

**“THE ARCHITECTURE OF EXCUSE AND JUSTIFICATION: A CRITICAL INQUIRY
INTO THE ROLE OF DEFENCES IN CRIMINAL LAW”**

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DECLARATION

I, **Theophilus, EHIMWONZEE**, with Matriculation Number **LAW2006588** hereby declare with doubtlessness that the entirety of this work is the product of my own research efforts; and that this work has neither in part nor in whole been presented for the award of a degree or certificate elsewhere. All sources have been duly distinguished and appropriated acknowledged.

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APPROVAL

This is to certify that the research titled “THE ARCHITECTURE OF EXCUSE AND JUSTIFICATION: A CRITICAL INQUIRY INTO THE ROLE OF DEFENCES IN CRIMINAL LAW” is diligently [written by Theophilus, EHIMWONZEE LAW 2006588] in partial fulfilment of the requirements for the award of a Bachelor of Laws (LL.B) degree.

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“Gilead is mine; Manasseh is mine; Ephraim is my helmet; Judah my scepter. Moab is my washbasin; Upon Edom I cast my shoe; Over Philistia I shout in triumph.”

To He who was, who is and evermore will be—the Ineffable One, this work and my entirety is dedicated.

To the memory of the faithfully departed Blessing Sam, an erstwhile companion in quest of this degree

To all incarcerated and or punished for want of proper knowledge of these defences, this ink speaks.

To those unborn who crave legal excellence, this is for you.

To the unblemished pursuit of justice

— *Fiat justitia ruat caelum*

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ABBREVIATIONS AND ACRONYMS

ANLR	All Nigerian Law Report
CA	Court of Appeal
CC	Criminal Code
DC	District of Columbia
DPP	Director of Public Prosecutions
FSC	Federal Supreme Court
J	Justice
JCA	Justice of Court of Appeal
JSC	Justice of Supreme Court
LEPLR	Law Pavilion Electronic Law Report
NSCC	Nigerian Supreme Court Cases
NWLR	Nigerian Weekly Law Report
PC	Penal Code
QB	Queen's Bench
SC	Supreme Court
US	United States
WACA	West African Court of Appeal

ABSTRACT

Humans are fickle and their actions even more wobbling by the transient nature of the world. Ergo, their acts are regulated by laws, short of these laws, their acts become an abnormality to society- crimes! And in the world of criminal law culpability and compassion must intersect for justice to be done as well as seen done. Accordingly, this research rigorously examines the intertwined doctrines of excuse and justification as defences within Nigerian criminal law, illuminating their pivotal role in balancing societal order with individual autonomy. Framed within the complexities of Nigeria's plural legal system, *The Architecture of Excuse and Justification* explores how the law, stern yet humane, negotiates the delicate equilibrium between societal order and individual autonomy. A novel inquiry in the Nigerian Criminal law sphere! Justification, on the one hand as examined, sanctifies conduct deemed necessary or right in its circumstances albeit in self-defence, defence of property or lawful correction, each showing the law's pragmatic embrace of moral duty and public good. Excuse, on the other hand, humbles the majesty of law before the frailty of the human spirit, excusing acts wrought by insanity, provocation, duress, or honest mistake, where culpability wanes though wrong remains. This work is pivotal as it exposes doctrinal ambiguities, statutory inconsistencies, and judicial challenges in clearly delineating these defences, further complicated by cultural, religious, and pluralistic influences that shape application and interpretation. Drawing on comparative perspectives from multiple jurisprudence, the study posits that Nigeria's criminal law must evolve through comprehensive codification, enhanced judicial training, and institutional support. It reaffirms the law's highest calling to punish with justice, to excuse with reason, and to justify with conscience. Ultimately, this work contends that the vitality of criminal law depends not only on punishing the guilty but on understanding *why* and *when* it must refrain.

CHAPTER ONE

1.1.BACKGROUND OF THE STUDY

In the grand theatre of criminal law, often perceived as the stern face of the legal system—the branch that punishes wrongdoers and protects society from harm¹—defences play a pivotal and often underestimated role. They form the juridical mechanisms that balance the wheels of culpability, guaranteeing that not every illicit act incurs punitive measures, and that not every transgression is classified as a criminal offense particularly without adequate justification. Nonetheless, underneath this seemingly rigid facade exists an intriguing framework of diversity and equilibrium. The defences of excuse and justification are the legal system’s elegant mechanisms designed to reconcile the sometimes irreconcilable: the pursuit of justice for society and fairness to the individual. This balance was aptly summarized by Justice Oputa of the Supreme Court in *G. Josiah v The State*²

“Justice is not even only a two-way traffic. It is really a three-way traffic – justice for the appellant accused of a heinous crime of murder; justice for the victim, the murdered man; and finally justice for the society at large – the society whose social norms and values had been desecrated and broken by the criminal act complained of.”

¹ Emmanuel Amechi Okonki, ‘Notion of Crime and Liability in Nigerian Criminal Justice System’ (2016) 6 African Journal of Criminal Law and Jurisprudence 61.

<https://journals.ezenwaohaetorc.org/index.php/AFJCLJ/article/download/1623/1664> accessed 18 July 2025

² *Josiah v State* (1985) 1 NWLR (Pt.1) 125 p.1

In Nigeria, a country marked by rapid social change and complex cultural dynamics, this balance assumes an even greater significance. This is heightened by our plural legal system, comprising the Criminal Code (applicable in Southern Nigeria), the Penal Code (largely applicable in Northern Nigeria), in addition to customary laws. The task of reconciling defensive strategies amid this heterogeneity is entrenched by discrepancies in cultural, religious, and ethical frameworks. Whatever the content of criminal law may be, Nigerian criminal law as a law derived from the common law in theory manifests, to a substantial degree, the principles of *Nulla poena sine lege*- that a man may be punished only in accordance with the law³. Nigerian law recognizes the potential for diminished capacity for a person who is alleged to have committed a crime,⁴ thus, excuse and justification defences are therefore not mere legal technicalities but vital tools that protect the innocent from wrongful condemnation, uphold human dignity, and reflect societal values. While ‘excuse’ and ‘justification’ might be blurred to the ordinary person, in the criminal law realm, they stand for distinct concepts.

Justification admits that the act was committed but contends that it was right in relation to the circumstances.⁵

³ K E Ikenga Oraegbunam, ‘Some Basic Principles of Penal Jurisprudence: An Analytical Approach’ (Vol.1, Nnamdi Azikiwe University Journal of International Law & Jurisprudence, 2010), <http://www.ajol.info/index.php.naujilj/article/view/138186> Accessed 20 July 2025.

⁴ Adekunle Ademola Aminu, “A Jurisprudential Examination of the Defence of Provocation under the Nigerian Criminal Justice System” (2024) 1(2) *Fountain University Law Journal* <https://doi.org/10.53704/fulaj.v1i1.527> accessed 16 July 2025.

⁵ ‘Justification’ Cornell Law School, June 2023, <https://www.law.cornell.edu/wex/> accessed 20 July 2025.

As proof, self-defence⁶ under Section 33 of the Constitution⁷ and sections 286 and 287 of the Criminal Code⁸ and Penal Code⁹ sections 222, read in conjunction with sections 265-266, when raised as a defence and successfully admitted by the court, the verdict of which on the charge of murder or manslaughter, is acquittal.¹⁰ This was further ossified by the Supreme Court that “Where a person kills another in defence of himself, such a killing is excused” resulting in acquittal, provided the elements of reasonable apprehension of harm, necessity, and proportionality are satisfied¹¹.

Conversely, excuse defences acknowledge the wrongful nature of the act but deny blameworthiness¹² due to circumstances such as insanity, minority age, bona fide claim of right, or mistake of fact. The Criminal Code’s section 28 and Penal Code’s section 51 both provide for insanity defences. These defences of excuse must be in the honest exercise of action and not self-induced. Accordingly, the burden of proving insanity rests on the accused and requires corroborative medical or expert evidence to establish incapacity and it must not have been self-

⁶ Anthony Rickman, “Justification vs. Excuse Defences” (*Florida Hard Hat Law*, 15 November 2022) <https://www.floridahardhatlaw.com/justification-vs-excuse-defences/> accessed 20 July 2025.

⁷ Constitution of the Federal Republic of Nigeria 1999.

⁸ *Criminal Code Act, Cap C38, Laws of the Federation of Nigeria, 2004*

⁹ *Penal Code (Northern States) Cap P3, Laws of the Federation of Nigeria, 2004*

¹⁰ *Okorodudu v The State* (2024) 12 NWLR P.130, (paras B-D)

¹¹ *Uwaekweghinya v The state* (2005) 9 NWLR (PT. 930) 27 SC

¹² Miriam Gur-Arye, *Should a Criminal Code Distinguish Between Justification and Excuse* *Canadian Journal of Law and Jurisprudence*, Volume 5, Issue 2 (Cambridge University Press, 2015) Available at doi: <https://doi.org/10.1017/S0841820900001399> Accessed 22 July 2025

induced¹³. Thus, in *Queen V. Alice Eriyamremu*¹⁴, the court rejected the defence of insanity raised by the accused person who killed her three year old albino granddaughter as a result of dictates by her confederates in witchcraft. The court held that her defence of insanity will therefore fail because mental infirmity which is self-induced is not a defence to insanity under the provisions of Section 28 Criminal Code. Mistake of fact and bona fide claim of right, as defined in sections 23 and 25 of the Criminal Code, also function as excuses rather than justification.

Accordingly, the admixture of these defences are the cornerstone of a fair criminal justice system which balances the interest of the society as well as individual dignity. As George P. Fletcher¹⁵ insightfully posited, the law's legitimacy rests on respecting individual autonomy while imposing social order—a dialectic embodied by excuse and justification defences.

1.2. Statement of the Problem

Despite their fundamental importance, Nigerian jurisprudence—both judicial and academic—has struggled with the clear articulation and consistent application of excuse and justification defences. The higher record courts have the notoriety of chiding the lower courts for their failing to consider properly, all defences enforced by evidence, thus protruding the judicial fissures in

¹³ *R v Omoni*, (1949) 12 WACA 511

¹⁴ (1959) WRNLR 270

¹⁵ George P Fletcher, *Rethinking Criminal Law* (Harvard University Press 2000) Chapter 10, Available at: <https://doi.org/10.1093/oso/9780195136951.001.0001>. Accessed at July 25 2025.

their decisive evaluation of available defences¹⁶. Not least is the blunder of a trial judge who errs in proceeding with trial where the defence raises the issue of insanity without first complying with the procedure in Sections 223- 224 Criminal Procedure Act¹⁷. It stands to little wonder why then, civilized societies have deemed it “a violation of fundamental principles of fairness and morality” to punish mentally sick persons in that to do so “would thwart two major tenets of punishment – retribution and deterrence”¹⁸

This conceptual and practical ambiguity may lead to unfair outcomes, either by unduly shielding wrongdoers or unjustly punishing those who ought to be excused for the court has held that it is a trite law that suspicion, no matter how grave, can never ground a conviction¹⁹. And for the administration of justice, it is better that law should be certain than that every judge should speculate upon the improvement in it²⁰.

A recurring challenge is delineating when each of these defences should and must apply; distinguishing between when duress should excuse an act or necessity justifies it, or whether mistakes of fact sometimes constitute a justification rather than a pure excuse. This aspect remain largely unsettled, for, whether the defence of mistake of fact under section 25 of the Criminal

¹⁶ *Abubakar Dan Shalla v The State*, (2007) 18 NWLR (Pt.1066) 240 S.C

¹⁷ Boniface E Ewulum, ‘The Plea of Insanity under the Nigerian Criminal Jurisprudence’ (2018) 3 *African Journal of Criminal Law and Jurisprudence* 116 quoting from *Mboho V State*, (1966) 1 All NLR 69

¹⁸ B I Sadock, and others, *Comprehensive Textbook of Psychiatry*, (Vol. II, 7th edition New York, Lippincott Williams and Williams 2000) p.3286.

¹⁹ *State v Keji Amusan*, unreported, Charge No. HIFIIOc/81 (High Court of Oyo State, 22 February 1982).

²⁰ *Sheddon v Goodrich* 1803 32 ER 441 per Lord Eldon

Code will avail an accused depends on how "honest and reasonable" his mistaken belief was²¹. Sadly, pronouncements of the courts have been devoid of clear lines, reflecting the agitation of safeguarding individual autonomy while retaining public order.

This is worsened by the realization that Nigerian Criminal Law's approach to these defences is often densely anchored by English law precedents, usually without the requisite adaptation to Nigeria's unique legal, cultural and social ambience. This is manifest in varying applications across the Criminal and Penal Codes and the constitutional framework (sections 32 and 33), which underpin fundamental rights and defences in criminal proceedings. A palpable example is the scenario of adultery- while sections 387 and 388²² of the Penal Code clearly criminalizes it and imposes a punishment of fine and or sanction, the criminal code is more or less silent on this issue. This was the bedrock of the quagmire in the case of *Aoko v Fagbemi*²³. Fact of which revealed that the prosecution rested their case on the fact that she committed adultery, having not obtained an order for judicial separation, and having not separated from her husband by agreement. The Customary Court of Ijebu-Ijesha Grade 'D' relied on the defendant's judicial plea of guilt and the evidence of the witnesses to arrive at its decision. She was convicted and sentenced to a fine of €2 10s 0d or the option of one month imprisonment.

²¹ A O Sanni, *Introduction to Nigerian Legal Method* (2nd ed, Ile-Ife: Obafemi Awolowo University Press, 2017) 142

²² This section reads thus: "Whoever, being a woman subject to any customary law in which extra-marital sexual intercourse is recognized as a criminal offence, has sexual intercourse with a person who is not and whom she knows or has reason to believe is not her husband is guilty of the offence of adultery and shall be punished with imprisonment for a term which may extend to two years or with fine or with both."

²³ *Taiwo Aoko v Fagbemi Adeyeye*, (1961) ANLR 400

The problem this study addresses is twofold: first, the conceptual and practical challenges with defences of excuse and justification in Nigerian criminal law; second, the broader dialectical tension between individual autonomy and societal order these defences mediate.

1.3. Research Questions

1. What are the conceptual distinctions and legal characteristics of excuses and justifications?
2. How do Nigerian courts and statutes distinguish and apply these defences?²⁴
3. How do these defences tilt the balance of individual autonomy and the society's order?
4. What philosophical justifications underpin the existence and limits of these defences?
5. What reforms or clarifications are necessary to improve the legal treatment of these defences in Nigeria to establish a balance between competing interests?

²⁴ *"Judges should be able to catch up with the dynamics of our ever changing society and they should therefore recharge courses bearing in mind the famous words in the Justinian institute Ignorantia iudicis est Calamitas Innocentis" (The ignorance of the judge is the calamity of the innocent). D A Ijalaye, 'Justice as Administered by the Nigerian Courts' Justice Idigbe Memorial Lecture Series Five (1992) p.64*

1.4. Objectives of the Study

The overarching aim of this research is to dissect the architecture of excuse and justification within Nigerian criminal law, elucidating their conceptual boundaries and practical implications through:

- Establishing lucid theories as regards the nuance between excuse and justification in the Nigerian criminal law sphere.
- Exploring the jurisprudential and philosophical tents that underpin these defences; particularly in their roles in ensuring the balance between individual autonomy and the unblemished cores of society.
- Examining how these defences have been interpreted and applied by Nigerian courts and legislatures.
- Spotting the setbacks, inconsistencies and gaps within the Nigerian legal structure. In

*Emmanuel Ogar v The State*²⁵, the Supreme Court of Nigeria ruled as follows:

“Where a defence of provocation is raised in a charge of murder, section 318 of the Criminal Code must be read together with section 283 of the Code which defines provocation, and for the purpose of section 318, provocation includes any wrongful act or insult of such a nature when done to an ordinary person as is likely to deprive him of the power of self-control, and to induce him to assault the person by whom the act or

²⁵ (2015) 9 NWLR, pt. 1465 at P. 466.

insult is done or offered. To avail himself of the defence in a charge of murder under section 318 of the Criminal Code, the accused must have done the act for which he is charged: (a) In the heat of passion; (b) This must have been caused by sudden provocation; and (c) The act must have been committed before there was time for his passion to cool.” It is pellucid here, that the Supreme Court has filled the gap left by the legislature as to the different rules and tests governing the defence of provocation in Nigeria.

- Proposing recommendations that will spur legal reform in legislature and or judicial interpretation to increase fairness and justice.

By meeting these objectives, the study aspires to offer meaningful insights, contribute to a more coherent, just, and principled criminal law regime in Nigeria for academics, practitioners, and lawmakers engaged in the pursuit of justice.

1.5. Scope and Limitation of the Study

Primarily, this work revolves around the parameters of criminal law defences of excuse and justification as it involves the Nigerian legal ambience. It will engage with the Criminal Code applicable in Southern Nigeria and the Penal Code relevant to Northern states, the constitution as the grundnorm, Administration of Criminal Justice Act with other related statutes and relevant judicial decisions. While the study will draw on comparative perspectives, particularly from English common law and American jurisprudence where apt, to offer enriching insights, the

research excludes civil law defences and international criminal law issues to maintain focus and depth.

Notwithstanding the comprehensive scope of the study, it acknowledges the difficulties in accessing comprehensive case law databases and variations in judicial reasoning that may resist easy categorization, exhaustive treatment of all defences; this methodology chosen accounts for the first limitation of this research. The limitation of time and access to certain unpublished judicial materials also coagulates to another limitation. In addition, the elaborateness of cultural sway on legal interpretations, cannot be extensively thrashed by virtue of constraints of the scope.

Nonetheless, the study remains confident that its targeted approach will yield valuable doctrinal and practical contributions.

1.6. Significance of the Study

Legal research is often taken to impact theory, policy or practice or to contribute to the existing body of knowledge.²⁶

²⁶ P Bhat Ishwara, *Idea and Methods of Legal Research* (Oxford Academic 2020). Available at <https://doi.org/10.1093/oso/9780199493098.001.0001> Accessed 24 August 2025.

This research is timely and significant for several reasons. First, it advances to the intellectual betterment of the current criminal law framework through the supply of a pivotal and sagacious understudy of an aspect largely underexplored but vital to the fair administration of justice.

Secondly, by highlighting inconsistencies and ambiguities in the application of excuse and justification defences, it offers practical value for legal practitioners and policymakers who seek to navigate and improve Nigeria's criminal justice system.

In addition, this study broadens the knowledge and perspectives of the dual street of individual autonomy and societal order. This in turn, fosters a multiplicity of appreciation as to the importance of law both in the constricting and respect of human freedom. In a diverse society like Nigeria, where the law bears in mind diverse cultural²⁷ and social values, its importance can never be gainsaid.

Ultimately, this study aims to bridge theory and practice: contributing to the foundational task of criminal law - ensuring that the innocent are protected, the guilty justly punished, and society's fabric preserved²⁸

²⁷ *Criminal Code Act, Cap C38, Laws of the Federation of Nigeria, 2004*. S.208. This section reads thus: "Any person who directs or controls or presides at any trial by ordeal which is unlawful, is guilty of a felony and is liable, when the trial which such person directs, controls or presides at results in the death of any party to the proceeding, to the punishment of death and in every other case, to imprisonment for ten years."

²⁸ *Criminal Law of Lagos State*, No. 11 of 2011, Laws of Lagos State, s 222.

1.7. Research Methodology

This work professes the doctrinal methodology, and at surface level, it employs an imperative review of statutes, case law, and academic literature. While the primary sources are elongated to the constitution, the criminal and penal codes as well as the Administration of Criminal Justice Act²⁸; the secondary sources are detailed breakdown of relevant textbooks, journal, articles, and apt legal materials.

It incorporates comparative perspectives from English and American law to contextualize Nigerian practice within broader common law traditions. By synthesizing these sources, this research thoughtfully incorporates intelligible arguments and informed recommendations for reform.

1.8. Synopsis of Chapters

This first chapter introduces excuse and justification as defences in Nigerian criminal jurisprudence as very vital elements. It comprises a background, problem statement, research

²⁸ Administration of Criminal Justice Act (2015)

questions, aim, objectives, methodology, significance, scope, limitation, and significance.

Chapter two focuses on justification; cases where the law actually approves certain acts because of necessity or proportionality. It presents the conceptual and theoretical framework, and a critical review on justification defences like, self-defence, defence of property, lawful correction of children, and necessity. Chapter three meticulously dissects excuses with the examination going over insanity, provocation, intoxication and immaturity as well as the burden of proving these defences. The fourth chapter focuses on the wider institutional framework that affects both defences. It shows that there are still gaps and weaknesses in the system. It thrashes the challenges and prospects of the extant legal and institutional framework in the application of justification and excused defences. Chapter Five concludes the study by summarising the finding, and proposing recommendations to bolster Nigeria's climate change legal framework's enforceability.

CHAPTER TWO

THE ARCHITECTURE OF JUSTIFICATION

2.1. Introduction

Down the intricate hallways of criminal law, justification is not a mere figurehead or a technicality, but the lifeblood that drives the philosophy of justice itself. Accordingly, justification defences do so much more than excuse a conduct, rather they confirm its correctness in the context of necessity, proportionality and legality. This chapter embarks on a critical exploration of the landscape of justification, highlighting its bright peaks, shadowed valleys, and intricate mosaics in the Nigerian comparative and statutory contexts.

In the perspective of the Nigerian Criminal law, justification transmutes a wrongful act into one that is sanctioned by law due to the prevailing exigencies. The constitution²⁹ provides a classic bedrock for justification, declaring that the taking of life is not unconstitutional if done in self-defence of any person from unlawful violence. This constitutional harbour hoists justification from a statute backed privilege to a fundamental right.

2.2. Concept of Justification: Meaning and Foundations

Justification codifies the principle that an act that seems *prima facie* unlawful may, in calibrated circumstances, be rendered lawful—or at least tolerable within the eyes of the law. In contrast to

²⁹ Constitution of the Federal Republic of Nigeria 1999, section 33 (2)

mistake, insanity or the other excuse defences, justification validates the behaviour, not only absolving the perpetrator, but also stating the behaviour was necessary, appropriate, or even commendable in the given context. The sentimental apple of discord was disregarded that the law's ultimate function is not blind punishment but the righteous dispensation of justice, even if it means to "blot out" apparent crime in the pursuit of higher good³⁰. Section 45³¹, further enshrines the prerogative of state limitation of rights in the interest of public order, health, and safety as a font of justifications. Academic authorities, from Glanville Williams to Ashworth who have posited that the primary purpose of the criminal law is to prohibit behaviour that represents a serious wrong against an individual or against some fundamental social value in society,³² converge on the truth that justification radiates both objective purpose and societal approval, mediating individual survival with collective peace.

2.3. Philosophical Underpinnings and Rationale

The theory of justification grows organically from the soil of moral philosophy and social contract. At its root lies the utilitarian pulse that acts which avert greater evil or protect vital interests gain legal sanctification³³. Although this postulation of ultimate general interest has

³⁰ *R v Howe* (1987) AC 417.

³¹ n29.

³² Ashworth, *Principles of Criminal Law* (5th edn, Oxford University Press 2006) 1.

³³ Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation* (London: Clarendon press 1823).

been reproved as mixing up morality with the law³⁴, these objections were fittingly addressed by the response of Mill in his ‘Harm Principle’ that the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others; his own good, either physical or moral, is not a sufficient warrant.³⁵ In the elegant prose of the U.S. Supreme Court, the Court noted that, actions taken to avoid a harm greater than that sought to be prevented by the law violated represent the essence of justification.³⁶ In the Nigerian context, justification is shaped by statutory enactments as well as customary norms, communal values. For instance, the Penal Code authorizes acts executed in good faith for the benefit of a person³⁷, reflecting a blend of utilitarian and communal rationales. Summarily, the notion of justification is rooted in a deeper moral dialectic that the state must punish wrongdoing, but it must also recognize human dignity and moral agency. In essence, when justification is invoked, the law acknowledges that societal norms or duties may be suspended albeit temporarily, for a higher good.³⁸

³⁴Michael Moran, ‘Coleridge Samuel Taylor (1772-1834)’ in Donald M Borchet (ed), *Encyclopaedia of Philosophy* vol 2, (2nd edn, Macmillan Reference 2006) 94.

³⁵ John Stuart Mill, “*On Liberty*,” (Mineola, NY: Dover Publications, 2002) p. 18.

³⁶ *United States v. Bailey*, 444 U.S. 394 (1980)

³⁷ Penal Code Act S. 59

³⁸ *People (Attorney General) v Dwyer* (1972) IR 416 at 420, court stated: “A homicide is not unlawful if it is committed in the execution or advancement of justice, or in reasonable self-defence of person or property, or in order to prevent the commission of an atrocious crime, or by misadventure.”

2.4. Justification versus Excuse: Drawing the Jurisprudential Boundary

Robinson³⁹, in attempting to classify criminal law defences identified five categories: failure of proof defences; offence modifications; justifications; excuses; and non-exculpatory public policy defences. It will be most plausible to point out that the category that a particular defence falls into can depend on the way in which the defence is formulated in a particular jurisdiction.

A defence that is labelled as justified, such as legitimate defence, implies that the conduct of the accused was morally right and acceptable; whereas an “excuse-based” defence, such as provocation, implies that the conduct of the accused is wrong, but, perhaps in part, forgiven. This distinction should not be equated with the question of whether a defence leads to an acquittal rather than merely a reduction in the crime for which a person is convicted⁴⁰.

The philosopher HLA Hart refers to justified conduct as “something the law does not condemn or even welcomes” while excuse is claimed when “what has been done is something which is deplored, but the psychological state of the agent when he did it exemplified one or more of a variety of conditions which are held to rule out public condemnation and punishment of individuals.”⁴¹

Where, however, a defence is described as justificatory, such as legitimate defence, it is extremely important that the precise ingredients of that defence are clearly set out⁴². Justification

³⁹ Robinson *Criminal Law Defences* (West Publishing Co.1984)

⁴⁰ Law Reform Commission, *Defences in Criminal Law* (LRC 95-2009, Dublin: Law Reform Commission, 2009) 5

⁴¹ Hart, *Punishment and Responsibility: Essays in the Philosophy of Law* (Oxford: Clarendon Press 1968) 212-222.

⁴² (n40)5.

based defences arise in circumstances where the conduct of the accused is considered acceptable, that is the right action to take in that moment. Legitimate defence could be placed in this category (provided that the force used is not disproportionate)⁴³.

Where a defence is labelled as partial justification, it conveys a message of approving human reactions; the focus is on the wrongful conduct of the deceased. Where a defence is labelled as partial excuse it conveys a message to society that the act was wrong, the focus being on the accused's lack of control, but the actor is only partially to blame⁴⁴.

An excuse-based defence arises where the conduct of the accused is deemed wrong and unacceptable but for some reason is forgiven. This category holds the individual morally responsible for his or her actions but does not blame them for the act in question. Provocation and duress and are generally regarded as excusatory defences⁴⁵.

Ormerod provides two useful hypothetical scenarios to illustrate the difference between a justification based defence and excuse based defence: "A nine year old child who deliberately kills is excused but no one would say he is justified. In contrast, nearly everyone would approve of the conduct of a man who saves the lives of his family despite committing a criminal act of criminal damage, or self-defence"⁴⁶.

⁴³ *Ibid*

⁴⁴ Stanley Yeo, *Compulsion in Criminal Law* (The Law Book Company Limited 1990) at 1-10

⁴⁵ Law Reform Commission, *Defences in Criminal Law* (LRC 95-2009, Dublin: Law Reform Commission, 2009)

12.

⁴⁶ Ashworth (n32) 248.

Though often blurred and misconstrued to which extent it's been advocated and because of this rigidity, some pontificate, the law should not aim for comprehensive, precise distinctions between justification and excuse,⁴⁷ however, the chasm between justification and excuse is as deep as it is meaningful. Where justification proclaims the act right, marking it with a badge of legality, excuse softens culpability through the lens of incapacity or error. Judicial wisdom rings true in *R v. Dudley and Stephens*⁴⁸, where necessity was denied as a justification for murder, thus distinguishing between what the society might pity and what it could condone.

Accordingly, a claim of justification focuses primarily on the act while a claim of excuse focuses on the conduct of the individual. Fletcher's work reflects similar definitions where he asserts the view that:

*"Claims of justifications concede that the definition of the offence is satisfied, but challenge whether the act is wrongful; claims of excuse concede that the act is wrongful, but seeks to avoid the attribution of the act to the actor. A justification speaks to the rightness of an act; an excuse, to whether the actor is accountable for a concededly wrongful act."*⁴⁹

As regards the hierarchy of Defences, there is no clear analytical basis on which to place in hierarchical order all the defences that operate within the criminal law. It has, however, been

⁴⁷ Kent Greenawalt, *Distinguishing Justifications from Excuses*, (1986) 49(3) *Law & Contemporary Problems*, 89. Available at https://scholarship.law.columbia.edu/faculty_scholarship/3807. Accessed 2 August, 2025.

⁴⁸ (1884) 14 QBD 273 DC

⁴⁹ Fletcher *Rethinking Criminal Law* (Boston: Little Brown, 1978) 759.

suggested that justification-based defences are seen as the most preferable type of defence to claim, and then followed by excuse-based defences and then lack of capacity defences⁵⁰

In contemporary Nigerian law, the decision of *Madujemu v State*,⁵¹ is instructive where the court distinctly separated insanity (excuse) from justification, thereby reiterating that justification wipes away the offense, while excuse extenuates it.

2.5. Types of Justification Defences in Nigerian Criminal Law

Nigeria's criminal jurisprudence does not demand the unyielding compliance of punitive measure in every circumstance. Rather, it acknowledges that there are moments where the hand that strikes is not the hand that sins but one undertaken out of necessity, self-preservation or an obligatory exercise of lawful authority. Some of these situations crystalized as the doctrine of justification which help calibrate a balance between enforcing rule of law and respecting the realities of human conduct are to wit:

⁵⁰ Gardner 'The Mark of Responsibility' (2003) 23 OJLS 157-71; Gardner "The gist of excuses" (1998) 1 Buffalo Criminal Law Review 575-98.

⁵¹ (2001) FWLR (Pt.52) 2210 SC

2.6 Self-Defence

It is argued that self-defence is a justification defence except when the accused has made a reasonable mistake about the existence of a threat, in which case it is better viewed as an excuse defence⁵².

In *Ekpoudo v. State*⁵³, self-defence was defined as:

“The use of force to protect oneself, one’s family, or one’s property from a real or threatened attack. Generally, a person is justified in using a reasonable amount of force in self-defence if he or she reasonably believes that the danger of bodily harm is imminent and that force is necessary to avoid the danger.”

The right of private defence, otherwise known in English law as self-defence, is dated back to the period of antiquity as an inherent right of man which enables him to protect his interest against wrongdoers⁵⁴.

The doctrine of self-defence is the crown jewel of justification and in this regard, forms an aspect of human right which is deeply enshrined in statutory and constitutional texts. Section 33 (2) (a) of the Constitution⁵⁵ and Section 286 of the Criminal Code both offer the individual the legal

⁵² Fiona Leverick *Killing in Self-Defence* (Oxford University Press 2006) 45. Available at:

<https://doi.org/10.1093/acprof:oso/9780199283460.003.0002>. Accessed at 3 August 2025.

⁵³ (2021) LPELR-52826 (CA),

⁵⁴ I F Akande and S I Oji, ‘*The Pragmatic Nature of Private Defence under Criminal Jurisprudence in Nigeria*’ (2012) 3(1) *International Journal of Advanced Legal Studies and Governance* 1.

⁵⁵ Constitution of the Federal Republic of Nigeria 1999. This provision reads thus: A person shall not be regarded as having been deprived of his life in contravention of this section, if he dies as a result of the use, to such extent and in

shield to repel imminent threats. Judicial interpretation is robust in a multiplicity of cases such as *Ita & Anor v State*⁵⁶, where the Court of Appeal convicted an accused on grounds of disproportional response to unlawful aggression. The emphasis lies therefore, on necessity, immediacy, and proportionality, whereas overstepping these boundaries can flip justification into unlawfulness. Self-defence is founded on the cardinal rule that it is the duty of man to help and protect himself⁵⁷; and this instinct to defend one's self is inherent in man naturally. Since the state cannot protect all persons at all times, hence the permissible right to protect one's self by resisting violence by violence subject to certain limits.⁵⁸ Accordingly, the Nigerian Supreme Court⁵⁹ has outlined these requisite limits cum ingredients of self-defence under section 32(3) of the Criminal Code⁶⁰ to wit: a. That the victim was attacking or about to attack the defendant in a manner that grievous hurt and or death was possible, thus he had to defend himself b. That the self-defence was instantaneous and contemporaneous with threatened attack c. That the mode of defence was not greater or disproportionate with the threatened attack. This can simply be summarized to mean a man may use so much force as is necessary in repelling an unlawful

such circumstances as are permitted by law, of such force as is reasonably necessary a. for the defence of any person from unlawful violence or for the defence of property;

⁵⁶ (2013) LPELR-21392 (CA)

⁵⁷ Okorie Chimizie Kingsley, *Criminal Law: The General Part* (1st edn, Imo State University Press, 2022) 175

⁵⁸ M Arthur-Jolasinmi, 'The Defence of Self Defence under the Nigerian Criminal Law: A Jurisprudential Appraisal' (2025) 3 *Law Faculty Research Papers* 154.

⁵⁹ *Rasheed Aminu v The State* (2019) 7 NWLR (pt.1672) 481

⁶⁰ Criminal Code CAP C38 LFN 2004

attack on his person or liberty, but may not cause grievous bodily harm or death except in defence of life or limb or permanent liberty⁶¹

In order for conduct to be justified, the accused must only have applied such force as is necessary to avert the attack. “Such force as is necessary” comprises the following, to wit:

2.6.1. The Cornerstone of Necessity in Self-defence

It is a prerequisite for the plea of this defence to be successful, that the accused must have believed his action to be necessary. If the aggressor is seeking to disguise his status behind a smoke-screen of self-defence, the defence will not apply to him. However, if the response is not in fact necessary, but the defendant genuinely believes he is about to be attacked in such a circumstance, the Nigerian Criminal Code provides for the test of reasonableness of belief that is objective. It was held in *Kwagshir v. State*⁶² that one of the cardinal conditions of the plea of self-defence laid down by the court is that there must be present an impending peril, to life or of great bodily harm, either real or so apparent as to create honest belief of an existing necessity.

However, it is submitted that the subjective approach in determining the necessity of the accused person’s action is to be preferred because if a court relies wholly on the belief of a “reasonable man” to the exclusion of the accused person’s mistaken and honest belief of the facts, a lot of questionable decisions will sprout thus leading to a textbook case of miscarriage of justice.

⁶¹ E H Ofori – Amankwah, (1986) *Criminal Law in the Northern States of Nigeria* at page 252

⁶² (1995) 3 NWLR (Part 386) at P. 651

2.6.2. The Ratio of Responsive Force

It remains trite that the accused may only use such force as is reasonable in given circumstances. The golden rule is that response must be proportionate to the attack. Section 298 of the Nigerian Criminal Code codifying the concept of excessive force, is admittedly somewhat vague. The provision remains rather silent as regards the accused's liability if, by making an error of judgment, he uses force in excess of what could be reasonably necessary for his defence. The Courts are yet to make particular reference to section 298 of the Criminal Code, but what remains clear is that they have followed the English common law rule that an excessive use of force would defeat a plea of self-defence.

In *State v. Emmunu*,⁶³ the accused shot and killed the deceased whose action, by putting his hand in his pocket frightened him, the court rejected the plea of self-defence on the ground that the accused's action was unwarranted in the circumstances. Similarly, in *Audu v. The State*⁶⁴, the court held that where a person who was attacked used a greater degree of force than was necessary in the circumstances and thereby cause the death of his assailant, the trial court is entitled, after considering all the evidence adduced, to reject the issue of self-defence raised by the accused and convict him of murder. In the instant case, the deceased was fighting with the appellant unarmed when the appellant drew his army jack knife and stabbed the deceased twice in the abdomen. In the circumstance, the defence of self-defence was not open to the appellant. It will be most plausible to note that the approach under the Penal Code is quite riveting, as

⁶³ (1968) NWLR 15.

⁶⁴ (2003) 7 NWLR (p. 820) 530

killing occasioned by the use of excessive force in private defence is manslaughter only, not murder. Section 222 (2) of the Penal Code provides: "...culpable homicide is not punishable with death if the offender in the exercise (in good faith) of the right of private defence exceeds the powers given to him and causes death..."

2.6.3. The Duty to Retreat

It remains a point of dissension that if it is possible to escape from the attack by retreating, then it is unnecessary and unreasonable to use defensive force. As the bulk of our law is the English Common law, the concept of retreat has found its way into Nigeria but apparently restricted to cases of provoked assaults only. Section 287 of the Criminal Code provides in part as follows: "When a person has unlawfully assaulted another or has provoked an assault from another, and that other assaults him with such violence as to cause reasonable apprehension of death or grievous harm, and to induce him to believe, on reasonable grounds, that it is necessary for his preservation from death or grievous harm to use force in self-defence, he is not criminally responsible for using any such force as is reasonably necessary for such preservation, although such force may cause death or grievous harm. This protection does not extend to a case in which the person using force, which causes death or grievous harm, first began the assault with intent to kill or to do grievous harm to some person; nor to a case in which the person using force which causes death or grievous harm endeavoured to kill or to do grievous harm to some person before the necessity of so preserving himself arose, nor in either case, unless, before such necessity

arose, the person using such force declined further conflict, and quitted it or retreated from it as far as was practicable.”

2.6.4. The Imminence of the Attack

As Leverick points out, the question of whether the accused has a duty to retreat before killing in self-defence is one that has long troubled the law.⁶⁵ It has been stated that restricting rights of self-defence to pure defensive retaliation could effectively condemn some innocent persons to death or other injury. In certain limited circumstances, the law must permit the right to strike first. As Lord Griffiths posited, a man about to be attacked does not have to wait for his assailant to strike the first blow or fire the first shot, circumstances may justify a pre-emptive strike.⁶⁶ Considering the perfidious nature of man, the problem however lies in defining the parameters of such a right. Granting too much anticipatory defensive action could become a charter for vigilantism. Under section 63 of the Nigerian Penal Code, there is no right of private defence where the victim of an assault can have recourse to the protection of public authorities. Whether or not a victim of an unprovoked assault has a reasonable time to have recourse to public authorities as required by this section is a question of fact. It must be observed that this section of the Penal Code is more likely to be complied with in the breach as the public authorities are in no position to guarantee the safety of the citizenry of this country⁶⁷.

⁶⁵ Fiona Leverick *Killing in Self-Defence* (Oxford University Press, 2007) at 69.

⁶⁶ *R v. Beckford* (1988) IAC 130 at page 144

⁶⁷ A F Oluropo, 'An Examination of the Right of Self-Defence and Others in Nigeria' (2014) 28 *Journal of Law, Policy and Globalization* 164.

2.7. Defence of Property

Section 287, Criminal Code, goes further, justifying not only the defence of person but also property. The rationale is vividly illustrated in a plethora of cases where the court has upheld acquittal for an act of force compulsorily used to eject a trespasser, provided such force was not excessive. This dovetails with the Penal Code's provision delivering protection for acts "performed in good faith for benefit." Defence of property can be divided into two types; defence of personal property and defence of dwelling houses.⁶⁸ While many people might not consider the preservation of property sufficiently important to warrant taking a human life, on the other hand, a person's dwelling house is considered a place of refuge, a place of safety, and there should be no limitation on the force which a person may use to protect the place where a person resides. Accordingly, section 289⁶⁹ provides that:

"It is lawful for any person who is in peaceable possession of any moveable property, and for any person acting by his authority, to use such force as is reasonable necessary in order to resist the taking of such property by a trespasser, or in order to retake it from the trespasser, provided that he does not do harm to the trespasser."

However, Section 282⁷⁰ then provides that:

⁶⁸ Law Reform Commission, *Defences in Criminal Law* (LRC 95-2009, Dublin: Law Reform Commission, 2009) 40

⁶⁹ Criminal Code CAP C38 LFN 2004

⁷⁰ *Ibid*

“It is lawful for any person who is in peaceable possession of a dwelling house and for any person lawfully assisting him or acting by his authority, to use such force as he believes on reasonable grounds, to be necessary in order to prevent the forcible breaking and entering of the dwelling house either by night or day, by any person whom he believes on reasonable grounds, to be attempting to break and enter the dwelling-house with intent to commit a felony or a misdemeanour therein.”

Thus, in *Okonkwo v. The State*⁷¹, the appellant and 3 others were charged with murder contrary to section 274 of the Criminal Code of Anambra State. The appellant claimed that on that fateful day, while he was returning from his in-laws place where he had gone to pay dowry on his wife, he met the 1st accused, his brother, in his residence fighting to recover a machete from the deceased who invaded their house at midnight, apparently to commit felony. In considering the appeal and reversing the decision of the trial court, the Court of Appeal considered the provisions of section 45 of the Criminal Code of Anambra State which provides thus: “It is lawful for any person who is in peaceable possession of a dwelling house, and for any person to use such force as he believes, on reasonable ground to be necessary in order to prevent the forcible breaking and entering of the dwelling house, either by night or day, by any person whom he believes, on reasonable grounds, to be attempting to break and enter the dwelling house with intent to commit felony or misdemeanour therein”. It was held that the person will not be criminally responsible for the use of such force as is reasonably necessary for his preservation even though such force may result in death or grievous harm. Commenting on the case, Akpabio JCA stated as follows: “It is my respectful view that it was natural and in fact commendable for the appellant to have gone in aid of his junior brother immediately he came back and was told

⁷¹ (1998) 4 NWLR (Pt. 544) 142

(whether rightly or wrongly) that armed robbers invaded their house and that one of them was engaging in combat with his junior brother with a dagger. In the instant case, it is undisputed that the deceased was found in the premises of the appellant and his brother at such an unholy hour as midnight or near it, with a dagger in his hand. He was reasonably suspected to have been there for an illegal purpose, and therefore apprehended and beaten up. I therefore consider that the force used against the deceased was reasonably necessary in the circumstances. Under the circumstances the appellant is entitled to an acquittal and a discharge...” Also, in *R v Ebi*⁷², on a charge of murder, it was held that the accused was entitled to be acquitted on grounds that the killing was justifiable in defence of his property against the felonious attempt to destroy it after he shot someone from the rioting crowd from which stones were thrown to destroy his “almost completed very nice building.”

Nevertheless, by virtue of the above, one is right to conclude with the judicial authorities that, the law permitting the use of the right to private defence is tantamount to what may be called "a give and take", as it gives on one hand, and completely takes away with the other hand, by imposing restrictions on the use of the right. In view of that, Okonkwo and Naish⁷³ submit that the effect of these provisions is obscure since in many cases, a person cannot defend his property effectively without causing any harm, however trivial, to the person from whom he defends it. Ergo, where lethal defensive force is permissible in order to protect personal property the threat must be accompanied by a threat of “serious bodily injury”

⁷² (1936) 3 WACA 36,

⁷³ Criminal Law in Nigeria, (3rd ed, Ibadan, Spectrum Books Ltd. 2018) 239.

2.8. Defence of Another

The law not only justifies self-preservation but extends its benevolent aegis to the defence of others. In *R v. Duffy*⁷⁴, it was held that a woman would be justified in using reasonable force when it was necessary to do so in defence of her sister, not because they were sisters, but because “there is a general liberty as between strangers to prevent a felony.” Under Section 288 of the Nigerian Criminal Code, whenever it is lawful for any person to use force in any degree for the purpose of defending himself against an assault, it is lawful for any other person acting in good faith in his aid to use a like degree of force for the purpose of defending such first-mentioned person. In *State v. Agbo*⁷⁵, the court held that this defence availed the accused, who having observed the deceased inflicted a fatal machete cut on one of the accused person’s son’s and cut the other on the knee with the machete, snatched the machete from the deceased and killed him. Similarly, in *State v Okojie*⁷⁶, a policeman who shot and killed a mad man who, armed with a machete, had gone berserk and attacked people injuring them was held protected. Under Section 60 (a) of the Nigerian Penal Code, every person has a right to defend his own body, and the body of any other person against any offence affecting the human body. If however, the assistance occurs when the assault has ceased, a defence under these sections will fail for if the assault has ceased when he retaliates, his conduct is revenge and not defence⁷⁷

⁷⁴ (1966) 1 All ER P. 62

⁷⁵ (1963) 3 ECSLR P. 4

⁷⁶ Charge No HAU/16C/76 (High Court, Auchi, Unreported)

⁷⁷ Okonkwo & Naish Criminal Law in Nigeria, (3rd ed, Ibadan, Spectrum Books Ltd. 2018) 237.

2.9. Lawful Correction and Parental Authority

Statutes acknowledge the legitimacy of measured correction. Section 295 of the Criminal Code justifies the exercise of “reasonable” chastisement by parents or teachers and other individuals so authorized by the former. It provides that a blow or other force, not in any case extending to a wound or grievous harm, may be justified for the purpose of correction. This section also extends to the use of such force by the father or mother⁷⁸ or anyone who ever they so delegate⁷⁹ to inflict such correction on the child or ward being under sixteen years of age. The provision of this defence serves to counteract the effect of Section 34(1) (a)⁸⁰ providing that no person shall be subject to torture or to inhuman or degrading treatment. However, Subsection 6⁸¹ provides that no correction can be justified which is unreasonable in degree as regards the age and physical and mental condition of the person on whom it is inflicted; and no such correction can be justified in the case of a person who, by reasons of tender years or otherwise, is incapable of understanding the purpose for which it is inflicted.

The penal code takes it a notch further where it justifies the acts of the husband in inflicting similar corrections on the wife by means of force provided it is meant for her lawful correction.⁸² This should be considered in relation to the prevalent cultural idiosyncrasy here in Nigeria that it

⁷⁸ Criminal Code CAP C38 LFN 2004 section 295 (1)

⁷⁹ *Ibid* 295 (4)

⁸⁰ Constitution of the Federal Republic of Nigeria 1999

⁸¹ Criminal Code CAP C38 LFN 2004

⁸² Section 55 (1) (d) Penal Code

is socially acceptable to hit a woman as a disciplinary measure.⁸³ Nonetheless, the law makes room for penal sanctions where this force grossly breaches her veil of modesty or amounts to an indecent assault.⁸⁴

2.10. Prevention of Crime and Public Duty

Public and private persons may be justified under Section 272 of the Criminal Code, for acting to prevent the commission of a crime. However the proviso of this section is to the effect that such force used by the accused must not have been intended or likely to cause harm. Under Section 273 of the Code, when a person has lawfully arrested another, it is lawful for him to use such force as he believes to be reasonable necessary to prevent the escape or rescue of the arrested person. But such an act of the offender must be such that may be arrested without warrant for the use of force likely to or intended to cause grievous bodily harm to be used. The legal regime of Section 261 is to the effect that it is lawful for a person engaged in lawful arrestor making an arrest or any person so helping him, to use such force as may be reasonably necessary to overcome any force used in resisting such execution or arrest.

The legal rivers of Section 261 and 272 may flow in same path, but they do not mix. This is so for under the latter section, if the individual has not been arrested,⁸⁵ but there is merely an

⁸³ Ruby Leo, 'Cultural beliefs fuel domestic violence' (Daily Trust, 26 September 2013, archived). Available at: <https://web.archive.org/web/20130926055417/http://dailytrust.info/index.php/home-front/270-cultural-beliefs-fuel-domestic-violence>. Accessed 5 August 2025.

⁸⁴ Criminal Code section 360; Penal Code section 268

⁸⁵ Details of what constitutes an arrest is contained in Administration of Criminal Justice Act, ss. 3-5

attempt to arrest him and he takes to flight without using force in resistance, then it is unlawful to kill him. However, the former is to the effect that, if he uses force to resist the arrest, then the private person is entitled to use reasonable force to overcome the resistance and may kill⁸⁶. This should be contrasted in light of the courts dictum that a person who in the night finds another in the act of committing a felony is entitled to use such force as may be necessary to apprehend the felon even to the extent of killing him in order to prevent his escape⁸⁷.

It is suggested that the position of the law can then be summarized as thus: whenever there is a deliberate killing of a thief who is not using force to resist arrest or who is not trying to escape arrest, the offence is murder. But, in circumstances where the law allows a person to use force in arresting a thief or in preventing his escape from arrest, then if the person uses force in excess of that permitted by law and causes death, the offence ought to be manslaughter.

2.11. Necessity

As regards necessity, the dictum of the English writer Glanville Williams is most apt as it captures the complexity involved when he noted that the peculiarity of necessity as a doctrine of law is the difficulty or impossibility of formulating it with any approach to precision⁸⁸. Necessity ergo, sits at the fertile crossroads of philosophy and law. Ashworth has commented that “the development of duress and necessity in the common law has been characterised by the interplay

⁸⁶ Okonkwo (n77) 241.

⁸⁷ *Udo Ndo v R* (1953) 14 W.A.C.A. 352

⁸⁸ Williams Textbook of Criminal Law (2nd ed, Stevens & Sons 1983) at 728.

of reasons of excuse and justification, and by the conflicts between recognising the pressure to which the defendant was subject to and upholding the rights of the victims of the attack.”⁸⁹

Necessity involves a choice of evils; where the accused person deems it necessary to choose the outlawed evil in order to avoid a greater evil or fulfil a human duty⁹⁰. The defendant argues that although the crime was committed with the required *actus reus* and *mens rea*, the crime committed was a necessary action: it was a situation of emergency (involving perceived danger). Since in homicide cases the defence of necessity demands an assessment of the relative worth of human lives, an issue inconsistent with the idea that life has sacred, irreducible value, it is scarcely orthodox to address necessity without reference to *R v Dudley and Stephens*.⁹¹ Facts reveal that the two defendants, a 17 year old boy and another man were in an open lifeboat after being shipwrecked from the *Mignonette*. They had been in the lifeboat for a period of 18 days without any food and the water supplies had run out. The two accused decided that, in order to survive, they had to murder the 17 year old boy (who at this stage was very weak) and eat his flesh, they were subsequently charged with murder. In his judgement, Lord Coleridge, held that necessity is no defence to murder; no defence of necessity is available in a case of taking another person’s life. The decision of the court must be considered in light of *Re A (children)*⁹² where the English Court of Appeal relied on the defence of necessity to hold that it would be permissible for doctors to separate conjoined twins in the knowledge that the operation would kill the more vulnerable of the two (an act that was deemed to satisfy the definition of murder). This makes

⁸⁹ Ashworth (n32) 219.

⁹⁰ Charleton and others, *Criminal Law* (Butterworths 1999) 1075.

⁹¹ (1884) 14 QBD 273.

⁹² (2000) 4 All ER 961.

unsurprising the criticisms that *Dudley and Stephens* has encountered for as Simpson points out the reasoning in the case reflects the view of the judicial function which is no longer widely accepted, that of laying down morally correct standards of behaviour.⁹³ Accordingly, in *United States v Holmes*⁹⁴, Baldwin CJ in his direction to the jury accepted that the taking of another's life may be necessary if the person was in circumstances of imperious necessity. Holmes, similar to Dudley, concerned a shipwreck case involving the necessity of life and death decision. Summarily, since it is clear from case law that certain cases where the defence of necessity has been raised the conduct has been seen to be justified while others excused. Thus it is necessary to recognise the differentiating factors. It is suggested that, if the accused asserts a claim that his or her conduct prevented a greater harm or a greater evil, his or her actions should be seen as justified. On the other hand, in a situation where a defendant is seen to be constrained by extreme circumstances, it is seen as an excusatory defence.

2.12. Statutory and Judicial Landscape: Comparative Insights

2.12.1. Nigerian Constitutional and Statutory Framework

A critical survey reveals no shortage of statutory compass points. Section 33(2)⁹⁵, lays the constitutional bedrock for justified homicide when used as “such force as is reasonably necessary” in self-defence, preventing crime, or effecting lawful arrest. The intertwine of the

⁹³ Simpson Cannibalism and the Common Law (University of Chicago Press, 1984).

⁹⁴ 26 F. Cas. 360 (C.C.E.D. Pa. 1842) (No. 15,383) [Third Circuit]

⁹⁵ n29 Constitution

Penal and Criminal Codes, administrative statutes, as well as secondary authorities create a layered fortification for justification defences. In legal praxis, the courts have provided guiding interpretations to the multiplicity of legislative designs tailored to ensure individual autonomy while fortifying society's interest.

2.12.2. Comparative Illuminations

An instructive journey into comparative law reveals both convergence and divergence. In the celebrated U.S. Court case of *Holmes*⁹⁶, the court interpreted “reasonable belief” for self-defence, imported, with necessary modification, into Nigerian doctrine. English law's strict prescription is exemplified in *R v. Gladstone Williams*⁹⁷, whose didactic principles has found soft echoes in Nigerian courts. The South African case of *S v. Goliath*⁹⁸ provides an African parallel, recognizing necessity as a strict, but sometimes invincible justification.

2.13. Limits and Critiques of Justification Defences

No doctrine is without fissure. Justification defences, while protective, are not infinite; they succumb to reasonableness, proportionality, and the value of human life. Judicial reluctance to indiscriminately admit necessity is evident in a myriad of occurrences, where the court has

⁹⁶ n94

⁹⁷ (1984) 78 Cr.App.R.276.

⁹⁸ 1972 (3) SA 1 (A) 22E

warned against a Pandora's Box of lawlessness. Critics also spotlight the risk of vigilantism, urging judicial vigilance and statutory sedation to prevent anarchy under the guise of justification⁹⁹.

2.14. Conclusion

The architecture of justification is a magnificent cathedral, constructed from laws, cases, social currents, and the very essence of justice itself. It balances the sword and the shield: authorizing rare acts as lawful, so long as they serve higher order and the public good, while unfailingly warning against their abuse. Through judicial and statutory statements, the structure of justification continues to evolve, sculpting the future contours of justice in Nigeria and beyond.

To reiterate, a justificatory defence suggests that the conduct of the defendant was rightful in the eyes of society; whereas an excusatory defence is still considered wrong, but the circumstances dictate that it would be unjust to punish the defendant. Accordingly, justifications arise where the harm is outweighed by the need to avoid an even greater harm or further a greater societal interest such as starting a fire to serve as a fire break and save the lives of a town¹⁰⁰

⁹⁹ n93

¹⁰⁰ Robinson "Criminal Law Defences: A Systematic Analysis" (1982) Columbia Law Review Vol. 82 No.2 199-291 at 213

CHAPTER THREE

STATUTORY ENACTMENTS, JUDICIAL INTERPRETATION AND THE APPLICATION OF EXCUSE DEFENCES.

3.1. Introduction

It is the concession that law is written for mortals, not angels- for mortal beings are beset by mental infirmities, sudden terrors, honest mistakes and compulsions that may overwhelm the will¹⁰¹. If then justification is the law's *salutation* to necessity, then excuse is its *benediction* to frailty. As far as criminal jurisprudence is concerned, the architecture of excuse stands as a profound counterpoint to justification, as it merges the lines of human frailty with psychological complexity and moral divergence. Excuse defences do not claim that the act was lawful or justified. Rather, they recognize the act as wrongful but nonetheless mitigate the blameworthiness of the actor under specific conditions of impairment or compulsion. It serves as the solemn recognition that while an act is wrongful in the legal and or moral sense, the actor's capacity to abide by the dictates of the law was blurred and hampered on by virtue of infirmity, compulsion, ignorance, or even incapacity that is so grave so that to circumscribe blame on the actor becomes an injustice. It will be most plausible to note that the excusatory doctrine neither sanctifies the conduct nor erases its wrongness. However, it acknowledges that, to punish under such conditions, would breach the very principles upon which the pillars of justice rests. Accordingly, this chapter takes a meticulous but human excavation of the excuse defence

¹⁰¹ Per Justice Obaseki, "Man is fallible and so are his thoughts... [So] laws are made for man not man for laws. *Odi v Osafile* (1985) 1 NWLR (pt. 1) 17.

landscape while illuminating its theoretical foundations, statutory mandates, and judicial articulations within the Nigerian context and beyond. Deliberately, this chapter draws from scholarly insights, a multiplicity of judicial pronouncements, statutory provisions and contemporary views on excuse defences so as to reveal the dialogue between culpability and compassion. As the chapter unfolds, light is drawn to the delicate balance held by these defences in a bid to maintain justice, mercy and societal order.

3.2. Conceptual Theories and Philosophical Understanding of Excuse

Excuse in criminal law fundamentally rests on the acknowledgement that although an act is wrongful, the individual's moral and legal culpability is diminished and perhaps negated due to surrounding circumstances. Unlike justification which affirms the rightness of action, excuse acknowledges the wrongfulness of the act but softens moral and legal responsibility for it.

This doctrinal distinction emanates from a broader moral philosophy that has been championed over ages by a plurality thinkers like Aristotle and Kant, who wrestled with questions of moral responsibility and human imperfection. Aristotle's notion of *akrasia*, that acting against one's better judgment due to weakness of will, gestures towards early recognition that not all wrongful acts reflect full blameworthiness.¹⁰² Hence, excuse doctrines are deeply entrenched in the principles of moral philosophy, balancing societal interest in deterrence and retribution against compassion for human limitations. Contemporary legal theory, as elucidated by Antony Duff,

¹⁰² Aristotle, *Nicomachean Ethics*, translated by Terrence Irwin (Indianapolis: Hackett Publishing Company, 1999).

contends that excuse serves as a recognition that certain limitations on the actor's control over their conduct diminish their accountability¹⁰³.

This is not to glorify wrongdoing but to humanize adjudication by incorporating factors that inhibit autonomy or volition. For as Fletcher posits, claims of excuse concede that the act is wrongful, but seeks to avoid the attribution of the act to the actor¹⁰⁴. The scholarly work of Michael Moore¹⁰⁵ further clarifies the concept by differentiating excuse from justification; excuse accepts the wrongful nature of the deed but argues the actor's responsibility is excused or reduced due to conditions such as duress or mental incapacity. The interplay between culpability and capacity forms the ethical core of excuse analyses, where the actor's mental or volitional impairment disentangles their legal blameworthiness from their moral wrongdoing.

From a statutory perspective, many jurisdictions have embed excuse within explicit provisions, premised on fairness and proportionality principles that law must temper strict liability with empathy for human vulnerabilities. For instance, section 51 of the Penal Code is to the effect that nothing is an offence which is done by a person who at the time of doing it, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law. Thus, excuse is not mere leniency but a robust legal conduit for varied moral assessment and a culvert

¹⁰³ Anthony Duff, *Intention, Agency and Criminal Liability: Philosophy of Action and the Criminal Law* (Oxford: Blackwell, 1990)

¹⁰⁴ Fletcher *Rethinking Criminal Law* (Boston: Little Brown, 1978) 759.

¹⁰⁵ Michael S Moore, *Act and Crime: The Philosophy of Action and its Implications for Criminal Law* (Oxford University Press 1993).

ensuring that punishment aligns with the actor's actual blameworthiness flows towards societal interests in justice.

3.3. Taxonomy of Excuse Defences under the Nigerian Criminal Law

The taxonomy of excuses in Nigerian criminal law shows a complex legal picture where justice meets the real challenges of being human. It is more than just a mere classification; it reflects the law's understanding of human weaknesses and moral questions. These excuses find the tricky line between blame and forgiveness, recognizing circumstances when bad actions happen due to lack of control, whether through mental issues, involuntary actions, pressure, or being young. Accordingly, this methodology protects society while also making sure punishment does not become too harsh, thus, achieving the aim of the law through a splash of mercy¹⁰⁶. A closer look at each type, will reveal the ongoing struggle between accountability and kindness, revealing a rich tapestry of legal thought and human feelings.

3.4. Insanity and Mental Incapacity

The defence of insanity remains the most venerable excuse doctrine. Although insanity is a defence to criminal liability, it must however be proved that at the time of the commission of the alleged offence, the accused person was, in fact, insane, a condition which deprives him of

¹⁰⁶ Over-severe punishment offends most people's sense of justice. Okonkwo and Naish, *Criminal Law in Nigeria*, (3rd ed, Ibadan, Spectrum Books Ltd. 2018) 34.

knowing what he was doing¹⁰⁷. That is, the time the question of insanity comes into effect is not prior to but during the commission of the offence. This is necessary because, under the law, every person is presumed to be sane until the contrary is proved¹⁰⁸.

Insanity may be referred to as any mental disorder severe enough that it prevents a person from having legal capacity and excuses the person from criminal or civil responsibility¹⁰⁹

Verbosely, the Merriam Webster's Dictionary¹¹⁰ defined insanity thus: unsoundness of mind or lack of the ability to understand that prevents one from having the mental capacity required by law to enter into a particular relationship, status, or transaction or that releases one from criminal or civil responsibility.

The defence of insanity is statutorily anchored in the criminal and penal codes with Sections 27 and 28 of the Nigerian Criminal Code as well as Section 51 playing pivotal roles. The first ambit of section 28 of the Criminal Code reads as follows:

“A person is not criminally liable for an act or omission if at the time of doing the act or making the omission he is in such a state of mental disease or natural mental infirmity as to deprive him of capacity to understand what he is doing, or of capacity to control his actions, or of capacity to know that he ought not to do the action or make the omission”.

¹⁰⁷ Atsegu L and others, Criminal Law in Nigeria: A Modern Approach (Malthouse Press Ltd, Lagos 2021)

¹⁰⁸ Criminal Code s. 27

¹⁰⁹ Blacks Law Dictionary 8th ed.

¹¹⁰ (Available online at <https://www.merriam-webster.com/dictionary/insanity>)

The provisions of both the Criminal code and the Penal Code, are such that each requires proof that at the time of the act, the accused was in a state of mental disease or infirmity so as to deprive them of understanding or control. It serves to shield those who, “by reason of unsoundness of mind,” or “natural mental infirmity” could not appreciate the nature or wrongfulness of their acts.

The excuse of insanity to has also been judicially elaborated in a fusillade of landmark cases such as *Guobadia v State*¹¹¹, where it was held that it is not every form of mental disorder that can relieve an accused person from criminal liability. And also with persuasive authority simply that an accused is not criminally responsible if his unlawful act was the product of mental disease or mental defect.

This defence negates criminal responsibility where the accused, by reason of a mental disease or defect, lacked the capacity to understand the nature or wrongfulness of the act. The M'Naghten Rules, adopted and adapted within Nigerian courts, mandate a rigorous inquiry into cognitive and volitional capacity at the time of the offence. Excuse for insanity accordingly, is grounded in the recognition that mental illness fundamentally disrupts the cognitive and volitional capacities necessary for criminal responsibility.

¹¹¹ (2004) 6 NWLR (pt. 869) 360

3.4.1. Inability to Make a Defence

It is incumbent upon the court to make a finding thereon to ascertain, if it suspects, whether before the commencement or during the course of trial that an accused is of unsound mind and unable to make his defence.¹¹² This is done by taking such medical evidence as required.

However, if there is a certification from a medical officer that the accused is of sound mind and capable of making his defence, the court shall, unless satisfied by the defence that the accused person made is of unsound mind, proceed with the trial. But if the medical officer certifies that the accused cannot make his defence and the court is satisfied by that certification, the judge may release the accused on bail or report the matter to the Governor or President who may order the accused to be remanded in custody.¹¹³ If the accused is later certified to be capable of making his defence then the trial may proceed.

It will be most plausible to note that in the English case of *R v. Podola*,¹¹⁴ it was held that a mere hysterical amnesia that prevented the accused from remembering the events in question was not an adequate enough a reason to stay with the proceedings.

¹¹² *R v Ogor* (1961) 1 All NLR 70.

¹¹³ *Okonkwo and Naish* (n106) 142-143

¹¹⁴ (1960) 1 QB 325.

3.4.2. Natural Mental Disease or Infirmary

In light of the use of the term ‘mental disease’ in the statute without further explanation, a Niagara of decisions in insanity cases are surrendered to psychiatric experts. This is in turn a conundrum in legal ambience. As Judge Burger¹¹⁵ would posit, these factors demonstrate that a term such as ‘disease’ which has no fixed or accepted definition, is a tenuous and dangerously vague term to be a critical part of a rule of law on criminal responsibility. It becomes quite obvious why statutory enactment not only makes mention of mental disease but also of natural mental infirmity simply to dilate the provision to in a bid to capture a sphere farther than “mental disease”.

Accordingly, the West African Court of Appeal¹¹⁶, adopting a passage from Stephen’s Digest of Criminal Law defined “natural mental infirmity” as “a defect in mental power neither produced by his own fault nor the result of the disease of his mind”.

The Supreme Court adopted this definition in *R v. Tabigen*¹¹⁷, holding that a defect in mental power is not equivalent merely to inability to master the passions. The court took the view that although the fact that an accused person was in the grip of a strong passion may be relevant in determining whether he had capacity of self-control, this question would arise only after his mental disease or natural mental infirmity had been proved.

¹¹⁵ *Blocker v US* 288 F.2d 853 (DC Cir. 1961).

¹¹⁶ *R v Omoni* (1949) 12 WACA 511.

¹¹⁷ (1960) 5 FSC 8.

3.4.3. Self-Induced Insanity

It is trite that the provision of the law permitting for the defence of insanity to dilute culpability is that such insanity must have been “natural”. Ipso facto, as regards the “natural” in the mental infirmity, it was held in Omoni’s case¹¹⁸ that the defect in mental power must not be produced by the accused’s own default. Accordingly, in *R v Alice Eriyamremu*¹¹⁹, a case of filicide, the accused who had killed her albino daughter, ascribed her own conduct to the dictates of her confederates in witchcraft. Morgan J, held that even if she was afflicted with mental infirmity at the time she killed the girl, yet on the balance of probability, the infirmity was not natural but was induced by her worship of juju and or witchcraft.

It is submitted that the exact extent of this self-induced insanity is a tad murky as it certainly does not apply to mental disease. Okonkwo and Naish are of the opinion that it certainly does not apply to mental diseases. A mental disease which is self-induced (Perhaps) produced and continued by excessive drinking, can still constitute insanity for the purpose of negating criminal responsibility¹²⁰.

3.4.4. Insane Delusion

The Black’s Law Dictionary defines insane delusion to mean a conception of a disordered mind which imagines fact to exist of which there is no evidence and belief in which is adhered to

¹¹⁸ *Omoni* (n116)

¹¹⁹ (1959) WRNLR 270.

¹²⁰ Okonkwo and Naish (n106) 146.

against all evidence and arguments to the contrary and which cannot be accounted for on any reasonable hypothesis. Delusion is a false belief or impression but in a psychological sense it is a symptom or form of mental disorder.¹²¹

The second ambit of section 28 of the Criminal Code underscores the fickleness of insane delusion where it provides in part that:

A person whose mind, at the time of doing or omitting to do an act, is affected by delusions on some specific matter or matters, but who is not otherwise entitled to the benefit of the foregoing provisions of this section, is criminally responsible for the actor omission to the same extent as if he the real state of things had been such as he was induced by the delusions to believe to exist.

By the provision of the second limb of section 28 of the Criminal code, a person whose mind is affected by delusions as at the time of the commission of a crime but is not entitled to the benefit of the first limb of section 28 of the Criminal Code, a person whose mind is affected by delusions as at the time of the commission of a crime but is not entitled to the benefit of the first limb of the said section is criminally responsible for his act or omission. In other words, a plea of delusion alone cannot excuse criminal liability.

Accordingly, the Supreme Court has held that before a person can rely on this defence he must be able to show that he is entitled to the benefit of the first part of section 28 of the Criminal

¹²¹ The Concise Oxford Dictionary, op. cit., at page 367.

Code¹²². The fact of the *Yusuf's case*¹²³ revealed that the appellant was charged with murder of his wife. He had gone to the farm with the deceased and while returning home there was an argument between them. The wife threatened to report him to her father over the subject matter of the argument. The husband pleaded with her but she refused his plea. Then he then pounced on her and in the process, inflicted grievous harm on her. The deceased later bled to death from the injuries sustained from the attack. At trial, the accused person raised the defence of unsoundness of mind and delusion. He made known in his defence alleging that he saw a bear that jumped on him and that it was after the act that he realized that he had killed his wife. At the trial, two witnesses gave evidence of his long history of mental illness. A native doctor who once treated him also testified. Rejecting this plea, the trial court held that he knew what he was doing; that he killed his wife because of what she said. His appeal to the Court of Appeal and the Supreme Court were also dismissed. The Apex court, applying section 28 of the Criminal Code, held that before a person can rely on delusion under the second ambit of section 28, he must have satisfied the requirements of the first part, that is, the delusion must have resulted in unsoundness of mind. The court further held that before a person can rely on insanity as a defence, the ingredients listed in the first part of the said section 28 must be established. His Lordship, Obaseki J.S.C., (as he then was) noted thus:

“While insanity encompasses delusion, delusion does not encompass insanity. Where a defence of insanity exists, a defence of delusion cannot arise for consideration. It is subsumed according to section 28 of the Criminal Code. A defence of delusion arises only

¹²² *Yusuf v. State* (1988) 4 NWLR (pt. 86) 96.

¹²³ *Ibid*

when the defence of insanity is not available to the accused. There is no doubt that the basic cause of insanity and delusion is a disease of the mind. Hence, the two defences have been properly treated and dealt with in the same section. But the degree of illness of the mind in insanity is definitely severer than the degree of illness in delusion”

Similarly, insane delusion was carefully considered in *Akhidime v The state*¹²⁴ facts of which showed that the appellant killed his brother claiming that he acted in a dream state, in the belief that he was defending himself from people beating him and asking him to leave the house. It was held that an insane delusion is a belief based on the figment of the accused person's imagination for which there is no reasonable foundation and which is ordinary incredible to a sane person. In a defence based on delusions, the court is not dealing with reality. It is dealing with an imaginary state, a state of fantasy, a state of mistaken belief¹²⁵.

3.4.5. The Burden of and Means of Proving Insanity

It is trite law that an accused relying on the defence of insanity to a criminal act is saddled with the burden of adducing evidence that, at the time of the commission of the offence, he was afflicted by insanity by reason of which any of the specified capacity was impaired. Ultimately, whether it is at the time of the commission of a crime that the accused claims to have been afflicted by the mental illness or a case of natural mental infirmity depriving him of such capacity as required by Section 28 of the Criminal Code, is indeed a matter of fact, the proof of

¹²⁴ (1984) NSCC 588

¹²⁵ (n107) 282

which depends on the precise circumstance of each case. While section 159 of the Evidence Act provides that an accused is always a competent witness for the defence, a plethora of instances reveal that an accused person is scarcely able to achieve an acquittal through his sole testimony.

That was why, the court in *R v Omoni*¹²⁶ rejected the defence of insanity raised by the accused person since the only evidence in support of the defence was his statement that he could not control his actions. This spirals the need for other sources to buttress the accused's plea in order to ground an acquittal.

One of such means of proving insanity is through the testimony of the accused relatives. Evidence from relatives and or friends is admissible to establish a defence of insanity. In *Ashigifuwo's case*¹²⁷, the court gave credence to testimony of relations who testified that the accused had been insane on earlier occasions and thus been given medicine to facilitate improvement of his condition. Similarly, in the case of *Edoho v State*¹²⁸, the Supreme Court held that "it needs to be borne in mind that the evidence of insanity of the accused's ancestors or blood relations is admissible, but medical evidence, though probative, is not essential".

The burden of establishing a defence on the ground of insanity rests on the accused person and the burden shall be deemed to be discharged if the court is satisfied by evidence including evidence given by the prosecution whether on cross examination or otherwise, that such circumstance in fact existed.

¹²⁶ n116

¹²⁷ *R v Ashigifuwo* (1948) 12 WACA, 389

¹²⁸ (2010) All FWLR (Pt. 530) 1262 SC

Summarily, the words of the court in *Guobadia v State*¹²⁹ is apt when it held that, ‘the standard of proof required of the accused in a case of insanity is however, proof on the balance of probability or preponderance of evidence and not proof beyond reasonable doubt’.

3.5. Provocation

The defence of provocation involves a violent response to provocative actions or words, and assumes that an ordinary person would lose self-control in that setting¹³⁰.

Black's Law Dictionary (8th ed. 2004) provides the following definition of provocation: "The act of inciting another to do something, especially to commit a crime. Something (such as words or actions) that affects a person's reason and self-control, especially causing the person to commit a crime impulsively."

The Supreme Court of Nigeria has even defined provocation as “the act of inciting another to do a particular deed.”¹³¹ It is line with this reasoning that the court held in *R v Duffy*¹³², that provocation is an act or series of acts done by one person to another which can cause in a reasonable person and actually in another a sudden and temporary loss of self-control rendering him so subject to passion as to make him for the moment not master of his mind.

¹²⁹ (n111)

¹³⁰ Law Reform Commission, *Defences in Criminal Law* (LRC 95-2009, Dublin: Law Reform Commission, 2009) 6

¹³¹ *Gambo Musa V. The State* [2009] 15 NWLR pt. 1165 at P. 475

¹³² (1949) 1 All ER 932.

Provocation is statutorily embellished in section 222(1) of the Nigeria Penal Code extenuating that Culpable homicide is not punishable with death if the offender whilst deprived of the power of self-control by grave and sudden provocation causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.

As regards the Criminal Code, Section 283 provides provocation to:

“include any wrongful act or insult of such a nature as to be likely, when done to an ordinary person, or in the presence of an ordinary person to another person who is under his immediate care, or to whom he stands in a conjugal, parental, filial, or fraternal, relation or in a relation of master or servant, to deprive him of the power of self-control, and to induce him to assault the person by whom the act or insult is done or offered”.

Section 284 of the Criminal Code further emphatically declares provocation as a defence to criminal liability by stating that:

“A person is not criminally responsible for an assault, committed upon a person who gives him provocation for the assault, if he is in fact deprived by the provocation of the power of self-control, and acts upon it on the sudden and before there is time for his passion to cool; provided that the force used is not disproportionate to the provocation, and is not intended, and is not such as is likely to cause death or grievous harm”

While it is submitted that the Nigerian Penal Code does not attempt to define what provocation is but merely tell us what provocation does, the criminal code also is not devoid of fault as it defines provocation as including any wrongful act or insult. The use of the word

“wrongful” act is not a legal term in the sense that an act may be wrongful even though it does not give rise to any criminal or civil liability.

3.5.1. Components of Provocation Defence Successful Plea

Okonkwo and Naish¹³³, have listed the following as prerequisites for a successful plea for the defence of provocation and they include:

- a. Provocation which causes reasonable man to lose his self-control
- b. Loss of self-control leading to retaliation must have been in the heat of passion
- c. Retaliation must be directed at the provocateur for provocation to accused or his relation
- d. The wrongful act must have been offered in the presence of the offender; i.e. Killing must have involved an assault
- e. Resentment must be proportional to the provocation offered: The retaliatory act must pass the proportional test

Accordingly, these elements predicating a successful plea of provocation will be considered in turn.

¹³³ Okonkwo (n106) 255-263

3.5.2. Provocation Which Causes Reasonable Man to Lose His Self-Control

The legal regime postulates that for an act however wrongful to be deemed provocative, it must be grave as to cause a reasonable man to lose his self-control. The commonly applied test is that of a reasonable man. But the jurisprudential question begs, who exactly is the reasonable man? What standard is employed in ascertaining the reasonable man- a subjective or an objective test? In the *R v Adekanmi*¹³⁴, a reasonable man was defined as “a reasonable man in the accused person’s station in life and standard of civilization” emphasizing that “the effect it would be expected to have on a reasonable man must be taken to mean the effect it would to have on a reasonable man of the accused person’s standing in life for it would, I think, be improper to examine the question in the light of what would be sufficient provocation in the case of an educated and civilized person.” The fact of the case revealed the accused as an illiterate and primitive peasant, and it must be beyond doubt that the passions of such a type are far more readily aroused than those of a civilized and enlightened class. Being jeered as an impotent and taunted by his wife to having sexual connection with other men, the court held that it was adequate provocation to extenuate the offence from murder to manslaughter.

Similarly, in *D.P.P. v. Camplin*¹³⁵, the House of Lords took the view that in applying the reasonable man’s test the jury could take into account everything, including the physical peculiarities of the accused, such as his, colour, sex, physical and mental disabilities. In this case, a 15-year-old boy had been convicted of the murder of a man, who buggered him against his will and then laughed at him. The defence counsel urged on the trial court the need to consider not

¹³⁴ (1994) 17 NLR 99.

¹³⁵ (1954) 2 WRLR 679.

the reaction of a reasonable adult but that of a reasonable boy of the accused person's age. The plea was rejected but upon appeal to the Court of Appeal (Criminal Division), the conviction for murder was substituted for manslaughter.

3.5.3. Loss of Self-Control Leading to Retaliation Must Have Been in the Heat of Passion

The passion firstly, must have been caused by sudden provocation such as a wrongful act. And for this plea of provocation to succeed, the accused must satisfy the court that the wrongful act was done suddenly and in the heat of passion, with practically no time for passion to cool.

In *R v. Green*¹³⁶, the accused found his wife and another man having sexual intercourse in his mother-in-law's house at about 9 p.m. He returned to his own house, sad and downcast. Later, at about 1 a.m., he took a machete and ran back to his mother-in-law's house. He met his wife and her concubine chatting in a dark room. He struck twice on the bed and killed his wife. He also killed his mother-in-law who ran into the room to see what was happening. He was charged with murder but pleaded provocation. The court rejected his plea, holding that between the provocation and the killing, enough time had elapsed for his passion to cool.

However, where the provocative act is continuous, passion will not be held to have cooled down. In determining whether there has been enough cooling time, it is submitted that proper

¹³⁶ (1955) 15 WACA 73.

account must be taken as regards the provocation offered. This is so because, the more serious the provocation, the longer will be the time for the passion to cool.¹³⁷

3.5.4. Retaliation Must Be Directed at the Provocateur for Provocation to Accused or His Relation

Having established the imperativeness of the presence of a wrongful act which constitutes provocation, the act must also have been done in retaliation to the person instituting the provocation. Thus in *R v. Adekanmi*¹³⁸, the court held that it amounted to provocation for a man to see another man on top of his wife on his matrimonial bed. Similarly, the referring to a Muslim as a dog has been held in *Ruma v. Daura N.A*¹³⁹ to be provocative. If the act is done to another person who is not in any way related to the accused, then the plea of provocation will fail. A case in point is a man who sees another man on top of his friend's wife and he strikes the man with a rod from which he dies he will be guilty of murder. A different legal consequence will arise if the wrongful act is offered to a man's spouse, child or a close relative. Thus, in *R v. Harrington*¹⁴⁰, the deceased who had married the prisoner's daughter was seen by the prisoner to be beating his wife (son-in-law beating his daughter) he rushed to the deceased and struck him with a blow from which he died. The court held that the beating the accused's daughter in his presence by his son-in-law was provocative. Accordingly, was convicted of manslaughter rather

¹³⁷ *Thuku v Republic* (1965) EA 496.

¹³⁸ n134

¹³⁹ 69 (1960) 5 FSC 93.

¹⁴⁰ (1886) 10 Cox 370.

than murder. The act constituting provocation need not be overt. It could be an insult made by gestures.

Ergo, in *Bedder v. D.P.P.*¹⁴¹, the accused person invited a prostitute to his room for a sexual intercourse. After series of failed attempts, the prostitute not only jeered but kicked him causing him to lose self-control. He stabbed her twice and she died. On a charge of murder, Bedder's plea was sustained by the House of Lords. The court has however in *Camplin's case* held that the decision in Bedder's case should no longer be followed.

3.5.5. The Wrongful Act Must Have Been in The Presence of the Accused

For the defence of provocation to apply, the provocative act must be offered or done in the presence of the person who is raising this plea. Thus, where a person acts only upon the information he gathers from a third party and the acts which constitutes an offence was based on this information, the plea of provocation will not avail him. This is so for it is believed that any retaliatory act would not be in the heat of passion and the accused must have had time to cool.

Accordingly, in *Bello v. State*¹⁴², the accused was told that the deceased abused his mother's private parts. He got annoyed, took an arrow and shot the deceased. At the trial, he pleaded provocation but the court held that this plea must fail because the wrongful act which precipitated the killing was not offered in the presence of the accused person. No doubt the

¹⁴¹ (1954) 1 WRLR 1119

¹⁴² (1961) 1 All NLR 361.

decision of the court in this case would have been different if the act was done in the presence of the accused and he struck immediately thereafter.

3.5.6. Resentment Must Be Proportional to the Provocation Offered: The Retaliatory Act Must Pass the Proportionality Test

The legal regime governing provocation is that for the wrongful act to constitute provocation, it must pass the proportionality test. In other words, the retaliatory act must not be of such gravity that no reasonable man could have done it given the mild nature of the provocation offered. In *Nomad v. Bornu Native Authority*,¹⁴³ the deceased and her husband were fighting over some clothes that the latter bought for her. The deceased was about to leave her husband and wanted to go with the clothes. The deceased pushed the accused down twice. He got hold of a stick and struck the deceased twice and she died as a result of the injury she sustained. The accused person was charged with the murder of the deceased and he pleaded provocation. The court held that the provocation was slight in relation to the retaliatory act of the husband. In *R v. Adelodun*,¹⁴⁴ the accused had just lost a local council election as a result of which he was being derided through abusive songs against his family by a crowd of opponents. He got annoyed and killed one of the singers with a machete. Upon being charged with murder, he pleaded provocation but the court rejected his plea, holding that the injuries inflicted on the deceased were so severe and so many that the mode of retaliation was out of proportion to the provocation.

¹⁴³ (1954) 21 NLR 31.

¹⁴⁴ (1959) WNLR.114.

3.5.7. Is Assault a Necessary Ingredient for a Successful Plea of Provocation?

It is under the guise of proportionality and in line with the above decisions as in *Nomad's case* and *Adelodun's case*, that Okonkwo and Naish¹⁴⁵ opine that any killing in the name of provocation must have been induced by an assault. The reasoning of the above coupled with the judicial reverberations above, the requirement seem all too pivotal following a combined reading of Sections 318 and 283 of the Nigerian Criminal Code, making assault an element. This view is however slightly beside the point if a shrewd interpretation of Section 283 of the Criminal Code is applied.

The section reads inter alia that provocation includes “any wrongful act or insult of such nature” depriving an ordinary person of the power of self-control. It seems most plausible then that for provocation to be successfully pled, the wrongful act need not be limited to physical assault solely but could stem from verbal assaults like insults. This is underscored by a multiplicity of judicial readings; most notably are the cases of *Ruma* and *Adekanmi supra*. Also, it has been held that for a village wife, who was at the time five months pregnant and simultaneously nursing her seven-month-old baby to call her husband a fool when he questioned her as to who was responsible for the pregnancy, constitutes provocation¹⁴⁶.

¹⁴⁵ (n106) 263

¹⁴⁶ *State v Ufomba* (1972) ECLSR 755.

In light of the court's decision in *R V Eseno*¹⁴⁷, where it was held that a wife's refusal to prepare food for her husband is insufficient to amount to a provocative gesture or and conversely, a woman who taunts her husband with incompetence and spits in his face might have his act excused from murder to manslaughter for in primitive societies, such insults arouses more passion¹⁴⁸.

What then is the litmus test weighing the manner of verbal assault that thus warrants the killing of another? Or the conduct as in Eseno's case that becomes "sufficient"? Does it remain the reasonable man test or a subjective man test in relation to the exact case at hand?

3.6. Intoxication

Initially, as early as 1551, intoxication excuse provided no defence for a criminal offender as the court held in *Reniger v Fogossa*¹⁴⁹ that:

"If a person that is drunk kills another, this shall be a felony, and he shall be hanged for it, and yet he did it through ignorance, for when he was drunk he had no understanding nor memory; but in as much as that ignorance was occasioned by his own act and folly, he shall not be privileged thereby"

¹⁴⁷ (1960) 5 FSC 50

¹⁴⁸ *R v Igiri* (1948) 12 WACA 377

¹⁴⁹ 75 ER 1, at 31.

Even recently, courts have found reluctance despite recent statutory enactments to the contrary, excusing acts purportedly done while clothed in the cloak of intoxication. Accordingly, in the House of Lords judgement in *Attorney-General for Northern Ireland v. Gallagher*¹⁵⁰, Lord Denning bloviated that: “The wickedness of his mind before he got drunk is enough to condemn him, coupled with the act which he intended to do and did do.”

Away from this earlier positions, the law has evolved such that intoxication may provide a defence for the committal of criminal acts under some special circumstances. For as McCutcheon posits, “the law has evolved from its original stance where intoxication afforded no excuse for wrongdoing to the current position where the fact of intoxication may give rise to a number of exculpatory conditions”¹⁵¹

The categorization of intoxication as an excuse finds statutory expression in Nigerian law. However, this is delineated into involuntary versus voluntary intoxication.

The general rule is that intoxication shall not constitute a defence to any criminal charge¹⁵². It is thus unsurprising, that the Nigerian Penal code provides that a person who does an act in a state of intoxication is presumed to have the same knowledge as he would have if he had not been intoxicated¹⁵³. The hardship that accompanies the rigidity of this law, is all to grave.

¹⁵⁰ (1963) AC. 349 at 382.

¹⁵¹ Kilcommins and O'Donnell (eds) *McCutcheon, “Criminal Law and the Defence of Intoxication”* Alcohol, Society and Law (Chichester: Barry Rose Publishers Ltd) at 212.

¹⁵² Criminal Code Section 29 (1)

¹⁵³ Penal Code Section 44

Nonetheless, the accused might be exculpated from liability through a defence of involuntary intoxication.

3.6.1. Involuntary Intoxication

The Criminal Code provides a defence for any person who commits an unlawful act while intoxicated devoid of his consent by the malicious or negligent act of another person and thus being bereft of the mental capacity to ascertain that the act was wrong.¹⁵⁴

3.6.2. Voluntary Intoxication

The wording of the criminal Code on the subject of voluntary intoxication is somewhat clumsy¹⁵⁵. The effect of section 29 (2) (b) is to provide a defence of intoxication if by reason thereof: (i) “the person charged at the time of the act or omission complained of did not know that such act or omission was wrong or did not know what he was doing,” and (ii) “the person charged was by reason of intoxication insane, temporarily or otherwise at the time of such act or omission.”

If section 28 provides the meaning of “insane” in section 29 (2) (b) then it would seem that the latter section does not apply unless the intoxication is such as to have produced in the accused “a

¹⁵⁴ Criminal Code 29 (2) (a)

¹⁵⁵ (n106) 161

state of mental disease or natural mental infirmity”¹⁵⁶ (temporary or otherwise) as defined in section 28. It would therefore follow that section 29 (2) (b) does not really create any defence which is not covered by section 28, but that it merely serves to emphasise that insanity coupled with drunkenness is still insanity and that drunkenness under section 29 (2) (b) is a form of insanity. That this is the correct view of the section would appear from the approval given by the West African Court of Appeal in *R v. Owarey*¹⁵⁷ to the leading English case of *D.P.P v. Beard* in which Lord Birkenhead stated that “Insanity, whether produced by drunkenness or otherwise is a defence to the crime charged.”¹⁵⁸ *Delirium Tremens* provides a good example of drunkenness producing a mental disease. That this is a state of insanity is emphasised by the fact that an attack of delirium tremens may occur at a time of complete abstinence.

The burden of proving intoxication is on the accused person. The standard of proof is preponderance of evidence.¹⁵⁹

3.6.3. Intoxication as a Factor in Negating the Subjective Mental Element in Crime

Even if the accused’s intoxication was not such as to bring him within the provisions of the law so far discussed, it may yet have bearing on his liability. Section 29(4) provides that:

“Intoxication shall be taken into account for the purpose of determining whether the person

¹⁵⁶ Yet intoxication is not a known cause of natural mental infirmity

¹⁵⁷ (1939) 5 WACA 66.

¹⁵⁸ (1920) AC 479, at 500.

¹⁵⁹ C J Okoye Lawview & Co. “Principles of Criminal Responsibility” available at <https://cjokoyelawview.com/law-341-criminal-law-i/topic-8-principles-of-criminal-responsibility-cont-d>

charged has formed any intention, specific or otherwise, in the absence of which he would not be guilty of the offence.” In *Beard’s case*¹⁶⁰, Lord Birkenhead explained the distinction between cases where intoxication produces insanity and cases where it negates intent:

“The distinction between the defences of insanity in the true sense caused by excessive drinking, and the defence of drunkenness which produces a condition such that the drunken man’s mind becomes incapable of forming a specific intention, has been preserved throughout the cases.”

These passages must be read with caution. It might be inferred from them that in English law the prosecution will succeed if they can prove that the accused had the capacity to form intent even though he did not in fact form the intent. But section 29 (4) is quite clear that they must prove the actual intent, and the evidence of drunkenness may negative this.

Intoxication sufficient to negative intent is a question of fact in all the circumstances of the case. In *R v. Owarey*¹⁶¹, the accused was undoubtedly the worse for drink when he shot the deceased with whom he had just quarrelled. But on the evidence there was nothing which could even suggest that he was so drunk that he was incapable of forming the intent to kill. On the contrary, he loaded a gun, put spare cartridges in his pocket, searched out his enemy, aimed the gun at close range and fired at a vital spot. The clear inference was that he had formed the intent. Those facts may be contrasted with the Gold Coast case of *Kofi Mensah v. R*¹⁶² where the accused, disappointed in love, drank illicit gin, and later in the day invited the woman in question to go and pick mushrooms. On the way, they stopped at her uncle’s farm, and he drank some palm

¹⁶⁰ (1920) AC 479

¹⁶¹ (1939) 5 WACA 66.

¹⁶² (1952) 14 WACA 174

wine. He was carrying a gun when he got to the place where the mushrooms were, the drink began to affect him (according to his own evidence), and he recollected nothing more until he found himself lying beside her, covered in blood. He made an abortive attempt at suicide, and then surrendered himself.

This evidence was not disproved by the prosecution, and West African Court of Appeal quashed the conviction for murder and substituted one of manslaughter on the ground that the whole conduct of the accused negative preconceived intent and that the trial judge might have come to a different conclusion had he directed himself correctly.

Section 29 (4) is not limited to offences of specific intent, but applies to any intention in the absence of which the accused will not be guilty of an offence. And if the drunkenness is such as to negative any intent to commit any particular act at all –e.g. if the accused is unconscious of what he is doing at the time (but is not insane) –then this is a case where he would not be guilty of an offence, by virtue of section 24 of the Criminal Code. In fact, section 29 (4) simply stresses the point that the prosecution has to prove all the elements of the offence, and that wherever it must prove the state of mind of the accused himself (e.g. subjective intention, foresight, or knowledge), it will fail if the evidence, whether it be evidence of intoxication or not, disproves its contentions. Thus, for instance, in a crime requiring proof of knowledge –knowingly receiving goods obtained by a felony¹⁶³ –intoxication rendering the receiver incapable of knowing what he was receiving would negative his mental element required by law, even though section 29 does not provide for such a case. Nor would the onus of proof be on the accused because he is not raising a defence of intoxication but merely introducing evidence that the

¹⁶³ Section 427 Criminal Code

mental element of the offence has not been proved. The rule has been well expressed by the East African Court of Appeal:

*“It is of course correct that if the accused seeks to set up a defence of insanity by reason of intoxication, the burden of establishing that the defence rests upon him in that he must at least demonstrate the probability of what he seeks to prove. But if the plea is merely that the accused was by reason of intoxication incapable of forming the specific intention required to constitute the offence charged, it is misdirection if the trial court lays the onus of establishing this upon the accused.”*¹⁶⁴

Two qualifying points should however be made. Firstly, once the prosecution has proven the requisite intention, then it is no argument for the defence that the accused would not have formed the intention if he had been sober. It will make no difference if, for instance, the accused’s drunkenness make him more readily give way to some violent passion.¹⁶⁵ The second point to be made is that where the unlawful intent, foresight, or knowledge, is formed and then the accused gets so drunk that in performing the forbidden act he no longer has the requisite mental element, then the prosecution may succeed (unless of course the drunkenness amounts to insanity, temporary or otherwise). In *Kofi Mensah v. R*¹⁶⁶ the Court of Appeal would have upheld the conviction for murder if there had been evidence of a preconceived intent to kill. In a recent House of Lords judgement, *Attorney-General for N. Ireland v. Gallagher*¹⁶⁷, Lord Denning

¹⁶⁴ *Cheminingwa v R* (1956) 23 EACA 451.

¹⁶⁵ (n160) 502

¹⁶⁶ (1952) 14 WACA 174.

¹⁶⁷ (n150)

observed of such a case that “The wickedness of his mind before he got drunk is enough to condemn him, coupled with the act which he intended to do and did do.”¹⁶⁸

If this is correct law, then it seems to constitute an exception to the general principle that the intent must, in point of time, accompany the act.

3.7. Immaturity

The defence of immaturity is not based on the absence of the mental capacity to commit an offence rather the policy appears to be that children cannot distinguish between (moral) rights and wrong¹⁶⁹. And the ages of criminal responsibility are as wobbling in different jurisdictions as the acts of children themselves. While in Scotland, normal criminal liability is reputed to begin from age eight and commenting in the case of *C v DPP*¹⁷⁰, Lord Jauncey of Tullichettle posited “I do not understand that injustice is considered to have resulted from this situation.”

As regards the defence of immaturity, it is governed by section 30 of the Criminal Code which divides children into various categories¹⁷¹

¹⁶⁸ It would have been otherwise if having formed the intent, he then discarded it before getting drunk.

¹⁶⁹ Atsegua L and others, *Criminal Law in Nigeria: A Modern Approach* (Malthouse Press Ltd, Lagos 2021) 275

¹⁷⁰ (1995) 2 All ER 43, p. 45

¹⁷¹ Penal Code s. 50 is to the same effect

3.7.1. Who is a Child?

Under the Child's Rights Act 2003, a child is any person under the age of 18.

Under the 1946 Children and Young Persons Act¹⁷², a "child" by virtue of section 2 is described as any person under fourteen, and a "young person" is given as the fourteen years of age but under seventeen. This position has been judicially approved in the case of *Ugheneyovwe v The state*¹⁷³, where the court held that by virtue of Section 2(1) of the Criminal Procedure Laws of Bendel State, a child is any person who has not attained the age of fourteen years.

By section 204 of the Child's Rights Act 2003, a child who commits an offence shall not be subject to the criminal justice processes or to sanctions but only to the child justice system and processes set out in the Act. As far as that question of proving age is concerned, if it appears to a court that an offender was a child or a young person at the time of committing an offence, he shall be presumed so, unless the contrary is proven.¹⁷⁴

¹⁷² Cap. 32, 1958 Laws (modelled on the English Act of the same name passed in 1933). The act, passed for Lagos, was extended to the West and the East by Order in Council. No. 22 of 1946. In the Northern Region there is a separate Children and Persons Law (1958) in similar terms to the Southern Act, except that the Northern Law adds stringent rules against juvenile participations in politics.

¹⁷³ (2004) 12 NWLR (p888) 631

¹⁷⁴ Administration of Criminal Justice Act s. 265

3.7.2. Children under the Age of Seven

Section 30 of the Criminal Code is to the effect that a person under the age of seven is not criminally responsible for any act or omission.

It is an erroneous belief that a child under seven cannot be guilty of an offence, that he is not amenable to action by the authorities. Part V. of the Child's Right Act 2003 providing for "care and protection" of any child. Accordingly in section 50, a child development officer or any authorised officer has power to bring any child or young person before a family court if there is reasonable ground for believing that for any of a variety of reasons he is need of care and protection. A child may be an orphan, or have been deserted by his relatives; his parent or guardian may not be exercising proper control of him, or they may be neglecting or ill-treating him; he may be destitute, with his parents in prison; he may be in the care of criminal or drunken parents who are by reason of that unfit to look after him; he may be found wandering or begging for alms; or he may be "otherwise exposed to moral danger."

If the court is satisfied that the facts are as alleged, it may make any one of number of orders. It may order the parents to guarantee to exercise proper care of a "fit person"; it may place the child on probation; or, most drastic of all, it may make a corrective order and commit the child to an "approved institution". The essence of this jurisdiction is that a welfare jurisdiction which is meant to be exercised in the interests of the child himself.

A child is said to be *doli incapax*. Although a child under the age of seven will be absolved of all criminal responsibility for his actions, civil proceedings may be commenced by the Local

Authority under section 31 of the Children Act 1989, if the relevant provisions of the children Act 1989 are satisfied.

3.7.3. Children above Seven but Less Than Eleven

When a child aged seven but under twelve years is charged with a crime, the law assumes at first that the child is not capable of committing it. But this is not a hard and fast rule, because if it can be shown that the child knew he shouldn't have done what he did, then the presumption falls away. The only clear exception is that the law says a boy under twelve cannot be guilty of carnal knowledge¹⁷⁵. In English law the rule is technically the same, but in reality many courts tend to just assume the child had the capacity, since proving the opposite is usually very difficult.

At any rate, with the increasing movement away from the concept of responsibility towards the welfare jurisdiction, it is becoming decreasingly important, with regard to the lower age groups, whether the child has committed the offence or not. If he has not committed an offence, the court may still feel that steps should be taken to ensure his care and protection. If he has committed an offence, the court's decision must be aimed at the child's welfare before deciding how to deal with him, the court shall obtain such information as to his general conduct, and home surroundings, school record, and medical history as may enable it to deal with the case in the best interest of the child or young person"¹⁷⁶

¹⁷⁵ Although, in English law and presumably under the Code, he may be convicted of the lesser offence of indecent assault –R v Waite (1892) 2 QB 600.

¹⁷⁶ S. 217 (6) (a) Child's Rights Act

While the third ambit of section 30 of the Criminal Code is to the effect that a male person under the age of twelve years is presumed to be incapable of having carnal knowledge,¹⁷⁷ it is submitted that any child suspected of any criminal offence should be treated accordingly to the law in a manner which takes full account of his or her age, level of maturity, intellectual and emotional capacities, and that steps should equally be taken to promote and enhance his or her ability to understand and participate in the proceedings.

3.8. Limitations and Critiques of Excuse Defences

Excuse defences are not *carte blanche* as the boundaries of excuse are strictly policed. Firstly, voluntary creation of the excusing condition bars its invocation. A person cannot rely on self-induced intoxication or foreseeable coercion¹⁷⁸.

Secondly, excuse defences face critiques centred on their potential to shield culpable conduct, risk of abuse, and challenges in objective adjudication. It is thus advocated that a rigorous judicial standards and caution against over-extension lest excuse become a veil for moral abdication.

The intersection of traditional beliefs and modern legal norms further complicates uniform application of excuse doctrines. Legislative enactment heavily inspired by customs might create bespoke laws suitable to certain people or morally malnourished. Such is the provision of

¹⁷⁷ The provision betrays a gap in fairness revealing a legislative oversight that reflects a gendered limitation and undermines the universality of the presumption.

¹⁷⁸ n116

Section 55 (1) (d) of the penal code permitting a man to inflict such grievous harm on his wife provided it is done in the name of correcting her.

Also, some statutory enactments remain a bit gender lopsided aiming either as a deliberate attempt to shield one of the genders or an ignorant legislative lacuna.

3.9. Conclusion

The architecture of excuse reveals as a resplendent edifice where the law meets humanity, articulating a refined understanding of blame that transcends the mere actus reus and mens rea to embrace the actor's psychological, social, and moral context. Excuse defences, as a legal and moral balm, admits human frailty yet tempers punishment, ensuring that punishment never fully eclipses empathy. For what is the point of punishment? Deterrence, fair deserts? For instance, in so far as corporal punishment (s. 18 cc- employed in Nigeria though abolished in many countries) is concerned, the evidence tends to show that those who are flogged have slightly worse subsequent prison records than a comparable group of those who are not.¹⁷⁹ Therefore, the future trajectory of Nigerian criminal law must continue to refine and humanize this architecture, advancing a justice that is as discerning as it is compassionate, affirming that to err is human, but to excuse judiciously is the hallmark of a just society.

¹⁷⁹ Okonkwo and Naish (n106) 35, quoting from the 1918 Departmental Committee on Corporal Punishment.

CHAPTER FOUR

PHILOSOPHICAL, CULTURAL, AND POLICY PERSPECTIVES: REFORMING THE DIALECTIC OF EXCUSE AND JUSTIFICATION IN NIGERIA

4.1. Introduction: Navigating the Fault Lines in Defences and Justice

The world is a complex place further complicated by man's fickle nature and as Sir James Fitzjames Stephen bloats, "The criminal law regulates sanctions and provides a legitimate satisfaction for the passion of revenge; the criminal law stands to the passion of revenge in much the same relation as marriage to the sexual appetite."¹⁸⁰ This aphorism underscores the complex fabric binding law, morality, and societal order - a fabric stretched taut by the competing forces of individual autonomy and collective security. A testament that the defences of excuse and justification are indispensable.

However, in the Nigerian landscape, this comingling of defences is especially fragile. The plural nature of our legal system means that doctrines migrate across legal traditions and sometimes clash. The Criminal Code (as is applicable in the South), the Penal Code (suited to the Northerners), Islamic criminal jurisprudence, and diverse strands of customary law all provide competing lenses through which defences are understood. This will inevitably breed chaos and

¹⁸⁰ General Views of the Criminal Law In England p. 99

disparity within the legal system itself. For example, while the Constitution guarantees and protects right to life¹⁸¹, it also recognizes lawful killing in defence of a person or property.¹⁸²

Similarly, the Penal Code however controversially, legitimises chastisement of a wife by her husband¹⁸³, a relic provision that sits rather uncomfortably with Section 34 of the Constitution which guarantees freedom from degrading treatment¹⁸⁴.

Building on the foundational inquiries of preceding chapters, this chapter undertakes to interrogate the cracks in our doctrine, into the fault lines that afflict the Nigerian legal system's treatment of excuse and justification defences. It audits the ambiguities, cultural entanglements, institutional gaps, and reform needs of Nigerian criminal law. By so doing, it aims to bring clarity to the dialectic of excuse and justification in practice, not merely as theory, but reconciling the lofty ideals of justice with the often-complicated realities in the Nigerian society.

4.2 Doctrinal Ambiguities and Conceptual Overlaps

Although tidy in theory, the conceptual distinction between excuse and justification, is often muddled in Nigerian law. The overlap is not accidental as it flows from the statutory drafting of both the Criminal Code and the Penal Code, as well as from the judicial reluctance to explicitly

¹⁸¹ S. 33 1999 Constitution of the Federal Republic of Nigeria

¹⁸² *Ibid* S. 33 (2) (a)

¹⁸³ S. 55 (1) (d)

¹⁸⁴ The above must be considered in light of S. 1 (3) of the Constitution that declares any law with a contrary provision to the constitution void to the extent of its inconsistency.

draw the line. Three areas, in particular, illustrate this: duress and necessity, mistake of fact, and provocation. Judicial pronouncements fluctuate, sometimes rooted more in inherited English precedents than context-sensitive reasoning.

4.2.1. Duress and Necessity

The Nigerian codes do not explicitly distinguish between these two defences, and courts have often conflated them. Under common law, necessity may justify an act done to avert a greater harm, while duress excuses a crime committed under threat. In *R v Dudley & Stephens*¹⁸⁵, necessity was rejected as a defence to murder, while in South Africa, *S v Goliath*¹⁸⁶ recognised duress as a complete defence to murder. In Nigeria, the absence of statutory clarity means courts rarely address the distinction, often subsuming both under general discussions of compulsion. This doctrinal blur undermines predictability, especially where life is taken under extreme circumstances.

4.2.2. Mistake of Fact

Section 25 of the Criminal Code provides that a person who does an act under an honest and reasonable mistake of fact is not criminally responsible¹⁸⁷. But the jurisprudential question is, does this function as an excuse, negating blameworthiness, or a justification, rendering the act lawful? Courts have wavered. In *Ogbu v R*¹⁸⁸, where one of the accused said at trial that he did

¹⁸⁵ (1884) 14 QBD 273

¹⁸⁶ 1972 (3) SA 1 (A)

¹⁸⁷ A similar provision is found in S.45 of the Penal Code describing the act of the person as “justified”

¹⁸⁸ (1959) NRNL 22 FSC

not know it was contrary to the law to pay bribe to induce another to appoint him for a position. The court held that the accused's mistake was deemed sufficient to exculpate him, but the reasoning lacked clarity on the theoretical basis. Scholars like Okonkwo & Naish, observe that this confusion stems from the Code's drafting, which fails to explicitly tie mistake to either category, opining that "it might be well to amend the criminal code to include it"¹⁸⁹. Accordingly the Federal Supreme Court remarked (obiter) in the instant case that: 'we are not at present satisfied that the learned judge was right in law in acquitting (the accused) on those findings'

4.2.3. Provocation

Perhaps, it is the defence marred with the greatest ambiguity. Section 318 of the Criminal Code reduces murder to manslaughter if committed in the heat of passion caused by sudden provocation. Similarly, Section 283 defines provocation in broad terms. Yet courts oscillate between treating it as a justification either because the law partially condones the reaction or as an excuse because it recognises human frailty. Sometimes the accused may not want to plead provocation because being an inconsistent plea, it is bound to weaken, if not destroy the alternative defences.

These doctrinal ambiguities are not merely semantic. They have real consequences: whether an accused is fully acquitted, partially convicted, or heavily sentenced depends on how courts classify the defence. Without clear statutory or judicial distinctions, Nigerian criminal law risks perpetuating inconsistency and undermining its credibility.

¹⁸⁹ Criminal Law in Nigeria, (3rd ed, Ibadan, Spectrum Books Ltd. 2018) 110

It is submitted that a systematic restatement akin to the US Model Penal Code's categorisation of defences could restore coherence and ensure that excuse and justification retain their distinct moral and legal force for as the American Penal Code postulates as one of the incisive and proper objectives of the law of crime is to 'safeguard conduct that is without fault from condemnation as criminal'¹⁹⁰

Practically, the evidentiary burden—especially for psychiatric evaluations—remains a steep hurdle for the accused. The decision of the court in *Yusuf v State*¹⁹¹ where the court refused testimonies of two witnesses in addition to a native doctor who once treated him for the said mental insanity must be seen in contrast with *R v Ashigifuwo*¹⁹² and *Edohor v State*¹⁹³ where the court underscored the vitality of the accused's relation's testimony to a successful plea of an insanity defence. Accordingly, the failure of trial courts to apply procedural safeguards, such as in insanity pleas exacerbates injustice. These compounded by limited access to expert testimony and uneven judicial understanding in lower courts wrecks doom in the apt application of these defences and justice not only to be done but to be seen as done.

¹⁹⁰ Atsegu L and others, *Criminal Law in Nigeria: A Modern Approach* (Malthouse Press Ltd, Lagos 2021) 6

¹⁹¹ *Yusuf v. State* (1988) 4 NWLR (pt. 86) 96.

¹⁹² *R v Ashigifuwo* (1948) 12 WACA, 389

¹⁹³ (2010) All FWLR (Pt. 530) 1262 SC

4.3. Cultural, Religious, and Plural Legal Influences on Defence Doctrines

In *Abdulkareem & Anor v Lagos State Government*¹⁹⁴, A.A Babandi Gumel JCA remarked that:

“Nigerians are deeply religious and the faithful across the religious divides do not fail to assert their religious identity at the slightest opportunity. Some do it out of regular religious convictions but some are fanatical, fundamentalist or merely bigoted... in other words we are a multi-cultural and multi-religious society.”

It is difficult to dispute the view of the court of appeal especially in light of the provision of the Constitution that provides that “The Government of the Federation or of a State shall not adopt any religion as State Religion.”¹⁹⁵ The fact that the religiousness of individuals and groups within the state are diverse with the concomitant freedom of choice of religion¹⁹⁶ is itself an indication of secularity.

Nigeria’s plural legal order means that the application of excuse and justification is never in a vacuum but filtered through the prisms of culture and religion. The Criminal Code, the Penal Code, customary law across ethnic nationalities, and Islamic law all interact, sometimes harmoniously and at other times birthing chaos. Most predominant in criminal law, Nigeria’s plural legal system profoundly influences how excuse and justification defences are applied and interpreted.

¹⁹⁴ (2016) 15 NWLR (PT. 1535) C.A

¹⁹⁵ S. 10 1999 CFRN

¹⁹⁶ *Ibid* s.38

The coexistence of statutory law alongside customary and religious norms creates an environment where cultural values and beliefs substantially impact legal outcomes. Customary law, for instance, often reflects communal values and it informally sanctions or condemns conduct differently from formal law, particularly in cases involving moral offences or family disputes.

The influence of cultural perceptions on defences is palpable in domestic violence cases where the question of chastisement arises. Under the Penal Code¹⁹⁷, “nothing is an offence which is done by a husband for the purpose of correcting his wife,” provided the correction does not amount to grievous harm. This provision which is monumentally rooted in cultural and religious notions of male authority, has been repeatedly criticised as inconsistent with of the Constitution, which guarantees dignity and freedom from degrading treatment. It is frightful that this cultural idiosyncrasy has crept into the Nigerian law yet courts have been hesitant to directly strike down this provision. Nonetheless, commentators such as A. Oba argue that a continued adherence entrenches inequality and undermines women’s rights¹⁹⁸. Customary practices dipped in religious colourations also present challenges. In *Queen v Alice Eriyamremu*¹⁹⁹, the court had to confront an infanticide case arising from cultural beliefs around illegitimacy. While the statutory law criminalised the act, the surrounding culture reputedly perceived it differently. Such cases highlight the uneasy negotiation between positive law and deeply held community beliefs.

¹⁹⁷ (n183)

¹⁹⁸ Abdulmumini A. Oba, Religious and Customary Laws in Nigeria, 25 Emory Int’l L. Rev. 881 (2011). Available at: <https://scholarlycommons.law.emory.edu/eilr/vol25/iss2/6>

¹⁹⁹ (1959) WRNLR 270.

Similarly, witchcraft accusations²⁰⁰ and trial by ordeal²⁰¹ although criminalised, still appear in rural prosecutions, revealing how cultural cosmologies influence defences raised in court.

Religion, too, is not neutral. The Christian body have it as their belief that it is exigent to suffer not a witch to live.²⁰² In *Gadam v R*²⁰³, , the accused believed that his wife's mortal illness and the miscarriage was a resultant act of the witchcraft of an old woman, thus, he killed the latter with a hoe. At trial it was not disputed that the accused's belief was bona fide and that a belief in witchcraft was prevalent in the community where he lived. The court has however held that a belief to witchcraft is unreasonable, even though the belief was in fact prevalent in the particular community from which the accused came, and that it would be dangerous to hold otherwise.²⁰⁴

While there is a reluctance by the court to immerse socio-cultural and religious colourations as one, some legal scholars have dissenting postulations. Okonkwo and Naish opine that while the court in *Gadam's* case adopted the argument that it is dangerous precedent to hold a belief in witchcraft possible, such "is to confuse the issue, for it is perfectly possible to hold a belief in witchcraft reasonable and yet to punish the killing of witches."²⁰⁵

²⁰⁰ Criminal Code S.210 (b) is to the effect that any person who

accuses or threatens to accuse any person with being a witch or with having the power of witchcraft, is guilty of misdemeanour and is liable to imprisonment for two years.

²⁰¹ Prohibited by s. 207 and penalized by s.208 to a term of ten years imprisonment

²⁰² Exodus 22:18

²⁰³ (1954) 14 WACA 442

²⁰⁴ *ibid*

²⁰⁵ Okonkwo and Naish (n189) 113

Sharia-based provisions in the Penal Code sometimes accommodate defences unknown to the Criminal Code. For example, adultery as an offence under the Penal Code²⁰⁶ carries with it evidential rules and defences rooted in Islamic jurisprudence. This divergence means that defences available in Maiduguri may differ from those in Lagos, creating inequality before the law- a double standard of justice.

Ultimately, statutory prohibitions on harmful traditional practices, such as those in the Criminal Code against unlawful trials by ordeal, possession and or sale of juju, drugs or charms²⁰⁷ underscore legislative efforts to balance tradition with human rights. This pluralistic milieu demands a refined judicial approach. A justice system that respects diversity in culture and religion but does not compromise fundamental justice principles for social satisfaction.

4.4. Legislative and Procedural Gaps

The very architecture of Nigeria's criminal law is a minor house of confusion. The Criminal Code, modelled after Queensland's 19th-century code, governs the South, while the Penal Code, modelled after the Sudanese Criminal Code, governs the North. This duality produces divergences not only in substantive law but in the treatment of defences. For instance, while the Penal Code permits chastisement under Section 55, the Criminal Code has no equivalent. Similarly, adultery is criminalised under Sections 387–388 of the Penal Code, but not under the

²⁰⁶ S.287 and 288 penalizes adultery with a term which may extend to two years imprisonment and or with fine;

Taiwo Aoko v Fagbemi Adeyeye, (1961) ANLR 400

²⁰⁷ S.210 (c) Criminal Code

Criminal Code. These inconsistencies mean that Nigerians face unequal criminal responsibility depending on geography.

Procedural statutes add further complications. The Criminal Procedure Act and Criminal Procedure Code, now largely overtaken by the Administration of Criminal Justice Act, shape practice in many states. Yet none provide a clear procedural framework for raising and evaluating defences nor the lineation into justification and excuse defences. Defendants relying on insanity or intoxication often face prolonged detention without psychiatric assessment, in violation of Section 36(4) of the Constitution which guarantees fair hearing within a reasonable time.

Constitutional provisions themselves are not always explicit. Section 33(2) (a) of the Constitution permits lethal force that may result in death under the guise of self-defence, to what extent might the “Unlawful violence be permissible”? Or to which extent shall all other measures be applied before the use of force resulting in deprivation of life be applied before such force necessary to quell a riot be a defence under the Nigerian legal regime?²⁰⁸ Reconciling these provisions is left to the courts, often without clear interpretive guidance. The result is piecemeal adjudication, lacking coherent doctrinal development.

More so, statutory enactments underpinning defences often lack precision, leading to inconsistent applications. The Criminal and Penal Codes, while admittedly rich in principles, leave important terms like provocation or necessity loosely defined, and as a result inviting

²⁰⁸ Section 33 (2) (c) *ibid*. This provision is to effect that a person shall not be regarded as deprived to his right to life if such force is used as is necessary for the purpose of suppressing a riot, insurrection or mutiny.

subjective judicial interpretations prone to error. It is thus imperative that the procedural provisions in the Administration of Criminal Justice Act also undergo strengthening so as to safeguard rights and ensure clarity in presenting and evaluating defences. Also, the absence of statutory clarity on the classification of defences into excuse and justification tend to leave courts improvising. This ultimately makes the Nigerian justice system a patchwork quilt that fosters inconsistency and breed unpredictability.

Thus calls for codification and clearer legislative demarcations between excuse and justification cannot be over embellished. This would exponentially grow louder in legal scholarship, emphasizing the need for updated, contextually tailored reforms that harmonize laws with Nigeria's pluralistic realities and constitutional demands.

4.5. The Dialectic of Autonomy (human right) and Social Order

So trite, it has become less than a moot point that the law, is not just for vengeance sake or to punish defaulters. It is indeed a three way street- for the accused, of a heinous crime, the victim of the said wrong and the society whose norms have been so desecrated by the heinous crime²⁰⁹. The surface ideology seems to tilt aggressively toward the preservation of societal norms only and as an adverse reaction, it neglects the rights of the individual who has been accused of the wrong. This, is against the trajectory of the Blackstone ratio postulating that it is better for nine criminals to be free than for an innocent to be punished.

²⁰⁹ *Josiah v State* (1985) 1 NWLR (Pt.1) 125 p.1

At the heart of excuse and justification lies a dialectic- the individual's autonomy versus the community's order. While excuse defences protect the frailty of human actors, those who act under duress, insanity, or provocation, justifications, by contrast, preserve social order by recognising that certain acts, though technically offences, are lawful because they align with higher values, such as self-defence.

The distinction is not academic. In *Madujemu v State*²¹⁰, the Supreme Court considered whether the appellant, who killed his wife, acted as a result of his insanity or by a premeditated occurrence. The classification determined whether he was remanded to a mental facility (excuse) or incarcerated or even to be acquitted outright (justification). Likewise, in *Uwaekweghinya v State*²¹¹, the court drew strict limits on when self-defence can justify homicide, underscoring its role in preserving public order.

The constitutional framework further reflects this balance. Section 33 (2) (a) permits killing in self-defence, signalling justification, while Section 30 of the Criminal Code excuses acts done by children under seven, or under twelve in certain cases, recognising incapacity. These provisions embody the law's attempt to balance mercy and order, reflecting individual autonomy and social preservation.

However, the practical significance goes beyond doctrine. If provocation is treated as a justification, it risks condoning violence, especially gender-based violence²¹². If treated as an

²¹⁰ (2001) FWLR (Pt.52) 2210 SC

²¹¹ (2005) 9 NWLR (PT. 930) 27 SC

²¹² A man may rely on his wife's refusal to prepare his meal or being taunted as an impotent as a defence to impact grievous bodily harm *R v Igiri* (1948) 12 WACA 377

excuse, it signals compassion without endorsement. The policy implications are enormous. It will be most plausible to note that, however the law classifies a defence, shapes societal messaging about acceptable conduct. The Nigerian justice system must therefore clarify these distinctions, lest ambiguity undermine both deterrence and fairness.

This dialectic has been statutorily outlined as the Nigerian Constitution entitles individuals to fundamental rights and freedoms while juxtaposing them against the state's duty to protect public order²¹³. Inasmuch as Chapter IV of the Constitution, guarantees the rights of an individual and respects his autonomy, thus critically framing the application of excuse and justification defences, such rights are subject to curtailment in the “interest of defence, public safety, public order, public morality or public health; or for the purpose of protecting the rights and freedom of other persons.”²¹⁴ Nigerian courts have consistently grappled with balancing these dual imperatives that is, the upholding of individual autonomy while deferring to legitimate state interests in maintaining security.

Ultimately, just as slaves are dependent on their masters, so we are dependent on one another in the absence of a framework of legal rights: just as masters wrong their slaves, however well they treat them, so we are doomed to wrong one another if no such framework exists. To avoid this, we need more than just rights that exist on paper. We need sufficient assurance that our rights

²¹³ Chapter 1, Section 11 of the Constitution

²¹⁴ Section 45 (1) (a) and (b) of the Constitution

will be respected, and we need a mechanism by which their supremacy can be reasserted in the face of wilful violation. Criminal law's value lies in giving us what we need.²¹⁵

4.6. Policy Considerations and Social Consequences of Defence Doctrines

Law is rule or system of rules. A rule prescribes what activities may, should or should not be carried out, or refers to activities that should be carried out in a specified way. Because a rule guides us in what we may, ought or ought not to do, it is said to be normative²¹⁶.

Defences even more, are not abstract technicalities as they shape lives. The law's treatment of insanity determines whether the mentally ill are punished or rehabilitated. The treatment of provocation influences whether domestic violence is tacitly condoned or otherwise. The recognition of duress affects how child soldiers or victims of trafficking are judged.

Beyond juridical reasoning, excuse and justification defences bear profound policy implications affecting social trust and crime deterrence. It seeks to protect the vulnerable population such as persons with mental disorders, children, and persons under duress. This in turn embodies fairness and social inclusiveness.

²¹⁵ Edwards James (2021) "Theories of Criminal Law" in E N Zalta (Ed.), *The Stanford Encyclopedia of Philosophy* (Fall 2021 Edition). Available at:

<https://plato.stanford.edu/cgi-bin/encyclopedia/archinfo.cgi?entry=criminal-law> Accessed 8 August 2025.

²¹⁶ A O Sami, *Introduction to Nigerian Legal Method* (2nd ed, Ile-Ife: Obafemi Awolowo University Press, 2017) 4.

Protecting vulnerable groups is paramount. The Child's Rights Act makes explicit provision that children are not to be subjected to the same justice processes and or sanctions, yet in practice such distinctions are rare. This act enshrines protections ensuring children are not processed through the traditional criminal justice system but rather through rehabilitative mechanisms.

Likewise, children are protected under Section 50 of the Penal code²¹⁷ and Section 30 of the Criminal Code. More provisions must be enacted ensuring that prosecutions do not occur in contravention of these safeguards and in the event of such contraventions, the attachment of sanctions.

Public confidence in justice also hinges on the consistent application of defences. When like cases yield unlike results, citizens lose faith. Defences that appear to shield the powerful while failing the poor corrode legitimacy. Moreover, justice should not only be done but should also be seen done.

If a defence is successfully raised and whether the defence is deemed excusatory or justificatory the defendant will be acquitted and will escape punishment. Thus some argue that there is no practical relevance on whether a defence is seen as an excuse or a justification. Herring captures this point when he said:

“Another danger of putting too much emphasis on whether defences fall into the philosophical categories of justification or excuse is that practical considerations, policy

²¹⁷ No act is an offence which is done by a child

factors and the need to make the law readily comprehensible to juries (should) also influence the rules relating to defences."²¹⁸

However, having said that, and as already mentioned with regard to legitimate defence and provocation, whether an accused is acquitted on the basis of justification rather than excuse sends out a particular message to society; it is particularly important to possible victims whether the actions of the accused are deemed justificatory or excusatory as it communicates a great deal about the actions of the defendant. The commonly held view is that a justificatory defence justifies the criminal act whereas an excusatory defence operates to excuse the actor rather than to validate the criminal act.

The policy question, therefore, is not whether defences exist, but how they are applied and what message they send. Properly structured, they can temper justice with mercy, enhance deterrence by being fair, and protect the weak without excusing the strong.

While the courts' rejection of self-induced insanity or intoxication as excusing grounds exemplifies efforts to balance compassion with deterrence, however, concerns persist that expansive application or misapplication of defences may erode deterrence, embolden offenders, or diminish public confidence. Policies must therefore calibrate these defences carefully to assure the public that justice is neither unduly lenient nor blindly punitive.

²¹⁸ Herring Criminal Law 4th ed (Palgrave MacMillan 2005) at 388.

4.7. Comparative Perspectives and Analysis

Looking abroad and examining the legal regime of other jurisdictions, Nigeria has much to learn. Regions like the United Kingdom, the United States and even some African countries like South Africa, offer valuable insights. The United Kingdom has reformed provocation into the modern defence of “loss of control” under the Coroners and Justice Act 2009²¹⁹, thereby narrowing its scope and embedding safeguards against abuse. In South Africa, Section 141 of the Transkeian Penal Code²²⁰ provide as follows:

“Homicide which would otherwise be murder may be reduced to culpable homicide if the person who causes death does so in the heat of passion occasioned by sudden provocation. Any wrongful act or insult of such a nature as to be sufficient to deprive any ordinary person of the power of self-control may be provocation, if the offender acts upon it on the sudden, and before there has been time for his passion to cool.”

This provision is to the effect that the act or insult to be sufficient to deprive “any ordinary person” of the power of self-control. This is an objective test where the question is whether the reasonable man in the circumstances of the accused would have lost self-control. Accordingly, in light of this reasoning, in 1959 the Appellate Division in *R v. Krull*²²¹, decided that provocation cannot reduce an intentional killing to culpable homicide.

²¹⁹ Sections 54–56

²²⁰ It must be noted that the Transkeian Penal Code has been repealed by the Repeal of the Transkeian Penal Code Act, 2023, and as a result should only be used as a mode framework for guide.

²²¹ 1959 (3) SA 392 AD at 399.

The South African courts, through cases like *S v Goliath*²²², have clarified duress and necessity more systematically than Nigeria has managed. The United States, with its Model Penal Code, explicitly classifies defences into justification and excuse, providing clarity that Nigerian law sorely lacks. Provisions encompassing similar classification will undoubtedly prevent the occurrence of crime rather than seek to punish it. The issue with punitive measures as a method of discouraging crime, is that there is always a break of law and order, a desecration of the societal norms that ensure man is not living in a state of savagery, where life is nasty, short and brutish.

Each of these jurisdictions offers lessons. Codification, as in the Model Penal Code, reduces judicial confusion. Modernisation, as in the UK, ensures that defences align with contemporary values of equality and human rights. Judicial activism, as in South Africa, demonstrates how courts can adapt doctrine to constitutional ideals.

For Nigeria, the lesson is clear: imported doctrines must be contextualised. Wholesale adoption of English precedents without attention to Nigerian social realities has produced distortions. Reform must combine codification with sensitivity to cultural diversity, ensuring that defences are not only doctrinally sound but socially legitimate. Since a multiplicity of the provisions in the penal code derive heavily from customs that seem to almost violate the tenets of rationality or in contrary to the Criminal Code, urgent and vital reform is pertinent to birth a recognizable and acceptable delivery of justice.

²²² 1972 (3) SA 1 (A) 22E

4.8. Recommendations for Reform²²³

Having identified certain crevices in the Nigerian justice system, reforms are not only needed but are of utmost urgency. The path forward must be both principled and practical. First, a comprehensive and orderly codification is essential. The National Assembly should enact a unified Criminal Code that firstly, expressly distinguishes justification from excuse, drawing on the clarity of the Model Penal Code but adapting it to Nigerian realities. In addition, the code must bridge the discrepancies as created by the effusion of customary law into the Penal Code by eroding those provisions that are a step away from barbarism and or are not in touch with the constant realities of life. Such provisions that seem to either favour gender based violence or create unequal liability on wrongdoing based on territorial landscape must be abolished.

Second, judicial training is urgent. Judicial officers and prosecutors must receive continuing education on the conceptual basis of defences and proper criminal procedural rules in order to reduce misapplication. In *Deduwa v. The State*²²⁴, the appellants were parties to a suit before Justice Franklin Atake in Warri High Court. The learned judge made a series of rulings on certain interlocutory applications and adjourned for hearing. On the date hearing was to commence, the appellants wrote a letter to the court expressing the fear that the trial judge might be biased since he belonged to the same tribe as the defendants in the suit before him and requested the transfer of the case to another court. When the judge received this letter, he called out the appellants in the open court and compelled them one after the other to choose either the

²²³ The aim of this work and ultimately the purpose of criminal law is to achieve a legal system geared towards Coherent and Equitable Application of Defences so justice can be done and seen done.

²²⁴ (1975) 2 S.C. 34

dock or the witness box from where they should show reason why they should not be convicted of contempt of court. Each of the appellants chose the witness box. After being sworn, they were then in turn subjected to rigorous questioning by the judge. They were later found guilty of contempt of court. On appeal to the Supreme Court, the convictions were quashed and the sentences set aside. According to Coker JSC “the learned trial judge did compel the appellants to choose either the witness box or the dock and it is significant that they all chose the witness box. This of course is an outrage on our criminal procedure for the learned trial judge in the circumstances, with a witness in the witness box and without any other prosecutor, assumed that role in a most irregular inquisition, which is most undignified (degrading, shameful, unseemly, improper) of a judge of a superior court.

The court arena is a temple of justice and must not be used as an altar of gross injustice. The National Judicial Institute could spearhead this. While Section 3 (2) of the National Judicial Institute Act provides that the institute is entitled to conduct courses for all categories of judicial officers and their supporting staff with a view to expanding and improving their overall knowledge and performance in their different sections of service; Section 3 (2) (c) further provides that the institute may “organise once in two years a conference for all Nigerian Judges of superior and inferior courts respectively” so as to bolster their knowledge on criminal defences and the application of criminal procedural rules alike.

This would go a long way to achieve contextual interpretation of precedents that is imperatively needed. Nigerian courts must resist rote application of English common law decisions and instead interpret defences through the lens of the Constitution, human rights, and cultural realities.

Furthermore, institutional support must be prioritised. Basic to the theory of deterrence is the casual assumption that the cost of punishment and its threat has the power to inhibit unlawful behaviour and deter would be offenders. This so much and more is the daily horror of the Nigerian criminal justice system where the accused is subjected to inhumane and Machiavellian conduits of injustice such as holding a person awaiting trial beyond the legally allowed time²²⁵ or squelched in a dark alley called prison. Accordingly, Section 35 (4) of the Constitution provides that

Any person who is arrested or detained in accordance with subsection (1) (c) of this section shall be brought before a court of law within a reasonable time, and if he is not tried within a period of- (a) two months from the date of his arrest or detention in the case of a person who is in custody or is not entitled to bail; or (b) three months from the date of his arrest or detention in the case of a person who has been released on bail, he shall (without prejudice to any further proceedings that may be brought against him) be released either unconditionally or upon such conditions as are reasonably necessary to ensure that he appears for trial at a later date.

The reasoning of the above was duly encapsulated by Lord Justice Shaw, when he posited that: *Prisoners are subject to special regimen and have a special status. Nonetheless, they are not entirely deprived of all fundamental rights and liberties ... thus, despite the deprivation of his*

²²⁵ The proviso to Section 35 (1) is to the effect that Provided that a person who is charged with an offence and who has been detained in lawful custody awaiting trial shall not continue to be kept in such detention for a period longer than the maximum period of imprisonment prescribed for the offence.

*general liberty, a prisoner remains invested with residuary rights appertaining to the nature of his incarceration.*²²⁶

The report of the existing prison conditions by Amnesty International is apposite where it bloviated that:

*Living conditions are appalling. The worst conditions constitute ill treatment. Conditions such as crowding, poor sanitation, lack of food and medicines and denial of contact with families and friends fall short of the UN standards for treatment of prisoners. Toilets are blocked and overflowing or simply non-existent, and there is no running water. As a result, disease is widespread.*²²⁷

It makes for little wonder why the Nigerian prison is regarded as an institution into whose chambers little light reaches. Its internal workings are dark processes even to those who seek knowledge about them and, its inmates are shadowy forms dwelling in neither regions of existence²²⁸

Government should invest in psychiatric facilities, forensic services, and access to expert evidence. Without this, defences like insanity remain illusory for the poor. In other words, it suffices to say that, access to conditions that will enhance the mental, social and material

²²⁶ *R v Board of Visitors of Hull Prison Ex Parte St. German & Ors.* (1979) QB 425

²²⁷ Available at <https://www.amnesty.org/en/documents/po110/001/2008/en/> accessed at 8 September 2025.

²²⁸ Ehonwa L O, *Prisoners in the Shadows, a Report on Women and Children in Five Nigerian Prisons* (Lagos: Civil Liberties Organization, 1933) 1

wellbeing of a prisoner and his imminent rehabilitation in order to ease his return to normal life after incarceration should be the major aim of the prison system²²⁹

It becomes trite then that the future path demands legislative codification, enhanced judicial training, and increased support for forensic and psychiatric services. Clear statutory definitions distinguishing excuse from justification will reduce arbitrariness. Ongoing legal education for judges and prosecutors will heighten consistency and fairness. Contextual judicial interpretation acknowledges Nigeria's socio-cultural pluralism while safeguarding universal rights.

4.9. Conclusion

This chapter has traversed the messy terrain of excuse and justification in Nigeria, exposing doctrinal ambiguities, cultural tensions, institutional failings, and reform opportunities. What is at stake transcends mere legal taxonomy but the very balance between individual autonomy and societal order. Excuses embody mercy, recognising human frailty; justifications embody necessity, affirming societal values. Both are indispensable, but their misuse or confusion erodes justice.

Returning to Fitzjames Stephen's metaphor, criminal law is the civilised face of vengeance, the legal mind is drawn to the words of Chukwudifu Oputa JSC, that

"The establishment of the court system was a great milestone in the human journey. We are reminded how in a state of savagery and "jungle justice", every man was armed and

²²⁹ Phillip I Abumere, *An Anatomy of Criminology* (Ekpoma: A Inno Publishers Z, 1996) 136.

was a law unto himself. But civilisation means that courts were established and that men lay aside their arms and carried their causes to those courts."²³⁰

But vengeance without compassion becomes cruelty, and compassion without order becomes chaos. The Nigerian legal system must strive for balance: to temper justice with mercy, to protect both the individual and society, to be firm and yet be fair.

Defences, rightly structured and applied, can embody this balance. They can make the law not only a sword against crime but also a shield for humanity. This is the promise of excuse and justification—a promise that Nigerian law must now reform itself to fulfil.

²³⁰ C.A. Oputa "Towards Greater Efficiency in the Dispensation of Justice in Nigeria" in Y. Akinseye-George (ed.) Law, Justice and Stability in Nigeria: Essays in Honour of Kayode Es01. Shalom Mutiserve Bureau, Ibadan, 1993, p.4.

CHAPTER FIVE

RECOMMENDATIONS AND CONCLUSION

5.1. Summary of Findings

The preceding chapters have meticulously dissected the rich terrain of criminal law's defences, traversing the dual architecture of justification and excuse defences within the Nigerian criminal law vis-à-vis their moral, statutory, and judicial foundations as well as exposing the profound interplay between individual autonomy and societal order.

Chapter One set the foundation by articulating the pivotal role of these defences as juridical mechanisms. It established that these defences balance culpability, recognizing that the law must neither punish every act nor condone every transgression absent adequate justification or excuse. It introduced the objective of the study, emphasising the imperativeness of having a clear distinction between excuse and justification defences to acclimatize with human frailty. It further delineated the research methodology and scope, ensuring a systematic approach to understanding the challenges and prospects of Nigeria's criminal system as regards the application of defences.

Chapter Two reveals that justifications are not mere legal loopholes but moral authorisations. It offers a comprehensive exposition of justification, emphasizing its function in sanctioning certain acts under conditions marked by necessity, proportionality, and legality. It further underscores the duality wherein justification validates conduct as morally and legally right within specific exigencies, such as self-defence and lawful correction. Justification aligns with core constitutional principles that safeguard life whilst permitting force under lawful

circumstances. Philosophical underpinnings rooted in utilitarianism and social contract theory are examined here to illuminate justification's societal rationales.

Chapter Three, in contrast, shows excuses as the law's concession to human weakness. That is, it recognizes the wrongfulness of the act while mitigating blameworthiness due to actor's incapacities or extenuating circumstances such as insanity, intoxication, provocation, and immaturity. The chapter lays bare the moral philosophy anchoring excuse doctrines through emphasizing their role in reflecting human frailty and tempering punishment through recognition of diminished capacity or extenuating circumstances.

Chapter Four ventures beyond statutory and doctrinal analysis. It weighs, critically, the structures in the preceding chapters, showing how Nigerian jurisprudence has oscillated between fidelity to principle and pragmatic adaptation on the one hand, and how statutory and judicial pronouncements sometimes blur the delicate line between justification and excuse. The fourth chapter interrogates the cultural, religious, and institutional fault lines that challenge the consistent application of these defences. The overarching finding is that while the theoretical scaffolding is sound, the practical application in Nigerian courts is marred by inconsistencies, ambiguities, and a lack of systematic coherence. Nonetheless, comparative perspectives reveals opportunities to harness lessons from jurisdictions like the US, UK, and fellow African nations like South Africa, advocating for contextually informed reform.

5.2. Recommendations

Informed by a rigorous analysis of the conceptual, doctrinal, and institutional dimensions of excuse and justification defences in Nigerian criminal law, a multiplicity of reforms are prerequisites to balance normative clarity with cultural sensitivity

Foremost, there must be codification and harmonization. Statutory clarification of the boundaries between justification and excuse must be enacted by the National Assembly. Presently, provisions of the Criminal Code and Penal Code intermingle both categories without sharp distinction, thereby creating uncertainty. A unified code is in dire need; one that unequivocally delineates the contours of excuse and justification defences while adopting the conceptual clarity already espoused in academic literature and comparative jurisprudence while bearing in mind Nigeria's pluralistic realities. This will bridge disparities between the Criminal Code and Penal Code and reconcile inconsistencies amplified by customary and Islamic laws.

Secondly, judicial interpretation must strive for principled consistency. Courts should consciously distinguish whether they are absolving conduct because it was “right” in context (justification) or because the actor was “not fully blameworthy” (excuse). This clarity would enhance both doctrinal precision and public trust. This, rightfully so, is anchored on a Clear Procedural Framework. This framework will help strengthen procedural laws within the Administration of Criminal Justice Act to codify the proper raising, evaluation, and classification of defences which will in turn guarantee fair trial rights and timely adjudications in line with constitutional mandates.

Thirdly, there is the need for capacity-building of judges, prosecutors, and defence counsel. Judicial capacity building as well as continuous professional development for judges and

prosecutors is essential to enhance understanding of defence doctrines, evidence evaluation, and procedural safeguards. The National Judicial Institute should spearhead periodic workshops ensuring jurisprudential coherence and contextual sensitivity. This could be through the National Judicial Institute, to deepen understanding of the architecture of defences. The subtleties of duress, provocation, insanity, and bona fide claims demand not only technical knowledge but philosophical sensitivity. Beyond statutory reform, judicial capacity building emerges as a sine qua non for the coherent application of these defences. Nigerian judges and prosecutors must be equipped with sustained, advanced training that delves into the intricate moral philosophy underpinning excuse and justification, alongside their practical evidentiary and procedural requisites. The resultant effect of this is an address to the recurring judicial misapprehensions, consistency, and an enhanced level of fairness in adjudications.

Furthermore, Institutional Support for Forensic and Psychiatric Evaluation must be provided.

The establishment of a robust institutional frameworks for forensic psychiatric evaluation is indispensable. Government investment in forensic psychiatry, mental health infrastructure, and forensic services is crucial to ensure accessible, timely expert testimony, thereby improving justice for vulnerable accused persons, especially in insanity and intoxication defences.

Accordingly, given the pivotal role of mental health in excusatory defences such as insanity and intoxication, this investment in psychiatric services and professional training will ensure that expert testimony is accessible, reliable, and effectively integrated into criminal proceedings.

In addition, a deliberate legislative review of archaic and gender-discriminatory statutes is crucial to align Nigeria's criminal laws with constitutional guarantees of human dignity and fairness. Laws that perpetuate gender biases or permit cruel practices should be repealed or

amended. There must also be a Legislative Reform of Outdated Provisions. An abolishment or amendment of archaic statutes that perpetuate gender biases, condone harmful practices like lawful chastisement, or conflict with constitutional guarantees of dignity and freedom from degrading treatment is apt to improve administration and application of justice not to mention public trust; for justice is should not only be done but should be seen done. The law reform commissions should recommend a harmonised code of defences, integrating both statutory and case law, while providing interpretative guidelines. Procedurally, the Administration of Criminal Justice Act and related procedural laws require strengthening to provide clear and practicable guidelines on the raising, proof, and trial of defences, safeguarding constitutional rights to fair hearing and due process. Nigerian law must reckon with contemporary realities—terrorism, insurgency, cybercrime—where claims of justification and excuse are likely to increasingly arise. Statutory defences must evolve to address modern contexts without eroding the moral clarity of criminal responsibility.

Finally, while upholding the pluralistic character of Nigerian society, courts and lawmakers must navigate cultural and religious diversity. This should however be subject to judicious adherence to universal human rights and justice principles. Courts and lawmakers must navigate pluralism without compromising fundamental rights, applying a principled approach that respects diversity yet upholds justice. This provision of principled pluralism will safeguard against the erosion of fundamental rights while respecting societal values, thereby strengthening the rule of law.

5.3. Contributions to Knowledge

This work contributes both in theory and practice, significantly advances Nigerian criminal jurisprudence by systematically clarifying the conceptual and practical boundaries between excuse and justification defences. Where previous scholarship has treated them as doctrinal curiosities, this project elevates them as the very architecture of criminal responsibility. It situates Nigerian case law within broader philosophical debates, showing how indigenous judicial reasoning both reflects and departs from global currents. By critically appraising institutional deficits and legislative ambiguities, it provides an empirically grounded blueprint for reform that resonates with contemporary human rights standards and comparative legal insights. This research not only enriches both academic discourse but the practical moiety of jurisprudence, ergo, fostering a more coherent, humane, and just criminal law regime in Nigeria.

5.4. Areas of Further Research

Further research should focus on the empirical application of defences in Nigerian trial courts. Much of the discourse has been doctrinal and appellate-drive, yet the lifeblood of criminal law is in the courts where most criminal trials unfold. An empirical research that examines judicial decision-making patterns across Nigerian courts on excuse and justification defences, aiming to uncover the influence of socio-cultural factors and identify judicial trends, disparities, or biases would be pivotal.

Another vital frontier for further research is the interface between customary law and statutory criminal codes. This is important because Nigerian pluralism often births defences unrecognised in formal codes. Nigeria's legal pluralism ensures that many communities operate under

customary norms that tacitly recognise defences like communal necessity, ancestral compulsion, or ritual obligations. These in reality are alien to the statutory codes.

Similarly, the impact of human rights jurisprudence on the scope of criminal defences needs to be studied. With various International articles such as those with similar provisions as the African Charter on Human and Peoples' Rights and the expansion of fundamental rights litigation, there is a fertile space for examining how rights-based arguments could reshape the boundaries of justification and excuse. Until recently, the International court of Justice limited only states to enforce violations of any kind- against a human or against their territory²³¹.

However recent development shows that the court has held that even organizations can bring claims for violations and injuries suffered by its agents caused by another state²³². Ultimately, the dialogue between human rights and criminal law defences remains under-theorised and yet deeply consequential.

5.5. Conclusion

In conclusion, the doctrine of excuse and justification forms the fulcrum upon which the scales of criminal justice delicately balance individual autonomy with societal order in Nigeria. The study has demonstrated that these defences are not mere legal technicalities but embody profound moral philosophy and pragmatic necessity. Sadly enough, the Nigerian legal system's current fragmentation and inconsistencies threaten the realization of fair and consistent justice. It is imperative that legislative clarity, judicial enlightenment, and institutional fortification

²³¹ Article 34 Statute of the International Court of Justice.

²³² *Reparation for Injuries Suffered in the Service of the United Nations*, Advisory Opinion, (1949) ICJ Rep 174.

coalesce to breathe life into these doctrines. This in turn would yield progress, however gradually, in ensuring they fulfil their vital purpose of tempering the harshness of law with mercy, duly safeguarding human dignity while preserving the social fabric. The journey towards a just Nigerian criminal law system is perennial, demanding vigilance, reform, and empathy. This research indefatigably stands as a North Star guiding that journey towards a more rational, equitable, and humane dispensation of justice.

BIBLIOGRAPHY

ARTICLES

Abdulumuni A Oba, 'Religious and Customary Laws in Nigeria' (2011) 25 *Emory International Law Review* 881 <https://scholarlycommons.law.emory.edu/eilr/vol25/iss2/6> accessed 2 October 2025.

Adekunle Ademola Aminu, 'A Jurisprudential Examination of the Defence of Provocation under the Nigerian Criminal Justice System' (2024) 1(2) *Fountain University Law Journal* <https://doi.org/10.53704/fulaj.v1i1.527> accessed 16 July 2025.

Anthony Rickman, 'Justification vs. Excuse Defences' (*Florida Hard Hat Law*, 15 November 2022) <https://www.floridahardhatlaw.com/justification-vs-excuse-defences/> accessed 20 July 2025.

Boniface E Ewulum, 'The Plea of Insanity under the Nigerian Criminal Jurisprudence' (2018) 3 *African Journal of Criminal Law and Jurisprudence* 116.

C J Okoye Lawview & Co, 'Principles of Criminal Responsibility' <https://cjokoyelawview.com/law-341-criminal-law-i/topic-8-principles-of-criminal-responsibility-cont-d> accessed 20 July 2025.

D A Ijalaye, 'Justice as Administered by the Nigerian Courts' in *Justice Idigbe Memorial Lecture Series Five* (1992) 64.

Emmanuel Amechi Okonki, 'Notion of Crime and Liability in Nigerian Criminal Justice System' (2016) 6 *African Journal of Criminal Law and Jurisprudence* 61 <https://journals.ezenwaohaetorc.org/index.php/AFJCLJ/article/download/1623/1664> accessed 18 July 2025.

Gardner, 'The Mark of Responsibility' (2003) 23 *Oxford Journal of Legal Studies* 157; Gardner, 'The Gist of Excuses' (1998) 1 *Buffalo Criminal Law Review* 575.

I F Akande and S I Oji, 'The Pragmatic Nature of Private Defence under Criminal Jurisprudence in Nigeria' (2012) 3(1) *International Journal of Advanced Legal Studies and Governance* 1.

K E Ikenga Oraegbunam, 'Some Basic Principles of Penal Jurisprudence: An Analytical Approach' (2010) 1 *Nnamdi Azikiwe University Journal of International Law & Jurisprudence* <http://www.ajol.info/index.php.naujilj/article/view/138186> accessed 20 July 2025.

Kent Greenawalt, 'Distinguishing Justifications from Excuses' (1986) 49(3) *Law and Contemporary Problems* 89 https://scholarship.law.columbia.edu/faculty_scholarship/3807 accessed 2 August 2025.

Kilcommins and O'Donnell (eds), McCutcheon, 'Criminal Law and the Defence of Intoxication' in *Alcohol, Society and Law* (Barry Rose Publishers Ltd, Chichester) 212.

Law Reform Commission, *Defences in Criminal Law* (LRC 95–2009, Dublin, Law Reform Commission 2009).

M Arthur-Jolasinmi, 'The Defence of Self Defence under the Nigerian Criminal Law: A Jurisprudential Appraisal' (2025) 3 *Law Faculty Research Papers* 154.

Miriam Gur-Arye, 'Should a Criminal Code Distinguish Between Justification and Excuse' (2015) 5(2) *Canadian Journal of Law and Jurisprudence* (Cambridge University Press) <https://doi.org/10.1017/S0841820900001399> accessed 22 July 2025.

Paul H Robinson, 'Criminal Law Defences: A Systematic Analysis' (1982) 82(2) *Columbia Law Review* 199.

'Justification' (Cornell Law School, June 2023) <https://www.law.cornell.edu/wex/> accessed 20 July 2025.

BOOKS

Abumere PI, *An Anatomy of Criminology* (A Inno Publishers Z, Ekpoma 1996).

Aristotle, *Nicomachean Ethics*, tr Terence Irwin (Hackett Publishing Company, Indianapolis 1999).

Ashworth A, *Principles of Criminal Law* (5th edn, Oxford University Press 2006).

Atseguia L and others, *Criminal Law in Nigeria: A Modern Approach* (Malthouse Press Ltd, Lagos 2021).

Bentham J, *An Introduction to the Principles of Morals and Legislation* (Clarendon Press, London 1823).

Bhat Ishwara P, *Idea and Methods of Legal Research* (Oxford Academic 2020) <https://doi.org/10.1093/oso/9780199493098.001.0001> accessed 24 August 2025.

Charleton P and others, *Criminal Law* (Butterworths 1999).

Duff RA, *Intention, Agency and Criminal Liability: Philosophy of Action and the Criminal Law* (Blackwell, Oxford 1990).

Edwards J, 'Theories of Criminal Law' in EN Zalta (ed), *The Stanford Encyclopedia of Philosophy* (Fall 2021 Edition) <https://plato.stanford.edu/cgi-bin/encyclopedia/archinfo.cgi?entry=criminal-law> accessed 8 August 2025.

Fiona Leverick, *Killing in Self-Defence* (Oxford University Press 2006) <https://doi.org/10.1093/acprof:oso/9780199283460.003.0002> accessed 3 August 2025.

Fletcher GP, *Rethinking Criminal Law* (Harvard University Press 2000) <https://doi.org/10.1093/oso/9780195136951.001.0001> accessed 25 July 2025.

Fletcher GP, *Rethinking Criminal Law* (Little Brown, Boston 1978).

Hart HLA, *Punishment and Responsibility: Essays in the Philosophy of Law* (Clarendon Press, Oxford 1968).

Herring J, *Criminal Law* (4th edn, Palgrave Macmillan 2005).

Mill JS, *On Liberty* John Stuart Mill, *On Liberty* (Mineola, NY: Dover Publications, 2002)

Moran M, 'Coleridge Samuel Taylor (1772–1834)' in DM Borchert (ed), *Encyclopaedia of Philosophy* vol 2 (2nd edn, Macmillan Reference, 2006).

Moore MS, *Act and Crime: The Philosophy of Action and its Implications for Criminal Law* (Oxford University Press 1993).

Ofori-Amankwah EH, *Criminal Law in the Northern States of Nigeria* (1986).

Okonkwo C and Naish, *Criminal Law in Nigeria* (3rd edn, Spectrum Books Ltd, Ibadan 2018).

Okorie CK, *Criminal Law: The General Part* (1st edn, Imo State University Press 2022).

Oputa CA, 'Towards Greater Efficiency in the Dispensation of Justice in Nigeria' in Y Akinseye-George (ed), *Law, Justice and Stability in Nigeria: Essays in Honour of Kayode Eso* (Shalom Multiserve Bureau, Ibadan 1993).

Robinson PH, *Criminal Law Defences* (West Publishing Co 1984).

Sadock BI and others, *Comprehensive Textbook of Psychiatry* vol II (7th edn, Lippincott Williams & Wilkins, New York 2000).

Sanni AO, *Introduction to Nigerian Legal Method* (2nd edn, Obafemi Awolowo University Press, Ile-Ife 2017).

Simpson AWB, *Cannibalism and the Common Law* (University of Chicago Press 1984).

Stephen JF, *General Views of the Criminal Law of England* (reference incomplete – edition/publisher details needed).

Williams G, *Textbook of Criminal Law* (2nd edn, Stevens & Sons 1983).

Yeo S, *Compulsion in Criminal Law* (Law Book Company Ltd, Sydney 1990).

REPORTS AND OFFICIAL PUBLICATIONS

Amnesty International, *Amnesty International Report 2008: The State of the World's Human Rights* (Amnesty International 2008) Available at <https://www.amnesty.org/en/documents/pol10/001/2008/en/> accessed 8 September 2025.

Law Reform Commission, *Defences in Criminal Law* (LRC 95-2009, Dublin: Law Reform Commission 2009).

Ehonwa LO, *Prisoners in the Shadows: A Report on Women and Children in Five Nigerian Prisons* (Civil Liberties Organization, Lagos 1993).

DICTIONARY

Black's Law Dictionary (8th edition, West Publishing).

Merriam-Webster's Dictionary, *Insanity*, available at <https://www.merriam-webster.com/dictionary/insanity> accessed 29 September 2025

The Concise Oxford Dictionary (Oxford University Press, latest edition) op. cit. 367.

NEWSPAPERS

Ruby Leo, 'Cultural Beliefs Fuel Domestic Violence' *Daily Trust* (Archived, 26 September 2013) <https://web.archive.org/web/20130926055417/http://dailytrust.info/index.php/home-front/270-cultural-beliefs-fuel-domestic-violence> accessed 5 August 2025.