

Abstract

This study discussed the treason and treasonable felony in the Nigerian context. The study discussed the several statutes that deals on the subject matter. Treason and treasonable offences are offences with capital punishment under the Nigerian laws. The objective of this study is to examine the various statute regulating the trial and punishment for the offence of treason and treasonable offences and the distinction of the two active words: 'Treason' and 'Treasonable' offences. This study adopts the doctrinal method of legal research, thus, has made use of primary sources such as statutes, International Instrument and case law; and secondary sources of data, such as journal/article, online materials. This study also made recommendations, particularly in punishment for treason and treasonable offences.

Keywords: Offences, Treason, Treasonable Felony, Punishment.

1. Introduction

Treason has its recorded historical roots in the ancient Greek and Roman Empires where the concept was initially developed, mostly for crimes against the monarch rather than the state in general. The definition of treason has historically been relatively broad and has developed quite drastically over time. It has evolved so that some offences that may have previously been deemed treasonous are now minor crimes, with the reverse also true. The State can aptly be considered as an embodiment of the people. The state is represented by the government and thus, anyone who tries to overthrow the state or the government, is also attacking the people. Attacking the state through the form of war or trying to overthrow the government of the day is categorised under treason. On the other hand, performing acts that are related to treason is regarded as treasonable felony. The charge of treason and treasonable felony are serious offences against the state, which is why they attract death penalty and life imprisonment, respectively. In most democracies, 'the charge of treason is usually linked to a military invasion, either from within or from outside the country....'¹ The offences of treason and treasonable felony are considered as direct affront to the office and powers of the President in that it tends to intimidate the holder of that office. If successful, it is an illegitimate way of taking over a government.

Recently, several agitations secessionist movements, political recklessness, internally displaced persons problems, banditry, farmer herder clashes, terrorism, etc., tend to threaten the existence of Nigeria, and this leave to bear on the rationale for the government clamp down (through its security forces) on innocent protesters, who are protesting to draw the attention of the government on a looming disaster waiting to manifest; it then question the place of the fundamental rights to freedom of expression² and freedom of movement³ enshrined in the constitution of the Federal Republic of Nigeria. The 1914 amalgamation of the Southern and Northern Nigeria came, but not without some marks in our social, religious, judicial etc., systems, the administration of criminal justice in Nigeria is basically divided into two: the Criminal Code Act, regulates offences and punishment within the southern region of Nigeria, while the Penal Code regulates offences and punishments in the northern region of Nigeria. However, the two codes dealt on the issue of treason and treasonable felony, this study will consider the Act and the Code. In Nigeria's political history, it was only under the military regime that treason and treasonable felony were routine.⁴ During the first republic, the Obafemi Awolowo episode almost, because of its political undertone, crippled the first republic. Recently, the trajectory the government is using to silence the citizens is the threat of a treason or treasonable charge, many Nigerians like Retired. General, Olusegun Obasanjo, late General Shehu Musa Yar'adua Akinloye Akinyemi, Obafemi Awolowo, Daniel Bamidele, Buka Suka Dimka, Oladipo Diya, Anthony Enahoro, Lateef Jakande, Ken Saro-wiwa, Dr. Beko Ransom-Kuti Mashood Abiola, had in the history of Nigeria, once in a time been charged with treason or treasonable felony. Most recently, are people like Alhaji, Majaheed Asari Dokubo, Nnamdi Kanu, Omoloye Sowore, sheik Ibrahim Zaakzaky, etc.

2. Conceptual Discourse on Treason and Treasonable Felony

Treason: the offence of attempting to overthrow the government of the state to which one owes allegiance, either by making war against the state or by materially supporting its enemies⁵ The Criminal Code states to wit:

- (1) Any person who levies war against the state, in order to intimidate or overawe the president or the governor of a state is guilty of treason and is liable to the punishment of death.
- (2) Any person conspiring with any person, either within or without Nigeria, to levy war against the state with the intent to cause such levying of war as would be treason if committed by a citizen of Nigeria is guilty of treason and is liable to punishment of death.

It is pertinent to state at this point that in the offence of treason under the criminal Code Act the operative words are 'levying war', against the country. To levy war, would not only mean, to take arms, and make plans and preparation in furtherance of a war, it is not necessary that the accused person should be a member of a military force or even trained

*By **Obinna Marvellous OFODILE, PhD**, Obinna M Ofodile & Co No. 12 Wogu Street, D/Line, Port Harcourt, Rivers State; Email: Ofodileobinna3@gmail.com; Tel: 08080005540, 07069689864

¹ G. Amalu, *Office of Treason*, <https://Thenationonlineeng.net> <<accessed on 4/02/2025>>

² S 39 (1) Constitution of the Federal Republic of Nigeria, 1999 (as amended), (CFRN)

³ S 41 (1) CFRN, 1999 (as amended)

⁴ G. Amalu, *Office of Treason*. <https://Thenationonlineeng.net> <<accessed on 4/02/2025>>

⁵ Bryan A. Garner, *Black's Law Dictionary*, 10th ed. (USA: Thomas Reuters, 2014) p. 1730.

in the use of arms and the type of weapons used is not material. It is also immaterial that the numbers of persons engaged in levying the war are small, see the case of *R. v Gallagher*.⁶ The war must be levied for a general and public purpose. Hence the gravest punishment of the land is prescribed for offenders. If it is done merely for a private purpose the offence may be simply a riot. Treason is the highest offence against public order because it is aimed at truncating a constitutional Order, the perpetrator(s) would need to levy war against the president or the governor. It is also a crime of treasonable felony if anyone levies war against the state, in order to influence the president's action or policy. The Criminal Code also categorises as treason anyone who conspires with others, either within or outside Nigeria, to levy war against Nigeria.⁷ It is also treason to instigate a foreigner to invade Nigeria with an armed force⁸ See the case of: *Enahoro v Queen*.⁹ It is pertinent to state that where a minor or a person under the age of 18 participates in treason or treasonable felony, such person would not be executed but would be detained on the pleasure of the president.¹⁰ Similarly, section 39(2)¹¹ provides: where a pregnant woman participates in treason, the procedure stated in section 376 of the Criminal Procedure Act should be followed.¹² Also, the number of persons carrying out the act is not a factor in determining the offence. The essence of waging the war must be for general or public purpose, if it just for private reasons, it would best be regarded as a riot or public disturbance.

Concealment of Treason: any person who; (a). becomes an accessory after the fact to treason or (b) knowing that any person intends to commit treason, does not give information thereof with all reasonable dispatch to the President or Governor of the state or a Peace Officer, or use other reasonable endeavours to prevent the commission of the offence, is guilty of a felony and is liable to imprisonment for life.¹³

Treasonable Felony: An act that shows an intention of committing treason, unaccompanied by any further act to carry out that intention. This offence usually results in life imprisonment rather than the death penalty.¹⁴ The Criminal Code Act also provides thus:

Any person who forms an intention to effect any of the following purposes that is to say

- (a) To remove during his term of office otherwise than by constitutional means the President as Head of State of the Federation and Commander in Chief of the Armed Forces thereof; or
- (b) To likewise remove during his terms of office the Governor of a state or
- (c) To levy war against Nigeria in order to put any force or compel the President to change his measures or counsels, or in order to put any force or constraint upon, or in order to intimidate or overawe any House of the National Assembly or any other legislative or legislation authority or
- (d) To instigate any foreigner to make any armed invasion of Nigeria or any of the territories thereof and manifests such intention by an overt act is guilty of a felony and is liable to imprisonment for life.¹⁵

The use of force will be reduced from Treason to Treasonable Felony if and when the use of force or better put the levying of war is targeted at doing any deed in section 41 (c),¹⁶ above. In other words, whilst the use of force is basically linked with treason, it would not fit into the ingredients of treasonable felony, if the use of force is to force the Government to act in any way, or influence a policy, or take a step, or refrain from taking any step. It shall not also be treason if the use of force is targeted at the law making arm of either the federal or state government.

The focus in Treasonable Felony is 'anybody who forms any *'intention to effect the following purposes'*; intention to effect a change of government is a solid element of the offence. It is of no essence whether or not, the person formed the intention by arms or by charms. A crime of treasonable felony would occur if the President is blackmailed or compelled to resign from office.

The major difference between treason and treasonable felony is the fact that treason is punishable by death while treasonable felony is punishable by life imprisonment.¹⁷ The first instance of treasonable felony is contained in section 40.¹⁸ According to this provision, anyone who becomes an accessory after the fact to treason or has knowledge that some people want to commit treason but doesn't report to the appropriate authorities, is guilty of a treasonable felony and would be punished by life imprisonment.¹⁹ It should however be noted that a person charged with the intention to commit treason cannot use proof of actual treason as a defence. On the other hand, a person that has been discharged and acquitted of the offence of intention to commit treason cannot be charged for treason.

⁶ (1986) VR 219

⁷ S 37 (2) Criminal Code Act, Cap. C38 Laws of the Federation of Nigeria 2004. (CCA)

⁸ S 38 CCA, Cap. C38 LFN 2004

⁹ (1965) vol. 1 ANLR

¹⁰ S 39 (1) CCA Cap. C38 LFN 2004

¹¹ CCA Cap. C38 LFN 2004

¹² The procedure stated here is one that concerns the reduction of a capital punishment to life imprisonment in the case of a pregnant woman.

¹³ S 40 Criminal Code Act, Cap. C38 Laws of the Federation of Nigeria, 2004

¹⁴ Bryan A. Garner, *Black's Law Dictionary*, 10th edn (USA: Thomas Reuters 2014) p. 1731

¹⁵ Criminal Code Act, Cap. C38 Laws of the Federation of Nigeria, 2004 (CCA)

¹⁶ CCA Cap. C38 LFN 2004

¹⁷ CCA Cap. C38 LFN 2004, s.37 to 43, or Penal Code Law Cap. 89 s.410 to 415

¹⁸ *Supra*

¹⁹ CCA Cap. C38 LFN 2004

Treason under the Penal Code (Northern States) Federal Provisions Act

This act made succinct postulation on the offence of treason to mean whoever levies war against the state, in order to intimidate or overawe the president, commits treason.²⁰ Whoever commits treason shall be punished with death, and whoever attempts or abets treason shall be punished with imprisonment for life or for any less term or with fine or with both²¹

3. Conflict among Treason, Treasonable Felony and Fundamental Rights

Human Rights have been defined as the 'inalienable rights of people'. They are the legal entitlements which every citizen should enjoy without fear of the government or other fellow citizens. They are the rights which cannot be completely said to have been given to man by man, but are earned by man for being a human, because they are necessary for his continuous happy existence with himself, his fellow man and for participation in a complex society.

Human Rights: the freedoms, immunities, and benefits that, according to modern values (especially at an international level), all human beings should be able to claim as a matter of right in the society in which they live.²² Human rights do not emerge exclusively from western philosophical and political principles. The cultures of every world region contain important references to principles and standards of behaviour in human relations. The fundamental human rights enshrined in the constitution²³ provides for about ten (10) fundamental rights, which are inalienable. Amongst these rights is the right to freedom of expression at the press. 'Most of the fundamental rights in Nigeria are not absolute; and the right to freedom of expression is not an exception as it is clogged by numerous limitations.'²⁴ The right to freedom of expression as guaranteed by the constitution and provides thus:

1. Every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference.
2. Without prejudice to the generality of sub section (1) of this section:
every person shall be entitled to own, establish and operate any medium for the dissemination of information, ideas and opinions provided that no person, other the government of the federation or a state, or any other person or body authorised by the president on fulfilment of a condition laid down by an Act of National Assembly, shall own, establish or operate a television or wireless broadcasting station for any purpose whatsoever.²⁵

There is no doubt that the government usually use the provisions of sub section 2 quoted above to gag the citizen from fully expressing their dissatisfaction on contending issues with the federal government. In the analysis of section 37²⁶ it is clear that the element of 'levying war' in treason does not only requires carrying arm, as even verbal words that may instigate the citizens can amount to treason, as have been seen in recent cases in Nigeria where citizens gather to express their displeasure over some government policies and/or in the quest to make demands to the government, and they are rounded up by security agencies and charged with treason or treasonable felony. Even media stations have been sanctioned by the National Broadcasting Corporation²⁷ and sometimes shut down for airing jingles and disseminating information that the government perceives not to be in their favour. The right to freedom of expression is also guaranteed under the various international instruments on human rights and fundamental freedom, which Nigeria is a signatory to their treaties. Thus, article 19 provides as follows: 'Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinion without interference and to seek, receive and impart information, and ideas though any media and regardless of frontiers'.²⁸ From the above provisions, one can decipher that true freedom of a person(s) would be elusive if it is not possible to ventilate ones viewpoint or share ones opinions with others in the society. Therefore, freedom of expression is one of the essential ingredients of every democratic society, and should not be relegated because of the fears of a clamp down by government agencies.

4. The Issues and the Facts

Since we have fairly over-dwelt in the vexed issue of treason and treasonable felony; let us now delve into the ambit of the fundamental right to protest and demand for a change in governance. In other words, how can our constitutionally guaranteed rights to assembly, association, freedom of expression and speech, be protected, in light of treason and treasonable felonies? Our ultimate question therefore is; how then do we draw the line? If at all there is a line to draw. Whereas the Court of Appeal's decision in *IGP v ANPP & Ors*²⁹ has ultimately given a judicial burial to the obnoxious provisions of the Public Order Act,³⁰ wherein protesters would need police permit before they can go on any protest, the court has basically pronounced that that position is primitive and it runs counter to the spirit and letter of the constitution, by this judgment, the right to freedom of association and assembly has been judicially protected and the

²⁰ S 410 Penal Code (Northern States) Federal Provisions Act Cap. 345 C89 LFN 2004, (PC)

²¹ PCFPA Cap. 345 C89 LFN 2004, S 411

²² Bryan A. Garner, *Black's Law Dictionary*, 10th ed. (USA: Thomas Reuters 2014) p. 858

²³ Constitution of the Federal Republic of Nigeria, 1999 (as amended), Chap. iv

²⁴ Ikenga K.E. Oraegbunam, *Sedition Under the Nigerian Criminal Code: Effects on the Right to Freedom of Expression* (2021) <updates@academia-mail.com> accessed on 8/02/ 2025

²⁵ S 39 Constitution of the Federal Republic of Nigeria 1999 (as amended)

²⁶ Criminal Code Act, Cap. C38 Laws of the Federal Republic, 2004

²⁷ An agency of the Federal Government of Nigeria, saddled with the responsibility of regulating, monitoring, sanctioning, etc of media organisations.

²⁸ Universal Declaration on Human Rights.

²⁹ (2007) 18NWLR (PT 1066)

³⁰ Cap 383 LFN 1990

courts have ruled in this line time and time again. In *Ejoigu & Ors v Onwuruaka & Ors*³¹ the courts recently pronounced that the right and freedom to free association provided under section 40 of the 1999 constitution as amended cannot be taken away under any guise. In deed the court acknowledged in that Judgment, that the right to freedom of assembly can be impeded with certain ploys and schemes, one of which of course is the hanging threat of treason and treasonable felonies. For safety, let us dig a little deeper into this foray and examine the relevant provisions of the Criminal Code Act again as it relates with treason and treasonable felonies. Sections 37, 38, 39 and 41,³² examine whether the position that a call for revolution can ultimately qualify as a crime of either treason or treasonable felonies. Since we can safely conclude that the right to protest is married and submerged into the express combined provisions of section 39 and 40,³³ and these provisions have been given judicial backing in plethora of cases, including the much-celebrated case of *IGP v ANPP*.³⁴ What we cannot ignore or run from is the surrounding situation and circumstances peculiar to each case.

It is a trite position of the law that the intention of man can only be unmasked by his overt actions and steps. This ancient legal sentiment was re-echoed by His Lordship Justice Mohammed Tanko, in a very technically sound judgment delivered in the pacesetting case of *Asari-Dokubo V FRN*³⁵ his lordship noted that ‘even the devil cannot know or draw inference in what that unpredictable and oft oscillating organ in human body called the heart/mind conceals’. Simply put, no one can read your mind, it is only your words and actions that can help colour the picture in our minds. Even though the right to protest is pristine and paramount, the right of the state to prevent anarchy is also sacrosanct, and would always supersede individual rights if need be. In *Asari-Dokubo v FRN*³⁶ per his Lordship Mohammad Tanko (CJN) made this position clear when the supreme court held that ‘where the national security of the state is threatened or there is the real likelihood of it being threatened, human rights or the individual’s rights of those responsible takes second place, human right or individual right must be suspended until the national security can be protected or well taken care of’. The point raised is that it is a clear affront on the state to take steps to persuade a sitting president to resign or step-down; the constitutional way of changing the government is by election, impeachment, death or voluntary resignation. Any attempt to either frustrate the president or a governor to resign, either by breeding disaffection, or crippling the economy of the state, or overwhelming the instruments of the state, like was done in the Arab spring nations constitute the grievous crime of treasonable felony.

5. Treason and Treasonable Felony in the USA: A Comparative Analysis with Nigeria

The position of the United States of America is not too different with the Nigerian situation, because both countries had their own share of civil war. The American Civil war was a civil war in the United States from 1861 to 1865, fought between northern states loyal to the Union and southern states that had seceded to form the Confederate States of America. The principal cause of the war was the status of slavery in the United States, especially in the territories.³⁷ The constitution of the United States of America provides that:

Treason against the United States, shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of Treason unless on the testimony of two witnesses to the same overt Act, or on confession in open court.³⁸

The American constitution specifically identifies what constitute treason against the United States and, importantly, limits the offense of treason to only two types of conduct: (1) ‘levying war’ against the United States; or (2) ‘adhering to the enemies of the United States, giving them aids and comfort. The Founders went out of their way to define treason narrowly because they knew how it had been repeatedly abused in the past. To ensure that treason could not likewise be co-opted for political or personal purposes, the United States of America Constitution’s drafters not only defined it precisely (it’s the only offense specifically defined in that document), but also specified that ‘No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court. In the definition of treason by the Constitution of the United States of America ‘levying war’ against the United States requires active and direct participation in an armed conflict, not just ‘un-American’ speech or insufficient patriotism. Notably, and contra claims levelled against Edward Snowden or Hillary Clinton, it also do not mean the mishandling of classified information. By those metrics, it should be obvious why it is not treason to either refuse to applaud the president. To be sure, the latter, if proven, is light-years worse than the former. But treason is not defined by the gravity of the offense; it’s a crime indicating the clear support our enemies during wartime, period. In American history, indeed, only one person has been indicted for treason since 1954.’³⁹ In the United States, treason is the only crime defined in the constitution, and basic to the treatment of this offense has been a mingling of values protective of government and of individual.

From the above, it can be comparatively stated that there is not much difference between the definition of treason in the constitution of the United States of America and the Criminal Code Act/ Penal Code. However, the following are the differences:

³¹ (2019) LPELR 47 333 C A.

³² CCA Cap. C38 LFN 2004

³³ CFRN 1999 (as amended)

³⁴ (2007) JELR 33842 CA

³⁵ (2007)12 NWLR (pt 1048),

³⁶ Supra

³⁷ Wikipedia <<accessed on 12/03/2025>>

³⁸ Article III, Section 3, Clause 1

³⁹ P T. Crane and D Pearlstein, *Common Interpretation: Treason Clause*

- In Nigeria the offence of treason is contained in the Criminal Code Act, while in the United States of America, the offence is contained and defined in the American Constitution. This is to buttress the importance the United States attach to the offence;
- In Nigeria, statements and overt act of a person may be interpreted as treason. However, in the USA a person must have carried physical arms against the state or support the enemies of the state before he can be considered to be charge with the offence of treason.
- Generally, in Nigeria, offences are proved beyond reasonable doubt, but in the United States, the offence of treason can only be proved against an accused person by the testimony of two persons or by a confession in the open court; and
- Since the independence of Nigeria, there had been several convictions on treason and treasonable offences (particularly during the military regime), but since the history of America, there has only been one conviction on the offence of treason
- The punishment for treason in the United States is death or imprisonment for not less than five years and fined and incapable of holding any US office, while in Nigeria, the punishment is death.

6. Conclusion and Recommendations

It is pertinent to state that the fundamental right of a Nigeria citizen (as enshrined in chapter iv of the 1999 constitution) cannot be used against him, except where the law provides the contrary. The use of treason and treasonable felony as a tool of oppression by politicians and the government against their perceived enemies is a gross violation of the constitution the people in authority swore to protect and should be discouraged by people of good conscience. It is recommended that the appointment of the Executive Secretary of the National Human Rights Commission be done by the National Judicial Council, and not by the executive, in order to avoid hand picking of loyalist to the president, thereby defeating the execution of the objectives of the commission. There should be an amendment of the treason and treasonable offence to only mean when a person or group of persons physically carry arms against the state with the intention to force the president out of office. The executive should avoid the incessant usage and abuse of the term 'treason' as a tool of oppression against perceived enemies of the government. A piece of legislation to create special courts or tribunal to hear treason and treasonable felonies, to avoid delayed dispensation of justice. The right of citizens as enshrined in the constitution should be jealously guarded, against being used by desperate politician to infringe on citizens right to freedom of expression.