Â Historical Evolution of Nigerian Criminal Law

Posted on March 30, 2016March 30, 2016 Written By Olanrewaju Olamide Posted in Nigerian Criminal LawTagged Gubba vs Gwandu Native Authority, Maizabo vs Sokoto Native Authority

Before the advent of the British to the area now known as Nigeria, there were different systems for the administration of criminal law. In the Southern part of Nigeria, the criminal justice system was administered using the local traditions of the society. In most parts of the North, the criminal justice system was regulated by the operation of Islamic law.

In the year 1861, King Dosunmu of Lagos ceded Lagos to British control and Lagos became a crown colony. Consequently, in the yearÂ **1863**, the British introduced the criminal justice system which was applied in Britain to Lagos. In the protectorates, the indigenous laws were still applicable.

InÂ **1904**, after consolidating their hold over the North, the British introduced theÂ **Criminal Code**. In the yearÂ **1914**, the Northern and Southern protectorates were merged. This resulted in a situation in which three Criminal justice systems were in operation throughout the country: the English criminal law in Lagos, theÂ **Criminal Code**Â in the North and the indigenous criminal law customs in the south.

To resolve this, the British decided to make the provisions of theÂ **Criminal Code**Â applicable to the whole of Nigeria in the yearÂ **1916**.

This caused a lot of conflict especially between theÂ **Criminal Code**Â and the Islamic Law. One of the major areas of contention was the fact that Islamic law allowed the infliction of punishment unrecognized by theÂ **Criminal Code**. Islamic law also didnâ€™t recognise provocation in order to mitigate a sentence of death to manslaughter.

In an attempt to resolve this conflict,Â **S.4 of the Criminal Code**Â was amended. The section initially read thus:

> â€œNo person shall be liable to be tried or punished in any court in Nigeria,Â **other than a native tribunal,**Â for any offence except under the express provision of the code or some other ordinance or some law or some order-in-council made by his majesty for Nigeria.â€

The amendment removed the phrase â€œother than a native tribunalâ€ fromÂ **S.4 of the Criminal Code**. This was thought in many quarters to remove the powers of the native courts . However, the criminal jurisdiction of the native courts was saved by the provisions ofÂ **S.10Â** of the**Â Native Court Ordinance 1933.**

The case that further clarified all ambiguity on the issue was that ofÂ ***Gubba vs Gwandu Native Authority (1947) WACA volÂ*** *12*. In this case, the appellant was sentenced to death for murder by an Alkaliâ€™s Court. However, the appellant had a defense of provocation but it was not considered by the Alkaliâ€™s court because provocation wasnâ€™t recognized under Islamic law. If the Alkaliâ€™s court had applied theÂ **Criminal Code**, the death sentence would have been mitigated to the sentence for manslaughter.

On appeal, the West African Court of Appeal quashed the decision of the lower court. It held that customary courts could only fully apply customary law in cases which are not covered under the Criminal Code. If the cases are covered by the criminal code, customary law could not be applied.

This judgement caused a lot of discontent amongst the Muslim community as Islamic law was being relegated to the background. This was due to the fact that the criminal code covered most aspects of criminal law. To solve this issue, a committee was set up.

The committee proposed that a Customary Court trying a criminal case had the right to try and and sentence the case under the customary law without paying regard to the provisions of theÂ **Criminal Code**. This was applied by the courts in cases likeÂ ***Kano Native Authority vs Fagoji (1957) NRNLR***Â andÂ ***Tsamiya vs Bauchi Native Authority (1957) NRNLR***.

The principles followed in the above cases were however truncated in the case ofÂ ***Maizabo vs Sokoto Native Authority (1957)****.Â* In this case, the court held that:

Though a Native Court has power to try a case under Native law and custom, it cannot impose a higher sentence than the accused would have gotten had his case been tried under theÂ **Criminal Code.**

This meant that the case could be tried under the Customary Law but for sentencing, recourse had to be made to theÂ **Criminal Code**.

This further caused more conflict in the Northern region. To resolve this, a committee was set up in 1958 to address the issue. The committee proposed either the whole acceptance of English Criminal Law, the whole acceptance of Islamic Law or a Hybrid between both of them.

After heated debates and extensive consultation, it was decided that a hybrid was the best choice. This was brought into effect through the introduction of theÂ **Penal Code**. This was considered because it was already been applied successfully in a Muslim community (Sudan). TheÂ **Penal CodeÂ** was also modeled after theÂ **Indian Penal Code of 1860**.

The Penal Code contained some elements of Islamic law through the criminalisation of certain acts like Adultery;Â **SS.387 and 388**, Drinking of Alcohol;Â **s.403**, insultingÂ the modesty of Muslim Women;Â **s.400**. The code also preserved the punishment of hard lashing;Â **s.68(2)**.

Thus, Customary Criminal Law is no more applicable in the north due to the provision ofÂ **S.3(2) of the Penal Code**.

SOURCES

1. Lecture delivered by Dr Mrs. M.A. Abdulraheem Mustapha
2. Okonkwo and Naish: Criminal Law in Nigeria
3. The Nigerian criminal Code
4. The Nigerian Penal Code
5. Native Court Ordinance 1933

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