

PURSUIT OF HUMAN RIGHTS IN THE ADMINISTRATION OF CRIMINAL JUSTICE IN NIGERIA

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Abstract

Human rights are inherent to every person. They are universal and inalienable. These rights include the right to personal liberty, the right to fair hearing, the right to life, the right to dignity of the human person, the right to legal representation, freedom of expression, thought and conscience, right to private and family life, right to freedom of association and assembly. These rights are recognized by the constitution as fundamental rights. The commission of crime may in a way amount to violation of human rights and societal norms and offenders are punished according to law. However, in the administration of criminal justice there is need to respect and protect human rights because they remain sacrosanct. The paper examined the need for respect and protection of human rights in course of administering justice. These institutions which include the Police, the Judiciary and the Correctional Service deal with human beings in course of administering criminal justice. To actualize the aim of this paper, the researchers employed a doctrinal research methodology, analyzed national, regional, international and foreign laws and court decisions related to fundamental rights and the administration of criminal justice. The paper focused on approach to the administration of criminal justice in accordance with law, with the ultimate goal of guaranteeing respect for human rights at every stage in the administration of criminal justice in Nigeria.

Keywords: *Human Rights, Administration, Criminal Justice*

Introduction

It is a universal standard and practice that a person facing criminal trial is entitled to the protection of his human rights notwithstanding the charge against him. Under the Constitution of the Federal Republic of Nigeria 1999, these rights include right to personal liberty, right to fair hearing, right to life, right to dignity of human person, and right to legal representation.¹ To ensure the respect and protection of these rights in the administration of criminal justice, the National Assembly enacted the Administration of Criminal Justice Act (ACJA) and established bodies like the National Human Rights Commission (NHRC). The various States in Nigeria in the same spirit enacted their respective Administration of Criminal Justice Laws. Incidentally, statutes on the administration of criminal justice have not solved the numerous problems of breach of human rights of citizens in Nigeria, especially, those undergoing

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¹ See Chapter IV of the Constitution of the Federal Republic of Nigeria 1999 (as amended); *F.R.N. v Kanu* (2024) 11 NWLR (Pt. 1949) 231

criminal investigations and trials. For instance, the regrettable state of detention facilities, access to justice, delay in justice delivery are amongst the challenges that statutes on criminal justice have not solved.

As a result of these enormous challenges, the criminal justice system which includes the Police, the Correctional Service and the Judiciary needs reform. The Police, the Correctional Service and the Judiciary play vital roles in the administration of criminal justice in Nigeria, and they are governmental bodies that need to respect, protect and ensure the protection and enforcement of human rights. Criminal jurisprudence in any given society may be radically coloured by historical experience of the society itself or its people.² The assertion that justice is a three-way traffic³, no doubt envisages that a criminal defendant is also entitled to justice in the face of the heinous allegation laid against him.

Assessment of the Legal Regime for Enforcement of Human Rights and Administration of Criminal Justice in Nigeria

Arrest and Detention of Suspect

Arrest as well as detention of a suspect has to do with restraining of the liberty of the suspect. This must be effected having in mind the right to the civil liberty of every person as guaranteed under the Constitution.⁴ The Constitution provides for the liberty of every person and no person shall be deprived of his liberty except as permitted by law.⁵ The conditions under which a person's liberty can be deprived are:

- (a) in execution of the sentence or order of a Court in respect of a criminal offence of which the person has been found guilty;
- (b) by reason of his failure to comply with the order of a Court or in order to secure the fulfillment of any obligation imposed upon him by law;
- (c) for the purpose of bringing him before a Court in execution of the order of a Court or upon reasonable suspicion of his having committed a criminal offence, or to such extent as may be reasonably necessary to prevent his committing a criminal offence;
- (d) in the case of a person who has not attained the age of eighteen years, for the purpose of his education or welfare;

² Bala and Jerry, "Crime and the Criminal Justice System in Nigeria", (Port Harcourt: Pearl Publishers, 2009) 45

³ *Josiah v State* (1985) 1 NWLR (Pt.1) 125

⁴ Constitution of the Federal Republic of Nigeria 1999, as amended, s 35

⁵ *Khawaja v Secretary of State for the Home Department* (1983) 1 All ER 765, at 766

- (e) in the case of persons suffering from infectious or contagious disease, persons of unsound mind, persons addicted to drugs or alcohol or vagrants, for the purpose of their care or treatment or the protection of the community; or
- (f) for the purpose of preventing the unlawful entry of any person into Nigeria or of effecting the expulsion, extradition or other lawful removal from Nigeria of any person or the taking of proceedings relating thereto;

provided that a person who is charged with an offence and who has been detained in lawful custody awaiting trial shall not continue to be kept in such detention for a period longer than the maximum period of imprisonment prescribed for the offence.

The classic statement of the law was made by Lord Atkin in the landmark case of *Liversidge v Anderson*⁶. According to the law Lord.

In England amidst the clash of arms the laws are not silent. They may be changed, but they speak the same language in war as in peace. It has always been one of the pillars of freedom, one of the principles of liberty for which, on recent authority, we are now fighting, that the judges are no respecters of persons, and stand between the subject and any attempted encroachments on his liberty by the executive, alert to see that any coercive action is justified in law.⁷

Arrest has been defined to be the process of compelling the appearance of an offender before a court of law.⁸ The law frowns at unlawful arrest, and a person cannot be arrested in lieu of another person.⁹ The Constitution protects the fundamental rights of every person, and any person who is unlawfully arrested or detained shall be entitled to compensation and public apology from the appropriate authority or person.¹⁰ The detention of a person suspected to have committed a criminal offence shall not be more than one day where there is a court of competent jurisdiction within a radius of forty kilometres, and in any other case, a period of two days or such longer period as in the circumstance may be considered by the court to be reasonable.¹¹

⁶ (1941) 3 All ER 338

⁷ At 361, paras C-D; *R (on the application of Hicks) v Metropolitan Police Commissioner* (2018) 1 All ER 374; (2017) UKSC 9

⁸ N. N. Uzoma, *The Role of the Police in the Administration of Criminal Justice in Nigeria*, Legal Essays in Honour of Mary Odili, Justice of the Supreme Court of Nigeria (Ikeja: Princeton & Associates Publishing Co. Ltd., 2023)

⁹ Administration of Criminal Justice Act 2015, s 7, Rivers State Administration of Criminal Justice Law No. 7 of 2015, s 7

¹⁰ CFRN, s 35(6); *Opara v A.G. Federation* (2017) 9 NWLR (Pt. 1569) 61

¹¹ CFRN, s 35(5)(a)(b)

The arrest of a suspect over a civil wrong or breach of contract is unlawful.¹² The law does not also require the detention of a female detainee and a male detainee in the same cell or place.¹³ There are adequate provisions of the law to prevent violation of citizen's fundamental right to liberty and in-humane treatment.¹⁴ For instance, article 5 of the African Charter on Human and Peoples' Rights 1981¹⁵ provides that-

Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.

Lord Bingham commented in *A v Secretary of State for the Home Department (No. 2)*¹⁶ that:

The preamble to the United Nations Charter (1945) recorded the determination of member states to reaffirm their faith in fundamental human rights and the dignity and worth of the human person and to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained. The Charter was succeeded by the Universal Declaration of Human Rights 1948 (Paris, 10 December 1948; UN 2 (1949); Cmnd 7662), the European Convention and the International Covenant on Civil and Political Rights 1966 (New York, 19 December 1966; TS 6 (1977); Cmnd 6702 (ICCPR), all of which (in arts 5, 3 and 7 respectively, in very similar language) provided that no one should be subjected to torture or inhuman or degrading treatment.

The procedure for enforcement of fundamental rights is contained in the Fundamental Rights (Enforcement Procedure) Rules 2009. Where an applicant is in detention and the court is satisfied that exceptional hardship may be caused to the applicant before the service of the main application, the court may accept ex parte application to grant some interim reliefs as the justice of the case may demand.¹⁷ However, the affidavit in support of the ex parte application must show sufficient grounds why delay in hearing the application would cause exceptional hardship.¹⁸ Justice Augie, JCA (as he then was) confirmed this procedure when he observed in *E.F.C.C. v Akingbola*¹⁹ to the following effect:

¹² Administration of Criminal Justice Act 2015, s 8(2); *Diamond Bank Plc v Opara* (2018) 7 NWLR (Pt. 1617) 92

¹³ *Ibid*, s 8(4)

¹⁴ CFRN, Chapter IV

¹⁵ See Cap A9, LFN 2004; see also the Anti-Torture Act 2017

¹⁶ (2006) 1 All ER 575; (2005) UKHL 71, at [30]

¹⁷ *Ibid*, Order IV Rule 3

¹⁸ *Ibid*, Order IV Rule 4(a)

¹⁹ (2015) 11 NWLR (Pt. 1470) 249, at 290, paras E-F

There it is in black and white; and the provision of Order IV rule 4(c)(i), no doubt, speaks for itself, and what it says is that the lower court could direct the release of the respondent by way of an *ex-parte* application under the Fundamental Human Rights (Enforcement Procedure) Rules, which is a special proceeding with its distinctive rules and procedure.

The African Charter on Human and Peoples' Rights popularly called the Banjul Charter provides for the protection of the right to liberty and freedom of movement.²⁰ The Charter has been ratified by an Act of the National Assembly²¹ by virtue of section 12 of the Constitution. The counterpart European Convention on Human Rights and Fundamental Freedom 1951 is another quintessential regional legal document that proclaims fundamental rights to a profound degree.

At the global stage the Universal Declaration of Human Rights (UDHR) 1948, the International Covenant on Civil and Political Rights 1966 and the International Covenant on Economic, Social and Cultural Rights constitute the Universal Bill of Rights, upon which other regional and municipal laws on human rights thrive. It is important to note that rights with such international and universal flavour cannot be derogated, for the fun, by municipal laws, even though such laws are criminal in effect.²² It is desirable to highlight some procedures that have been known to engender breaches of human rights in the pursuit of the administration of criminal justice.

Recording of Extra Judicial Statement of Suspect

The recording of the extra judicial statement of a suspect is jealously guided by law to enhance its voluntariness. A confessional statement obtained from a suspect by oppression or similar circumstance may render the confession unreliable and inadmissible in evidence.²³ It is the right of any person arrested or detained to remain silent or avoid answering any question until after consultation with a legal practitioner or any other person of his own choice.²⁴ It is also the right of an arrested or detained person to be informed in writing within twenty four hours, and in the language that he understands, of the facts and grounds for his arrest or detention.²⁵

The implication of the above is that an arrested or detained person is entitled to know the reason for his arrest or detention and have a lawyer of his own choice before answering any allegation made against him. A suspect who was arrested at the point of committing an offence, or who had escaped from lawful custody is not entitled to be informed the reason for his arrest or detention.²⁶ It is incumbent on the police or any person making the arrest or the police officer in-charge of a police station to inform the

²⁰ *African Charter on Human and Peoples' Rights*, Articles 4-7

²¹ *African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act*, Cap A9 LFN 2004, s 1

²² *Abacha v Fawehinmi* (2000) 6 NWLR (Pt. 660) 228

²³ *Evidence Act 2011* (as amended) s 29; *Bako v I.G.P.* (2025) 16 NWLR (Pt. 2012) 591

²⁴ CFRN, s 35(2)

²⁵ CFRN, s 35(3)

²⁶ n9, s 6(1)

arrested person of his right to remain silent or avoid answering any question until after consultation with a legal practitioner or any other person of his own choice.²⁷

The Police or any authority having custody of a suspect is also obligated to inform the suspect of his right to free legal representation by the Legal Aid Council of Nigeria, or other organizations, and shall notify the next-of-kin or relative of the suspect of the arrest at no cost to the suspect.²⁸ Of material importance is that no person shall be arrested in place of a suspect.²⁹

The law has placed enough safeguards to protect the rights of every person arrested by the police or any other lawful authority. The provisions of the law with respect to the attendance or presence of a legal practitioner of his choice or free legal representation by the Legal Aid Council of Nigeria or other organizations or his relatives before making any statement or answering questions will indeed protect every suspect from being vulnerable to torture or any other in-human or degrading treatment. In *Owhoruke v C.O.P.*³⁰ Justice Rhodes-Vivour, JSC observed that,

The appellant did not have the service of a legal practitioner when he wrote exhibits E, a day after the incident. It must be noted that most crimes are committed by people with little or no education, consequently they are easily led along by the investigating Police Officer to write incriminating statements which legal minds find almost impossible to unravel and resolve. Confessional statements are most times beaten out of suspects, and the courts usually admit such statements as counsel and the accused are unable to prove that the statements was not made voluntarily. A fair trial presupposes that police investigation of crime for which the accused person stands trial was transparent. In that regard it is time for safeguards to be put in place to guarantee transparency. It is seriously recommended that confessional statements should only be taken from suspect if, and only if his counsel is present, or in the presence of a legal practitioner. Where this is not done such a confessional statement should be rejected by the court.

There is now laudable innovations to the recording of confessional statement from a suspect. Where a suspect volunteers to make a confessional statement, the authority taking the statement shall ensure that the taking of the statement is in writing and may be recorded electronically on a retrievable video compact disc, or such other audio visual means.³¹ In *F.R.N. v Akaeze*³², the Supreme Court in stamping

²⁷ *Ibid*, s 6(2)

²⁸ Nigeria Police Act 2020, s 35(2)

²⁹ *Ibid*, s 36

³⁰ (2015) 15 NWLR (Pt. 1483) 557, at 576, paras A-D

³¹ Administration of Criminal Justice Act 2015, SS 15(4) and 17(2)

³² (2024)12 NWLR (Pt. 1951) 1 at 19-20 paras. G-C

and giving credence to sections 15(4) and 17(2) of the Administration of Criminal Justice Act 2015 stated that the provisions are mandatory and not directory. The provisions are for the benefit of private citizens, to check the possible abuse of power by the police or other security agencies. In effect, failure to comply with the provisions could warrant the rejection of the confessional statement obtained in breach of the provisions. The rule is that confessional statement of a suspect shall be recorded on video, and where there is no video facility, the statement shall be in writing in the presence of a legal practitioner of his choice.³³

The provisions of the law, if fully complied with, will shape Nigeria's criminal justice system. Justice will always be manifestly seen as done if the provisions of the law are fully complied with. Meanwhile, the Administration of Criminal Justice Law of Rivers State provides that the statement of a suspect can be recorded electronically, either in the presence or absence of a legal representative of his choice, or any other person of his choice.³⁴ And where the statement is recorded electronically, a copy of the electronically recorded statement shall be given to the suspect and the original shall be sealed and signed in the presence of the suspect.³⁵ If in the opinion of a police officer of the rank of an Inspector or above, that further delay would lead to destruction of evidence, harm to witnesses or hinder recovery of evidence, he may give written and signed authorization for the taking of the statement of the suspect, after waiting for the suspect's legal representative or any other person of his choice for a reasonable time.³⁶ The law permits the court to admit statements obtained in this manner, if the court is satisfied that no impropriety occurred.³⁷ If after the written authority is given and the statement is recorded electronically, followed by recovery of incriminating evidence through the suspect, the case of the prosecution will be strengthened and the court under the circumstance is likely to admit the statement in evidence.

Any confessional statement that is unfairly obtained will be discountenanced by the Court. In *The State v Masiga*,³⁸ it was stated by the apex court that:

Section 29 of the Evidence Act, 2011 empowers the trial court to exclude a confession that appears to it to have been unfairly obtained from the accused in order to incriminate him. The court is accordingly empowered not to allow such confession to be put in evidence against him unless the prosecution proves to the court beyond reasonable doubt that the confession (notwithstanding that it may be true) was not obtained in a manner not contrary to the provisions of section 29 of the Act. It is

³³ *Charles v The State of Lagos* (2023) NWLR (Pt. 1901) 213 at 242-243, paras. F-H; *Nnaji v F.R.N.* (2019) 2 NWLR (Pt. 1655) 157 at 170, paras. D-E

³⁴ Rivers State Administration of Criminal Justice Law No. 7 of 2015, S 17(3)(b)

³⁵ n29, s 17(2)(b)

³⁶ *Ibid*, s 6(6)(a)

³⁷ *Ibid*, s 6(6)(b)

³⁸ (2017) LPELR – 43474 (SC)

mandatory under section 29 of the Act, that the only admissible confession is the confession that was not obtained by oppression of the maker, or in consequence of anything said or done which was likely, in the circumstances existing at the time, to render unreliable the said confession.

The various statutes on administration of criminal justice have indeed established clear procedure for recording voluntary statement from suspects. With this new development, it appears that the regular litigation over the voluntariness of confessions through trial within trial will hardly be resorted to.

Time and Facilities in Criminal Trial

Some of the key areas in criminal litigation where attention ought to be paid in order to guarantee the rights of citizen are the questions of reasonable time for a criminal defendant to defend himself, and access to facilities in the custody of the prosecution. These questions are entrenched in the Constitution, and therefore they are of sublime importance. For instance, section 35(4) of the Constitution dictates that:

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 or is not 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.³⁹

In *Nwangwu v Duru Chukwuma-Eneh*, JCA (as he then was) submitted that

Personal liberty is one of the fundamental rights guaranteed under the 1979 Constitution as provided for in section 32 of Chapter IV of the Constitution. This right is crucial and so has been eulogised in some ways for example by statutes in some jurisdiction including the United States (the famous statue of liberty). An infraction of the right which includes unlawful arrest and detentions will attract the sanction as provided in section 32(6) of the Constitution and its remedy results in compensation and an apology from the appropriate authority or person.

³⁹ *Ibid*, s 6(6)

Criminal trial commences with arraignment.⁴⁰ The time regime in the statute is that trial shall commence not later than 30 days from the date of filing the charge and the trial shall be completed within a reasonable time. Part of the requirements is that if trial does not commence within 30 days of bringing the charge, or trial has commenced but has not been completed after 180 days of arraignment on that charge, the court shall forward to the Chief Judge the particulars of the charge and reasons for failure to commence the trial or to complete the trial within the stipulated time.⁴¹ The Administration of Criminal Justice Law of Rivers State provides further that where the Chief Judge has been notified of the reason why the trial could not be completed within 180 days, the Chief Judge may recommend to the trial court to continue with the trial and complete it within 28 days.⁴² Where the trial is not completed within the extra days granted due to a deliberate attempt by the prosecution, the court shall where it is in the interest of justice, discharge the defendant without prejudice and may report the prosecuting counsel to the Attorney-General or the Legal Practitioners Disciplinary Committee. If the delay is from the defence, the court may report the defence counsel to the Legal Practitioners Disciplinary Committee: If the defendant is on bail, the court may revoke the bail and place the defendant in custody indefinitely, or where the defendant is not in custody, the Court shall complete the trial within 10 working days.⁴³

Another important human right bundle in the Constitution is the right of a criminal defendant to access to the records and materials in the custody of the prosecution. The constitutional term for these records or materials is facilities. As a constitutional requirement a person charged with a crime shall be given adequate time and facilities to defend himself.⁴⁴ The Supreme Court construed this constitutional requirement in the leading case of *Okoye v C.O.P.*⁴⁵ Justice Aka'ahs, JSC elucidated in the leading judgment that-

The facilities that must be afforded the accused person are the '*resources*' or '*anything which would aid*' the accused person in preparing his defence to the crimes for which he is charged. These, no doubt, include the statements of witnesses interviewed by the police in the course of their investigation which might have absolved the accused of any blame or which may assist the accused to *subpoena* such favourable witnesses that the prosecuting counsel may not want to put forward to testify. In *Layonu v. State* (1967) 1 All NLR 198 citing with approval the case of *R v. Clarke* 22 Cr. App. R 58 held that a defendant is entitled to see a written description of himself given by a police officer to his superior, with a view

⁴⁰ *Bala v C.O.P.* (2025) 9 NWLR (Pt. 1994) 495, at 542, paras A-F

⁴¹ n8, s 110(3)(4)

⁴² *Ibid* s 110(6)

⁴³ *Ibid*, s 110(7)

⁴⁴ CFRN, S 36(1)(6)(b)

⁴⁵ (2015) 17 NWLR (Pt. 1488) 276.

to cross-examining that officer on alleged discrepancies between the content of that document and his sworn testimony.⁴⁶

The decision in *Okoye v C.O.P.* is liable to be abused by convicts who will challenge their convictions merely on the ground that the prosecution did not avail them of the facilities in the custody of the prosecution. It is for this reason that the Supreme Court qualified the *Okoye v C.O.P.* rule in subsequent cases.⁴⁷ In *Nweke v State*,⁴⁸ for instance, Justice Nweze, JSC made the following comments:

In all, the learned counsel for the appellant, evidently, not quite conversant with the logic of the reasoning in the above decisions, failed to appreciate that the right to the "...facilities"..." for the defence of an accused person in section 36(6)(b) of the Constitution (supra) is not self-executory, *R v Adebayo* (supra); *Layonu and Ors v. State* (supra).

That is the rationale for the prescription in these authorities that the appellant (as accused person) ought to have made a request to the trial court, either orally or in writing, for the prosecution to oblige him with the "facilities" that would have enabled him to prepare his defence.

The explanation for this requirement could be found in the jurisprudence of the European Court of Human Rights (ECtHR) which, in interpreting Article 6(3)(b) (supra) of the 1999 Constitution, as amended (supra), has held that, at that stage, the entitlement to disclosure of such facilities, like statements of prosecution's witnesses, is not an absolute right. Thus, in criminal proceedings, there may be competing interests, such as national security or the need "to protect witnesses who are at risk of reprisals or to keep secret the methods used by the Police in the investigation of crimes, *Van Mechelen and Ors v. The Netherlands*, (Reports of Judgments and Decisions, 1997-11."

It is therefore, plausible to conclude that the time regime and the facilities policy in criminal trials are not absolute, in relations to the rights of criminal defendants. What is important is substantive justice in every case. The rights created under the Constitution, whether in regard to time or facilities, or both, cannot be employed to enthrone technicalities above justice.

⁴⁶ At 296, paras D-F; the decision has been applied by the apex court in the following cases, *Igwe v State* (2019) 3 NWLR (Pt. 1660) 417 SC; *Madukaegbu v State* (2018) 10 NWLR (Pt. 1626) 26 SC; *Shema v F.R.N.* (2018) 9 NWLR (Pt. 1624) 337 SC.

⁴⁷ *Nweke v State* (2017) 15 NWLR (Pt. 1587) 120 SC; *Nwadiogbu v A.I.R.B.D.A.* (2010) 19 NWLR (Pt. 1226) 364 SC.

⁴⁸ (2017) 15 NWLR (Pt. 1587) 120, at 148, paras A-E; see also *Madukaegbu v State* (supra); *Okemini v C.O.P.* (2024) 13 NWLR (Pt. 1956) 457.

Assessment of the Performance of Institutions involved in the Administration of Criminal Justice in Nigeria

There are three separate organized institutions directly involved in the administration of the criminal justice systems in Nigeria. These are the Police, the Court and the Correctional Service.⁴⁹

The Nigeria Police

The Nigeria Police Force is a creation of the Constitution.⁵⁰ But the details of police power are laced in the Police Act 2020 which repealed the Police Act, Cap P19, LFN 2004. The objective of the Act is to ensure that the Police is more efficient and effective, based on the principles of accountability and transparency and protection of human rights and fundamental freedoms.⁵¹

Section 3(1) provides for the establishment of the Police Force which shall be organized and administered in accordance with the provisions of the Act.⁵² Section 4 of the Act⁵³ provides for the functions or duties of the Police Force, which include prevention and detection of crimes, protection of the rights and freedom of every person in Nigeria as provided in the Constitution, the African Charter on Human and Peoples Rights and any other law, maintenance of public safety, law and order, protection of lives and property of all persons in Nigeria, enforcement of all laws and regulations, and to discharge such duties within and outside Nigeria as may be required of it under the Act or any other law, to collaborate with other agencies to take necessary action and attend to persons in distress, including victims of road accidents, fire disasters, earthquakes and floods, to facilitate the free passage and movement on highways, roads and streets open to the public, to adopt community policing and to vet and approve the registration of private detective schools and private investigative outfits.

The Nigeria Police Force occupies a strategic position in the administration of criminal justice. While fighting crimes, the police must promote and protect the fundamental rights of persons in their custody.⁵⁴ The power of the police to arrest and investigate every allegation of crime made to it must be in accordance with due process of law.⁵⁵ The duties of the police do not extend to mere civil wrong or breach of contract.⁵⁶ In the same vein, a person arrested shall not be handcuffed, bound or subjected to unnecessary restraint, except there is reasonable apprehension of violence, or an attempt to escape; or the restraint is considered necessary for the safety of the suspect or defendants as the case may be, or by

⁴⁹ Bala and Jerry, *Crime and the Criminal Justice System in Nigeria*, (Port Harcourt: Pearl Publishers, 2009) 75

⁵⁰ CFRN 1999, s 214(1)

⁵¹ Police Act 2020, S 1

⁵² *Ibid*

⁵³ *Ibid*

⁵⁴ *Ibid*, s 5

⁵⁵ CFRN, S 35(3)

⁵⁶ *Ibid*, section 35(2)

order of a court.⁵⁷ Part of the safeguards is that every suspect arrested is entitled to be informed of the reason for his arrest, except when the suspect has escaped from lawful custody, or is in the actual course of committing an offence, or is pursued immediately after the commission of an offence.⁵⁸

An arrested person shall also be informed of his right to remain silent, or avoid answering any question until after consultation with a legal practitioner, or any other person of his own choice.⁵⁹ It is the duty of the police to inform an arrested person of his right to a free legal representation and to notify his next-of-kin or relative of the suspect of the arrest at no cost of the suspect. Where the suspect offers to make extra judicial statement, the taking of the statement shall be in writing and should be recorded electronically on a retrievable video compact disc, or audio visual means.⁶⁰ The law also requires the statement of a suspect to be taken in the presence of a legal practitioner of his choice, or where he has no legal practitioner of his choice, in the presence of an officer of the Legal Aid Council of Nigeria, or an official of a civil society organization, or a justice of the peace, or any other person of his choice, provided that any of the persons mentioned shall not interfere while the suspect is making his statement.⁶¹

The law provides for humane treatment of suspects, dignity of their persons, decent cell for suspects, access to proper and adequate medical care, and to be fed at reasonable times and intervals.⁶² No person should be arrested on a mere civil wrong or breach of contract, while a suspect that is arrested shall be brought before a court of competent jurisdiction within the stipulated time of 24 hours as the case maybe.⁶³

Administratively speaking, there are measures to ensure that in every police formation there are qualified legal practitioners employed with the police to guide and educate colleagues on the protection and observation of human rights of citizens along the line of duty. As a matter of fact, section 66(3) of the Police Act 2020 makes provision for the posting of at least a police officer, who is qualified to practice as legal practitioner, to every police station, and whose responsibility is to promote human rights compliance by the officers at the police station. The requirement for posting of police officers who are qualified to practice as legal practitioners to every Police Division is to enhance human rights compliance, hence there is need to separate the Police Legal Department from the command of the

⁵⁷ *Ibid*, s 34

⁵⁸ *Ibid*, s 35(1)

⁵⁹ (n5) s 6(2)

⁶⁰ ACJA 2015, s 15(4)

⁶¹ *Ibid*, s 17(12)

⁶² *Ibid*, s 8(1) (a) – (e)

⁶³ CFRN, s 35(4)

Inspector General of Police and the Nigeria Police should also comply with the law and elevate police lawyers to their status as provided by the law.

The Judiciary

The judiciary is the third arm of government that is saddled with the responsibility of interpreting all laws made by the legislature, the adjudication of disputes amongst individuals as well as government agencies and punishment of offenders. The final hope of the people (both the rich and the poor) is the judiciary and it sits as umpire and an arbiter over constitutional flux or violation.⁶⁴ In his classic statement of the law on the sacred duty of the court in the protection of human rights, Oputa, JSC contended that,

I can safely say that here in Nigeria even under a Military Government, the law is no respecter of persons, principalities, governments or powers and that the courts stand between the citizens and the government alert to see that the state or government is bound by the law and respects the law.⁶⁵

There are a number of landmark cases where the courts in Nigeria rose to the occasion of proclaiming the human rights of citizen against executive abuse.⁶⁶

It is submitted that the promotion and compelling obedience to respect for human rights is tied to the impartiality of the judiciary. A judiciary that is not independent, or a judiciary that has no financial autonomy and goes about seeking for money to run its affairs can never and should not even be expected to discharge its sacred duty of dispensing justice within the contemplation of the law.⁶⁷ In effect, the resonant cry for the independence of the judiciary in Nigeria should no longer be politicized. Those at the helms of political affairs often resort to the judiciary after they have left the corridors of power. The independence of the judiciary will therefore serve the purpose of all and sundry. It should be put into effect without further delays or dialectics.

The Nigerian Correctional Service

This is the third part or institution of criminal justice system in Nigeria. It receives and keeps inmates delivered to it by the Court.⁶⁸ The Nigeria correctional service is established to provide custodial and non-custodial services.⁶⁹ The Correctional Service is administered by a Comptroller-General as the

⁶⁴ N. N. Thursday, *The Judiciary as the Bulwark of Nigerian Democracy Constitutional Reforms to Strengthen and Insulate it from Political Abuses*, Legal Essays in Honour of Mary Odili, Justice of the Supreme Court of Nigeria, (Ikeja: Princeton & Associates Publishing Co. Ltd. 2022) 347

⁶⁵ *Military Governor of Lagos State v. Ojukwu* (1986) 1 NWLR (Pt. 18) 621, at 648, para B

⁶⁶ See *Abacha v Fawehinmi* (2000) 6 NWLR (Pt. 660) 228; *Military Governor of Lagos State v Ojukwu* (supra); *Bello v. A.G. Oyo State* (1986) 5 NWLR (Pt. 45) 828; *Darman v Federal Minister of Internal Affairs* (1981) 2 NCLR 459.

⁶⁷ J.A. Yakubu, *Administration of Justice in Nigeria*, essays in Honour of Non-Justice Mohammed Lawal Uwais, (Ikeja: Malthouse Press Limited Publishers. 2000) 81

⁶⁸ Bala and Jerry, *'Crime and the Criminal Justice System in Nigeria'*, (Port Harcourt: Pearl Publishers, 2009) 75

⁶⁹ Nigeria Correctional Service Act 2019, s 1

administrative head and a minimum of eight Deputy Comptroller-Generals, one of whom is responsible for the non-custodial service, and such other subordinates to the Comptroller-General as may be necessary for the administration of the correctional service.

The objective of the correctional service is to ensure compliance with international human rights standards and good correctional practices. Key to these duties is the duty to provide enabling environment for implementation of non-custodial measures and to ensure the corrections and promotion of reformation, rehabilitation and reintegration of offenders. The correctional service has the functions of providing safe, secure and humane custody for inmates, identifying the existence and causes of anti-social behaviour of inmates, conducting risk and needs assessment aimed at developing appropriate correctional treatment methods for reformation, rehabilitation programmes to enhance the reintegration of the inmates, initiating behaviour modification in inmates through the provision of medical, psychological, spiritual and counseling services for all offenders including violent extremists, empowering inmates through the deployment of educational and vocational skills training programmes, and facilitating incentives and income generation through custodial centres, farms and industries, administering borstal and related institutions, providing support to facilitate the speedy disposal of cases of persons awaiting trial, and performing other functions as may be required to further the general goals of the service.⁷⁰

There are good measures provided by the law to ensure the correctional service performs its functions with respect for human rights and ensure the transformation, reformation and re-integration of the inmates. The government on its part is to make available the resources and paraphernalia to realise the noble expectations of the law. The failure of any governmental institution is the failure of the government. For the correctional service to perform optimally and effectively, government must equip and furnish all the correctional centres with the necessary facilities and encourage respect for human rights.

Non-custodial service is an important procedure in facilitating reformation, rehabilitation and reintegration of convicts into the society. In advance societies the convict is monitored through electronic tagging⁷¹, while he is allowed to integrate with members of his family in any approved location. This saves a lot of resources for the State, because funds that would have been expended by the State for the maintenance of the convict would be saved. The optimal performance of the correctional service in line with the provisions of the law establishing it will enhance respect for human rights. There is need for expeditious trial of cases so as to reduce the number of inmates in the correctional centres. The expeditious trial of cases could be effected by the establishment of special courts to try special cases. In the United States there are in existence courts in each district and metropolitan area for the purpose of ensuring speedy trial of cases.⁷²

⁷⁰ *Ibid*, s 10

⁷¹ *R(on the application of Jalloh) v Secretary of State for the Home Department* (2020) 3 All ER 449, at [27];

⁷² The Law and Order Disruption (Speedy Trial) Act 2002, ss 8, 10 and 11



Summary

By way of summary, it cannot be debated that the respect and protection of human rights is fundamental to the peace, order and development of the nation. The institutions involved in the administration of criminal justice, namely the police (including other law enforcement agencies), the judiciary and the correctional service must function effectively if there must be respect and protection of human rights. The failure of these institutions, or any of them will amount to the failure of the government, and that may threaten the peace, order and development of Nigeria. On the shelf are noble statutes to drive the policy, but commitment to duty, or the enforcement of the laws is often the denominating challenge. Amongst the stakeholders, the role of the judiciary appears to be supreme. It is said to be the hope of the common man. No wonder the pendulum of human rights in every clime is dictated by the effectiveness of the judiciary in that jurisdiction. The Nigerian judiciary has journeyed through a chequered atmosphere, but this is the time for the judiciary to stamp its feet, firm, if human rights of Nigerian citizens will be recognised, observed and protected.