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Assessing the Principle of Legality in Nigerian Criminal Jurisprudence

Dr. Aniedi J. Ikpang
Associate Professor & Dean, Faculty of Law, University of Uyo, Nigeria.

Abstract
Every criminal statute in all jurisdictions should adhere to the principle of legality for a proper application. The principle of legality means that every criminal statute should be published in a given jurisdiction. The publication involves the process whereby offences should be reduced into a written form with punishment or sanction expressly stated therein. Also, such statute should not be applied retroactively but should only take effect from the date the assent is given either by the president or the governor whichever is applicable. Further, the punishment to be meted out to the accused person should be the type which was in application at the time of the commission of the offence. The goal post (punishment) should not be shifted (increased or reduced) after the foul (offence) has been committed. In examining this paper, attention was focused on the mass of legal literature available and the recommendation is that the principle has stimulated the quality of criminal statutes through the process of reliability, certainty and comprehensibility.

1. Introduction

An act or omission can only be said to be a crime if a law or statute so creates or created it to be crime. This is embedded in the ancient Latin phrase "*Nulla poena sine lege*" which means "no punishment unless by law." Thus every crime is backed by law otherwise such purported crime is illegal and therefore no crime at all. This logically introduces the principle of legality. The principle is one of the venerated concepts in the Anglo-American and indeed Nigerian Criminal Law. The principle that there can be no crime unless a law exists which has been violated is the hallmark or the centrality of the above ancient Latin saying.[1]

The origins of the principle could be traced back to the post-World War II when a set of compelling criminal statutes were established and the drafters of the Nuremberg Statute affirmed the notion of individual criminal responsibility from a tri-dimensional perspective, that is to say legal, moral and criminal.[2] The principle is closely related to legal formalism. Legal formalism is the theory that law is a set of rules and principles independent of other political and social institutions.[3] It is also associated with the rule of law which says that citizens must respect the supremacy of law.

The principle of legality is that persons must not be held to be criminally liable and punished without there first being a law so holding.[4] In his opinion, *Richard Card*,[5] quoting *Lord Atkin* in the case of *Proprietary Articles Trade Association v.A.G for Canada*[6] captivated to the effect that the criminal quality of an act cannot be discerned by intuition; nor can it be discovered by reference to any standard but one: is the act prohibited with penal consequences? To lend weight to the foregoing, for an act or omission to be designated or labeled as a crime, such must first have been prohibited by statute and penalty or sanction therefore prescribed in order to give strength, thickness and vitality to it.

According to *Black's Law Dictionary*, legality means strict adherence to law, prescription, or doctrine, or the quality of being legal. The principle also means that a person may not be prosecuted under a criminal law that has not been previously published[7]. The definition of a particular crime, either in statute or common law will contain the required *actus reus* and the *mens rea* for the offence. The prosecution has to prove both of these elements so that the court is satisfied beyond all reasonable doubt of their existence, if this is not done, the accused person will be acquitted because in criminal jurisprudence all accused persons are presumed innocent until proven guilty.[8]

A person cannot usually be found guilty of a criminal offence unless two elements are present: an *actus*

Dr. Aniedi J. Ikpang, LL.B; BL; LL.M; Ph.D, is an Associate Professor of Law & Dean, Faculty of Law, University of Uyo, Nigeria. He writes extensively on Criminal Law, Comparative Criminal Law and Criminal Justice.

[1] Paul Tappan, (1966) p. 10.

[2] Iulia Crisan, "The Principles of Legality "*nullum crimen, nulla poena sine lege*" and their role" Available at http://effectius.com/yahoo_site_admin/assets/docs/The_principles_of_legality_nullum_crimen_nulla_poena_sine_lege_and_their_role_Iulia_Crisan_Issue5.16811416.pdf, accessed on 27/1/2017.

[3] B. A. Garner, *Black's Law Dictionary*, 9th ed. (Minessota: Thomson West, 2004) p. 977.

[4] Michael Jefferson, *Criminal Law*, 6th ed. (London: Pearson, 2003) p. 3.

[5] Richard Card, *Criminal Law*, 13th ed. (London: Butterworths, 1994) p. 2.

[6] (1931) AC 310 at 324.

[7] B. A. Garner, op.cit. p. 977.

[8] *Woolmington v. DPP* (1935) AC. 462.

reus, Latin for guilty act and *mens rea*, Latin for guilty mind.[1] The important thing to note is that to be guilty of an offence, an accused must not only have behaved in a particular way, but also usually have had a particular mental attitude to the behaviour.[2] These two elements are found in every criminal statute unless such statute dispenses with the proof of *mens reus* with the result that proof of the *actus reus* only will suffice for the proof of the entire or particular offence.

The *actus reus* and the *rea* can be reckoned only from the definition of a particular offence and the definition is derived from how a particular offence is couched, because for a particular act or omission to amount to an offence, the ingredients, that is to say, the *mens rea* and the *actus reus* must be derived from it and no more.

The foregoing roundly fits into the Latin *Nulla poena sine lege* which otherwise means that there is no punishment without law. This maxim means that a person should not be made to suffer penalties except for a clear breach of existing criminal law, the law being precise and well defined.[3] In *Proprietary Articles Trade Association v.A.G for Canada*,[4] the court held that the domain of criminal jurisprudence can only be ascertained by examining what acts at any particular period are declared by the state to be crimes.

The essence of *nulla poena sine lege* is to guard against the introduction of new crimes which operate retrospectively under which a person might be found guilty of a crime for doing an act which was not criminal when he did it,[5] because to do so will create injustice against the accused person. In this scholarship, the present writer will inquire more into the principle of legality and perhaps justifies its continued preservation in our criminal jurisprudence.

2. The Role of Substantive Criminal Law

The substantive rules on criminal liability define the playing field upon which the apparatus of the criminal justice system can be brought to bear. The coercive powers of the police on search and arrest, etc, and the courts to convict and sentence are based on conduct defined as criminal by the substantive law. The social control mechanism which is the criminal justice system is founded upon the rules prescribing what is and what crime is not.[6] The substantive criminal law and its adjectival components are designed to achieve egalitarianism and social harmony in interpersonal relationship as well as enhance peace and orderliness in an organized society.

The Wolfenden Committee on Homo Sexual Offence and Prostitution[7] had viewed the purpose of criminal law as "to preserve public order and decency, to protect the citizen from what is offensive and injurious and to provide sufficient safeguards against exploitation and corruption of others, particularly those who are especially vulnerable…it is not…the function of the law to intervene in the private lives of citizens, or to seek to enforce any particular pattern of behaviour, further than is necessary to carry out the purpose we have outlined"[8]

According to *Smith & Hogan*, the general purpose governing the definition of offences in the American Law Institute's Model Penal Code are (a) to forbid and prevent conduct that unjustifiably and inexcusably inflicts or threatens substantial harm to the individual or public interests; (b) to subject to public control persons whose conduct indicates that they are disposed to commit crimes; (c) to safeguard conduct that is without fault from condemnation as criminal; (d) to give fair warning of the nature of the conduct declared to be an offence; and (e) to differentiate on reasonable grounds between serious and minor crimes.[9]

It could be seen from the above that the enumeration of the purposes of criminal law shows the contribution of criminal law towards the maintenance of law and order as well as the enthronement of stability and social equipoise. The principle of legality emphasizes the legality of every crime or offence. The legality of every crime is titivated against the matrix of various definitions of crime to be presently examined in this paper. Crimes have been defined by authors in a manner known as the juristic approach; by statutes in a manner known as the statutory approach and by the courts in a manner known as the judicial approach.

3. Juristic Approach

According to *Okonkwo & Naish*, crimes are those breaches of the law resulting in special accusatorial procedure controlled by the state, and liable to sanction over and above compensation and costs.[10] In their view, *Earl Jowitt* and *Clifford Walsh* defined crime as the violation of a right; when considered in reference to the evil tendency of such violation as regards the community at large; an act or default which tends to the prejudice of the community

[1] Catherine Elliot & Frances Quinn, *Criminal Law*, 4th ed (London: Longman, 2002) p.8.
[2] Ibid.
[3] *Shaw v. DPP* (1962) AC 220.
[4] (1931) AC 310 at 324.
[5] Denis Keenen, *English Law*, 13th ed. (London: Longman, 2001) p. 596.
[6] Russell Heaton, *Criminal Law*, 2nd ed. (London: Blackstone Press Ltd, 1998) p. 2.
[7] (1959) Cmnd 241 at para 13.
[8] Ibid.
[9] Smith & Hogan, *Criminal Law*, 7th ed (London: Butterworth, 1988) p. 18.
[10] Okonkwo & Naish, *Criminal Law in Nigeria* (Ibadan: Spectrum, 1980) p. 20.

and is forbidden by the law on the pain of punishment inflicted at the instance of the state.[1]

Cross and Jones aptly and tersely defined crime as a legal wrong the remedy for which is the punishment of the offender at the instance of the state.[2] *Fakayode* seemed to have fallen in love with the classical definition by *Russell* when he stated that a crime is an act or omission involving breach of a duty to which by the law of England a sanction is attached by way of punishment in the public interest, and for which the ordinary remedy is by indictment.[3] *Diana Roe* is even more clinical as she defined crime as a wrong against the state either by commission or omission, regarded by that body as criminal and one to which punishment has been attached.[4]

B. A. Garner in his view defined crime as an act that the law makes punishable, the breach of a legal duty treated as the subject matter of a criminal proceeding.[5] There is the understanding that the conception of crime, as distinguished from that wrong or tort and from that sin, involves the idea of injury to the state of collective community, and it is found that the commonwealth, in literal conformity with the conception, itself interposed directly, and by isolated acts, to avenge itself on the author of the evil which it had suffered.[6]

Max Radin, states that it is curious fact that all the minor acts enumerated in the Penal Code of a state are in law called criminal, which term includes both murder and over parking. It is a strong term to use for the later, and of course the law has for centuries recognized that there are more serious and less serious crimes. At the common law, however, only two classes were recognized, serious crimes or felonies and minor crimes or misdemeanors. [7]

From the above, the various juristic definitions articulated in this paper emphasize the breach of the law of the state by the accused. The law must be written and sanction attached therein. In this regard, *Anayo Edeh* had this to say "suffice it to say that whatever definition that is given or ascribed to crime, the basic characteristics of a crime or offence are an act or omission, forbidden by the state (and in Nigerian context) under a written law, there is a punishment stipulated for it."[8] According to *Ashworth,* most English writers on criminal law have laid emphasis on liberal ideals as they concern the principle in terms of non-retroactivity, maximum certainty and restrictive construction. [9]

Furthermore, *Obilade* opines that an act or omission is not a criminal offence unless its definition and punishment for it as contained in a written law[10]. This is a definition which strikes synergy with the maze of statutory definitions which are presently discussed seriatim.

4. Statutory Approach

Section 2 of the Criminal Code Act[11] has added an impetus to the principle of legality by stating that an act or omission which renders the person doing the act or making of the omission liable to punishment under this code or under any Act or Law is called an offence[12]. In the same vein, the Penal Code adds weight to the principle of legality by stating that every person shall be liable to punishment under the Penal Code for every act or omission contrary to the provisions thereof, of which he shall be guilty within the state[13]. That Code has gone further to abolish native criminal or customary criminal law by stating that after the commencement of the code, no person shall be liable to punishment under any native law or custom[14]. The abolition of native criminal law is consistent with the provision of the 1963 republican constitution (since repealed) which provided to the effect that no person shall be convicted of a criminal offence unless that offence is defined and penalty therefore is prescribed in a written law.[15]

The constitution of the Federal Republic of Nigeria 1999 (as amended) also recognized the principle of legality when it states that subject as otherwise provided, a person shall not convicted of a criminal offence unless that offence is defined and penalty therefore is prescribed in a written law and it provides further that a written law refers to an Act of the National Assembly or a law of a state as well as any subsidiary legislation or

[1] *The Dictionary of English Law*, Vol. 1 (London: Sweet & Maxwell, 1977) p. 512.
[2] *Introduction to Criminal Law*, 6th ed. (London: Butterworths, 1968) p. 19.
[3] *The Nigerian Criminal Code Companion* (Benin: Ethiope Publishers, 1977) p. 11, see generally Anayo N. Edeh, *Criminal Law in Nigeria*: *A Practitioner's Guide* (Enugu: Snaap Press Nig. Ltd, 2015) p. 2.
[4] Diana Roe, *Criminal Law* (London: Holder & Stroughton, 1999) p. 2. see agaa Anayo N. Edeh, op.cit. p. 3.
[5] B. A. Garner, *Black's Law Dictionary*, 9th ed (Minessota: Thomson West 2004) p. 437.
[6] Henry S. Maine, *Ancient Law*, 17th ed p. 1901.
[7] Max Radin, *The Law and You* (1948) p. 91; See generally B.A Garner, op.cit, p. 427.
[8] Anayo Edeh, op.cit. p. 5.
[9] Professor Ashworth, "Interpreting Criminal Statutes: a crisis of legality?" (1991) 107 LQR 419.
[10] A. O. Obilade, *The Nigerian Legal System*. (London: Sweet & Maxwell, 1979) p. 5.
[11] Laws of the Federation of Nigeria 2010.
[12] Ibid.
[13] Penal Code Law 1960, Section 3 (1).
[14] Ibid at Section 3 (2).
[15] Section 22 (10) of the 1963 Republican Constitution.

instrument under the provisions of a law.[1]

In addition, the African Charter on Human and People's Right (Ratification and Enforcement) Act[2] provides that no one may be condemned for an act or omission which did not constitute a legally punishable offence at the time it was committed[3]. The African Charter by that provision is re-enthroning the principle of legality.

Also, giving vitality to the principle, the European Convention on Human Rights and Fundamental Freedoms (ECHR) 1950[4] on the provision relating to no punishment without law provides that no one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. That Convention further states that no heavier penalty other than the one that was applicable at the time the offence was committed can be imposed against an accused person.[5] The provision of Article 7 therein contained says that it shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by civilized nations.

The principle of legality is also contained in Universal Declaration of Human Rights (UDHR) 1948[6] and states that no one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.[7]

In the same spirit, the constitution entrenches to the effect that no person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence heavier than the penalty in force at time the offence was committed[8]. Similarly, the Criminal Code Act[9] provides that a person shall not be punished for doing or omitting to do an act unless the act or omission constituted an offence under the law in force when it occurred.

The foregoing in a nutshell means that there is in our criminal jurisprudence the rule against retrospective or retroactive application of the law. Retroactive law is a legislative act that looks backward or contemplates the past, affecting acts or facts that existed before the act came into effect. In criminal law, it is settled to the effect that an act or omission is regarded as an offence because its contents is written down and penalty is also succinctly and clearly stated therein in a written form. It does not give room for speculation and does not admit of any surprise. The law does not allow an increase in the nature or type of punishment after the offence had been committed. Punishment in the manner prescribed for an offence remains the way it was at the time of the commission of the offence. In *Ifeagwu v. Federal Republic of Nigeria*,[10] the court held that it is a fundamental principle that no statute, law or rule can be construed retrospectively unless its language is such as plainly to require that construction.

The 1999 constitution[11] in spite of the wide legislative power of the National Assembly or a House of Assembly has stated that these legislative bodies do not have the power to make any law which shall have retrospective effect. The effective date for the application of any law relating to any crime shall commence from when the President or Governor as the case may be gives assent to such statute.

Under the military rule in Nigeria, the provision in the constitution which prohibits retrospective application of legislation was usually one of the first provisions to be suspended because retrospective legislating is a common feature of military rule as they usually pose as a corrective regime.[12] Every military regime is founded on the barrel of the gun and does not in any way admit of legality from the ballot box.

In Continental Africa, the principle is also contained in constitutions of many jurisdictions including Kenya. In Kenya, the principle is contained in its constitution of 2010[13] and states that the state shall not punish an act or omission, which was not an offence under Kenya Law or International laws at the time of the

[1] Section 36 (12) of the 1999 Constitution, Cap. C23 LFN 2010.
[2] Cap. A9 Laws of the Federation of Nigeria (LFN) 2010.
[3] Ibid.
[4] Article 7 of the European Convention on Human Rights.
[5] Ibid.
[6] Article 11.
[7] See also Additional Protocol I to the Geneva Conventions, art.75(4)(c)(1977) and Additional Protocol II of the same Conventions, art. 6(2)(c)(1977) which also entrench the principle of legality. See generally the International Covenant on Civil and Political Rights (ICCPR) 1966, art. 15 (1) and the American Convention on Human Rights (ACHR) 1969.
[8] Section 36 (8) of the 1999 Constitution.
[9] See Section 11 of the Criminal Code Act, LFN 2010.
[10] (2001) 7 WRN 50.
[11] See Section 4 (9) thereof.
[12] K. M. Mowoe, *Constitutional Law in Nigeria*, 1st ed. (Lagos: Malthouse Press Ltd, 2008) p. 391.
[13] Article 52 (2) (n).

commission or omission.

5. Judicial Approach

The courts by way of precedent have spoken variously on the principle of legality. In *R. v. Tyler*,[1] crime was defined as an act committed or omitted in violation of public law either forbidding or commanding it. Whenever a person does an act which the law forbids or fails to do what the law commands, he is said to violate public law (criminal law) and therefore in breach of the law either by commission or omission depending on the circumstance.

In *Conybeare v. London School Board*,[2] Day J. said that a crime is an offence against the crown for which an indictment will lie. This definition contemplates serious crimes in which an accused person is charged by way of indictment (in England) or by an information (in Nigeria) in a superior court. It seems to have ignored minor offences which can be tried summarily in the magistrate courts in both jurisdictions.

Also in the case of *Aoko v. Fagbemi*,[3] the court held that a woman cannot now be convicted for adultery in the southern states of Nigeria because it was not prescribed as an offence in any written law in those states. In *Fagbemi's* case, the appellant had on the 21st day of February 1961 been convicted and sentenced to pay a fine or be imprisoned for one month by a customary court for an alleged offence (to a charge of which she had pleaded guilty) of committing adultery by living with another man without judicial separation. She was also ordered to pay compensation and cost. She appealed to the High Court to quash the conviction and set aside all the consequential orders flowing from the conviction. The basis of her appeal was that as there was no written law which she had violated, her conviction was contrary to section 21 (10) of the 1960 Independence Constitution. That section provided that a person shall not be convicted of a criminal offence unless that offence is defined and the penalty therefore is prescribed in a written law. The appeal was allowed and the judgment of the court below was set aside on the basis that what appellant did was not forbidden in any written law.

Also in *Udokwu v. Onugha & Anor*,[4] the appellant was charged in the District court with the offence of invoking juju over the complainants/respondents. That court found him guilty and convicted him. The appellant appealed to the county court which found him not guilty of the alleged offence. He was discharged and acquitted. Dissatisfied, the complainants/respondents appealed to the Magistrate court and that court reversed the decision of the county court and restored that of the District Court. The appellant then appealed to the High Court and that court allowed the appeal on the ground *inter alia* that the conviction was a breach of the appellant's right as contained and guaranteed by section 21 (10) of the Nigerian (Constitution) Order-in-Council[5] because the offence was neither defined no penalty therefore prescribed in writing.

Furthermore, in *Attorney General of the Federation v. Isong*,[6] the court reiterated the law to the effect that for the act or omission to constitute an offence, it has to be forbidden in a written law but if there is no punishment stipulated for it, no offence is committed.

Let it be stated that from an institutional level the Europeans Court of Human Rights in *Kokkinakis v. Greece case*[7] held that only a law can define a crime and prescribe punishment. Similar decision was reached in the case of *Criminal proceedings against X*,[8] wherein the court stated that European Union Member States have the obligation to observe the principle of legality with regards to crimes and sanctions when applying European directives into their national law.

Russell Heaton[9] summed it all when he re-echoed the view of *Glanville Williams*[10] that an act is a crime if it capable of being followed by a criminal proceeding, having one of the types of outcome (punishment) known to follow these proceedings. In other words, the legal consequences which follow either criminal proceedings or civil proceedings determine whether what was litigated upon was a crime or a civil wrong.

6. Crime and Morality

An act or omission is a crime because it is so stated in a written law and punishment therefore prescribed also in a written law. On the other hand, morality means conformity with recognized rules of correct conduct. Crime and morality sometimes meet in the sense that some acts which are regarded as immoral are also illegal and therefore criminal. The offence of stealing dramatically comes into mind in this regard. In the Criminal Code

[1] (1891) 2 QB 594.
[2] (1891) 1 QB 118.
[3] (1961) AII NLR 40.
[4] (1963) 7 ENLR 1; *Akinbiyi v. Adelabu* (1956) 1 Fsc 451. Legal Notice 159 of 1960 (Chapter III).
[5] (1986) QLRN 75.
[6] Russell Heaton, *Criminal Law*, 2nd ed. (London: Black-stone Press Ltd, 1998) p. 2.
[7] Case 3/1992/348/421 of 25 May 1993.
[8] Joined Cases 74/95 and C-129/95.
[9] Glanville Williams, 8 CLP 107, p. 123.
[10] B. A. Garner, op.cit, p. 1100.

Act,[1] stealing is contained therein. Also in the moral Code as contained in the *Holy Bible*,[2] stealing is forbidden. An act may be immoral but not a crime, for example, adultery in the southern states of Nigeria which explains the aphorism to the effect that though many criminal acts are immoral, not all immoral acts are criminal. Recognizing the diversity and the interwovenness of crime and morality *Lord Atkin* opined:

> Morality and Criminality are far from being co-extensive,
> nor is the sphere of criminality part of a more extensive field covered by morality- unless the moral code necessarily disapproves of all acts prohibited by the state in which case the argument moves in a circle.[3]

7. Crime and Codification

In Nigeria, crimes are codified but the reverse is the case in England because of the genesis of its criminal justice system which saw criminal statutes contained in different statute books. Criminal law is the direct expression of the relationship between a state and its citizens; it is right as a matter of constitutional principle that the relationship should be clearly stated in a Criminal Code with concern for legality and due process. Attempt was therefore made in England[4] to codify criminal law because English criminal law is a mix from the variety of common law and statutory laws or sources.

One of the aims of codification is accessibility and comprehensibility. When the terms of the criminal law are set out in one well drafted enactment in place of the fluctuating mix of statutes and case law as in England and Wales, the law must necessarily become more accessible and comprehensible to everyone concerned with the interests of criminal justice.

Certainty can also be the reason for codification. It is very important to prevent unwanted prosecution being brought at all or prosecutions collapsing or convictions being quashed on appeal. Lack of certainty may also cause difficulties for defence lawyers advising their clients. Furthermore, the method of resolving uncertainty by retrospective declaration of the law is objectionable in principle. It may lead to the conviction of an accused person on the basis of criminal liability not known to exist in that form before he acted or omitted to act.

Much criticism was directed at the decision of the House of Lords in *DPP v. Shaw*[5] where retrospective declaration of the law was said or perceived to have happened. In any criminal justice system worth its salt, statutory changes do not have retrospective effect, they come to force only after full parliamentary debate with the commencement of the provisions of the statute.[6]

Another feature of codification or publication of offences is known as consistency. The Code team in England noted that the haphazard development of the law through cases, and a multiplicity of statutes inevitably lead to inconsistencies, not merely in terminology but also in substance of two rules actually contradicting one another, they cannot both be the law. The codifier cannot rationally restate both. Codification which is a conscious policy for the elimination of inconsistency can deal adequately with this kind problem. Elimination of inconsistency in the body of the law will also help to ensure that the offence of one accused is dealt with fairly in relation to the offences by the other accused.[7]

8. Justification

The principle of legality creates a level playing field for all the accused persons and complainants in the criminal process. All persons alleged to have committed a particular offence are charged with the particular offence. There is therefore certainty in the law because everyone knows through the process of publication or declaration of that offence that all convicts will be punished in a particular way because the type of punishment against the accused person has been expressly stated in the offence. In this sense, justice will not only be done but will be seen to have been adequately and justifiably done to all manner of persons.

The worthy position of the principle of legality in the criminal process shows the attention it catches in the constitutionalisation process as copious provisions have been provided in the constitution as well as other statutes. The recognition of the principle in both the substantive and adjectival laws shows the reverence which the criminal process have for it and also underlines the extent of reliability by the entire legal fraternity on the principle and its quality. The principle therefore operates without barrier in a given legal system for once entrenched in the criminal process of a given jurisdiction; it is of general application to all manner of persons. Its application ensures fairness, equity and transparency of the criminal process and judicial authority.

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[1] See Section 383 thereof.
[2] Exodus 20:15.
[3] *Proprietary Articles Trade Association v. A-G for Canada* (supra).
[4] Volume 1 of Law Com 177.
[5] (1962) AC 220.
[6] Michael Molan, *Sourcebook on Criminal Law*, 2nd ed (London: Cavendish Publishing Ltd, 2003) p. 30
[7] See Vol. 1, Law Commission Report (No. 177) of 1981. See also Molan, op.cit. pp. 25 – 28.

9. Conclusion

In criminal law, the principle of legality ensures the primacy of law in all criminal proceedings. It also affords to the accused person the right to be tried and punished only in accordance with existing law. The need for justice to be given to all manner of people underlines the essence for the application of the principle of legality which is designed to fight abuse and impunity in criminal justice delivery. This further explains why the principle is articulated in municipal statutes particularly constitutions of many jurisdictions as well as in treaties and conventions of sub-regional, regional and global organizations.

Nigeria in its criminal justice system recognizes the principle in the body of her criminal law and numerous criminal statutes in their provisions give effect to the application of the principle particularly during the period of democratic governance. The only abuse to the principle was in the time past during military regime which often seized power through the barrel of the gun and not through the collective wish of the ballot box.