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Kidnapping: The Audacity of Criminality in Nigeria

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Abstract:

Every nation at every stage of her development experience one form of criminality or the other. Nigeria is not an exception, for crimes such as murder, armed robbery and kidnapping occur on frequent basis. The thought about kidnapping is very frightening, the experience of the crime is traumatic to the victims and their relatives and its effects generally on the psychic of the people and the serious challenge it poses to various levels of government have all actuated the greater need to investigate the crime in this treatise, particularly in the South-South, South-East and more recently South-West geo-political zones. The investigation of the crime will also attempt to find answers to the many problems generated by the crime and how the crime can be tackled successfully. The paper begins by stating the problems occasioned by the crime, examines the causes and effects of the crime in Nigeria and defines the relevant terms. Next, the paper discusses the elements of kidnapping, kidnapping and other crimes, the crime of kidnapping in Nigeria and also attempts legal and sociological prescriptions with a view to tackling the crime. Conclusion wraps up the paper.

Keywords: Kidnapping, Criminality and Militant

1. Introduction

Until fairly recently, the crime of kidnapping was rarely heard of, although conduct against such has since been criminalized.¹ That has accounted for the dearth of reported cases and the obvious lack of legal literature on the crime in Nigeria. The forgoing is now history as reported cases of kidnapping on daily basis now envelope the South – South region (Niger Delta axis), South – East and South - West flanks, thereby sending shivers to, and causing other parts of Nigeria to catch cold.

The theoretical framework of this paper is to examine the law of kidnapping from the perspective of the common law, statutes and case law in Nigeria. The paper will also examine the currency and the notoriety of the crime in Nigeria, particularly in the Niger Delta region and the South East axis of the federation of Nigeria. This exposition will examine the law on kidnapping in South Africa, partly because it is a country with high rate of criminality and partly because it is a developing country like Nigeria in a typical African setting. The law of kidnapping in England will also be handled partly because it is a developed economy with well entrenched laws and partly because England and Nigeria both belong to the common law family.

2. Causes and Effects of Kidnapping in Nigeria

2.1. Causes

The militarization of electioneering process and the provision of arms and ammunitions to political foot soldiers by their god fathers in order to influence the results of elections, without immediately withdrawing such weapons from them, thereafter, has provided a ready tool (weapon) for the commission of the crime of kidnapping. This has been galvanized by lack of what to do for their survival after being used and dumped as political thugs. Armed group have proliferated and are often linked to local politicians²

In some of the states affected, governments are said to have bolstered the activities of the militants and kidnapers by being involved in securing the release of the victims. As a matter of facts, Rivers and Bayelsa States have been fingered as having facilitated a number of releases and were also believed to have provided funds where necessary.

The poor state of infrastructure in the oil producing communities has ignited all sorts of criminalities and brigandage. The roads are terribly bad. There is no potable drinking water for the inhabitants. There is lack of health and educational facilities. There are no job opportunities for the youth and the standard of living in the region has nosedived negatively. *Oloibiri*, a sleepy village in *Bayelsa*

¹ Criminal Code Act [Chapter 38: 364]

² See <http://www.monsterandcritics.com/new>, (accessed 3 April 2015). See also Url: http://www.monsterandcritics.com/news/energy_watch/oilandgas/features/article_1290481.php/kidnappings-threaten-Nigerians-oil-industry, (accessed 4 May 2015).

State where crude oil was first discovered in commercial quantity in 1956 is only remembered in history but forgotten in development.³

The worship for money is a facilitating factor for the crime of kidnapping. So far, money remains the motivating factor in every case of the crime. Kidnapping, like other major crimes in the region, such as illegal oil bunkering, violent attacks on oil companies and the rise of criminal gangs, centres on who gets what in the big business of kidnapping those who can pay the huge ransom. Kidnapping today is strictly commercial and it is a lucrative business for its perpetrators.

Furthermore, the Global system of Mobile (GSM) Communication provides the mechanism through which kidnappers use in communicating and negotiating with relations of the kidnapped victims in order to arrive at the ransom amount. For this, Mr. Mike Okiro, former Inspector – General of Police said: “you see, we cannot stop them from kidnapping. It is only investigation that can do that. One is that in some countries, when telephone calls are made, the police have access to the call log but here, once telephone calls are made with mobile phones, providers won’t give us that call log. They want us to get a court order in an emergency like investigation. To get the number, you have to go through a tortuous and tedious way of getting court order before the services providers can give the call log.”⁴ These are unnecessary bottlenecks and milestones saddled on the police authorities which in turn militate against investigative powers of the police.

Other causes include poor societal values, poor parenting and negative influence by peer groups.⁵ Roused by the forgoing reasons, the militants and indeed kidnappers have seized Nigeria by the neck, thereby causing well to do indigenes and expatriates to flee from the region in huge numbers.

2.2. Effects

South east region of Nigeria is a fall out of the crime. People are living in fear of the crime. The various governments of the region appear to be incapable of suppressing or eradicating the crime. People have lost confidence in the ability of the governments to eradicate the crime and the integrity of the entrenched governments has waned before the people as a result. The social lives of the people has dramatically changed because many people who consider themselves as potential victims now shun social outings and curtail their visit to or patronage of relaxation centres. The level of social interaction between the people has deteriorated.

Some foreign multinational companies in the oil, construction and production companies have closed shops and offices in the Niger Delta region and have relocated to other parts of Nigeria or abroad. For example, a construction giant, Julius Berger Plc relocated from the region, so the many road construction and other civil engineering works which the company was handling are stalemated because of abandonment. This has affected adversely the developmental strides of the region and that is antithetical to the genuine effort, positive yearning and committed aspiration for the development of the region.

It is worthy to note that the foregoing has resulted in loss of jobs and the consequence on individual homes and the larger society cannot be over – emphasized. Similarly, a rise in the activities of the kidnappers and their effort at seeking more control of the Niger Delta’s rich oil resources has caused a significant reduction in Nigeria’s oil production thereby affecting negatively the country’s foreign exchange and developmental objective.⁶ This is more worrisome in the light of global oil glut, lower oil prices, low per capita income, in the face of the current financial and economic melt down across the globe.

The Niger Delta region of Nigeria is now seen as the hot bed of criminality and a safe haven for kidnappers and militants who direct their tantrums against individuals, industrial, oil and construction concerns as well as governments, their agents and establishments. Furthermore, some foreign governments have asked their nationals resident or working in the troubled region to leave the area as their security were no longer guaranteed. Nigeria is therefore seen as a country in which insecurity to lives and property looms large and where criminality has assumed notoriety.

In consequence, the Niger Delta region in particular and Nigeria generally appear not to be investment friendly.⁷ Investors are afraid of establishing or setting up investments in a volatile area where peace and orderliness continue to elude inhabitants. The region cannot therefore be a preferred destination for investment and the much talked about centre for tourism development. Nigeria, within the comity of nations, is seen as a place where investment climate is unfriendly and where criminality has, to an extent, outgrown the

³ Oloibiri should be developed, celebrated and declared as a preferred destination for tourism with modern infrastructural development comparable to same which is obtained in Lagos, Abuja in Nigeria, Houston and Texas in the United States as well as Paris in France, etc.

⁴ ‘Kidnapping For Megabucks’ The News Magazine 11 August, 2008

⁵ Culled from Nigerian Television Authority (NTA) Nationwide News at 4pm on 25 March 2009

and credited to Professor Chizen Okolocha of the University of Benin City, Edo State, Nigeria, in an interview with a correspondent in Benin City.

⁶ The Federal Government sometimes past expressed fears that the implementation of the 2009 budget could be endangered as average crude oil production figure on which revenue projections were made remained below the target of 2. 292 million barrels per day (Mbp/d), in the first quarter. The decline in oil production was due to militants’ activity and this compound the problem of falling oil price which had remained lower than the benchmark of 45 Dollars per barrel for most part of the year. ‘Niger Delta Crisis Threatens 2009 Budget’ Punch Newspaper 25 March, 2009.

⁷ Reacting to a call by the one time Minister of Niger Delta Affairs, Obong Ufot Ekaette, to the Republic of Russia to invest in the region and complement the mandate of the Ministry, her Ambassador to Nigeria, Alexander D. Polyakov, charged the Minister to help arrest the problem of kidnapping, banditry and other security challenges in the region to enable business activities to thrive. ‘Federal Government Woos Russia to Invest in Niger Delta’ Midweek Pioneer Newspaper, 1 April, 2009.

law and the criminal justice system. According to Helen Clark, former Prime Minister of New Zealand, the Niger Delta remains “particularly dangerous from a personal security point of view. There has been considerable instability in Nigeria, particularly around Oil Company – related issues. So people do go to work there knowing it’s not the safest place to be⁸”.

The foregoing brings us to the issue of negative perception against Nigeria and the image problem which the country is noted for. In the heat of the crime, the federal Ministry of Information and Communications had risen to the occasion and or challenge with a campaign to re- brand Nigeria and launder her image positively⁹. It is disquieting that militancy and kidnapping have defaced the social fabric of the society and rendered the government of Nigeria a weak one because of her inability or lack of courage to contend with the criminalities. There is the obvious lack of governmental control in the Niger Delta.

The Power sector has also been adversely affected by the violence. When militants vandalized Shell’s *Utorogbu/Ughelli* 300 million metric standard cubic feet of gas per day capacity condensate pipeline late 2007, it resulted in the shut – down of the *Egbin* Power Station, the nation’s biggest. Nigeria, through that, lost 800 megawatts. As a result of destruction of its pipeline at *Okerenkoko* area of Delta State, the Nigerian Gas Company, NGC, could not get gas for its operations.

Other destroyed pipelines were the *Escravos – Chanomi* pipeline that supplies *Egbin* Station from Chevron Gas Station in Delta State and *Akarakiri* gas pipeline linking Shell’s gas facilities in Rivers State with *Afam* Power Station. As a result of the energy problem, the Organized Private Sector, OPS, said “the cost of goods and services has increased by 20 per cent.”¹⁰

Although Nigeria has enough gas to supply its need for the next 150 years, Rilwanu Lukman, former Minister for Petroleum Resources and Chairman, Power Sector Reform Committee sometimes past, argued that the hope “of a reliable power supply for the citizenry will remain a pipe dream unless the problem of agitations by people of Niger Delta where the gas resources are located is resolved¹¹. The power situation in Nigeria has so far not improved as the total number of megawatts generated for electricity in the country has nosedived remarkably.

3. Legal Meaning of Kidnapping

The crime of kidnapping is derived from the *lex Fabia de plagariis* (a law directed against kidnapping and harbouring of slaves) in Roman law and was known in common law as *plagium*. *Plagium* means the act of kidnapping, which included harboring another’s slave. A *Plagiarius* in Roman law means a kidnapper. Common law of kidnapping was developed by courts in England. Originally, the crime of kidnapping was known as the unlawful and non – consensual transportation of a person from one country to another. At the early common law, kidnapping required forcible asportation of the victim. But in the late nineteenth and early twentieth centuries, states began to re-brand kidnapping, most notably eliminating the requirement of inter state transport.

Kidnapping has been known since the beginning of history. It was common as a method for producing slaves and it has been employed by brigands and revolutionaries to obtain money through ransom or to hold hostages whose safe release was dependent on the freeing of political prisoners.¹² In modern times, the crime has been given statutory underpinnings in many jurisdictions including Nigeria. Under modern statutes, the requirement of asportation (movement) has been whittled down because such need not be extensive; it suffices if the asportation is minimal or negligible.

At common law, kidnapping is the crime of forcibly taking a person from his or her own country and sending the person to another. Thus, kidnapping occurs when a person, without lawful authority, physically asports (moves) another person without that other person’s consent with the intent to use the abduction in connection with some other nefarious objective.

The Black’s Law Dictionary defines kidnapping as the crime of seizing and taking away a person by force or fraud, often with a demand for a ransom.¹³ The crime involves unlawfully seizing and carrying away a person by force or fraud or seizing and detaining a person against his or her will with intent of carrying that person away at a later time.

In Nigeria, the law against kidnapping provides that “any person who unlawfully imprisons any person, and takes him out of Nigeria without his consent; or unlawfully imprisons any person within Nigeria in such a manner as to prevent him from applying to court for his release or from discovering to any other person the place where he is imprisoned, or in such a manner as to prevent any person entitled to have access to him from discovering the place where he is imprisoned, is guilty of a felony, and is liable to imprisonment for ten years.”¹⁴

In South Africa, kidnapping consists in unlawfully and intentionally depriving a person of his or her freedom of movement and or if such a person is a child, the custodians of their control over the child.¹⁵ The elements of the crime in South Africa are the following:

⁸ The News Magazine (n 4 above) p.22.

⁹ The Launch for re-branding pre-supposes the fact the Nigeria has a brand name which is not good enough for her. One reason is the high rate of criminalities and a litany of problems which arises therefrom. Hitherto, we have heard about re-branding attempts through the functions and activities of MAMSER, National Orientation Agency and more recently, the Heart of Africa Project. We are hopeful that the current image laundering project will not fail.

¹⁰ ‘An Intractable Problem’ The News Magazine 11 August, 2008.

¹¹ (n 10 above)

¹² E Okoloenyi ‘Kidnapping: A Global Phenomenon’ (2006) Vol. 69 Security and Safety Issue 21

¹³ B Garner *Black’s Law Dictionary* (2004) 886.

¹⁴ Criminal Code Act (Chapter C 38:364) S. 364, Criminal Code Law, (Chapter C16:364).

¹⁵ This definition basically follows that given by H Milton South African Criminal Law and

Procedure, (1996) 539, which was accepted as correct and followed in Mellors 1990 (1) SACR 347 (w) 350 i-j.

(a) the deprivation of (b) a person's freedom of movement (or parental control in the case of a child) which takes place (c) unlawfully and (d) intentionally. It should be noted that the crime can be committed in respect of a man, woman or child.¹⁶

In the United States of America, under the Model Penal Code (a set of exemplary criminal rules fashioned by the America Law Institute), kidnapping occurs when a person is unlawfully and non – consensually asported (moved) and held for certain purposes.¹⁷ These purposes include gaining a ransom or reward; facilitating the commission of a felony or a flight after the commission of a felony; terrorizing or inflicting bodily injury on the victim or a third person; and interfering with a governmental or political function.¹⁸

In England, the House of Lords in the case of *R v D*¹⁹ gave an incisive and authoritative account of the law of kidnapping as follows: First, the nature of the offence is an attack on, and infringement of, the personal liberty of an individual. Second, the offence contains four ingredients as follows : (1) the taking or carrying away of one person by another, (2) by force or by fraud,(3) without the consent of the person so taken or carried away and (4) without lawful excuse . . .

The jurisprudence of the law of kidnapping as highlighted in the above case shows that until the abolition by statute of the division of the criminal offences into the two categories of felonies and misdemeanours,²⁰ the offence of kidnapping was categorized by the common law as misdemeanor only. Despite that, kidnapping was always regarded, by reason of its nature, as a grave and heinous offence. The House of Lords also noted that in earlier days, the offence contained a further ingredient, namely that the taking or carrying away should be from a place within the jurisdiction to another place outside it. Their Lordships observed that this ingredient had, however, long been obsolete and formed no necessary part of the offence today. The House of Lords held that the offence was in the former days described not merely as taking or carrying away a person but further or alternatively as secreting him and noted that this element of secretion had, however also become obsolete, so that, although it may be present in a particular case, it added nothing to the basic ingredient of taking or carrying away.²¹

4. Dimensions of the Crime

It is interesting to note that the Criminal Code in Nigeria does not classify kidnapping into types. The typologies contained herein are the creation of seminal writers. Therefore the classification is dependent on who the victim is, the manner and the purpose of kidnapping as well as who the perpetrator is.

4.1. Aggravated Kidnapping

This is a kind of kidnapping accompanied by some aggravating factor such as demand for ransom (which is fashionable in Nigeria nowadays), or injury to the victim.²² This kind of kidnapping can also be labeled as kidnapping for ransom which is the offence of unlawfully seizing a person and confining the person, usually in a secret place while attempting to extort ransom.²³

The Niger Delta Region and to an extent the southeastern flank form the centre-stage of this criminality and the perpetrators, notably, able bodied young men are usually armed with sophisticated weapons. Their hideout include isolated locations in rural communities, strongholds in thick forests and dangerous creeks, rough waterways and unfriendly tide of the high seas. They operate a sophisticated network, use a pseudonym as their brand name and sometimes are courageous enough to claim responsibility for their criminality.

4.2. Child Kidnapping

This is the kidnapping of a child or minor often without the element of force or fraud (as when someone walks off with another's baby). This is also known as child stealing (a species of kidnapping) or child napping. Few incidents have been reported in Nigeria, particularly Rivers, *Akwa Ibom*, Lagos and Cross River States.²⁴ In this kind of kidnapping, the child is the victim, the parents or guardians are the targets and the essence is to compel the parents or guardians to do certain things or to refrain from doing certain things. It can be the request by the kidnapers that parents or guardians of victims should pay ransom or even to reverse a decision

¹⁶ C Snyman Criminal Law (2002) 462.

¹⁷ Model Penal Code 212.1

¹⁸ (n 17 above)

¹⁹ (1984) AC 778.

²⁰ Criminal Law Act S.1, 1967 (England).

²¹ (n 19 above)

²² Garner (n 13 above) 886.

²³ Garner (n 13 above) 886.

²⁴ In Akwa Ibom State, the daughter of Rev (Dr) Abel Damina, Senior Pastor of Power City International was kidnapped in 2008. In Lagos State, Folake a 3 – year old daughter of Deputy Chief of Staff was kidnapped and was later found in Ghana. In Imo State, Adaobi Nnenna Eze aged 3 years old and daughter of Igwe Promise Eze of Umunze was also kidnapped and released upon payment of N3 million as ransom. In Rivers State in 2007, Miss Margaret Hill, daughter of a British oil worker was kidnapped and released after three days. Still in Rivers State, Francisca and Francis Ehileme, children of an Elf Oil company worker were kidnapped on their way to school, Bereton Montessori Primary School, Port Harcourt. Again, in Rivers State, Master Ogochukwu Onyiri, son of a Peoples Democratic Party's Chieftain was kidnapped on January 5, 2008. Samuel Amadi, a three year old son of the Paramount ruler of Iriebe, Esara, Evo Kingdom in Rivers State was also kidnapped. In Cross River State on the 15/10/2007, a certain Godgift colluded with other and facilitated the kidnap of his employer's son. with the title 'Kidnapping for Megabucks' The News Magazine August 2008. Many more people have since been kidnapped.

which they consider adverse to their interests. This type of kidnapping is known to the law in Nigeria because it comes within the greater purview of the crime as contained in section 364 of the Criminal Code.

4.3. Parental Kidnapping

This is the kidnapping of a child by one parent in violation of the other parent's custody or visitation right. Parental kidnapping is the abduction of a child by a parent. The law on parental kidnapping, particularly in the United States varies from jurisdiction to jurisdiction. Some jurisdictions define it as a felony, others as a misdemeanor. Many States consider parental kidnapping to be less offensive than classic kidnapping because of the strong bond between parents and children.

In parental kidnapping, the parent acts in contravention of the order of a competent court, leaving open the question whether a parent might be convicted in any other circumstances but, the majority of Their Lordships in *R v Reid*²⁵ preferred to hold simply that the parent is guilty where he acts without lawful excuse. The question must be whether the parent has gone beyond what is reasonable in the exercise of parental authority. Where it exists, it is as a result of a breakdown of conjugal relationship between couples. Acrimony and mutual distrust become the cataclysmic phenomena which propel the desire to keep custody of the child or children. Therefore, any parent who forcefully takes custody of a child without the consent of the other parent is said to have kidnapped the child. Parental kidnapping is not specifically provided for in Nigeria's criminal jurisprudence.

4.4. Simple Kidnapping

Simple Kidnapping is a felonious or unlawful restraint of a person that exposes the victim to physical harm or places the victim in slavery. It is a lesser form of kidnapping because it does not require restraint, or a specified period or specific purpose (such as to secure money or commit a felony). Simple kidnapping is that which is not accompanied by an aggravating factor. This is the kind of kidnapping adopted by foreign slave merchants in capturing defenceless Africans into slavery in the Diasporas. Also, the act wherein communities in hostility with others kidnapped or captured indigenes of opposing communities is a quintessence of simple kidnapping in the indigenous cultures in Nigeria.

5. Elements of Kidnapping

In Nigeria, the law²⁶ has defined kidnapping and from it can be sipped out the elements of (i) unlawfulness of the imprisonment or detention of the victim (ii) lack of consent by the victim for such imprisonment or detention (iii) prevention from access to court for release (iv) prevention of person from discovering where the victim is detained and (v) prevention of any person entitled to have access to where the victim is being imprisoned or detained. These are the ingredients which the prosecution must prove before the court in order to secure the conviction of the accused person.

In South Africa, the elements include deprivation of freedom of movement. This crime is committed by depriving a person of her freedom of movement, or a parent or custodian of her control over a child. This is usually affected by force, but forcible removal is not a requirement. The removal may also be affected by craft or cunningness, as in *Long(2)*²⁷ where x pretended to be a photographer's assistant who had to fetch a little girl from her school to photograph her, and in this way obtained possession of the girl. The crime can also be committed even though there is no physical removal, as where the victim is concealed or imprisoned where she happens to be.²⁸

Unlawfulness is another element of the crime. The deprivation of freedom or detention and asportation must be unlawful. But if the victim is lawfully arrested by a police in official capacity and detained, such detention or deprivation of freedom is not unlawful.

Finally, the accused must know that the victim has not consented to the removal. The accused need not intend to deprive the victim permanently of his or her freedom of movement; it is sufficient if the accused intends to release the victim upon payment of a ransom even if this takes place after a few hours.²⁹ The accused motive in depriving the victim of his freedom of movement or the parents or custodians of their control is immaterial for the purpose of liability.

The law in England in respect of kidnapping is common law driven. In terms of its elements, it is the absence of consent of the person taken which is relevant, even where that person is a child.³⁰ In the case of a young child, lacking the understanding or intelligence to give consent, the absence of consent is a necessary inference. In the case of such a child, there may be no fraud (unless those words are very broadly construed³¹). In the case of an older child, it is question of fact for the jury whether (i) the child has sufficient understanding and, if so (ii) it in fact consented. The question whether a child under 14 years lacks sufficient understanding to give consent has been answered by the need or urges not to underestimate the capacity of the modern child.³²

The crime would seem to be completed when the victim is deprived of his liberty and carried away from the place where he wished to be.³³ The requirement of carrying away and the use of force or fraud seem to be the only factors drawing a line between kidnapping

²⁵ (1973) QB 299.

²⁶ Criminal Code Act [Chapter 38: 364]

²⁷ 969 (3) SA 713 R; See also *Naidoo* 1974 (3) SA 706 (A).

²⁸ *Levy* 1967 (1) SA 351 (w); *Long* 1970 (2) SA 153 (RA) 158B, *Mellors* 1990 (Supra).

²⁹ *Long* 1969 (3) SA 713 (R) 715 – 716.

³⁰ J Smith *Criminal Law* (2002) 454.

³¹ Smith (n 30 above) 454.

³² *op. cit*; p. 454.

³³ *R v Wellard* (1979) 3 All ER 161

and false imprisonment. The significance of the element of aggravation is that it enables the kidnapper to be labeled as such and given an appropriate penalty.

6. Kidnapping and other Crimes

6.1. Abduction

This is a crime³⁴ in Nigeria's criminal jurisprudence. The criminal code provides that "any person who unlawfully takes an unmarried girl under the age of sixteen years out of the custody or protection of her father or mother or other person having lawful care or charge of her, and against the will of such father or mother or other person, is guilty of a misdemeanor, and is liable to imprisonment for two years."³⁵ The crime of abduction is committed against parental authority over a minor, whereas kidnapping is in principle committed against a person's freedom, and particularly freedom of movement. It therefore appears that there is a confluence between kidnapping and abduction of the child since both are directed against parental authority over a minor, but even at that, there is a divergence between the two crimes as illustrated below.

In abduction, the minor is removed unlawfully from the custody or protection of her father or mother, whereas in kidnapping, the accuser's motive for removing the victim is immaterial, for the crime to be committed, it is sufficient if the accused intends to deprive the victim of his freedom of movement or victim's parents or custodians of their control. Often, the accuser's motive in depriving the victim of his freedom is to demand a ransom for his release, but the existence of such an ulterior purpose is no requirement for liability, although it is almost invariably a ground for imposing a more severe sentence.³⁶

6.2. False Imprisonment

False imprisonment is a relatively inoffensive, harmless restraint of another person. It is worthy to recapitulate the fact that the only factors distinguishing kidnapping from false imprisonment are the requirements of carrying away the victim and the use of force or fraud, which are germane to the crime of kidnapping. It would appear that every kidnapping is also a false imprisonment, but a detention without any taking or force or fraud is only the offence of false imprisonment. Where the accused carried the victim away by force or fraud, he may be convicted of both offences. Therefore, it is suitable to opine that kidnapping is an aggravated form of false imprisonment,³⁷ so the rules of lawful excuse are, no doubt the same.³⁸ In the lofty view of this paper, kidnapping and false imprisonment overlap a good deal, although there is a marked difference between the two common law crimes.

6.3. Robbery, Rape and Assault

The main of central judicial concern with a charge of the kidnapping is double jeopardy, which the Nigerian Constitution in section 36 (9) or the American Constitution under its Fifth Amendment forbids. Kidnapping often is an act which facilitates another offence, such as robbery, rape or assault. These crimes usually involve the act of moving a person against his or her will which is the *gravamen* (i.e. the significant element) of a kidnapping charge. Therefore, a persistent problem with kidnapping prosecutions is in determining whether a kidnapping conviction would constitute a second punishment for the same act.

In the United States of America, legislatures in different federating States have passed statutes, and courts have fashioned rules to prevent and detect double jeopardy in kidnapping cases. These laws and rules hold that for kidnapping to be charged as a separate crime, some factors must set the asportation (movement) apart, from a companion crime. Most courts will sustain multiple convictions if the asportation exposes the victim to increased risk of harm or results in harm to the victim separate from that caused by the companion offence. In other jurisdictions, the test is whether the asportation involves a change of environment or is designed to conceal a companion offence.

Some states have eliminated the asportation element from their kidnapping statutes. In Ohio, for example, kidnapping is defined in part as restraining the liberty of another person.³⁹ This creates an increased risk of double jeopardy in kidnapping convictions because, by definition, every robbery, rape or assault would constitute kidnapping. However, Ohio State Legislature has enacted a statute that prohibits multiple convictions for the same conduct unless the accused exhibits a separate *animus* (a separate intent) to commit a separate crime.⁴⁰ The law therefore, is, whether the prosecution proves a separate *animus* to kidnap is a question of fact based on the circumstances surrounding the crime.

In *State v Logan*,⁴¹ the Supreme Court of Ohio held that the defendant/accused could not be convicted of both rape and kidnapping when he had moved the victim a mere few feet and had released the victim immediately after the rape. Under the facts of the case, the asportation had no significance apart from the rape crime. According to the court, the accused had displayed no *animus* beyond that necessary to commit rape, so punishment for both rape and kidnapping was not warranted.

³⁴ Criminal Code Act [Chapter 38: 362]

³⁵ (n 34 above)

³⁶ Snyman (n 16 above) 463.

³⁷ East, (1) PC, 429.

³⁸ Smith (n 30 above) 455.

³⁹ Ohio Rev Code Ann. s. 2905: 014

⁴⁰ Ohio Rev Code Ann. s. 2941. 25.

⁴¹ 60 Ohio St 2d 126, 397 N.E. 2d 1345, 14 Ohio Op. 3d 373 (1979).

But in contrast with the above case, in *State v Wagner*,⁴² the appeal court upheld a separate conviction for kidnapping. In *Wagner*, the accused approached two women on two separate occasions in a Laundromat. Both times, the accused tried to force the women into a bathroom to rape them. He was convicted of two counts of attempted first – degree large sexual assault, one count of kidnapping while armed, and one count of attempted kidnapping while armed. On appeal, he argued that he should not have been convicted of kidnapping because, under section 940.31 (1) (a) of the Wisconsin Statutes, kidnapping is defined in part as the carrying of a persons “from one place to another”, and that he had not taken his victims to another place. The Court disagreed, holding that forced movement from one room to another falls within the meaning of kidnapping statute. Thus, the appeal court affirmed the accused person’s sentence of 72 years in prison.

In Nigeria, so many reported incidents of arrest of culprits of kidnapping have been made by the security agencies.⁴³ The prosecutorial authorities are hereby advised not to be misled by the various opinions which now makes the rounds to the effect that those alleged to have committed the crime of kidnapping can also be charged for the crime of armed robbery. According to the law which has already been discussed and which persuades the discretion, power and conscience of the court, for such a charge to be successful, the prosecution must prove by way of evidence and beyond reasonable doubt that the accused had a separate *animus* (intent) to commit the companion crime (robbery). But if it is so established, there is no justification why the accused should not be charged with the companion crime. The same is also the case if the kidnapping results in death as, for example, where torture of the victim is severe and he or she dies as a result. In such a situation, the accused should be charged with a companion crime of murder and that would, no way, conflict with the *aebisidem* principle.

7. The Crime of Kidnapping in Nigeria

Few years ago, that is in the early 2006, some aggrieved youths of the Niger Delta origin with the appellation of Movement for the Emancipation of the Niger Delta (MEND) grumbled against the neglect of their region by the oil producing companies operating in the area. They also complained that the federal government of Nigeria lacked the policy framework for the development of their region, in spite of the fact that crude oil is tapped in abundance in their locality.⁴⁴

This heralded the emergence of a group of young people who labeled themselves as “militants”. These militants started their offensive by blowing up oil installations both on land and in the high seas as a means of attracting the attention and patronage of the oil producing companies and the federal government of Nigeria. That strategy failed. In the renewed offensive, they started to kidnap expatriate staff of oil and construction companies or any available white foreigner in order to attract attention.⁴⁵ In the process, some Nigerian workers in the oil companies were also kidnapped.

A new dimension was introduced by the militants into the crime of kidnapping and that is the issue of ransom which had to be paid to them after due negotiation before the release of the kidnapped staff. Thus, the crime of kidnapping became a sure way of generating millions of Naira for the militants but unfortunately, it has turned out to be a great audacity of criminality in Nigeria. The corridors of criminality in Nigeria have been widened by kidnapping because many more miscreants have joined in committing the crime because of the gain of ransom. This is not good for Nigeria.

The scope of the crime of kidnapping has been enlarged by the perpetrators to include politicians, prominent and wealthy citizens of the region as victims.⁴⁶ Reported cases of kidnapping are legion and leave much to be desired. Very unfortunately, the responsiveness of various state governments in the South – South and South East region where this crime thrives has been thwarted and frustrated on daily basis by the incidents of kidnapping in these areas.

⁴² 91 Wis. 2d 322, 528 N. W. 2d 35 (Ct. App. 1995).

⁴³ In Akwa Ibom State, those alleged to have kidnapped expatriate staff of Stemco Construction Company in Ikot Ekpene in 2008 were arrested and they underwent interrogation with the security agencies. In the early 2009, the hide out for kidnappers was discovered at Ntrukpum in Uruan Local Government Area of Akwa Ibom State where some arrests were made. The police in Enugu State on 29/3/2009 killed three men suspected to have been behind the kidnap of the wife of the Chairman of Enugu State Local Government Area. The trio met their Waterloo while trying to escape after arrest. ‘Police Kill Three Suspected Kidnappers’ Midweek Pioneer 1 April, 2009.

⁴⁴ Kidnapping actually began in the Niger Delta as a means of calling national and international attention to the plight of the region. See The News Magazine, *Ibid*, p. 24, column 2.

⁴⁵ For over three weeks, armed and traveling on speedboats, they kidnapped in Delta State nine foreigners made up of 3 Americans, 1 Briton, 2 Egyptians, 2 Thais and 1 Filipino on 17/1/2006. They were however released between 1/3/2006 and 27/3/2006. Earlier, on the 11/1/2006, 4 hostages comprising a Bulgarian, Honduras, American and a Briton were kidnapped in Shell EA Field and were later released on 30/1/2006. EU Ekanem ‘Kidnapping/hostage Taking in Nigeria’s Oil Rich Niger Delta Region: The Way Out’ (2007) Vol. 2 International Journal of Law and Contemporary Studies 134.

⁴⁶ Until recently, the booming business of kidnapping was limited to the Niger Delta region, where militants literally made a career of holding oil expatriates for mouth-watering sum as ransom. This group of abductees soon expanded to include wealthy Nigerians and their family members including toddlers. And before one realized it, the kidnapping trend had spread to areas outside the Niger Delta area, especially the South East. ‘Enugu/Death Penalty for Kidnappers’, The News Magazine 29 December, 2008

In *Akwa Ibom* State, there have been reported and confirmed incidents of kidnapping of people⁴⁷ and the situation is worrisome to the extent that the state governor has assented to a bill against kidnapping as passed by the House of Assembly. This new law articulates and prescribes capital punishment against perpetrators.⁴⁸

8. Punishment

In Nigeria, punishment for the crime of kidnapping is imprisonment for ten years. This paper is suggesting that seizure of the property of those convicted for this crime should be an additional penalty and that a law should be enacted to that effect. In the United States of America, at the federal level, the term of imprisonment may be the remainder of the offender's natural life (life imprisonment). In jurisdictions that authorize death penalty, a kidnapper is charged with a capital offence if the kidnapping results in death. Kidnapping is so severely punished because it is a dreaded crime. This is evident in the capital punishment prescribed in Rivers, *Ebonyi* and *Akwa Ibom* States and proposed in *Enugu* State.

In New York, a first – degree kidnapping is a class A – 1 felony, which attracts a sentence of at least 20 years in prison.⁴⁹ A person who is convicted of a class B felony in New York State can be sentenced to one to eight years in prison.⁵⁰ In England, since kidnapping is a common law misdemeanor, it is punishable with imprisonment or fine at the discretion of the court.⁵¹

9. Prescriptions

9.1. Legal

It is the view of this paper that the statutory punishment of 10 years prescribed by law in Nigeria is not enough to tackle successfully, the crime of kidnapping. Therefore, a stiffer penalty in the form of life imprisonment is recommended as punishment for the crime.

Three states, that is to say, *Akwa Ibom*,⁵² Rivers, and *Ebonyi*⁵³ States have amended their laws and have enacted new laws on the crime. In their new laws, capital punishment has been prescribed. For example, the *Akwa Ibom* State Internal Security and Enforcement Act 2009 which is generally regarded as Anti – Kidnapping Act prescribes death penalty for convicts. The position of the three state governments in prescribing capital punishment for the offence is an attempt to punish the offenders effectively and to deter prospective offenders from offending again. But the position of this paper is that capital punishment for this crime appears high handed except where it results in the murder of the victim. The global approach to punishment now is a departure from capital punishment which is against the sanctity for human lives.

The *Akwa Ibom* Law also prescribes life imprisonment for an attempt to kidnap which is too high; instead it should be reduced to 21 years imprisonment because punishment for an attempt to kidnap as presently constituted is too high, instead, it should be reduced to 21 years imprisonment. Again, a punishment of 21 years imprisonment is provided for any person who assists the escape of a kidnapper. This is quite appropriate in the circumstance of the moment.

Furthermore, the law on kidnapping in *Akwa Ibom* State provides that any premises where a person is held against his will as a hostage shall be forfeited to the government without payment of compensation and that the governor or his authorized representative shall have power to sign an order authorizing the sealing up of such premises. This essay is of the sublime opinion that this provision is sound and appropriate but adds that same forfeiture should also extend to any land, farmland, forest, caravan, car or such other places or things used in holding the victim hostage.

It is hereby suggested that the legislature in the states in Nigeria ought to create a separate crime consisting in kidnapping with the intention of demanding a ransom or exercising some other kind of pressure on the family of the kidnapped person. For example, if the accused after kidnapping his victim demands a ransom, an additional elements or dimension, resembling the exercise of pressure in extortion, is introduced, which warrants the view that a separate or companion crime is committed. Such a crime has not yet been

⁴⁷ A number of kidnappings have occurred in *Akwa Ibom* State. On the 3/10/2006, 7 foreigners namely 4 Scots, a Malaysian, an Indonesian and a Romanian were kidnapped in RUSAL Aluminium Smelting Company Nigeria Limited, Ikot Abasi. On 8/7/2007, 2 foreigners were kidnapped in Eket. In Uyo and Ikot Ekpene, a former Speaker of the State House of Assembly, a retired permanent Secretary and Proprietor of a private school, foreign staff of Stemco Construction Company, current chairman of a Local Government Area, Managing director of a pharmacy shop, a daughter of a Pentecostal Pastor, a Treasurer of a Local Government Council, a popular business man, the wife of a serving Senator, the wife of an independent broadcast producer and others were kidnapped. The number of kidnappings in the State is increasing day- by- day. For more see EU Ekanem (n 45 above) 143 & 145. See also 'Bill to classify kidnappers as Armed Robbers Underway' The Pioneer Newspaper, 25 August, 2008.

⁴⁸ The Rivers State House of Assembly has recently enacted a law against kidnapping in which capital punishment has been prescribed against perpetrators. In *Enugu* State, there is intention of the government to initiate a bill providing capital punishment for kidnapping and conspiracy to commit the act. Culprits and accomplices will also suffer the confiscation of their property by the State, Ibid; The News Magazine of 29th Dec. 2008, p. 8.

⁴⁹ S. 70.00, N. Y. Penal Code.

⁵⁰ Ibid.

⁵¹ Smith (n 31 above) 455.

⁵² S.1 (2), *Akwa Ibom* Internal Security and Enforcement Law, 2009.

⁵³ *Ebonyi* State Internal Security Enforcement and Related Matters Law, 2009. See again 'Elechi signs death –for-kidnapping bill into law, Promises execution of convicts within 48 hours' The Nation Newspaper 14 October, 2009

created. If the accused demands a ransom, he may be guilty of extortion. This crime should be criminalised in Nigeria's municipal statute. There should be surrender of small arms and ammunitions to the police which proliferated during past elections in Nigeria. Way back, the federal government of Nigeria granted amnesty to militants/kidnappers operating in the Niger Delta Region of Nigeria. This was a step in the right direction and underscored the commitment to tackle the crime holistically. Under the arrangement, beneficiaries were and are paid stipend. They are also trained locally and internationally in some of the best tertiary institutions across the globe; some have so far qualified in their specialties.

9.2. Sociological

Some measure of attitudinal re-orientation should be conducted for the youths at all fora to be law – abiding and desist from any form of criminality including kidnapping. Employment opportunities and other forms of human empowerment programmes⁵⁴ should be created for the youths. Deliberate effort should also be made for the development of the local communities, particularly the oil bearing communities since they bear the brunt of oil prospecting and producing activities.

The foregoing approach will calm the frayed nerves of the militant and aggrieved youths and return them to the path of good behavior. Oil companies and construction concerns should adopt a positive approach towards the development of the localities wherein they work. The need to fight this criminality demands a collective and concerted effort by all Nigerians; therefore, all mouths should speak aloud while all hands should be on deck to act against kidnapping upon the matrix of the law.

10. Conclusion

It is the sublime view of this paper that if collective efforts are geared towards the eradication of this crime, effective results will be achieved before long. This will restore confidence in governance by the people who will feel protected and catered for, in the face of this crime which has dampened the morale of the citizenry. Similarly, this exposition provides an in-depth study for curbing more than ever before the menace of the crime by some other jurisdictions in a typical Afro-centric setting.

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⁵⁴ The SURE. P otherwise known as Subsidy Re-investment Programme and YOUWIN Programme are some of the strategies adopted by the government of President Goodluck Jonathan to create jobs for the teeming number of youths in Nigeria.