iyaniwura, W. 2014. The death penalty – A negation of the right to life. *Global Journal of Human-Social Science: Economics* 14.4: Version 1.0p.33-41 at 40

systems rather than hurried execution of death row inmates”.<sup>258</sup> By all means we join voice with them in this regard.

### 3.13 Effects of Wrongful Conviction

The increasing literature on wrongful conviction highlights the various and touching kind of damage that can happen to victims of wrongful convictions, their families, friends and the larger society when justice is perverted. Research has discovered that majority of victims of wrongful incarceration for long duration found it difficult, if not virtually hard, to fit back into society and rebuild their lives as a result of permanent psychological and emotional disorder they go through after been set free.<sup>259</sup> Wrongful conviction causes social harm, psychological harm, physical harm and financial harm to the victims. It can ruin lives, destroy careers, lead to separation of families and friends. It can lead to the breakup of marriage; it may involve temporal and permanent means of humiliation to victims and their families that can outlive the overturn wrongful conviction. The social harm arising from a parents’ absence during their children’s upbringing cannot be over emphasized. Same goes for spouses who are deprived of partner’s support.<sup>260</sup>

Another social harm is in the area of stigma and stain on their reputation even after exoneration. They don’t fit into the society any more. This was the bitter reality of Annette Hewins after he was exonerated on appeal in 1999: “I was exonerated by the court but not in the community in which I live. That will not happen...I will carry the stigma. Injustice does not cease just because you walk free from the court”.<sup>261</sup> Their families and friends also share from the social harm by expression of rage, torment, grief and shared frustration, which can be

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<sup>258</sup>Uhaa, S. T. *op. cit.*

<sup>259</sup>Naughton, M. 2007. *op. cit.* at 193-194.

<sup>260</sup>EX2 believes he cannot get over the trauma and social harm arising from his 13 years of wrongful incarceration.

<sup>261</sup>Naughton, M. 2012. *Rethinking miscarriage of justice: Beyond the tip of the iceberg.* Palgrave: Macmillan Books. 168.

severe for them just as severely felt by the victims they lend support to. It can have long lasting effect upon their lives.

It was stated that wrongfully convicted persons commonly experience “emotion which ranges from anger to paranoia and hopelessness”.<sup>262</sup> One study found that majority of wrongfully convicted males could not live with previous partners, they can be so traumatised in such a way that they have been compared to victims of worse devastations such as natural disasters and prisoners of war.<sup>263</sup> Wrongful convictions take a toll on the convicted persons’ physical, mental and emotional health. They can find it difficult to fit back into a society that has changed so much while they were in prison. They can have continuous psychological and emotional disorders and can be likely experiencing mood changes, emotional upsurge and to renew bounds with their immediate families like children and wife..<sup>264</sup> The person may likely experience stress and depression over the knowledge that he has been unjustly imprisoned. They suffer from Post-Traumatic Stress Syndrome. Some exonerated persons spend ample time in prison so much that they get used to prison life and the ritual that takes place there which they may find difficult to break free from.<sup>265</sup>

Some victims of wrongful conviction may have also been subjected to physical harm by the state as consequences of their wrongful imprisonment. They may end up in a mental hospital or die when eventually released from prison. This is like the situation in one Olatunji Olaide who was wrongly convicted and incarcerated for 24years years. He was released as a disabled person, having lost one eye and bad health problems. He died shortly thereafter. Some of them came out with physical deformity like EX1 who came out of prison with big scare at the back of his head which, according to him, was inflicted on him by the police during interrogation when he was being forced to sign already prepared confessional statement. This can lead to a decline in the person’s physical health in the form of inability to eat or sleep.<sup>266</sup> And the maltreatment that they can suffer has been compared to brain damaged accident victims.<sup>267</sup>

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<sup>262</sup>Haney, C. 2005. *Death by design: Capital punishment as a social psychological system*. Oxford: Oxford University Press. 53

<sup>263</sup>Naughton, M. How big is the iceberg? A zemiological approach to quantifying miscarriages of justice. *Radical Statics*. 81. 5-17

<sup>264</sup>Ibid

<sup>265</sup>Naughton, M. 2007. *op. cit.* at 174.

<sup>266</sup>Ibid

<sup>267</sup>Taylor, N. and Wood, J. 1999. Victims of miscarriages of justice. *Miscarriages of Justice: A Review of Justice Error*. Ed. C.Walker, and K. Starmer, Oxford: Oxford University Press. 247-262 at 257.

Samuel Ehigialua,<sup>268</sup> the Director of Innocence Project in Nigeria, noted that the experience of incarceration can have long term impact on prison inmates, including relationship issues, apprehensions of physical and emotional corrosion, the uncertain nature of sentences and the prison surrounding itself.<sup>269</sup> The miscarriages of injustice and damaging effect of confinement are further intensified by the unjust nature of the victim's incarceration. Once released, the wrongfully convicted experience differs from those persons that are rightly convicted. These create a rising prejudice of justice and a desire for the government to acknowledge that an error occurred.

According to Craig Haney, a psychologist,<sup>270</sup> exonerated persons attempt to juxtapose their imprisonment against their innocence may cause more grief which is difficult to rationalise; difficult to fathom or outgrow. They experience physical, emotional, financial and mental post release disturbances. The regulated routine of prison life denies them of their independence and ability of choice making. The aggressive prison life style causes social seclusion, emotional collapse and lack of self-confidence. This has resulted in a low self-esteem.<sup>271</sup> The post traumatic distress condition is common. Virtually all prisoners have experienced acts of aggression or victimisation and memory of this experience can be traumatising. The symptoms include sleepless nights, recurrent nightmares, lack of concentration, irritability, paranoia, anger and being over suspicious of their environment. They also tussle with the psychological disturbance of having been severely wronged by the society.

Unlike other trauma survivors, the victims of wrongful conviction do not receive the necessary support be it financial, social, psychological and emotional support as they and their loved ones try to move on with their lives.<sup>272</sup>

Financially, many exonerated persons were wrongfully convicted when they were young; while their contemporaries were improving their careers and educational prospect, they languished in prison. After years in prison, the exonerated persons find themselves starting all over at older age. To compound the issues, they carry the heavy burden of continually justify

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<sup>268</sup>Haney, C. 2006. Exoneration and wrongful conviction: Expanding the zone of perceived injustice in death penalty. *Golden Gate University Law Review* 37.

<sup>269</sup>Ibid.

<sup>270</sup>Supra

<sup>271</sup>The British Journal of Criminology. 2014. *An International Review of Crime and Society*. 34.6: 1152.

<sup>272</sup>*Canadian Journal of Criminology and Criminal Justice* 46. 2004. 165-182

their exoneration to people like employers and others who are aware of their previous status, ex-convicts.<sup>273</sup>

According to Anthony Robinson there is always a stigma attached to serving a prison term— a sense of disbelief.<sup>274</sup> Securing accommodation is a critical need that must be met towards a fruitful re-integration into society. Gainful employment is also needed to attain financial independence. Nevertheless, most employers are not comfortable with the idea of hiring someone who had previously been imprisoned, whether such person innocent or otherwise.<sup>275</sup> Landlords are also not willing to give their house to an ex-convict. Some have lost contact with their spouses, home, business and even their children who are scattered around without education or proper job.

Wrongful convictions may also have negative effects on the society. People will naturally lose confidence in a criminal justice system that cannot assure fair trial and justice. It may result to jungle justice where people take laws into their hands by killing, lynching suspects. The converse of conviction of innocent persons is that real perpetrators of the crime is free, roaming the street looking for the slightest opportunity to commit more crimes thereby making the society unsafe for people to live in.

The victims of crime also have their fair share of the effects of wrongful conviction. The impact is comparable to or even worse than the initial victimization a victim suffers as a result of the crime. They usually have intense feeling of guilt for being responsible for the suffering of an innocent person. The crime victims in that circumstance exercises fear towards the wrongfully convicted individual following the exoneration and release from custody. The fear is connected to the impression that the wrongfully convicted individual may seek revenge by killing or hurting them and their family members. Some experienced helplessness, devastation, depression and lack of fulfillment that justice is yet to be done as the actual offenders still roam freely.<sup>276</sup>

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<sup>273</sup>Grounds, A. 2004. Psychological consequences of wrongful conviction and imprisonment. *Canadian Journal of Criminology and Criminal Justice* 46.2: 176.

<sup>274</sup>Campbell, K. and Denov, M. 2004. The Burden of innocence: Coping with a wrongful imprisonment. *Canadian Journal of Criminology and Criminal Justice* 46.2: 145.

<sup>275</sup>Reeves, C. 2016. Experiencing imprisonment. *Report on 2007 Wrongful Conviction of Curtiss M.* Routledge. 58-60.

<sup>276</sup>Irazola, S., Williamson, E., Stricker, J. & Niedzwiecki, E. 2014. Addressing the impact of wrongful convictions on crime victims. *NIJ Journal* 274. 34-38.



### 3.14 Case Review

We will now examine the effect of the causes of wrongful convictions has on individual cases from eyewitness misidentification, forensic error, Police misconduct, prosecutorial misconduct to ineffective defence.

Faulty eyewitness testimony is one of the factors responsible for wrongful convictions and has been categorised as the leading cause of wrongful convictions. One of the evidence that prosecutors and defence counsel encounter in criminal cases is eyewitness errors, which has continued to plague the criminal justice system. Out of the 180 DNA exonerated cases in the US, eyewitness error occurred in 75 percent or more of those cases.<sup>277</sup> Eyewitness testimony has been the single biggest contributor to wrongful conviction. DNA in most cases has proven that eyewitness identification is frequently inaccurate. Court do not believe that trustworthy witness can be mistaken. Just one witness identification can be sufficient enough to secure conviction and can also play important role that will affect investigation in any case. An erroneous identification of a suspect can wreck police investigations by just putting focus on an innocent person while the real perpetrator is at large committing more crimes thereby put the community in danger. Over 180 people have been erroneously convicted based on eyewitness misidentification and later proved to be innocent through DNA testing<sup>278</sup>.

In 2012 in Nigeria, Olatunji Olaide<sup>279</sup> was released from prison after serving over 24 years in prison for the offence of murder and robbery he did not commit. The robbery incident in questions that led to the alleged murder he was convicted of occurred on May 30, 1988 in Lagos, where the victim was killed; his car was snatched and later found around Gwari village in Niger state. The police rounded up and arrested all the visitors to the village because the suspects ran into the bush. Olaide was in that village that day to buy cows as usual. He was in possession of N325,000.00 for the purchase of cows. He was arrested; the money he had disappeared upon his arrest up till today. He was tortured and was forced to sign an already prepared confessional statement under duress. His trial started in 1989 and ran for 6 years. On February 15, 1995 he was sentence to death based on the confessional statement he

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<sup>277</sup> Roach, K. 2010. Wrongful convictions: Adversarial and inquisitorial themes. *North Carolina Journal of International Law & Commercial Regulation* 35.2: 388- 446.

<sup>278</sup> Leo R.A. and Gould, J. B. 2010. Justice in action one hundred years later: Wrongful convictions after a century of research. *The Journal of Criminal Law & Criminology* 100.3: 825-868.

<sup>279</sup> Sentence to death: An innocent man steps out after 24 years in prison. LEDAP June 18, 2015.

purportedly made and signed at the police station. From the beginning of his case, police brutality occurred and throughout the investigation and this forced him to sign confessional statement.

In 2005, Mr. Obiagwu from LEDAP took up his case on pro bono and went on appeal to the Court of appeal in Lagos and after so many argument on the admissibility of the confessional statement by the lower in arriving at guilty verdict, the Court of appeal allowed his appeal and set aside the lower court judgement because no corroborative evidence to support the so called confessional statement and trial within trial was never order and conducted before the statement was admitted in evidence by the court. He was exonerated and released on the 5th of June, 2012 after 24 years in prison for the offence not committed.

This case represents the role of coerced confessional statement and other issue that may be wrongly admitted and relied on in obtaining wrongful conviction such as calling material witness like the interpreter in this case; no eye witness was invited. The interpreter at that village confirmed to the police that Olaide had been coming to the village for a while to buy cows from Lagos. But there is nothing in the case file to that effect and the accused was not even allowed to make statement to that effect. This is evidence of police prosecutorial misconduct by withhold important evidence that might be favourable to the accused to support his innocence as evident in the above case.

### **False confession and Police Misconduct**

Research has shown that about 75% of suspects in custody confess voluntarily or involuntarily to crime not committed.<sup>280</sup> People may confessed to the offence not committed for so many such as mental imbalance, fear of court punishment, police mischief to avoid harsh punishment or coerciveness.

In July 2014 Monday was exonerated and freed from prison after he spent 12 years in prison for robbery on his master, Boniface, A. on May 3, 2003.<sup>281</sup> He was found guilty and sentence to death for the crime after his false confession caused by police torture was admitted in evidence by the court. From the beginning throughout the investigation, police brutality

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<sup>280</sup> Leo, R. A. and Davis, D. 2010. From false confession to wrongful conviction: Seven psychological processes. *The Journal of Psychiatry & Law* 38. 9-56.

<sup>281</sup> Monday Ilada Prosper v. State Unreported. Appeal Number CA/B/213C/2007 Delivered on Wednesday the 19<sup>th</sup> day of July, 2014 at Court of Appeal, Benin.

persisted. He was mercilessly beaten and brutalised by the police and was coerced to sign a confessional statement.

An incident which led to his conviction accrued on the 3<sup>rd</sup> of May, 2013 when he was driving his master, Boniface, A. to work. On reaching a lonely road he stopped the vehicle pretending that the vehicle had problems. He then came out of the car, opened the bonnet of the vehicle, slammed sand on his master's face and while the victim was totally confused and helpless, the suspect robbed him of a bag containing N70,000 (seventy thousand Naira) and disappeared. Three months later, he broke into the house of his master and attempted to rob him. He was arrested by the police and charged before the High Court for robbery. At the trial the prosecution called three witnesses, the victim and two policemen who investigated the cases. A total of six exhibits were tendered in evidence and marked as exhibits A, one dagger; B, one toy gun; C, a black singlet; D, a piece of cloth; E, the statement of the accused person before the state CID Benin, dated August 14, 2003 and F, the statement of the accused made at the Aideyan police station dated August 8, 2003. Monday gave evidence in his defence, denying that he robbed his master, Boniface who was PW1 in this case, of the alleged sums of money. He rather contended that Boniface owed him arrears of salary which he, PW1 refused to pay, in spite of his passionate appeal. This led to his abandoning PW1 on the road in anger on the said day. At the close of the trial, the lower court convicted Monday for robbery and was sentenced to death by hanging.

LEDAP took up his case on pro bono and appealed against his conviction and sentence to the Nigeria Court of Appeal. Monday, the appellant maintained that he is innocent; that he did not rob his master but only abandoned him on the road when he refused to pay him his money and threw his car key at him. He went back to the master's house to collect his arrears of salary. The master called police to arrest him alleged that he came to rob him. The issue for determination was whether the lower court judge that tried his case was right in failing to conduct trial within trial before admitting Exhibit E in evidence in spite of the appellant's objection to its voluntariness and in the absence of Exhibit E; whether there is enough evidence on record to convict the accused and whether the approach of the learned trial judge in his evaluation of the evidence in the case was proper and did not cause miscarriage of justice against the appellant. The court of Appeal decided that the trial court was duty bound to conduct a trial within trial to determine the voluntariness of the statement as it is the only

process of determining the voluntariness of the statement and failure of the lower court to conduct trial within trial when the voluntariness and admissibility of confessional statement was challenged by the defendant is a violation of a duty placed on him and thus acted in critical error in admitting and relying on same to convict the accused. The issue was determined in favour of the appellant and appellant's conviction was therefore quashed and he was acquitted. There were also material inconsistencies in the evidence of the witnesses testified for the prosecution which were fatal to the case and were essential to the main issue in question before the trial court. This was the failure of the prosecution to offer the explanation needed through evidence. The issue was resolved in favor of the appellant

On 9th day of July, 2014, the Nigeria Court of Appeal in unanimous decision allowed EX2 appeal and this resulted in his exoneration, on the ground that the coerced confessional statement was rebuttable and that the evidence by the main prosecution witnesses were contradictory and unreliable to secure conviction. He was therefore released after almost 12 years in prison for crime he did not commit. The above case clearly shows an example of police brutality that leads to a false admission of commission of an offence. It is clearly shows that the two police officers who investigated the case and testified against him engaged in police misconduct by obtaining a coercive confessional statement from him Monday.

Police misconduct is always harmful to the criminal justice system and can seriously increase the possibilities of erroneous convictions.<sup>282</sup> Coercive confession like that of Monday cannot be easily disproved or removed because many accused believed that even if they confess to a crime not committed, other evidence might prove their innocence but this is not always the case as there might not be other physical evidence to prove they did not commit the offence. Self-confessions in regards to wrongful convictions can be so powerful that may be extremely difficult to overcome especially when put together with some other factors like police wrong doing and brutality.

In 2015, Kingsley Akhabue was acquitted and was set free after spent almost 8 years in custody for conspiracy to commit armed robbery<sup>283</sup>. The case against Akhabue was that in the

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<sup>282</sup>Johnson, T. L. 2013. Eyewitness testimony, false confessions, and human performance technology: An examination of wrongful convictions. Thesis. 107. Retrieved on February 23, 2018 from <http://utdr.utoledo.edu/theses-dissertations/107>

<sup>283</sup>Kingsley Akhabue v. State Unreported in Appeal Number CA/L/1056/2011 Delivered on 11<sup>th</sup> day of December, 2015 at the Court of Appeal, Lagos.

night of March 22, 2008 at about 3.45am, five masked men armed with pistol, iron rod and other sharp object invaded the house of one Mr. Sunday Otuya, prosecution witness 1 (PW1) located at No 10 Taiwo Street, off Oremeji, Osuti Road, Egan, Lagos. In the course of the attack, the five men manhandled PW1, his wife and children and robbed the household of two mobile phones of Motorola and Nokia model and an undisclosed substantial amount of money. The victim heard the voice of their leader and recognised it to be the voice of Akhabue because Akhabue had worked for him in his house some four years earlier. He struggled with Akhabue who got injured in the process of the struggle. The PW1 was also covered with Akhabue's blood. He reported the matter to the police the following day and did not mention Akhabue's name to the police that day until a year later when one of the suspects in a different armed robbery report mentioned Akhabue's name to the police as one among the five masked men that had robbed the house of PW1 a year ago. Akhabue was arrested and was coerced to sign an already made confessional statement which he denied the voluntariness. The evidence of the appellant was that on the March 23, 2008 he went to a bus stop to pick his younger brother who was coming back from Benin City. They had problem with the cyclist over balance of the money he had paid him. A fight ensued. Other cyclist joined and assisted the cyclist in beating them. They ran to Igando Police Station where he reported the cyclist. The police gave him a medical form for treatment. When he came back from the hospital, the medical form was received from him by the police. He was put in the cell and was confronted with the question whether he knew the PW1 which he told them he knew him. He was tortured to make confessional statement and was later charged to the High Court for robbery. The Court below accepted the Prosecution's case, convicted and sentenced him to death.

Mr. Obiagwu, the lawyer from LEDAP representing the convict on pro bono, filed an appeal on his behalf challenging his trial, conviction and sentence on the ground that miscarriage of justice had occurred in the matter, as the two confessional statements of the defendant upon which he was convicted were not voluntarily made and also violated the mandatory provisions of section 9(3) of the Administration of Criminal Justice Law of Lagos State(ACJL), 2015 requiring the recording of the suspect's statement. More so, the victim knows the accused very well before the alleged incident as he testified that he knew him 4 years prior to the incident; that the accused, a labourer, dug the toilet system of PW1, constructed the fence of his plot of land and sand filled the building and that of his brother. He also revealed that the house of the defendant's father where defendant lives is directly behind PW1's house. In other words, they

were, at all material times, neighbours. From the above scenario PW1 knows the accused very well but his statement to the Police did not contain the accused name as suspect when he reported the alleged robbery incident to the Police and no explanation was proffered for the failure of the PW1 to mention the name when he knew him very well and recognised his voice at the time of the alleged robbery operation in his house. This failure without explanation cast dark/heavy cloud of doubt on the PW1's evidence in the case. It shows the identification of the accused, Akhabue by the victim is in error because if he actually identified him at the scene of crime that was the first he would have mentioned it to the police.

Even the so called confessional statement the court relied upon to convict the accused did not even admit the offence charged. The items the victim said were robbed by the armed robbers were a Motorola and Nokia phones, whereas the confessional statement stated that it was Sony Ericson phones that were robbed from his unfenced house. However, PW1 said in evidence that his own house is fenced. The Court of Appeal ruled that for a confessional statement to nail a defendant, it must admit the offence charged before it can be used effectively against the confessor/defendant in accordance with Section 28 of the Evidence Act. So the statements marked exhibit D and DI could not be recognised as confessional statements because the statements also breached Section 9(3) of the Administration of Criminal Justice Law of Lagos State which rendered them impotent. Also, that the evidence for the Respondent at the Court below did not link the accused with the commission of the offences charged, in that, the only eye witness, PW1, could not prove that the leader of the five man armed gang that robbed him on that day was the defendant. The appeal was allowed on its merit; the appellant was discharged and acquitted.

### **Police Misconduct**

In 2018, Kevin Bailey was exonerated and released in the United States after serving 28 years in Prison,<sup>284</sup> while his co-convict, Corey Bachelor was earlier set free in 2004 after serving 15 years in prison for the murder of Lula Mae Woods who was assassinated on June 1st, 1989 based exclusively on confessions obtained by an Area 2 Chicago Police detective, John Burge. The victim, Wood was found dead by a neighbour in her garage with a Domino Pizza cap found under her body at the scene of the crime. This Pizza cap became the center of

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<sup>284</sup> Two Chicago men exonerated based on DNA and coerced false confession. Retrieved on March 23, 2018 from <https://www.innocenceproject.org>

investigation. Bachelor was one of a number of neighbourhood teenagers rounded up by the police and subjected to questioning on the murder of Wood. Bailey was picked up because Bachelor told them he was with Bailey at the time the murder was committed which was also confirmed by Bailey. The two suspects were just 19 at the time they were arrested for murder just five days after the murder. Bachelor was choked, kicked and knocked against the wall by detectives until he admitted committing the offence. On the part of Bailey, he was questioned for more than 12 hours and refused to confess until he was grabbed by the neck and threatened by the detective. They were so scared that they gave confession but their confessions were madly inconsistent with each other and did not fit known details about the murder case under investigation.

The two young teenagers always maintained their innocence; they were tried separately and convicted based solely on their confessions. Bailey was sentenced to 80 years and was incarcerated until his release on 30th January, 2018; while Bachelor was sentenced to 30 years' imprisonment and was released in 2004 after serving 15 years in prison. The Innocent Project and the People's Law office representing Bailey and The Exoneration Project and The Centre on Wrongful Convictions of Youth representing Bachelor, sought post-conviction relief for their clients in the hope of rectifying the injustice perpetrated on the two teenagers 30 years ago. They believed sufficient force and coercion can force anyone to crack under pressure, which does not solve such crime but only destroys the lives of defendants and their family members who are affected by their imprisonment. They thoroughly investigated the case and eventually recognised that their convictions cannot be sustained despite all early opposition by the prior Cook County State's Attorney who earlier secured DNA testing. The prosecution excluded DNA test of the hair found from the Domino pizza cap worn by the murderer and the bloody towel found near the body did not match that of Bailey and Bachelor. A Cook County Court dismissed the murder convictions of Kelvin Bailey and Corey Bachelor based on DNA and other evidence that the two men who were teenagers at the time of their conviction, were physically coerced into falsely confessing to the crime they did not commit. This case clearly shows an instance of police brutality that led to a false confession.

There was no suspicion that detective Jon Burge and his subordinates engaged in police brutality by forcefully extracting confessional statements from Bailey and Bachelor until the Chicago Tribune published a sequence of articles that beamed its searchlight into affairs of the

Chicago Police Department. They discovered that there were close to 260 murder cases where confessions were made by accused persons who were released or whose cases had been dismissed. Over hundred black men and women were later discovered to be exposed to torture that was racially motivated which included use of electric shock, mock executions, suffocation, hanging and beating in Chicago by detective Jon Burge and his team. It is pertinent to note that police bad behavior in any form is harmful to the criminal justice system and can seriously increase the chances of wrongful incarceration. Burge was later dismissed from the Chicago Police Department in 1993 and convicted for perjury and obstruction of justice arising from the torture cases in federal court in 2010. However, many people still remain and suffering in prison as a result of coerced confessions based in wholly or partly on physically false confessions in Chicago.

### **Central Park Five**

This is another case of police misconduct in USA that led to the conviction of an innocent persons for the offence not committed. In 2002 the five convicted teenagers- Kharey Wise, Antron McCray, Raymond Santana, Yusef Salam and Kevin Richard were released and their convictions were vacated after convicted murderer, Matias Reyes, who was serving life sentence in prison confessed to the crime. DNA evidence later conducted matched the semen found on the victim body to Reyes. The DNA had not matched any of the 5 teenagers.<sup>285</sup> This case reveals a clear case of police misconduct of forcing confessions from suspects that led to their wrongful convictions. The fact of this case is that in 1989, a young white female stockbroker, Trisha Meili was jogging in the park and was attacked, raped, beaten and left almost dead by some teenagers. She was hit on the head and she remembered nothing.<sup>286</sup> Within days, the above five black teenagers between the ages of 14 to 16 were arrested and charged with the crime. The teens had been part of larger rampage in which several people were randomly attacked in the park that night. Four of them confessed on video tape that the victim described as a jogger had been one of their victim that night but they later recanted the confessions saying that their statements had been coerced from them by the police. Despite this, they were still convicted of the crime. They were serving their different jail terms when another person, Reyes, confessed to the crime that he alone had raped the jogger and DNA

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<sup>285</sup> Slodghill, R. 2002. True confession of the central park rapist. The Daily Times 9, December, 2002.

<sup>286</sup> Faber, M. A. 1990. Smart driven woman overcomes reluctance. The New York Times



evidence corroborated Reyes involvement in the crime. From the start, the weakness in the evidence was there. There proved to be no physical or forensic evidence recovered at the scene or from the person or effects of the victim which connected the 5 defendants to the crime. Even though the teenagers had confessed to have launched the attack but their versions of what happened that night varied widely from their account of crime location to the description of victim. The confession was coerced, as one of them recanted that he heard the police beating up one of them in the other room and police would tell him that he is next. He feared he would not make it; he had to confess to the crime in order to escaped being tortured. While the confessions were videotaped, the hours of interrogation that took place before the confessions were not videotaped.

There were also inconsistencies about the weapon that was used that night. Some of them said she was repeatedly stabbed but there was no knife wound on the victim. Even the eye witness testimony from other victims that night suggested that the five boys were involved in spells elsewhere in the park as at the time of the crime when the jogger was being attacked. Moreover, Reyes had committed another assault in the park a few days to the attack on the jogger. The police closed their eyes on the similarities in the cases and contradictions in the confessions of the 5 defendants because if they had noted these they might have considered other suspects besides the five boys but because they had already made up their minds. “They were not going to let anything spoil their neatly tied package of convictions and used the five teens as scapegoats”.<sup>287</sup> As there was no DNA evidence to corner the suspects to the offence, the prosecution’s case depended virtually on the confessional statements of the defendants. After their release they agreed to more than \$40 million settlement with New York City in a law suit as compensation for the numbers of years spent in jail.<sup>288</sup>

### **Forensic Error**

There are several forensic procedures that can cause wrongful conviction involving forensic error apart from underlying fingerprints and hair analysis. Much of the forensic evidence tendered in courtrooms nowadays in countries like UK and US are surveyed by procedures that were either created in police stations and laboratories or have been made for the purpose

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<sup>287</sup> This is according to Roger Wareham, the Attorney for two of the victims of Central Park Five. Timeinc.net

<sup>288</sup> Central park jogger case settled for \$40 million. Associated Press, June 20, 2014.

of crime detection and securing convictions.<sup>289</sup> With the inability to use peer-reviewed forensic evidence or confirmed scientific practices, especially in country like Nigeria where the use of DNA analysis to investigate crime is limited, the Innocence Project showed that close to half of the first set of 225 DNA exonerations were as a result of faulty or false evidence.<sup>290</sup>

Alfred Swinton case in US discloses one instance of failure to use scientific-based practices in crime investigation or wrong scientific analysis which resulted in identification of innocent person as the perpetrator of the crime. Swinton was exonerated and murder charge against him was dismissed in March, 2018 after DNA testing exonerated him. Swinton spent 18 out of a 60 years he was sentenced for the killing of Carla Terry in 1991.<sup>291</sup> The victim, Terry was killed in January, 1991 and Swinton was arraigned in court for his murder and was convicted and sentence based on the testimony of a forensic expert who gave evidence that the bite mark on Terry's right breast matched Swinton's teeth. But astonishingly the saliva sample traced in the bite mark was recently tested by the state and the results showed that Swinton's DNA was not the same which indicates that the initial DNA test from the forensic expert was not correct. Swinton was the first suspect identified by the police due to the fact that he was seen with the victim of the crime, Terry at a bar earlier that day before she got missing. Swinton was picked up by the police but his case was thrown out by a judge, as there was no sufficient evidence to prosecute him for the said murder. He was rearrested seven years later on two new found pieces of evidence, a bra that was picked from a box in his apartment at the time of the murder and the testimony of one Dr. Constantine Karazulas who testified that the bite mark on Terry's breasts is the same as Swinton's teeth. Terry's sister also testified that she was the one that gave the bra to her sister, Terry the day she was murdered. The prosecutor also maintained to the jurors that Swinton kept the bra as a trophy from the murder but lawyers from Innocent Project representing Swinton pressed the state officials to review all the evidence on Terry's case as one of the over 650 cases that state officials were reviewing at that time using a federal grant in the US. The new DNA analysis conducted on the bra in 2015 by the forensic laboratory revealed that neither Terry nor Swinton's DNA was found on the bra. The new test result discloses that the bra did not belong to Terry and she was not wearing it in the night she

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<sup>289</sup>Balko, R. 2011. Wrongful convictions: How many innocent Americans are behind bars? *Reason.com* 43.3: 20-33.

<sup>290</sup>*ibid.*

<sup>291</sup>Owens, D. and Altimari, D. Murder charge dismissed against Alfred Swinton, man who served 18 years after wrongful conviction. *Courant.com* March 1, 2018.

was murdered. The new DNA test conducted on the saliva that was found on Terry's two breasts at the time of Swinton's trial also shows that the saliva was not Swinton's DNA and the DNA found near Terry's vagina was not that of Swinton either. With this development, the attorney attacked the evidence of the forensic expert who originally testified against Swinton, the expert later retracted his trial testimony in an 11 paged signed affidavit submitted as part of Swinton's petition for new trial. He stated therein:

I no longer believe with reasonable medical certainty or with any degree of certainty that the bite marks on Ms. Terry were by Mr. Swinton's teeth, because of the current developments in the scientific understanding of bite mark analysis. Many scores of individuals could have produced those injuries.

In this case it was later discovered that the evidence used in the original trial was faulty and the conviction and sentence was in error which resulted in an innocent man's incarceration for 18 years for the offence committed by another person. The use of flawed and unscientific evidence in any trial or case is very troubling for the criminal justice system, especially in Nigeria where the use of forensic investigation is gain wide usage and acceptance. As forensic evidence is regarded as the most trusted evidence by jury members in countries like US, USA and China, the general public, and even judges, it can be difficult for an accused to contest incorrect and even faulty analysed evidence during trial.<sup>292</sup> Furthermore, it can be challenging to controvert such evidence, as forensic examiners can be expensive, which many defendants may not afford without the help of external organisations, like the Innocence Project and others.

It must be pointed out that, even though DNA may bring about many exonerations, it is not easily gathered as evidence in criminal cases unlike, fingerprint, hair, and fabricator evidence. Generally, the practice of forensic testing and investigation in criminal matters in the United States and United Kingdom do not have competence and background in scientific evidence, which consequently affects the value of the evidence and hikes the likelihood of erroneous convictions. It is more difficult as these flawed scientific practices are peculiar with the regularly used evidence such as fingerprint, hair, bite mark analysis and arson analysis.

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<sup>292</sup>Smith, E. and Hattery, A. J. 2011. Wace, wrongful conviction and exoneration. *Journal of African American Studies* 15.1:74-94.

## **Incompetent Legal Representation**

Incompetent legal representation has been seen as one of the leading factor that give rise to wrongful conviction or death penalty imposed on defendants in the past few years. There are several means by which defence lawyers may incompetently defend their clients, which could arise in form of insufficient cross examination of witnesses, unjustified plea bargaining confessions, failure to file the right applications, failure to confront the voluntariness of a confessional statements, failing to challenge the credibility of forensic evidence, and inadequate investigation of the case.<sup>293</sup>

An example of incompetent defence representation is shown in the case of Macolm Alexander, who was convicted to mandatory life sentence without parole. He served nearly 38 years in prison for an offence of rape in 1979 which DNA evidence later proved him not guilty.<sup>294</sup> After a reinvestigation of the case by District Attorney, the Court dismissed the indictment and ordered his release on January 30, 2018. Malcom was arrested for the crime of rape of the proprietress of an antique shop in Witney Avenue, Gretna, Louisiana in November 8, 1979. A black man grapped the victim, a white woman, from behind in the vacant shop and moved to a little badly lit private bathroom at back of the shop. That was where she was raped from behind at gun point. In February 1980, Macolm, a black man, had a mutual romantic affair with a white woman. She asked for money and she subsequently claimed he assaulted her sexually when she was non cooperative.

This allegation of romantic affair between them was not corroborated by a witness and the police couldn't proceed with the charges any longer. This encouraged the police to hang Macolm's image in a photo gallery which was presented to the victim of the present rape case more than four months following her attack and rape at gun point by a total stranger. The offender stood behind the victim throughout the period the crime lasted which limited the chances of the victim viewing the assailant. The police report showed that the victim tentatively selected Macolm's photo yet they still carried out identification parade three days after, which included Macolmand other suspects. However, he was the only one from the photo gallery that was presented to the victim for the second time during the identification

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<sup>293</sup> Gould, J. B. and Leo, R. A. 2010. Justice in action one hundred years later: Wrongful convictions after a century of research. *The Journal of Criminal Law & Criminology* 100.3: 825-868.

<sup>294</sup> Louisiana man exonerated by DNA evidence after serving nearly 38 years. Retrieved on January 30, 2018 from <https://www.innocenceproject.org>

parade procedure. According to the police report on the line up the victim made a likely recognition and the word ‘tentative’ was marked against the number given to Macolm by the Police. The victim’s confidence was documented as 98 percent certainty that Macolm committed the offence and also testified to that effect. The rape kit that could have either buttressed the victim’s identification or substantiate that Macolm was not the offender was never sought. Macolm was 21 years old at the time of his conviction for the offence after his trial was commenced and concluded on the same day because his counsel did not provide effective representation. His counsel, who was later disbarred following several complaints of negligence and neglect of his clients were filed against him, failed to carry out his fundamental duty of putting up a strong defence for his client. An assessment of the oneday trial shows that his counsel refused to make an opening statement. Neither was any witness called in support of the case of the defence. He also did not carry out adequate cross examination of the prosecution witnesses on the identification of Macolm by the victim nor did he deliver a closing argument.

The counsel promised to appeal the case after Macolm received a life sentence but he never did. In 2013, hair sample dscovered from the crime scene was found at Crime Laboratory of the Sheriff’s Office. The Innocence Project sought DNA testing of the hair evidence on behalf of their client, Macolm. Three of the hair samples were of the similar DNA profile which were not a match to neither that of Macolm nor the victim. It should be noted that due to this information and ensuing interrogations of the victim, the District Attorney’s office collaborated with the Innocent Project to ensue Macolm’s conviction is set aside and the indictment was eventually dismissed on January 30, 2018.

It should be noted that lack of effective defence counsel, the system would amount to nothing other than a conviction grinder.<sup>295</sup> Vanessa Potkin, who is a director of post-conviction litigation at the Innocent Project, said that the implication of the case had a potential tragic situation for Macolm who stood the risk of a compulsory life sentence without the chances of parole, notwithstanding, the defence counsel saddled with the responsibility of protecting his client’s life failed to do anything to give effective defence.<sup>296</sup>

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<sup>295</sup> Smith, E. and Hattery, A. J. 2011. Wrongful conviction and exoneration. *Journal of African American Studies* 15.1: 74-94.

<sup>296</sup> *ibid.*

2. Another example of incompetent defence by the Attorney can be seen Daniel Larsen's case, who was found guilty of unlawful possession of a hidden weapon in 1999 and was given a sentence at least 28 years up to life imprisonment.<sup>297</sup> The event took place on the 6<sup>th</sup> day of June, 1998, when a fight ensued in the car park of the Gold Apple Cocktail Lounge located at the Northridge, California. The person who alerted the police narrated that he witnessed a man wearing a green colour shirt waving a knife into the air. There were more than a twelve person present at the scene when the police arrived. A police officers also stated that he noticed one man putting on a green colour shirt and had his hair shaved. The man removed a knife out of his waistband and tossed it under a car that was parked nearby. The knife was found under the car, and Daniel Larsen, 30 years old, was arrested by the police officers as the man who threw the knife under the car. He was later charged to court for possession of a hidden weapon, but the case was dismissed because the trial court did not establish any evidence of cover-up, which constitute a basic particle of the crime, against the defendant. Larsen was subsequently charged again for the same offence, after the same officer changed his evidence during the second preliminary hearing. At the second hearing, the officer specified that Larsen's did not tuck in his shirt and that the knife was hidden under it; that Larsen grabbed the knife underneath his shirt to commit the crime and tossed it under the car when the police arrived the scene.

Based on the second preliminary hearing of the case, Larsen was formally charged to court and the trial began in June 1999. During trial, the officer testified that he saw Larsen bring out the knife underneath his shirt and toss it under the car, which is quite different from what he said initially. Larsen was found guilty and convicted by a jury on the 23<sup>rd</sup> day of June 1999, and was to spend 28 years and up to life in prison under California's "three strike" provision.

Until 2004, Larsen's case was not get any consideration, until the Innocence Project office of the California Western School of law, commenced work concerning his case by filing a habeas corpus writ at the County Superior Court of Los Angeles, as an appeal earlier filed had been refused. The habeas petition revealed that Larsen suffered from incompetent legal representation from his counsel at trial court. His counsel who's licence to practice law was later withdrawn, did not properly investigate the case and could not locate any of the nine eye

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<sup>297</sup> After 13 years in prison, man found innocent of crime freed. NBC. Retrieved on January 17, 2018 from <https://www.nbclosangeles.com>

witnesses who were willing to testify in favour of Larsen that it was someone else who had tossed the knife under the said car. According to the petition, the failings of Larsen's counsel were one too many: he did not insist on the examination of the fingerprint impression on the said knife; he declined to take advantage of opening speech which he was entitled to make.

Attached to the petition was the declarations of the nine witnesses who expressed willingness to testify to the effect that Larsen was not the one in possession of the knife. One of them, James McNutt who was an ex- sergeant of the Army and former Police chief, stated that he was present at the scene of the crime and he saw a man, William Hewitt, engaged in an argument with his step-son, Daniel Harrison. He further stated that he noticed Hewitt pulling out a knife out of his waistband and tossed it beneath the car as soon as the police reach the scene. Further statement by Jorji Owen who was Hewitt's girlfriend, indicated that Hewitt made a confessional statement to her that he was the one that threw the knife under the car. He further said that his conscience continued to prick him that his act had cost Larsen's freedom that he sold his bike in order to raise money to process the bail bond of Larsen. On his part, Hewitt later swore to an affidavit verifying the statement of Owen showing that the knife belongs to him and that it was not Larsen that threw the knife underneath the car. Despite the deposed affidavits and many other witnesses' statements that was filed, the habeas corpus petition was refused. The refusal was upheld on appeal to the California Court of Appeals and further the Supreme Court.

All these strengthened the federal petition to issue a writ of habeas corpus which was filed in favour of Larsen in 2008. The prosecution's appeal of the petition was on the ground that the petition was filed out of time. However, the prosecution's appeal was dismissed by the federal court which ordered for a hearing on the petition in order to ascertain whether the petition falls within the exceptional category of to the one-year rule. the court commenced hearing in 2009. At this hearing, McNutt, restated his position as deposed to in the affidavit in support of the petition. His explanation for failing to testify during the initial trial was that together with his wife, they relocated to their new home at North Carolina, and it wasn't brought to his notice that charges were brought against Larsen for the offence. The judge held that the case falls within the purview of exceptional cases that are not barred after one year. He also reached a conclusion that Larsen was, in fact, innocence. The judge faulted the competence and efficiency of Larsen's trial Attorney in handling the case which had contributed to the tragic

outcome of the case. Finally, the court set aside conviction of the trial court and made an order for a retrial of the case. In September 2013, the subsequent appeal against the ruling by the prosecution was disregarded by the American Court of Appeals, Ninth Circuit. On the 27<sup>th</sup> day of January, 2014, the District Attorney's Office of the Los Angeles County cancelled the charge brought against Larsen after he had spent over 14 years in incarceration.

This case demonstrates a clear instance of incompetent legal representation and how it can lead to wrongful conviction. Larsen would have suffered through those ordeals if his counsel had not fall short in his professional responsibility to his client. If he had been careful enough to locate other eye witnesses at the scene of the crime, he would have obtained favourable testimonies in defence of his client's innocence. While it is recognised that instances of inefficient defence happen in cases where the defendants are poor, these issues also occur in any of the circumstance such as: impecuniosity, lack of quality control by regulatory professional bodies, and absence of enthusiasm on the part of the defence attorney in performing his professional function on behalf of the defendant. Incompetent legal defence is one of the major factors that accounts for wrongful convictions.

The defence counsel is in a position to protect the defendant from shortcomings of other criminal justice players such as police and prosecutorial misconduct, eyewitness testimony or other factors that must have taken place before, during and after trial. In the case of Larsen, the conflicting testimony of the police officer at the two preliminary hearings should have been brought to the notice of the court by Larsen's counsel. this should have raise the suspicion of Larsen's counsel to make further investigation to prove his client's innocence. In all, incompetent legal defence is a major element that can directly affect the outcome of a case, as the quality of defence put up by the defendant counsel is likely to point out and correct the errors which must have occurred prior to the trial and assist the court reach a proper verdict by pointing out the facts and legal principles to be considered by the court in determination of the case.



## CHAPTER FOUR

### PREVENTION AND REMEDIES FOR WRONGFUL CONVICTIONS

#### 4.1 Prevention of Wrongful Convictions

No criminal justice system is expected to be perfect. Nevertheless, the manner in which a society concerns itself with persons who may have been wrongly convicted and imprisoned must be one of the methods by which civilization is measured.<sup>298</sup>

The conviction of innocent persons sometimes happens everywhere and every day in all countries including US, UK, Canada, China and Nigeria. It is an expected, yet unacceptable, consequence of imperfect procedures of investigation by the law enforcement agents, prosecutors and trial courts.<sup>299</sup> Wrongful conviction is a threat to the legitimacy of criminal justice system. People have seen the erroneous conviction as a process of imperfect larger system. This has been attributed to several causes which include forced confessional statements, eyewitness misidentification, police misconduct, prosecutorial misconduct, ineffective legal representation, improper forensic evidence etc. All justice participants need to make in-depth review of their policies to prevent wrongful convictions by focusing on the factors responsible for wrongful conviction and the greatest practice to stop them in the conduct of criminal investigations. Edgar Macleod, the President of Canadian Association of Police stated that: “It is essential that all actors in the justice system such as police, prosecutor, the judiciary and the Defence – team up together and thereby efficiently reduce the problem of wrongful convictions”.<sup>300</sup>

The law enforcement agents can take a prominent role in averting and reducing wrongful convictions by eliminating the malicious and arbitrary arrest of wrong persons, by improved investigative protocols, policies, training, supervision and assessment of evidence adduced in the course of investigation to reduce the number of persons who are wrongly convicted. Better and improved officer training, better line up procedure and more research can prevent eye witness misidentification of innocent. The courts should insist on the recording of all

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<sup>298</sup>The path to justice: Preventing wrongful convictions. Reports on the Prevention of Wrongful Convictions. Released on September 15, 2011.

<sup>299</sup>Nobles, R. and Schiff, S. D. 2000. *Understanding miscarriage of justice* 1st ed. Oxford: Oxford University Press 9

<sup>300</sup>Statement by Edgar Macleod, the President, Canadian Association of Police when reviewing report on the Prevention of Miscarriage of Justice by Head of Prosecution in Canada in 2002.

interviews conducted for the suspect by the police or other security agents as an essential condition for the admissibility of confessional statements. Although the recent enactments of Administration of criminal Justice Act (ACJA),2015 and Administration of Criminal Justice Laws (ACJL) in Lagos and some other states requires the electronic recording of court's proceeding where practicable, efforts should be made by the government to ensure the installation of facilities in this regards to ensure effective justice delivery. Recording in the court room may be useful at the appeals stage especially in evaluating claims of bias and misconduct of judges. All these an prevent or reduce wrongful convictions of innocent persons.<sup>301</sup>

The prosecutor must never over-reach the defendant in order to secure a conviction. Evidence collected by the police must be scrutinised, assessed, and evaluated to check and determine its admissibility. The Prosecutors must be fair, courageous, exercise diverse thinking and be able to make unpopular decision based on its personal evaluation of the evidence.<sup>302</sup> They must ask questions where need be and be firm in their decision to guarantee the veracity of the administration of justice by avoiding improper use of prosecutorial practices. The second opinion and case evaluation should be presented in all areas.<sup>303</sup> The training and regular retraining of the prosecutors is also necessary on the correct use, cross examination and examination of expert witnesses and adequate funding should also be made available to the office of the prosecutors to avoid corrupt practices. The recommended changes in public policy and can prevent and reduce conviction error. The public must send message to prosecutors through public opinion that they are less interested in conviction percentage but more concern about the accuracy and justification of the conviction because convicting the innocent will one way or the other directly undermines public safety as it enables the guilty to continue their acts of crime and violence, thereby making the society unsafe for people to live in. The integrity of our justice will rest upon how society responds to the wakeup call of wrongful convictions.

There have been over 300 post convictions DNA exoneration in USA over the past 25 years. Innocence Project and the National Registry of Exoneration has recognized over 1600 since the first DNA exoneration in 1989. This has been attributed to several causes which include false confessional, eyewitness misidentification, police misconduct, prosecutorial

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<sup>301</sup>Prevention of wrongful convictions: Norwegian Legal Safeguards and the Criminal Cases Review Commission. *University of Cincinnati Law Review* 80.4: 18-19.

<sup>302</sup>*ibid.*

<sup>303</sup>*ibid.*

misconduct, ineffective legal representation, informant testimony, improper forensic evidence. Many innocent persons have been killed in execution of court judgement due to wrongful conviction. At least in USA 11 innocent people have been executed.<sup>304</sup> How could the system reduce the risks of convicting the innocent? Some persons have put up the argument that wrongful convictions have to be accepted as part of the risk attached to the criminal justice system. Such conclusion should not be accepted. Useful means of how to control and deal with this risk must be formulated.

The Police have a lot of role to play to prevent wrongful conviction by avoiding one sided investigation. They should be made criminally liable in cases involving intentional misconduct in their line of duty. Police should also avoid accusatorial method of interviewing suspect as it increases the risk of false confession which contributes to wrongful conviction to a great extent. This measure alone can reduce the odds of innocent defendant wrongfully convicted.<sup>305</sup> Appeal to higher courts should also be more expedite and efficient because availability of appeals can work as a sort of control to re-examine all relevant issues that happened at the trial court. The lower court may take caution when they anticipate a high rate of successful appeals.

Experts have also been seen as a source of errors in finding the relevant facts. Such experts should be independent of police and prosecutor to avoid the situation that they might suppress favourable findings or streamline expert opinion in such a way to suit their case. The handling DNA evidence must be a matter of serious concern to the experts and the courts. The discovery of physical evidence in crime scenes, its collection, identification, packaging, conveyance, storage and eventual exhibiting it in court as evidence must follow an unbroken chain of custody.<sup>306</sup> The wrong handling of it thereof, often leads to wrong finding and conclusions. The physical evidence should also be conserved for many years beyond the final determination of the case. The physical destruction of evidence after trial often results the lower rate of exoneration, especially in the UK.<sup>307</sup> Training and retraining of experts is also necessary to reduce wrong forensic error. Confirmatory testing should become the routine procedure whenever the defendant contests the result of a forensic science test or the result is inconsistent with the known facts of the case.

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<sup>304</sup>Death Penalty Exoneration Centre in US. See also, Madill Justice Project.

<sup>305</sup>Naughton, M. 2012. *op. cit.*

<sup>306</sup>Momodu, B. 2013. *Preparing for Trials in Murder and Rape Cases in Nigeria: What Detectives Left Undone*. Benin: Evergreen Overseas Publications Ltd. 7.

<sup>307</sup>*ibid.*

Police and prosecutors should receive training about the existence, causes and psychology of police induced confessions which should include people confessing to the offence not committed. They should be trained in the proper technique for the interview of suspect to enhance the reliability of the product of the interview process.

#### **4.1.1 Role of Forensic Evidence in Prevention of Wrongful Convictions**

The ultimate goal of the criminal justice system is to deliver justice for all, which entails ensuring the conviction and punishment of the guilty to prevent them from further offending while also protecting the innocent.<sup>308</sup> The last few decades have witnessed the breakthrough of infusion of technology in crime investigation in the advancement of goal criminal justice. Crime investigators utilise scientific tools and techniques in the crime detection, crime scene reconstruction, identification of the offender and establishment of vital links. The courts, on the other hand, have relied on these scientific findings to determine with greater degree of accuracy the innocence or guilt of the suspects.<sup>309</sup>

Forensic science entails an extensive range of sub-sciences which utilises natural science technique to obtain relevant criminal and legal evidence.<sup>310</sup> It is sub-divided into the following categories:

- a) Forensic accounting
- b) Forensic aerial photography
- c) Computational forensics
- d) Criminalistics
- e) Forensic dactyloscopy.
- f) Digital forensics
- g) Forensic document examination.<sup>311</sup>

There are different arms of forensic science. These include the following: DNA (Deoxyribonucleic Acid), Fingerprints, Ear printing analysis, Geomorphology, Entomology, Forensic geology, Toxicology, Bloodstain pattern analysis, Handwriting analysis, Optometry, Odontology, Forensic podiatry, Ballistics, Anthropometry, hair comparism, semen analysis, saliva analysis, bite mark analysis and so on

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<sup>308</sup>Ugbe, A. U. 2012. *Forensic science-Course Guide*. Abuja: National Open University of Nigeria p. 111.

<sup>309</sup>Chakraborty, M. and Dube, D. Applicability of forensic science in criminal justice system in India. Retrieved on the December 10, 2017 from [vips.edu/wp-content/uploads/2017/07/Forensic-Science.pdf](https://vips.edu/wp-content/uploads/2017/07/Forensic-Science.pdf)

<sup>310</sup>Ugbe, A. U. *op. cit.* 12.

<sup>311</sup>Grover, N. and Tyagi, I. 2014. Development of forensic science and criminal prosecution-India. *International Journal of Scientific and Research Publications* 4.12: 2

The following factors have led to about four times increase in the number of forensic laboratories since the early 1970s:

- i. the increasing cases of drug abuse
- ii. pressure on the security agencies and the judiciary for increased reliance on more objective forms of evidence
- iii. scientific innovation and advancement in the fields of DNA analysis to reliably determine and match sources of biological substances, and
- iv. popularisation of forensic science culture through both fictional and non-fictional crime media.<sup>312</sup>

Of the various forms of forensic science, Lord Thomas pointed out that not all forensic science is equal, in terms of scientific rigour, credibility and certainty. Apart from DNA Analysis other branches of forensic science such as bite mark, and handwriting depends largely on expert interpretation.<sup>313</sup> Apart from the utilisation of forensic evidence in criminal trial, Lord Thomas proposed other factors of greater concerns such as: getting the science right; getting the right expert; and the use and understanding of forensic science in order to ensure a fair trial.<sup>314</sup> He further proposed that the credibility and reliability of expert opinion of forensic evidence be tested by cross examination.<sup>315</sup> The careful and cautious generation of forensic evidence often results in the best evidence. This is due to the obtaining of such evidence from the crime scenes combined with the application of scientific analysis without a need of needs further social inquiry making it less susceptible to tampering.<sup>316</sup> The credibility of the criminal justice system depends on the quality of the science underpinning the forensic evidence, hence the need for continuous advancement of further research and improvement in this area of science.

Forensic science is relevant and indispensable in the effective administration of criminal justice system. It is of relevance to the various players of the criminal justice system. This includes the legal practitioners on both sides of the defence or prosecution, who rely on

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<sup>312</sup>Peterson, J., Sommers, I., Baskin, D., & Johnson, D. 2010. The role and impact of forensic evidence in the criminal justice process. *Revised Final Report 6-10-10 National Institute Of Justice*. 1. Retrieved on December 10, 2017 from <https://www.ncjrs.gov/pdffiles1/nij/grants/231977.pdf>

<sup>313</sup>Lord Thomas, 2014. Expert evidence: The future of forensic science in criminal trials. The 2014 *Criminal Bar Association Kalisher Lecture* 14<sup>th</sup> October.2014. 7.

<sup>314</sup>*Ibid.* 6.

<sup>315</sup>*Ibid.* 4.

<sup>316</sup>Ope-Ogunseitan, M. 2016. Forensics: The missing link in Nigerian criminal investigation. *Journal of the Mooting Society University of Lagos* 2 67-83 at 74-75.

expert evidence to effectively represent their client; the judiciary which is to ensure fairness and rule of law in the criminal proceedings. And more importantly, the society which is concerned that the innocent persons are not convicted of crimes they did not commit while the perpetrators of crimes are brought to justice.<sup>317</sup> Expert opinion through the use of forensic findings can be utilised to overturn faulty eyewitness opinion.<sup>318</sup> A study carried out by researchers suggested that citizens generally perceive forensic evidence as much more reliable than other forms of testimonial evidence.<sup>319</sup>

Forensic sciences are indispensable tool of the criminal investigation in advanced western countries. But this is hardly the story of Nigeria, where forensic investigations are still underutilized.<sup>320</sup> The Nigerian government is yet to show serious attempt in harnessing skills of security agencies especially the Police in this regard. A former Assistant Commissioner of Police is quoted as saying that: “As at today, to the best of my knowledge, the Nigeria police do not have anyone that could be correctly called a fingerprints expert, the old hands with little or no science experience and adequate training are still in charge”.<sup>321</sup>

Another author captures this situation when he stated:

Unsolved crime cases form pile upon piles. More often than not, innocent individuals are prosecuted just to turn over the pages of investigation. Crime scenes are rarely marked out and scrutinized. Autopsy is only usually carried out on a victim whose family is influential enough to afford it, even with that, it ends with a mere determination of the cause of death. Forensic techniques such as DNA typing, osteology, neuropathology, ballistics, criminal profiling, and crime scene photography amongst others are rarely used to unravel the incidents. Criminal trials last for a long unpredictable period of time due to the lack of evidence.<sup>322</sup>

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<sup>317</sup>Lord Thomas, *op cit.* 2.

<sup>318</sup>Ugbe, U. A.*op. cit.* 284.

<sup>319</sup>Peterson, J., Sommers, I., Johnson, D., & Baskin, D. 2009. Role and impact of forensic evidence in the criminal justice process. Justice Research and Statistics Association October 23, 2009. 32. Retrieved on December 10, 2017 from [jrsta.org/events/conference/presentations-09/Joseph\\_Peterson.pdf](http://jrsta.org/events/conference/presentations-09/Joseph_Peterson.pdf)

<sup>320</sup>Ladapo, O. A. Effective investigations, a pivot to efficient criminal justice administration: Challenges in Nigeria. *African Journal of Criminology and Justice Studies* 5.1 & 2: 79-94 at 84.

<sup>321</sup>Nte, N. D. 2012. An evaluation of the challenges of forensic investigation and unsolved murders in Nigeria. *African Journal of Criminology and Justice Studies* 6.1 & 2: November 143-162 at 148.

<sup>322</sup>Ope-Ogunseitan, M. *op. cit.* 70.

Forensic evidence performs various functions in criminal investigation and trial. These include:

- a. Prove an offence has been committed or establish key elements of a crime.
- b. Place the accuse in contact with the victim or with the crime scene.
- c. Establish the personality of persons associated with a crime.
- d. Free the innocent.
- e. Corroborate a victim's evidence.
- f. Assist in establishing the facts of what occurred.<sup>323</sup>

Despite the positive reviews about the utility of forensic evidence in criminal trial, it must be stated that it is not a magic wand that would solely determine the outcome of a judicial process. It must through the eye of the needle of the legal and judicial requirement and processes. The general underlining principles of the law of evidence must be satisfied at any given time before forensic evidence can be of moment in criminal trials. Thus, forensic evidence which is tendered by expert witnesses under oath must be of relevance to the trial and have probative value in order to be of evident benefit in resolving the issues in contention.<sup>324</sup>

Another evidential challenge is requirement of the law on expert opinion. Generally, the opinion of witness as to the reality or otherwise of a fact in issue is not admissible by the Court. However, S. 68 Evidence Act 2011 provides that:

When the court has to form an opinion upon a point of foreign law, customary law or custom, or of science or art, or as to identity of handwriting or finger impressions, the opinions upon that point of persons especially skilled in such foreign law, customary law or custom, or science or art, or in questions as to identity of handwriting or finger impressions, are admissible.

By this provision, the implication is that it is the court that actually intends to form the opinion; but due to the nature of the subject matter in issue, the opinion of expert is expected to assist the court in reaching a finding on the fact in issue. The court thus has a duty to examine and make inference from expert opinion before reaching its own independent conclusion. This position supports the holding of the U.S. Supreme Court in *Daubert v.*

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<sup>323</sup>McEwen, T. 2011. The role and impact of forensic evidence in the criminal justice system. Final Report for National Institute of Justice.p. 3.Retrievedon December 10, 2017 from <https://www.ncjrs.gov/pdffiles1/nij/grants/236474.pdf>

<sup>324</sup>See generally, S. 4-14 Evidence Act 2011.

*Merrell Dow Pharmaceuticals*<sup>325</sup> which referred to judges as ‘gatekeepers’ to assess quality and reliability of scientific evidence.

We shall make an overview of three instances where forensic evidence was utilised by the Nigerian Court in arriving at a decision in a criminal trial. These are the cases of

*Bosah v. State*,<sup>326</sup>*State v. Ejiofor & 5 Ors*<sup>327</sup> and *Nafiu Rabiu v. State*<sup>328</sup>. The various cases exemplify how the application of forensic evidence was used to exculpate the innocent and convict the guilty. Even though this research is primarily concerned with the use of forensic science for the protection of the innocent and prevention of wrongful conviction, we are convinced that the use of forensics to bring the guilty to justice aims at attaining that same end. This is because, for each factually guilty person that is rightly convicted by the court is an avoidance of wrongful conviction of an innocent person.

In *Bosah v. State*, the defendant and the deceased quarreled and where seen struggling with each other. Thereafter the deceased collapsed. Evidence suggests that after deceased’s collapse he took some pink pills as barbiturates. The testimony of the first doctor who attended the deceased before his death testified that there were no signs of physical violence, no displacement of the trachea as might be expected in the case of strangulation and there were no indications of heart, chest or kidney disease. He also confirmed the external signs of ingestion of the pink substance. The second doctor who examined the deceased after death testified that asphyxia resulting from strangulation or peripheral circulatory failure such as neurogenic shock is possible causes of death. There was, however, no evidence that the second doctor examined the respiratory system, neither did he state his findings on the internal examination of the deceased abdomen. There was no explanation as to how he came to a conclusion as to the cause of death. Despite these shortfalls, the trial court convicted the defendant for murder. On appeal, the court held that the several medical evidence merely presented alternatives possibilities of death which the court cannot pick and choose which one to rely upon. The defendant was, thus, discharged and acquitted.

In *State v. Ejiofor & 5 Ors*<sup>329</sup> six persons were accused of the offences of theft, forgery, using as genuine a false document and criminal breach of trust. An expert in handwriting testified

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<sup>325</sup>509 US 579 (1993)

<sup>326</sup>1980 (1) NCR 204

<sup>327</sup>1983 (1) NCR 86

<sup>328</sup>1980 (2) NCR 117

<sup>329</sup>1983 (1) NCR 86



implicating the 6<sup>th</sup> defendant for committing the offence. Consequently, the 6<sup>th</sup> defendant was convicted while the other accused persons were discharged and acquitted.

The case of *Nafiu Rabiu v. State* is one instance in Nigeria where forensic evidence was fully explored as a determinant of the outcome of the trial as, other than the defendant, there was no other witness to the crime. The fact of the case is that the defendant and his wife, the deceased entertained some guest in a dinner party they hosted. After the party, the guest dispersed and the servants were all dismissed from duty for the day. Only the defendant and the deceased were in the house and only the defendant has the key to the house. In the morning, he handed over the key to the servants in the morning before leaving the house. In the afternoon he came back to find his wife dead. The body of the deceased bore evidence of external injuries including mark on the neck.

The pathologist who examined the deceased testified that she died from asphyxiation resulting from manual strangulation. The defendant did not testify but called three medical experts to testify on his behalf. Two of the witness testified that the alcoholic content in the body of the deceased was sufficient to cause her death and rejected strangulation as a possibility. The trial court found that the deceased was strangled and that the defendant was the only person that has the opportunity of strangulating her. However, the possibility of death due to alcohol poison creates a reasonable doubt as to the guilt of the defendant. Defendant was thus acquitted.

On appeal by the prosecution, the Federal Court of Appeal held that the trial court made a wrong assessment of the medical evidence before it. It further stated that the only possible conclusion to have been reached is that the defendant killed the deceased. The court, however, convicted the defendant for culpable homicide not punishable with death. On further appeal, this time by the Defendant, the Supreme Court upheld the lower court's decision. However, it stated that the proper conviction would have been culpable homicide punishable with death. But the Supreme Court could not substitute the lower court's decision as the prosecution did not cross appeal.

#### **4.1.2 Role of Civil Society Groups in Prevention of Wrongful Convictions**

Civil Society groups, also known as non-governmental organizations (NGO), are not for profit making organisations or associations of persons registered for the advancement of religious, educational, literary, scientific, social development, cultural, sporting and

charitable purposes.<sup>330</sup> They became more visible in Nigeria during the military era championing the clamour for democracy, good governance, rule of law and respect for the citizens' human rights. Thereafter, they now perform variety of services and humanitarian functions such as bringing citizen's concerns to governments, advocate and monitor policies of government, encourage political participation and reforms through provision of information and advocacy.<sup>331</sup>

Civil society groups are a mobilisation platform for popular struggle with considerable co-ordination and intensity in their demands. They have used several means to influence policy makers and determine the outcome of policy decisions. They are also known as the whistle blowers who alert policy makers on the need to take action matters of public interest. Their ability to define problems, provide cutting edge research on scientific matters, educate the public through media coverage and galvanise their vast membership networks to demand action by government, are widely recognised as fundamental to policy making process and law reforms.<sup>332</sup> Through the use of campaigns, education programmes and the dissemination of information, civil society groups have heightened the level of awareness, mobilising the local people, articulating their demands, strengthening participation among the people, forging commonality of objectives and building region-wide platforms and compelled the entrance of the issue into the front burner of national agenda.<sup>333</sup>

There are a number of civil society groups concerned with the subject of wrongful conviction and allied matters in Nigeria. They include Legal Defence and Assistance Project (LEDAP), Innocent Project, Office of the Public Defender, National Human Right Commission etc. They have been known to, at the instance of the bench, provide expert opinions, act as *amicus curiae* (friend of the court), work in concert with prosecution and defence counsel to make available documents which have come to light even after conviction and sentence have been served.<sup>334</sup> With the dearth of legal aid services, and huge legal fees of counsel to contend with, the gauntlet falls on the NGOs to take up. They also take up test cases or class action suits of

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<sup>330</sup>Section 590 of the Companies and Allied Matters Act, CAP C20. Laws of the Federal Republic of Nigeria 2004

<sup>331</sup>Udofa, C. I. 2017. The Legality of Taxation of Ngo's: Reference to Churches and Mosque in Nigeria. LL.M Seminar Paper Presentation on Comparative Taxation Law, Faculty of Law, University of Ibadan, Nigeria. 2.

<sup>332</sup>Ekwere, K. 2010. Sustainable Development of Oil and Gas in the Niger Delta: Legal and Political Issues. Dissertation. Law of the Sea and Maritime Law Institute, University of Hamburg. xxii+212 at 173.

<sup>333</sup>Ibid. at 179-180.

<sup>334</sup>Ehighalua, D. op. cit. at 1143.

public interest in this regard. These sorts of actions help pushes for law reforms, systemic and attitudinal change.

This researcher has come in contact with persons who have been exonerated from wrongful conviction by the effort of LEDAP. It is the spirited efforts of the Nigerian National Study Group on the Death Penalty in October, 2004 that led to the moratorium on the execution of capital punishment in Nigeria. It would also be recalled that LEDAP filed a legal suit to stop the execution of the inmates whose execution warrants were signed by the Edo State Governor in October 2012. Even though the executions were finally carried out, there has not been any further execution thereafter due to the huge mobilisation and public outcry the activities of these NGOs generated. In view of the large incidence of wrongful conviction, it is suggested that there is need for more civil society groups in this regard and increased capacity of the existing ones.

#### **4.2 Post Convictions Relief**

The fact that an accused has been found guilty does not mean his rights have seized to exist, he still has those safeguards that abound when he decides to appeal such a conviction in a higher court of law.<sup>335</sup>

The discussion now moves from questions about the production of wrongful convictions to questions about whether or how they can be rectified.<sup>336</sup> Post-conviction remedies is a general term related to appeals of criminal convictions, variety of reliefs pursued by a convict to have his or her sentence upturn, set aside or remedied because he believe such a sentence was based upon some abuse of his or her constitutional rights or wrong findings of fact.<sup>337</sup> This is in a hope of proving actual innocence. Once a defendant has received a guilty verdict, in the criminal justice system, he or she can then challenge a conviction or sentence. The most common post-conviction remedies available are appeals, bail pending appeal, application for additional evidence, modification of sentence, motion for a new trial, stay of execution of the verdict and such other relief as may be proper and just. The goal of these remedies is exoneration or to prove the innocence of the convicted person by exercising their legal rights.<sup>338</sup> The post-conviction process is in place to protect innocent individuals from inherent human errors in the criminal justice system. There are several reasons why a convict may

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<sup>335</sup>Lanre, A. 2017. Bail pending appeal in Nigeria. *The Lawyer's Chronicle: Magazine for the African Lawyer*.

<sup>336</sup>Ibid.

<sup>337</sup>Post-Conviction Remedies. 2008. *West Encyclopedia of American Law* 2<sup>nd</sup>ed. The Gale Group Inc.

<sup>338</sup>Oregon Department of Justice. 2013. *Crime Victims Right in the Post-Conviction Process*.

appeal against his or her conviction which include: errors by the judge, issue with the initial arrest, problem with evidence, inadmissible evidence allowed in trial, overlooked evidence that should have been presented in court and a false or coerced confession elicited from the defendant by the investigative officers. We shall look at these reliefs and their suitability and applicability to issues of wrongful conviction.

#### **4.2.1 Appeals**

The pitfalls inherent in the investigative and legal process, described in chapter 3 above, might be thought to be reduced by the existence of appeal procedures. Every person who has been convicted of an offence may appeal the conviction or sentence from the lower court to the upper court for review of the conviction or sentence. If the judgment of the lower court is not satisfying, appeal can be made to the higher court in order to seek redress and justice. An appeal is often the first step a person can take to challenge an unjust or illegal conviction; this may rationally lead to a reexamination of the matter by a superior court. Appeal provides avenue for correction of error and elimination of mistake as far as possible. Irikefe, JSC when talking about the important of appeal in a criminal matter observed in *Nafiu Rabi'u v. State*<sup>339</sup> that: “The possibility that a decision by an inferior court may be scrutinised on appeal by higher court at the instance of an aggrieved party... is by itself a safeguard against injustice by acting as a curb against capriciousness or arbitrariness”.

Appeal is an invitation to a higher court to find out whether the trial court arrived at a right decision after a good consideration of the facts put before the court and the relevant law.<sup>340</sup> When a convict appeals a case, a higher court will be called upon to review what happened in the case at the lower court; whether the lower court made any legal errors. The court will rule to either affirm the lower court’s decision, or order a new trial, modify the trial court’s judgment, consider new facts or throw out the case entirely. To some extent this is undoubtedly true. But the question remains: to what extent can the system be relied upon to correct its own injustice? To what extent can the appellate courts quash convictions and be seen as an independent, impartial and truth seeking body?

The 1999 Constitution of the Federal Republic of Nigeria, 1999 guaranteed the right of a defendant to appeal against his or her conviction. The power and jurisdiction of the appellate court to entertain such appeal and the procedure to follow are all governed by the same

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<sup>339</sup>(1980) 8-11 S.C. 130 at 175-176.

<sup>340</sup>Per Oputa JSC in *Oredoyin v. Arowolo*, (1984) 4NWLR (Pt. 114) 172 at 211.

constitution. Right of appeal is a creation of statute<sup>341</sup> Section 6 (1) (2) (3) of 1999 Constitution of the Federal Republic of Nigeria provides that:

(1): The judicial powers of the Federation shall be vested in the courts to which this section relates, being courts established for the Federation.

(2) The judicial powers of a State shall be vested in the courts to which this section relates, being Courts established, subject as provided by this Constitution for a State.

(3) The courts to which this section relates, established by this Constitution for the Federation and for the States, specified in subsection (5) (a) to (1) of this section, shall be the only superior courts of record in Nigeria; and save as otherwise prescribed by the National Assembly or by the House of Assembly of a State, each court shall have all the powers of a superior court of record.

The Supreme Court, the Court of Appeal, the Sharia Courts of Appeal, the Customary Court of Appeal and the High Courts (state and federal) are the main appellate courts in Nigeria. These are the superior courts mentioned in section 6 of the constitution above.<sup>342</sup> The Appeal lies from the State and Federal High courts, the Sharia Courts of Appeal and the Customary Courts of Appeal to the Court of Appeal; while appeal lies directly from the Court of Appeal to the Supreme Court. For the purpose of this study we shall consider criminal appeals from High courts (state and federal) to the Courts of Appeals and from Courts of Appeals to the Supreme Court. If one feels he or she has been wrongly convicted in the High Court, he or she can appeal against the conviction to the Court of Appeal. If not yet satisfied, further appeal lies to the Supreme Court which is the highest and final appellate court in Nigeria.

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<sup>341</sup> Adigun & Ors v. A.G. Oyo, (1972) 2 NWLR (pt. 56) 197 at 230.

<sup>342</sup> Section 6(5) of the 1999 Constitution of the Federal Republic of Nigeria Cap C23, Laws of Federation of Nigeria, 2004.

#### **4.2.2 Appeals to the Court of Appeal**

Under the Nigeria 1999 Constitution,<sup>343</sup> the Court of Appeal is established as a court for the federation, it is an intermediate appellate tribunal below the Supreme Court. Section 237 of 1999 Constitution recognises the establishment of Court of Appeal when it provides that:

- (1) There shall be a Court of Appeal.
- (2) The Court of Appeal shall consist of –
  - (a) a President of the Court of Appeal; and
  - (b) such number of Justices of the Court of Appeal, not less than forty-nine of which not less than three shall be learned in Islamic personal law, and not less than three shall be learned in Customary law, as may be prescribed by an Act of the National Assembly

Appeal lies as of right from the High courts to the Court of Appeal. Section 241(1) of 1999 constitution recognises the circumstances in which appeal can be made as of right when it provides that:

An appeal shall lie from decisions of the Federal High Court or a High Court to the Court of Appeal as of right in the following cases -

- (a) final decisions in any civil or criminal proceedings before the Federal High Court or a High Court sitting at first instance;
- (b) where the ground of appeal involves questions of law alone, decisions in any civil or criminal proceedings;
- (c) decisions in any civil or criminal proceedings on questions as to the interpretation or application of this Constitution;
- (d) decisions in any civil or criminal proceedings on questions as to whether any of the provisions of Chapter IV of this Constitution has been, is being or is likely to be, contravened in relation to any person;

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<sup>343</sup>Section 237 of 1999 Constitution.

(e) decisions in any criminal proceedings in which the Federal High Court or a High Court has imposed a sentence of death;

From the above section, the death penalty imposed by a High Court does not require the leave of either the lower court or the appellate court before lodgment of the appeal. In any other cases not recognised by the above provision appeal has to be by leave of either the trial court or Court of Appeal.<sup>344</sup> An appeal against the final verdict of the High court in criminal cases must be lodged within 90 days.<sup>345</sup> The appellant, after filing notice of appeal, and both counsel, that is appellant and respondent counsel filed and exchange their briefs of argument the stage is set for hearing and determination of the appeal. An appeal may be based on the grounds that the trial court judge simply got it wrong, believed wrong witnesses or that there are some admitted evidence that should have been excluded or one went through unfair trial that resulted in the erroneous conviction appealed against. The Court of Appeal can either allow the appeal or dismiss the appeal. The Court of Appeal will then decide to do one of the underlisted:

- a. Decide to strike out the appeal if it lacks merit
- b. Allow the appeal and direct that the appellant be discharged or acquitted
- c. Allow the appeal and direct that there should be a retrial
- d. Allow the appeal and substitute the conviction for a lesser offence which must have been open to the trial judge. For example, substituting manslaughter for a conviction of murder.

The Court of Appeal overturned the conviction of death sentence passed on *Major Hamza Al-Mustapha*<sup>346</sup> in 2013 after thorough consideration of the appellant's grounds of appeal, the respondent's argument and the record of proceeding in the lower court. The court found that the totality of evidence and the subsequent conviction lacks merit and the sentence was unjust and a gross miscarriage of justice. The court, in that case, per Pemu, J.C.A. held that, it is settled that a trial court interprets a situation as per the cold facts before it. He stated further that: "A Judge of first instance decides on evidence led by the parties to a case before him. He does not, with respect, fabricate evidence. He does not imagine evidence. He interprets a

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<sup>344</sup>Section 242 of 1999 Constitution.

<sup>345</sup>Section 24 of the Court of Appeal Act Cap C36 Laws of the Federation of Nigeria, 2004.

<sup>346</sup>*Major Hamza Almustapha v. The State in Suit No. CA/L/469A/2012* Delivered on July 12, 2013.

situation as per the cold facts before him not as per what he would have preferred the facts to be”.<sup>347</sup>

The court held further that where there is a suspicion and doubt in the case of the prosecution as in the instance case, it must be resolved in favour of the defendant and the doubt should, accordingly, be resolved in favor of the appellants because from the record of proceeding from the lower court nothing in the case sufficiently links the appellants with the commission of the offence. The Court of Appeal then allowed the appeal, discharged and acquitted the appellants accordingly. The court observed in that case that the lower court was only bent on securing conviction by all means when Pemu, JCA stated that: “It is preposterous that in a 326 pages’ judgment, the lower court was only concerned with securing a conviction at all cost”. There were lots of inconsistency in the testimonies of the key witnesses at the trial which the lower court would have considered to rule in favour of the defendants but the appellants were wrongly convicted.

The Court of Appeal in Lagos in March, 2015 also discharged and acquitted Sopuruchi Obed and Otobong who were sentenced to death for armed robbery by the Lagos High Court after spending 10 years in prison and 5 years on death row for the offence they did not commit. They were barely 17 years when they were arrested. The court, when setting aside their conviction and sentence, found that the evidence of the prosecution witnesses was mere hearsay and that the vital evidence to prove the charges against them was not provided by the prosecution. They were accordingly discharged and acquitted.<sup>348</sup>

In *Kingsley Akhabue v. The State*,<sup>349</sup> the Court of Appeal per Joseph Shagbor JCA held that the evidence presented before the trial court did not link the appellant with the commission of the offences charged, the evidence of witnesses did not support or established the offence of armed robbery against the appellant beyond every reasonable doubt. The court then allowed the appeal and set aside the conviction and the death penalty sentence passed on the appellant and enter an order of acquittal and discharged in favour of the appellant.

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<sup>347</sup>See also, Eso JSC in *Nwachukwu v. The State*, (2002) 2 NWLR (Pt. 751) 366.

<sup>348</sup>Legal Defence and Assisted Project (LEDAP). Two juvenile on death row in Lagos. Retrieved on March 11, 2015.

<sup>349</sup>Unreported. Appeal No: CA/L/1056/2011. Delivered on December 11, 2015 by the Court of Appeal, Lagos Division.



In *Monday Ilada Prosper v. The State*,<sup>350</sup> the Court of Appeal, Benin Judicial Division overturned the conviction and death sentence passed by the Edo State High Court for the offence of robbery when he challenged his conviction and death sentence by the high court sitting in Benin. He was discharged and acquitted and judgment of the lower court was set aside.

Bala Ngilari challenged his conviction by the trial court that sent him to five years imprisonment for awarding contract without due process. An Appeal court sitting in Yola presided over by Justice Folasade Omoleye discharged and acquitted Bala James Ngilari. The court set aside the judgement of a trial court that earlier sentenced him to five years' imprisonment. The Appeal court held in that case that the lower court that originally convicted Ngilari erred in law because he could not be charged as if he was an ordinary procurement officer.

#### **4.2.3 Appeals to the Supreme Court from Court of Appeal**

The Supreme Court is the highest court in Nigeria. It is mainly a court of appellate jurisdiction and exercises the final right of appeal in the country. Although it also has original jurisdiction in any dispute between the Federation and a state or between states inter se. The Supreme Court of Nigeria consist of the Chief Justice of Nigeria and such number of Justices of the Supreme Court not exceeding twenty one as may be prescribed by an Act of the National Assembly.<sup>351</sup>

Section 6(1) of 1999 Constitution vested the judicial power of the federation on the courts created by the constitution amongst which is the Supreme Court. The Supreme Court derives its existence from the provision of Section 230 of 1999 Constitution. By virtue of the provision of Section 232 (1) (2) of the 1999 Constitution no original jurisdiction can be conferred upon the Supreme Court with respect to any criminal matter.

Section 233(1) of the 1999 Nigeria Constitution confers appellate jurisdiction on the Supreme Court from the Court of Appeal, to the exclusion of any other court in Nigeria. Accordingly:

- (2) An appeal shall lie from decisions of the Court of Appeal to the Supreme Court as of right in the following cases

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<sup>350</sup>Unreported. Appeal No: CA/B/213C/2007. Delivered on 19th of July, 2015 by the Court of Appeal, Benin, Division.

<sup>351</sup>S. 230 1999 Constitution (as amended)

- (a) where the ground of appeal involves questions of law alone, decisions in any civil or criminal proceedings before the Court of Appeal;
- (b) decisions in any civil or criminal proceedings on questions as to the interpretation or application of this constitution,
- (c) decisions in any civil or criminal proceedings on questions as to whether any of the provisions of Chapter IV of this Constitution has been, is being or is likely to be, contravened in relation to any person;
- (d) decisions in any criminal proceedings in which any person has been sentenced to death by the Court of Appeal or in which the Court of Appeal has affirmed a sentence of death imposed by any other court

Section 26 of the Supreme Court Act provides that on the hearing of an appeal, the Supreme Court may exercise any power that could have been exercised by the Court of Appeal such as dismissing the appeal, allowing the appeal and directing that the appellant be discharged or acquitted, allow the appeal and substitute the conviction for a lesser charge which must have been open to the trial judge. For example, substituting a conviction of manslaughter for murder or may order the retrial of the case by a court of competent jurisdiction.

The Supreme Court, in *Gbadamosi & Anor v. State*,<sup>352</sup> allowed the appeal of the 1st appellant and he was found not guilty of the crime of conspiracy and armed robbery for which they were convicted by the court below. It was substituted with a conviction for the offence of receiving stolen property contrary to Section 427 of the Criminal Code. Consequently, he was sentenced to a term of 5 years' imprisonment with hard labour and the earlier sentence of death passed on him by the lower court and affirmed by the Court of Appeal was quashed. The nine years in which he had been in custody since his arrest was taken into account. He was therefore deemed to have served his sentence and his immediate release was ordered. The 2nd appellant's appeal succeeded in full. The conviction and death sentence passed on him by the lower courts was set aside. He was discharged and acquitted. The Supreme Court in that case stated per Omo JSC:

I hold that the court below was in error to have convicted them on the charge of conspiracy. Merely being seen together with the stolen vehicle without

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<sup>352</sup>(1992) NWLR (Pt. 266) 465; 1992 11/12 SCNJ 268

more would not be sufficient evidence of conspiracy to rob. In conclusion I allow the appeal of 2nd appellant and discharge and acquit him in each of the two counts for conspiracy and robbery. I also allow the appeal of the 1st appellant on the charge for conspiracy to rob but substitute for offence of receiving stolen property... I hereby sentence him to ten years imprisonment with hard labour on that count.

If not for the fact that the appellants exercised their constitutional rights of appeal they would have been executed for the offence of armed robbery or languish on death row for years waiting for the hangman.

In *Osuagwu v. The State*,<sup>353</sup> the appellant, Osuagwu appealed against the judgment of the Court of Appeal affirming his conviction and sentence of death passed on him by the High Court of Imo State for the offence of armed robbery. The counsel for the appellant contended that the High court wrongly convicted the appellant on the ground the conviction was based on wrong identification parade conducted by the police, which tailored and coached the process. It was also contended that the defence was not considered on the ground that it was flimsy.<sup>354</sup> He also submitted that the Court of Appeal was wrong in affirming the guilty verdict and death sentence which the trial court passed on the appellant. The Supreme Court held that the trial court should have applied caution in convicting the appellant and that the Court of Appeal on its part should not have endorsed the egregious mockery of the identification process. The Supreme Court, per Nweze JSC, in setting aside the judgment of the lower court that affirmed the appellant's conviction observed that:

The prosecution must be deemed to have failed to discharge the burden of proof which the law cast upon it: a failure which entitled the appellant to a discharge and acquittal.<sup>355</sup> The concurrent judgments of the trial court and the lower court would appear to have been founded on scraggy reasoning. They must therefore, not be allowed to stand as they constitute great affronts to the constitutional presumption of innocence in favour of the appellant. This appeal must be, and is hereby allowed, and I order the setting aside the

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<sup>353</sup>(2016) NGSC 1 (1st July, 2016)

<sup>354</sup>See *Nwankwoala v. The State*, (2006) All FWLR (pt. 339) 801. *Ulebaka vs The State* (2011) 3 NWLR (pt. 1237) 358

<sup>355</sup>See, *State v. Danjuma*, (1997) 5 NWLR (Pt. 506) 512. *Alonge v. Inspector General of Police*, (1959) SCNLR 576.

judgment of the lower court ...and in lieu thereof, order the immediate release of the appellant from custody.<sup>356</sup>

The appellant's sentence of death was overturned after he had spent 7 years of physical and mental torture on death row for the offence he did not commit in a tomb-like condemn cell.

In *Simon Edibo v. The State*,<sup>357</sup> the appellant and other persons were charged with the offence of culpable homicide. The trial was at Benue State High Court, Makurdi where the appellant was found guilty of culpable homicide and sentenced to death. The Court of Appeal dismissed their appeal. On further appeal to Supreme Court, after considering all relevant arguments, the court set aside the judgment of the trial court and the Court of Appeal on the ground that the entire proceedings was null and void as it was conducted in contravention of Section 33(3) of the 1979 Constitution. The appellant was discharged and acquitted

Also in *Olabode George v. Federal Republic of Nigeria*<sup>358</sup> the conviction and sentence of the appellant by the High Court which was affirmed by the Court of Appeal was overturned because the trial was a complete mistrial by the lower courts. The appellant, Olabode George, the former Chairman of the Board of Directors of Nigeria Ports Authority (NPA), was charged before the trial court along with five other persons alleged to have been involved in "contract splitting". This involved exceeding the limit set by a circular issued by the authority, for the award of contracts and contriving to bring the contracts within the said limits by splitting them while also inflating their prices. The learned trial judge convicted and sentenced the appellants to 2 years imprisonment. The Court of Appeal upheld the conviction and sentence of the appellants. On further appeal to the Supreme Court, it was observed that the offence he was convicted of was not known to law as at the time of the alleged offence. The court held that the intention to defraud was not proved as affirmed by the Court of Appeal and where such a vital element was not proved, the prosecution case must fail. Fabiyi, JSC held that:

It has been established that the case of the Respondent rests on shifting sand. The charges framed against the appellant in respect of splitting of contracts and disobedience of guideline in Exhibit P3 is unknown to any written law at the material time. They rest on nothing in the face of the provisions of section

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<sup>356</sup>Per Anigolu JSC in *Nwosu v. The State*, (1986) 4 NWLR (Pt. 35) 348, 359.

<sup>357</sup>Unreported: Suit No. SC. 284/2003 Delivered on Friday 11th May, 2007

<sup>358</sup>Supra. Also see, *Omouga v. The State*, (2006) 14 NWLR (pt. 1000) 532. *Aliyu v. The State*, (2007) All FWLR (Pt. 388)1123 at 1148

36(8) and (12) of the 1999 Constitution. They cannot stand as they fall flat...  
it was a complete mistrial by the lower court.

Despite the discharge and acquittal of the appellant, he had already served his two years sentence in prison before his conviction and sentence was overturned and set aside by the Supreme Court.

In *Okabichi & Ors v. The State*,<sup>359</sup> the Supreme Court of Nigeria while exercising its appellate jurisdictional power overturned and set aside the conviction and sentence of death passed on the 2nd appellant. His conviction and sentence to death was quashed. He was discharged and acquitted; while the appeal of 3rd to 7th appellants was allowed. Their death sentences were set aside and they were convicted of lesser offences and imprisonment for three years while the 1st appellant's appeal was dismissed and the death penalty sentence was upheld.

#### **4.2.4 Bail Pending Appeal**

Bail pending appeal is another relief available to the convict in a criminal proceeding to secure his or freedom temporarily pending the determination of the appeal. Bail pending appeal is not granted as a matter of course. It is determined by different factors unlike bail pending trial where the applicant is still presumed to be innocent. Bail after conviction and sentence is not available as of right to a convict because at that stage, the presumption of innocence do no longer exist in favour of the accuse consequent upon his conviction. Hence, appellate usually refer to convicted defendants as prisoners. The primary consideration in bail pending appeal and after conviction is that there must be an unusual or exceptional circumstance clearly disclosed in the affirmation in support of the bail application to enable the court exercise this exceptional discretion judicially and judiciously.<sup>360</sup>

In *Jamal v. The State*,<sup>361</sup> the court held that:

Generally, the grant of bail to a convict sentenced to a term of imprisonment is not made as a matter of course. The principle of presumption of applicant's innocence no longer exists, because of his conviction; he must show special circumstances to be entitled to bail pending determination of his appeal.

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<sup>359</sup> (1975) 3 SC 96

<sup>360</sup> *Duro Ajayi and Ors v. The State*, (1977) FCA 1 Per Obaseki JCA p. 6.

<sup>361</sup> 16 NLR

When a person is convicted by a Court, the court can grant him bail if the person satisfies the court that he intends to present an appeal or has appealed against the conviction to the higher court. He may apply to the court for his bail pending the determination of that appeal. If he was granted bail before or during trial at the lower court, he must also adduce evidence to show that he did not jump bail.

Section 28 (1) of the Court of Appeal Act<sup>362</sup> endows the Court of Appeal with the power to grant bail pending appeal. It provides that the Court of Appeal may, if it thinks fit, on the application of an appellant, admit him to bail pending the determination of his appeal. While Order 17(13) of the Court of Appeal Rules, 2011 stipulates the conditions to be attached to the bail granted by the court to an appellant

A person charged with felony other than the one punishable with death may be granted bail if the court deems it fit. But the decision whether or not to allow his/her bail in such cases is a matter within the judicial discretion of the court handling the application. The judicial discretion must be exercised in accordance with the law and also taking into consideration the facts of the particular case.<sup>363</sup> In granting bail pending appeal, the applicant must show special and exceptional circumstances<sup>364</sup> like:

- a. Whether the Applicant is a first time offender and has been of good behavior.
- b. Whether substantial grounds of law are involved in the appeal.
- c. Whether the sentence is manifestly contestable as to whether or not it is a sentence known to law.
- d. Whether a refusal of the court to admit the applicant to bail will have the result of the whole or considerable portion of the sentence being imposed on the applicant being served before the appeal can be heard.
- e. Whether the application is based on ill health and the applicant cannot get the necessary treatment in prison.<sup>365</sup>

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<sup>362</sup>Cap C37 Laws of the Federation of Nigeria, 2004

<sup>363</sup>Per Obaseki Adejumo JCA in *Fawehinmi v. State*, (1990) 1 NWLR (Pt. 127) pp. 7-8

<sup>364</sup>See, *Dogo v. Commissioner of Police*, (1980) 1 NCLR 14; *Okoroji v. State* (1996) 9 NWLR (Pt. 157) 509 Per Nimpur JCA at 3-4.

<sup>365</sup>*Fawehinmi v. State*. Supra

The burden of proving exceptional circumstances which will entitle the applicant to be admitted to bail pending the determination of the appeal lies on the applicant to establish. The presumption of innocence as well as right to liberty is no longer available to the applicant consequent upon the conviction<sup>366</sup> as explained above. Until the conviction and sentence of the lower court is overturned, the right to freedom is also lost.

The Court of Appeal, in *Arowolo v. The State*,<sup>367</sup> observed that the state of health of the applicant appears to be in great danger of deterioration and in dire jeopardy as evidenced from the medical condition of the appellant. If released on bail, he may therefore be in a position to make adequate arrangement for his medical care. The court held that special serious health condition of the applicant amounts to a special or exceptional circumstance upon which he can be admitted to a better and attainable condition of bail pending the hearing and determination of his appeal.

In *Fiberesima Ibinabo v. The State*,<sup>368</sup> the appellant applied for her bail pending appeal in the Court of Appeal, Lagos. She prayed the court to grant her bail to seek medical attention pending the determination of her appeal against her conviction and sentence to five years imprisonment. In the affidavit in support of her application, she averred that she had recently undergone surgical operation for breast cancer and is still under the close watch of her medical Doctors. The surgical operation was yet to be healed and she was scared that her life might be threatened if remained in the prison custody as there is no facility in the prison custody that would meet her medical condition. The court exercised its discretion in view of her medical problem and because there was no record that the applicant had jumped bail in the past. Justice Oseji stated that it would amount to unfairness if after the applicant had been kept in custody the Supreme Court later ruled that the five years imprisonment imposed on her should be set aside after about three to four years on appeal.

Also the Federal High Court granted the applicant bail pending appeal against the conviction and sentence of 3 years imprisonment in *James Adie v. The State*,<sup>369</sup> on the grounds that the applicant was a first time offender, he did not jumped bail during the pendency of the trial and more importantly the accused person would have served whole or substantial part of the sentence period before the hearing of the appeal. The court held that there was nothing in the

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<sup>366</sup> *Madike v. The State*, (1992) 8 NWLR (pt. 257) 85. Per Obaseki Ademola JCA at p. 13

<sup>367</sup> (2008) All FWLR (pt. 404) 1603 at 1608.

<sup>368</sup> *Ibinabo Fiberesima Granted Bail. Daily Trust*, April 9, 2016.

<sup>369</sup> (2016) LPELR 41570

record of the court that the convict once jumped bail and that the applicant has shown that the application is based on ill health and the applicant cannot get the necessary treatment in prison, the applicant has demonstrated the special circumstance, the court then allowed the appeal and the applicant was granted bail.

Bail pending appeal is an application that can be taken advantage of to ameliorate the sufferings and hardship associated with wrongful conviction. This saves a situation where a person, while trying to correct the wrong conviction by way of appeal, would still serve the jail term. Due to the congestion in our appellate courts and the resulting lengthy period in the determination of appellate cases, it is highly possible that an innocent person might unjustly serve the whole or substantial period of sentence. The challenge, however, is the restrictive grant of application of this nature. The court should relax the conditions for the grant of bail pending appeal. Where it is obvious that there is real likelihood that the applicant would have served out the sentence, as in the *Olabode George's case*, and there is a substantial ground of appeal that suggest that the applicant was wrongly convicted, the court should ordinarily grant bail pending appeal.

#### **4.2.5 Stay of Execution**

Stay of execution is an order from the court to temporarily suspend the execution of a court judgment. Generally, execution of criminal conviction and sentence takes effect and cannot be stayed, immediately after judgment of the trial court. However, where the sentence is a death penalty, an appeal of such decision automatically acts as a stay of execution of the sentence until the final determination of the appeal. In Nigeria, it is typical for governors and the president to ensure that there is no pending appeal or all appeal have been dismissed before signing execution warrant for death penalty.

In *Peter Nemi v. State*,<sup>370</sup> the Court of Appeal held that the life of a convict on death row could not be terminated without due process of law. The Supreme Court in the case of *Bello v. A.G of Oyo State*<sup>371</sup> held that the premature execution of the Bello was not only against the constitution but also illegal and unlawful; because by that execution, the deceased, Bello had lost both his right to life and the right to prosecute his appeal and that the deceased's dependents had been unjustly deprived of the benefit of his life as they have lost their bread winner. In that case, one Nasiru Bello had been convicted of the offence of armed robbery

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<sup>370</sup>Administrative Law of Lagos State, 2011.

<sup>371</sup>(1986) 5 NWLR (pt. 45) 828. See also, Ogungbe, M. O. 1998. *Bello v. Attorney General of Oyo State: An Appraisal of the Right to Life in Nigeria. East African Journal of Peace and Human Rights to Life in Nigeria.*



and was sentenced to death by the High Court in Oyo State. In exercising his constitutional right of appeal, he appealed against his guilty verdict to the Federal Court of Appeal. A copy of the Notice of Appeal was served on the Attorney General of Oyo State. While the appeal was still pending before the Federal Court of Appeal, the A.G. of Oyo State made a recommendation for the execution of Bello to the Governor and he was executed based on that recommendation. His family challenged his premature execution by instituting a law suit in court.

The Federal High Court of Nigeria ordered the Nigeria Army to stay execution on the death sentence passed by Army General Court Martial against 12 Nigeria soldiers. The convicted soldiers appealed against their conviction and punishment of death handed on them by the court Martial on the grounds of abuse of their fundamental rights contrary to the constitution and many other fundamental irregularities which characterised the entire trial. Their application for stay of execution of their sentence pending the determination of their appeal was granted by the court in the interest of justice.

In USA, all death verdicts are automatically put on hold pending direct evaluation by an appeal court. The stay is lifted only if the verdict is found to be legally justifiable. In US, James Autry's execution was suspended in 1983 in Texas when the court order came to stay the execution despite the fact that he was already strapped down to the execution table. Also a stay of execution was granted to Joseph Paul Franklin by a US District Judge on 19<sup>th</sup> November, 2013, when his Attorney filed a motion that the use of the drug in a lethal injection would amount to cruelty and unusual punishment.<sup>372</sup> In Arkansas, Jack Green's execution was halted on Tuesday 7<sup>th</sup> November, 2017 by the US Supreme Court two days to his execution because he was suffering from psychotic delusions and was mentally ill.

Stay of execution may be viewed somewhat as an available post-conviction relief, howbeit temporary, pending the determination of the appeal of those convicts who are sentenced to death. This relief, sadly enough, is not available to convicts of non-capital offences. However, the condemned convict will still be on death row while the appeal subsists. This puts to question whether stay of execution really serve its purpose as a relief when the experience at death row have been described as worse than being put to death. Whereas a person is wrongfully convicted for a capital offence, such person is meant to suffer the horror, gruesome experience and torture of imminent death.

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<sup>372</sup> Ibid

### 4.3 Criminal Appeals in USA

An appellate court is a court that hears cases on appeal from another court depending on the particular legal rules that apply to each circumstance. An aggrieved party to a case may challenge the decision of a trial court on specific grounds. The grounds typically could include errors of law, facts, procedural or due process failure. The appellate courts will typically be not interfering with the trial court's finding of facts unless the findings are perverted and clearly erroneous. Hence, its' primary focus will center on the application of the law to those finding of facts. If the appellate court finds no defect in the trial court's decision, it will affirm the judgment. But if a legal defect is found in the decision of the court below, it may modify the ruling to correct the defect or nullify the whole decision or any part of it thereof. It may in addition send the case back to the lower court for further proceedings to remedy the defect. The appellate court can also give an order for the trial to commence *de novo* at the trial court. Sometimes, the appellate court may find defect in the procedure the parties used in initiating the appeal and dismiss the appeal without considering its merit. This has the same effect as affirming the judgment of the court below.

Generally, appellate courts do not engage in trial of a case. Consideration is only given to the records of the appeal which contain records evidence presented at the trial court, all the pretrial and trial proceedings. However, in some US jurisdiction, appeal can be by way of rehearing. Thus, trial can be heard afresh at the appellate court in which case, new evidence will be considered especially where material evidence was unavailable to a party for some very significant reason. While the defendant may appeal a conviction, the government may not appeal lack the right of appeal if a defendant is discharged and acquitted due to the defendant's right against double jeopardy. However, either side in a criminal case may appeal the sentence imposed by court after a guilty verdict.

Appeal as of right is one that is guaranteed by statute or by some underlying constitutional or legal principle. The appellate court cannot refuse to hear to the appeal as the leave of the court is not required before instituting such appeal. An appeal with leave or permission requires the appellant to obtain leave to appeal. In such a situation either the lower court or the appellate court may exercise the discretion to grant or refuse the appellant's application for leave to appeal the lower court's decision. In the Supreme Court, review in most cases, is available only if the court exercises its discretion in granting a writ of certiorari. All states have post-conviction relief procedure, which is very closed to federal post-conviction reliefs. An appellant can apply to the court to correct alleged fundamental mistake that were not

rectified on direct review.<sup>373</sup> The claim might include ineffective representation of his lawyer and actual innocence based on new facts. These proceedings are normally distinct from direct appeal. However, some states allow for collateral reliefs to be sought on straight appeal. After direct appeal, the verdict is considered final. But once the appellant has completed the entire appeal process, there is yet another way for the appellant to challenge his conviction. This is called post-conviction relief (PCR). In PCR, the convict is called petitioner and the petitioner may raise new claims. The petitioner must initiate the PCR proceedings within 2 years of the completion of his or her direct appeal. The petitioner begins the PCR process by filing a PCR petition setting out the claims of error and prayers for reliefs the petitioner sought. In response, the state may file an answer responding to the petitioner's claims. The PCR proceeding generally last for 30 minutes only and are done before a judge. There are essentially two possible outcomes in PCR proceedings:

1. The petition for relief may be disallowed (meaning the conviction and sentence are upheld) or
2. The petition may be allowed and the judge may order any of the following:
  - a. Order a new trial.
  - b. Modify the sentence or
  - c. Order other relief as required

The post-conviction relief appeal basically follows the same procedure as direct appeal. Either side may begin the PCR appeal by filling a notice in the Court of Appeal.<sup>374</sup> An appeal from the post-conviction court proceeds just as a direct appeal goes to the intermediate appellate court and then to the highest court. If the petition is granted, the appellant could be released from incarceration or a new trial could be ordered.

#### **4.4 Criminal Appeals in UK**

The Court of Criminal Appeal in UK is the court responsible for criminal appeal from Court of Scottish law and the historical courts in England and Wales in United Kingdom, the Republic of Ireland and the Northern Ireland. The Court of Criminal Appeal was created by the Criminal Appeal Act 1907. The court succeeded the Court for Crown Cases earmarked for which referral had been exclusively discretionary and which could only deliberate points of law. The Access to Justice Act 1999 came into force on 2<sup>nd</sup> May, 2000. Sections 54 to 59

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<sup>373</sup> Yackle, L. 2003. *Federal Courts, Habeas Corpus*. Thomas Reuters.

<sup>374</sup> Oregon Department of Justice. Process for post conviction relief. Retrieved in April 27, 2011.

of the Act create a universal appeal system to the Court of Appeal. The fundamental principle is that appeal should go to the next highest court in the order of courts.

The Court of Criminal Appeal hears appeal from the Crown Court. Permission to appeal is normally necessary from either the lower court or the court of appeal itself. With leave, further appeals may lie to the Supreme Court. Appeals are allowed if the decision was not correct, or suffered from a grave procedural or anomaly. All appeals need leave; the application for leave should be made to the lower court or to the appellate court itself. A separate Court of Criminal Appeal was created in 1908. In 1966, it was merged with its older namesake, establishing the current day gathering of a single Court of Appeal.

A Crown Court's sentence, conviction or both can be appeal and does not matter whether the accused pleads guilty or not guilty to the charges and this must be done within 28 days of conviction. Seeking and obtaining leave or permission to appeal is often the first stage, a judge will review the application and elect whether to give consent to appeal or not. Thereafter, the appeal will be decided by the Court of Appeal Criminal Division. If the appeal is successful, the conviction may be overturned or the sentence may be reduced as is the case in Nigeria. If the appeal fails, the original sentence or conviction won't change. An aggrieved party may have the following option:

- a. restart the sentence from the beginning
- b. pay the costs

A person convicted by a Magistrate Court may appeal against such conviction, sentence or both if he or she had pleaded not guilty at trial. Where he or she pleaded guilty at trial, appeal can only lie against sentence. The appeal must be filed within 21 days after the date of sentence. Failure in this regard would warrant the need for leave to be sought from the Crown Court before the appeal could be filed. The appeal will depend on whether the case went through trial or not. If it went through trial, there would be need to send an appeal notice form to the Magistrate Court where the trial took place. If the person was convicted by the Magistrate Court and the Crown court passed the sentence, one has to abide by the rules for appealing a Crown Court verdict. Assuming the case did not go to trial, one will need to apply to a Magistrate to reopen the case.

If the appeal succeeds against the conviction, the sentence will no longer apply. There could be an application for compensation. The sentence may be reduced if the appeal against the

conviction is successful. The court can order payment of some legal costs. For example, Solicitor's charges. But if the appeal is fails, the original verdict or sentence might change.

#### **4.5 Post Conviction Relief in America**

This section shall consider some of the post-conviction reliefs available in America as a basis of comparism with the above considered Nigeria position.

##### **4.5.1 Motion for a New Trial**

In US, after a criminal trial ends in a conviction and it was discovered that some kind of error prevented the defendant from receiving a fair trial, the defendant or court can file a motion for a new trial to correct significant errors that happened during trial. This can also come handy on the discovery of new substantial evidence that proves the innocence of the prisoner after conviction. Those new pieces of evidence must have been unknown to defence during trial and that new and substantial evidence have been found which the defendant could not with rational diligence have discovered and produced at the trial and which if presented and admitted at trial would have possibly affect the decision of the trial court. The purpose of motion for new trial is to temper the harshness of a judgment or avert the failure of justice.<sup>375</sup> A motion for new trial may be filed at any time before a judgment of conviction becomes final, that is within 15 days from its promulgation or notice, as a motion for new trial will no longer be opened as a remedy upon finality of the judgment

The court must consider the following when granting motion for new trial on the grounds of newly discovered evidence:

- a. The evidence must have been discovered after trial;
- b. Such evidence could not have been discovered and produced at the trial even with the exercise of reasonable diligence;
- c. The evidence is material, not merely cumulative, corroborative, or impeaching;
- d. The evidence must go to the merits, such that it would produce a different result if admitted.

An example of new evidence is when the defence found a vital witness he had been looking for to corroborate his defence of alibi. The new trial could be granted if doing so could mend the injustice related to the first trial. The application for new trial is always presented by the

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<sup>375</sup>Ibid

defendant. The prosecutor cannot make a motion for new trial. This is to prevent double jeopardy against the defendant having been acquitted. Although a prosecutor can appeal the grant of order for new trial by a trial judge or appeal an order for new trial by an appellate court. The motion must be in writing, stating the grounds on which it is based. If based on newly discovered evidence, it must be supported by affidavits of witness by whom such evidence is expected to be given or authenticated copies of document to be introduced in evidence.<sup>376</sup> And the prosecutor must be served the notice of motion for new trial. If an application for new trial by the accused is denied, he can appeal against it and he has fresh 15 days period beginning from the date of such denial of motion within which to file his or her notice of appeal against the refusal. Motion for new trial is only available after a guilty verdict has been entered. If a court also discovered that an injustice has happened, it may also grant a motion for new trial.

Effect of the grant of the motion for New Trial- if it is based on error or anomalies:

1. All the proceedings and evidence affected by such error or irregularities will be set aside. Trial de novo might be allowed to ensure introduction of new evidence in the interest of justice and fair play.
2. The evidence already adduced will remain if the new trial is based on discovering of new evidence; the court will then consider the old evidence on record and the new evidence together to arrive at a decision.
3. The original judgement shall be vacated or vacated and a new verdict shall be rendered.<sup>377</sup>

In *People v. Estefa*,<sup>378</sup> the trial court during the trial excluded a defence witness from testifying based on an erroneous interpretation of the rules of evidence. The judge disqualified him. A new trial was granted and he was allowed to testify as it was believed that if his testimony is allowed, the defendant would likely get acquitted. This was based on error of law not irregularity.

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<sup>376</sup>S. 4 Rule 121.

<sup>377</sup>S. 6 rule 121

<sup>378</sup>*People v. Estefa* 86 Phil. 104

#### 4.5.2 Coram Nobis

This is another remedy available to convicts in the United States of America to challenge and correct erroneous conviction. *Coram Nobis* is the name of a legal order allowing a court to correct its original judgment upon discovery of a fundamental error which did not appear on the records of the original judgment's proceeding and would have prevented the judgment from being pronounced. The writ of *coram nobis* originated from the English court of common law during the 16th century. In England, the writ was eradicated in civil matters with the Common Law Procedure Act of 1852<sup>379</sup> and criminal cases with the Criminal Appeal Act of 1907.<sup>380</sup> The writ of *Coram Nobis* was replaced by other means of correcting errors in UK in 1907 when it became obsolete. It is still in existence today in few courts in the US even though it is not in wide practice. It is still in existence in some courts in 15 States in US, the District of Columbia and US Federal Courts.

A writ of *Coram Nobis* can only be allowed by the court where the original judgment was decided. So anyone applying to correct a judgment must understand the conditions necessary for that specific court. Before states in US commenced to develop legal post-conviction remedies in the 1940s, this common law remedy was a very significant means of rectifying errors in criminal proceeding.

*Coram Nobis* is not usually open to an offender who is still serving a prison term but it could be available after sentencing a convict. The petitioner in *Coram Nobis* must be a person who has already been found guilty and sentenced for a criminal offence. He is not in prison under that verdict; nor on probation under that sentence, but in possession of new evidence which could not have been revealed while in custody or on probation which can indicate that the new evidence would have prevented the conviction and sentence if it had been discovered during trial. The writ of *Coram Nobis* is an extraordinary remedy to correct errors of the most fundamental character. Such error must be that which resulted in a complete error of justice and the mistake must have been the one that renders the proceeding irregular and invalid.<sup>381</sup>

In December, 2014, a writ of *Coram Nobis* was allowed by a US Federal Court to set aside the conviction of George Stinney, a 14-year-old African-American boy who was found guilty of first degree murder in a one-day trial and hurriedly executed on the 16<sup>th</sup> June, 1944. He

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<sup>379</sup>Common Law Procedure Act 1852, 15 & 16 Ch. 76 & 148.

<sup>380</sup>Criminal Appeal Act of 1907 7 Edw Ch. 23.

<sup>381</sup>Jose v. Court of Appeal, (1976) 70 SCRA 257.

was alleged to have admitted committing the crime but there was no written record of the admission, but the only evidence provided was the notes by an investigating deputy.<sup>382</sup> His conviction was posthumously vacated on the 17<sup>th</sup> December, 2014, 70 years after he was executed. The judge of Federal Court ruled that he had not been given fair trial; no effective defence from his Attorney who was busy pursuing his political ambition and his sixth amendment right<sup>383</sup> was violated.<sup>384</sup>

The US district court in Oregon granted Yasui Minoru *Coram Nobis* writ in January, 1984 and overturned his conviction and sentence. Yasui was convicted in November, 1942 of a criminal offence, he appealed against the conviction in 1943 to the Supreme Court, which upheld his sentence in *Yasui v. United State*.<sup>385</sup> Although he later died in 1986, in November, 2015 he was posthumously granted the presidential Medal of Freedom.<sup>386</sup>

#### **4.6 Prerogative of Mercy in Nigeria**

The classic exposition of the law relating to pardon is established in *Ex parte Phillip Grossman*<sup>387</sup> case where Chief Justice Taft stated that:

Executive clemency exists to afford relief from undue harshness or evident mistake in the operation or the enforcement of the criminal law. The administration of justice by the courts is not necessarily always wise or certainly considerate of circumstances which may properly mitigate guilt. To afford a remedy, it has always been thought essential in popular governments, as well as in monarchies, to vest in some other authority than the courts power to ameliorate or avoid particular criminal judgments.

Under common law, a free pardon restores the name of the person granted such a pardon, removes the consequences of the conviction that necessitated the pardon and leaves his character unaffected. In *R v. Foster*,<sup>388</sup> it was held that the effect of free pardon was to remove from the subject of the pardon “all pains, penalties, and punishment whatever that

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<sup>382</sup>Robertson and Campbell 2014. South Carolina judge vacate conviction of George Stinney in 1944 execution. *New York Times*.

<sup>383</sup>This is the right of an accused person to remain silent as contained in the sixth amendment of the American constitution.

<sup>384</sup>Turnage and Jeremy 2014. George Stinney, 14 year old, convicted of 1944 murder, exonerated. *WIS* archived from the original on March 3, 2016.

<sup>385</sup>(1943) 320 U.S. 81

<sup>386</sup>*Bereano v. United States*, (2013) 706 F. 3d 568.

<sup>387</sup>(1925) 267 US 87. See also, *Bangladesh Research Publication Journal* 7.3: September to October, 2012.

<sup>388</sup>(1985) QB 115, 1984) 3 WLR 401



from the said conviction may ensue” but not to eliminate the conviction itself.<sup>389</sup> When Prerogative of mercy is granted to a convict, it restores the person pardon to exactly the same position as if he had never been convicted.<sup>390</sup> Prerogative of mercy is not only to wipe out the sentence and the penalty but also the conviction and all its aftermaths.

A pardon is usually allowed where a convict has exhausted all his constitutional rights of appeal, has no plan of exercising such right or where he is unjustly convicted and is afterward released on the ground of his innocence.<sup>391</sup> The prerogative of mercy is the right and power of a sovereign, state, president, or other supreme authority to commute a death sentence, to change the mode of execution, or to pardon an offender. It is a special privilege or right exercised by a person or group of people occupying a particular office or hereditary position. Prerogative of mercy is for those offenders who have been wrongly convicted by reason of some technical or procedural error or convicted on the right facts under the wrong law and whose plight is discovered too late for redress in any judicial Court of Appeal.

The grant of prerogative of mercy or pardon is a right recognised under the 1999 Constitution (as amended). Sections 175 (1) (2) 212 (1) reserves such powers exclusively to the President and Governors respectively.

Section 175(1) (2)(3)<sup>392</sup> provides that:

- (1) The President may -
  - (a) grant any person concerned with or convicted of any offence created by an Act of the National Assembly a pardon, either free or subject to lawful conditions;
  - (b) grant to any person a respite, either for an indefinite or for a specified period, of the execution of any punishment imposed on that person for such an offence;
  - (c) substitute a less severe form of punishment for any punishment imposed on that person for such an offence; or
  - (d) remit the whole or any part of any punishment imposed on that person for such an offence or of any penalty or forfeiture otherwise due to the State on account of such an offence.

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<sup>389</sup>Augustine, E. A. 2017. Bayelsa State prerogative of mercy law. *The Nigeria Lawyer*.

<sup>390</sup>Weihofen. 1939. The effect of a pardon. *88 U. Pa Rev.* 177. 179.

<sup>391</sup>Orji, N. 2016. Legal effect of President, Governors' exercise of prerogative of mercy. *Daily Sun News*. May 5, 2016. See also, *C.O.P v. Salisu Buhari*, (2000) FWLR p 164.

<sup>392</sup>See S. 175(1) of 1999 Constitution.

(2) The powers of the President under subsection (1) of this section shall be exercised by him after consultation with the Council of State.

(3) The President, acting in accordance with the advice of the Council of State, may exercise his powers under subsection (1) of this section in relation to persons concerned with offences against the army, naval or air-force law or convicted or sentenced by a court-martial.

Section 212 is *impari materia* with S. 175 *mutatis mutandi*. Section 212 relates to offences created by laws of any State and the power is exercisable by the state Governor involved. By virtue of the above sections of the constitution, the President and state Governors can grant pardon to a condemned person or reduced or commute a death sentence to terms of imprisonment. Council of State is one of the Federal Executive bodies established by virtue of Section 153(1) of 1999 Constitution of the Federal Republic of Nigeria to advise the president in the exercise of his power to issue a prerogative of mercy in the maintenance of public order. By the provision of Section 312 of ACJA, the Administration of the Criminal Justice Act, the court can make recommendation for mercy and as well give the reasons for its recommendation in any case in recording its sentence. This innovation is a welcome development in this regard.

Section 409(1) (2) of ACJA, 2015 further states that:

Where a convict:

(a) has been sentenced to death and has exercised his legal rights of appeal against the conviction and sentence and the conviction and sentence have not been quashed or the sentence has not been reduced, or has failed to exercise his legal right of appeal or having filed an application for leave to appeal, or an appellant has failed to perfect or prosecute the application or appeal within the time prescribed by law or

(b) Where the convict desires to have his case considered by the committee on prerogative of mercy, he shall forward his request through his legal practitioner or officer in charge of the prison in which he is confined to the Committee on Prerogative of mercy

(2) The Committee on Prerogative of Mercy shall consider the request and make their report to the council of State which shall give advice to the President.

In *Obidike v. The State*<sup>393</sup> the court held that the President and State Governor can grant pardon to a convicted person or grant a respite or remission of punishment among other things in respect of conviction of any offence created by an Act of the National Assembly or the Law of a state as the case may be.

State pardon is a discretionary power to be exercised by the executive. Unlike judicial powers there no legal requirement that it must be exercised judicially and judiciously. It is usually exercised at the pleasure of the executive. The practice in Nigeria confirms that prerogative of mercy has continued to be used as an instrument of political, ethnic and religious patronage. Some State Governors do not exercise this power in line with the constitutional requirement as these States do not have in place the Council of State for prerogative of mercy. Even in some states where such council exists, they appear to be mere rubber stamp to just sign documents in order to fulfill all righteousness.<sup>394</sup>

In many cases where the power of prerogative of mercy were exercised by the Federal Government, it was only politically exposed persons that have been the beneficiaries thereof. General Yakubu Gowon as the military Head of state granted pardon to Chief Obafemi Awolowo and Chief Enahoro who were convicted and sentenced to jail terms for treasonable felony. General Abdusalami Abubakar in his capacity as Head of State in 1998, pardoned Chief Olusegun Obasanjo and late Musa Yar adua. President Shehu Shagari ordered the release of Mrs. Helen Gomwalk and Captain Peter Temlong from jail. General Badamosi Babangida pardoned Nduka Irabor and Tunde Thompson after they were released from jail. Also Major General Oladipo Diya, Shettima Bulama, and Major-General Abalukareem Adisa (late) were granted pardon. President Olusegun Obasanjo granted pardon to Alhaji Salisu Ibrahim Buhari, who was convicted of certificate and age falsification.<sup>395</sup> Also, the Governor of Borno State, Kashim Shettima granted prerogative of mercy to 22 prisoners serving various prison terms at the Maiduguri Maximum Prison to commemorate Nigeria Independence Anniversary. Ondo State Governor also granted state pardon to 30 prisoners

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<sup>393</sup>(2001) 17 NWLR (pt. 743) 601

<sup>394</sup>Akwenze, A.S. Presidential pardon and prerogative of mercy: A necessary national shooting balm for social justice. Retrieved on October 3, 2017 from Coou.edu.ng

<sup>395</sup>Ibid at foot note 50

servicing various jail terms at the Olokuta Medium Prison in Akure based on the recommendation of the State Advisory Council on 4th October, 2017 while Governor Ajimobi of Oyo State pardon 21 convicts on the occasion of Nigeria independence anniversary while Governor Ortom of Benue State pardons 112 prisoners serving various jail terms. Governor Aregbesola of Osun State granted amnesty to four death row prison inmates pursuant to the advise and recommendations of the State Advisory Council on Prerogative of Mercy. Two of them were set free while the other two had their sentence commuted from death to 20 years imprisonment each.

The right to appeal the decision of a trial court even up to the Supreme Court avails a convicted person for possible correction of a wrong conviction during trial. Hence, a panel of three, five or even seven justices, as the case may be, usually sits to consider the rightness of decisions of lower courts. These measures, notwithstanding, the possibility of error due to human nature still exist, even at the Supreme Court level.<sup>396</sup> This is where the exercise of power of prerogative of mercy comes in to fill the gap, Coram Nobis and motion for a new trial can also be introduced in Nigeria upon discovery of new evidence which were not known to the defence at trial as it is the practice in US. Prerogative of mercy thus, be the last option of correcting miscarriage of justice. Instead of using this power for political consideration, it would be well served if the target beneficiaries are those persons whose conviction are purely and manifestly cases of wrongful conviction. That way, prerogative of mercy would properly serve as a tool for checking the excesses and short coming of the judiciary by the executive. This is in conformity with the underlining principle of checks and balances contemplated by the constitution.

#### **4.7 Compensation**

Despite their proven innocent, the difficulty of re-entering society is difficult for the wrongfully convicted; the failure to get compensation had insult to injury. Society has an obligation to promptly provide compassionate assistance to the wrongfully convicted.<sup>397</sup>

Compensation is typically a monetary award to someone in recognition of loss, suffering or injury. It is money paid to someone in exchange for something that has been lost or damaged

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<sup>396</sup>It is usually said that the ‘Supreme Court is not final because it is infallible, but it is infallible because it is final’. In any case, it is in the interest of the public that there must be an end to litigation. This is aptly captured by the Latin maxim: *‘rei publicae ut sit finis litum’*.

<sup>397</sup>Innocent Project. *Compensating the wrongly convicted*.

or for some problem.<sup>398</sup> The main objective of a civil case is merely to compensate the plaintiff as much as possible for the wrong done to him.<sup>399</sup> In Nigeria there is no direct compensation scheme recognised by Nigeria laws to cater for the compensation for loss or damage to the victim of wrongful conviction compared to the situation in UK and USA where there is compensation scheme readily available for the victims of wrongful conviction. This section shall consider the available civil law remedy, if any, in Nigeria, under which victims of wrongful conviction can claim compensation. Comparative analysis of compensation scheme available in United Kingdom and America shall be made.

#### **4.7.1 Compensation in Nigeria**

Under the Nigeria law, there is no direct provision on compensation for victims of wrongful conviction unlike the US and UK that have laws that recognises, establish and cater for the compensation of victims of wrongful convictions for the harm and trauma suffered during their incarceration. Compensation can be accessed under civil and criminal law. Assessment of compensation under criminal law is not a bar to instituting civil action for compensation. However, the court granting compensation in a subsequent civil matter relating to the same suit is to take into account any sum paid or recovered as compensation under the criminal suit.<sup>400</sup>

What appear as compensation under civil law are actions under common law. For instance, victims can sue the police for false imprisonment assault, battery and malicious prosecution. The common law principle of vicarious liability is also applicable here. The law that employers would be responsible for the damage caused by the tort of their employee acting in the cause of their employment is a strict liability applicable to the police in Nigeria.

#### **4.7.2 Malicious Prosecution and False Imprisonment**

When making complaints to the police one needs to be very careful not to maliciously instigate the arrest and unlawful prosecution of a suspect without reasonable grounds because any unwarranted or unjustified arrest or prosecution of any person as a result of fabricated allegation may later attract legal proceedings for damages for false imprisonment or malicious prosecution.

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<sup>398</sup>Merriam Webster Dictionary.definition. <https://.merriamwebster.com>

<sup>399</sup>Olatunbosun, A.I. 2002. Compensation to the victims of crime in Nigeria: A critical assessment of criminal - victim relationship. *Journal of the Indian Law Institute*44.2: April- June. 205- 207

<sup>400</sup>S. 320 ACJA 2015

The tort of false imprisonment arises from unlawful arrest, detention and conviction of a person on the basis of false allegation of complaint made against such a person to the police. In such a situation the complainant will then be liable for malicious prosecution of that person. In *Ogbonna v. Ogbonna & Anor*,<sup>401</sup> Orji-Abadua JCA defined malicious prosecution as: “a tort or a civil wrong which enables a person who is the subject of baseless and unfair court proceedings (the prosecution proceeding) to seek a civil claim for damages against his prosecution”. Kodilinye and Aluko<sup>402</sup> describe malicious prosecution as a tort committed where the “defendant maliciously and without reasonable or probable reason initiate against the plaintiff a criminal prosecution which later ends in the plaintiff’s favour and which results in damage to the plaintiff’s reputation, person or property”.

In order to succeed in an action for malicious prosecution, the plaintiff or claimant must fulfil the following requirements as held by the Court of Appeal, in the case of *Isa Lagoro v. Jubril Garba*<sup>403</sup> that:

- (1) He was prosecuted by the defendant because the defendant set the law in motion against the claimant leading to a criminal charge.
- (2) That he was discharged and acquitted later as a result of the prosecution.
- (3) That the prosecution by the defendant has no reasonable and probable cause.
- (4) That the prosecution was a result of malice by the defendant against the plaintiff/claimant.

In *Balogun v. Amubikahun*<sup>404</sup> the parties were having dispute over a piece of land at Ibadan in Oyo State. While the case was pending in court, Balogun made a complaint to the police against Amubikahun asserting that he tried to kill him with the help of a witch who came to his house. Amubikahun and the alleged woman were both arrested and arraigned in court but they were later discharged and acquitted. The Supreme Court upheld the concurrent judgements of the lower courts that is High Court and Court of Appeal and found Balogun liable in damages for malicious prosecution.

The Common law action for malicious prosecution is appropriate only where a person alleges the judicial system is abused. The tort of malicious prosecution is an action for damages brought by one person against whom a criminal proceeding has been unsuccessfully

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<sup>401</sup>(2014) LPELR 22308 (CA)

<sup>402</sup>Aluko, O. and Kodilinye, G. 2011. *Nigerian Law of Torts*. Ibadan: Spectrum Books Limited. 4-20.

<sup>403</sup> (1992) 5 NWLR (Pt 243) 588

<sup>404</sup> (1989) NWLR (Pt. 107) 18 or (1989) 4 SC. Pt. 167

commenced without probable cause. A critical evaluation of malicious prosecution will reveal that it is not really a remedy available for wrongful conviction. This is because for a suit for malicious prosecution to be successful, the plaintiff must have been discharged or acquitted of the alleged offence. Whereas a person has been convicted, either rightly or wrongly, this remedy will not be available to such person. The saving grace, perhaps, might be where such decision of the trial court is overturned on appeal.

Another challenge is that common law remedies have certain limitations. In certain cases, they have been limited by statute such that it becomes difficult or inadequate in compensating victims of wrongful conviction. One instance is the provision of S. 2 (a) Public Officers Protection Act which provides:

Where any action, prosecution, or other proceeding is commenced against any person for any act done in pursuance or execution or intended execution of any Act or Law or of any public duty or authority, or in respect of any alleged neglect or default in the execution of any such Act, Law, duty or authority, the following provisions shall have effect-

(a) the action, prosecution, or proceeding shall not lie or be instituted unless it is commenced within three months next after the act, neglect or default complained of, or in case of a continuance of damage or injury, within three months next after the ceasing thereof:

Provided that if the action, prosecution or proceeding be at the instance of any person for cause arising while such person was a convict prisoner, it may be commenced within three months after the discharge of such person from prison;

The major statutory limitation to compensatory remedy for wrongful conviction is the constitution. S. 35 (1) a. provides an exception to the enforcement of the fundamental right to personal liberty. This is in the event of execution of the judgement or order of a court in respect of a criminal offence wherein such person is found guilty. Herein, the constitution did not consider the rightness or wrongness of the decision of the court. Even where a court without jurisdiction convicts a person, such judgment and execution thereof is still valid and subsisting for all purpose until set aside by an appellate court. Even when it has been set

aside, an action for enforcement of breach to right of personal liberty would be declined on the ground that it was carried out pursuant to a court order.

### **4.7.3 Cost and Compensation by Court Exercising Criminal Jurisdiction**

Ordinarily, cost follows event. While this is usually the case in civil cases, this does not ordinarily follow in criminal cases. In fact, it has been contended in some quarters that cost does not avail parties in criminal cases. Fabiyi JSC has taken it upon himself at the slightest opportunity to impress it on successful parties in criminal suit that order for cost would not avail them. Hear him in *Odunlami v. Nigerian Navy*<sup>405</sup> where he stated:

As an aside, I noted that in paragraph 5.02 at page 24 of the respondent's brief of argument, learned counsel urged that the appeal be dismissed with substantial cost in favour of the respondent. This is unheard of in a criminal matter as same is not provided for in the applicable rules of court. Counsel should note same. It should not be repeated.

In an earlier case,<sup>406</sup> the learned law lord had stated:

Chief Philip Umeh, learned counsel for the respondent urged that the appeal be dismissed with substantial costs. This is the first time I will read such a thing in a brief of argument dealing with a criminal matter. Learned counsel should know better. The rules of court did not touch on same. It is unheard of and should not be repeated.

With due respect to the learned justice, it is doubtful if this is the true position of the law with regard cost in criminal cases and it should not be regarded as such; more so, as the statements were merely obiter dicta in both cases. The statutes regulating criminal procedures recognise cost on certain circumstances.<sup>407</sup> But for the purpose of this study we shall be concerned with the aspect that provides in favour of the defendant. S. 255 (2) CPA provides:

A court that acquits or discharges a person accused of an offence, if the prosecution of such offence was originally instituted on a summons or a warrant issued by a court on the complaint of a private prosecutor, may order such private prosecutor to pay to the accused such reasonable costs as the

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<sup>405</sup>(2014) All FWLR (pt. 720) p. 1233

<sup>406</sup>Egunjobi v. FRN, (2013) All FWLR (pt. 670) p. 121

<sup>407</sup>See, Ss. 319-328 of ACJA 2015; Ss. 255-262 CPA etc.



court may seem fit and the payment of such costs or any part thereof may be ordered by the court to be made out of any moneys taken from such person on his apprehension or may be recovered by distress.

Also the newly enacted ACJA 2015 provides in S. 322 (1) provides that the court may, in a proceeding instituted by a private prosecutor or on a summons or complain of a private person, on acquittal of the defendant, order the private prosecutor or person to pay to the defendant such reasonable cost as the court may deem fit. The above cited statute, without doubt, clearly provides for cost and compensation to be awarded by the court in deserving cases. While the various statutes provide for unqualified cost against the defendant, the defendant is only entitled to cost in certain qualified circumstances. A defendant is only entitled to cost where the criminal action was instituted by a private prosecutor. To reiterate this fact, part of the requirement for a private individual to institute a criminal case is to undertake to pay cost awarded by court.<sup>408</sup> S. 322 (2) ACJA 2015 exclude persons prosecuting on behalf of the state, public officers prosecuting in official capacity and a police officers from payment of cost or compensation. It is to be noted that private individuals institute criminal matters only in limited cases. Most criminal cases are instituted by this excluded category of persons. Besides most of the issues that lead to wrongful conviction are perpetrated by this excluded category of persons.

Also, the cost and compensation is only available to the defendant where there is an acquittal or discharged. Technically, this does not cover instances of wrongful conviction; as in the case of wrongful conviction, there must have been an initial conviction by the court. The saving grace may be when this provision of the statute is considered by a court exercising appellate jurisdiction. But judging from the attitude of appellate courts on cost in criminal cases as manifested in the dicta of Fabiyi JSC above, the extent to which the wrongfully convicted person may get this remedy is doubtful.

#### **4.8 A Case for Compensation Scheme for Wrongful Conviction in Nigeria**

We have analysed the available remedies and compensation schemes available to victims of wrongful conviction in Nigeria. The shortcomings have been highlighted. It is regrettable that one can hardly pin point any compensation that directly deals with the issues of wrongful conviction. It is highly undesirable. Wrongly depriving a person of his liberty, or worst still,

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<sup>408</sup>S. 254 (ii) ACJA 2015.

putting persons in a condition of sudden helpless expectation of death for years is the highest form of violation of human right.

It is in view of the above that we criticise the provision of S. 322 (2) ACJA 2015. The provision clangs the medieval chains of common law which suggest that the “state can do no wrong”.<sup>409</sup> This injustice was echoed in the case of *Kuti v. A. G. Federation*.<sup>410</sup> However, our law has gone beyond that stage. S. 6 (6) a. and b. of 1999 Constitution (as amended) is apt in this regard. The Supreme Court restated the law in *Bello v. A. G. Oyo State*<sup>411</sup> when it that where there is a right, there must be a remedy, ubi jus ubi remedium.<sup>412</sup>

In *Ashby v. White*<sup>413</sup> it was held that “if the plaintiff has a right he must of necessity have the means to vindicate it, and a remedy, if he is injured in the exercise of it, and indeed, it is a vain thing to imagine a right without a remedy; for want of right and remedy are reciprocal.” In other words, where there is a right, infringement of which will give rise to a wrong, there should of necessity be a remedy to cure or ameliorate it. Conversely put: where there is a wrong, there is a remedy. It is argued here that every person is entitled to fair trial. Where an innocent person is convicted, that is a violation of such right. It is therefore unimaginable that there should not be an available remedy to cushion the effect of such violation as compensation for the year lost as the case in US and UK. For example, in February 2019, a California man in US, Craig Coley who has spent almost four decades in prison for the murder he did not commit was granted \$21 million US dollars in compensation.<sup>414</sup>

Although no statutory scheme is readily available in Nigeria to compensate the wrongfully convicted individual but the court has power to award compensation to exonerated persons against the party who committed unlawful detention and other parties like the complainant, police and other security agents like EFCC<sup>415</sup> who are part of that unlawful detention process. It is the constitutional rights of every Nigerian to challenge any malfeasant police or security agency. Nigerians should take up the challenge not minding the slow system of justice to curb or reduce the incidence of wrongful conviction of innocent individuals caused by the criminal justice players through faulty investigation, coerced confessional statement,

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<sup>409</sup>This is captured by the Latin maxim: ‘*Rex non potest peccare*’

<sup>410</sup>(1985) NWLR pt.

<sup>411</sup>Supra

<sup>412</sup>Based on the Latin maxim: ‘*ubi jus ibi remedium*’

<sup>413</sup>(1703) 1 ER 417

<sup>414</sup>US man receives \$21million Pay Out for almost 40 years of Wrongful Incarceration. Retrieved on 25<sup>th</sup> February, 2019 from <http://www.newshub.co.nz>

<sup>415</sup>Jim-Jaja v. COP River State and Ors, (2013) 6 NWLR (PT. 1350) 225

faulty identification parade of the suspect, forensic and expert error and even ineffective defence counsel, to mention a few.<sup>416</sup> This perhaps can guarantee a better society where Nigerians can move freely without any fear or favour.

Exonerated persons as plaintiffs are expected to make specific claims for certain sum of money because courts in Nigeria may not award a relief not claimed. But the court has to consider some factors in awarding the compensation claimed by the plaintiff. Factors like the status and reputation of the plaintiff, the years spent in detention, any penury or permanent loss to the plaintiff, like loss of sight or contracting contagious disease or life threatening ailment as a result of the incarceration. The unkempt and poor state of prison is one of the worse living condition that a person would find himself that it would take sheer luck for a prison to gain freedom without a failing health condition. In the case of *Olatunji Olaide*, he came out of prison after with one of his eyes affected by glaucoma, and some other disease after spending 24 years on death row. This failing health condition eventually claimed his life less than 2 years after he was released from prison upon his discharge and acquittal for the offence of armed robbery.

The punishment for wrongly convicted persons transcends their release from incarceration. Their nightmare and trauma does not come to an end upon release. Lack of money, housing, transportation, health services, and a stigma of criminal conviction despite exoneration, becomes their new reality. The state therefore owes them a duty to restore them back to their previous condition before wrongful conviction and incarceration. Re-entering and fitting back to the society is always difficult for them for them to achieve despite the fact that they have been proved innocent. Receiving monetary compensation help them settle some of these challenges. The government and public's recognition of the serious harm inflicted upon wrongfully convicted persons help to foster their healing process quickly.

#### **4.9 Compensation to the Victim of Wrongful Conviction in UK**

Nick Taylor<sup>417</sup> has drawn significant attention to the failure of the criminal justice system to recognise and correct its mistakes more quickly when he state that:

For the individuals involved in the upturning of a wrongful conviction is often the beginning of a long and onerous struggle to pick their lives back together again. On the other hand, it is recognised that the state's responsibility in

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<sup>416</sup> Ibid

<sup>417</sup>Taylor, N. 2002. Fixing the price for spoiled life: Compensation for wrongful conviction. *Criminal Justice Review 1999-2001*, Centre for Criminal Justice Studies, University of Leeds, UK

relation to unlawful conviction should not and does not end with the quashing of such a conviction. But on the other hand such recompense does not arrive quickly and neither can it compensate for the agony that have been endured by defendant and members of their family.

England and Wales have statutory compensation scheme for victims of wrongful conviction under the provision of Section 133 of the Criminal Justice Act (CJA), 1988. Subsection 1 provides that:

When a person has been found guilty of a criminal offence and when subsequently his conviction has been set aside (quashed) or he has been pardoned on the ground that a new or newly discovered facts shows beyond reasonable doubt that there has been a miscarriage of justice, the secretary of state shall pay compensation for the miscarriages of justice to the person who has suffered punishment as a result of such conviction or, if he is dead to his personal representative, unless the non-disclosure of the unknown fact was wholly or partly attributable to the person convicted.

From the above it could be gathered that statutory compensation is for all successful appellants who have their conviction overturned of a criminal sentence within the normal criminal appeals system. The only successful appeals are those who have their convictions overturned over fresh evidence upon appeal if and only if the new or newly discovered facts show beyond reasonable that the person did not commit the offence.

Statutory Compensation in England and Wales is only offered to those in highly uncommon occasions when new evidence surfaces at post appeal stage that completely exonerates a person who was convicted of a crime. For example, where DNA evidence that was not accessible at the time of the trial or previous appeal is later made available. The conviction of Sean Hodgson for rape and murder was overturned when DNA evidence proved his innocence after spending 27 years in prison.

Compensation in England is more of an exception than the rule. Although, it is always assumed that victims of wrongful conviction must be entitled to compensation especially if they have spent so many years in prison before they have their conviction overturned. There used to be two types of compensation for victims of miscarriage of justice in England and Wales. They are statutory and discretionary scheme. The discretionary scheme had been

abolished leaving only statutory claim. Payment of compensation under the statutory scheme is calculated in similar fashion as the calculation of damages for civil harms. Personal economic losses consist of loss of earnings and the reduction in the applicant's future earning capacity.

The scheme allows the Justice Secretary to use his discretion to pay compensation to a erroneously convicted individual when his conviction has been overturned or he has been pardoned on the ground that a new or newly discovered evidences shows beyond reasonable doubt that there has been a miscarriage of justice has occurred. If it is decided that an applicant is entitle to compensation under S. 133, the question of how much he or she is eligible to is determined by an neutral assessor who will decide on how much to be awarded. Deduction may be made for any conduct of the applicant that contributed to the conviction for his criminal record. The maximum amount of compensation payable is 1million pound in cases where the applicant has been imprisoned for at least 10 years or 500,000 pound in all other cases.<sup>418</sup>

Though in 2011, the Supreme Court of United Kingdom ruled that the meaning of miscarriage of justice for the purpose of S. 133 of the Criminal Justice Act, 1988 ought not to be restricted to applicants who are able to conclusively establish their innocence for the determination of statutory scheme. Instead it should be extended to cases where a new or newly discovered facts so undermines the evidence against the suspect that no conviction could perhaps be based on it. It was ruled by the Supreme Court that Raymond McCartney and Eamonn Macdermott, two men from Northern Ireland who had their conviction overturned, should receive payments for compensation. The men were convicted of murder in 1979 but their convictions were quashed in February, 2007.

It should be noted that since March, 2014, miscarriage of justice only occurred if and only if the new or newly discovered facts shows beyond reasonable doubt that the person did not commit the offence. The maximum amount of compensation payable is 1 million in cases where the applicant has been imprisoned for at least ten years or 500,000 dollars in all others cases.

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<sup>418</sup>Lipscombe, S. and Beard, J. 2015. Miscarriage of justice: Compensation schemes. *House of Common Library*.

In *Thompson & Anor v. Commissioner of Police for the Metropolis*,<sup>419</sup> Lord Woolf spoke of direction to be given to a jury to assist them in assessing the damages to be awarded in cases involving illegal conduct by the police towards the public. He stated that:

In a straightforward case of unlawful arrest by the police and imprisonment, the starting point is likely to be about £500 for the first hour during which the plaintiff has been deprived of his or her liberty. After the first hour an additional sum is to be awarded, but that sum is to be on a reduced scale.

He went further to state that the only remedy the jury had power to grant to successful plaintiff is damages and that damages were to compensate the plaintiff not to punish the defendant. Also Article 14(6) of the International Covenant on Civil and Political Right, 1966, which Covenant the UK signed on 16<sup>th</sup> September, 1968 and ratified on 20<sup>th</sup> May, 1976 provides that:

When a person has by a final decision of the court been convicted of a crime and when subsequently his conviction has been set aside or he has been exonerated on the ground that a new or newly discovered facts shows conclusively that there has been a miscarriage of justice in his case, the person who has suffered punishment as a result of such wrongful conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is totally or partially attributable to him.<sup>420</sup>

#### **4.10 Compensation to the Victims of wrongful Conviction in USA**

Not all states have compensation statutes in the US. Only 30 States, the Federal government and District of Columbia have compensation statutes of some form. The other 18 states do not have statute with compensation scheme for victims of wrongful conviction. According to Innocent Project,<sup>421</sup> despite this lack of compensation statutes there are other options for exonerated persons, such as:

(1) Pursuing a civil rights law suit which requires proof of official misconduct leading to a constitutional violation.

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<sup>419</sup>(1997) 2 All ER 762; (1997) 3 WLR 403.

<sup>420</sup>Ibid.

<sup>421</sup>Innocent Project. *Compensating the wrongly convicted*. Report.

(2) Pursuing a private compensation bill in which a state legislature makes an exception for individuals.

There are no uniform rules among the states in US as far as the compensation statutes are concerned. New York is one of the 18 states without compensation statute. Thus compensation is not easily and immediately accessible by exonerated persons in New York. It took Tankleff seven years after his exoneration to win a settlement of nearly 3.4million dollars in a suit against New York State. Some states require that the person must not have contributed to their own conviction in order to benefit from state compensation. If someone falsely confessed to the commission of the crime or pleaded guilty to the crime he did not commit, he may be deprived of compensation.<sup>422</sup>

The Federal wrongful conviction compensation statute is the only statute that proposes higher compensation for those who have spent time on death row. Under the federal law a person can be awarded up to \$50,000 (fifty Thousand Dollars) per year of wrongful imprisonment and up to \$100,000 (one hundred thousand) per year on death row.

In 2004, Wilton Dedge, a Floridian, spent 22 years in prison for the offence he did not commit. He was entitled to nothing from the state because Florida has no compensation statute. His suit against the state was dismissed. His only alternative was to pursue a private compensation bill from the legislature even with the injustice he suffered. When an innocent person has had his life stripped from him, spent majority of his life in prison by enduring the horrors of prison, justice demands that such a person be compensated for the harm suffered. The state should adequately and promptly provide justice to him and restore him back to the society through a just process. Denying such person compensation is unfair and unjust.

Richy Jackson, 59 years old, and two others were sentenced to death in 1975 for the murder of a businessman after a 12year old boy said he saw them committing the crime. The witness later recanted his testimony saying that he had been pressured and threatened by the police to testify against them. His award was computed from the states base rate for wrongful conviction compensation. He also received an undermine sum of money to account for his loss of wages while in prison. Also, an Illinois man who spent nearly 20 years in jail after being wrongfully imprisoned for rape and murder he did commit received 20 million dollars settlement setting a new national record. He received about 1 million dollars for each

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<sup>422</sup>Slifer,S. 2014. How the wrongfully convicted are compensated for years lost. *CBS News* March27, 2014

year spent behind bars while Jackson received about 51,000 dollars. In January, a Connecticut man who spent 21 years in jail for rape he did not commit received 6 million dollars in compensation after DNA tests proved his innocence.

#### **4.11 Problems with the Existing Compensation Legislative Statutes in USA**

1. Insufficient monetary compensation and social services
2. Lack of uniform statutory access to wrongful conviction compensation. Some states prefer to compensate the exonerated persons by private compensation bill while other states have the compensation statutes readily available.
3. Denying compensation to those they are deemed to have contributed to their own wrongful conviction, like those that are coerced into confessing or pleading guilty to crimes they are later found to be innocent.
4. Preventing the compensation of individuals with unrelated felony convictions.

To ensure fair compensation in US, the following have been suggested:

- a. By taking important step towards ensuring the integrity of her Criminal Justice System.
- b. By making compensation equally attainable and adequate for the wrongfully convicted by re-examining the compensating statute of those state that operate such statute; while the states without such statute should work towards enacting it.
- c. The statutes of each state to have fixed sum for each year spent in prison. Innocent Project had suggested that each state should offer a minimum of \$50,000 for each year a person spends in prison.
- d. Statute should also include the immediate access to service critically needed for a successful return to society including housing, medical facilities jobs expertise training and other relevant assistance to foster the positive rebuilding of the lives of the wrongfully convicted individual.

#### **4.12 Reintegration and Restoration of a Convict back to the Society**

When convicts are exonerated, the impact of their erroneous conviction when they return back to their communities which may not welcome them with open arms, still lingers after their release. The stigma of their conviction negatively impact the way they are treated by their community members. The members of the community still believe them to be guilty of the crime for which they were convicted. They have the perception that they gained freedom



after completing their sentence or on technicality rather than factual innocence.<sup>423</sup> This perception may be fueled by comments re-affirming belief in the guilt of the exonerated persons by public officials like police, prosecutors, and press. This is very common when the actual perpetrator of such crime has not yet been identified. One of the victims of wrongful conviction interviewed by the researcher, EX2, affirmed this position. According to him, when he returned to his community, his actual innocence had been downplayed. What was proclaimed was his guilty which had been broadcasted widely, leaving the public with little to dissuade him as to his factual guilty as the actual offender is still at large.

Another interviewed participant, EX1, shared his experience on how people avoid talking to him in his community. They shunned him in public and at times crossed to the other side of the road in order to avoid him. He reported being humiliated by even his family members. This stigmatization is a serious challenge which affects their ability to get stable job as no employer is ready to hire ex-convicts, especially those that are convicted of offences like murder or robbery, as their employee. This is double jeopardy for them. The heavy burden of rebuilding their life and regaining the trust of the community is solely on them. They shared experience of being dislocated, dislodged and uprooted from their community. They must find a way to reconnect themselves with their family and communities and make a place where they can fit in. The situation is a serious catastrophe and a threat to life. One needs multiple coping strategies or management techniques to reconcile the difficulties of life after exoneration.

Westervelt and Cook<sup>424</sup> grouped the techniques into incorporation approach and avoidance approach. According to them:

These approaches are determined by the degree to which survivors confront and integrate the traumatic experience into their reconstructed life. These two approaches, according to the author, serve as ideal type of strategies chosen as they contend with the aftermath of their wrongful convictions. For the incorporation approach, the strategies they need to adopt is telling their trauma story both in private relationship and to public audience; connecting to other

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<sup>423</sup>Westervelt, D.S. and Cook, C. J. 2013. Life after exoneration, examining the aftermath of a wrongful capital conviction. *Wrongful Convictions and Miscarriage of Justice, Causes and Remedies in North American and European Criminal Justice*. Ed. H.Ronald & K.Martin. Routledge Publishing Inc. 270.

<sup>424</sup>Westervelt, D. S. and Cook, J. K. 2012. *Life after death row: Exoneree's search for community and identity*. Rutgers University Press. 135

exonerated persons; bringing meaning out of their trauma and then make that meaning a “survivor mission.”<sup>425</sup>

That might serve as a therapy that might give them positive feelings of acceptance from the public. By speaking to other exonerated persons, especially the death row survivors, creates feelings of validation and acceptance. Many of them attend programmes organised by the Non-Governmental Organisations that secure their release like EX 1 & II and others who attended LEDAP’s programm. They shared their experience of trauma; find comfort and understanding from being around people with similar situation. Some of them have the believe that their wrongful convictions and survival of death row happened for the purpose of giving them new direction in life which help them stay away from negative activities and serve as symbol of the failure in the justice system. By attributing such purpose, they are motivated towards new opportunity in life rather than always focusing on their losses.

They can even be campaigners against death penalty by raising awareness about the problem associated with it and the failures in the criminal justice system by using their personal experiences to advocate, educate, promote social and political changes.<sup>426</sup> Some used avoidance strategies to manage the trauma they confront after exoneration by try to escape the pain and frustration during their re-entry into the society.<sup>427</sup> Some take to alcohol and drug as avoidance strategy. Sadly, this may appear to be a bit problematic as it could lead to managing ones pain and anger through violence associated with drug and alcohol. This is not the best strategies. The incorporation strategy is preferable.

Some of the death row exonerees also use withdrawal and numbing<sup>428</sup> avoidance strategies. This entails withdrawing from situation that will bring back the memories of their trial or incarceration by avoiding interaction with other exonerees or avoid discussing their past experience with other people to avoid bringing back their bad memories. There is the fear they might not be able to control their emotions by remembering their ordeal. Some take into drug to disassociate from the trauma about the painful past. They believe alcohol and drug is a technique to manage their anger over their wrongful convictions and time lost to incarceration.

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<sup>425</sup>Westervelt, D. S. and Cook, C. J. 2013.*op. cit.* at 273.

<sup>426</sup>Herman, G. 1977. *Policing a free society*. Cambridge: Ballinger Pub. Co.p.1-12

<sup>427</sup>Ibid at p. 274, foot note 19.

<sup>428</sup>Herman, 1997. *Supra*.

Another problem encountered by exonerees in reintegrating themselves back to the society is in the area of getting support from state officials who do not recognise any responsibility on their part to assist exonerees in rebuilding a life. This is another serious obstacle to reintegration and restoration back to the society, especially in Nigeria, where there is absence of compensation scheme and, basic needs like health care needs, financial needs, social needs and housing needs to support the exonerees. They lack basic needs having left prison with nothing. In some countries like UK and USA they may still need money to further legal battle like suing for compensation if none is available in the state of conviction, child support claim and application for pardon.<sup>429</sup>

Exonerees received nothing from the state after their release in Nigeria because there is no provision for such in our laws. Some will not even bother to exploit others means of relief to claim from the government that wrong them for so longer. They are even grateful to have escaped the jaws of the harsh justice system. Due to ignorance, some of them hold the belief that if they file anything in court, the court might send them back to prison again. Many do not even have the financial resources to commence compensation action. Participant EX I was of the view that the state does not assume responsibility for their ugly situation: no apology, no compensation, nothing at all. They received nothing from the government.

In US few states offer reintegration services aside from compensation. But this is limited as many of them do not have access to such services; they are left to their own devices of facing life after exoneration. Participant EX I confirmed this when he said that after 13 years on death row he came out with nothing, no job, no money. He reiterated the fact that this is why many exonerees go back to prison as they only have crime to fall back to.

Reintegration and restoration of the death row survivors requires resources.<sup>430</sup> They need support tools to provide for themselves and their families. This requires more than financial support. There is need for recognition and acknowledgement of the damages done to them and their loved ones with ability to restore their reputation and rebuild them back to the community is also important and necessary. Acceptance, not rejection is what they need from their community. According to Cook and Westervelt:<sup>431</sup>

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<sup>429</sup>Innocence Project. 2009.Retrieved on December 5, 2017 from <http://www.innocentproject.org>

<sup>430</sup>Ibid at 276.

<sup>431</sup>Westervelt, D.S. and Cook J.K.2012. *op. cit.* at 138.

Reintegration and restoration will be achieved when exonorees, their injustice and their need are no longer invisible to those who created them. To the extent that current policies and provisions fall short of this goal, they are in need of revision and re-evaluation, until justice for exonorees is fully realized.

#### **4.13 Findings from Unstructured Interview**

##### **Participants' response on the effectiveness of administration of criminal justice system and the issue of wrongful convictions.**

The ultimate goal of criminal justice system is to deliver justice for all, which entails ensuring the conviction and punishment of the guilty to prevent them from committing further offence while also protecting the innocent from wrongful conviction. The finding showed that in general terms the justice system is expected to function adequately well in order to provide the services to society that it is tasked with and to do so within acceptable parameters of the law in terms of adopting the right processes, fairness and transparency. The criminal justice system is also fashioned such that the guilty should not escape justice nor the innocent suffer. However, like all human constructs, the criminal justice system is flawed and susceptible to human errors. The justice system in Nigeria is lagging behind the international standards. There are multiple instances of willful perversion of what appears just and right based on grounds of social status, age, sex, race and so on, which erodes justice in its purest forms. Miscarriages of justice arise through the operation of human fallibility. A different level of inefficiency of the justice system in Nigeria is the reason why there are lots of cases of wrongful convictions. The experiences of some of the exonerees increased their awareness of the defects inherent in the justice system and the practice of law in Nigeria. They are unfortunate, but real, phenomenon to which no legal system is immune to.

The finding also showed that the principal contributory factors to these phenomena are incompetence, malfeasance and misapplication of technology. Taking these in order:

a. **Incompetence** - the system is designed to prevent wrongful conviction but it is, of necessity, complex and requires competent application. Defence lawyers, prosecutors and indeed judges, through human fallibility, do not always discharge their roles with appropriate competence. The result is usually wrongful conviction. Some defence lawyers, police officers and prosecutors contribute to erroneous conviction through negligence and misconduct arising in course of their professional duties. The Courts either overturned the conviction or ruled the misconduct harmful. They knowingly use unreliable informants, coercing witnesses,

utilising questionable forensic science or experts, withholding vital information or failure to timely deliver the information to the defence, accepting coerced confessions, purposely misleading the court and other unethical behaviours just to secure conviction by all means.<sup>432</sup> There is also evidence of misconduct during investigation and trial by the prosecutors. In some cases, government officers take steps to make ensure that an accused is convicted despite poor evidence or even strong prove of innocence, many innocent people have been wrongly accused and falsely incarcerated for decades. Some persons are on death row for years because of police and prosecution misconduct. This author has witnessed in court where a Prosecutor informed the Court that she has been directed from the office that she must oppose and make sure all bail applications in cases she is handling does not succeed. That means the prosecution is deprived of the authority and discretion to evaluate cases and act accordingly in deserving circumstances.

**b. Misfeasance** –Finding showed further that the police and prosecuting authorities are under political and societal pressure to secure acceptable “clear-up” rates both for crime in general and, more particularly, for individual high-profile crimes. This leads, on occasions, to the improper use or consideration of available evidence in order to increase the possibility of conviction. A topical example of this is the failure of the police and/or prosecutors to disclose to the defence evidence of an exculpatory nature that might be favourable to the defendants’ case. At a less extreme level, the exercise of bias in criminal investigation leads police and prosecutors to the rejection and even suppression of exculpatory evidence. Another factor is the failure of prosecutors to properly understand their role which is, in theory, simply to place the facts before the court. The adversarial nature of our system allows prosecutors to adopt a partisan approach which underlies the problems identified above. Poverty level and awareness is another problem affecting justice system. Law is made for the society not the society made for law but reverse is the case in Nigeria. Even though the recent introduction of Administration of Criminal Justice Act (ACJA) at the Federal Level and Administration of Criminal Justice Law (ACJL) in some states of the federation, states like Lagos, Edo, Delta and FCT Abuja has brought radical changes, innovations and improvement into the administration of criminal justice in Nigeria and the respective state

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<sup>432</sup> In the case of *Major Hamza Almustapha v. The State* in Suit No. CA/L/469A/2012 Delivered on July12, 2013, Pemu, JCA stated that: “It is preposterous that in a 326 pages’ judgment, the lower court was only concerned with securing a conviction at all cost”.

aimed at fast tracking justice delivery with a concerted effort at the preservation of the rights of the defendants. However, the problem seems to be with the implementation of this law.<sup>433</sup>

**c. On the application of Technology** - the finding showed that global best practices are not being adopted in Nigeria. Nigeria is reluctant to adapt to innovation; it gets fixated on the same way of doing things even when the world has outgrown its usefulness. There is no way this can meet the demands of justice administration. We are using the same set of law that has been in existence since independence rather than to review these laws and public policies to ensure that they are in conformity with human rights norms. There is a problem of trying to import the justice system of foreign countries without due consideration of our circumstances in Nigeria.

DNA evidence is a fertile source of miscarriage of justice in countries like UK and USA due to a combination of two factors. The first of these factors is a lack of understanding by lawyers, judges and even juries of the actual limits of its effectiveness and the second point is that they don't even agreed that they lack the understanding of its effectiveness. The cumulative effect of the "prosecutor's fallacy" effect is the excessive confidence placed on DNA evidence which is neither justified nor it deserves. In reality the only absolute value in DNA is in its ability to eliminate a suspect from a crime. It can be stated, as a matter of objective fact, that a DNA sample does not match a control sample. However, its frequent, inappropriate use as a scientific justification to ground conviction goes unchallenged because defence lawyers, judges and juries simply do not know any better. The application of forensic evidence in criminal cases has solved many crime puzzles but when the forensic evidence is not properly or erroneously evaluated, the result will amount to misleading the court to convict an innocent person. Some forensic evidence in some advance countries has proved to be unreliable, inaccurate and inefficient ways to determine who committed a crime. For example, bite marks and shoeprints comparism may be highly unreliable; the expert withholding evidence or opinion that might support the defendant's case; or exaggerating or twisting the important evidence pointing towards the guilt of the suspect. Unintentional errors and some purposeful misconduct are common with forensic analysis process and when all these happen, a person's life could be significantly and unjustly affected by wrongful conviction of such person.

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<sup>433</sup>See Section 1 of ACJA, 2015 and Section 9 of ACJL of Lagos State.

In Nigeria the use of forensic analysis in identifying the real perpetrator of a crime has not really gained its ground due to some factors like lack of awareness of its existence and value or lack of modern technological equipment for effective investigation of a crime. Criminal activities are dynamic and require highly sophisticated equipment for advanced investigation. Equipments like genetic analyser used for forensic analysis is not available in most DNA centre visited by this researcher. Those forensic centres which possess such equipment only used it for monocular analysis of plants and animals even though it could also be used for human forensic analysis like fingerprint analysis.

The forensic analysis in the western world was developed by researchers in the society for the purpose of solving crimes. The Nigeria society has its own way of identifying offenders with the use of traditional metaphysical powers which is believed to be more effective than the so called DNA forensic analysis. For instance, suspects may be required to swear at the shrine of some local deities or invoking the spirit of deities like *Sango* or *Ayelala* among the Yorubas in South Western Nigeria: “*Won be Sango lowe ko foju asebi han,*” that is, invoking the spirit of Sango to identify and pass instant judgment on the offender. This approach which is still in practice at present times really works for them as it guarantees instant judgment. However, the Nigerian Criminal justice System is not *in tandem* with this reality of the people and expressly proscribes this local reality.<sup>434</sup>

Equipment used for forensic analysis are capital intensive. The lack of government commitment to establish well equipped facilities for forensic analysis leave the option of private investment in that regard. The cost of DNA technology in Nigeria is such that cannot be easily affordable by individuals. Where individuals spend huge sum to procure expensive equipment such as genetic analyser, the services accruing therefrom is likewise expensive in order for the investor to cover the capital and maintenance cost. The lack of government interest in this area has resulted in more private participation in this industry. Except for one or two forensic centres in Nigeria, the others are privately owned. The centres owned by government are not at optimal function due to financial constraint and lack of equipment and experts. In most case DNA samples are sent abroad for forensic analysis due to want of requisite equipment. This adds up to the high cost due to issues of foreign exchange.

The lack of awareness of the purpose and usefulness of forensic analysis for the purpose of identification of offender through fingerprint analysis, blood spatter analysis, bite mark

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<sup>434</sup> See Sections 207 - 213 Criminal Code Act.

analysis or hair comparison. The law enforcement agencies might not even do proper investigation in taking samples from the scene of crimes immediately a crime is committed until the area is contaminated. For example, FE-1 narrated one incidence in Lagos sometimes ago when police officers from Scotland Yard in UK were invited to support the Nigerian Police investigate a high profile murder case. By the time the police from UK got to the crime scene, more than 1000 fingerprints were identified as the environment had already been contaminated. The fingerprint of a family member of the victim was identified. Sample could, hence, not be collected from the crime scene as they served little or no evidential value.

On the issue of faulty forensic analysis, FE- 3 made us understand that forensic analysis is always based on probability especially when it is done manually. However, with the introduction of equipments such as genetic analyser, the human error has been reduced. The absence of fingerprint database in Nigeria even makes the job of criminal investigation with forensic analysis more difficult. If the government can capture the fingerprint of everybody in Nigeria and compile a database therefrom, it would be a basis for making comparison for a match or close match with fingerprints obtained from crime scene.

The eyewitness testimony plays important role in wrongful conviction of an innocent person due to the frailty of human memories. Memory is a reconstructive process. Post event information supplied by actors like the police, prosecutors or media can alter or influence the perception or memory of an eyewitness of the crime and perpetrator of the crime. For example, asking a leading question like: 'Is the perpetrator short or tall? This can influence or alter the memory of a witness. Once this happens it will be very difficult to restore the original perception of witness which can result in wrongful convictions. The length of the criminal process is another factor that affects the accuracy of eye witness testimony. This problem is peculiar to the Nigerian Justice System where the wheel of justice grinds slowly. Most criminal matters get protracted in court for years due to factors such as administrative bottle-necks, delay in the DPP giving advice, protracted court adjournments, etc. Where this is the case, the witnesses in the case may have died, relocated or due to human mental frailty may not clearly recall the crime incident when they are called to testify. This would definitely affect the lucidity and veracity of their testimony. In the worst case scenario, it could lead to wrongful conviction if such evidence is relied upon.

Many eyewitnesses are sometimes unwilling to testify either for or against any suspect due to the possibility of the police robe in an innocent person to the crime they know nothing about.



Witnesses would rather keep quiet than go to the police station and testify as witnesses, especially if their evidence might be favourable to the suspect. Such witness might be detained and rubbed in as one of the suspect. It is a common saying in Yorubaland that “*kose oju mi koro konpe ni ile ejo*” meaning, “I did not witness anything do not stay long in court”. The fear of being arrested or prosecuted will prevent a lot of eye witness from testifying in court. Proper eyewitness interviews and identification procedures should be carried out in order to prevent eyewitness errors. Conducting good eyewitness interviews and identification procedures is necessary to reduce eyewitness error.

Another outcome of the finding is that the length of criminal trial is a notorious menace affecting our criminal justice system. The cause of delay include workload of cases handled by the court or unnecessary adjournment sought by the counsel.<sup>435</sup> Attempts have been made to deal with it by successive governments to expedite the criminal justice process. The latest effort, perhaps, is the enactment of the Administration of Criminal Justice Act in 2015 and Administration of Criminal Justice Law in some States like Lagos, Edo and Federal Capital Territory, Abuja. The legislation contains provisions that require criminal matters to be determined within a certain period on a day to day basis. However, it is difficult to comply with this requirement of the law due to congestion of cases in Nigerian Court.

Preventing wrongful conviction requires an understanding of the institutional procedures that facilitate misconduct on the part of the prosecution. Such misconducts are often product of institutional conditions such as: unclear ethical rules which provide ambiguous guidance to prosecutors; enormous discretionary authority without transparency; and too little remedies for prosecutorial misconduct.

It was also found out that police misconduct has been one of the factors responsible for wrongful conviction. The police forcefully obtain confessional statements from suspects. The Police is the major justice player in the administration of criminal justice system in Nigeria. It has powers to arrest, investigate, search, prosecute etc. With all these powers, whether or not the accused will receive justice hangs on how the police go about their legal duties. The Nigeria Police has come under heavy criticism from members of the public for its reactive approach and inability to effectively fight crime and make the society safe for people to live in. People have criticised the Nigeria police for its unprofessionalism, corruption, ineptitude, negligence in performance of their duties and lack of co-operation with members of the

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<sup>435</sup> Adedeji, A. O. Problem of justice – Nigerian experience. *Indian Law Institute Journal* 39. 2-4

public. The police engage in certain activities that might support potentially erroneous cases constructed against innocent individual such as manipulating interview content through what is termed “tunnel vision phenomenon” The Nigeria police are expected by the society to be effective and efficient in the performance of their duties as an institution established to maintain law and order under the constitution. But as explained above, they have performed below expectation due to some factors. Some of the police officers interviewed believed such factors like underfunding, poor remuneration, corruption, unhealthy police/community relationship and so on. Some of them believe that there is corruption in the police force due to poor remuneration, underfunding and lack of contentment by some officers. Corruption plays a major role in the perversion of justice by the stakeholders. Police corruption is not only about money changing hands; It starts with nepotism, favouritism, bribery, cultural differential attitude, willful perversion of what appears just and right, giving excuses based on social status, age, race and sex. All these erode justice in its purest form. Police coerce some suspects to make confessional statements admitting guilt for an offence not committed which if not expunged by the court would lead to wrongful conviction of such suspect. For example, the manager of one of the NGOs interviewed in Scotland in UK got this to say:

I am currently working on a case where two educationally sub-normal young men were coerced into making self-incriminating statements by virtue of which they were convicted of a murder and this is by no means an isolated example. Coercive questioning by the police, despite improvements in the processes of police interviews, remains a problem in the context of wrongful conviction in Scotland.<sup>436</sup>

The finding also showed that any system designed and operated by humans is prone to make mistakes. Thus, eradication of the problem is likely to prove an elusive goal. But it can be mitigated by the diligent investigation of the factors giving rise to miscarriage of justice as and when they arise. A useful analogy is the civil aviation business. Any air accident is investigated to the fullest extent possible; contributory factors and weaknesses are identified from which a safer measure is designed for the system. It is largely for this reason that air travel has become progressively safer than other means of transportation. Conversely, there is currently no rigorous investigation into the causes of individual miscarriages of justice.

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<sup>436</sup>Response from the Manager, Casework Team of the Miscarriages of Justice Organisation in Scotland in UK from the interview conducted with him by the researcher.

The overriding objective of the court, be it trial or appellate court in any society, appears to be the maintenance of public confidence in the justice system; to provide fair and impartial judgment. However, the human nature takes its toll on the system. This factor is neither new nor restricted to Nigeria alone; it applies to the UK and USA too. But the courts in Nigeria have their own way of contributing to the problem of wrongful conviction. The appellate courts in some jurisdiction perform the primary role of preserving convictions. It is a very difficult forum to win an appeal because they believe that the lower court which had the opportunity to hear the witnesses will hardly make a mistake in grounding conviction. It is more difficult to overturn a conviction under appeal.

Some of the victims of wrongfully conviction interviewed by the researcher believe that their conviction was due to the failure of their defence lawyer to diligently handle their case during trial. Where a defence lawyer lacks the requisite skill and experience in criminal defence, such lawyer will not know when to object and what to object to; if any of the legal safeguards which protect the defendant has been breached. For instance, where a lawyer fails to raise objection to the admissibility of a confessional statement that was obtained involuntarily, it is likely to lead to the conviction of a defendant based on a wrong fact.

## CHAPTER 5

### SUMMARY, CONCLUSION AND RECOMMENDATION

#### 5.1 Summary of the Study

Chapter one is a general introduction to the study. It gives background information about this study as well as its aim and objectives. This chapter also discussed the problem statement, research methodology and research questions. The structure of the interviews made are also contained in this section. The scope and limitation of the study were also contained in this chapter as well as the study's contribution to knowledge and expected outcomes. Chapter two contained the literature review. In this chapter, existing literatures related to wrongful convictions were reviewed. The work done in this chapter contains literatures by various authors whose works have made significant contributions to the subject matter. The existing gap in these literatures was also pointed out in this chapter and the conceptual framework of the study. The chapter also contained the structure of interview, procedure and analysis.

Chapter three discussed the theoretical framework and underlying concept of criminal trials that otherwise necessitates this study. This research adopted due process theory and theory of Justice to examine the concept of wrongful conviction. This chapter examined the causes of wrongful convictions and examined the roles that the various stakeholders in the Nigerian Justice System play in wrongful convictions. The impacts and effects of wrongful conviction on victims and their family are also contained in this chapter.

Chapter four examined the methods of prevention and remedies for wrongful conviction. It looked at methods of preventing wrongful conviction, the role of forensic evidence and civil society groups in prevention of wrongful conviction. This chapter also presented issues such as post-conviction relief, appeals, bail pending appeal and stay of execution. This chapter made a comparative analysis of the criminal Appeal system in US and UK which serves as sources to draw useful lessons which could be applicable to the Nigerian situation. The chapter presented the issues of compensation and reintegration of victims back into the society. The chapter also contains the report of the findings of unstructured interview conducted by the researcher.

Chapter five is the conclusion and recommendations in view of the evaluation and critical analysis of the phenomenon, wrongful conviction. 20 recommendations were made in respect of the study.

In attaining the aim and objectives of this work as captured in this work, the researcher formulated and addressed the following questions herein:

1. What are the underlying experiential, interactional and institutional processes involved in the creation and sustenance of wrongful convictions?
2. What are the challenges encountered in the administration of criminal justice in Nigeria and how does these factors lead to wrongful conviction?
3. How does the retention of capital punishment in Nigeria impact on the issue of wrongful conviction?
4. What are the impacts of wrongful convictions on victims, their loved ones, the society and the criminal justice system?
5. What institutional changes might help to prevent or rectify wrongful convictions?
6. Are there existing legal frameworks to ensure adequate remedy and compensation for victims of wrongful conviction?

## **OBJECTIVE I**

The 1<sup>st</sup> and 2<sup>nd</sup> research questions arise from the objective (i) of this research work. The answers to the questions are contained in chapter three of this research work. The research identifies several causes of wrongful conviction in Nigeria; amongst which are: involuntary confessional statement, identification parade, flawed forensic evidence, etc.

The court is enjoined under S.29 (2) a. Evidence Act 2011 to not admit and reject in evidence any confessional statement obtained by oppression of the person who made it. Under sub section 5 ‘oppression’ is defined to include torture, inhuman or degrading treatment, and the use or threat of violence whether or not amounting to torture. In practice, there is hardly any criminal case prosecuted by the Police without their making resort to confessional statements in proving the charge. In most of those cases, it is common for objections to be raised on the grounds that the Police obtained those statements by acts of oppression such as: shooting suspects at the foot, beating and hang them from the ceiling for long periods to extract information and confessions, flogging suspects with whips, beating them with batons and machetes, threatening them with death, sticking pins or sharp objects into the genitals of

suspects, use of cigarette lights to inflict burns on suspects, giving them psychological and mental torture by denying them food and water for days.<sup>437</sup> When confessions are not voluntarily obtained, there is the danger that the defendant had falsely implicated himself.<sup>438</sup> The court usually refers to confessional statements as the best evidence and when the defendant fails to convince the court of the involuntariness of the confessional statement, it is very likely that having admitted the statement into evidence, it would eventually ground the (wrongful) conviction of the defendant.

Faulty eyewitness testimony and improper identification parade procedure are part of the leading causes of wrongful convictions. The challenge of using identification parade is that it appears like searching at all means for something that was not lost in the first place. The problem associated with identification parade is the inability of the witness to pick the actual person due to memory loss or close resemblance of lined up suspect. In a desperate move to pin criminal responsibility on someone, the witness may pick wrong person innocently or maliciously.<sup>439</sup> Another challenge is that, there is currently no legislative framework regulating the conduct of identification parade in Nigeria. Disappointedly, the recently enacted Administration of Criminal Justice Act 2015 did not provide rules relating to the proper conduct of identification parade. What forms our *corpus juris* on identification parade is contained in the Nigerian Police Training Manual for Basic and Advanced Studies, which has no binding effect on Nigeria Courts.<sup>440</sup>

Forensic evidence is one reliable means of determining a criminal trial. However, the wrong application of forensic science leads to wrongful conviction of an innocent person. This is when a forensic analyst or other forensic experts present evidence that is based on unreliable

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<sup>437</sup>Okeshola, F. B. 2013. Human rights abuse by Nigerian Police in four selected States and the Federal Capital Territory, Abuja. *British Journal of Arts and Social Sciences* 13.2: 242-250 at 244.

<sup>438</sup>Ibraheem, O. T. 2013. The relevance of confessions in criminal proceedings. *International Journal of Humanities and Social Science* 3.21: (Special Issue – December) 291-300 at 291.

<sup>439</sup>In the case of *Aichenabor v. State*, (2015) All FWLR (Pt. 763) p. 2005 the court held: A person who is the victim of a criminal act would want the culprit or culprits to be caught, to be brought to justice to answer for his/their criminal deed/deeds. The courts, (particularly as it relates to evidence of identification) have recognized that a victim of a crime in the quest or pursuit that the perpetrator(s) of the crime against him is/are punished, might be genuinely mistaken in his identification of the said perpetrator(s) or might out rightly decide to implicate someone or persons of known bad dispositions, just as the law enforcement agencies might also want to capitalise on the crime committed, to have known or perceived miscreants put behind bars. It is against this backdrop of the human error to which it can be put that the courts, while realizing the primary or pre-eminence of identification evidence in proof of the commission of a crime by an accused person, have consistently counseled for caution or some restraint in convicting on same where it is wholly or substantially the evidence relied upon by the prosecuting agency.

<sup>440</sup>See generally, Police College Enugu. *Nigerian Police training manual for basic and advanced studies*. Enugu: Ferdinco Printing Press.

or unproven methods, expressed with exaggerated and misleading confidence and fraudulent report. Evidence shows that the misapplication of forensic science is the second most contributing factors to wrongful conviction as highlighted by a recent article published by the innocent project.<sup>441</sup> The misapplication of forensic science is notorious cause of wrongful conviction that it is cited in more than 50 percent of cases in which the use of DNA evidence led to the exoneration of victims. Some forensic evidence has proved to be inaccurate, inefficient and unreliable means to determine who committed a crime. For example, bite marks and shoeprints comparism may be highly unreliable in most cases.<sup>442</sup>

Causes of wrongful conviction at the institutional level indentified by the research includes: Police and prosecutorial misconduct, improper evaluation of evidence by trial judges and incompetent defence counsel. The research further identifies the role the media play in giving rise to wrongful conviction.

Police and Prosecutors may knowingly make use of unreliable informants, coercing witnesses, utilising questionable forensic science or experts, withholding vital information/evidence or failure to timely deliver facilities to enable the defendant defend himself, tendering confessional statements obtained by oppression, misleading the court and putting up other unethical conduct just to secure conviction by all means. The officers focus on suspects and filter the evidence that built a case for conviction while ignoring or suppressing other evidence that points away from the guilt of the defendant just to secure conviction by all means. This practice is due to the officer's believe that the number of conviction secured would aid his/her promotion.

Some cases of wrongful convictions arise from inefficient practice on the part of defence counsel. This ineptitude could be in the form of fundamental failure to investigate, prepare, and ultimately defend their clients' case diligently. The major role of the defence counsel in a criminal trial is to insist that the prosecution proves the offence the defendant is charged with beyond reasonable doubt and within the bounds of the law. Where a defence lawyer lacks the requisite skill and experience in criminal defence, such lawyer will not know when to object and what to object to if any of the legal safeguards to protect the defendant has been breached. For instance, where a counsel fails to object to the admissibility of a confessional

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<sup>441</sup>Mahajan, S. 2017. Flawed forensics: The Innocence Project's 25th Anniversary. <https://www.innocenceproject.org>

<sup>442</sup> Shkolni, N. K. Forensic Science Mistakes and Wrongful Convictions. Retrieved on June 25, 2017 from: <https://www.napolilaw.com>

statement that was obtained involuntarily, it is likely that a defendant will be convicted on a wrong fact. Some write several letters of adjournments to court at the detriment of their clients, thereby exposing many innocent persons to the dangers of wrongful convictions or delayed trials for years.<sup>443</sup> Most of the defendants charged for criminal offences are indigents and cannot afford the services of competent and experienced lawyers to defend them. Most of them really rely on the services of Legal Aid Council created by the federal government to give free legal aid to indigent defendant;<sup>444</sup> the Office of the Public Defender,<sup>445</sup> civil society groups<sup>446</sup> and other legal practitioners. The challenge, however, is that institutions such as Legal Aid Council is financially handicapped due to lack of adequate funding by the federal government and so finds it challenging assisting the ever growing number of defendants in Nigeria. The Legal Aid Council lacks enough Legal Practitioners to effectively service the needs of indigent defendants. They have to rely on lawyers who have just been called to bar and are on their National Youth Service Corp (NYSC) programme. These “new wigs” are not very experienced to represent defendants effectively. In *Udofia v. State*,<sup>447</sup> the Supreme Court, per Oputa JSC, lamenting over this practice, stated: “what is the country turning into when members of the NYSC will be sent to court to defend a man on trial for his life”.

Wrongful conviction entails a long chain of misconduct from various quarters, some of which we have examined above, However, the court is the last authority that sanctions it. In fact, those various misconducts can never amount to wrongful conviction until it has been sanctioned by the court upon pronouncement of the guilt of the defendant. Thus, the court is in the position to correct the wrongs of other authorities that would have otherwise given rise to wrong conviction. Most wrongful conviction arising from the actions or inactions of the court is usually due to improper evaluation of evidence by the trial judge. The criminal adjudication deals with proofs and proofs are a function of evidence placed before the court and the evaluation thereof. Nigerian operates the adversarial system of adjudication. This requires the judge to assume an officious position to evaluate the evidence and proofs canvassed by parties and reaching its decision thereto. The court is not expected to descend into the arena of conflict. Sometimes this could be a limitation on the part of the court to do

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<sup>443</sup>The Supreme Court in the case of *Dariye v. FRN*, (2015) All FWLR (Pt. 774) p. 97 at 118-121 stated that in effectively defending a person charged for an offence does not mean that the lawyer should employ delay tactics such as the use of incessant adjournment and unnecessary application in order to delay the cause of justice.

<sup>444</sup>See, Legal Aid Act

<sup>445</sup>Created by the Administration of Criminal Justice Law of Lagos State.

<sup>446</sup>Example of such groups include: LEDAP, Amnesty International, Innocent Project Human Rights Commission, Access to justice etc.

<sup>447</sup>(1988) 3 NWLR (Pt. 84) 533



substantial justice especially when there are weaknesses in the case of the defence which has been noticed by the court *suo moto*. Wrong evaluation of evidence sometimes arises from a situation where judges had already formed a preconceived impression or opinion about the defendant or the case. Such impressions are always difficult to be changed or erased or convince the court of the innocence of the defendant. Psychological, sociological, religious and even environment factors could also influence or prejudiced the mind of the court.

In Nigeria, the security personnel, especially the police, are fond of using the media to try suspects in the court of public opinion even before they are charged to court. When persons are arrested in connection to a crime, they invite the journalist to publicise the event where the suspects and exhibits are displayed. The suspects would even be made to make statement to the journalist. The low point of this practice is that the entire media jamboree could expose vital exhibits and crime scene evidence to contamination leading to wrong forensic analysis and conclusion to the detriment of the suspects. The media, at times, drive interest in a case and demand a quick resolution of that case. This tend to mount pressure on every persons involved in the criminal process. It has been shown that news coverage of several highly published criminal convictions is later discredited. In each of those cases the defendants were sentence to death or given years imprisonment before the errors were corrected. Examples of such cases include the Central Park Jogger Case<sup>448</sup> in US and Olabode George's case<sup>449</sup> in Nigeria. Media may affect the court's decision. Potential judges might be biased towards a suspect due to some sensational comments by the press before the start of the trial; the suspect would be facing two trials, one in the court of public opinion and another in the court of law.<sup>450</sup> It is likely that public opinion will affect or create certain impression on the judge to preside over such matter; after all, the judge is a member of the public. Also a judge may be compelled to ground convict for fear of negative publicity if the otherwise is done.

## **OBJECTIVE II**

The 3<sup>rd</sup> and 4<sup>th</sup> research questions are borne out of objective (ii) of this research work. The answers to the questions are contained in chapter three of this research work. The Constitution of the Federal Republic of Nigeria, 1999 recognises death penalty as a form of punishment for a criminal offence for which a person has been pronounced guilty provided it

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<sup>448</sup>Where five teenagers were charged for assault, rape, they were convicted in 1990 but their conviction was vacated in 2002 and the charges were withdrawn against them when the real perpetrator was identified.

<sup>449</sup>Olabode George v. Federal Republic of Nigeria, (2014) 5 NWLR (PT. 1399) P 129

<sup>450</sup> Michel, L. and Herbeck, D. 2001. *American terrorist: Timothy McVeigh and the Oklahoma City bombing*. Harper 284

is carried out in the execution of a sentence of a court.<sup>451</sup> The Supreme Court of Nigeria validated death penalty in the case of *Onuoha Kalu v. State*,<sup>452</sup> when Uwais C.J.N. (as he then was) stated that, “death penalty is a reality in Nigeria”. The qualms with capital punishment as it concerns this research is: what if the conviction of such death row inmate is eventually overturned on appeal and the person is found to be innocent after spending years in such condition or have been executed before the court ruled that the initial conviction was in error? Is it possible to reverse such sentence and bring back to life the already executed individual? Such mistakes cannot be put right. Unlike any other criminal punishment, the death penalty is irrevocable. Disturbingly, a large body of evidence from modern day shows that innocent people are often convicted of capital crimes and some have been executed. More innocent persons might be put on death row as many of them might not be actually guilty. Death penalty destroys innocent lives. Many people are put to death in error; innocent people get killed because of mistake or flaws in the justice system. The death penalty is irreversible; therefore death penalty should be abolished in its entirety because when innocent people are executed for the offence not committed, it might be too late to reverse the judgment.<sup>453</sup>

Research has found that many victims of long term wrongful imprisonment found it difficult, if not virtually impossible, to fit back into society and rebuild their lives due to resultant permanent psychological and emotional disorder they go through after exoneration.<sup>454</sup> Wrongful conviction causes social harm, psychological harm, physical harm and financial harm to the victims. It can ruin lives, destroy careers, lead to separation of families and friends. It can lead to the breakup of marriage; it may involve temporal and permanent form of stigma to victims and their families that can outlive the overturned wrongful conviction. The social harm arising from a parents’ absence during their children’s upbringing cannot be over emphasised. Same goes for spouses who are deprived of partner’s support.<sup>455</sup> This was the bitter reality of Annette Hewins after he was exonerated on appeal in 1999: “I was exonerated by the court but not in the community in which I live. That will not happen...I will carry the stigma. Injustice does not cease just because you walk free from the court”.<sup>456</sup>

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<sup>451</sup> Section 33 (1) Constitution 1999 (as amended)

<sup>452</sup> 13 NWLR (pt.583) 531 or (1998) 12 SCNJ 1

<sup>453</sup> Iyaniwura, W. 2014. The death penalty – A negation of the right to life. *Global Journal of Human-Social Science: Economics* 14.4: Version 1.0 p.33-41 at 40

<sup>454</sup> Naughton M. 2007. *Rethinking miscarriage of justice beyond the tip of the iceberg*. Palgrave: Macmillan Books. at 193-194.

<sup>455</sup> Mr Wahab Ganiu believes he cannot get over the trauma and social harm arising from his 13 years of wrongful incarceration.

<sup>456</sup> Naughton, M. 2012. *Rethinking miscarriage of justice: Beyond the tip of the iceberg*. Palgrave: Macmillan Books. 168.

Wrongly convicted persons commonly experience “emotions which ranges from anger to paranoia and hopelessness”.<sup>457</sup> One study found that majority of wrongly convicted males could not live with previous partners. They could be traumatised in such a way that they have been likened to be similar to victims of other catastrophes such as natural disasters, long term abuse or prisoners of war.<sup>458</sup> Wrongful conviction takes a toll on convicted persons’ physical, mental and emotional health. They can find it difficult to fit back into a society that has undergone several changes while they were in prison.

### **OBJECTIVE III**

The 5<sup>th</sup> research question is targeted at resolving objective (iii) of this research work. The answer to the question is contained in chapter four of this research work. In view of the cause of wrongful conviction, all justice sector role players need to make in-depth review of their policies to prevent wrongful conviction by focusing on the causes of wrongful conviction and the best practice to prevent them in the conduct of criminal investigations. Edgar Macleod, the President of Canadian Association of Police stated that: “It is important that all players in the justice system, police, prosecutor, the judiciary and the Defence – work together and thereby effectively reduce the risk of wrongful convictions”.<sup>459</sup> The law enforcement agents can take a leading role in preventing and reducing wrongful convictions by eliminating the wanton and arbitral arrest of wrong persons, by improving investigative protocols, policies, training, supervision and assessment of evidence adduced in the course of investigation to reduce the number of persons who are wrongly convicted.

Better and improved officer training, better line up procedure and more research can prevent eye witness misidentification of wrong persons. Courts should insist on the recording of all interviews of the suspect by the police or other security agents as a condition precedent for the admissibility of confessional statements. Although the latest enactments of criminal procedure laws require the electronic recording of court’s proceeding where practicable, efforts should be made by the government to ensure the installation of facilities in this regards. Electronic recording of court proceedings may be useful at appeals especially in

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<sup>457</sup>Haney C. 2005. *Death by design: Capital punishment as a social psychological system*. Oxford: Oxford University Press. 53

<sup>458</sup>Naughton, M. How big is the iceberg? A zemiological approach to quantifying miscarriages of justice. *Radical Statics*. 81: 5-17

<sup>459</sup>Statement by Edgar Macleod, the President Canadian Association of Police when reviewing report on the Prevention of Miscarriage of Justice by Head of Prosecution in Canada in 2002

evaluating claims of bias and misconduct of judges. All these can prevent or reduce wrongful convictions of innocent persons.<sup>460</sup>

The prosecutor must never over-reach the defendant in order to obtain a conviction. Evidence gathered by the police must be scrutinised, evaluated, and properly assessed to confirm and determine its admissibility. Prosecutors must be fair, courageous, exercise diverse thinking and be able to make unpopular decisions based on personal evaluation of the evidence.<sup>461</sup> They must ask questions where need be and be firm in their decision to ensure the integrity of the administration of justice by avoiding improper use of prosecutorial powers. Second opinion and case review should be available in all areas.<sup>462</sup>

Forensic science is relevant and indispensable in the effective administration of criminal justice system. It is of relevance to the various players of the criminal justice system. This includes the legal practitioners on both sides of the defence or prosecution, who rely on expert evidence to effectively represent their client; the judiciary, which is to ensure fairness and rule of law in the criminal proceedings; and more importantly, the society which is concerned that the innocent persons are not convicted of crimes they did not commit while the perpetrators of crimes are to be brought to justice.<sup>463</sup> Expert opinion through the use of forensic findings can be utilised to overturn faulty eyewitness opinion.<sup>464</sup>

Civil society groups are a mobilisation platform for popular struggle with considerable coordination and intensity in their demands. They have used several means to influence policy makers and determine the outcome of policy decisions. They are also known as the whistleblowers who alert policy makers on the need to take action on matters of public interest. Their ability to define problems, provide cutting edge research on scientific matters, educate the public through media coverage and galvanise their vast membership networks to demand action by government, are widely recognised as fundamental to policy making process and law reforms.<sup>465</sup> Through the use of campaigns, education programmes and the dissemination of information, civil society groups have heightened the level of awareness,

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<sup>460</sup>Prevention of Wrongful Convictions. *Nowegian Legal Safeguards and the Criminal Cases Review Commission University of Cincinnati Law Review* 80.4: 18-19.

<sup>461</sup>*ibid.* at foot note 1

<sup>462</sup>*ibid.*

<sup>463</sup>Lord Thomas, 2014. Expert evidence: The future of forensic science in criminal trials. *The 2014 Criminal Bar Association Kalisher Lecture* 14<sup>th</sup> October. 2014. 2.

<sup>464</sup>Ugbe, U. A. 2012. *Forensic science-Course Guide*. Abuja: National Open University of Nigeria. 284.

<sup>465</sup>Ekwere, K. 2010. Sustainable development of oil and gas in the Niger Delta: Legal and political issues. Dissertation. Law of the Sea and Maritime Law Institute, University Of Hamburg. xxii+212 at 173.

mobilising the local people, articulating their demands, strengthening participation among the people, forging commonality of objectives and building region-wide platforms and compelled the entrance of the issue into the front burner of national agenda.<sup>466</sup>

This researcher has come in contact with persons who have been exonerated from wrongful conviction as a result of efforts from Legal Defense and Assistance Project (LEDAP). It was the spirited efforts of the Nigerian National Study Group on the Death Penalty in October, 2004 that led to the moratorium on the execution of capital punishment in Nigeria. It would also be recalled that LEDAP filed a law suit to stop the execution of the inmates whose execution warrants were signed by the Edo State Governor in October 2012. Even though the executions were finally carried out, there has not been any further execution thereafter due to the huge mobilisation and public outcry the activities of these NGOs generated. In view of the large incidence of wrongful conviction, it is suggested that there is need for more civil society groups in this regard and increased capacity of the existing ones.

#### **OBJECTIVE IV**

The 6th research question is targeted at objective (iv) of this research work. The answer to the question is contained in chapter four of this research work. The reliefs open to a wrongly convicted person to exercise in Nigeria are categorised in twofold post-conviction remedies and post exoneration reliefs. The post conviction reliefs can be explored while on appeal. Appeal lies from the State and Federal High courts, the Sharia Courts of Appeal and the Customary Courts of Appeal to the Court of Appeal; while the Supreme Court hears appeal directly from the court of Appeal.<sup>467</sup> Appeal can lie as of right from the lower courts to the Court of Appeal. Section 241 (1) of the Constitution 1999 recognises the circumstances in which a litigant can appeal as of right. Section 233 (1) of the Constitution confers appellate jurisdiction on the Supreme Court from the Court of Appeal, to the exclusion of any other court in Nigeria. An appeal may be based on the grounds that the trial court judge simply got it wrong, believed wrong witnesses or that there are some admitted evidence that should have been excluded or an appellant went through unfair trial that resulted in the erroneous conviction appealed against. The Court of Appeal will then decide to do one of the following:

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<sup>466</sup> *ibid.* at 179-180.

<sup>467</sup>Section 6 (5) of the 1999 Constitution of the Federal Republic of Nigeria Cap C23, Laws of Federation of Nigeria, 2004.

- a. Dismiss the appeal if it lacks merit;
- b. Allow the appeal and direct that the appellant be discharged or acquitted;
- c. Allow the appeal and direct that there should be a retrial;
- d. Allow the appeal and substitute the conviction for a lesser charge which must have been open to the trial judge.

Reliefs open to a defendant in course of appealing a conviction by the trial court includes stay of execution, bail pending appeal and prerogative of mercy. Generally, execution of criminal conviction and sentence takes effect immediately after judgment of the trial court. Unlike civil claims, it cannot be stayed. However, where the sentence is a death penalty, an appeal of such decision automatically acts as a stay of execution of the sentence until the final determination of the appeal. In Nigeria, it is typical for governors and the president to ensure that there is no pending appeal or all appeal have been dismissed before signing execution warrant for death penalty. Stay of execution may be viewed, somewhat, as an available post conviction relief, howbeit temporary, pending the determination of the appeal of those convicts who are sentenced to death. This relief, sadly enough, is not available to convicts of non-capital offences. However, the condemned convict will still be on death row while the appeal subsists. This puts to question whether stay of execution really serve its purpose as a relief when the experience of death row have been described as worse than being put to death. Whereas a person is wrongly convicted for a capital offence, such person is meant to suffer the horror, gruesome experience and torture of imminent death.

A convict may also explore the option of bail pending appeal assuming the sentence is that of imprisonment. In *Jamal v. State*,<sup>468</sup> the court held that:

Generally the grant of bail to a convict sentenced to a term of imprisonment is not made as a matter of course. The principle of presumption of applicant's innocence no longer exists, because of his conviction; he must show special circumstances to be entitled to bail pending determination of his appeal.

In granting bail pending appeal, the applicant must show special and exceptional circumstances<sup>469</sup> like:

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<sup>468</sup>16 NLR

- a. Whether the Applicant is a first time offender and has been of good behavior.
- b. Whether substantial grounds of law are involved in the appeal.
- c. Whether the sentence is manifestly contestable as to whether or not it is a sentence known to law.
- d. Whether a refusal of the court to admit the applicant to bail will have the result of the whole or considerable portion of the sentence being imposed on the applicant being served before the appeal can be heard.
- e. Whether the application is based on ill health and the applicant cannot get the necessary treatment in prison.<sup>470</sup>

The burden of proving exceptional circumstances which will entitle the applicant to be admitted to bail pending the determination of the appeal lies on the applicant to establish. The presumption of innocence as well as right to liberty is no longer available to the applicant consequent upon the conviction<sup>471</sup> as explained above. Until the conviction and sentence of the trial court is overturned, the right to liberty is also lost.

The grant of prerogative of mercy or pardon is a right recognised under the 1999 Constitution (as amended). Sections 175 (1) and (2), 212 (1) reserves such powers exclusively to the President and Governors. By the provision of Section 312 of the Administration of the Criminal Justice Act (ACJA) 2015, the court can make recommendation for mercy and as well as give the reasons for its recommendation in any case. State pardon is a discretionary power to be exercised by the executive. The practice in Nigeria confirms that prerogative of mercy has continued to be used as an instrument of political, ethnic and religious patronage. Instead of using this power for political consideration, it would be well served if the target beneficiaries are those persons whose conviction are purely and manifestly cases of wrongful conviction. That way, prerogative of mercy would properly serve as a tool for checking the excesses and short coming of the judiciary by the executive. This is in conformity with the underlining principle of checks and balances contemplated by the constitution.

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<sup>469</sup>See, Dogo v. Commissioner of Police, (1980) 1 NCLR 14; Okoroji v. State (1996) 9 NWLR (Pt. 157) 509 Per Njiraku JCA at 3-4.

<sup>470</sup>Fawehinmi v. State. Supra

<sup>471</sup>Madike v. State, (1992) 8 NWLR (pt. 257) 85. Per Obaseki Ademola JCA at p. 13

The second category which is post exoneration reliefs is problematic. Under Nigeria law, there is no direct provision on compensation for victims of wrongful conviction unlike the US and UK that have laws that recognises, establish and cater for the compensation of victims of wrongful convictions for the harm and trauma suffered during their incarceration. What appears to be compensation under civil law in Nigeria are actions under common law. For instance, victims can sue the police for false imprisonment, assault, battery and malicious prosecution. A critical evaluation of malicious prosecution will reveal that it is not really a remedy available for wrongful conviction. This is because for an action for malicious prosecution to succeed, the plaintiff must have been discharged or acquitted of the alleged offence. Whereas a person has been convicted, either rightly or wrongly, this remedy will not be available to such person. The saving grace, perhaps, might be where such decision of the trial court is set aside on appeal. The major statutory limitation to compensatory remedy for wrongful conviction is the constitution. S. 35 (1) a. provides an exception to the enforcement of the fundamental right to personal liberty. This is in the event of execution of the sentence or order of a court in respect of a criminal offence wherein such person is found guilty. Herein, the constitution did not consider the rightness or wrongness of the decision of the court. Even where a court without jurisdiction convicts a person, such judgment and execution thereof is still valid and subsisting for all purpose until set aside by an appellate court. Even when it has been set aside, an action for enforcement of breach to right of personal liberty would be declined on the ground that it was carried out pursuant to a court order.

The only conjecture of compensation is Nigerian statute is in the form of cost. S. 255 (2) CPA provides:

A court that acquits or discharges a person accused of an offence, if the prosecution of such offence was originally instituted on a summons or a warrant issued by a court on the complaint of a private prosecutor, may order such private prosecutor to pay to the accused such reasonable costs as the court may seem fit and the payment of such costs or any part thereof may be ordered by the court to be made out of any moneys taken from such person on his apprehension or may be recovered by distress.

Also the newly enacted ACJA 2015 provides in S. 322 (1) that the court may, in a proceeding instituted by a private prosecutor or on a summons or complain of a private person, on



acquittal of the defendant, order the private prosecutor or person to pay to the defendant such reasonable cost as the court may deem fit. The problems associated with the foregoing provisions are that:

- i. by its nature, cost is meant to be a nominal payment and cannot serve as adequate compensation;
- ii. cost is only available to the defendant where there is an acquittal or discharged. Technically, this does not envisage instances of wrongful conviction which requires that there must have been an initial conviction by the court. The saving grace may be where these provisions are considered by a court exercising appellate jurisdiction;
- iii. the provision are only applicable on instances where the criminal cases are instituted by private individuals. Private individuals institute criminal cases only on limited instances. Most criminal cases in Nigeria are instituted by public institutions and personalities which are excluded from these provisions despite the fact that most of the issues leading to wrongful conviction are perpetrated by this excluded category of persons;
- v. judging from the attitude of appellate courts on cost in criminal cases as manifested in the *dicta* of Fabiyi JSC,<sup>472</sup> the extent to which the wrongly convicted person may get this remedy is doubtful. There is another serious obstacle to reintegration and restoration back to the society, especially in Nigeria, where there is absence of compensation scheme and, basic needs like health care needs, financial needs, social needs and housing needs to support the exonerated persons.

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<sup>472</sup>See the cases of: *Odunlami v. Nigerian Navy* (2014) All FWLR (pt. 720) p. 1233; *Egunjobi v. FRN*, (2013) All FWLR (pt. 670) p. 121. In the former case, Fabiyi, JSC. Stated that: "As an aside, I noted that in paragraph 5.02 at page 24 of the respondent's brief of argument, learned counsel urged that the appeal be dismissed with substantial cost in favour of the respondent. This is unheard of in a criminal matter as same is not provided for in the applicable rules of court. Counsel should note same. It should not be repeated."

## 5.2 Conclusion

“Wrongful convictions happen in all countries. Miscarriages of justice are a normal and expected consequence of imperfect procedures of investigation, prosecution and court trials and they ordinarily conceived as exceptional and unacceptable event”.<sup>473</sup>

The criminal justice actors long doubted whether courts ever convicted people in error. For instance, Judge Learned Hand of USA has once said that wrongful conviction is: "an unreal dream" in *United State v. Garrison*.<sup>474</sup> O'Connor J in the case of *Herrera v. Collins*<sup>475</sup> also held strong believe that wrongful conviction does not occurred when he said that: “Our society has a high degree of confidence in its criminal trials, in no small part because the constitution offers unparalleled protections against convicting the innocent person”.

From the rate of DNA exoneration in countries like US and UK and the numbers of successful appeals in Nigeria whereby convicts are discharged and acquitted, people now believed that our courts had convicted innocent people and even sentenced some to death. This has altered the way people perceive the accuracy of the criminal justice system.<sup>476</sup> Criminal justice actors such as: judges, lawyers, legislature, the public and scholars are also affected by this perception. The reaction has been the emergency of many innocence networks of lawyers, journalists and other people that care about justice, working hard to prevent, locate and advocate against more cases of wrongful conviction. The NGOs in Nigeria and Legal Aids Council are now helping those convicts in prison whom they believe were wrongly convicted, especially those on death row. Public distrust of the criminal system has increased as a result of the increasing number of exonerations.<sup>477</sup> Some countries have declared moratorium on execution of death sentences citing examples of wrongful convictions. Nigeria also operates a self-imposed moratorium on execution of death sentences. Many Nigerians have joined the call for the eradication of death penalty as a sentence in Nigeria allude wrongful convictions as one of the grounds.

Wrongful conviction entails that errors by police or prosecutors had occurred during criminal investigation and trial that have resulted in a suspect becoming a defendant in a criminal trial

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<sup>473</sup>Noble, R. and Schiff, D. 2000. *Understanding miscarriages of justice* 1<sup>st</sup> ed. Oxford: Oxford University Press 78.

<sup>474</sup>291 F. 646,649 (S.D.N.Y. 1923)

<sup>475</sup>506 U.S. 390 (1993)

<sup>476</sup>Johnson, L. T. 2013. Eye witness testimony, false confession and human performance technology: An examination of wrongful conviction. Thesis and Dissertation 107. Retrieved on November 27, 2017 from: <http://utdr.utoledo.edu/theses-disertation/107>

<sup>477</sup>Noble, R. and Schiff, D. op. cit.

and finally convicted of such offence. According to Gross,<sup>478</sup> conversion from suspect to defendant is often unintentional when he stated that “false convictions are accident: a system we rely on daily goes wrong, with tragic results. Like other accident, most false convictions are probably unintended, although they may be preventable”.

The accidental or unintentional error we are talking about can easily turn into wrongful conviction when the judicial system fails to uncover system defects in the criminal justice process. When courts fail to correct prior errors observed in an investigation and based on that error, arrive at decisions about the guilt of the defendant. A wrongful conviction may likely occur and this would lead to the conviction and sentencing of such impeccable person. No one denies the existence of wrongful convictions. The participants in this research interviewed by the researcher confirmed the existence of this aberration of law. Out of 22 people interviewed in this work only 2 people did not agree with the fact that wrongful convictions occur. Other participants are of the view that wrongful convictions do occur based on reasons adduced in chapter 3 of this work and some other factors like fault of the government to provide necessary facilities to the justice players like the police, prosecutors and judges to carry out their duties effectively and efficiently. Poor funding and lack of incentive to the criminal justice players really contributed to the performance of the judiciary in this regard because poor funding encourages corruption.

In July, 2014, one Ilada Prosper a Nigeria man who served 10 years on death row for the robbery and late Olatunji Olaide who spent 24 years on death row for the offences they did not commit were discharged and set free by the Court of Appeal. The evidence used to convict them was flawed and false and the trial court failed to notice the error. Their cases represent a catastrophic failure of the criminal justice system in Nigeria. As observed by Professor Garrett: “a few type of unreliable trial evidence predictably supported wrongful convictions”.<sup>479</sup>

Wrongful conviction in the criminal justice system is not only a Nigeria problem, it is a global issue, it is an issue that occurs all around the world. The conviction of people entirely innocent of crimes committed by others has attracted popular attention globally. It is a subject with major policy relevance because significant cases of miscarriage of justice occur daily

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<sup>478</sup>Gross, S. R. and O'Brien, B. 2008. Frequency and predictors of false conviction: Why we know so little, and new data on capital cases. *Journal of Empirical Legal Studies* 4.4: 927-962.

<sup>479</sup>Garrett, L. B. 2008. Judging innocence. *Columbia Law Review*, January. Retrieved on November 27, 2017 from: <https://ssrn.com/abstract=999984>

everywhere in the world and this has attracted many innocence advocacy drives, important investigation, prosecution, forensic science and adjudication for reforms.<sup>480</sup> Wrongful convictions are often the result of criminal justice and legal system failure. Although the criminal justice system in Nigeria and most other countries have a number of safeguards designed to ensure that the overwhelming majority of convictions are accurate determination of facts, it is clear that wrongful conviction still occur, notwithstanding. Innocent people are convicted while the guilty persons are at large committing more crimes. Public attention has focused on the inherent dangers in this because the free guilty ones will make society unsafe for people to live in. Wrongful convictions should concern anyone who cares about law enforcement and public safety because for every innocent person wrongfully convicted, the real offender poses a safety threat to the lives and property of members of the society.

Wrongful conviction is fastening around the inefficient mechanism of the administration of justice and centred largely on how the police, in the course of performing their duties, have been violating laws and citizens' rights which they are legally obliged to observe and protect. Ogunwumiju JCA emphasised this point in *Emeka v. The State*<sup>481</sup> when he puts it thus:

I must emphasise the fact that in spite of the prevalence of the crime of armed robbery, it would be wrong attitude for the courts not to insist that the police ensure proper investigation and prosecution of criminal offences. The police must be held high standard. It is better for ten guilty men to escape punishment where there is uncertainty as to their guilty, than for one innocent man to be convicted where there is uncertainty as to his guilt.

Many prisoners, including those on death row, in Nigeria and other countries like US and UK might have been wrongly convicted considering the number of people exonerated on appeals. They are victim of high handed police tactics, flawed forensic science, misidentification of suspects, incompetent defence counsel, prosecutorial misconduct etc. The advocacy of civil society groups and lawyers in private practice has exposed these shortcomings as they successfully appeal and gets some of these convictions upturned.

There are varieties of causes that can be identified which contribute to wrongful convictions. Some of the major causes have been outlined in the chapter three of this work. Much that has been learnt by this researcher as causes of wrongful convictions suggest that errors can be

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<sup>480</sup>Zalman, M. 2017. Wrongful convictions and criminal justice: A challenge and invitation. *ACJS Today: The News Letter of the Academy of Criminal Justice Sciences* XL11.1: 1.

<sup>481</sup>(2014) All FWLR (Pt. 756) p. 589.

reduced by changes in policies, procedures, findings and routine that affects police, prosecutors, attorneys, judges and even the public at large. Being a palpable miscarriage of justice, when the existence of wrongful conviction is known, it tends to force reforms in a system that is generally resistant to change. A more accurate justice system should improve the efficiency and effectiveness of its ability to apprehend and prosecute criminals. George Washington once said: “the due administration of justice is the firmest pillar of good government”. If people lose faith in the criminal justice system, society is greatly weakened. There may be no greater threat to faith in the justice system than the threat presented by wrongful conviction of innocent persons. Lawyers, security agents, and other justice system players have important pledge in guaranteeing the health of the criminal justice system.

Wrongful conviction is a problematic societal issue that warrants serious attention. This study provides a greater understanding of the issues that lead to wrongful conviction in Nigeria from the level of crime investigation through to the judicial processes. The Nigeria government should provide adequate fund for the training and retraining of law enforcement agencies to increase their knowledge and investigative skills in law enforcement to prevent wrongful convictions. This is because most instances of wrongful convictions arise from mistakes and misconducts which occur at the law enforcement level. Of course it is an indictment on law enforcement agencies with wide scale reports of violation of human rights which they are supposed to protect. Continuous interventions directed at limiting the problems and mistakes arising from investigation must take place within the individual law enforcement agencies, especially the police. The government, both at state and federal level, should provide tools to improve the performance of those agencies concerned.<sup>482</sup> Considering the number of people serving various sentence for the offence not committed, the time has come to make drastic changes in the criminal justice system. All hands need to be on the deck now. The members of the public, the law enforcement agencies, the judiciary legislature needs to take major steps directed at reducing the rate of the judicial errors because convicting an innocent person does not serve any useful purpose but to reduce people’s confidence in justice system. This is more so when the reversibility of such error may prove difficult. Hence, prevention of wrongful conviction should be everyone's immediate focus and attention.

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<sup>482</sup>Ibid

## 5.2 Recommendations

Obviously defendants and witnesses may lie anywhere and under all systems; experts may draw erroneous conclusions based on the materials at hand all over the world: and there may be incompetent legal staff anywhere and at anytime. It would be wrong, however to conclude from this obvious state of affairs that wrongful convictions have to be accepted as part of a risky world. Indeed, systems also differ in how they deal with errors and in how they act in order to control such risks.<sup>483</sup>

Everyone involved in the criminal justice system must be constantly on guard against the factors that can contribute to miscarriages of justice and must be provided with appropriate resources and training to reduce the risk of wrongful convictions. Indeed, police officers and prosecutors, services, the entire police and prosecution communities, must make the prevention of wrongful convictions a constant priority<sup>484</sup>

This research has made efforts to extensively discuss and analyse the problems of wrongful convictions in Nigeria; the factors such misidentification of the suspect by eyewitness, confessional statement either voluntary or coerced, faulty expert opinion, inefficient defence counsel, faulty forensic analysis and so on as being responsible for this aberration. The effects of wrongful conviction on the victims, their loved ones and the society were also considered.

It is admitted that no justice system created and run by humans is ever free of human error. However, much is left to be desired when errors that are prejudicial to the lives and liberty of persons become a reoccurrence decimal. This is especially so in Nigeria where the criminal justice system had been described as dysfunctional, outdated and absolutely not fit for purpose. Osinbajo highlighted this problem when he states that:

An effective criminal justice system is fundamental to the maintenance of law and order. Criminal justice, because it addresses behavioural issues, must be dynamic and proactive.... Consequently, many of the provisions are outdated and in some cases anachronistic. Besides the loopholes in the laws and procedures have become so obvious that lawyers especially defence lawyers

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<sup>483</sup>Killias, M. 2013. Errors occur everywhere- but not at the same frequency: The role of procedural systems in wrongful convictions. *Wrongful Convictions and Miscarriage of Justice: Causes and Remedies in North American and European Criminal Justice*. Eds. H. Ronald & K. Martin. Routledge Publishing Inc. 69

<sup>484</sup>Ibid.

have become masters in dilatory tactics. It has thus become increasingly difficult to reach closure of any kind in many criminal cases. Convictions or acquittal have become exceedingly rare.<sup>485</sup>

The above indicates that there are serious problems with the Nigerian criminal justice system that produces wrongful conviction of innocent persons. Osinbajo went further to state that the inability of the criminal justice system to satisfactorily resolve high profile murder cases, leaves one wondering whether such system can deliver good justice to the ordinary person when offences against the 'high and mighty' cannot deal with.<sup>486</sup>

The criminal justice system, according to some participants in this research, needs total overhauling because the Nigeria criminal laws are too archaic and needed to be replaced by new laws. Some interviewed participants believed that Nigerian criminal laws need some innovation to meet the standard required in the international comity of nations. Some of the participants suggested some recommendations that would be useful in reducing the issue of wrongful convictions in Nigeria.<sup>487</sup> It is imperative for continuous search for improvements in the accuracy of the criminal justice system to prevent or reduce erroneous conviction. After a careful analysis and appraisal of factors responsible for wrongful convictions, especially on the areas of investigation, prosecution and throughout the judicial process, not forgetting post-conviction remedies and post exoneration reliefs, the following recommendations are made:

#### 1. **Establishment of more forensic Laboratories.**

The use of forensic science in criminal investigation is very important and without it there is no doubt that the most significant resources of investigation are automatically absent. It entails the application of science in the gathering of evidence which is the result of examination and comparison of biological evidence. DNA analysis is also important and many jurisdictions use it to solve many crimes. In Nigeria, the police do not have its own laboratories with the capacity for DNA Analysis. The result is that crime scene management becomes alien to police operatives. It is therefore recommended that some practical steps need to be taken by the Federal government to establish working forensic laboratories in all police command to help in the detection of crime and identification of the real perpetrators of crime through finger print analysis, comparative bullet lead analysis, bite mark analysis and

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<sup>485</sup>Osinbajo, Y. 2009. *op. cit.*

<sup>486</sup>*Ibid.*

<sup>487</sup>See the full interview and response of the participant at the Appendix to this research.

other form of forensic analysis to prevent arrest, prosecution and conviction of innocent persons. Lagos State has recently established what appears to be the first forensic laboratory in Nigeria. More states of the federation should follow suit. Adequate training for the forensic expert is also important because if errors occur in their analysis, it could lead to wrong findings and result to wrongful conviction as have been analysed in chapter three. The forensic science laboratories must also be adequately funded by the government for effective performance.

## **2. Research on systems of checks and balances is needed in the various department of all justice players**

There should be hierarchy within the sector of criminal system to check each other. The superior officers in the police should make it a point of duty to check the activities of the junior officers to ensure due diligence while the Attorney General and DPP should make it a point of duty to cross check the activities of the law officers under them for effective justice delivery. And the Chief Justice of Nigeria and Chief Judge of a state can also check the excess of judicial officers and the police for example the Chief Justice of Nigeria, Justice Samuel Water Onnoghen gives a "Practice Direction" to Chief judges of all the 36 states in Nigeria and that of the Federal Capital Territory to give matching Orders to Chief Magistrates in their respective state to conduct inspection of police station and other detention centre within their state except prisons in line with the provisions of Administration of Criminal Justice Act, 2015.<sup>488</sup> which intends to check complaints of police brutality, malicious arrest, illegal detention and extortion of Nigeria citizens by the officers of the Nigeria police force across the country. He also directed all 36 Chief Judges to set up correct machinery to ensure due compliance with above provision of ACJA especially the sections that relates to police torture, unlawful arrest and illegal detention of suspect.

## **3. Adequate and continuous training for police prosecutors and other police officers.**

Police prosecutors need adequate training by the Police Service Commission in the art of advocacy and prosecution of cases in the law courts. Traditionally police are obliged to discharge their duties responsibly having regard to the public interest, the interest of justice on a broad basis, as well as the need to prevent abuse of the judicial process. They must be duly and appropriately equipped as well by the government as positioned particularly in

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<sup>488</sup> See generally Section 34(1)(2) of Administration of Criminal Justice Act, 2015



terms of remuneration in order to effectively discharge their duties. The investigations are poor and shoddy. It is evident from this work that inability of police to investigate and prosecute cases properly has been a major cause of wrongful convictions in Nigeria and other countries. Seminars and capacity building workshops should be organised periodically for the police personnel by the Police Service Commission especially the prosecutors that are not lawyers, in a bid to ensure effective justice delivery. The Investigating Police Officers (IPO) requires retraining on modern investigative equipment and modes to facilitate successful investigation. Effective training of IPOs is very important because if a case is messed up during investigation, there is little or nothing a prosecutor could do to salvage the situation. Government should provide manpower and technological advancement of the security agencies particularly the police force to meet the United Nations requirements.

#### **4. Electronic Recording of Suspects' Statements.**

Some participants in this work propose that the courts should require that the statements of suspects be tape-recorded whenever in line with provision of Administration of Criminal Justice Act (ACJA), 2015. The state of Illinois of USA has just passed a law requiring that custodial interrogations of murder suspects in murder cases be electronically recorded. This research previously pointed to reasons why taping of statements may benefit the police, the defendant, the system, and the truth-seeking function of the judiciary. The ACJA 2015 and other state laws based on it require the electronic recording of confessional statements by the police and other law enforcement agents. However, the courts have been reluctant in giving a mandatory interpretation to this requirement to this provision of the law. It is about time our court started enforcing this law by rejecting the admissibility of any confessional statement that falls short of this condition. This in our view will help the police to rely on intelligence gathering rather than placing heavy reliance on obtaining confessional statement at all cost as a means of criminal investigation as is currently the case.

#### **5. Introduction of Post-Conviction Compensation Scheme.**

Compensation scheme should be introduced in Nigeria by the government to compensate the victims of wrongful conviction as a means of reintegrating them into the society to cater for their financial and material needs as the case in the United State where government assumed responsibility to do all it can to foster the re-entry of exoneree in order to help restore him/her back to the original position by awarding millions of dollars as compensation. Such compensation scheme should also be introduced in Nigeria which should include medical support, job support and housing support by either state or federal government. If possible,

this should be extended to their family because of the hardships they have been made to go through while the victim was wrongly convicted and incarcerated.

**6. Creation of a committee or an Independent Body.**

A Committee or independent body should be established by the government for the prevention of wrongful conviction with the mandate to make recommendation to the authority on the measures to be adopted to prevent occurrence of wrongful conviction. The committee has a duty to review the development in Nigeria and oversea related to wrongful conviction, including emerging case law, technology, law and reports on any variations in policies, practices, procedures and directions that should be executed by individual prosecution services. The committee should also work with the prosecution services and police forces to develop best practices and educational training to avert wrongful convictions. Such committee should report periodically to either the State Governor or the President on its actions and any development in the area of erroneous convictions.

**7. Make prosecutorial officers accountable for unethical behaviour.**

The legal profession must lift the professional standards of lawyers, including legal officers by applying meaningful sanctions for violation of legal requirements, standards and ethical expectations. The Bar Association both at federal and state level must take stronger action to restore confidence in the integrity of all qualified lawyers particularly those who represent the state to bring sanity to legal profession in Nigeria. The highest level of professionalism and ethical standards of seeking the truth must be constantly reinforced in the culture of every prosecutor's office. They should be accountable for any criminal behaviour from their misconduct. The laws relating to the rules of professional conduct must be strictly implemented and regularly reviewed by Legal Practitioner Disciplinary Committee (LPDC) to include penalties and sanctions for misconduct at all levels to ensure that all lawyers either as prosecutor or defence lawyers perform their duty diligently, fairly and honourably and failure to do the just and right thing. Perversion of the course of justice or not being diligent in prosecuting or defending cases that eventually result in the wrongful conviction of innocent persons should warrant disciplinary action or criminal liability for such misdeeds.

**8. Continuing Legal Education Course.**

This should be introduced by the Nigeria Bar Association (NBA) to all lawyers at least once a year and it must be made compulsory for all lawyers to refresh their memories as is the practice in countries like UK where all solicitors must attend continuing legal education

course every year. Such a course may include the scope and remedies for wrongful convictions and provide the latest research on the level of reliability of different forms of evidence

9. Open disclosure which removes prosecutorial discretion in sharing evidence for greater assurance that all pertinent evidence is seen by the defence is recommended as the practice in some states in US.

10. Everyone in the criminal justice system needs to engage in a vigorous and honest debate about ways to reduce the incidence of wrongful convictions. Everyone involved in the criminal justice system must be constantly on guard against the factors that can contribute to miscarriages of justice and must be provided with appropriate resources and training to reduce the risk of wrongful convictions. Individual police forces and prosecution services, and indeed the entire police and prosecution communities, must make the prevention of wrongful convictions a constant priority.

**11. Adequate funding of criminal Prosecution.**

If law officers are required to attend to their duties promptly and efficiently, it is a highly obligatory on the part of government to ensure prompt payment of wages, salaries and other allowances as and when due. This is because a hungry man is an angry man. Apart from their welfare that has always regrettably paid scanty attention to in many states of the federation. There is need for continuous trainings, equipment with materials such as law reports, journals, practice books, good working environment, vehicles, investment in information technology and recreation. Attention needs to be paid to welfare issues including medical needs.<sup>489</sup> Well-equipped libraries are always the pride of any legal practitioner or any law officer for effective discharge of their key roles.

**12. Support Human Rights Commission and other Non-Governmental Organisations (NGO).**

Concerns about wrongful convictions and violation of fundamental rights of citizen by the security agents have led to the creation of a number of NGOs around the country. NGOs like LEDAP (Legal Defence and Assistance Project), Human Rights Commission (HRC) and Access to Justice, Justice Development and Peace Commission (JDPC) and so on who are always involved in the fight for the exoneration of victims of wrongful conviction and those

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<sup>489</sup>Ayeni, O. 2017. Thoughts on effective justice delivery for the common benefit of society in Ogun State. being a Paper Presented at the 2017/2018 Ogun State Judges Conference on September 26, 2017.

that have their rights violated. Some focus on capital cases liker robbery and murders that carry the maximum penalties of death sentence. They assist convicts who cannot afford the service of lawyer but seek to challenge their convictions on the grounds that they are actually innocent. NGO like LEDAP has assisted more than fifty innocent people to have their death sentence upturned on appeals and get discharged and acquitted. These NGOs needs the support of government, individuals and international organisations to effectively perform their duties effectively to help more victims of wrongful conviction.

**13. Make Appeals Work.**

The mere availability of appeals can work as a sort of quality control. Appeals to higher courts should also be more efficient because availability of appeals can work as a sort of control to re-examine and re-evaluate all relevant issues and decision. Decisions are often overturned for reasons that concern the sentence rather than the verdict. Even so, lower courts may take caution when they anticipate a higher rate of successful appeals. Therefore, a well developed system of appeals by the judiciary may act as a strong incentive to avoid judicial error of all kinds.

**14. Adoption of more Neutral Interrogation Methods**

Adoption of information gathering approach in police interviews is also recommended to the police force and other security agency. Accusatorial interview methods should be avoided to reduce the risk of false confession and indirectly of wrongful convictions might be reduced without any loss in the efficiency of police interrogations. This measure alone might significantly reduce the odds of innocent defendants being wrongfully convicted.

15 Increased awareness must consistently be the goal of everyone. Working in common synergy, all stakeholders in justice system must work together in improving the criminal justice system. Corruption, abuse of power and discretion must be shunned by all justice sector, modern method must be embraced. Education as well as information dissemination ought to be consistent.

**16. Improve Welfare Package of Judicial Officers.**

Judicial officers including judges and magistrates must be adequately taken care of and guaranteed of good life even after service. These measures inhibit the germination of the seed of corruption and invariably enhance the efficacy of the good justice delivery machinery that prevents wrongful conviction of innocent persons. There is also the need for training and retraining of court staff by the federal or state Judicial Service Commission in order to

appreciate the universal changing trends in administration of justice. Expansion of digital access to justice is becoming an essential part of justice system and should be a priority for the judiciary in the 21st century to digitally record court proceedings in order to secure evidence and make that evidence accessible easily.

**17. Monitor the Use of Informants.**

Whether they are called ‘cooperating witnesses’ or ‘snitches’, it is clear that informants raise particular and additional trustworthiness concerns. Law enforcement officers should be more suspicious of informants. Prosecutors should demand more complete investigations of informants’ report. Defence counsel should diligently investigate the informants. The courts, through discovery, motions, expert testimony should make sure that all issues relating to the trustworthiness of informants are properly presented to courts.

**18. Use of Prerogative of mercy as a remedial tool for wrongful conviction.**

The power to exercise prerogative of mercy by the executives should not just be used arbitrarily or for political patronage. It should be used by the government as a remedial tool targeted at ameliorating the damage of wrongful conviction of innocent persons. This could also serve as an executive attempt at dealing with the scourge of wrongful conviction

**19. Introduction of Motion for New Trial and *Coram Nobis* in Nigeria**

A review scheme for wrongfully convicted person in Nigeria should also be introduced particularly where there are fresh evidence emerging after such conviction. This could be in form of (motion for) a new trial or *coram nobis* as practiced in the US.

**20. Attitudinal change by the administrators of the criminal justice system** There is need for a shift in the mentality and approach to the duties of stakeholders in the justice system. They must maintain a human face and be determined to make the system work. In the absence of this whatever, legal safeguard or mechanisms that is put in place to checkmate wrongful conviction will continue to be put in jeopardy by adverse human factors. When this has been achieved, the society will reciprocate by reposing confidence in the criminal justice system. Only then can members of the society see the police as their friends.

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## **STATUTES**

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## **APPENDICES**

### **APPENDIX 1:**

#### **INTRODUCTION LETTER ON UNSTRUCTURED INTERVIEW**

Dear Sir/Ma,

#### **REQUEST FOR MEETING**

My name is Fasilat Abimbola Olalere, a doctoral student from the Law Faculty, University of Ibadan, Ibadan Nigeria writing my PhD thesis on the topic “Legal Implication of Wrongful Conviction under the Criminal Justice System in Nigeria”. As part of the field work for my research, I aim to conduct an unstructured interview for major justice organizations and stakeholders in the administration of criminal justice which your establishment represents.

I would be honoured to have the opportunity to meet you and some of your staff in order to discuss some of my ideas and learn from your experiences and views about the flaws of our existing justice system.

Please find attached an official letter of introduction from the Dean of the Faculty of law, University of Ibadan, Ibadan.

Please kindly know that your participation in the research is voluntary, and that any information supplied would be used purely for research purpose only and will not be used in any publication or report. All information collected will be treated with utmost confidentiality. No names will be recorded.

Thank you for your cooperation.

Signed

Olalere Fasilat (The Researcher)

## APPENDIX 2:



### **SOCIAL SCIENCES AND HUMANITIES RESEARCH ETHICS COMMITTEE (SSHEC)**

**UNIVERSITY OF IBADAN**

**Chairman: Prof. A. S. Jegede, B.Sc, M.Sc (Ife), MHSc (Toronto), Ph.d (Ibadan)**

**Tel: +234-8055282418**

**E-mail: [sayjegede@yahoo.com](mailto:sayjegede@yahoo.com)**

**[sayjegede@gmail.com](mailto:sayjegede@gmail.com)**

**[as.jegede@mail.ui.edu.ng](mailto:as.jegede@mail.ui.edu.ng)**

#### **NOTICE OF FULL APPROVAL AFTER FULL COMMITTEE REVIEW**

**Re: LEGAL IMPLICATIONS OF WRONGFUL CONVICTIONS UNDER THE NIGERIAN CRIMINAL JUSTICE SYSTEM**

UI/Social Sciences Ethics Committee assigned number: **UI/SSHEC/2018/0007**

Name of Principal Investigator: **OLALERE, Fasilat Abimbola**  
Address of Principal Investigator: Department of Law,  
Faculty of Law,  
University of Ibadan.

Date of receipt of valid application: **05/06/2018**

Date of meeting when final determination on ethical approval was made: **27th June, 2018.**

This is to inform you that the research described in the submitted protocol, the consent forms, and other participant information materials have been reviewed and given full approval by the SSHE Committee.

This approval dates from **27/06/2018 to 26/06/2019**. If there is delay in starting the research, please inform the SSHE Committee so that the dates of approval can be adjusted accordingly. Note that no participant accrual or activity related to this research may be conducted outside of these dates. All informed consent forms used in this study must carry the SSHE Committee assigned number and duration of SSHE Committee approval of the study. It is expected that you submit your annual report as well as an annual request for the project renewal to the SSHE Committee early in order to obtain renewal of your approval to avoid disruption of your research.

*Note: the National code for health research ethics requires you to comply with all institutional guidelines, rules and regulations and with the tenets of the Code including ensuring that all adverse events are reported promptly to the SSHEC. No changes are permitted in the research without prior approval by the SSHEC except in circumstances outlined in the Code. The SSHE reserves the right to conduct compliance visit to your research site without previous notification.*

**Prof. A.S. Jegede**

## APPENDIX 3:

### ETHICAL APPROVAL



## UNIVERSITY OF IBADAN, IBADAN, NIGERIA FACULTY OF LAW

**DEAN**  
Professor A. I. Olatunbosun  
LL.B (Ife), LL.M (Lagos) M. Phil, Ph.D (Ife), BL  
E-mail: tunbosun1@yahoo.com  
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**FACULTY OFFICER**  
T. G. Bankole  
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Website: <http://www/ui.edu.ng>

25 May, 2017

TO WHOM IT MAY CONCERN

#### LETTER OF INTRODUCTION OF MS FASILA ABIMBOLA OLALERE – Ph.D CANDIDATE ON FIELD WORK

This is to introduce Ms Fasila Abimbola OLALERE, a Ph.D candidate in Faculty of Law, with research interest on 'A Critical analysis of wrongful conviction under Criminal Justice system in Nigeria'.

As part of the field work design, she would like to conduct unstructured interviews with major justice system, of which your establishment is a key stakeholder.

I hereby seek for your permission to allow her conduct an interview with you or your representative.

I thank you for your anticipated cooperation.

Thank you.

**DEAN**  
**FACULTY OF LAW**  
**UNIVERSITY OF IBADAN**

A handwritten signature in black ink, appearing to read 'A. I. Olatunbosun'.

Prof. A. I. Olatunbosun

**SUB DEAN (UNDERGRADUATE)**  
Dr. Afolasade A. Adewumi LL.B, LL.M (Ib.) Ph.D, BL  
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