



**ACTUS REUS AND CUSTOMARY CRIMINAL LAW IN NIGERIA:  
AN APPRAISAL OF CONTEXT AND APPLICABILITY**

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**ABSTRACT**

Under Nigeria Customary law, certain actions are proscribed and are therefore visited with penalties when carried out. Although Section 36 (12) Constitution of the Federal Republic of Nigeria, 1999 provides that no person can be convicted of a criminal offence unless that offence is defined and the penalty prescribed in a written law, the Nigerian customary criminal law was, however, in full operation before the introduction of English criminal law in Nigeria. The latter proscribes some of the actions considered criminal under customary law. This paper, therefore, considers *actus reus* in the context of Nigeria customary criminal law jurisprudence arguing that under Nigerian customary criminal law as it existed, the twin concepts of *actus reus* and *mens rea* were recognized across the various tribes. Although the jurisprudence on the distinction between these concepts was not developed, they are however not alien to the Nigerian customary criminal law jurisprudence. We concluded that, it is almost impossible to distinguish between *actus reus* of some of the offences in our native laws and customs, such as the offence of witchcraft; there are also some difficulties in distinguishing some criminal wrongs from civil wrongs; and, there is a general lack of decided customary criminal law cases to offer legal precedents. The paper suggests that, there is the need for the customary legal system to be developed to accommodate the basic principles of common law.

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