

DEFAMATION AS TORT AND CRIME IN NIGERIA- LEGAL REVIEW

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ABSTRACT

The 1999 Nigerian Constitution guarantees freedom of speech and freedom of expression. Freedom of expression has, however, been curtailed, among others, by the law of defamation. Defamation applies to the situation when words spoken or written, and made public, damage the reputation, good will, name and standing of another individual before right thinking members of the public. Defamation has been given both civil and criminal applications under Nigerian jurisprudence, creating questions in the minds of the populace as to the rationale. It is argued that criminalizing defamation would lead to undue abuses in using the law enforcement agencies to harass and prosecute fellow citizens for exercising their rights to freedom of expression enshrined in the Constitution, and the breach of which ought to lead to a civil law suit with adequate compensation extracted under the law; instead of being escalated to criminal prosecution which attracts severe penalties, including death. This paper sets out to review the state of the law of tort of defamation in Nigeria, the apparent conflicts between engaging civil and criminal laws proceedings in pursuing a wrong done under the tort of defamation. Existing laws, practices, legal thoughts and court judgments would be examined and recommendations proffered with a view of contributing towards streamlining the legal jurisprudence in this area of law.

Keywords: Defamation, Civil law, Criminal law, Constitution, Nigeria police, Prosecution.

INTRODUCTION

One distinguishing feature between human beings and other creatures on earth is human beings' ability to communicate through words. Words proceed and are transmitted in varied forms which may include oral expressions, written works, drawings, graphic designs; and could be transient or preserved in permanent forms through human, mechanical and electronic devices. Words also form the foundation for most musical renditions which cross boundaries of the earth. In recognition of the importance of words in the overall existence of human beings, most countries' laws, including the Nigerian Constitution¹ contain very elaborate provisions for the protection of free speech. This freedom of speech is, however, not absolute. The law of Defamation is one of the ways freedom of speech has been abridged.

Human interactions often lead to various kinds of conflicts, requiring judicial redress. Nigerian legal system, just as other legal systems all over the world, operate on the basis of the well-known Latin maxim '*Ubi jus, ibi remedium*', which means, '*where there is a right, there must be a corresponding remedy*'.² Following this Latin Maxim, laws are put in place with provisions to address issues emanating from human interactions, including the use of words. Every wrong act, especially conveyed through the medium of human words, should also be amply compensated for or remedied. The remedy comes through existing laws enacted by the legislatures in every jurisdiction. Indeed, the provisions of the 1999 Constitution also contain restrictions on the exercise of freedom of expression.³

Broadly speaking, there are two identifiable bodies of laws which aim at deterring wrongdoers, and providing punishment and compensations to the injured parties. These are known as civil and criminal laws. Civil law deals with any behaviour that constitutes an injury or wrong to an individual or other private property, such as a corporation, in the ordinary course of interactions. Criminal law, on the other hand, deals with behaviour that is or can be construed as an offense against the public, society or the state-even if the immediate victim is an individual.⁴ In other words, civil law is that branch of law which concerns itself with interactions between individuals in normal everyday affairs, while criminal law involves infractions which are termed offences under the enacted laws of a state, and targeted at the protection of the peace and sanity of the general public.

Defamation is defined, in law, as the act of communicating to a third party false statements about a person that result in damage to that person's reputation.⁵ The words of the definition

already contain all the key ingredients for defamation, namely, (a) words communicated and made public, either orally or in writing; (b) referring to a person, and (c) which damages that other person's reputation. Defamation occurs in two ways: oral and in writing. When it occurs orally it is termed slander, and when the words are reduced in permanent forms, even via electronic media, they are termed libel. Libel may also include pictures, or any other visual symbols in a print or electronic medium.⁶

From the foregoing classification and definitions of law and defamation, it could be surmised that defamation majorly relates to wrongdoing against the reputation of another person; which should fall in the category of civil law. It usually does not affect the safety of the general public; and wherever it touches upon and threatens the general peace of the wider society other laws such as Treason⁷ do provide adequate remedies. However, certain enacted laws and judicial pronouncements in Nigeria have categorized defamation into the sphere of criminal law, thereby expanding the scope of remedies available to a party, while exposing a tortfeasor to the possibility of additional criminal prosecution.

The question that begs for attention and consideration is whether the normal civil remedies available to a wronged party under defamation would not be enough, or is it a question of following existing legal traditions in other jurisdictions? Would it not amount to double jeopardy in law for a party to be simultaneously sued for both civil and criminal liabilities as a result of a singular act of defamation? Again, should the law of defamation not be unified under one body of law in Nigeria so as not to create complexity in implementation and administration?

Under Islamic law jurisdictions, blasphemy⁸, a wrong committed through spoken or written words, is severely punished as a crime, sometimes with death by stoning or hanging. This position of law under Sharia legal system has been affirmed by the Supreme Court of Nigeria in many cases.⁹ The punishment prescribed under Sharia law for blasphemy, which contains same regular ingredients¹⁰, as defamation, shows it has been moved to the realms of criminal offence; whilst overlooking the existing legal norm under the law of defamation.

Furthermore, as the world of information technology and the new media of communication termed 'social media' penetrates more and more into the fabrics of society, with attendant challenges, many jurisdictions have also enacted cyber laws with provisions which criminalize wrongs committed through words. For example, under Nigeria's *Cybercrimes (Prohibition and*

Prevention) Act, 2015,¹¹ defamation has come under the umbrella of protection of Nigeria's cyber law, similar to internet fraud, and other criminal acts carried out online.

Under the Criminal Code¹² in Nigeria, words are termed defamatory if they are likely to injure the reputation of any person by exposing him to hatred, contempt, or ridicule, or likely to damage any person in his profession or trade by an injury to his reputation. A close examination of the definition under the criminal laws would show no difference with the classical definition of defamation normally deployed under the civil law jurisdiction in Nigeria. In same vein, the Penal Code, relevant to the Northern States of Nigeria contains similar provisions.¹³ The implication is that within Nigeria one may be sued both under the civil law as well as criminal law proceedings for the same set of words spoken or written, if the plaintiff finds them defamatory in nature.

This legal regime also exists in other foreign jurisdictions. In India, which shares a lot of historical, sociological and political similarities with Nigeria¹⁴ defamation is both a civil law of tort wrong, as well as a crime punishable with jail terms.¹⁵ In other jurisdictions like the United States of America, there seems to now be a shift to single approach under the tort of defamation. Eric P. Robinson, writing on 'Criminal Libel'¹⁶ in the United States of America jurisprudence opines as follows: *"Although libel or defamation is now primarily a civil claim, it once was primarily a criminal offense, prosecuted by the government and punishable by imprisonment or a fine... Criminal statutes punishing defamatory statements date from as early as the thirteenth century in England. Criminal libel law as applied in America can be traced directly to the English Star Chamber, which, during the time of King Henry VIII (r. 1509–1547), became a forum for prosecuting critics of the monarch."*¹⁷ Currently, in the United States of America, defamation is generally regarded as a civil wrong under the law of Torts, but some States, through their legislatures, have retained the criminal aspects of defamation.¹⁸

The objective of this paper is to explore, through reviews of enabling laws on defamation in Nigeria, in particular, the rationale for retaining the regime of criminal punishment for defamation; and whether, taking all things into consideration, the existing provisions under the law of Torts, which determines defamation to be a civil wrong is not adequate. The effort will examine potential areas of conflicts and hardship towards the citizens in the current legal regime of defamation, and how to eradicate such hardships, if any. Efforts would also be

exerted towards ascertaining the adequacy of the current remedies under the regular law of Torts as enough for the civil wrong of defamation.

LITERATURE AND CASE LAW REVIEWS

The Tort of defamation contains well established ingredients which have survived many authors and judicial interpretations. The elements of defamation highlighted above have been given judicial recognition in a number of cases in Nigeria, right up to the Supreme Court. In the case of *Chilkied Security Services and Dog Farms Ltd v. Schlumberger Nigeria Ltd & Anor* (2018)¹⁹, Hon. Justice of the Supreme Court, Kekere-ekun remarked as follows: “Defamation, as a tort, whether as libel or slander, has been judicially defined to consist of the publication to a third person or persons of any words or matter which tend to lower the person defamed in the estimation of right thinking members of society generally or to cut him off from society or to expose him to hatred, contempt, opprobrium or ridicule or to injure his reputation in his office, trade or profession or to injure his financial credit.”

In the earlier cases of *Byrne v. Dean*²⁰ and *Egbuna v. Amalgamated Press of Nigeria Ltd*²¹ it was clarified that the reference to ‘right thinking members of society generally’ does not relate to a particular section of society, but to the general public; and the standard used to determine such class of people is that of a normal reasonable person.

While it may appear well settled that defamation as a tort involves publishing false words about another which damages the persons image, standing and reputation; and permits the person so affected to sue to remedy the wrongs, it is also the case that the same offending person may equally be prosecuted under the provisions of the criminal laws. Crime is usually prosecuted through the instrumentality of the state executive arm, such as the police and justice ministries. Such prosecution could attract punishments under criminal law which could go from imposition of fines, jail terms to even capital punishments like death. In his paper, ‘*Concept and Theories of Justice Administration*’²², Nidhi Arya identified five theories of punishment, namely: (a). Retributive theory, (b). Deterrent theory, (c). Preventive theory, (d). Reformatory theory and (e). Compensation theory. In brief, Arya classified the various theories as follows: Under retributive theory the offended party was allowed to have his revenge against the wrongdoer. The deterrent theory seeks not only to deter the wrongdoer, but also to make him an example to other persons who have criminal tendencies. Preventive theory seeks to disable

the offender from repeating such offences by exerting punishments such as imprisonment, exile, death, etc. On the other hand, the reformatory theory seeks to reform the criminal and make him a better person in society, while the compensation theory contends that the object of punishment must be not merely to prevent further crime but also to compensate the victim of the crime.

Under the civil law administration of the tort of defamation, a successful action grants the wronged party judgment in terms of damages, which could be monetary compensation, as well as injunctions against the tortfeasor preventing him from carrying out the deeds again. It may also require the tortfeasor to carry out some acts like publishing widely circulated rebuttal or retraction of the material from public circulation, and rendering open apology to the offended party. On a fair comparison, the outcome of a successful litigation under the law of tort puts the successful party in a position where he is seen to be restored to the initial state before the wrong was committed against him. In effect, it may be said that a successful litigation under the civil law of the tort of defamation brings about a result which embodies all the earlier stated five principles of punishment under criminal administration. In addition, courts have been known to have awarded ‘exemplary’ and ‘punitive’ damages as ways of scaling up the civil wrong damages.²³

Section 375 of the Criminal Code Act, applicable in the southern states of Nigeria provides criminal sanctions for defamation. It states that “...*any person who publishes any defamatory matter, is guilty of a misdemeanor and is liable to imprisonment for one year; and any person who publishes any defamatory matter knowing it to be false, is liable to imprisonment for two years.*”²⁴ Section 375 makes use of the word ‘publishes’ in a manner that suggests it is referring to libel, which occurs when a defamatory matter is reduced into writing or placed in a permanent form. In effect, it is unlikely that mere shouting ‘you are a thief’ to another, would warrant criminal prosecution under Section 375 of the Criminal Code, but perhaps writing and publishing the same words in a national newspaper may warrant criminal prosecution.

An interesting provision under the Criminal Code Act in Nigeria relates to defamation of persons exercising sovereign authority over a State.²⁵ Section 60 of the Criminal Code Act provides that “any person who, without such justification or excuse as would be sufficient in the case of the defamation of a private person, publishes anything intended to be read, or any sign or visible representation, tending to expose to hatred or contempt in the estimation of the people of any foreign State any person exercising sovereign authority over that State, is guilty

of a mis-demeanour, and is liable to imprisonment for two years.” This section refers to and uses the same scale of assessment as applicable to ‘defamation of a private person’, indicating acknowledgment that defamation could be remedied under private civil action. It prescribes same two years jail term as provided under Section 375 of same Criminal Code Act on general tort of defamation. The use of the term ‘sovereign authority’ under Section 60 of the Criminal Code Act undoubtedly exposes the origination of the provision as traceable to the colonial era.²⁶ Under civilian democracy, as currently practiced in Nigeria, sovereignty belongs to the people who elected the political leaders, but under colonial regimes of the past, sovereign authority refers to the king or queen, as the case may be²⁷.

There is also a well established principle of criminal justice that frowns at double jeopardy; that is, allowing a victim to be punished twice for same offence. This is embedded in the popular maxim, *nemo debet bis vexari pro una et eadem causa* (no one shall be punished twice for the same offence)²⁸ Section 36 (9) of the 1999 Constitution of Nigeria (as amended) provides the basis for the principle of double jeopardy under Nigeria’s criminal justice administration, but this does not, as yet, include trial for civil wrongs. As such, whereas it prevents an accused from being prosecuted a second time for an offense if the accused can show evidence of previous arraignment and judgement or acquittal granted on same facts, it may not prevent a civil wrong trial of a wrong doer on same facts. In effect, whereas criminal justice administration abhors double jeopardy, civil law justice administration does not abhor such. As the law stands in Nigeria one caught under the wrong of defamation, for instance, could be punished under any of the various criminal justice administration punishments, and also be open to an action under the law of tort.

Under Chapter Four²⁹ of the Constitution, Section 39 devotes its provisions to the protection of the right to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference, granted to every citizen of Nigeria.³⁰ This Section further permits a citizen to own, establish and operate any medium for the dissemination of information, ideas and opinions, provided he must obtain relevant permits to establish or operate a television or wireless broadcasting station.³¹ The provisions under freedom of expression are, however, abridged under sub-sections 39 (3) (a) and (b) with the following provisions: “Nothing in this section shall invalidate any law that is reasonably justifiable in a democratic society - (a) for the purpose of preventing the disclosure of information received in confidence, maintaining the authority and independence of courts or

regulating telephony, wireless broadcasting, television or the exhibition of cinematograph films; or (b) imposing restrictions upon persons holding office under the Government of the Federation or of a State, members of the armed forces of the Federation or members of the Nigeria Police Force or other Government security services or agencies established by law.

From the foregoing provisions of Section 39 of the 1999 Constitution it is clear that every Nigerian citizen has the freedom to express himself or herself, so far as the provisions therein are observed.

The question then is: why would a statement made against a fellow citizen, in the ordinary cause of dealings, in the exercise of freedom of expression which is well guaranteed under the Constitution be criminalized; whereas the offended citizen has every possibility of suing the wrong doer under the provisions of civil law of the tort of defamation? This question becomes relevant because in the normal jurisprudence of criminal law administration, it is assumed that its punishment pertains to safeguarding the sanity of the general society by preventing individuals from desecrating the general peace.

DISCUSSIONS

There seems to be a central convergence in agreement between the schools of thoughts in favour of criminalizing the tort of defamation and those canvassing that defamation should remain in the realms of civil wrong. This convergence appears in the fact that both approaches arrive at the same destination, which is that there should be recourse to the law against the wrong doer for the act of defamation. The challenge then may be with what manner of recourse to the law would be adequate. Should it be found under ‘remedy’ or ‘punishment’, as both of them may adequately address the matter of defamation? Remedy, in law, refers to “means by which the violation of a right is prevented, redressed, or compensated.”³² According to the Black’s Law Dictionary, remedies are of four kinds, namely; (1) By act of the party injured, the principal of which are defense, reception, distress, entry, abatement, and seizure; (2) by operation of law, as in the case of retainer and remitter; (3) by agreement between the parties, e.g, by accord and satisfaction and arbitration; and (4) by judicial remedy, e.g., action or suit.³³ One can see a vast array of options that could be applied by a person whose character and reputation has been injured through an act of defamation. Indeed, the fourth option which speaks of judicial remedy connotes wide ranging and multifarious orders that could be given

by a court of competent jurisdiction. They are as expansive as there are violations or wrongs. In addition, the courts also have inherent discretions which permits them to, sometimes, go outside laid down remedies, and seek to apply novel remedies that may meet the end of justice. It was once noted by the renowned jurist, Oputa, J.S.C that: “The law is an equal dispenser of justice, and leaves none without a remedy for his right. It is thus a basic and elementary principle of common law that whenever there is a wrong, legal wrong or injuria that is, there ought to be a remedy to redress that wrong.”³⁴

To further underscore the importance attached to the question of a citizen being able to obtain adequate remedies, Section 46 (1) & (2) of the 1999 Constitution³⁵ mandates that “(1) Any person who alleges that any of the provisions of this Chapter³⁶ has been, is being or likely to be contravened in any State in relation to him may apply to a High Court in that State for redress. (2) Subject to the provisions of this Constitution, a High Court shall have original jurisdiction to hear and determine any application made to it in pursuance of this section and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcement or securing the enforcing within that State of any right to which the person who makes the application may be entitled under this Chapter.” Over time the ambit of these remedies and orders which a court could make have expanded to include a. award of damages, b. injunctions, c. specific performance, among others.³⁷

On the other hand, ‘punishment’ would connote a situation where pain or suffering is inflicted on someone because of doing something wrong. According to the **Oxford Advanced Learner’s Dictionary of Current English**, punishment conveys a “causation of suffering or discomfort to somebody for his or her wrongdoing.”³⁸ It is also defined as “a penalty inflicted on an offender through judicial procedure.”³⁹ Unlike defamation under the civil law realm, under criminal law there must first exist a statute or law which must spell out clear provisions on the crime and prescribe clear punishment. In the field of criminology, therefore, punishment is defined as “the state’s imposition of any type of sanction on an individual for an act that has violated criminal law.”⁴⁰

Having taken defamation into the spheres of criminal law, automatically all the characteristics of criminal law must apply; namely (a) the fact that no person shall be held for an offence which did not constitute a crime as at the time the act took place, which is encapsulated in the Latin maxim *Nulla poena sine leges*⁴¹; (b) and the person must be presumed innocent until

finally adjudged guilty by a court of competent jurisdiction, which again is captured in the Latin maxim '*in dubio pro reo*'.⁴²

As already stated, criminal laws are usually acts of Federal or State statutes, enacted into law by either the National Assembly of the Federation or the House of Assembly of a State. Upon complaint by a citizen such offences, having passed the constitutional tests stated under Section 36 of the Constitution, the State normally takes over the investigation and prosecution, and, if conviction arises, the offender is punished according to the requirements of the particular criminal law. The remarkable thing here is that the complainant whose name was defamed under the law of Tort under consideration in this paper, may actually not receive any personal gratification such as monetary compensation, as would be possible under civil law trial situation. The complainant may only walk away with the psychological gratification that the offender was punished, but does that alone warrant preference for criminal trial?

Again, under the law of tort of defamation, a defendant is entitled to a variety of defences that, if properly utilized, could completely exonerate the person from any damages. Whereas under criminal trial situation the defendant may not immediately have such opportunity to put up defences before finding himself or herself behind bars, while awaiting actual trial.

The definition of defamation which we have copiously cited in this paper shows that the wrong is committed against ***an individual***, who may have suffered an erosion of his or her reputation and standing in society, and not directly committed against the Federal or State government. The hallmark of criminal offences includes the fact that it goes contrary to an enacted statute which makes it an offence. Blackstone, a well known commentator in English Law, gives the definition of crime as "violation of the public rights and duties that is due to the whole community..."⁴³ In effect, crime touches upon the wider society and contravenes a public law established for the maintenance of peace and order in a community. This is different from the way civil wrong is classified. Perhaps, an illustration becomes imperative here. James writes on the newspaper that Chief Daniel stole his landed property. If Chief Daniel feels that his reputation has been injured, he has every right to approach the court to commence civil action against James, and would ask as reliefs that (a) James withdraws such statement, (b) apologise to him and also publish same in the newspaper, (c) pay compensatory damages in monetary terms to him for the injury to his reputation, and may also (d) obtain court injunction restraining James from ever making such allegations in future.

If the matter were to be reported to the police by Chief Daniel, a totally different scenario would arise in which James would be arrested or invited to the police station. After his statements have been obtained, the police may decide to charge him to court, and if successfully proven that he defamed the character and reputation of Chief Daniel, James may be made to pay fine or serve jail term. What happens to Chief Daniel? Most likely, he would only enjoy the psychological gratification of having secured state punishment against James.

Reference must be made to the long decided English case of *Smith V. Selwyn*⁴⁴ which enunciates the position that where a civil wrong is also a crime, as is now the case with defamation under Nigerian laws, the prosecution of the crime aspect must be initiated, or reasons for default of prosecution given, before any action filed by the Plaintiff in the civil Court can be heard. This position answers the poser as to whether civil and criminal cases may run simultaneously in Nigeria. As the law stands, both civil proceeding and a criminal proceeding may proceed simultaneously, provided the principles established in *Smith V. Selwyn* has been followed.

This position of law in Nigeria is however not shared with some sister African countries. In South Africa, for instance, defamation is regarded simply as a civil wrong.⁴⁵ In *Hix Networking Technologies case*⁴⁶, Plewman AJ defined defamatory statements as: “... a defamatory statement is one which injures the person to whom it refers by lowering him in the estimation of the ordinary intelligent or right thinking members of society...” This definition has received the legal blessing of the Supreme Court of Appeal of South Africa in the case of *Mthembi-Mahanyele v Mail & Guardian Ltd and Another*⁴⁷, where it emphasized that the relevant ingredients the determination of whether a word has defamatory meaning is with respect to how a reasonable man with ordinary intelligence would regard the words. If he comes to the conclusion that it is defamatory then that becomes the position, without more. In other words, there would be no need for sophisticated interpretation or laborious work to determine defamation. One finds total similarity and agreement between the position in Nigeria with that of South Africa with respect to the law of defamation.

Same similarity exists between the defenses available to a person sued under defamation in Nigeria as well as in South Africa. Once it has been established by a court of competent jurisdiction in South Africa that a statement is defamatory, there are defenses that can be

raised.⁴⁸ According to Alisha Naik, the defenses protect freedom of speech and serve the public interest by ensuring that certain kinds of defamatory allegations cannot be made with impunity. A summary of the defenses is presented as follows:

1. If it can be proved, on a balance of probabilities, that the statement is true and in the public interest, then the defendant(s) will enjoy complete protection.
2. The statement amounts to fair comment or freedom of expression, wherein the perpetrator(s) may argue that they believed themselves to be doing the right thing, regardless of the correctness of their belief. In doing so, they lacked the wrongful intention necessary to constitute a violation of the law.
3. The statement is made under privileged circumstances. This protects statements made by someone who is under a moral or legal duty to make such statements or has an interest in making such statements to someone who has an interest in hearing them or a duty to do so, for instance, a statement made during litigation proceedings.

In Nigeria, following a line of cases decided both at the Court of Appeal and the Supreme Court⁴⁹, the line of defences available to a defendant sued under defamation are as follows:

1. That the alleged wrong doer is not the publisher of the statement;
2. That the statement did not refer to the alleged victim;
3. That the statement in its ordinary meaning is not defamatory;
4. That the statement was true;
5. That the statement was fair comment on a matter of public interest;
6. That the statement was made in the heat of an argument;
7. That the statement was made under a situation of absolute or qualified privilege in favour of the alleged wrong doer.

It does seem correct to posit here that these defenses should be available to any alleged defamer of character whether sued under civil or criminal law in Nigeria. At the same time, it is also very likely that a prosecutor in a case of criminal defamation in Nigeria would proceed on the path of proving to the court beyond all reasonable doubts that the complainant's reputation has been impugned by the act of the accused, and thereby exposed the complainant to ridicule before the public.

In the final analysis, the position of the law in Nigeria remains that defamation which arises when another person's reputation, name and standing is brought to public opprobrium, is both a civil wrong and criminal offence.

CONCLUSION AND RECOMMENDATIONS

The need for this exploratory work on the position of the law of defamation in Nigeria arose from the concern that a civil wrong which has adequate provisions for legal redress and defense ought not to be regarded as a criminal offence at the same time. From the nature of defamation and Tort generally,⁵⁰ it could be surmised that it falls in the realm of private law; and only in exceptional cases⁵¹ may it be criminalized. Even when the incident of defamation may amount to public nuisance, such as when it arises during public altercation or vulgar abuse, there is the well known principle that none of the parties can maintain an action in court.⁵² In the decided case of *Bakare V. Ishola*⁵³ the court affirmed this principle, and did not hold the defendant answerable for defamation. In that case, there was a fight between the plaintiff and the defendant, and in the heat of passion of the moment, the defendant voiced out loudly to the hearing of many members of the public, "*ole ni o. Elewon, iwo ti o sese tie won de yi.*" The words translated to English languages meant: "*You are a thief. Ex-convict. You who has just come out of prison.*"

So the point being canvassed here is that basically the law of tort of defamation accommodates varieties of issues around the tortuous wrong; and an action maintained by an individual against the perceived wrong doer ought to be sufficient. As highlighted before in this paper, there are arrays of remedies a court could apply to assuage the feelings of someone who alleges that his character has been defamed. These include order for monetary compensation, publication of retraction of the written material and similarly publishing it in prominent dailies; and appropriate injunctions against any repeat in future of such offensive material. These remedies, as could be seen, are specifically targeted at satisfying the one who suffered from the libelous act.

On the other hand, under criminal defamation as contained under Section 375 of the Criminal Code Act, two categories of punishments are prescribed. The first relates to the offence of publishing any defamatory matter against another, which is regarded as a misdemeanor and

attracts one year jail term; while the second category relates to the offence of publishing defamatory matter ‘knowing same to be false’, which attracts two years jail term. The distinction between ‘*publishing any defamatory matter*’, and ‘*publishing defamatory matter knowing same to be false*’, are matters which could easily be established under trial in any case. No one would be held liable for defamation except the alleged words are determined to be false. The defence of ‘Justification’ usually avails a defendant who knowingly or unknowingly publishes an alleged defamatory matter which later turns out to be true. In other words, once the words published are true a plaintiff seeking to secure damages against another for defamation would fail. One therefore concludes here that the provisions of the Criminal Code Act have not introduced any new standard of proof to warrant the duplicity of legal jurisdiction in Nigeria.

In addition, as it relates to which regime, between civil and criminal approaches to defamation, best provides the remedy to the injured party, one would conclude that civil cause of action does provide better remedies, for reasons already stated. Criminal processes only seek to punish the tortfeasor, but do not necessarily provide a direct remedy to the injured party.

It would be fair to conclude that having seen the extent of the provisions given under both civil and criminal procedures for tackling the tort of defamation, that it would be appropriate to recommend that Nigeria should adopt a single regime for the tort of defamation. There is little justification for continuing to retain the legal regime which criminalizes defamation in Nigeria.

References:

1. See Section 39 of the 1999 Constitution of the Federal Republic of Nigeria which states that : “39. (1) *Every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference.*”
2. The right to a remedy is one of the fundamental rights historically recognized in all legal systems.
3. Section 45 (1) of the 1999 Constitution of the Federal Republic of Nigeria states that : “*Nothing in sections 37, 38, 39, 40 and 41 of this Constitution shall invalidate any law that is reasonably justifiable in a democratic society (a) in the interest of defence, public safety, public order, public morality or public health; or (b) for the purpose of protecting the rights and freedom of other persons.*”

4. Brian Duignan, 'What is the difference between criminal and civil law?', online article published at <https://www.britannica.com/story/what-is-the-difference-between-criminal-law-and-civil-law>; accessed on 14/12/2022.
5. The editors of Encyclopedia Britannica: <https://www.britannica.com/event/New-York-Times-Co-v-Sullivan/The-Supreme-Courts-ruling>; online source accessed on 17/12/2022.
6. Ibid. No 4 above.
7. See Section 37 of the Criminal Code Act on Treason, Sections 50-52 of the Criminal Code, and Sections 416-422 of the Penal Code of the offence of Sedition, Laws of the Federation of Nigeria, 1990.
8. Blasphemy refers to "impious utterance or action concerning God, but is broader than in normal English usage, including not only the mocking or vilifying of attributes of Islam but denying any of the fundamental beliefs of the religion. Examples include denying that the Quran was divinely revealed, the Prophethood of one of the Islamic Prophets, insulting an angel, or maintaining God had a son." see: 'Islam and Blasphemy' at https://en.wikipedia.org/wiki/Islam_and_blasphemy; online source accessed on 21/12/2022.
9. See the case of Kaza Vs. State (2008) 7 NWLR (Pt 1085) 125, ratio 15. Also recent Supreme Court Judgment reported in the Punch Newspapers online at <https://punchng.com/supreme-court-affirms-sharia-law-on-blasphemy-muric/> of an Islamic Cleric Abduljabbar Nasiru Kabara whose earlier sentence to death in an Upper Sharia Court in Kano was affirmed by the Supreme Court; online source accessed on 21/12/2022.
10. Ibid No 4 above.
11. The Explanatory Memorandum to the Act states that "The Act provides an effective, unified and comprehensive legal, regulatory and institutional framework for the prohibition, prevention, detection, prosecution and punishment of cybercrimes in Nigeria." See also Section 1(a) of the Act.
12. See Sections 373-381 of the *Criminal Code Act*, (Nigeria), Cap C38 LFN 2004, 1 June 1916.
13. See online article by James Abayomi Agaja, '*The Nigerian Law of Defamation and Its impact on Libraries.* ', which cites S.S. Richardson, 'Notes on the Penal Code Law Cap

- 89, Laws of Northern Nigeria 1963 (Zaria: Gaskiya Corporation 1967) p.225; at <https://worldlibraries.dom.edu/index.php/worldlib/article/view/243/199> ; accessed on 23/12/2022.
 14. India, just like Nigeria, has diversity of peoples, religions and languages, and was also a British colony.
 15. See Sections 499 & 500 of Indian Penal Code, 1860. Further reading at <https://www.legalserviceindia.com/legal/article-2224-defamation-law-in-india.html>; online resource accessed on 23/12/2022.
 16. Eric. P. Robinson, 'Criminal Libel', online article accessed on 23/12/2022 at <https://www.mtsu.edu/first-amendment/article/941/criminal-libel>.
 17. The tyrannical tendencies of powerful pre-colonial rulers in Rome and Europe seem to have influenced criminalizing defamation.
 18. Ibid. 15 above.
 19. Inioluwa Olaposi, Online publication , *DEFAMATION: Definition, Types, Distinctions, Vulgar Abuse (NG)* at <https://www.lawglobalhub.com/defamation-torts/>, accessed on 03/02/2023.
 20. (1937) 1 K.B. 818
 21. (1967) 1 All N.L.R. 25 at pg.
 22. See International Journal of Science and Research (IJSR), ISSN 2319-7064, published online at <https://www.ijsr.net/archive/v8i5/ART20197985.pdf>, accessed on 20/2/2023.
 23. See Vanguard newspaper online article on 'The Supreme Court's attitude to exemplary damages', by Lawrence Atsegbua, accessed at <https://www.vanguardngr.com/2013/04/the-supreme-courts-approach-to-exemplary-damages/> on 20/2/2023.
 24. Provision on criminal defamation under the Criminal Code laws of the Federal Republic of Nigeria.
 25. See Section 60 of the Criminal Code Act, Laws of the Federation of Nigeria.
 26. Nigeria Criminal Code Act derives from the Nigerian Criminal Code Act 1916, and adapted from different laws in operation since the colonial days. See also https://en.wikipedia.org/wiki/Nigerian_Criminal_Code for more information.
- See interpretations of 'Sovereignty' on the website of Cornell Law School accessed at <https://www.law.cornell.edu/wex/sovereignty> on 8/2/2023.

28. See *Section 36 (9) , 1999 Constitution of the Federal Republic of Nigeria* (as amended).
29. Fundamental Rights provisions under the 1999 Constitution of the Federal Republic of Nigeria (as amended) are contained in Sections 33 to 46.
30. See *Section 39 (1) , 1999 Constitution of the Federal Republic of Nigeria* (as amended).
31. See *Section 39 (2), 1999 Constitution of the Federal Republic of Nigeria* (as amended).
32. The Law Dictionary; featuring Black's Law Dictionary, 2nd Ed.
<https://thelawdictionary.org/remedy/>, online resources, accessed on 28/03/2023
33. See the cases of *Kuapp v. McCaffrey*, 177 U. S. 638, 20 Sup. Ct. 824, 44 L. Ed. 921; *Missionary Soc. v. Ely*, 56 Ohio St. 405, 47 N. E. 537; *Shugaba Darman V. Minister of Internal Affairs* (1981) 2 NCLR 459
34. See the case of *Aliyu Bello v A-G Oyo State* (1986) 5 NWLR pt. 45 828 at 889-890; The Latin legal maxim is *ubi jus ibi remedium* (where there is a right there must be a remedy): <https://en.m.wikipedia.org> , accessed on 28/3/2023.
35. Special Jurisdiction of the High Court in Nigeria
36. Chapter Four of the Constitution on Fundamental Rights
37. See the case of *Asemota v. Yesufu & Anor* where the court held that the remedy provided for in Section 42 of the 1979 Constitution “Supplements or is in addition to the existing order for enforcing or securing constitutional redress of enshrined constitutional rights by the writs of *habeas corpus*, and/or order of *certiorari*, *mandamus* and/or prohibition.”
38. A.S. Hornby, (ed), **Oxford Advanced Learner's Dictionary of Current English**, Revised Third Edition, Oxford University Press, London, 1980, 677-678
39. Definition offered online at <https://www.merian-webster.com>, accessed on 31/3/23.
40. <https://howardleague.org>, an online resource accessed on 31/3/23
41. See Sections 36 (8) & (12) of the 1999 Constitution of the FRN, CAP C 23 LFN, 2004
42. Section 36 (5) of the 1999 Constitution of the FRN, CAP C 23 LFN, 2004
43. <https://www.google.com/search?client=firefox-b-d&q=Blackstones+definition+of+crime>, an online resources accessed on 15/4/2023.
44. (1914) 3 KB 98
45. 1997 (1) SA 391 (A), cited in an online article *The Legal Principles of Defamation*, written by Alisha Naik, published under Schindlers (attorneys-conveyancers-notaries) posted on <https://www.schindlers.co.za/news/the-legal-principles-of-defamation/>, accessed on 15/4/2023.

46. Ibid
47. 2004 (6) SA 329 (SCA)
48. Ibid , 45
49. See : *Bekee & ors v. Bekee* (2012) LPELR-21270(CA) per Onyemenam , J.C.A. P. 20, Paras. D, Onwurah & Ors v. Onwumeh & Anor (2016) LPELR-40304(CA) Per Ogunwumiju, J.C.A. (P. 16, Paras C, and the Supreme Court case of Anya V. A.N.N. Ltd. (1992) NWLR, (PT. 247) 319 , (1992) 7 SCNJ 47
50. Tort is defined on the website of Cornell University <https://www.law.cornell.edu/wex/tort> as “an act or omission that gives rise to injury or harm to another and amounts to a civil wrong for which courts impose liability. In the context of torts, "injury" describes the invasion of any legal right, whereas "harm" describes a loss or detriment in fact that an individual suffers”, online source accessed on 20/4/2023
51. There is the case of ‘public nuisance’ which is often regarded also as a criminal offence because it generally affects the society at large.
52. Statements made referring to another during an outburst of altercation between the parties are excluded from any imputation of defamatory meaning.
53. 1959 (WLNR), 106