

Sentencing and the Scope of Deportation in Nigeria**

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Abstract

This paper examined the scope of deportation within the deterrent framework of Nigerian Criminal Justice System. Various legal provisions for its operation and judicial attitudes were discussed. The paper equally examined various acts of internal deportation carried out by the Executive Arm of Government with impunity, against the poor and proffered lasting solutions to the problem.

Keywords: Sentencing, Deportation, Human Rights, Constitution

INTRODUCTION

Sentencing, according to Adeyemi, is a definite disposition order pronounced by a court or other competent tribunal at the conclusion of a criminal trial subsequent to a finding of guilt against him, *quantum* of which may either be fixed by the court or tribunal at the discretion of the court or tribunal.¹ *Black's Law Dictionary* also defines sentencing as the judgement that a court formally pronounces after finding a criminal defendant guilty.² The *quantum* of sentences to be imposed after the conclusion of a criminal trial depends on what is provided for in the Criminal Code,³ Penal Code,⁴ and other offence creating statutes.⁵

Offences that carry capital punishments give no judicial discretion. The sentence is mandatory. Under the Criminal Code, murder,⁶ any person who directs or controls or presided at any trial by ordeal and if such trial resulted in death of another,⁷ armed robbery,⁸ treason⁹ and treachery carry mandatory sentence.¹⁰ Under the Penal Code, treason,¹¹ fabrication of false evidence leading to the conviction to death of an innocent person,¹² murder¹³ and aiding the suicide of a child or lunatic carry mandatory sentence.¹⁴ Under the Sharia Penal Law,¹⁵ adultery,¹⁶ rape,¹⁷ Sodomy¹⁸ and incest¹⁹ carry mandatory death sentence.

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¹Adeyemi, A.A. (1990) "Administration of Justice in Nigeria: Sentencing" In Osinbajo, Y and Awa Kalu (eds.) *Law Development and Administration in Nigeria*, Chapter 5, vol. 157 at 109. See also, Adeyemi, A.A. (1992) "Sentencing and Probation" Chapter 12 in *Judicial Lectures: Continuing Education for the Judiciary*. MIJ Professional Publishers Limited, p. 174

²Garner, B.A. (ed.) (2009) *Black's Law Dictionary* 9th Edition (St. Paul Minnesota: West Group) p. 1485

³Criminal Code, Cap. C38, LFN, 2004

⁴Penal Code, Cap. P3, LFN, 2004

⁵Section 2(2) of the Banks and Other Financial Institution Act, section 1(3) of the Miscellaneous Offences Act, Cap. M17, Laws of the Federation of Nigeria, 2004; section 2(c) of the Advance Fee Fraud and Other Related Offences Act, Cap. N6, Laws of The Federation of Nigeria, 2004: *etc.*

⁶Section 319(1) of the Criminal Code

⁷Section 208 of the Criminal Code

⁸Section 1(2) (a-b) of the Robbery and Firearms (Special Provisions) Act, Cap. R11, LFN, 2004

⁹Section 37(1) of the Criminal Code

¹⁰Section 49^A of the Criminal Code

¹¹Sections 410 and 411 of the Penal Code

¹²Section 515 (2) of the Penal Code

¹³Section 221 of the Penal Code

¹⁴Section 227 of the Penal Code

¹⁵The Shariah Penal Law is applicable to twelve States in the Northern part of Nigeria namely; Zamfara, Sokoto, Kaduna, Kano, Bauchi, Borno, Gombe, Jigawa, Katsina, Kebbi, Niger and Yobe

¹⁶Sections 126-127 of the Zamfara Shariah Penal Code, 2000

¹⁷Sections 128-129 of Zamfara Shariah Penal Code, 2000

¹⁸Sections 130-131 *Ibid.*

It is possible for the law which creates an offence to prescribe a minimum penalty or a term of imprisonment as a minimum penalty. Where a minimum penalty is prescribed, the court can impose a higher penalty but it cannot impose a term less than the minimum. Where the minimum penalty for offences upon conviction is a term of imprisonment, the court has no jurisdiction to impose a fine in lieu of imprisonment.

²⁰

In addition, where the penalty prescribed is without option of fine, the court has no power to impose a fine in lieu of imprisonment.²¹ But where the law is silent on the option of a fine, the court can exercise its discretion to impose a fine in lieu of imprisonment.²² Where terms of imprisonment or fines in lieu of imprisonment are not statutorily expressed in terms of being a mandatory, minimum or maximum, the terms prescribed shall be regarded as statutory maximum penalties.²³ There are instances in which the *quantum* of fine is not specified, the approach of the court is that the court shall not exceed its financial jurisdiction and it shall not be excessive.²⁴

THE THEORIES OF SENTENCING

Apart from punishing offenders for their criminal acts with a view to preventing crimes, other aims of sentencing are to subject to public control, persons whose conduct indicates that they are disposed to committing crimes, encouragement of economic growth and reformation of offenders.²⁵ The theories of sentencing developed over the years are retributive theory, deterrence theory, theory of restraint and theory of rehabilitation

THEORY OF RETRIBUTION

This theory is derived from the Mosaic Theory *Lex Talions* of an eye for an eye, teeth for teeth, hand for hand, foot for foot.²⁶ The theory is based on the view that criminals must be punished. It is on the demand of the society that criminals ought to receive a punishment equal to the crime committed. The death sentence for murder, armed robbery, treason and fabrication of false evidence leading to the conviction to death of an innocent person is based on the theory of retribution.²⁷ Another aspect of the theory is that it is only through punishment can the criminal made to pay dearly for his sins.²⁸

In *Shella v State*,²⁹ Muhammed (JSC as he then was) stated as follows:

The appellant in this appeal did not show any of the courts that he had the requisite authority to take away the life of the deceased. He thus unlawfully deprived the deceased the opportunity to defend the allegations levelled against him before any court of law or authority. The village head of Kardi who was contacted by the appellant and others for authority to execute the deceased flatly refused authority as he fully well knew that he was not the right authority to grant such a leave. A learned person known as Ustaḡ Mamman drew attention of the appellant and his co-accused persons that they had no authority to take away the life of the deceased. Yet they kept deaf ears and even described Ustaḡ as an infidel. I cannot see how these kind of people shall have any respite by the law. What is good for any goose is good for all the gander. Life is precious to all and sundry.

¹⁹Sections 130-133 *Ibid*. See also, Faber, Y.A. (2006) "The Practice and Procedure of Judicial Proof by Sharia Courts in Nigeria" in Yusuf, F.A.A. (ed.) *The Nigerian Judiciary- Perspectives and Profile*. VDG International Limited. Chapter 17, p. 354. In *Balogun v Attorney-General, Ogun State* (2002) 6 NWLR (pt 763) p. 512, the Supreme Court held that the term of life imprisonment is mandatory for the offence of attempted armed robbery. The trial court has no discretion but to impose the mandatory statutory sentence

²⁰Section 316 (5) of the Administration of Criminal Justice Law, Lagos State

²¹*Dada v Board of Customs and Excise* (1992) 2 N.C.R. p. 79

²²Section 316 of the Administration of Criminal Justice Law of Lagos State. See generally, Osamor, B. (2012) *Criminal Procedure Laws and Litigation Practices*, 2nd Edition, Manchester; Dee-Sage (Books Prints) p. 475

²³Section 17(1) of the Interpretation Act, Laws of the Federation, 2004.

²⁴See Adeyemi, A.A. (1992) "Sentencing and Probation" *Op.cit.*

²⁵Ukattah, E.I.E. (1992) "Sentencing and Probation" Chapter 13 in *Judicial Lectures: Continuing Education for the Judiciary*, MIJ Professional Publishers Limited, p.190

²⁶*The Bible*, Deuteronomy, Chapter 19, verse 21 (new International Version) Great Britain: Colorado Springs. Co. P.140. Leviticus, chapter 24, verses 17-24 states that "when one man strikes another and kills him, he shall be put to death. Whoever strikes a heart and kills it shall make restitution, life for life. When one man injures and disfigures his fellow – countrymen, it shall be done to him as he has done, fracture for fracture, eye for eye, tooth for tooth; the injury and disfigurement that he has inflicted upon another shall in turn be inflicted upon him.

²⁷See footnotes 6-13

²⁸Dambazau, A.B. 92006), *Criminology and Criminal Justice*, Ibadan: Spectrum Books Limited, p.303

²⁹(2007) 18 NWLR (pt. 1066) 240 at pp.298-299, paras H-D. See also, *Abu v State* (1976) 5 S.C. 21: *Alemi v A.G. Lagos State & Anor* (1996) 6 NWLR (Pt. 452) p.429: *Ada v State* (2008) All. FWLR (pt. 427) p.1 and *Olaiya v State* (2008) All FWLR (pt. 438) p. 372

He who kills by the sword shall die by the sword. I have no sympathy for the banishment of such busy bodies who respect no human life due to their high degree of misapprehension of the law or, should I say, complete ignorance of the law. The appellant failed to convince me through his explanations. But he is free to make further and better explanations to the hang man, though belatedly it may be.

Notwithstanding the advantages of the theory of retribution, the theory has been criticised because of effects it has on the offender. People are now clamouring for the abolition of death penalty.³⁰

THE THEORY OF DETERRENCE

This theory is based on the idea that punishment must be used to create fear in the mind of the people. This is regarded as the strongest safeguard against crime.³¹ Deterrence theory aims at correcting the offender by punishing him, by so doing renders other men better or remove bad men from the society for the betterment of the society.³² Deterrent theory can be specific or general. Specific deterrence is applicable to the criminal himself, the criminal is expected to be deterred from engaging in the crime for which he was punished.³³ In *State v Okechukwu*,³⁴ Nkemen J, while convicting and sentencing a quack doctor to a nine year jail term said:³⁵

This type of offence is very common nowadays and a deterrent sentence is called for in this type of case. Ignorant persons should not be allowed to experiment with lives of people.

The other aspect of deterrence is the general deterrence. The society is expected to benefit from the punishment meted out to the criminal by learning a lesson from the fate of the criminal who suffers penal consequences for his acts. The Special Military Tribunal (Miscellaneous Offences) Decree was enacted by the Military Administration of General Buhari. The Decree provided death penalty for drug related offences.³⁶

THEORY OF RESTRAINT

This theory is also known as the theory of incapacitation.³⁷ the rationale behind this theory is to prevent or to reduce the possibility of future crimes by those convicted of crimes. It will be impossible for those convicted of crimes to commit the same offence or other offences during the period of their incapacitation.³⁸ A person who is to serve a term of imprisonment is restrained temporarily while a person sentenced to death is restrained permanently.

THE THEORY OF REHABILITATION

This is also known as the theory of reformation. The objective of this theory is to assist the offender to abstain from criminal behaviour by providing him social support in form of advice or guidance in form of probation.³⁹ This theory is rarely used because of the possibility of exposing to the community where the offenders lived to risk. The beneficiaries of the theory are juveniles.⁴⁰ According to Adeyemi,⁴¹ the Nigerian courts do not employ this disposition method at all for adult offenders notwithstanding its provisions in the Nigerian law.

All the foregoing theories serve to justify particular sentences passed by the judges in dealing with particular facts before them. No single theory stated above may be efficacious enough to stamp out crimes completely. It is an integration of all the theories that can reduce criminal activities. Law should not always be seen as punitive alone but also corrective and reformative.

³⁰Ukattah, F.I.E (1992) Sentencing and Probation” *Op.cit*

³¹Ayua, I.A. (1983) “Towards a more Appropriate Sentencing Policy in Nigeria” *Ahmadu Bello University Law Journal*, p.1.

³²Omole Soji (1984) “Application of the Theories Behind Criminal Punishment” *The Advocate* (Special Edition), Vol. 8, p.64

³³Isabella, O. (1996) “The Death Penalty as an Effective Deterrence to Drug Abuse and Trafficking: Myth or Reality” *Publication of the Nigerian Institute of Advanced Legal Studies*, p.15

³⁴(1965) 9 E.N. L. R, p. 91

³⁵*Ibid.* At p. 94

³⁶Decree No. 20 of 1984. Under the Decree, Lawal Ojulope, Bernard Ogedegbe and BathlomewOwoh were executed in 1985

³⁷Dembazau, A.B. *Op.cit* at p.308

³⁸Keith Devline (1970) *Sentencing Offenders in Magistrate’s Court*.London: Sweet and Maxwell, p.10

³⁹Ayua, I.A. *Op.cit.* at p.6

⁴⁰Section 17 of the Children and Young Persons Act, Cap. 80 Laws of the Federation, 2004 makes provisions for the imposition of probation and parole on Juveniles.

⁴¹Adeyemi, A.A. (2007) “The Problem of Imprisonment in the Nigerian Penal System” in Popoola, A. O. And Adodo, E.O.I (eds.) *Current Legal Development in Nigeria – Essays in Memory of Professor J.D. Ojo*. Ile-Ife, O.A.U. Press at p.70

THE IMMIGRATION ACT, 2015

Black's Law Dictionary defines deportation as banishment to a foreign country, attended with confiscation of property and deprivation of civil right.⁴²

In Nigeria, aliens or illegal aliens are liable to expulsion or deportation for violation of immigration law, community law and the criminal law of the country. The immigration Act, 2015 provides for the following grounds for expulsion of aliens;

- a. one who enters or remains in violation of immigration or other related laws;
- b. one who has been convicted of a serious crime or guilty of a criminal offence;
- c. one who offends against "public morality", and
- d. one who is politically undesirable.⁴³

For the purpose of deportation, the Act provides for several classes of "prohibited immigrants" who are liable to be refused admission into the country or to be deported from the country.⁴⁴ In Nigeria, persons within the following categories are considered prohibited immigrants and will be refused entry into Nigeria and if admitted will be deported;⁴⁵

- a. persons, without visible means of support;
- b. mentally ill person;
- c. persons trafficking in persons or smuggling migrants;⁴⁶
- d. persons convicted of any crime wherever committed, which is an extradition crime within the provisions of the Extradition Act;⁴⁷
- e. persons without valid passports;⁴⁸ and
- f. a person who is a prostitute or a person who has been convicted of the offence of rape, defilement or any other sexual offence or a brothel keeper.⁴⁹

Once the court makes recommendation for the deportation of aliens or illegal aliens, it is for the Minister of Interior to make the deportation order.⁵⁰ The Minister, while making the deportation order, has to be satisfied regarding the fulfilment of essential prerequisites, namely; prosecution, conviction and recommendation for deportation. Apart from this, he tries to reconcile the interest of the State with the individual liberty of the deportee except in cases involving security matters affecting the National Interest.

⁴² Garner, B.A. (ed.) *Black's Law Dictionary, Op.cit.* at p.504. See also, section 439, Administration of Criminal Justice Act, 2015

⁴³ These offences are created in sections 56-60 of the Immigration Act, 2015. The 2015 Act created more offences than the Immigration Act of 1963

⁴⁴ The Act uses the term "prohibited immigration" while the 1963 Immigration Act used "inadmissible immigrant"

⁴⁵ Section 44 of the Immigration Act, 2015

⁴⁶ Onuoha, F. (2009) "Corruption and National Security: The Three-gap Theory and the Nigerian Experience" *Nigerian Journal of Economic and Financial Crimes*, 2:1-13; Trafficking in Persons (Prohibited Law) Enforcement and Administration Act, 2003. The Act, created the National Agency for the Prohibition of Trafficking in Persons and other Related Matters (NAPTIP). See also, Article 5, Protocol to prevent Trafficking of Persons which came into force on 25th December, 2003 pursuant to the United Nations Convention Against Transnational Organised Crime. The Protocol is designed to prevent, suppress and punish trafficking in persons, especially women and children

⁴⁷ For instance, Article 2(1-7) of the Extradition Treaty between the Government of Nigeria and the Government of South Africa (Ratification and Enforcement) Act, Cap. E26, Laws of the Federation of Nigeria, 2004 states that extraditable offences are offences punishable under the laws of both countries or consist of attempting to commit aiding, abetting, inducing, counselling or procuring the commission or being an accessory before or after the fact of the said offences or a person sought for an offence against a law relating to taxation, customs duties, exchange control or other revenue matters.

⁴⁸ Section 20 of the Immigration Act empowers the Comptroller- General of Immigration to issue visa. Application for visa can also be made to the appropriate Nigerian Diplomatic Mission established abroad. The Comptroller-general of Immigration has power to issue Tourist visas, Direct transit Visas. See also, Masajuwa, F. *et.al* (2018) "Illegal Transnational Immigration: Implication for Human Rights and Dignity of Nigerians" Being the institutional paper presented by Faculty of Law, Edo University, Iyamibo at the 51st Conference of the Nigerian Association of Law Teachers held on July 1-6, 2018 at the Nigerian Law School, Abuja.

⁴⁹ Omorodion, F.I. (2009) "Vulnerability of Nigerian Secondary School to Human Sex Trafficking in Nigeria" *African Journal of Reproductive Health*, 13(2), p.33

⁵⁰ Section 45(2) of the Immigration Act. The Federal Government approved the deportation of 10 Egyptians and 7 Sri-Lankas with immediate effect. The Minister of Interior signed the deportation pursuant to sections 45(2), 46(1) and 47(1) of the Immigration Act, 2015. The said 10 Egyptians violated the conditions for their entry. The 7 Sri-Lankas that were jailed for petroleum product related offences after serving their jail terms were ordered by the court to be deported to their country. The Minister also signed the deportation order of one Ali Mahamal- Taher to France and one Kasinathan Ramasamy to India for involving in activities violating the condition of their entry into Nigeria.

The term “National Interest” has neither been statutorily defined nor judicially interpreted in the immigration cases. However, one can contemplate that the Minister will exercise his power in cases where the activities of an alien or illegal alien are criminal, immoral and prejudicial to the country’s interest. Ordinarily, his discretionary power of deporting illegal aliens in the public interest is not subject to judicial review unless someone relies on the status of granting this power is to protect the national interest and preserve public on the one hand and to get rid of undesirable aliens on the other hand.

The court held in *Awolowo v Minister of Internal Affairs* that the right to a legal practitioner of one’s choice protected by the Constitution of Nigeria contemplated the instructions of a legal practitioner “not under a disability of any kind”. This phrase was interpreted in the *Awolowo case* to mean that if the legal practitioner is outside Nigeria, he must be a person who can enter the country as of right. In the case, the Minister of Internal Affairs prevented a foreigner who was contacted to defend Chief Awolowo against the offence of treasonable felony instituted against him.⁵¹

DEPORTATION UNDER THE ADMINISTRATION OF CRIMINAL JUSTICE ACT (ACJA) 2015

Deportation, however is not limited in application to banishment of a foreigner who is convicted of an offence punishable with imprisonment without the option of fine in which case he will be ordered to be deported from the country upon recommendation, by the court, to the Minister of Interior that the convict be deported.⁵² Also, where on a sworn information, it appears to a court that there is reason to believe that a person in Nigeria, is about to commit a breach of the peace, the court, after due inquiry at which the defendant concerned shall be present, may order him to give security with two or more sureties for peace and good behaviour, and in default, may recommend to the Minister of Interior that the defendant be deported.⁵³

But where it is shown by evidence on oath to the satisfaction of a court that a defendant, in Nigeria, who is not a citizen is conducting or has conducted himself so as to be dangerous to peace and good order, endeavouring or has endeavoured to incite enmity between any section of the people of the Federal Republic of Nigeria or is intriguing or has intrigued against constituted power and authority of Nigeria, the court may recommend to the Minister of Interior that he be deported.⁵⁴

There is a procedure to be followed before the court can make an order of deportation under sections 441 and 442 of the Administration of Criminal Justice Act, 2015. Where a defendant is required to give security under sections 441 and 442 of ACJA, defaults in so doing and the court contemplates on recommending to the Minister of Interior, the deportation of the said defendant, before making any such recommendation, the court shall require the defendant concerned to attend before the court and being informed of the allegations made against him, be given an opportunity to show cause why he should not be deported.⁵⁵ After hearing the defendant, the court shall decide whether or not to recommend to the Minister of Interior that the person concerned be deported.⁵⁶

Where the court decides to recommend to the Minister of Interior the deportation of the affected defendant, the court shall forward to the Minister of Interior the recommendation together with a report setting out the reasons why the court considers it necessary to make the recommendation and a certified true copy of any of the proceedings relating to it.⁵⁷ Such a defendant may be detained in custody pending the decision of the Minister of Interior and during such time shall be deemed to be in lawful custody.⁵⁸ Subject to the provisions of sections 440, 444 and 445, the Minister of Interior shall, in the interest of peace, order and good governance make an order of deportation and issue a written order directing that the said defendant be deported to his country.⁵⁹ Where the Minister of Interior decides that no order of deportation shall be made, he shall inform the court, and the court shall then proceed to make such order of imprisonment or other punishment as may be authorised by the law.⁶⁰

⁵¹(1962) L.L.R. 177; See also, *Nwambe v State* (1995) 3 NWLR (pt 384) p.385

⁵²Garner, B.A. (ed.) *Black’s Law Dictionary, Op.citat* p. 504. See also, section 439, Administration of Criminal Justice Act, 2015 Section 440, Administration of Criminal Justice Act, 2015

⁵³*Ibid.* Section 441

⁵⁴*Ibid.* Section 442 (a-c)

⁵⁵*Ibid.* Section 443(1)

⁵⁶*Ibid.* Section 443(2)

⁵⁷*Ibid.* Section 444

⁵⁸*Ibid.* Section 445

⁵⁹*Ibid.* Section 446

⁶⁰*Ibid.* Section 447

Under the Act, no person or authority is permitted to deport a citizen of Nigeria to a place outside Nigeria.⁶¹ But where a defendant ordered to be deported is sentenced to a term of imprisonment, the sentence of imprisonment shall be served before the order of deportation is carried into effect.⁶² In executing the order of deportation, the delivery of the order to the person to whom it is directed or delivered for execution to receive and detain the defendant named in the order and to take him to the place named in the order.⁶³ Where a defendant leaves or attempts to leave the district or place to which he has been confined prior to deportation while the order of deportation is still in force, without the written consent of the Minister of Interior which consent shall be given subject to any term as to security for good behaviour or otherwise as the Minister of Interior shall deem fit, or wilfully neglects or refuses to report himself as ordered, such a person is liable to imprisonment for six months and to be again deported on a fresh warrant under the original order or under a new order.⁶⁴

DEPORTATION UNDER THE CHIEFS LAW

Under the Chiefs Law of various States,⁶⁵ the Executive Council may suspend or depose any chief if it is satisfied that such suspension or deposition reasonably justifiable in the interest of defence, public safety, public order, public health or for the purpose of protecting the rights and freedom of other persons.

Under the Chiefs Law, any chief suspended or deposed may be banished to another town within the State.⁶⁶ In *Oba Orioge v The Governor, Ondo State & Anor*,⁶⁷ the traditional ruler of Oba-Ile, Ondo State was deposed and banished to Ikaramu, another town in Ondo State on allegation of malpractices levelled against him by the Oba-Ile community. The traditional ruler went to court to challenge his deposition and deportation as an infringement of his fundamental right as provided by section 32(1) and section 38 of the Constitution of the Federal Republic of Nigeria, 1979. The court, however, held that the decision to depose and deport the traditional ruler was an administrative decision of the Governor and was taken in accordance with the provisions of sections 22 and 23 of the Chiefs Law of Ondo State which provided for deposition and deportation of Chiefs respectively.

JUDICIAL ATTITUDE

The starting point is the consideration of the provisions of the Constitution of the Federal Republic of Nigeria, 1999 as amended. Section 41(1) of the Constitution provides:

Every Citizen of Nigeria is entitled to move freely throughout Nigeria and to reside in any part thereof, and no citizen of Nigeria shall be expelled from Nigeria or refused entry thereto, or exit therefrom.

The Constitution of the Federal Republic of Nigeria is the grundnorm, the fundamental law of the society and so, any law that is inconsistent with the provision of the Constitution is void to the extent of its inconsistency.⁶⁸ Section 35(1) of the same Constitution provides that every person shall be entitled to his personal liberty and no person shall be deprived of such liberty except in accordance with the provision of the Constitution.⁶⁹ Personal liberty means that no person shall be subjected to imprisonment, arrest and any other physical coercion without any legal justification.⁷⁰ In Nigeria, a landmark case on deportation is the case of *Shugaba v Federal Minister of Internal Affairs*.⁷¹ The Plaintiff, a member of the Great Nigerian People's Party and the Majority Leader in Bornu State House of Assembly was deported by the Federal Authority and its agents from Nigeria on the 24th of January, 1980.

⁶¹*Ibid.* Section 448

⁶²*Ibid.* Section 449

⁶³*Ibid.* Section 451(1)

⁶⁴*Ibid.* Section 451(2)

⁶⁵Section 26(1) of the Chiefs Law of Oyo State, 1978 and section 17 of the Chiefs Law, Cap 5, Laws of Ekiti State, 2010, see also Adebayo, A.M. (2013) *Practical Approach to Chieftaincy Matters in Nigeria*. Lagos: Princeton Publishing Co. p.141

⁶⁶Section 18 of the Chiefs Law of Ekiti State, 2010

⁶⁷(1982) 3 NCLR, p. 349. See also, Kusamotu, G (2001) *Chieftaincy and the Law*, Ibadan: Sulek-Temik Publishing Company, p.89.

⁶⁸Section 1(1) and (3) of the Constitution of Nigeria, 1999 as amended. See also, *Momoh v Fache* (2007) 42 WRN, p.131 at 144, Lines 25-30; *Federal Capital Development Authority v John Ezinkwo* (2007) 18 WRN, 158 at 178, Lines 15-25 and *Awefeada, U.V.* (2006) Nigerian Legislature "Between the Law and Money Making Powers" *Ekiti State University Law Journal*, 7:118

⁶⁹The exemptions are provided in section 35(1) (a-f) of the Constitution

⁷⁰Akande, J.O. (2000) *Introduction to the Constitution of the Federal Republic of Nigeria, 1999*. Lagos: MIJ Professional Publishers Limited, p.78. See also, *Odogar v A.G. of the Federation* (1996) 6 NWLR (pt 456), p 508

⁷¹(1981) 2 NCLR, p. 459

An application was filed on his behalf under the Fundamental Rights (Enforcement Procedure) Rules, 1979 for the enforcement of his fundamental rights and for redress for violation of the same. The court held that his deportation was unconstitutional and void.

The court made a declaration that the applicant, being a Nigerian could not be deported as he is immuned from being deported from Nigeria. It was further declared that the ShugabaAbdulramanDarma deportation order was *ultra vires*, void and unconstitutional. The court, having found that the applicant has been proved to be a citizen of Nigeria, made a declaration that he was immuned from being expelled from Nigeria.

In *Turkeur v Governor Gongola State*,⁷²the applicant, an Emir of Muri who was deposed and banished from his domain by the Government of Gongola State, applied to the court for the declaration that his deportation and banishment were unconstitutional and an infringement on his fundamental rights to personal dignity, fair hearing and right to freedom of movement. The court held that banishment of a Nigerian is unconstitutional as it basically offended the right to personal liberty, fair hearing and freedom of movement. In an earlier case of *EsugbayiEleko v Government of Nigeria*,⁷³ the Judicial Committee of the Privy Council declared void the deportation of the Oba of Lagos from his domain into another part of the country. The Privy Council held that no member of the Executive Council had power to interfere with the liberty or property of a subject except on the condition that he could support the legality of his action before a court of law.

In *Government of Kebbi State v HRH Mustapha Jokolo*, the Court of Appeal (Per Adumein JCA) held that:⁷⁴

The Governor of Kebbi State has no right to act outside the clear and unambiguous provisions of the Constitution of the Federal Republic of Nigeria, 1999, (applicable to this case) section 35(1) of the said Constitution provides that every citizen of Nigeria is entitled to his personal liberty and no person shall be deprived of such liberty except in the circumstances set out in subsections (a) to (f) thereof. Section 40 of the same Constitution provides that "every person is entitled to assemble freely and associate with other persons". On the issue at hand, section 41(1) of the Constitution is germane and it provides thus: "41(1) Every citizen of Nigeria is entitled to move freely throughout Nigeria and to reside in any part thereof, and no citizen of Nigeria shall be expelled from Nigeria or refused entry thereto or exit therefrom. (2) nothing in subsection(1) of this section shall invalidate any law that is reasonably justifiable in a democratic society- (a) imposing restrictions on the residence or movement of any person who has committed or is reasonably suspected to have committed a criminal offence in order to prevent him from leaving Nigeria, or (b) providing for the removal of any person from Nigeria to any other country to- (1) be tried outside Nigeria for any criminal offence, Or (II) undergo imprisonment outside Nigeria in execution of the sentence of a court of law in respect of a criminal offence of which he has been found guilty. Provided that there is reciprocal agreement between Nigeria and such other country in relation to such matter. The appellant has not been able to show that the banishment of the 1st respondent from Gwandu Emirate in Kebbi State and his deportation to Obi in Nasarawa State were in accordance with the clear provisions of section 41 of the Constitution of the Federal Republic of Nigeria, 1999. The banishment and deportation from Kebbi State by the Governor of Kebbi State on or about the 3rd of June, 2005 of the 1st respondent to Lafia in Nasarawa State and later to Obi, also in Nasarawa State, is most unconstitutional and illegal. By the said banishment and deportation, the 1st respondent has been unduly denied and wrongfully denied of his constitutional rights to respect for dignity of his person, to assemble freely and associate with other persons- including the people of Gwandu of Kebbi State. And to move freely throughout Nigeria and to reside in any part thereof as respectively provided in the Constitution of the Federal Republic of Nigeria.

From the above judicial decisions, it is clear that the decision of the court in *Orioge v The Governor of Ondo State* was wrong.⁷⁵The court held that the decision to depose and deport the applicant was an administrative decision of the Governor and was taken in accordance with the provisions of sections 22 and 23 of the Chiefs Law of Ondo State which provided for deposition and deportation of chiefs respectively. This decision violated section 33 of the Constitution of the Federal Republic of Nigeria, 1979.⁷⁶

⁷²(1989) 2 NCLR, p. 459

⁷³(1931) A.C. 662

⁷⁴(2013) LPER- 22349

⁷⁵*supra*

⁷⁶The Constitution of the Federal Republic of Nigeria, 1999 replaced the Constitution of the Federal Republic of Nigeria, 1979. In *Tony Momoh v Senate of the National Assembly* (1981) 1 N.C.L.R, p.21, the provisions of section 31 of the Legislative (Powers and Privileges) Act, cap.102, Laws of the Federation of Nigeria and Lagos, 1958, which provides that court's process cannot be served within the chambers or precincts of a legislative house while the house is sitting was held inconsistent with the provisions of section 42 of the 1979 Constitution by virtue of section 1 of the Constitution which proclaims the supremacy of the Constitution.

THE DEPORTATION OF EMIR SANUSI LAMIDO SANUSI OF KANO

On Monday, the 9th of March, 2020, the Kano State Government under the leadership of Governor Abdullahi Ganduje dethroned Sanusi Lamido Sanusi as Emir of Kano and deported him to Nasarawa State.⁷⁷ The erstwhile Emir was accused of disrespect to lawful instructions from the authorities. He was also alleged to have refused to attend official programmes and meetings organised by the Government.⁷⁸ The Government, immediately announced a replacement in the person of Aminu Bayero.⁷⁹ The deposed Emir instituted a suit before the Federal High Court, Abuja seeking an order of his release from the post-dethronement detention and confinement. He claimed that his detention and deportation violated sections 34, 35, 40, 41 and 46 of the Constitution of Nigeria, 2020.⁸⁰

Under the Kano State Emirates Council Law of 2019, the Governor of Kano State has no unilateral power to remove him as Emir of Kano. There was no notice of disrespect to lawful instructions to him before his removal and deportation. Section 13 of the Kano Emirates Council Law allows the Governor to depose an emir only after due consultation with State Council of Chiefs. With regard to Lamido Sanusi, there was no time the Kano State Council of Chiefs was summoned to any meeting before his deposition and deportation.⁸¹

The purpose of the Chiefs (Appointment and Deposition) Ordinance with regard to “due Inquiry” was stated in *Lagunju v Olubadan in Council and Anor* that parties to the dispute should be given an opportunity of being heard by the Governor.⁸² In *Obayemi v Commissioner for Local Government and Ors*, the Supreme Court had to decide whether the Governor of Kwara State held a due inquiry as required by section 3(2) of the Chiefs (Appointment and Deposition) Law of 1963.⁸³ In determining the issue for consideration, Nnaemeka Agu, JSC (as he then was) said:

I agree with learned counsel for the appellant that a proper inquiry under section 3(2) and (6) of the Chiefs (Appointment and Deposition) Law contemplates not only that the appellant as a person who lays claim to the position of the Bale of Oro town was entitled to be present and present his case at such inquiry but that Asanlu of Oro and the Aro of Oro, Iwo Principal Chiefs responsible under native law and custom for the appointment and installation of the Bale of Oro should be consulted by the Governor as required by section 6. But none was the case. The law does not intend that on mere representations to the Governor by some persons in the community, no matter how highly placed they might be he should intervene and without an inquiry, withdraw the recognition of a chief no matter how clear the case against him might appear to be. The Executive Governor of Kwara State was bound to act according to law, any act of his which was contrary to law, statutory or otherwise could be declared invalid. In this case, the action of the Governor in removing the appellant without a hearing was in breach of the principle of fair hearing.⁸⁴

According to Adewale,⁸⁵ the deportation of deposed traditional rulers in Nigeria by Government is an age-long practice. For instance, the Oba of Benin Ovonranwen Nogbaisi was deported to Calabar in 1887, Alhaji Ibrahim Dasuki, the Sultan of Sokoto was deposed and deported. The Alaafin of Oyo, Oba Adeyemi the first was dethroned and deported to Ilesa in 1954 based on the report of Lloyd’s Commission of Inquiry.⁸⁶

OTHER ACTS OF INTERNAL DEPORTATION IN NIGERIA

There are acts of internal deportation committed against the poor in Nigeria. On the 9th of April, 2009,⁸⁷ Lagos State Government deported 129 beggars of Oyo State of origin. Some beggars of Osun State of origin were deported to Osogbo, 14 beggars of Anambra State of origin were deported from Lagos State.

⁷⁷He was deposed pursuant to section 13 of the Kano State Emirate Council Law, 2019, which empowers the Government to depose an emir only after due inquiry and in consultation with State Council of Chiefs.

⁷⁸Monday Ubani “Removal and Banishment of Sanusi Lamido Sanusi is Illegal” <https://thenigerianlawyer.com/theremoval-and-banishment-of-sanusi-lamidi-sanusi-is-illegal>, accessed on 17/03/2020; Femi Falana “Falana, SAN asks Kano Govt to Release Sanusi and Allow him To Enjoy His Fundamental Rights to Personal Liberty” <https://thenigerianlawyer.com> accessed on 17/03/2020

⁷⁹*Ibid*

⁸⁰Suit No: FHC/ABJ/CS/357/2020. See also, Gbenga Adeniyi *et al.* (2020) “12 SANS lead Sanusi’s Freedom Battle” *The Punch*, Friday, March 13, p.2

⁸¹Lamido Sanusi, being the Chairman of the Emirates Council would have known if such meeting was summoned. See also, Mike Osekhome (2020) “Illegality of Sanusi’s Dethronement, Banishment” *The Guardian*, Thursday, March 17, p.43

⁸²(1950) 12 W.A.C.A, p.406. See also, the *Queen v the Administrator, Western Nigeria and Anor (1962) W.R.N.L.R, p. 313 at 316*

⁸³(1992) 2 S.C.N.J. (pt.11) 266

⁸⁴*Ibid*, at p.283

⁸⁵Adewale, M.A. (2020) “The Legality of the Dethronement and Banishment of Traditional Rulers in Nigeria: Sanusi Lamido Sanusi as a case study” <https://thenigerianlawyer.com> accessed on 17/03/2020

⁸⁶Oluyede, P.A. (2007) *Nigerian Administrative Law*, Ibadan: University Press PLC, 251

⁸⁷Chukwudi, A. (2009) “Lagos State Depports 129 Beggars” *Daily Sun*, April 10:3

In 2011, Peter Obi, former Governor of Anambra State, deported 79 beggars from Anambra State to Akwa Ibom and Ebonyi States. In 2011, the Federal Capital Territory Minister deported 129 beggars from Abuja. Rivers State Government deported about 129 Nigerians from the streets of Port-Harcourt.

Governor Ganduje of kano State signed into Law, the Kano State Infectious Diseases Regulation Law, 2020 to allow him deport *Almajiris* who are non-indigenes of Kano State. In the process, Kano deported 432 *Almajiristo* to Katsina State, 63 to Yobe State, 198 to Kaduna State, 663 to Jigawa State, 101 to Bauchi State, 1 to Zamfara State, 9 to Gombe State and 10 to Nasarawa State.⁸⁸ The Government of Kaduna State admitted that over 30,000 street children were deported out of the State to their States of origin. On the 1st of May, 2020, the Information Commissioner in Osun State, Funke Egbemode, admitted that the Government of Osun State deported illegal miners from the State to Zamfara State.⁸⁹

EFFECTS OF DEPORTATION

Deportation method is based mainly on the penological theory of elimination or deterrence. The offender is deterred by eliminating him from the society to which he constitutes danger. For instance, Lamido Sanusi of Kano State was deported from Kano State to Nasarawa State,⁹⁰ Oba Adeyemi, the Alaafin of Oyo was deported from Oyo to Ilesa,⁹¹ Oba Orioge was deported from Oba-Ile to Ikaramu⁹² and Overawen Nogbaisi of benin was deported from Benin to Calabar.⁹³

Deportation order contravenes the provisions of the Constitution of Nigeria, 1999 as amended with regard to fundamental human rights. Section 41(1) of the Constitution, 1999 guarantees the right of every citizen to move freely throughout Nigeria and to reside in any part of the country. Section 35(1) of the Constitution guarantees the personal liberty of every citizen of Nigeria. Section 34 guarantees to every person the right to dignity of human person. The traditional rulers deposed were deported to various strange States where they eventually died.⁹⁴ Deportation Laws of all the States in Nigeria violate the provisions of sections 34, 35 and 41 of the Constitution by virtue of section 1(3) of the Constitution.

Various forms of deportation carried out by States Governors in Nigeria violate the provisions of section 15 of the 1999 Constitution. Section 15(2) and (3) (a-b) of the Constitutions states:

“15(2) Accordingly, national integration shall be actively encouraged, whilst, discrimination on the grounds of place of origin, sex, religion, status, ethnic or linguistic association or ties shall be prohibited

5(3) For the purpose of promoting National Integration, it shall be the duty of the state to

(a) provide adequate facilities for and encourage free mobility of people, goods and services throughout the federation

(b) secure full residence rights for every citizen to all parts of the federation

According to Sagay,⁹⁵ the Legislative and Executive arms of Government have failed woefully in promoting unity and national integration in Nigeria. Today, there are various ethnic groups such as Afenifere, Arewa Consultative Forum, Ohaneze Ndigbo and others with ethnic loyalty.⁹⁶ The legal effect of a deportation order made pursuant to the provision of sections 441 and 442 of the Administration of Criminal Justice Act, 2015 is like any other sentencing order. It takes effect from the date pronounced by the court and terminates as indicated in the sentencing order.

Usually, the sentencing order will indicate that the convict is to be deported from Nigeria so as to remove him from the place of commission of the offence to any other place either outside Nigeria or in Nigeria. Deportation is used for personal offences and other offences like burglary, house breaking, stealing, robbery *etc.*

⁸⁸Kolawole Adeyemi (2020) “Kano Sends Home 1.595 Almajiris” *The Nation*, Tuesday, 21st April, p.3

⁸⁹Funke Egbemde “Why we are deporting Illegal Miners” <https://thenigerianlawyer.com>, accessed on 8th May, 2020. The Special Adviser to the Zamfara State Governor on Public Enlightenment, Media and Communication, ZaibaniBappa accused the Osun State Government of acting in bad taste.

⁹⁰See footnotes 77-81

⁹¹See footnote 86

⁹²See footnote 67

⁹³See footnote 85

^{93(b)}the deposed Emir of Kano was allegedly subjected to maximum trauma. He was on the road for seven hours, arrived Nasarawa State around 2.a.m. See Eniola Akinkuotuet *al.* (2020) “Sanusi to Challenge Detention, Forced Exile” *The Punch Wednesday, March 11, p.2*

⁹⁴See footnotes 91-93

⁹⁵Sagay, I.E. (1998) *The Work of the Supreme Court (1980-1988)*. Lagos: Nigerian Law Publications Limited p.277 at 278

⁹⁶Afenifere is the Pan Yoruba Cultural Group, Arewa Consultative Forum is for the Hausa/Fulani and Ohaneze Ndigbo is for the Ibos. All the members of these groups maintain loyalty to their various groups at the expense of Nigeria.

On the other hand, deportation order made under the Immigration Act, 2015 has the effect of prohibition of the entry of the person into Nigeria until his deportation order is suspended or cancelled. The affected alien has no right of residence in Nigeria. The Minister can revoke the deportation order at any time before or after the deportation of the alien from the country.

It is important to state that the revocation or cancellation of the deportation does not entitle the deportee to an automatic right of entry but he has to undergo the regular formalities for admission to the country in accordance with the Immigration Act. The Minister is empowered to give direction to the Immigration authority to deport or send such a person to the country of his nationality or to a country of which he has obtained passport or a country ready and willing to admit him.⁹⁷

CONCLUSION

It is crystal clear from the consideration of the Immigration Act, Administration of Criminal Justice Act and the provisions of the Constitution of the Federal Republic of Nigeria, 1999 as amended, Nigerians cannot be deported, either to another country or from any part of Nigeria to another. The judiciary has lived up to expectation by condemning various acts of illegal deportations carried out by the Executive arm of Government for political reasons. Well-meaning Nigerians, the press, non-governmental organisations and the international community must kick against internal deportations in Nigeria. Nigerians are always the victims of governmental acts of lawlessness. The refusal of Sanusi Lamido Sanusi to challenge his deposition and deportation from Kano to Nasarawa is a major set-back against illegal deportation and violation of human rights in Nigeria.

⁹⁷See section 45(2) of the Immigration Act, 2015.