DOI: https://doi.org/10.68193/jilj.2023.d63tpedh

JOURNAL OF INTERNATIONAL LAW AND JURISPRUDENCE
A Publication of the
Department of International Law and Jurisprudence,
Faculty of Law, University of Jos,
Jos, Nigeria.
JILJ Vol. 8, No. 1, 2023.

HUMAN RIGHTS AND THE TREATMENT OF PERSONS ON REMAND IN PRE-TRIAL DETENTION

Sarah Rinmicit Garba*

ABSTRACT

The issue of human rights violations has been at the forefront of most discussions in Nigeria especially in the Correctional Service System. Even though the aim of imprisonment has been to serve as a retribution for offences committed and to serve as a deterrent to others as well as reformation of the offender, investigations have revealed that the prisons are at the fore-front of abusing the basic human rights of its occupants (i.e., the prisoners). Human rights are the basic guarantees for human beings to be able to attain their freedom and some of these rights do not cease simply because the individual is in prison. The situation in the Correctional Service Centres has shown that the human rights situation in Nigeria is not ideal even though concerted attempts have been made to redress this, but this issue still persists. Overcrowding in the prisons of which the major reason is the high number of inmates in pre-trial detention has made tackling this human rights abuses more cumbersome. This article discusses the rights available to the prisoners and how some of these rights have not been made accessible to the prisoners, the government machineries that

* LL.M, B.L, LL.B (Hons) Assistant Lecturer in the Faculty of Law, Plateau State University, Bokkos, Nigeria. sarahringarba@gmail.com, 07061283633

have unwittingly aided in the violation of these rights and how these abuses can be checkmated.

Key words: Human Rights, Prisoners, Pre-trial Detention, Nigerian Correctional Service, Abuse

1. INTRODUCTION

The issue of prisoners' rights has been a continuing one in the administration of criminal justice. This is because human rights abuses are some of the common features in the Nigerian Correctional Service and a serious challenge to the administration of criminal justice system. Therefore, it is imperative to examine the rights of prisoners as it is through this examination that the recurring abuses will be better understood and practical solutions proffered. Simply put, if the rights are not known, the breach or violations of those rights cannot be ascertained.

The human rights of prisoners are in no way different from the right of other citizens. The reason is not farfetched. Citizens are human beings, and conviction or imprisonment does not divest a prisoner of certain rights. In fact, there are some specific rights available to prisoners to protect them from maltreatment emanating from the unlawful acts of prison officials and the law enforcement agencies. The rights of prisoners are primarily geared towards enhancing their welfare. It, therefore, seeks to shield them from arbitrary treatment of prison officials, whether convicted or held on holding charge. Deprivation of liberty does not mean deprivation of humanity for the prisoner.

The realization of this aspiration must definitely give priority to the humanity and person of the prisoner as this is the basis and justification of the rights of prisoners. More so, the reason for guaranteeing the rights of prisoners is that, over time, the concept of imprisonment has ceased from being solely a source of punishment, to being regarded as a means to an end, that is the reformation of the offender. Indeed, there was a time when the prevailing belief was that criminal offenders, having transgressed against the law, had given up all claims to humanity and so deserved to be subject to such conditions of treatment that completely violate their rights as human beings. However, this belief has changed significantly due to the humanitarian concern and effort towards the improvement of the situation of prisoners on humanitarian grounds. The primary source of authority for

the promulgation of human rights standards by United Nations bodies may be found in the United Nations Charter itself. The Charter states one of the principal aims of the United Nations as follows:

> It reaffirms faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations, large and small.[1]

> The Charter also states:
> one of the purposes of the United Nations is to achieve international cooperation in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion.[2]

These should not be seen merely as empty statements of principle. Rather, the Charter is a legally binding treaty to which all member states are parties of which Nigeria is a member[3]. Therefore, the objective of this article is to discuss the nature and validity of prisoners' rights and the need for fair treatment of persons on remand in pre-trial detention.

2. DEFINITION OF HUMAN RIGHTS

Human rights are those rights that are inherent in the very nature of the human being. They define humanity, they exist to ensure that human life remains sacred and guarantee that inhumanity and injustice are prevented or redressed[4]. Human Rights are universal; they are the same for everyone everywhere. They are inalienable. They can neither be taken away nor given up[5]. They are universal in context and fundamental human rights which are guaranteed in the Constitution. They are not privileges in the sense that they could be withdrawn at the whim and caprices of the government of the day[6]. Umozurike defines human rights as claims which are invariably

---

[1] 2nd Paragraph of the preamble to the United Nations Charter
[2] Article 1, Paragraph 3 of the United Nations Charter
[3] Ibid
[4] Uchenna E., *Rule of Law and Human Rights Development* (2010) http://www.nigeriabestforum.com/general topics. p.72986 accessed 8 November 2010
[5] Aduba J.N, *An Introduction to Human Rights Law in Nigeria* (Innovative Communications 2016) p.2
[6] Ibid p.4

supported by ethics and which should be supported by law, made on society, especially on its official managers, by individuals or groups on the basis of their humanity[7]. Ikhariale also describes human rights as sacred rights, inborn in man because they are implanted in man by divine nature and therefore, positive law can neither establish nor abolish but only protect them [8]. In the case of *Ransome Kuti v Attorney-General of the Federation,*[9] the Nigerian Supreme Court defined it as a right which stands above the ordinary laws of the land and which in fact is antecedent to the political society itself. It is a primary condition to a civilized existence. Thus, however defined, one indisputable feature of human rights is that they are rights to which every human being, everywhere, can lay claim to by virtue of his or her humanity. These definitions apply to those in the prison custody as their right to freedom which they hitherto enjoyed before their incarceration has been deprived of them because of the crimes they have committed. The basic rights of human beings are contained in Chapters 2 and 4 of the 1999 Constitution (as amended).

3. STATUTORY PROVISIONS IN RESPECT OF THE RIGHTS OF PERSONS DETAINED

3.1 The right to be tried within a reasonable time

The Constitution of the Federal Republic of Nigeria 1999 (as amended) contains provisions designed to check delays in the administration of justice. It provides as follows:

> In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or tribunal established by law and constituted in such manner as to secure its independence and impartiality.[10]

Another provision which seeks to ensure speedy trial of cases by courts is Section 294(1) of the Constitution which provides as follows:

---

[7]Umozurike,U.O, *The African Charter on Human and Peoples Rights* (London, Martinus Nijhoff Publishers, 1997)

[8]Ikhariale, M., 'The Jurisprudence of Human Rights' *Journal of Human Rights and Practices* [1995] (5) (58)

[9] (1985) 2 NWLR (prt.6) 211, 219

[10] Section 36(1) Constitution of the Federal Republic of Nigeria 1999 (as amended)

> Every court established under this Constitution shall deliver its decision in writing not later than ninety days after the conclusion of evidence and final addresses and furnish all parties to the cause or matter determined with duly authenticated copies of the decision within seven days of the delivery thereof.[11]

The above provision is designed to ensure that judgment is delivered within a reasonable time after a case is heard and it is designed to compel judges to speed up judgments. As beautiful as this section of the Constitution is, some judges do not deliver judgment within the time fame provided for by the law. This leads to a lot of inmates held up in prison awaiting their trial. This is not supposed to be so as the inmates detained in prison have every right as any other person to have their cases decided speedily.

What then is the effect of a judgment delivered outside the ninety days limitation? In the case of *Ifezue v Mbadugha*[12], judgment was delivered more than three months after the case was heard. The issue before the Supreme Court was whether Section 258(1)[13] of the 1979 Constitution was mandatory or directory. If it was mandatory, a judgment delivered outside three months would be null and void. It would not have effect if the provision was merely directory. The Supreme Court by a majority, rightly held that the provision was mandatory. The court held that the decision delivered outside three months was null and void[14].It is thus a statutory requirement of the law that every judgment must be delivered within 90 days after the conclusion of evidence and this is to ensure that there is no miscarriage of justice.

3.2 The Right to Legal Representation

Nigeria, like Britain, operates the accusatorial procedure of legal practice which stipulates that the responsibility for collecting and presenting

---

[11] Section 294 (1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended)
[12] [1984] 1 S.C.N.L.R SC NLR p.427
[13] Section 294 (5) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) has replaced this.
[14](1986) 18 Zam. L.J 82

evidence lies with the party who seeks to introduce that evidence[15]. An accused, therefore, is presumed innocent until proven guilty by a competent court of law. It is then necessary for the accused person to have a legal representative from the point of his arraignment in court till the time a sentence is passed by the court. This will ensure that he is protected at all times and that he understands fully the intricacies involved in the case before the court.

> Section 36(6) of the Constitution provides as follows:
> Every person who is charged with a criminal offence shall be entitled to:
> a. Be informed promptly in the language that he understands and in detail of the nature of the offence;
> b. Be given adequate time and facilities for the preparation of his defence;
> c. Defend himself in person or by legal practitioners of his own choice;
> d. Examine, in person or by his legal practitioners, the witnesses called by the prosecution before any court or tribunal and to obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court or tribunal on the same conditions as those applying to the witnesses called by the prosecution; and
> e. Have, without payment, the assistance of an interpreter if he cannot understand the language used at the trial of the offence.[16]

From the above provisions of the law, whether or not a person is on remand awaiting trial, he is entitled to the services of a legal practitioner. Some inmates often find themselves awaiting trial for years simply because they cannot afford the services of a lawyer. For the smallest of offences, indigent inmates have remained in prison custody bemoaning their ill-luck as it were and continue to remain there until by some stroke of luck, they are able to secure the services of a lawyer. Some of the inmates have the opportunity of securing the services of a lawyer but for the high

[15]Akpe, A. I, Constitutional and Statutory Provisions for Persons on Remand Awaiting Trial: The Nigerian Experience (Spectrum Books Limited 2016) p.54
[16] Section 36(6) of the Constitution of the Federal Republic of Nigeria 1999 (as amended)

professional fees demanded by some lawyers, they are abandoned by such lawyers and left to remain in pre-trial detention indefinitely.

It is the duty of the court to ensure that where an accused person is indigent, a legal representative from the Legal Aid Council (LAC) is gotten for such a person, but this rarely works in most cases as the LAC is severely understaffed and as such, there are few hands to go round the ever-increasing number of inmates in pre-trial detention.

3.3 The right to be granted bail for bailable offences

The liberty of the inmate is guaranteed by the Constitution. The Constitution goes further to provide safeguard against unjustified deprivation of liberty. Section 35 (4)(a) (b) (c) of the Constitution provides as follows:

> Any person who is arrested or detained in accordance with subsection (1) (c) of this section shall be brought before a court of law within a reasonable time, and if he is not tried within a period of (a) two months from the date of his arrest or detention in the case of a person who is in custody is entitled to bail; or (b) three months from the date of his arrest or detention in the case of a person who has been released on bail, he shall (without prejudice to any further proceedings that may be brought against him) be released either unconditionally or upon such conditions as are reasonably necessary to ensure that he appears for trial at a later date.[17]

Despite the above liberal provisions for bail in the Constitution, in practice there is much difficulty in obtaining bail even in deserving cases. Some judges give stiff conditions for bail that accused persons are hardly able to satisfy or the judges, in some cases, make themselves non-available to sign the bail forms of the accused persons. There are allegations of demand for bribe by the Police in order to grant bail. The Police oppose bail even for bailable offences. In the case of *C.P v Onu Obekpa*[18]**,** the police

[17] Section 35 (4) (a) (b) (c) of the Constitution of the Federal Republic of Nigeria 1999 (as amended)

[18] [1980] 1 N.C.L.R p.133

opposed bail in respect of an accused that was charged with theft. Granting the application, the learned trial judge said:

> As it appears, the spirit behind the provision of section 32 (4) (a) and (b) of the 1979 Constitution is to keep an accused person out of incarceration until found guilty through the process of trial. It is a constitutional privilege which he is entitled to under the Constitution… of much further advantage in this regard is this fact that unless the right to bail or to freedom before conviction is preserved, protected and allowed, the presumption of innocence constitutionally guaranteed to every individual accused of a criminal offence would lose its meaning and force. It is the duty of the court to uphold the spirit of this constitutional guarantee and to give it flesh and blood in practical terms.

The act of granting bail would therefore preserve, protect and allow the presumption of innocence which is so cherished and constitutionally recognized.[19]

3.4 **Right to Fair Hearing**

The right to fair hearing is contained in Section 36 of the Constitution, which provides that:

> In the determination of his civil rights and obligations including any question or determination by or against any government or authority a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law constituted in such a manner as to secure its independence and impartiality.

Under this right, the twin pillars of justice are established: that a man must be given an opportunity of presenting his own side of a case (*audi alterem partem*) and that a man should not be the judge of his own cause (*nemo judex in causa sua*). Also, the impartiality of the judge and the independence of the tribunal are important attributes of this right.

[19]Akpe n.16. p.56-57

According to Mpamugo, this right is a conglomeration of other rights which are so important themselves that they are sometimes referred to as fundamental human rights[20]. These include;

a. The right to have proceedings and decisions held in public;
b. The right to make representations before administering authority;
c. The right to have the decision of administering authority reviewed by a higher organ;
d. The right to be tried in public within a reasonable time;
(e) The right to be presumed innocent until proved guilty;
(f) The right to be informed promptly in the language that he understands and in detail of the nature of the offence;
(g) The right to be given enough time to prepare his defence. [21]

Section 36(4) of the 1999 Constitution provides that a person who has been detained is to be brought before the court within a reasonable time. The time frame of 72 hours is given and anything beyond this is not acceptable by law. However, persons have been detained for longer periods of time spanning from days to weeks without arraignment and this has led to the ever-increasing number of persons in prisons awaiting trial.

Other rights that available to prisoners include: the right to life (unless that right is taken away from them when they have been sentenced and convicted for capital offences), the right to dignity of the human person (they are not to be tortured while in custody).

4. HUMAN RIGHTS ABUSES BY SOME GOVERNMENT AGENCIES

Some governmental agencies which were instituted by government to protect the rights and interests of citizens end up being the ones in the forefront in the abuse of the rights of inmates in pre-trial detention. Some of these agencies are discussed below.

4.1 The Nigeria Police Force

Section 214 of the Constitution[22] provides for the establishment of the Nigeria Police Force which is governed by the Police Act[23]. The section

[20]Mpamugo, V.A, 'The Role of the Nigerian Police in Human Rights Enforcement and Protection' [1996] *Abia State Law Journal* (29)
[21] Section 36 (3) 0f the 1999 Constitution(as amended)
[22] Section 214 of the Constitution of the Federal Republic of Nigeria 1999 (as amended)

forbids the establishment of any other Police Force for the Federation or any part thereof. The appointment of the Inspector General of Police, a Commissioner of Police for each State of the Federation and the control of the Police Force are provided for by Section 215 of the Constitution[24]. The Police Act[25] confers very wide powers on police officers including powers of arrest, investigation and to conduct prosecution. Section 4 of the Act deals with 'the general duties of the police' and it provides as follows:

> The police shall be employed for the prevention and detection of crime, the apprehension of offenders, the preservation of law and order, the protection of life and property and due enforcement of all laws and regulations with which they are directly charged and shall perform such military duties within or outside Nigeria as may be required of them by, or under the authority of this or any other Act.[26]

Section 24(1) of the Act[27] deals with power to arrest without warrants and it states as follows:

> In addition to the powers of arrest without warrant conferred upon a police officer by section 10 of the Criminal Procedure Act, it shall be lawful for any police officer and any person whom he may call to his assistance, to arrest without warrant the following cases:
>
> 1. Any person whom he finds committing a felony, misdemeanour or simple offence, or whom he reasonably suspects of having committed or of being about to commit any felony, misdemeanour or breach of peace;
> 2. Any person whom any other person charges with having committed a felony or misdemeanour.
> 3. Any person whom any other person;
>
> i. Suspects of having committed a felony or misdemeanour; or

[23] Police Act Cap P19 Laws of the Federation of Nigeria 2004
[24] Section 215 of the Constitution of the Federal Republic of Nigeria 1999 (as amended)
[25] Section 4 of the Police Act Cap P19 Laws of the Federation of Nigeria 2004
[26] Ibid
[27] Section 24(1) of the Police Act Cap P19 Laws of the Federation 2004

(ii) Charges with having committed a simple offence, if such other person is willing to accompany the police officer to the Police Station and to enter into recognizance to prosecute the charge.

For clarity, a felony is an offence such as murder or burglary or any other grave and serious offence and which is punishable with death or imprisonment of more than three (3) years. A misdemeanour is an offence defined as less serious than a felony and punishable with a term of imprisonment for not less than six (6) months. A simple offence is one that is punishable with less than three (3) months.

Unfortunately, the Nigeria Police Force is characterized by accusations of gross abuse of human rights of suspects in its custody through acts of brutality, harassment, corruption, extortion to name but a few. In addition to the above, some of the complaints levelled against the Police include:

1. Demanding and receiving money from road users especially commercial drivers;
2. Causing loss of life at indiscriminate road blocks;
3. Acts of brutality on members of the public such as assault upon minor provocation;
4. Stealing or conversion of seized items to their personal use;
5. Causing accidents by abandoning road blocks barriers on the roads mostly at night when the road blocks are not manned.

The promotion and protection of human rights is at the very core of policing. The enforcement of laws and the maintenance of peace and order are first and foremost about protecting the rights of citizens, and thus the role of the Police in protecting and respecting the rights of every individual is fundamental. However, because the police are always responding to diverse issues and problems of law enforce circumstances, issues of rule of law and human rights are cast around police intervention, including methods, such as stopping people for questioning, arresting them, searching them or their property, and interrogation after custodial arrest. Moreover, how the police take control of such circumstances particularly through the level of force they use, is also a matter concerning the rule of

law and human rights especially as it relates to suspects in their custody[28]. In Nigeria, the protection and/or violation of fundamental human rights continue to be critical challenges facing the NPF[29], with allegations of human rights abuses by the police officers dominating most discussions about the effectiveness of police in dealing with cases relating to crime, criminality and the proper treatment of persons suspected to have committed offences.

The NPF is saddled with the responsibility of ensuring that the citizens obey laid down laws as outlined in the Nigerian Constitution. However, the police are required to balance the freedom of the individual with the need to prevent and detect crime and, the preservation of law and order [30]. In this way, the police give life to human rights, meaning that police make decisions that either affirm or deny human rights of individuals. Police are mandated to protect and serve. They are the centurions at the gate and defenders of the law, legality, freedom, individual liberties and human rights of persons in their custody.

There are other aspects of the work of the Police which infringe on the human rights of the populace. The delay in Police investigation which can consequently cause delay in prosecution is one of the pains of persons languishing in prison cells and the major cause of prison congestion. Those who are kept in prison custody awaiting trial account for over sixty percent (60%) of the prison population in Nigeria. Minor issues that would have been settled over the counter at the police stations, if reconciliatory efforts had been encouraged among the disputing parties by the Police, have often led such persons to prison custody awaiting trial as a result of the uncooperative and non-chalant attitude of some Police officers. Some perceived violation of human rights of those in pre-trial detention by the Police can be seen in the following instances;

(a) There is failure on the part of the police to investigate the cases that come before them promptly for the forming of the case dairy. The First Information Report (FIR) forms part of the case diary for an

[28]Madubuike-Ekwe,N. J, Obayemi, O.K, 'Assessment of the role of the Nigerian Police Force in the Promotion and Protection of Human Rights in Nigeria' *Annual Survey of International and Comparative Law* [2019] (23)(1) Article 3 p. 22

[29] Nigerian Police Force

[30]Madaki, A., 'The Nigerian Police Force and the Promotion and Protection of Human Rights in Nigeria' *Commercial and Industrial Law Journal* [2012] (3)(1) p. 302

accused person to be taken before a court of law as provided for by sections 117, 118, and 121 of the Criminal Procedure Code;

(b) Failure on the part of the Police prosecutors to timeously conclude their investigation and charge the suspect to court.

(c) Failure to produce witnesses who will testify in the case. This has led to incessant adjournments at the instance of the prosecution thereby prolonging the length of time a suspect remains in prison custody while awaiting the conclusion of his case.

(d) Carelessness on the part of exhibit keepers in the various police offices whereby vital and critical pieces of evidence are not properly handled and stored resulting in unnecessary delay in the hearing of matters before the courts.

The excuses they give for their inability to speedily prosecute their cases include amongst others, the un-roadworthy nature of their vehicles, insufficient motor vehicles, non-provision of money for purchase of fuel and inadequate supply of stationery. All these acts constitute a gross violation of the fundamental human rights of inmates in prison custody and thus have the effect of lengthening their days in detention.

4.2 The Judiciary

Section 6 (1) of the Constitution[31] stipulates that the judicial powers of the Federation shall be vested in the courts which are established for the Federation. Section 6 (5) [32]names the courts as follows:

1. Supreme Court of Nigeria;
2. Court of Appeal;
3. Federal High Court;
4. High Court of the Federal Capital Territory of Nigeria;
5 High Court of a State;
6 Sharia Court of Appeal of the Federal Capital Territory of Nigeria;
7 Sharia Court of Appeal of a State;
8 Customary Court of Appeal of the Federal Capital Territory;
9 Customary Court of Appeal of a State;

[31] Section 6 (1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended)
[32] Ibid Section 6(5)

10 Such other courts as may be authorized by law to exercise jurisdiction on matters with respect to which the National Assembly may make laws;
11 Such other courts as may be authorized by law to exercise jurisdiction at first instance on appeal on matters with respect to which a House of Assembly may make laws.

There are however, a number of shortcomings of the judiciary which have direct consequences on the fundamental human rights of persons on remand awaiting trial. Some of these shortcomings include the following:

1. Delays in trial by the courts;
2. Underutilization of goal-delivery by the Chief Justice of the Federation and the State Chief Judges;
3. Attitude of the courts to ouster clauses[33].

Delays in trial by the courts are blamed on several reasons some of which are: that there are a few courts and a few judges, manual recording of court proceedings, inefficiency of some judges, unnecessary calls for adjournment by counsel, insufficient stationery, unconducive court rooms and external influence of judges particularly the area court judges. The condition of service of judicial officers is not good enough to attract the required number and calibre of lawyers especially to the lower bench. This results in insufficient number of courts in the country with the attendant over-crowding of cases on the cause list. This in turn has a negative effect on the fundamental human rights of those with pending cases which usually last for years.

The manual recording of court proceedings by judges who record the court proceedings is time consuming. Some lawyers can adumbrate on issues for hours and would expect the judge to write down every word they say in court. The judgment of the court is also written in long-hand by the judge and this puts a lot of strain on the judges. Were the services of stenographers[34] used by Nigerian courts, it would go a long way in assisting the judges to speedy up cases before their courts.

Some of the judges are not pro-active and fail to have at their fingertips, the recent decisions of superior courts as to the position of the law especially where it relates to instant cases being handled by them. This

[33]Akpen.16. p.78-84
[34] A stenographer is someone skilled in the transcription of speech especially dictation

inefficiency manifests itself in the manner that they do not know what the current position of the law is with respect to certain issues and as such, will have to sometimes adjourn a matter just to learn about the position of the law. Unseriousness on the part of some judges manifests itself in actions like not sitting at the time they are expected to, remanding suspects *sine die*[35], signing remand warrants without the suspects being brought to the courts, being absent from duty without cogent reasons, etc. All these cause unnecessary adjournments and further complicate the accused person's case.

Some of the court rooms used for the adjudication of cases are in pitiable conditions. This is common among the lower courts. Some of the court rooms share the space with animals and these illegal occupants have to be chased out before the judge can sit to handle the cases for the day. Some of the court rooms are without proper electrical and air-conditioning fittings and so when the weather is hot, the judge cannot sit to adjudicate on matters as the court room will be too uncomfortable for him/her to work in.

Inadequate supply of stationery and the impact of negative external influence on judges particularly those in the lower courts account for the large number of cases before those courts and which then leads to the deprivation of rights of the accused person. Frequent transfer of judges is also a negative influence on the administration of justice as all cases pending before such judges commence *de novo*[36] before the succeeding new judge and even when a *fiat*[37]is sought for before the Chief Judge, it takes a long time before such permission is gotten and the accused person languishes in prison custody.

In the Nigeria of today, we love to believe that the judiciary is independent and can make its own decisions without recourse to any other arm of government, but how true is this allusion? There have been series of strikes and agitations for the judiciary to be independent, but has this really been achieved? According to Oyeyipo[38],

---

[35] This means for an indefinite period of time.
[36] This means to start afresh or start from the beginning.
[37] A fiat is a formal authorization given by a person in authority.
[38]Oyeyipo, T. A, commentary on the Paper captioned 'Whether the Establishment of the National Judicial Council and the Set Up will Bring a Lasting Solution to the Perennial Problems Confronting the Judiciaries in this Nation' delivered at the 1999 All Nigerian

> Judicial independence postulates that no judicial officer should directly or indirectly, however remote, be put to pressure by any person whatsoever, be it government, corporate body or individual to decide any case in any particular way. He should be free to make binding orders which must be respected by the legislature, the executive and the citizens, whatever the status….

Looking at the attributes of judicial independence, it can be safely concluded that judicial independence is not yet a reality but an aspiration in our country today. The appointment and removal of judges which is controlled by the executive is not isolated from political and other external considerations [39]. This lack of independence of the judiciary hampers the actualization of the human rights of persons in prisons awaiting trial as the judges are not at liberty to flex their powers to the full in order to ensure that prisoners basic rights are protected at all times.

The Chief Justice of the Federation and the Chief Judges of the States and the Federal Capital Territory, are empowered to release awaiting trial prisoners from prison whose detention is manifestly unlawful or who have been detained for long periods longer than they could have served if they were convicted for the offences for which they were charged.[40] This power of release by the Chief Justice and Chief Judges known as goal-delivery is very sparingly used. It does not therefore have the desired impact of alleviating the problems of thousands of those whose detention is manifestly unlawful or those who stay in the prisons without being sentenced by any court[41].

The attitude of courts to ouster clauses is also responsible for the way the fundamental human rights of accused persons on remand awaiting trial are handled by the Government. By Ouster Clause, the jurisdiction of courts to inquire into the legality or otherwise of any power exercised and

---

Judges Conference held at the International Conference Centre, Abuja. November 1-5, 1999. P.5

[39]Dada, J.A, 'Judicial Remedies for Human Rights Violations in Nigeria: A Critical Appraisal' *Journal of Law, Policy and Globalization* [2013] (10)p. 14

[40]Criminal Justice (Release from Custody) Special Provisions Act Cap C40 Laws of the Federation of Nigeria 2004.

[41]Ogundipe, Z. O., Adepoju O.O, 'Prison Reforms System and Inmates Welfare in Nigeria' *Arts and Social Sciences Journal* [2016] (1) p.25

award the appropriate remedies is greatly reduced. During the military rule in Nigeria, there were many decrees promulgated that ousted the jurisdiction of the court. Section 6 (6) of the 1999 Constitution (as amended) ousted the jurisdiction of all the courts as it relates to Chapter II of the Constitution which deals with socio-economic rights thus making these rights a' neglected category of rights in Nigeria'[42]. A learned author lamented that this grave effect of ouster clauses reduced the ambit of human rights to a vanishing point [43]. The implication of this is that if the courts insist that the hands of the judges are tied, the human rights of those in remand awaiting trial will be violated with impunity.

4.3 The Federal and States Ministries of Justice

The office of the Attorney General of the Federation is provided for by the Constitution in the following words:

1. There shall be an Attorney General of the Federation who shall be the Chief Law Officer of the Federation and a Minister of Justice of the Government of the Federation;
2. A person shall not be qualified to hold or perform the functions of the Office of the Attorney General of the Federation unless he is qualified to practice as a legal practitioner in Nigeria and has been so qualified for not less than ten years.[44]

Similarly, the Constitution also provides for the appointment of Attorney Generals of the States, and it provides thus;

(1) There shall be an Attorney General for each State who shall be the Chief Law Officer of the State and Commissioner for Justice of the Government of that State;

(2) A person shall not be qualified to hold or perform the functions of the Office of the Attorney General of the

[42] Dada, J.A,Ibanga, M.E, 'Human Rights Protection in Nigeria: From Rhetoric to Pragmatic Agenda' *African Journal of Law and Criminology* [2011] (2) p.70-81

[43]Umoh, P.U, 'Human Rights in Nigeria: Impediments to Realization [1988] 2 University of Uyo Law Journal (41)(46)

[44] Section 150 (1) & (2) of the Constitution of the Federal Republic of Nigeria 1999 (as amended)

> Federation unless he is qualified to practice as a legal practitioner in Nigeria and has been so qualified for not less than ten years.[45]

The States and Federal Ministries of Justice are often accused of causing delay in the prosecution of cases. They give endless and often times, flimsy excuses why they cannot go on with their cases from bereavement to lack of stationery, ill-health and all the likes. All the while, the accused person remains in prison custody for months and even years sometimes[46]. The author of this work handled a case before the Court of Appeal, Kaduna Division wherein his client, the Appellant, was sentenced to death in the case of *Chris Eze v The State*[47]. The Appellant's counsel filed his Appellant's brief on the Respondent on the 4th of July, 2019 and the Respondent, by virtue of the provisions of the law, has thirty (30) days[48] to file his own brief. Meanwhile, the Respondent counsel had not filed its Respondent's brief and cited its failure to the lack of stationery in the office. The Appellant would have still been languishing in prison custody bemoaning his fate but for the intervention of the Court which mercifully struck out the appeal for want of diligent prosecution.

There is also the general inability on the part of the prosecuting counsels to give legal advice on time. Cases abound where accused persons have had to remain in prison custody for long periods of time because legal advice has not been gotten from the Ministry of Justice. In some instances, judges are forced to strike out the charge because the accused person is repeatedly brought to court without any headway due to the failure to give legal advice. The delay in giving legal advice sometimes is an act of corruption on some officials of the Ministry of Justice who would want to be financially induced to give such advice. However, the shortage of manpower can be said to be a primary culprit responsible for the delay as in many case files are left unattended to by the few state counsels in the Ministry.

---

[45] Section 195 (1) & (2) of the Constitution of the Federal Republic of Nigeria 1999 (as amended)

[46] Obaseki O., 'Causes of Congestion in Prisons and Proposals for Solutions' Judicial Lectures: Continuing Education for the Judiciary (1991) p.12-29

[47] CA/K/108b/C/2019

[48] Order 19 Rule 4 (1) of the Court of Appeal Rules 2016

4.4 The Legal Aid Council

The Legal Aid Council (LAC) was established pursuant to the promulgation of Legal Aid Decree No. 56 of 1976 to provide for the grant of free legal aid in certain proceedings, to indigent members of the society. The law which governs the operations of the Council is the Legal Aid Act which repealed the Legal Aid Act, 2011.[49] The Act provides that only persons whose income does not exceed 5,000 per annum are eligible to free legal aid.[50]

However, in Nigeria, the Legal Aid Council cannot deal with the large number of suspects who need assistance. Consequently, only one in seven inmates awaiting trial and one in five convicted inmates in Nigeria have legal representation[51]. Of those awaiting trial, only about 25 percent (25 %) have legal representation from the Legal Aid Council and other non-governmental bodies offering pro bono services. [52]Although legal aid has been in existence in Nigeria for over 30 years, it has not succeeded in living up to public expectations. The reasons are:

(1) Inadequate funding;
(2) Lack of personnel;
(3) Lack of operational vehicles;
(4) Lack of publicity and inadequate information on access to justice;
(5) Lack of empowerment of the Legal Aid Council to provide legal aid services in respect to certain categories of persons and matters;
(6) The scope of eligibility for legal aid is not wide enough53.

The services of the Legal Aid lawyers are however, grossly underutilized due to the reasons listed above. The prisoners awaiting trial for criminal or other offences regard most legal lawyers from the LAC as agents of the government who want to interview them and report the outcome of the interview to the government thus eroding whatever chance at freedom they might have. The author of this article has been in one of such situations wherein she went to the Kaduna Convict Correctional

[49] Cap L9 Laws of the Federation of Nigeria 2004
[50] Section 9 (1) ibid
[51] Access to Legal Aid in Criminal Justice System in Africa; Survey Report of United Nations (2011) p.10
[52] Ibid
[53] Mohammed,A.K, *Human Rights Abuses in the Nigerian Prison System: A Case Study of Niger State Prison* Being an L.L.M Dissertation of the Faculty of Law, Ahmadu Bello University Zaria (2017) p.67

Service to interview some indigent prisoners for possible *pro-bono*[54]assistance but the inmates interviewed, kept giving different versions of the same story. The researcher then understood that they were afraid to tell the whole truth for fear that as legal aid lawyers, such true version of their involvement in the offences would be used against them. It took some time for the researcher to convince them otherwise and have them give the right information.

There is the tendency of putting more confidence on a lawyer of one's choice rather than one who has been imposed on an individual by the government (in this case, the legal aid lawyers). There is also the erroneous belief that whatever is free may after all, not be of much value. Prisoners whose rights are infringed on at any stage in time of their trial, be it at the point of arrest or while in prison custody, are therefore, sceptical of the free services of the Legal Aid lawyers. The Legal Aid lawyers, therefore, unfortunately do not visit correctional facilities to help those who are poor and without legal services because of the attitude of some of the prisoners; but this is not supposed to be so. As legal representatives, sworn to protect the interest of downtrodden and indigent citizens, it is their duty to try to win over the trust and confidence of these inmates to carry out their constitutional mandate.

4.5 The Nigerian Prison Service (Now Nigerian Correctional Service)

The Nigerian Correctional Service is one of the oldest security services. The Nigerian Correctional Service (as it is known today) was introduced by the British during the time when Nigeria was its colony in 1861[55]. The Nigeria Prisons Service (now Nigerian Correctional Service) was governed by the Prisons Act[56]. However, the President of Nigeria, in a commendable feat in August, 2019, changed the name of the Nigerian Prisons Service to the Nigeria Correctional Service and the Nigeria Correctional Service Act 2019 was also formulated and this repeals the extant Prisons Act[57].

According to the Nigerian Correctional Service, there were 74,277 inmates in Nigerian prisons as at 1st August 2022. out of thi number, 21,893

[54]This means free of charge without any monetary attachment
[55]Rotimi, A.R, 'Prison Administration in Modern Nigeria' *International Journal of Comparative and Applied Criminal Justice* [1982] (6) (1) p.73-83
[56] Cap P29 Laws of the Federation of Nigeria 2004
[57]http:// www.premuimtimes.com. Published 14/08/19 accessed 26 August 2019

have been convicted and 52,384 are awaiting trial in total and there are about 240 correctional service facilities in Nigeria. [58]

From the above statistics, it is clearly discernible the bulk of inmates in the prisons today are those in pre-trial detention. Prisoners on remand awaiting trial are persons whose guilt has not yet been established in accordance with the due process of the law and thus have not been sentence to any term in prison. In practice however, persons in pre-trial detention suffer more than convicts as they stay in prison without trial of their cases for years, they are sometimes not allowed to move freely in the yards and so are always locked up. In some cases, their warrants are taken to courts for further endorsement of their remand period when they themselves are not taken to appear before the courts thus extending the period of time they spend in the prisons.

Correctional service facility staff receive individuals who are lawfully deprived of their liberty. They have the responsibility to hold them safely and then, in most cases, release them back to the community, yet there have been several complaints by the inmates that it is these officials that are chief in the violation of their rights. The Civil Liberties Organization discovered that while 63% of all detainees were not told of the charges against them, 45% were not cautioned, another 65% experienced torture[59]. Furthermore, over 78% were denied bail and 73% were not given fair hearing[60].

Section 17 of the Standard Minimum Rules for the Treatment of Offenders and Section 34 (a) of the 1999 Constitution provide that while under detention, suspects should not be tortured so that detainees' rights to proper physiological state is promoted and protected. Contrary to these laid down prohibitions, however, findings indicate that while in contact with police, suspects experience torture in the process of arrest, interrogation and subsequent prosecution[61]. However, a lot of the prisoners are shouted at indiscriminately, tortured and even beaten. There is inadequate medical

---

[58]http://www.google.comHow many people are in Nigerian prisons by Africa Check. Published 22 August 2022. accessed 6 March 2023

[59] See Civil Liberties Organization Report 'Blood Trial: Repression and Resistance in the Niger Delta' (2004) p.20

[60]Ibid

[61]Rodely,N., *Treatment of Prisoners under International Law* 4thedn (Oxford University Press 2000) p.13-105

welfare for the prisoners and the sanitary conditions of the prisons are poor thus leading to a breeding ground for various diseases[62].

The neglect of the statutory provisions for speedy trials by courts under Section 36 (1) & (4) of the Constitution[63] accounts for the large number of pre-trial detainees.

5. CASES INSTITUTED BY PRISON INMATES ON PRE-TRIAL DETENTION FOR THE BREACH OF THEIR HUMAN RIGHTS

Prisoners and their families are slowly becoming aware of their fundamental human rights. Prisoners on remand awaiting trial have instituted several cases in courts of law challenging their long detention without trial. Some of the cases are as follows:

5.1 Alade v FRN[64]

Sikiru Alade was born in Nigeria in 1975. He was self-employed as a panel beater in Lagos before his arrest. On or about March 9, 2003, Alade was arrested near the old Lagos toll gate area by a plain clothed police officer, who neither disclosed his identity nor gave any reasons for the arrest. The policeman then forcefully dragged Alade to the Ketu Police Station in Lagos State, where he was detained.[65]

On May 15, 2003, he was brought before the Magistrate's Court in Yaba, Lagos State, on an allegation of armed robbery under the procedure known as the 'holding charge' a process by which a suspect is brought before a magistrate's court that lacks jurisdiction over the offense for which the suspect has been detained. Pursuant to the holding charge, the magistrate ordered Alade to be remanded in custody. He was then held at the Kirikiri Maximum Security Prison in Apapa, Lagos, for more than nine years without being returned to court or charged with a crime under any law before any court of competent jurisdiction[66].

The Justice Initiative, together with Co-counsel Mutiu Ganiyu, sought to review the use of the holding charge to justify indefinite pre-trial

---

[62] Ibid

[63] Section 36 (1) & (4) of the Constitution of the Federal Republic of Nigeria 1999 (as amended)

[64]ECW/CCJ/APP/05/11

[65]http://www.openjusticeinitiative.org/liltgation/alade-v-federal-republic-nigeria accessed 19 February 2023

[66]Ibid.

detention through a legal challenge brought on behalf of Alade to the Community Court of Justice of ECOWAS.

The Government of Nigeria had initially denied that they had Alade in their custody, and argued vehemently that it was for the plaintiff to prove that he was detained. The plaintiff had served the Deputy Comptroller of Prisons with a notice to produce Alade's detention warrant, but it was not produced. The ECOWAS Court concluded that it would be deduced that the withholding of the warrant is indicative of the fact that the same would have been unfavourable if produced.

The ECOWAS Court concluded that no court would allow such prolonged detention to continue without abating same. It also held that the said detention was adjudged illegal and held that the plaintiff (Alade) had satisfied the requirements of proof that his human right was violated.

The ECOWAS Court, in its judgment of June 11, 2012, found that the prolonged detention of Alade was unlawful, and violated both the African Charter on Human and Peoples' Rights and the 2005 ECOWAS Protocol and also found he was entitled to the relief sought including that of his discharge/release from Kirikiri Maximum Security Prison. The court also held that damages should be awarded to place the plaintiff in the position he/she would have been, had the friction complained of not taken place. The Court ordered compensation of 300,000 Naira for each of the nine years that he had been detained, a total of 2,700,000 Naira (approximately $17,000 USD).

5.2 Adepoju Adebowale & 23 Ors v CGP[67] & 1 Or[68]

This case was instituted by the plaintiffs who were prisoners evacuated from Libya to Nigeria by the Nigerian Government in the wake of the crisis in that country. The applicants/plaintiffs were placed in prison upon their arrival as they were hitherto serving prison terms in Libya before their evacuation. They challenged their incarceration on the grounds that there is no agreement for exchange of prisoners between Nigeria and Libya more so that they were not detained with any warrant whatsoever and hence, there were no grounds for their detention. The Nigerian Prisons Service contended that they were kept on the authority of the National Security Adviser and only for security screening. The court, however, found in favour

[67] Comptroller General of Prisons
[68] FHC/ABJ/CS/595/2011 Federal High Court Abuja Division

of the applicants holding that in the absence of an agreement for exchange of prisoners, their continued detention in prison was illegal and the court ordered for their release.

Other unreported decided cases where the court found in the favour of the applicants who protested their continued and unjustifiable detention include:

1. Wasiu Ajayi v Controller General of Prisons & 2 Ors[69]
2. Nigel Francis v Inspector General of Police & 5 Ors[70]

6. CONCLUSION

It is against the backdrop of these flagrant and disheartening human rights abuses prisoners are subjected to that there have been concerted efforts by private individuals and bodies to the Nigerian government to look inwards at the correctional service system and put measures to checkmate the continuous cycle of abuses amongst the prisoners. The following recommendations have been made:

i. The Comptroller General of the prisons, being the one in charge of the day-to-day affairs of the prisons, should ensure that the prison officials do not abuse the powers they wield by violating prisoners' rights as well as a systematic review of the files of all inmates awaiting trial in Nigerian correctional facilities and detention centres should be adopted in order ensure that their right to a fair trial within reasonable time is guaranteed.

ii. The judiciary should live up to its responsibilities as the watch dog of the society by ensuring that the basic rights of the prisoners are respected by the security agents, and where necessary, punishments be meted out to those who abuse prisoners' rights (this will serve as a deterrent to others) and also, damages be awarded to the victim where it has been established that his/her rights have been violated.

iii. Inmates should be allowed and encouraged to institute actions before an independent court to challenge the lawfulness of their detention.

iv. Access to legal aid should be improved which should include providing resources to the Legal Aid Council to appoint more lawyers

[69] ID/742M/2011 Federal High Court Abuja Division
[70] M/984/2012 Federal High Court Abuja Division

and also there should be an upward review of the remuneration and allowances paid to the legal aid lawyers. This will serve as a booster to their morale and enable them carry out their duties effectively.

v. Lastly, there should be training and orientation of police officers so they are kept abreast of their core mandate which is the arrest, legal time bound detention of accused persons and prosecution of established cases before the courts.