TREASON AND TREASONABLE FELONY UNDER THE NIGERIAN CRIMINAL LAW

CHIAMAKA GENEVIEVE EZENTA
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ABSTRACT

This research project will consider treason and treasonable felony offences under the criminal laws of Nigeria. It focuses on the history behind these offences, statutes, and the fundamental conflict between state sovereignty preservation and constitutional fundamental human rights protection. The research employs pure doctrinal methodology whereby the primary sources of data include the 1999 Constitution of the Federal Republic of Nigeria, Criminal Code Act, Penal Code Act, Evidence Act 2011, and important decisions made by courts of appeal. The secondary sources of information include peer-reviewed journal articles and books written by legal scholars. From the findings in this research project, it can be established that whereas the relevant statutes give essential measures of protection for the corporate personality and constitutional stability of the state, they have very broad definitions, particularly in reference to the levying of war, overawing and overt act phrases, which create legal confusion. There are historical and current cases in which different administrations use the state security related offences to oppress democracy, free assembly and movements such as the RevolutionNow movement and secessionist activities. Moreover, the comparison between the United Kingdom's and the United States' framework further proves that the United States' system is better protected from political manipulation because of the stringent interpretation of the constitution in terms of actual war. This research therefore recommends immediate changes in legislation by the National Assembly to restrict and define the legal aspects of state security offences in the codes, codification of immunity from prosecution for non-violent political protest, the strict adherence to the two witnesses rule of evidence, and extension of the legal aid scheme for poor suspects charged with treasonable felony.

CHAPTER ONE

INTRODUCTION

1.1 Background to the Study

Law is the bedrock of the constitution, which establishes the institutions of government and guarantees individual civil rights.[1] Within this framework, the state is considered an embodiment of the people; therefore, any attack upon the government or an attempt to overthrow it is also an attack upon the people themselves, upon which the idea of treason and treasonable felony are built as principles of law.[2] Historically, the concept of treason originated in the ancient Greek and Roman Empires as a crime against the monarch, evolving over time into a legal principle designed to safeguard the modern state.[3] On the crimes of treason and treasonable felony in the Nigerian legal system, the administration of criminal justice is divided between the Criminal Code Act (applicable in the Southern region) and the Penal Code (applicable in the Northern States).[4] Both statutes criminalize acts that strike at the heart of national security through the offences of treason and treasonable felony. Treason is generally attempt to kill or overthrow the sovereign or government through overt acts such as levying war.[5] It is categorized as the highest offence against public order and carries the most severe penalty under the law: death.[6] Conversely, treasonable felony is a related but distinct offence characterized by an intention to commit treason or to remove a legally elected

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[1] B A Garner, *Black's Law Dict* (12th edn, Thomson Reuters 2024)
[2] O Olamide, 'Treason & Treasonable Felony' (The Jet Lawyer, 2025) <https://djetlawyer.com/treason-treasonable-felony/> accessed 30 June 2026.
[3] O M Ofodile, 'Exam of Treason & Treasonable Felony in Nig' [2025] (6) *IJOLACLE* 57 <https://nigerianjournalsonline.org/index.php/IJOLACLE/article/download/508/509> accessed 30 June 2026.
[4] Ibid.
[5] O V C Okene and N A Adewusi, 'Critical Exam of Treason in Nig' [2024] (1) (1) *AELN JMCS* 62 <https://www.environmentallawyersng.org/wp-content/uploads/2024/05/A5-Prof-O-V-C-Okene-Adewusi.pdf> accessed 30 June 2026.
[6] Ofodile (n 3) 58.

president or governor through unlawful means, even if that intention is not accompanied by the actual levying of war.[7]

While treason demands actual war or conspiracy to levy war, a treasonable felony can occur if a leader is blackmailed or compelled to resign through force or constraint.[8] This offence is punishable by life imprisonment rather than death penalty.[9]

In Nigeria's political history, charges of treason and treasonable felony were once rountinely primarily practiced under military regimes; however, they have remained a recurring feature of the civilian era.[10] Notable figures like Chief Obafemi Awolowo and Anthony Enahoro faced such charges during the First Republic.[11] In contemporary times, the Nigerian state has faced a rise in agitations, including secessionist movements like the Indigenous People of Biafra (IPOB) led by Nnamdi Kanu[12] and social movements such as the RevolutionNow campaign led by Omoyele Sowore.[13]Thus, a significant challenge associated with this study is unearthing the inherent conflict between protecting national security and upholding fundamental human rights enshrined in the 1999 Constitution, such as the rights to freedom of expression and peaceful assembly. There is a growing concern that treason charges are being used as tools of political oppression to silence legitimate opposition and dissenting opinions. This research intends to examine the specific elements and judicial interpretations of these crimes and to distinguish between lawful protest, secessionism, political and socio-economic agitations vis-a-vis provisions of the constitution.

1.2 Statement of the Problem

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7 O W Duru, 'Overview of Treason & Treasonable Felonies' (Duru Free Law Lecture Series No 16, 2016) <https://www.academia.edu/6792836/TREASON_AND_TREASONABLE_FELONIES> accessed 30 June 2026.

8 O A Momoh, 'On Revolution, Treason & Treasonable Offences' (BarristerNG, 6 October 2019) <https://barristerng.com/on-revolution-treason-and-treasonable-offences-by-osigwe-ahmed-momoh/> accessed 30 June 2026.

9 Olamide (n 2).

10 G Amalu, 'Offence of Treason' *The Nation* (Lagos, 20 August 2019) <https://thenationonlineng.net/offence-of-treason/> accessed 30 June 2026.

11 Okene and Adewusi (n 5) 62.

12 *FRN v Kanu* (Unreported, Suit No FHC/ABJ/CR/383/2015, FHC, Abuja Judicial Div, 20 November 2025).

13 'Planned Revolution March, a Treasonable Felony - IGP Warns' (Fed Min of Info & Nat Orientation, 5 August 2019) accessed 30 June 2026.

The law regards the safety and stability of the state and its leaders as paramount, and utilizes the offences of treason and treasonable felony to ensure this security. However, a gap exists between the statutory intent of these laws and their practical application within Nigeria's democratic framework.[14] While treason is defined as the highest offence against public order, typically requiring a clear action of war. There is a growing concern regarding the subjective interpretation of what constitutes such an act.[15]In contemporary Nigeria, there has been a surge in secessionist agitations and social movements that the government characterizes as treasonable. The main issue lies in between safeguarding national security and maintaining fundamental human rights, particularly the rights to freedom of expression, association, movement, and peaceful assembly as enshrined in the 1999 Constitution.[16] A dissatisfying trend has emerged where the government uses the threat of treason or treasonable felony as a trajectory to silence citizens and gag legitimate dissent. This judicial interpretation was seen in *Asari-Dokubo v FRN*,[17] where the court indicated that in situations where national security is at risk, personal human rights might be put on hold. Consequently, there is an alarming ambiguity in distinguishing between a lawful protest and a criminal attempt to remove a president through unlawful means.[18]Also, law enforcement agencies characterize calls for revolution as acts of terrorism or treasonable felony, even when such movements lacks the overt acts or the use of force traditionally required for a conviction.[19] This study, therefore, seeks to address the problem of how these grave offences are being utilized as tools of political oppression and to provide clarity on the legal boundaries that protect both the state and the fundamental liberties of its citizens.

[14] A I Onuigbo, *NALT-Based Research Guidebook for LL.B Long Essay* (2nd edn, GOUNI 2023).
[15] Ofodile (n 3) 59.
[16] Okene and Adewusi (n 5) 64.
[17] *Asari-Dokubo v FRN* (2007) 12 NWLR (Pt 1048) 320 (SC).
[18] Olamide (n 2).
[19] G Odugbemi, 'FRN v Sowore: Treason or Treasonable Felony?' (2019) *SSRN Electronic J* 1, 8 <https://ssrn.com/abstract=3435970> accessed 30 June 2026.

1.3 Research Questions

To address the tension between state security and civil liberties, this study seeks to answer the following questions:

1. What are the elements of the offence of treason and treasonable felony under the Nigerian Criminal Code and the Penal Code?
2. To what extent does the application of these offences conflict with the fundamental human rights of freedom of expression and peaceful assembly as guaranteed by the 1999 Constitution?
3. What has been the judicial attitude towards the interpretation of the offences relating to treason and treasonable felony?
4. What are the similarities and differences between the Nigerian and the United States legal framework on treason and treasonable felony?
5. What legislative and policy reforms are necessary to ensure that treason is not usedfor political oppression?

1.4 Aim and Objectives of the Study

This study aims to examine treason and treasonable felony under the Nigerian criminal law with primary focus on national security and the protection of fundamental human rights. To achieve these aims, objectives of the research are to:

1. Examine the elements of the offences of treason and treasonable felony under the Nigerian Criminal Code and the Penal Code.
2. Evaluate the extent to which the application of the offences of treason and treasonable felony affects the fundamental rights to freedom of expression and peaceful assembly

guaranteed under the Constitution of the Federal Republic of Nigeria 1999 (as amended).

3. Analyze the judicial attitude towards the interpretation and application of the offences of treason and treasonable felony in Nigeria.
4. Compare the Nigerian and United States legal frameworks on treason and treasonable felony, highlighting their similarities and differences.
5. Examine the legislative and policy reforms necessary to prevent the misuse of treason laws for political oppression while safeguarding national security.

1.5 Scope and Limitations of the Study

The scope of a research project are its limitations. This study is situated within Nigeria. The scope is limited to examining the elements, interpretations, and consequences of treason and treasonable felony. However, every research is subject to limitations which are the constraints or difficulties encountered during the research. The constraints in logistics and time have a role play too. Given that law is dynamic, with amendments like the Terrorism Prevention (Amendment) Act 2022, the researcher must be abreast with changes in the field in order to be updated. A limitation exists in the comparison carried out in the study. The research intends to draw lessons from jurisdictions like the United States.However, the differences in the constitutions of both countries mean that some findings may not be applicable to Nigeria. Despite these constraints, the study will analyse from available authorities, judicial precedents, and opinions of scholars on the topic.

1.6 Significance of the Study

The significance of a study represents its importance and the contribution of its findings to a body of knowledge. This timing of this research is perfect as it addresses the intersection between national security and the preservation of fundamental human rights within the context of democracy in Nigeria. While it is clear that there is a wealth of literature regarding human rights and the rule of law in general, there exists a notable lack of research on the ways in which political factors are used to undermine the principle of the rule of law, particularly in relation to treason and treasonable felony. From a jurisprudence point of view, the study is significant because it provides an analysis of the elements required to establish a conviction for offences against the state. Consequently, the findings will assist the judiciary to establish balanced approach in protecting the freedom of citizens and that they are not sacrificed on the altar of national security. The study also holds immense legislative and policy significance. It suggests a complete revision of the existing political and legal framework concerning state security violations by comparing the Nigerian framework with jurisdictions like the United States, where treason is narrowly defined and requires the physical carrying of arms. The study serves educative function for various stakeholders in the criminal justice system, such as law enforcement agencies, legal practitioners, academics and human rights advocates.

1.7 Research Methodology

Research methodology refers to the systematic study of the processes involved in conducting research in a scientific manner, aimed at enhancing human knowledge by identifying and examining facts or issues.[20] In the realm of legal studies, this entails a methodical exploration of legal resources, such as statutory laws, subordinate legislation, and court decisions, to further the discipline of law.[21] This research utilises the doctrinal approach, commonly known as black-letter research.[22] This approach seeks to organise, correct, and elucidate the legal framework regarding a specific subject, in this case, the capital crimes of treason and treasonable felony, through the examination of authoritative documents that include both

[20] K Vibhute and F Aynalem, *Legal Research Methods* (JLSRI 2009) 19; Onuigbo (n 14) 979.
[21] S N Jain, 'Legal Research & Methodology' [1972] (14) (4) *JILI* 487, 490.
[22] P Chynoweth, 'Legal Research' in A Knight and L Ruddock (eds), *Adv Research Methods in the Built Env* (Blackwell 2008) 878, 882.

primary and secondary materials.[23] The primary authorities consist of the Constitution, the Criminal Code Act, the Penal Code, and the Terrorism Prevention (Amendment) Act 2013 and Judgements of Courts.[24]As a library-based inquiry, the secondary research sources will be conducted from the law library, utilizing both traditional and digital or virtual resources.[25]The rationale for adopting doctrinal is rooted in the nature of the research. Because the offences of treason are primarily normative in character, a doctrinal approach is necessary to expound the coherence of these legal concepts. The research process is further structured around the historical and comparative models of legal research. The historical model is employed to trace the antecedents of treason from its monarchical roots to its contemporary application in a democratic framework, providing a clue to why current provisions are framed in their present form. The information for this study comes from a structured search approach that emphasises original sources.

Conversely, because the doctrinal research method relies on the investigator's internal analytical skills and logical trained mind, the resulting projections may reflect the researcher's own perception, which may contrast with conclusions of other scholars. The researcher may fail to account for extra-legal factors, such as political pressure or shifting social mores, that dictate how law operates in the real world, since the research focuses almost exclusively on law in the books. This limitation is compounded by an over-reliance on appeals, as the method tends to focus on reported judgements while overlooking the practical, often unreported activities of other courts and agencies.Despite these limitations, this method is the best fit for this study because an understanding of the law and institutions is a prerequisite for any investigation into the relationship between law and society.[26]

1.8 Literature Review

[23] M McConville and W H Chui (eds), *Research Methods for Law* (2nd edn, Edinburgh Univ Press 2017) 7.
[24] C Soren, 'Legal Research Methodology: Overview' [2021] (8) (10) *JETIR* 380 <https://www.jetir.org/view?paper=JETIR2110354> accessed 30 June 2026; Ofodile (n 3) 61.
[25] Okene and Adewusi (n 5) 62.
[26] U Baxi, *Socio-Legal Research in India: A Programschrift* (ICSSR 1975) 656.

The discourse surrounding treason and treasonable felony in Nigeria reflects an intersection of the constitution, colonial legal legacies, and contemporary democratic pressures. Literature on the subject reveals a tension between the state's imperative to ensure national security and the citizen's constitutionally guaranteed fundamental rights. Nigerian criminal jurisprudence is uniquely characterized by a dual administration of justice, where the Criminal Code Act governs the Southern states and the Penal Code Act applies to the Northern states and the Federal Capital Territory.[27] This legislative bifurcation necessitates a literature review that is not only evolutive, traces the origins of these laws from ancient Roman and English common law, but also comparative, assesses how these principles are applied across different regional and international jurisdictions.[28] Current literature emphasize that treason is a crime of the highest order, they define treason under Section 37 of the Criminal Code defines the act of waging war against the State with the intent to intimidate or overwhelm the President or a Governor. Scholars such as Osigwe Ahmed Momoh have noted that while the historical roots of treason were tied to the protection of a monarch, the modern Nigeria interprets the offence from the constitutional perspective.[29] However, the definition of war remains subject to debate.Literature suggests that the term does not imply military engagement but includes any assembly of persons with the intent to effect a purpose by force.[30] This creates a confusion in interpretation. This is because the line between a protest and treason is blurred.[31] A section of the literature emphasises the difference between treason and treasonable felony. According to Section 41 of the Criminal Code, a treasonable felony occurs when an individual intends to oust the President or a Governor while they are in office through unconstitutional means, as long as this intention is demonstrated by a clear action. Ofodile contends that the main

[27] C J Okeke, 'Criminal Jurisdiction of the FHC under CFRN s 251' [2015] (10) (1) *COOU LJ* 51.
[28] I N Okonkwo, 'Conspiring Realities: Offences in Nig & Commonwealth' [2023] (11) (2) *HJLSPP* 1431.
[29] C G Ezenta, 'Treason & Treasonable Felony under Nigeria Criminal Law' (LL.B Long Essay, GOUNI 2026) 1056.
[30] Momoh (n 8).
[31] Ibid.

distinction is found in the application of force. Treason is often linked with the use of armed force but treasonable felony can be established through the manifestation of an intent to subvert the constitution, even if the means are not violent. Okeke and Anushiem has extended this concept to election rigging. They suggested that attempts to sabotage an election is an assault on the constitution and should be treated as a form of betrayal equivalent to a treasonable felony. Empirical and socio-legal studies provide a law-in-action perspective that doctrinal analysis often lacks, revealing the socio-economic precipitants of insurgency. In the Boko Haram insurgency, Obinna Mbanugo and C.N. Arinze-Umobi explores whether such activities are more accurately categorized as treason or terrorism. Findings suggest that the roots of such conflicts often lie in grassroots poverty, illiteracy, and youth unemployment, which make individuals susceptible to ideological brainwashing. Similarly, the agitations by the IPOB and Nnamdi Kanu are viewed by the government through the perspective of treason, while proponents argue they are exercising a right to self-determination. Literature suggests that militaristic suppression of these movements have worsened the crisis, with Clement Odiri Obagbinoko recommending a shift toward dialogue and peaceful negotiation over suppression.[32]

Contemporary legal challenges involving extraordinary rendition have also surfaced in the literature, particularly concerning the trial of *FRN v. Nnamdi Kanu*.[4] [1] Judicial pronouncements note that violations of a defendant's fundamental rights in pre-trial or extrajudicial processes, such as being forcibly brought from a foreign jurisdiction should not influence jurisdiction of the court to hear the case, as long as the facts presented reveal an offence established by statutory law. This position, however, highlights a conflict between the interests of state security and the maintenance of legal principles. Lastly, the literature underscores the necessity for legislative reform, Momoh and Ofodile, suggest that the current

[32] C O Obagbinoko, 'State Response to Violent Conflicts: IPOB' [2018] (2) (1) *AfSol J* <https://afsol.ipss-addis.org/download/state-response-to-violent-conflicts-an-assessment-of-the-nigerian-state-and-the-indigenous-people-of-biafra-ipob-separationist-movement/> accessed 30 June 2026.

legal architecture regarding state security is a relic of oppressive military regimes and requires a complete and concrete overhaul. There is a consensus that the definition of treason and treasonable felony should be strictly delimited to involve physical armed conflict, thereby preventing the use of these statutes as tools for political oppression against perceived enemies of the state.[5] [9]

This research seeks to address silence in contemporary moral and political philosophy regarding treason, which has left a disconnect between black-letter definitions and the actual moral foundations of state allegiance. A gap exists in understanding how politics erodes the rule of law, leading to instances where dissent or protests are labelled as betrayal to justify a crackdown on actors. This persists because existing studies focus on traditional definitions without addressing how these laws are weaponised to silence opposition in a democracy. Also, there is a paucity of research that explores the under-criminalization of crimes committed during elections.Treason requires an act of war, but literature indicates that election malpractice constitutes a betrayal that remains unaddressed within the framework. Moreover, systemic obstacles, including extended pretrial incarceration and the omission of treasonable felony from typical legal aid provisions, signify a gap in execution.

This research identifies 6 (six) unresolved gaps first on the fact that although treason is universally regarded as a grave offence, existing literature largely rely on black-letter definitions in defining the concept, without looking at the moral perspective to state authority. Second, the literature reveals interpretational issues in defining what constitutes an overt act of treasonable felony. Third, there is a jurisprudential neglect of electoral malpractice as a form of treason, despite its capacity to undermine governments established by law.Further gaps arise in the hierarchy of constitutional rights, where security is prioritised over liberty without sufficient analysis of long-term democratic consequences. Lastly, there is limited engagement with the legality of extraordinary rendition and its implications for jurisdiction and human rights.

CHAPTER TWO

CONCEPTUAL CLARIFICATION AND THEORETICAL FRAMEWORK OF TREASON AND TREASONABLE FELONY

2.1 Conceptual Framework

2.1.1 Meaning of Treason

Treason is an offence against public order and a serious crime in Nigerian, as it strikes at the heart of the existence of the state.[33]The concept originated in the Greek and Roman Empires as a protection for the monarch.It evolved from high treason (disloyalty to the sovereign) and petty treason (murder of a superior by a subordinate) into a framework focused on the preservation of the state as the embodiment of the people.[34] In legal terms, treason refers to the act of betraying one's nation by attempting to subvert the government to which the offender owes allegiance either by making war against the state or supporting its enemies.[36]Cécile Fabre has interrogated the foundations of this crime, suggesting that while the law focuses on the nation of origin, the obligation of allegiance should be rooted in membership (the actual receipt of benefits and protections from a community), rather than mere provision in a statute.

In Nigeria, the treason is defined by the Criminal Code Act (Southern states) and the Penal Code Act (Northern states and the FCT).[37] According to Section 37(1) of the Criminal Code, anyone who engages in hostilities against the State with the intent to intimidate the President

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[33] Okene and Adewusi (n 5) 51; *FRN v Kanu* (n 12) 190; Ofodile (n 3) 57.
[34] Ibid.
[36] O Mbanugo and C N Arinze-Umobi, 'Boko Haram Insurgency: Treason or Terrorism?' [2018] (2) *AJCAL* 1, 11 <https://journals.ezenwaohaetorc.org/index.php/AJCAL/article/download/774/743> accessed 30 June 2026; O E Okeke and U M Anushiem, 'Electoral Malpractice as Treasonable Felony' [2025] (5) (2) *AJDER* 69, 77 <https://doi.org/10.31920/2752-602X/2025/v5n2a4> accessed 30 June 2026.
[37] Ibid; A Akujobi, *Comparative Crim Law II - PUL806* (NOUN) 413.

or a State Governor is committing treason and is subject to the death penalty. Section 37(2)[38] extends this responsibility to anyone colluding with individuals inside or outside Nigeria to wage such conflict. Section 38 imposes penalties on the encouragement of a foreign individual to launch an armed invasion of Nigeria. Under the Penal Code, Section 410 mirrors these provisions, maintaining the death penalty as the sanction for those who challenge the authority of the state.[39] The law has a distinct method for prosecuting an offender; according to the Evidence Act, an individual cannot be found guilty of treason unless they plead guilty or there is testimony in open court from at least two witnesses regarding the same overt act, or from one witness for one overt act and another witness for a different overt act of the same type of treason.[40] Nonetheless, the provision does not pertain to instances where the alleged treasonous act involves the assassination of the President or an effort to jeopardise the life or harm the individual of the President.[41]

The phrase "levying war" has been interpreted by both scholars and the judiciary to possess a general and descriptive meaning that transcends the definitions found in international law.[42] In the case of *Enahoro v. Queen*,[43] The court determined that for an act to be considered a levying of war, it is not required for the accused to belong to a military organization or to possess training in weaponry; additionally, the specific weapons utilised are irrelevant, as is the quantity of individuals involved in the act. As established in *R. v. Gallagher*,[44] war may be levied through various methods and approaches, as long as the gathering serves a collective and public aim. If the force is applied solely for private purpose, such as redressing a personal grievance, the offence is reduced to a riot rather than treason.

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[38] *Criminal Code Act* Cap C38 LFN 2004, s 37.
[39] Olamide (n 2); A Daramola, 'Treason & Treasonable Offence under Nig Jurisprudence' (Newswire Law & Events, 2019); Duru (n 7).
[40] B Ayinla-Ahmad and R K Salman, 'Legal Protections & Rights of Defendants in Nig CJS' [2025] (2) (1) *LexScriptio* 52, 60 <https://journals.kwasu.edu.ng/index.php/lexscriptio/article/view/289> accessed 30 June 2026.
[41] *Evidence Act* 2011, s 201.
[42] Ibid.
[43] *Enahoro v Queen* (1965) NMLR 265.
[44] *R v Gallagher* (1883) 15 Cox CC 291.

An interpretation of the meaning of treason involves the concepts of intimidating and overawing the head of state. In the case of *Boro v. The Republic*,[45] the Supreme Court dismissed the claim that it is necessary for the prosecution to demonstrate that the President or Governor was intimidated. The Court determined that the Head of State represents the State itself, thus intimidating the leader equates to intimidating the State. To "overawe" implies establishing a scenario in which the government is pressured to decide between capitulating to the insurgents' power or putting the public at risk.[46] This stance has since been scrutinised by *Momoh*, who notes that while this ensures that the state is stable, it creates a confusion when distinguishing between treason and protests.[47]

Also, the meaning of treason is distinguished from offences such as sedition and treasonable felony through the elements of force and intent. The former involves communication calculated to bring hatred to the government or rebel without open violence, treason requires levying of war.[48]In the trials of Sowore and Kanu, the FG attempted to equate revolution with treason.However, *Odugbemi* argues that the law must look at substance over form.A call for revolution through protest rather than armed conflict lacks the essential *actus reus* of levying war and should not be treated as treason, regardless of the nomenclature used by the organisers.[49]Treason is a crime that requires a linkage between a manifest act and an intention to subvert order.

2.1.2 Meaning of Treasonable Felony

The definition of treasonable felony in Nigeria is rooted in Section 41 of the Criminal Code, which describes the crime as establishing and demonstrating an intention (via an overt act) to

[45] *Boro v Republic* (1966) 1 All NLR 266 (SC).
[46] Ibid.
[47] Momoh (n 8).
[48] Ibid.
[49] Odugbemi (n 19) 7-8.

remove the President/Governor outside the law or incite invasion by foreigners.[50] Scholars distinguish this offence from treason by its focus on the element of intention which is accompanied by manifestation, rather than the act of warfare. While treason *per se* involves the actual "levying of war" to overawe the state and is a capital offence which is punishable by death, a treasonable felony is classified as a felony attracting a punishment of life imprisonment. The use of force is reduced from treason to treasonable felony when the "levying of war" is targeted at compelling a change in government policies or intimidating a legislative arm rather than the total ouster of the State. Section 41 delineates four categories of purpose that constitute the offence: (a) the aim to oust the President during his tenure through unconstitutional means; (b) the aim to depose a State Governor; (c) the levying of war to force the President to alter his policies or to threaten the National Assembly or any other legislative body; and (d) the encouragement of a foreign entity to invade Nigeria. *Ofodile* indicates that the core of the offence resides in actions that demonstrate a desire to engage in treason, yet are "not accompanied by any additional act" to completely execute that deadly intention.[51] He argues that it is immaterial whether the intention is formed through arms or by charms, noting that attempts to frustrate a leader into resigning, whether through blackmail, breeding disaffection, or crippling the state economy, satisfy the threshold of this grievous crime[52]

The phrase "levying war" has been interpreted by both scholars and the judiciary to possess a general and descriptive meaning that transcends the definitions found in international law.[53] In the case of *Enahoro v. Queen*,[54] The court determined that for an act to be classified as levying war, it is not required for the accused to belong to a military organization or to

[50] Ayinla-Ahmad and Salman (n 39) 60; Okeke and Anushiem (n 35) 77.
[51] Ayinla-Ahmad and Salman (n 39) 60.
[52] Odugbemi (n 19) 7-8.
[53] Ofodile (n 3) 60.
[54] *Enahoro v Queen* (n 42).

possess training in weaponry; additionally, the specific weapons utilised and the number of individuals involved are irrelevant. As established in *R. v. Gallagher*,[55] Conflict can be initiated through various methods and approaches, as long as the gathering serves a collective and public aim. If the force is employed solely for individual reasons, like addressing a personal complaint, the crime is downgraded to a riot instead of treason.

An interpretation of the meaning of treason involves the concepts of intimidating and overawing the head of state. In the case of *Boro v. The Republic*,[56] The Supreme Court dismissed the claim that it is necessary for the prosecution to demonstrate that the President or Governor was intimidated. The Court determined that the Head of State represents the State itself, and thus, intimidating the leader equates to intimidating the State. To "overawe" implies establishing a scenario in which the government must decide between succumbing to the pressure of the insurgents or putting the public at risk.[57] This stance has since been scrutinised by *Momoh*, who notes that while this ensures that the state is stable, it creates a confusion when distinguishing between treason and protests.[58]

Central to the proof of treasonable felony is the requirement of an overt act, which serves as external evidence of the internal treasonable intention. Under Section 49 of the Criminal Code, an act of conspiracy to effect any of the purposes in Section 41, Any action taken by any of the conspirators to advance such a purpose is considered a sufficient overt act.[59] However, *Odugbemi* warns against the absurdity of criminalizing mere words or expressions.[60] He contends that if a defendant's actions, like a march or demonstration, are protected under the rights of freedom of expression and association as outlined in Sections 39

[55] *R v Gallagher* (n 43).
[56] *Boro v Republic* (n 44).
[57] Ibid.
[58] Momoh (n 8).
[59] Amalu (n 10).
[60] Odugbemi (n 19) 7-8.

and 40 of the Constitution, the accusation cannot be upheld. This perspective demands that the State look at the substance over the form to ensure that protests are not mischaracterised as treason.[61] *Okeke* and *Anushiem s*eek to expand the concept to encompass electoral malpractice.[62] They argue that the subversion of elections, through rigging or other means of election suppression, constitutes betrayal of the constitution which is equivalent to an attempt to sabotage a government outside of the law. These scholars advocate for a shift that would categorise such acts as acts of subversion under the umbrella of treasonable felony by treating election malpractice as a threat to the constitution.

Treasonable felony is further defined by the procedure for establishing it under the law and the limits of various institutions. By virtue of the Evidence Act,[63] no individual can be found guilty of this crime (unless they admit guilt) unless there is testimony in court from a minimum of two witnesses regarding the same incident, or one witness for one overt act and another witness for a separate act of a similar nature. Furthermore, section 43 of the Criminal Code sets a two-year time limit, indicating that an individual cannot face trial for treasonable felony unless the prosecution is initiated within two years of the offence. Despite these protections, *Adeyemi* highlights a gap, as treasonable felony is currently excluded from standard coverage under the Legal Aid Scheme in Nigeria. This deficit often leaves defendants who may not be able to afford a good defence facing life-imprisonment charges without adequate representation.[64]

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[61] Ibid.
[62] Okeke and Anushiem (n 35) 77-80.
[63] *Evidence Act* 2011, s 201.
[64] I Adeyemi, 'Legal Aid Council in Nig: Challenges & Solutions' [2017] *SSRN Electronic J* 8 <https://ssrn.com/abstract=3547025> accessed 30 June 2026.

2.1.3 Difference between Treason and Treasonable Felony

The distinction between treason and treasonable felony in our criminal jurisprudence is established by a combination of the Criminal and the Penal Codes, and reinforced by decisions regarding the nature of the threat against the State. Both offences are categorised as the crimes against public order and the constitutional, yet they differ in their elements which constitute them(*i.e. actus reus*) and the severity of their sanctions. While treason strikes at the heart of the state's existence through the actual or planned levying of war, the other is characterised by the formation of an intention to effect change outside the constitution, provided that such an intention is manifested by a overt act which is discernible.Treason is defined under Section 37(1) of the Criminal Code as the act of levying war against the State in order to intimidate or overawe the President or the Governor of a State. The Court, in the landmark case of *Boro v. The Republic*,[65] clarified that "overawing" the Head of State is synonymous with overawing the State itself, as the leader is the legal embodiment of the sovereign community. Conversely, Section 41 of the Criminal Code Act exclusively governs treasonable felonies, which involve forming an intention to remove the President or a Governor during their term of office by unconstitutional means, or instigating a foreign invasion. *Ofodile* argue that the distinction lies in the completion of the act; a treasonable felony represents an intention to commit treason that remains unaccompanied by any further act to carry out the lethal intent of full-scale internal warfare.*Momoh* draws a line in their differences by highlighting the target and purpose of the force used. Under Section 41(c), the use of force or the levying of war is reduced from treason to a treasonable felony if it is targeted at compelling the President to change government policies or measures, or at intimidating a legislative arm rather than the total ouster of the sovereign State. This suggests that while treason per se is linked to a total existential assault on the state authority, a

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[65] Okene and Adewusi (n 5) 74-75.

treasonable felony acts as a "catch-all" for subversive activities designed to coerce government institutions through pressure that, while violent, does not reach the threshold of an all-out war for total overthrow.

The phrase "levying war" has been interpreted by both scholars and the judiciary to possess a general and descriptive meaning that transcends the definitions found in international law.[66] In the case of *Enahoro v. Queen*,[67] the court determined that for an act to be considered a levying of war, it is not required for the accused to belong to a military organization or to possess training in weaponry; additionally, the specific weapons utilised are irrelevant, as is the quantity of individuals involved in the act. As established in *R. v. Gallagher*,[68] war may be levied through various methods and approaches, as long as the gathering serves a collective and public aim. If the force is employed solely for individual reasons, like addressing a personal complaint, the crime is downgraded to a riot instead of treason.

An interpretation of the meaning of treason involves the concepts of intimidating and overawing the head of state. In the case of *Boro v. The Republic*,[69] that it is necessary for the prosecution to demonstrate that the President or Governor was intimidated. The Court determined that the Head of State represents the State itself, and thus, intimidating the leader equates to intimidating the State. To "overawe" implies establishing a scenario in which the government is pressured to decide between succumbing to the insurgents' power or putting the public at risk.[70] This stance has since been scrutinised by *Momoh*, who notes that while

[66] Ofodile (n 3) 60.
[67] *Enahoro v Queen* (n 42).
[68] *R v Gallagher* (n 43).
[69] *Boro v Republic* (n 44).
[70] Ibid.

this ensures that the state is stable, it creates a confusion when distinguishing between treason and protests.[71]

There are also different opinions with regards to what constitutes an overt act. *Odugbemi* argues that it does not amount to a crime.He contends that if the manifest steps taken fall within the rights of freedom of expression and association, they cannot satisfy the threshold for a charge of felony charge. In contrast, *Okene* and *Adewusi* argue that attempts to "take back" government through rhetoric outside the constitution fall within the threshold of sections 37(2) and 1(1) of the Penal Code because they threaten the order in a democracy.

In terms of procedure and penalties, the differences remain stark. Treason is a capital offence punishable by death, whereas the latter attracts a maximum sentence of life imprisonment. However, both crimes share similar procedure under the Evidence Act, which mandates that no conviction can be secured (save for a plea of guilt) without the evidence of at least two witnesses to the same overt act. They are also both subject to statute of limitations in criminal law by virtue of Section 43 of the Criminal Code.Prosecution must commence within two years of the commission of the act. Despite these similarities, a gap persists in implementation.Treason is covered by legal aid but the latter is not and this leaves indigent defendants without adequate representation.

2.1.4 Historical Background of Treason and Treasonable Felony

The evolution of treason and treasonable felony reflects a journey from the protection of the person of a monarch to the preservation of the sovereignty of the state. *Ofodile* locates the earliest roots of treason in the ancient Greek and Roman Empires.[72] In these civilisations, the concept was developed to penalise disloyal acts against the monarch rather than the state as a

[71] Momoh (n 8).
[72] Ofodile (n 3) 57.

whole. The etymology of the word treason is derived from the Latin term *tradere*, which means "to deliver or hand over". This is linked to the *traditors* of the Diocletianic Persecution (AD 303–305), Christians who betrayed their community by handing over scriptures to Roman authorities to escape punishment.

State security in Nigeria is rooted in common law, which was introduced to the Lagos colony via Ordinance No. 3 of 1863. The pole star of jurisprudence regarding this offence is the Treason Act 1351 (25 Edw. 3 St. 5 c. 2), which was the first time treason was defined by statute. In the past, English law bifurcated the offence into High Treason (not being loyal to the monarch) and Petty Treason (the murder of a superior, such as a master by a servant or a husband by a wife). As a result of modernisation, petty treason was abolished, and the term "treason" came to encompass what was known as high treason, an attack on the state to which one owes allegiance.The concept is relatively more recent.It was derived from the British Treason Felony Act 1848. This Act was designed to criminalise the imagining or forming of an intention to depose the sovereign or overawe Parliament, provided such intention was manifested by an overt act. In Nigeria, this allowed the state to prosecute activities that were subversive, coupled with a desire to commit treason.

In Nigeria's political history, charges of treason and treasonable felony were most routine under military regimes. The offences were frequently used as tools for political control, with the Obafemi Awolowo trial during the First Republic almost crippling the early democratic experiment due to its political system. Successive military juntas, including those of Generals Babangida and Abacha, utilized treason allegations to suppress dissent and political opponents, leading to the sentencing of leaders like Olusegun Obasanjo, Shehu Musa Yar'adua, and the execution of environmentalist Ken Saro-Wiwa. In the present era, the trials of Nnamdi Kanu and the IPOB movement represent the latest in treason and treasonable felony, where the state attempts to reconcile agitations for self-determination with the statutory prohibitions against treason.

2.2 THEORETICAL FRAMEWORK

2.2.1 THE SOCIAL CONTRACT THEORY

The concept of the social contract is fundamental to contemporary political and legal thought, offering a theoretical basis for the evolution of human society from a natural state to an organised civil structure.[73]This "Leviathan" is tasked with enforcing the contract and ensuring collective security through deterrence, making absolute authority the only viable alternative to a return to the anarchy of the state of nature.In contrast, John Locke in *Two Treatises of Civil Government*, illustrated the natural state as a scenario of complete autonomy where people act based on rationality and hold unassailable rights to existence, freedom, and ownership.[74] Nevertheless, this situation continues to be problematic because there is no established legislation and no unbiased judge to settle property disputes. Locke's social contract involves a conditional surrender of the right to execute natural law to a government that acts as a trustee of the people. Unlike the Hobbesian model, Locke's theory mandates that governmental authority is limited by the very rights it was created to protect, and he explicitly defends the right of the people to replace or overthrow a government that breaches this trust.[75]

In Africa, the social contract has been enriched by traditions such as Ubuntu and.[76] Ubuntu emphasises the priority of the community. This is based on the principle that an individual

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[73] B Bakshi, 'Analysis on Social Contract Theory' [2023] (6) (3) *IJLMH* 95, 96.
[74] J Locke, *Two Treatises of Govt* (1690) (I Shapiro ed, Yale Univ Press 2003).
[75] V Chiotis, 'Dynamic Contractarianism' in E E Etieyibo (ed), *Perspectives in Social Contract Theory* (CUP 2018) 231, 233.
[76] E I Ani, 'Traditional African Consensual Democracy' in E E Etieyibo (ed), *Perspectives in Social Contract Theory* (CUP 2018) 259.

exists as an individual through the presence of others.[77] This ethics suggests a social contract based on solidarity and mutual care rather than self-interest. In a similar way, African direct democracy, as explored by Kwasi Wiredu, seeks to harmonize divergent views into a group position, to ensure that even those in the minority provide their tacit consent to decisions for the sake of social unity. However, in Nigeria, researchers like Yahaya I. Ibrahim and Sikiru Lanre Nurudeen have noted that the historical creation of the state was an administrative convenience by colonial powers that lacked the genuine consent of the diverse ethnic and cultural groups involved, leading to ongoing challenges in national integration and the preservation of a stable social contract.[78]

2.2.2 THE DETERRENCE THEORY OF PUNISHMENT

The deterrence theory of punishment is a utilitarian framework that posits that the primary moral justification for the institution of criminal punishment lies in its ability to prevent or reduce future crime.[79] This theory is grounded in the hedonistic calculus. The idea that human beings are rational, self-interested agents who weigh the potential benefits of an act against its probable costs.[80] Historically, the concept is rooted in the Enlightenment-era works of Thomas Hobbes, Cesare Beccaria, and Jeremy Bentham.[81] Hobbes contended that deterrence is the essential means for upholding the social contract, as it ensures that the evil of punishment outweighs the benefit of transgression, thereby disposing citizens toward obedience.[4] Bentham elaborated on this by claiming that the perceived worth of punishment ought to serve as the measure to assess if the societal expense of a crime is balanced by the

[77] A O Oyowe and E Etieyibo, 'Ubuntu & Social Contract Theory' in E E Etieyibo (ed), *Perspectives in Social Contract Theory* (CUP 2018) 343.
[78] Y I Ibrahim and S L Nurudeen, 'Social Contract Theory: Model for Nation Building in Nig' [2022] (19) (1) *J Admin Sci* 136, 139.
[79] H-W Lee, 'Taking Deterrence Seriously' [2017] (36) (1) *Crim Just Ethics* 2, 5.
[80] M Mondal, 'Preventive or Deterrence Theory' [2021] (7) (5) *IJHSSS* 97, 101.
[81] O P Olayinka, 'Deterrence: European Antecedent & Contemporary Perspectives' [2021] (10) *BSULJ* 348, 349.

apprehension it generates in others.[82]Certainty, the likelihood of being apprehended and convicted, is widely regarded by researchers as more critical than severity.[83] Daniel Nagin emphasizes that the legal threat of punishment only functions when potential offenders believe there is a high probability of detection.[84]Celerity suggests that the closer the application of punishment follows the offence, the stronger the mental association between the crime and its negative consequence will be.[11]

Deterrence is categorised into two main forms: general and specific.[85] General deterrence aims to dissuade the public at large from committing crimes by making an example of a specific offender, thereby communicating the horrors of official sanctions to potential lawbreakers.[13] Historically, this was achieved through public executions or corporal punishments, such as those still practiced in certain jurisdictions under Shari'a law.[14] Conversely, specific deterrence (or individual deterrence) focuses on the punished individual, intending to teach them through the unpleasant experience of their sanction, not to reoffend.[15] This often involves measures like incapacitation, where the offender's physical power to commit a crime is removed via imprisonment or capital punishment.[16]

Judicial authorities have invoked deterrence as a necessity to protect public order. In the landmark Indian case of *Bachan Singh v. State of Punjab*,[86] the Court discussed the rarest of rare doctrine for the death penalty, implying that the magnitude of the crime must shock the collective conscience to justify the ultimate deterrent.[87] Similarly, the Supreme Court of India in *State of Madhya Pradesh v. Munna Choubey*[88] noted that safeguarding society and

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[82] C E Philip, 'Theory of Deterrence: Justification for Capital Punishment' [2023] (1) (1) *DSNLU J Soc Sci* 198, 200.
[83] K D Tomlinson, 'Exam of Deterrence Theory' [2016] (80) (3) *Fed Probation* 33, 38.
[84] D S Nagin, 'Deterrence in the Twenty-First Century' [2013] (42) *Crime & Justice* 199.
[85] I D Onwudiwe and others, 'Deterrence Theory' in *Encycl of Prisons & Corr Facilities* (Sage 2005) 1056, 1060.
[86] *Bachan Singh v State of Punjab* AIR 1980 SC 898; (1980) 2 SCC 684.
[87] Ibid.
[88] *State of Madhya Pradesh v Munna Choubey* (2005) 2 SCC 710.

eliminating criminal tendencies should be accomplished through suitable sentencing.[89] However, modern jurisprudence has increasingly adopted limiting retributivism, a model popularized by Norval Morris and adopted in the Model Penal Code.[90]

Hsin-Wen Lee critiques the theory as shallow because its effectiveness is limited to offenders who respond to external and punitive sanctions. To address these limitations, Lee proposes a theory that harmonises both external (shallow) and internal (deep) sanctions to achieve a robust state of public order.The component of this theory involves appealing to an individual's moral compass, with a focus on their sense of honour and self-respect.

As noted in the case of *Phul Singh v. State of Haryana*,[91] the Court must balance deterrence with correction, recognising that incarceration without a reformation can be counterproductive to the goal of peace in the society.[92]

2.2.3 THE LEGAL POSITIVIST THEORY

Legal positivism is regarded as an influential school of thought in jurisprudence. It is anchored in the principle that law is a social construction whose validity is derived from formal sources and facts rather than moral merit.[93] This thesis maintains that there is no connection between the validity of a legal norm and its righteousness. A law can be burdensome or unfair but still be considered legitimate if it meets the requirements of the legal framework.[94] Within this tradition, there are various subtleties, including the Social Fact Thesis, which suggests that a legal system's existence is based on social practices, and the

[89] Ibid.
[90] M S McLeod, 'Democratic Restraint on Incarceration' [2024] (76) *Fla L Rev* 1147, 1159.
[91] *Phul Singh v State of Haryana* AIR 1980 SC 249.
[92] Ibid.
[93] P Bhardwaj and R Raj, 'Legal Positivism: Austin & Bentham' [2014] (1) (6) *IJLLJS* 2; P K Pradhan and others, 'Legal Positivism v Natural Law Theory' [2024] *JETIR* 345.
[94] H L A Hart, 'Positivism & Separation of Law and Morals' [1958] (71) (4) *Harv L Rev* 593, 601; D Lyons, 'Founders & Foundations of Legal Positivism' [1984] (82) *Mich L Rev* 722, 731.

Sources Thesis, which claims that the law's content can be determined solely through social facts, without the need for evaluative reasoning.[95]

The classical foundations of legal positivism were established by Thomas Hobbes, Jeremy Bentham, and John Austin, who pioneered the command theory of law.[96] Hobbes viewed real law as civil law. The commands of a sovereign intended to limit natural liberty to maintain social order.[97] Austin clarified this by characterising law as the directive of a specific human authority (the sovereign) that the majority of society consistently follows, and which is supported by the possibility of a penalty.[98] In this classical view, the sovereign is uncommanded and enjoys absolute power, a concept that Austin used to distinguish laws properly so-called from positive morality, such as international law or constitutional etiquette, which he viewed as non-binding in a strictly legal sense. Bentham, in presenting the command model, put forth the Principle of Utility, contending that although the law's existence is factual, its worth ought to be evaluated based on its ability to promote the greatest happiness for the largest number of individuals.

Contemporary legal positivism, led by H.L.A. Hart, decisively rejected the simplistic command-and-sanction model, characterizing it as a gunman situation writ large that failed to account for the variety of legal rules. In his seminal work, *The Concept of Law*, Hart argued that law is a union of primary and secondary rules.[99] This shift allowed for a distinction between Inclusive (Soft) Positivism, which allows that a rule of recognition *may* incorporate moral criteria if officials so choose, and Exclusive (Hard) Positivism, championed by Joseph

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[95] J L Fabra-Zamora, 'Legal Positivism as Theory of Law's Existence' [2021] (55) *Isonomia* 193, 198; D Plunkett and D Wodak, 'Legal Positivism & Real Definition of Law' [2022] *Jurisprudence* 75.
[96] G J Postema, 'Legal Positivism: Early Foundations' [2020] *SSRN Electronic J* 906, 908.
[97] T Hobbes, *Leviathan* (1651) (R Tuck ed, CUP 1996) 183; D Priel, 'Toward Classical Legal Positivism' [2015] (101) *Va L Rev* 987, 1005.
[98] R Parker, 'Legal Positivism' [1956] (32) *Notre Dame L Rev* 31, 34; J Austin, *The Province of Jurisprudence Determined* (1832) (H L A Hart ed, 1955) 193.
[99] H L A Hart, *The Concept of Law* (3rd edn, OUP 2012) 79.

Raz, which argues that for law to serve its authoritative function, its existence and content must be identifiable without recourse to moral reasoning.[100]

According to Article 11 of the ICCPR, no individual shall be confined solely due to their failure to meet a contractual commitment.. However, the Court held the law to be valid. This demonstrates the commitment to identifying law through its formal "sources" rather than its moral merits. These decisions reflect the belief that the court's role is to "find" and "apply" the law as it is. Rather than to legislate through moral evaluation.[101]The legal positivist theory has faced rigorous criticism from competing schools of thought. Ronald Dworkin challenged the model of rules, arguing that legal systems also contain principles, such as "no man shall profit from his own wrong", which have the dimension of "weight" and cannot be identified by a pedigree-based rule of recognition.[102] Lon Fuller criticised the theory's claim of moral neutrality, arguing that law possesses an inherent morality (such as generality, publicity, clarity, etc.) that is essential for it to function as a legal system.[103]Furthermore, the Radbruch Formula, developed after the horrors of the Nazi regime, argues that extremely unjust law is no law at all, a position that directly counters the positivist separation of validity and merit.[104] Despite these critiques, modern positivists like Leslie Green argue that the theory's greatest virtue is its Fallibility Thesis, which is the recognition that because law is a human artifact, it is always morally risky and must be constantly subjected to external moral criticism precisely because its legality does not guarantee its justice.[105]

2.2.4 THE RULE OF LAW THEORY

[100] Fabra-Zamora (n 94); Hart (n 98); J Raz, *The Authority of Law* (2nd edn, OUP 2009).
[101] Okene and Adewusi (n 5) 63.
[102] R Dworkin, *Taking Rights Seriously* (Duckworth 1978) 24.
[103] L L Fuller, *The Morality of Law* (Yale Univ Press 1969) 153; L Green, 'Positivism & Inseparability of Law and Morals' [2008] (83) *NYU L Rev* 1035, 1046.
[104] G Radbruch, 'Statutory Lawlessness and Supra-Statutory Law' [1946], cited in Hart (n 93).
[105] D Lyons, *Ethics and the Rule of Law* (CUP 1984) 63.

The principle of governance in democracies is the rule of law. It claims that every individual and organization, including the government, is responsible for adhering to the laws established by the legislature.[106] The idea is frequently linked to the principle of reason in Aristotelian thought, where the law is considered superior to the authority of any single person, as it is the law that defines the king.[107] This idea developed greatly during the Enlightenment, as seen in the writings of John Locke, who contended that true freedom within a government involves adhering to established laws instead of being at the mercy of another individual's whims.[108] Nonetheless, the initial thorough effort to translate the theory into a clear legal framework was undertaken by Professor A.V. Dicey in 1885, who established a three-part definition: (a) the complete dominance of established law over capricious authority; (b) uniformity before the law, suggesting that all groups are equally bound by the standard laws of the nation; and (c) the constitution as a result of personal rights rather than their origin.[109]

Contemporary jurisprudence distinguishes between two primary models: the thin (formal) conception and the thick (substantive) conception.[110] The formal or minimal interpretation, as illustrated by Lon Fuller's concept of the inner morality of law, outlines eight fundamental principles necessary for law to achieve effectiveness: publicity, generality, clarity, prospectivity, non-contradictoriness, obeyability, stability, and alignment between official actions and stated rules.[111] This model, further developed by Joseph Raz, suggests that the rule of law is a formal quality; akin to a precise instrument, it serves as a tool that can be

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106 M A Akomolafe, 'Rule of Law & Practice in Nig' [2012] (2) (2) *Makurdi Owl J Phil* 13; UN Secretary-General, *Guidance Note on UN Approach to RoL Assistance* (2004).
107 Aristotle, *Politics III* (B Jowett trans, H W C Davis ed, Routledge 1916) 139; B E Hernandez-Truyol, 'Rule of Law & Human Rights' [2004] (16) (1) *Fla J Intl L* 168.
108 J Locke, *An Essay Concerning the True Original, Extent and End of Civil Govt* (Awnsham Churchill 1690).
109 A V Dicey, *The Law of the Constitution* (Routledge 1990) 202-3; Lord Sales, 'What is the Rule of Law and Why Does it Matter?' (Speech, Victoria Univ of Wellington, 12 December 2024).
110 R Peerenboom, 'Human Rights & Rule of Law' [2004] *Law Rev* 14.
111 Fuller (n 102) 38-39.

wielded ends. This implies that a non-democratic regime that disregards human rights could, in theory, adhere to its principles more closely than a liberal democracy.[112]

In Nigeria, the the rule of law is characterised as being vegetative. This is because there is a significant gap exists between the constitution and reality.Although the 1999 Constitution (as amended) provides the legal framework for the rule of law and the protection of rights, scholarly assessment suggests that the political elite have imbibed a culture of governance that prioritizes gaining power without accountability.[113] This implementation deficit is manifest in the selective disregard for judicial independence and the use of *nolle prosequi* as a tool of political convenience rather than an instrument of justice. Furthermore, the rule of anarchy or the rule of the jungle often displaces the supremacy of law when national security is invoked by the ruling party to justify the usurpation of individual liberties and the blackmail of the judiciary.[114] The principle of law holds significant economic and ethical consequences. Ethically, the theory honours human autonomy and worth; as Fuller observed, placing human behaviour under the authority of law entails a dedication to perceiving individuals as accountable agents who can comprehend and adhere to regulations. Nonetheless, dissenters within the movement question this impartiality. They contend that the rule of law frequently serves as a facade, concealing the legal system's inclination to safeguard the affluent and influential while neglecting the needs of the impoverished and the working class.[115]

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[112] J Raz, *The Authority of Law: Essays on Law and Morality* (Clarendon 1979) 210, 213.
[113] T A Ifedayo and O B Akomolede, 'Good Governance, Rule of Law & Constitutionalism in Nig' [2012] (1) (6) *EJBSS* 69.
[114] B Kwaghga, 'Rule of Law in Nig & Challenges to Good Governance' [2011] (3) *J Mgmt & Corp Governance* 4; Onuigbo (n 14).
[115] L H Tribe, 'Revisiting the Rule of Law' [1988] (64) *NYU L Rev* 726, 727.

2.2.5 THE HUMAN RIGHTS AND DEMOCRATIC RESTRAINT PRINCIPLE

The principle of human rights and democratic restraint represents a fundamental framework in which sovereign power is delimited by the inherent dignity of the individual and the collective conscience of the community.[116] Human rights are not merely benefits conferred by the state, but are inherent claims necessary for a continuous happy existence and participation in a complex society, acting as the sum of individual and collective entitlements recognized by sovereign states.[117] In a well-functioning democracy, the connection between democracy and human rights is characterised by a reciprocal and interdependent nature, meaning that one cannot effectively exist or be defined without the protection of the other.[118] Consequently, successful democratic governance must inevitably focus on the promotion and protection of fundamental freedoms, as they provide the only sustainable framework against the concentration of power and the inevitable human rights abuses that result from unchecked authority.[119] This demonstrates a dedication to the Kantian imperative to treat each individual as an end in their own right, rather than simply as a tool for achieving a utilitarian objective like deterrence.[120]

Statutorily, the principle of restraint is embedded within constitutional frameworks that allow for the limitation of rights only under strictly defined conditions. In Nigeria, Section 45 of the Constitution (as amended) serves as a caution. It states that fundamental rights may only be derogated from by laws that are justifiable in a democracy in the interest of defence or public order.[121]

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[116] L C Reif, 'Building Democratic Institutions' [2000] (13) *Harv HRJ* 2.
[117] Ofodile (n 3) 57; *Human Rights Handbook for Parliamentarians No 26* (IPU/OHCHR 2016) 19.
[118] UN, *Democracy and Human Rights: Role of the UN* (Intl Round Table Report, New York, 11-12 July 2011) 6-7.
[119] I Simonovic, 'Introductory Remarks' in *Democracy and Human Rights: Role of the UN* (2011) 39.
[120] Mondal (n 79) 103.
[121] *Constitution of the Federal Republic of Nigeria* 1999 (as amended), s 45; 'Exegesis of Sedition under the Nigerian Criminal Code' [2024] *Library Research J* 1266.

The tension between state survival and democratic restraint is most acute during states of emergency and national crises.[122] Aziz Z. Huq notes a contradiction in which states of emergency enable the erosion of the democratic principles they aim to protect, particularly because the executive branch poses the gravest risk of overreaching its administrative and military resources.[123] The landmark Nigerian case of *Asari-Dokubo v. FRN*[124] exemplified this tension, with the Supreme Court holding that in a situation where national security is at risk, personal freedoms are secondary and should be put on hold.[125] In contrast, the international rule of law and the Paris Standards argue for the preservation of judicial review even during crises to ensure that emergency measures conform to law and respect non-derogable rights, such as the prohibition of torture.

[122] A Z Huq, 'Democratic Norms, Human Rights & States of Emergency' [2008] 1256.
[123] Ibid.
[124] *Asari-Dokubo v FRN* (n 17).
[125] Ibid.

CHAPTER THREE

ELEMENTS OF TREASON AND TREASONABLE FELONY

3.1 Elements of Treason

In Nigeria, treason is governed by the Criminal Code (in the South) and the Penal Code (in the North and the FCT).[126] Section 37(1) of the Criminal Code Act defines treason as the act of levying war against the State in order to intimidate or overawe the President or the Governor of a State. The Penal Code mirrors this in Section 410 where it describes the offence as a capital crime which is punishable by death. Beyond the actual levying of war, the elements extend to conspiring with any person within or outside Nigeria to levy such war[128]and instigating a foreigner to invade Nigeria with an armed force.[129]

The first element of treason is the presence of a duty of loyalty to the Nigerian State.[130] Treason is fundamentally characterised as a breach of this allegiance; consequently, the charge typically applies to citizens or those with dual citizenship, though it extends to foreign nationals who enjoy the protection of the Nigerian government.[131] According to the law in Nigeria, an action is considered treasonous if a person has loyalty to Nigeria, but it is not deemed treasonous if they do not have such allegiance. Historically, legal jurisprudence distinguishes this obligation into two species: natural allegiance, which is perpetual and owed by natural-born or naturalised subjects, and local allegiance, which is temporary and owed by aliens while they reside within the realm of Nigeria.The real basis of this allegiance is the doctrine of reciprocity, expressed in the maxim *protectio trahit subjectionem et subjectio protectionem*, meaning that protection draws subjection, and subjection draws protection.

[126] Okene and Adewusi (n 5) 73.
[128] *Penal Code*, s 410; *Criminal Code Act*, s 37(2).
[129] *Criminal Code Act*, s 38.
[130] Okene and Adewusi (n 5) 73.
[131] Mbanugo and Arinze-Umobi (n 35) 11.

Prof. Okene and *Adewusi* emphasises that treason is the most serious compounding felony because it involves an attempt to overthrow a government established by law, carrying the ultimate penalty of death.[132] Under this element, the crime is not merely an attack on a person but an assault on the authority of the people as embodied by the State.[133] Since the Head of State represents the State, any act of disloyalty through waging war is seen as a danger to the security and advancement of the society. For foreign nationals, theirs may arise through residency, taking an oath, or protection afforded to passport holders. A citizen, on the other hand, has a duty of allegiance that extends beyond Nigeria's territory. It follows the individual or the subject wherever they are, indicating that a citizen can be charged with treason for actions taken both inside and outside Nigeria if they assist or provide support to the nation's adversaries. The phrase "levying war" has been interpreted by both scholars and the judiciary to possess a general and descriptive meaning that transcends the definitions found in international law.[134] In the case of *Enahoro v. Queen*,[135] the court determined that for an act to be considered a levying of war, it is not required for the accused to belong to a military organization or to have training in weaponry; additionally, the specific weapons utilised are irrelevant, as is the quantity of individuals involved in the act. As established in *R. v. Gallagher*,[136] war may be initiated through various methods and by diverse means, as long as the gathering serves a collective and public aim. If the force is employed solely for individual reasons, like addressing a personal complaint, the crime is downgraded to a riot instead of treason.

[132] Ibid.
[133] Ofodile (n 3) 57.
[134] Ibid.
[135] *Enahoro v Queen* (n 42).
[136] *R v Gallagher* (n 43).

An interpretation of the meaning of treason involves the concepts of intimidating and overawing the head of state. In the case of *Boro v. The Republic*,[137] The Supreme Court dismissed the claim that it is necessary for the prosecution to establish that the President or Governor was intimidated. The Court determined that the Head of State represents the State itself, and thus, intimidating the leader equates to intimidating the State. To "overawe" implies establishing a scenario in which the government must decide between succumbing to the pressure of the insurgents or putting the public at risk.[138] This stance has since been scrutinised by *Momoh*, who notes that while this ensures that the state is stable, it creates a confusion when distinguishing between treason and protests.[139]The element of allegiance also provides the thin line that distinguishes treason from other security offences like terrorism. While terrorism statutes apply to any foreign national regardless of their connection to the state, treason specifically penalises the betrayal of the bond of loyalty to the State.

The second and most crucial component of treason is the actus reus, particularly the tangible action of waging war against the State. Many offences necessitate an unlawful action or a particular condition to be deemed a crime. Within the framework of treason, the action is specified in Section 37(1) of the Criminal Code Act and Section 410 of the Penal Code. The judiciary has determined that the term 'war' in this context does not carry the definition recognised in international law, which requires a state of armed conflict between nations or belligerents. Rather, the term is seen as illustrative, covering a variety of revolts and rebellions aimed at opposing the authorities. In the case of *Enahoro v. Queen*,[140] The Court made it clear that for an act to be considered a levying of war, it is not required for the accused to belong to the military or to have undergone training in weaponry. the category of arms employed, whether sophisticated or rudimentary, and the number of persons involved

137 *Boro v Republic* (n 44).
138 Ibid.
139 Momoh (n 8).
140 *Enahoro v Queen* (1965) 1 All NLR 125.

are immaterial to the charge. This principle is grounded in the understanding that an assembly of men for a treasonable purpose constitutes a war if it moves from thought to action, even if no battle takes place. As established in *R. v. Vaughan*,[141] the acts of enlisting and marching are evidence of levying war without the necessity of a military engagement. As clarified in *R. v. Gallagher*,[142] war may be levied by various means across different ages of the world, provided the assembly is for a general and public purpose, such as overawing the President, a Governor, or a legislative authority. The intent of the assembly is the thin line that distinguishes treason from lesser public order offences. If the force used is directed at a private purpose, such as redressing a grievance or engaging in a quarrel, the offence is reduced to a riot rather than treason. For an act to reach the threshold of treason, it must strike at the constitution, with the aim of compelling the government to displace its leadership. The requirement for a discernible act serves as the element of the offence of treason. This ensures that the law punishes only conduct rather than thoughts or expressions. Section 41 of the Criminal Code provides that a the intention must be manifested by an act to be punishable, and Section 49 clarifies that every act of conspiracy or any step taken in furtherance of the purpose is deemed an act for the purpose of establishing treason. The function of this requirement is to provide certainty that a "treasonable project has moved from thought into action." *Omisade & Ors v. Queen*,[143] have established that while an overt act must manifest criminal intention, it may be proven through a closely woven net of behaviour where multiple witnesses provide snippets of evidence that collectively establish the act.

The third essential element of treason in Nigeria involves the *mens rea*, which is the criminal intent or guilty state of mind directed toward a specific prohibited result. Statutorily, under Section 37(1) of the Criminal Code Act and Section 410 of the Penal Code, this is defined as

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[141] *R v Vaughan* [1991] 3 SCR 691.
[142] *R v Gallagher* (n 43).
[143] *Omisade v Queen* (1964) 1 All NLR 233.

the intention to intimidate or overawe the President of the Federation or the Governor of a State. This mental element is viewed with paramount seriousness because it targets the constitutional stability of the state and its leadership. Under the law, the accused must have been aware of the nature of their actions to violate their obligation to Nigeria. In *Boro v. The Republic*,[144] the Supreme Court offered an explanation of the concept of intimidating a leader. The Court dismissed the claim that it was necessary for the prosecution to demonstrate that the President or Governor faced intimidation or was at risk of harm. Rather, the Court set a standard, determining that the Head of State represents the essence of the State. Therefore, to impress the leader is equivalent to impressing the State. The Court explained that overawing refers to a scenario in which the government is pressured to decide between succumbing to coercion or putting the public at risk. However, *Ofodile,* cautions that the application of this *mens rea* must prioritise substance over form.[145] Drawing on recent agitations, it is argued that the mere use of the word "revolution" or calls for change does not establish treason. If an individual expresses a desire for "revolution" but contemplates only a protest or demonstration, such actions fall within the rights to freedom of expression and association guaranteed by Sections 39 and 40 of the 1999 Constitution (as amended).The phrase "levying war" has been interpreted by both scholars and the judiciary to possess a general and descriptive meaning that transcends the definitions found in international law.[146] In the case of *Enahoro v. Queen*,[147] the court determined that for an act to be considered a levying of war, it is not required for the accused to belong to a military organization or to possess training in weaponry; additionally, the specific weapons utilised are irrelevant, as is the quantity of individuals involved in the action. As established in *R. v. Gallagher*,[148] war may be levied in different ways and by different means, provided the assembly is for a general and public

[144] Ibid.
[145] Ibid.
[146] Ibid.
[147] Ibid.
[148] *Enahoro v Queen* (n 42).

purpose. If the force is used merely for a private purpose, such as redressing a personal grievance, the offence is reduced to a riot rather than treason.

An interpretation of the meaning of treason involves the concepts of intimidating and overawing the head of state. In the case of *Boro v. The Republic*,[149] the SC rejected the argument that the prosecution must prove the person of the President or Governor intimidated. The Court determined that the Head of State represents the State itself, and thus, intimidating the leader equates to intimidating the State. To "overawe" implies establishing a scenario in which the government must decide between succumbing to the pressure of the insurgents or putting the public at risk.[150] This stance has since been scrutinised by *Momoh*, who notes that while this ensures that the state is stable, it creates a confusion when distinguishing between treason and protests.[151]As noted above, the law cannot criminalise intent alone unless it is coupled with an act intended to remove the leadership by means outside the constitution. Also, the *mens rea* of treason requires that the intent be directed toward a general and public purpose. If the intention behind the use of force is merely to redress a grievance or settle a quarrel, the offence is reduced to a riot rather than treason.

Furthermore, Section 43 of the Criminal Code imposes a two-year statute of limitations on the prosecution of treason and related felonies, creating an exception to the general principle that criminal actions are not time-barred.This limitation requires that any trial for these offences must commence within two years of the act's commission, effectively preventing the state from using long-past activities as indefinite threats over political opponents. The phrase "levying war" has been interpreted by both scholars and the judiciary to possess a general and descriptive meaning that transcends the definitions found in international law.[152] In the case of

[149] *R v Gallagher* (n 43).
[150] *Boro v Republic* (n 44).
[151] Ibid.
[152] Momoh (n 8).

Enahoro v. Queen,[153] The court determined that for an act to be considered a levying of war, it is not required for the accused to belong to a military organization or to possess training in weaponry; additionally, the specific weapons utilised are irrelevant, as is the quantity of individuals involved in the act. As established in *R. v. Gallagher*,[154] war may be levied through various methods and approaches, as long as the gathering serves a collective and public purpose. If the force is used merely for a private purpose, such as redressing a personal grievance, the offence is reduced to a riot rather than treason.

An interpretation of the meaning of treason involves the concepts of intimidating and overawing the head of state. In the case of *Boro v. The Republic*,[155] the SC rejected the argument that the prosecution must prove the person of the President or Governor intimidated. The Court determined that the Head of State represents the State itself, and thus, intimidating the leader equates to intimidating the State. To "overawe" implies establishing a scenario in which the government must decide between succumbing to the pressure of the insurgents or putting the public at risk.[156] This stance has since been scrutinised by *Momoh*, who notes that while this ensures that the state is stable, it creates a confusion when distinguishing between treason and protests.[157]*Duru* highlights that this time bar is an exception designed to ensure that the gravest penalty of the land is adjudicated with promptness and certainty.[158]

3.2 ELEMENTS OF TREASONABLE FELONY IN NIGERIA

The architecture of treasonable felony in Nigeria represents a middle ground in offences against the state, derived from the English Treason Felony Act of 1848. This legislation was designed to transition treasons (acts intended to subvert the state by force or compel a change

[153] Ibid.
[154] *Enahoro v Queen* (n 42).
[155] *R v Gallagher* (n 43).
[156] *Boro v Republic* (n 44).
[157] Ibid.
[158] Momoh (n 8).

in government policy) into felonies punishable by life imprisonment rather than death penalty which was reserved for high treason. Unlike the concept codified in the Treason Act 1351, which focused on the integrity and death of the monarch, the 1848 framework was adapted to address threats against the government and its leadership.

According to Section 41 of the Criminal Code Act and Section 410 of the Penal Code, the crime of treasonable felony is distinguished from treason *per se* by its focus on the formation of an intention to commit subversive acts. While treason is a capital offence punishable by death, a treasonable felony is a felony punishable by life imprisonment, allowing the legal system to address threats that have not yet ripened into an actual levying of war. Under Section 41 of the Criminal Code, this intention must be directed toward one of four objectives: first, the removal of the President as Head of State and Commander-in-Chief during his term of office otherwise than by the constitution, distinguished from removal in line with the law.Second, the statute encompasses the formation of an intent to remove a Governor of a State from office by means outside the constitution. Third, the crime focuses on the intention to wage war against Nigeria, aiming to force the President to alter his strategies or advice (policies) or to frighten or dominate the National Assembly or any other legislative body. Overawing implies establishing a scenario in which the government must decide between succumbing to pressure or putting the public at risk. Finally, it includes the intention to instigate a foreigner to invade Nigeria. Treason requires the actual and physical act of levying war.Treasonable felony, on the other hand, functions as an inchoate offence. This architecture acts as a mechanism for permitting intervention by the state the moment a treasonable project moves from thought into action, provided that intention is manifested by an act.Section 49 of the Criminal Code reinforces this by deeming every act of conspiracy to be an overt act, meaning the "very plot is an act in itself". Section 251(2) of the Constitution vests the FHC with exclusive jurisdiction to adjudicate these matters.

3.3 Punishments for Treason and Treasonable Felony in Nigeria

Under Section 37(1) of the Criminal Code Act and Section 410 of the Penal Code, treason carries the punishment of death. This sanction applies not only to the direct act of waging war but also to collaborating with any individual, whether inside or outside Nigeria, to wage war and encouraging a foreign entity to invade Nigeria with military force. This has been manifested in cases such as the leaders of coups, including those led by Nzogwu, Dimka, and Okar, who faced execution by hanging or firing squad upon their convictions.

In contrast, the offence of treasonable felony is distinguished from its counterpart by a gradation in sentencing that reflects the difference in the magnitude of injury and is punishable by life imprisonment. The landmark case of *Enahoro v. Queen*[159] illustrates the discretion by the judiciary in this regard. For instance, Chief Anthony Enahoro was convicted on a count of treasonable felony, but the Supreme Court reduced his initial twelve-year sentence to seven years. Furthermore, the offence of concealment of treason under Section 40 of the Criminal Code also carries a penalty of life imprisonment for any person who, knowing of the plot, fails to provide information to the authorities or use reasonable endeavours to prevent it. This was applied in *Ebiware v. FRN*,[160] where the appellant was sentenced to life imprisonment for failing to divulge his prior knowledge of the 1st October 2010 Independence Day bombing near Eagle Square, Abuja.

Despite the nature of these penalties, the legal system in Nigeria incorporates specific exceptions to the death penalty. Minors under the age of 18 convicted of treason or treasonable felony are exempt from execution and are instead detained at the pleasure of the President.[161] Additionally, Section 39(2) of the Criminal Code provides that a pregnant

[159] Duru (n 7).
[160] Ibid.
[161] *Ebiware v FRN* (2017) LPELR-43433(CA).

woman convicted of a capital offence shall have her sentence reduced to life imprisonment. The Federal High Court maintains exclusive jurisdiction to impose these penalties under Section 251(2) of the 1999 Constitution.

3.4 JUDICIAL ATTITUDE AND NOTABLE CASE LAWS

In the post-independence era, the judiciary was protective of the sovereign state, establishing precedents that defined the *actus reus* and *mens rea* of treason through a series of trials targeting political subversion. This attitude was characterised by an interpretation of the statute to safeguard the existence of the nation. This era began with the case of *Michael Omisade & Ors v. Queen*,[162] where the SC adjudicated on the activities of the committee of the Action Group political party. In this instance, the Court specified that although a treasonous intent must be demonstrated through a visible action according to Section 41 of the Criminal Code, such acts do not require a single piece of comprehensive testimony. Instead, the Court developed the snippet doctrine, holding that an overt act can be proven through the evidence of multiple witnesses providing fragments or snippets of behaviour which, when woven together, form a closely woven net of behaviour" that establishes the manifest intention. This jurisprudential expansion was further deepened in *Enahoro v. Queen*,[163] where the Supreme Court offered a clear Nigerian understanding of waging war. The Court determined that the term "war" as used in Section 37(1) of the Criminal Code does not carry the limited definition it has in international law; it does not require a formal military force, international belligerence, or even a large number of participants. The Court maintained that an assembly of men for a general and public purpose to challenge the government suffices to constitute the offence, regardless of the size of the group or the fact that they use weapons that are unsophisticated. The Court distinguished this from a riot,

[162] *Criminal Code Act*, s 39(1); *Child Rights Act* 2003, s 221(c).
[163] Ibid.

noting that if the force is used for a settling a grievance, it lacks the quality required to target the State.

This doctrine reached its apex in the conviction of Isaac Adaka Boro in *Boro v. The Republic*.[164]The case solidified the "embodiment doctrine" in our law. The defence contended that, to prove treason as outlined in Section 37(1) of the Criminal Code, it is necessary for the prosecution to demonstrate that the President or Governor experienced intimidation. The Supreme Court dismissed this argument as the Head of State represents the essence of the State. Therefore, to in still fear or impress the leader equates to instilling fear or impressing the State itself. The Court explained that overawing refers to a scenario in which the government is pressured to decide between succumbing to coercion or putting the public at risk. These precedents from the 1960s ensured that the law of treason became an instrument for state preservation, establishing that neither the lack of an army nor the absence of fear in the leader could serve as a defence against acts targeting the nation.

The transition from decades of military interregnum, characterised by the rule of force and a disregard for the Rule of Law, to a democracy necessitated a shift in judicial attitude during the late 20th and early 21st centuries. During the military era, the constitution was suspended, and citizens were incarcerated without trial, leading to what scholars describe as the Awaiting Trial Prison Inmates Syndrome. As Nigeria entered the Fourth Republic, the judiciary began to navigate a dialectic, attempting to balance the security of the state against individual liberties.In the case of *Abacha v. State*,[165] the SC demonstrated a willingness to act as a check on executive overreach. The Court overturned the findings of the lower courts.This established the principle that a conviction cannot rest on suspicion, regardless of how "weighty" the government's allegations are.Justice Belgore (as he then was) noted that there

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[164] Ibid.
[165] Ibid.

was nothing linking the appellant to the crimes on the indictment other than conjecture. This decision reinforced the presumption of innocence a defendant is entitled to under the constitution and signaled that the gravity of a state offence did not excuse the prosecution from its burden of establishing a clear link between the accused and the manifest act.However, this trajectory met a turn in *Asari-Dokubo v. FRN*,[166] a case that has since become the foundation for state arguments in treason trials.In this instance, the SC formalised a doctrine of state preservation, holding that where the existence of Nigeria is threatened, individual rights take second place. Justice Muhammad (as he then was) held that human rights must be suspended until national security can be protected, reasoning that if the nation survives only in *pieces rather than in peace*, the liberty may not even exist. This position established that the right of the state to prevent anarchy is sacrosanct and can, in specific crises, supersede the individual rights enshrined in Chapter IV of the Constitution.In the case of *Ebiware v. FRN*[167] (2017), the Court of Appeal reinforced this by upholding a conviction for the concealment of treason.It emphasised that the obligation of allegiance necessitates a disclosure of plots to authorities. This decision reinforces the principle that the law imposes positive, non-negotiable duties on citizens in matters of state security, where the failure to act can lead to severe consequences, including life imprisonment.

The trial of Nnamdi Kanu illustrates the of this tension in a perfect manner.Nigeria's use of 'extraordinary rendition' to secure his presence for trial was condemned by the Supreme Court. However, it held that such violations of the do not divest or rob the court of its jurisdiction to proceed with charges of treasonable felony and terrorism. This approach is anchored in the *Asari-Dokubo v. FRN*, which established that where the existence of Nigeria is in jeopardy, individual rights take second place and must be suspended until the the nation is protected. Similarly, the prosecution of Omoyele Sowore and the *#RevolutionNow*

[166] Ibid.
[167] Ibid.

movement highlights the struggle to define the thin line between protests and treasonable intent. The government's contention rests on the definition of revolution as a takeover.However, equity and law must look at the substance over the form and thus treats a "movement" as a protest if its actual contemplation remains within the ambit of the rights to freedom of expression and assembly. These trials demonstrate that while the judiciary is regarded as the backbone of the constitution, treason charges remain a tool that can be used to silence government critics.

CHAPTER FOUR

PROOF OF TREASON AND TREASONABLE FELONY: COMPARATIVE STUDY

4.1 Proof under Nigerian Laws

In Nigeria, the proof of treason and treasonable felony is governed by the rules of evidence. These rules were designed to ensure the presence of *mens rea* and *actus reus* in the elements which constitute the offence. To convict someone of treason, as with any crime, the prosecution is required to establish the case beyond a reasonable doubt. The reason for this is to ensure that convictions are not based on mere suspicion or imaginations.The Supreme Court reiterated this in *Abacha v. State*,[168] where it held that suspicion, no matter how weighty, cannot substitute for concrete evidence linking a defendant to the crime. To prove the *actus reus*, the prosecution must establish that the defendant attempted to levy war against the State. In *Enahoro v. Queen*, it was established that basic weapons can suffice for this purpose. Under the doctrine posited in *Boro v. The Republic*,[169]an attempt to overawe the President of a Governor has the same effect as an attempt to overawe the State. M*ens rea* can be proved by showing that the defendant had an intention to execute one of the acts enumerated in Section 41 of the Criminal Code.They include removal of the President by means outside the law. An intention to commit the crime, when coupled an act permitted by law, such as a call for "revolution", does not necessarily satisfy this requirement. The prosecution must match the intention to commit the crime with a crime that satisfies the requirement for treason. Under Section 49 of the Criminal Code, every act of conspiracy to commit the offense is seen as an overt act because the plot is an act in itself.

Section 201(1) of the Evidence Act 2011 (previously Section 178) states that an individual cannot be found guilty of treason or treasonable felony unless they plead guilty or there is

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[168] *Ebiware v FRN* (n 159).
[169] Ibid.

testimony in open court from at least two witnesses regarding the same overt act. On the other hand, the prosecution could present a single witness for one overt act and another witness for a different overt act of the same type of felony.. The Supreme Court in *Michael Omisade & Ors v. Queen*[170] refined this by establishing the snippet doctrine, holding that individual witnesses need not testify to an overt act in its entirety; rather, snippets of evidence from multiple witnesses can be woven together to form a net of behaviour that proves the manifest intention. Proving the concealment of treason requires establishing that the accused had actual knowledge of intention of a treasonous plot and failed to divulge it with all reasonable dispatch to a peace officer, President, or Governor. In *Ebiware v. FRN*,[171] the court affirmed that the failure to cross-examine a witness regarding such knowledge acts as an acceptance of the evidence. Finally, the prosecution must establish that the accused owed an obligation of allegiance to the State. This requirement generally applies to citizens.However, it can be extended to foreigners under protection by the government. The basis for this is that such protection draws subjection.

4.2 Proof under British Laws

In Britain, treason is statutory based.It is provided for in the Treason Act 1351.The original law had categories such as 'petty treason' for the murder of social superiors;'modern treason' for treason against the sovereign. The Treason Act was later expanded by the Treason Felony Act 1848.The latter led to the creation of a treasonable felony. The offence criminalised political treasons, such as a conspiracy to depose the monarch or using force to compel a change in government policy. The punishment for treason was the death penalty. However,this was replaced with life imprisonment under the Crime and Disorder Act 1998.

[170] Ibid.
[171] Ibid.

The notion of allegiance underscores the relevance of the offence of treason. This obligation applies to all citizens wherever they reside.It also applies to aliens who are present within the United Kingdom or who have departed while leaving behind family and effects. A critical dimension of this element is the Passport Doctrine, established in the case of *Joyce v. Director of Public Prosecutions*.[172]In this case, William Joyce (Lord Haw-Haw), an American citizen, broadcast Nazi propaganda from Germany during World War II. The prosecution based its argument on the Passport Doctrine.It was argued that anybody who had a passport, even where it was obtained through fraud constituted a request for protection by the Crown. The House of Lords held that a passport is a document issued in the name of the sovereign, requesting foreign governments to allow the bearer to pass without hindrance and to afford them assistance and protection.As a result of this, a bond is created between the holder of the passport and the issuer. This bond is encapsulated in the maxim: *Protectio trahit subjectionem, et subjectio protectionem* (Protection draws subjection, and subjection protection). The Court ruled that such possession is evidence of protection. This means the duty of allegiance remains until the individual renounces it or the passport expires. They also held that an act of treason, such as joining an enemy radio organisation, is not a withdrawal of allegiance.The reason is that the traitor could still be protected by the issuer in neutral countries. The majority decision established that the state's obligation to protect the holder remains until the Crown withdraws it.

In the UK, treason consists of the mental state rather than the act itself. The 1351 Act specifies the crime of compassing or imagining the death of the monarch, or their heir, where compassing signifies the purpose or design of the mind. Because human tribunals cannot try purposes of the heart, the law requires that this intention be attainted of open deed or an overt act. The *actus reus* of treason is categorised into several manifestations, including levying

[172] *Joyce v DPP* [1946] AC 347.

war against the sovereign within the realm and adhering to the sovereign's enemies by giving them aid and comfort in the realm or elsewhere. In cases such as *R. v. Lynch*[173] and *R. v. Casement*,[174] the courts confirmed the extraterritorial reach of the 1351 Act, ruling that a subject can be guilty of treason for adhering to enemies outside the King's dominions, such as by joining a foreign army or broadcasting propaganda. Under the Treason Act 1702, it remains a treasonable offence to endeavour to deprive or hinder the lawful line of succession to the Crown.

The two-witness rule is a stipulation for establishing treason in the UK.Established by the Treason Act of 1695, this provision stipulates that an individual cannot be found guilty of treason unless supported by the evidence of two reliable witnesses to the same overt act or through a confession made in open court. Under the Treason Felony Act 1848, this requirement ensures that a single witness' memory is insufficient to prove a conviction for treason. This bar reflects a commitment to ensuring that the state does not sit in judgment of a citizen's inner beliefs without a transition into action. In *R. v. McCafferty*,[175] the court established that while two witnesses must testify to the same act, they need not provide a carbon-copy account of the event.Rather, they may provide snippets of evidence. That is, fragments of behaviour that may seem insignificant.[176] When these snippets are woven together, they must form a woven net of behaviour that proves the manifest intention beyond reasonable doubt. This Snippet Doctrine was later adopted by the Nigerian Supreme Court in *Michael Omisade & Ors v. Queen*,[177] where the court affirmed that the prosecution could satisfy Section 178(2) (now Section 201) of the Evidence Act by combining fragmentary testimonies to prove a treasonable felony.

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[173] *R v Lynch* [1975] AC 653.
[174] *R v Casement* 2007 SKQB 422.
[175] *R v McCafferty* (1867) 10 Cox CC 603.
[176] *Omisade v Queen* (n 141); M Lobban, 'Travels of Treason' [2024] (87) (1) *Mod L Rev* 2 <https://doi.org/10.1111/1468-2230.12862> accessed 30 June 2026.
[177] Ibid.

Regarding the nature of evidence, British law historically views confessions with suspicion, describing them as the weakest and most suspicious of all testimony because they are ever liable to be obtained by artifice, false hopes, promises of favour, or menaces. Confessions are often poorly remembered, inaccurately reported, and nearly impossible to disprove through negative evidence. Consequently, the law prefers proof via open deed or documentation written under the party's own hand, which are considered sufficient overt acts to prove the internal treasonable imagination. For instance, the courts have held that a letter under a party's hand is a sufficient overt act to prove such imagination, as seen in the 1718 case of *James Sheppard*, where a letter declaring a design to assassinate the King was admitted as proof of the compassing. Similarly, in *Peacham's Case*, treasonable passages found in a sermon that was never even preached were deemed sufficient for indictment.

There is also a distinction between the proof required for conviction and the proof required for extradition. Under the Fugitive Offenders Act 1881, which governs the return of offenders within the Commonwealth, a magistrate must be satisfied that the evidence raises a strong or probable presumption that the fugitive committed the offence before ordering their return to another jurisdiction for trial. This requirement of a strong or probable presumption represents a burden on the prosecution and a safeguard for the fugitive than the establishment of a *prima facie* case, which only requires something to try. In high-profile matters like the arrest of Chief Anthony Enahoro in Britain, the court had to be satisfied of the standard before a warrant for his return to Nigeria was issued. However, at trial, the prosecution must satisfy the jury beyond all reasonable doubt. Judicial decisions, such as those in the trial of William Joyce, emphasise that this burden remains on the prosecution from first to last and never shifts. Even if the evidence of processing a passport is presented, it is merely evidence from which a jury might infer continued allegiance;not proof, and the jury must be satisfied of every element of the crime to this before a conviction can be sustained.

4.3 Proof under United States Laws

Treason holds a position in the legal system of the USA as the only crime defined by the United States Constitution. Under Article III, Section 3, Clause 1, the offence is limited to two types. They are levying war against the United States and adhering to their enemies by giving them aid and comfort. This definition was crafted by the framers, who drew from their experiences with English law where the crown escalated disputes from politics into treason. The Framers intended to prevent both Congress and the judiciary from expanding the crime to suppress legitimate opposition.

The key element of the offence is the obligation of allegiance.This is because treason is a crime of betrayal. This duty applies to all natural-born and naturalised citizens of the United States, regardless of where they may reside. The Supreme Court has clarified that dual nationality does not relieve an individual of this obligation.A dual citizen who provides aid to a nation at war with the United States can still be held liable for treason. Under the principle that protection draws subjection, even resident aliens who enjoy the protection of the American government owe allegiance and can be prosecuted for treason if they commit acts that would be considered criminal if done by a citizen. To satisfy the *actus reus* of "levying war," the prosecution must establish more than a conspiracy to overthrow the government. As clarified by Chief Justice John Marshall in *Ex parte Bollman,*[178] there must be an assemblage of men for a purpose that is treasonable. Conspiring to subvert the government by force, recruiting troops, does not constitute the act of levying war until those plans are brought into action through a gathering of forces.

Once war is levied, however, anyone who performs any part in the conspiracy, no matter how minute or remote from the scene of action, is considered a traitor. Adhering to enemies requires the convergence of both a mental state and a manifest act. The mental element, or

[178] *Ex parte Bollman* 8 US (4 Cranch) 75 (1807).

mens rea, requires proof of an intent to betray the United States. The manifestation must be an overt act that provides aid and comfort to an enemy, which is defined as a foreign power or group in a state of open hostility with the nation. While the Supreme Court in *Cramer v. United States*[179] initially held that the overt act must be one that, in its setting, demonstrably advances an enemy mission, the case of *Haupt v. United States*[180] refined this by ruling that acts such as harbouring a saboteur or assisting with transportation have the unmistakable quality of forwarding a design.

The proof of treason under United States law is governed by the strict standards in the Constitution.This is because it is the only crime defined by the U.S. Constitution. In *Haupt v. United States*, SCOTUS provided a refinement of the element for proving treason.It held that the testimony of the two witnesses need not be a carbon-copy of the act. Instead, they may testify to different aspects of the same act. For example, one witness may hear the report of a gun, while another sees the smoke, provided their evidence establishes the conduct beyond reasonable doubt.

4.4 Lessons from other Jurisdictions

The comparison of treason and treasonable felony across Nigeria, the United Kingdom, and the United States reveals a heritage rooted in the Treason Act 1351.The Act established the tension between state security and individual liberty. A similarity among these systems is the concept of allegiance, which defines treason as a breach of the support a citizen or resident owes to the sovereignty. All three jurisdictions utilise the term "levying war" as a primary element of the offence. While the term used to refer to military conflict, the courts have evolved it to include any assembly of persons for a general and public purpose intended to challenge or overawe the state. In Nigeria, the courts have clarified that the type of weaponry

[179] *Cramer v United States* 325 US 1 (1945).
[180] *Haupt v United States* 330 US 631 (1947).

used is immaterial, and even a small group can be guilty of levying war if their intent is to subvert the constitution. However, where the force is used to settle a personal dispute, the offence is reduced to a riot or public disturbance. The United States maintains a similar stance.In *Ex parte Bollman*, SCOTUS emphasised that levying war requires an that men are brought into "open action" rather than a plot. Nigeria, the UK, and the USA all maintain the two-witness rule as a safeguard to prevent convictions based on perjured testimony or circumstantial evidence. This requirement, first enacted in the Treason Act 1695, mandates that no person can be convicted except on the testimony of two witnesses to the same overt act or on a confession in court.

Despite these similarities, there significant differences. In the United States, treason is the only crime defined by the Constitution. This a measure by the Framers to create a barrier against exploiting the crime for political purposes. In contrast, Nigeria and the UK have dedicated statutes for treason. This has allowed for wider interpretations of the offence. In the United Kingdom, the concept of "compassing or imagining the death of the king" has been expanded to include non-violent acts such as plotting to depose the monarch or using speech to disable his title. Nigeria maintains a similar wide scope. It defines the offence as the levying of war against the state in order to intimidate or overawe the President or a Governor. This allows for a several activities to be categorised as treasonable, including agitations that threaten the person of the authority.On the other hand, SCOTUS has confined its version to active and direct participation in armed conflict or giving tangible aid and comfort to an actual enemy.

Disparities exist regarding the penalties prescribed for these offences. Nigeria imposes a death penalty for treason, treating it as a capital offence.Treasonable felony attracts a sentence of life imprisonment. In the United States, although the death penalty remains a potential sanction, federal law allows for a other punishments. According to 18 U.S. Code §

2381, an offender may be sentenced to death, but they can also be sentenced to a term of imprisonment of not less than five years and a fine of at least $10,000.They are also banned from holding any office under the United States. Nigeria possesses a two-year statute of limitations for commencing treason trials, a provision found in Section 43 of the Criminal Code. This time-bar is absent from the US Law.

Nigeria can glean several lessons from the United States and the United Kingdom to enhance its jurisprudence and protect the rights of its citizens. A lesson from the United States is the value of defining treason in the constitution.This could restrict the exploitation of opposition using treason charges. The US' position experience highlights a phenomenon known as "Congressional Circumvention," where the government opts to prosecute "treason-like" conduct under other statutes, such as espionage or sabotage. These do not require the rigorous two-witness rule. This allows the state to maintain public order and punish activities that breach the peace while protecting human rights to protest. For Nigeria, this suggests that the state can address threats to national security without eroding constitutional safeguards or applying the stigmatizing label of traitor to individuals who may only be guilty of lesser offences.

CHAPTER FIVE:

SUMMARY OF FINDINGS, RECOMMENDATIONS AND CONCLUSION

5.1 Summary of Findings

This research embarked on an examination of treason and treasonable felony in Nigeria.It placed emphasis on their meaning, elements, standard of proof, interpretation, and practices in other in selected jurisdictions. It also sought to determine the extent to which these offences protect the state without undermining human rights. In the course of the study, it was found that treason is regarded as one of the gravest offences against public order and the constitution in Nigeria.On the other hand, treasonable felony isa an offence designed to capture intentions that have not yet matured into levying of war. The study also found that, these offences are intended to preserve the existence of the state. However, their application in Nigeria often raises questions about the boundary between national security and democratic dissent.

The study found that the framework governing treason and treasonable felony in Nigeria is primarily contained in the Criminal Code Act and the Penal Code Act. These statutes operate in different parts of the country. Under these statutes, treason is committed where a person levies war against the state in order to undermine the President or Governor, or conspires to do so, or instigates a foreign invasion. Treasonable felony, on the other hand, is committed where a person forms an intention to remove the President or Governor by means outside the constitution, compel a change of policy by force, intimidate the legislature, or instigate foreign invasion.Provided that such intention is made manifest. The research found that the distinction between the two offences lies mainly in whether the crime is completed,

The study also found that the elements of these offences (*i.e.* the actus reus, and the *mens rea*) are tied to the doctrine of allegiance. Allegiance is the duty owed to the state, and its breach is one of the basis for treason its peculiar character. The *actus reus* of treason is the levying of war.The courts have interpreted this to include assemblies for a general and public purpose directed at the government, even where no formal military force is involved. The *mens rea* requires an intention to undermine the state or its leadership.The courts have treated the President or Governor as the embodiment of the state itself. In relation to treasonable felony, the study found that the overt act requirement is central, because the law does not punish secret thoughts alone. An intention must be manifested by conduct capable of being seen and proved, and conspiracy may amount to an overt act. These findings show that the offences are not labels, but crimes with thresholds that must be satisfied before conviction.

The research further found that the proof of treason and treasonable felony is governed by a burden and standard of proof. The standard of proof is beyond reasonable doubt, and no conviction can be secured on suspicion alone. The Evidence Act requires corroboration through the testimony of at least two witnesses regarding the same visible action, or one observer for one visible action and another observer for a distinct visible action of a similar nature. The study found that this requirement is a safeguard against abuse, especially in view of the gravity of the punishment attached to the offences. The courts, however, have also adopted the snippet doctrine, which allows fragments of testimony from several witnesses to be woven to establish the manifest intention. This means that while the law demands proof, it does not require that every witness narrate the entire transaction. The study also found that concealment of treason is punishable where a person knowingly withholds information about a treasonous plot, and that the obligation of allegiance may extend beyond citizens to aliens who are under the protection of the Nigerian state.

Another major finding of the study is that interpretation has leans toward state preservation. This could be at the expense of of individual rights. Cases such as Enahoro v Queen, Boro v The Republic, and Omisade v Queen show a judiciary willing to interpret “levying war,” and "overt acts" in a manner that protects the state from subversion. Other cases like Asari-Dokubo v FRN and the proceedings involving Nnamdi Kanu and Omoyele Sowore, demonstrate the tension between state security and liberties. The study found that in some of these cases, the courts and prosecuting authorities have adopted a national security stance that tends to subordinate the rights to expression and association, among others. This creates uncertainty as to when agitation ends and treasonable conduct begins, and it increases the risk that treason charges may be used to suppress dissent rather than punish genuine attempts to overthrow the state by force.

A comparison revealed that treason law I Nigeria shares roots with the UK and some similarities with the US, but there are differences. The UK system developed from the Treason Act 1351 and the Treason Felony Act 1848, with allegiance and overt acts remaining central to liability. The American model, however, is narrower and reliant on the definition in the constitution.This is because treason is expressly defined in Article III of the US Constitution and limited to levying war or adhering to enemies by giving them aid and comfort. The study found that this entrenchment gives their system protection against the exploitation of treason charges for political purposes. It was also found that the two-witness rule exists in all three jurisdictions as a safeguard, but the approach in the US is more restrictive in its scope and less open to exploitation. The research therefore found that Nigeria can draw lessons from the US by narrowing the offence, and ensuring that treason charges are reserved only for conduct that clearly involves force or war against the state.

In sum, the findings of this research show that while the law on treason and treasonable felony in Nigeria provides a framework for protecting the state, its wording and interpretation create a danger of overreach. The study found a tension between the need to preserve national security and the duty to uphold freedoms in a democracy. It also found that the legal regime is vulnerable to political misuse, especially where lawful protest, or agitation is mischaracterised as treasonous. The analysis showed that limits and safeguards are necessary if the offences are to serve their purpose. Accordingly, the study concludes that treason law in Nigeria requires reforms to ensure that it protects the state without becoming an instrument for suppressing lawful opposition or democratic expression.

5.2 Recommendations

In view of the challenges identified in the chapters and the findings of this research, the following recommendations are proposed to strengthen the framework governing treason and treasonable felony:

1. **Clarification of the Offences of Treason and Treasonable Felony**

   The National Assembly should review the Criminal Code and Penal Code provisions on treason and treasonable felony with a view to removing ambiguity in the phrases "levying war," "overawe," "intimidate," and "overt act." The present wording is broad enough to permit conflicting interpretations, especially where protest or political agitation is involved. The law should make it clear that only conduct involving actual or clearly imminent use of force against the constitutional order should amount to treason, while treasonable felony should be limited to deliberate acts that unmistakably manifest an intention to unlawfully overthrow or coerce the government. This will help prevent the misuse of these offences against lawful dissent.

2. **Statutory Protection for Peaceful Political Expression and Assembly**

   The legislature should expressly provide in the relevant criminal statutes that peaceful protest, criticism of government, advocacy for reform, and non-violent calls for political change do not, by themselves, amount to treason or treasonable felony. This clarification is necessary because the current legal climate creates uncertainty about the boundary between constitutional expression and criminal subversion. A clear statutory safeguard would better reflect the freedoms guaranteed under sections 39 and 40 of the 1999 Constitution and reduce the risk of politically motivated prosecutions.

3. **Narrower and More Proportionate Use of Treason Charges by Prosecuting Authorities**

   The police and the Office of the Attorney-General should adopt stricter prosecutorial guidelines before filing treason-related charges. Such charges should only be brought where there is credible evidence of actual armed action, conspiracy with clear overt acts, or conduct that genuinely threatens the corporate existence of the state. Where the facts disclose lesser offences such as incitement, unlawful assembly, conspiracy, terrorism-related conduct, or public disorder, prosecutors should charge those offences instead of treason. This would preserve the seriousness of treason as the highest offence against the state and reduce the tendency to overcharge.

4. **Judicial Adoption of a Restrictive Interpretation Consistent with Constitutional Democracy**

   The judiciary should continue to interpret treason and treasonable felony narrowly, in line with democratic governance and the protection of fundamental rights. Courts should insist on strict proof of allegiance, overt act, and intent before sustaining such charges. Judges should also be cautious not to stretch "levying war" to cover mere dissent, rhetorical radicalism, or symbolic protest. The courts should distinguish clearly between violent attempts to overthrow the state and constitutionally protected civic agitation. This approach would strengthen the rule of law and preserve public confidence in the criminal justice system.

5. **Strengthening Evidentiary Safeguards and Fair Trial Protections**

   The two-witness rule under the Evidence Act should be strictly enforced in all treason and treasonable felony trials. Trial courts should demand full compliance with the statutory evidential requirements before permitting a conviction. In addition, suspects charged with these offences should be given prompt access to legal representation, adequate time to prepare a defence, and protection against prolonged pre-trial detention. The seriousness of the offence should not be used as a reason to weaken due process. Rather, the gravity of the punishment makes strict adherence to fair trial standards even more necessary.

6. **Expansion of Legal Aid Coverage for Treasonable Felony Cases**

   The Nigerian Legal Aid framework should be reviewed to include treasonable felony expressly within its scope. Since the offence attracts life imprisonment and often involves complex constitutional and evidentiary issues, indigent defendants should not be left without representation. State-funded legal aid in such cases would reduce inequality before the law and prevent miscarriages of justice. It would also ensure that prosecutions are properly tested and that convictions are based on law rather than political pressure.

7. **Comparative Reform Drawing from the US Model**

   Nigeria should consider adopting a more constitutionally restrained model of treason law similar to the US approach, where treason is narrowly defined and deliberately insulated from political manipulation. This does not mean copying the American system wholesale, but rather using it as a guide to limit the offence to conduct involving actual war, clear aid to enemies, or direct armed overthrow. Such reform would help align Nigerian law with democratic principles and reduce the use of treason charges as a political weapon.

8. **Public Education on the Meaning and Limits of Treason Law**

   There should be sustained public enlightenment on the legal meaning of treason, treasonable felony, and the constitutional rights of citizens. The National Orientation Agency, legal professional bodies, civil society organisations, and the media should educate the public on the distinction between lawful protest and criminal subversion. This would reduce fear, confusion, and the tendency to brand every form of agitation as treasonous. A better informed public is less likely to accept abuse of state power in the name of national security.

9. **Training for Law Enforcement and Security Agencies**

   Police officers, intelligence personnel, and other security agencies should receive specialised training on the constitutional limits of treason-related arrests and investigations. Such training should emphasise the difference between violent subversion and legitimate political expression, as well as the need for objective evidence before making arrests. This will help prevent arbitrary enforcement and ensure that national security operations remain within lawful limits.

10. **Periodic Review of State Security Laws in a Democratic Context**

    There should be periodic legislative review of Nigeria’s state security offences to ensure that they remain suitable for a democratic order. Laws originally shaped by colonial and military-era concerns should be updated to reflect present constitutional realities. The goal should be to preserve the safety of the state without undermining the freedoms that define democratic citizenship. Regular review will also allow lawmakers to respond to emerging political and security challenges without resorting to outdated legal assumptions.

5.3 Conclusion

This research has revealed a disconnect between Nigeria's framework on treason and treasonable felony and the manner in which these offences are applied in practice. While the Criminal Code and Penal Code provide a clear basis for punishing conduct directed at overthrowing the state, the broad wording of the provisions and the expansive judicial interpretation of expressions such as "levying war," "overawe," and "overt act" have created room for uncertainty. The study found that treason remains the highest offence against the state, while treasonable felony serves as a related but less severe offence aimed at conduct that manifests an intention to subvert constitutional authority. However, in a democratic setting, the distinction between genuine attempts to overthrow the government and lawful political agitation is not always sharply observed. This has made the offences susceptible to being used in ways that may chill dissent and raise serious concerns about the protection of fundamental rights.

Moving forward, the treatment of treason and treasonable felony in Nigeria requires a more restrained and conscious approach. The protection of the state must remain important, but it should not come at the expense of lawful expression, and political opposition. A clearer definition, safeguards, discretion, and a cautious judiciary are necessary to ensure that these offences are reserved for truly grave attacks on the constitutional order. Comparative lessons from the US further show that treason can be defined in a way that prevents abuse while still protecting national security. Without deliberate reform and greater commitment to the rule of law, Nigeria risks maintaining a legal regime in which treason is recognised on paper as a grave offence against the state, but is applied in ways that may undermine the very democratic values it is meant to protect.

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