



An Examination of the Constitutional Safeguards for Criminal Justice Administration in Nigeria

¹Mary Jennifer Omachi & ²Egya John Nuhu

¹Faculty of Law, Benue State University Makurdi

²Department of Humanities and Social Sciences,
School of General Studies, Federal Polytechnic Nasarawa

Article DOI: 10.48028/iiprds/ssjprds.v6.i1.15

Abstract

This work examines an examination of the constitutional safeguards for criminal justice administration in Nigeria, the work pinpoints that, the criminal justice system is also responsible for the care and rehabilitation of individuals found guilty of breaking the laws and to whom prescribed punishment is meted out. It is the institution and practices of government whose main focus is to mitigate and deter crime, uphold social control and sanction individuals who violate the set laws of a specific state with rehabilitation and criminal penalties. The work observed that, the main provisions that provide for the administration of criminal justice in Nigeria can be found under Chapter IV of the CFRN dealing with fundamental rights and Chapter VII dealing with the powers of the courts, or the jurisdictional mandate of courts. Other notable provisions are sections 211 and 173 dealing with the powers and extent to which an Attorney General of the federation or a state can institute, continue or discontinue criminal proceedings as well as 212 and 175 dealing with the prerogative of mercy by the president or governor in pardoning a convict. The paper concludes that, the CFRN has made provisions ensuring the fundamental rights and corresponding duties of those involved in criminal justice both as accused persons or as administrators, thereby attempting to balance government's interest in crime control with the privacy and liberty rights of individuals either as victims, suspects or convicted persons. The work is recommended that stronger oversight and institutional safeguards be put in place in addition to the laws already on ground to ensure that officials responsible for criminal justice delivery perform their functions within permissible limits of law.

Keywords: *Criminal Justice, Administration, Constitution, Safeguard, Punishment*

Corresponding Author: Mary Jennifer Omachi

Background to the Study

It is trite that the major function of government is the maintenance of law and order which is usually carried out through crime control. It is also noteworthy that one of the major functions of a constitution is to balance government's interest in crime control with the privacy and liberty rights of individuals either as victims, suspects or convicted persons.¹ The Constitution Federal Republic of Nigeria, 1999 (as Amended)² is the supreme and apex law in Nigeria.³ All other laws applicable within Nigeria are subject to it and are to the extent of any inconsistencies, null and void.⁴ Thus, the administration of criminal Justice in Nigeria, is given its legal foundation through the CFRN where the government is to dispense justice in accordance with the due process or rule of law. For if the society must remain in peace, individuals with criminal tendencies must be put under close checks and their activities monitored and checkmated.⁵ If and when their activities offend against the social norms and standards the law must therefore intervene constitutionally, to do justice to all and sundry involved including the criminal, the victim and the society at large.⁶ This research therefore examines the constitutional basis for criminal justice administration in Nigeria to determine whether it conforms to best practises in ensuring justice.

Conceptual Clarifications

Constitution

A constitution is a set of fundamental legal-political rules that are binding on everyone in the state, including ordinary lawmaking institutions and as a minimum, meet the internationally recognized criteria for a democratic system in terms of representation and human rights.⁷ It provides a stable and predictable framework for governance as it sets out the rules and procedures for decision-making, resolving conflicts, and maintaining social order This is especially so because it ensures 'the fair and impartial exercise of power and has been described as one of the crowning achievements of human civilization.'⁸ A constitution stands as the bedrock of governance, rights, and liberties in democratic societies and establishes the rules, principles, and structures that shape the relationship between a state and its citizens.⁹ It ensures that government decisions are made through legitimate and accountable processes and requires striking a delicate balance between protecting individual rights and promoting

¹ Cliff Notes, 'Criminal Procedure and the Constitution' <<https://www.cliffsnotes.com/study-guides/criminal-justice/police-powers-and-citizens-rights/criminal-procedure-and-the-constitution>> Accessed on the 2nd of May, 2022.

² Hereinafter referred to as the CFRN

³ Section 1(1), CFRN

⁴ Section 1(3) CFRN

⁵ B O Ajah, 'Criminal Justice Administration and Panic of Prison Correction in Nigeria', *Journal of Law and Judicial System* [2018] (1) (12) 3.

⁶ A Babalola, 'Power of Police to Prosecute Criminal cases: Nigeria and International Perspectives', *European Journal of Business and Social Sciences*, [2014] (2) (11)

⁷ Constitution-Building Primers, 'What Is a Constitution? Principles and Concepts' [2014] *International Institute for Democracy and Electoral Assistance*

<https://constitutionnet.org/sites/default/files/what_is_a_constitution_0.pdf> Accessed 30th July, 2024

⁸ Ibid

⁹ K Jamie, 'Constitutional Law: Defining the Foundations, Principles and Challenges of Governance and Individual Rights'[2023](12)(3) *International Journal of Economics & Management Sciences* <<https://www.hilarispublisher.com/open-access/constitutional-law-defining-the-foundations-principles-and-challenges-of-governance-and-individual-rights-100219.html>> Accessed 2nd Sept., 2023

public good¹⁰ since challenges exist in determining the limits of individual freedoms when they come into conflict with broader societal interests, such as national security or public health.¹¹

Safeguard

A safeguard is a measure taken to protect someone or something. It is a policy or process to prevent or mitigate identified risks.¹² In this context, it means protecting a person's right to live in safety, free from abuse and neglect.

Criminal

The word criminal pertains to crime and has the character of a crime. It can be simply defined to mean one who commits a crime. The problem with this definition is that many people commit crimes but because they have not been caught or found guilty, no one can refer to them as criminals. A criminal is therefore defined as one who has violated the law of the land, been found guilty by a competent determining body recognized by law whether or not he/she has been punished or pardoned.

Criminal Justice Administration

This phrase consists of a system comprising of bodies, groups, institutions or agencies that have been charged with the responsibilities of ensuring social agreement and mass compliance with the law, and deciding whether or not an individual is guilty of violating the laws of the society, and the appropriate punishment to be meted to such an individual.¹³ In addition to such responsibility, the criminal justice system is also responsible for the care and rehabilitation of individuals found guilty of breaking the laws and to whom prescribed punishment is meted out.¹⁴ It is the institution and practices of government whose main focus is to mitigate and deter crime, uphold social control and sanction individuals who violate the set laws of a specific state with rehabilitation and criminal penalties.¹⁵ It has even been regarded as the sum total of society's activities to defend itself against the actions it describes as criminal.¹⁶ For the purposes of this research therefor, the administration of criminal justice may be defined as the collective practices and institutions aimed at detecting or deterring crimes, arresting, prosecuting, convicting, sentencing, rehabilitating or sanctioning criminals, compensating victims of crimes, restoring society and generally upholding social control

Constitutional Safeguards for Criminal Justice Administration in Nigeria

The main provisions that provide for the administration of criminal justice in Nigeria can be found under Chapter IV of the CFRN dealing with fundamental rights and Chapter VII

¹⁰Ibid

¹¹Ibid

¹² PJ Williams, 'Safeguards, Standards and Safeguard Information Systems; [2012] <https://pdf.usaid.gov/pdf_docs/PA00KCVH.pdf> accessed 2nd Sep., 2024

¹³Ajah n(5)

¹⁴ JK Ukwai and JT Okpa, 'Critical Assessment of Nigeria Criminal Justice System and the Perennial Problem of Awaiting Trial in Port Harcourt Maximum Prison, Rivers State', *Global Journal of Social Sciences*, [2017] (16). 17-25

¹⁵ AM Adebayo, *Administration of Criminal Justices System in Nigeria* (Princeton Publishing Co, 2012) 2.

¹⁶ F Adler, G Mueller and W Laufer, *Criminal Justice: An Introduction* (2nd Ed, McGraw Hill Higher Education, 2000) 7

dealing with the powers of the courts, or the jurisdictional mandate of courts. Other notable provisions are sections 211 and 173 dealing with the powers and extent to which an Attorney General of the federation or a state can institute, continue or discontinue criminal proceedings as well as 212 and 175 dealing with the prerogative of mercy by the president or governor in pardoning a convict.

In Chapter IV, the CFRN provides that every person is entitled to the enjoyment of their fundamental rights including the right to life,¹⁷ right to dignity of the human person,¹⁸ right to personal liberty,¹⁹ right to fair hearing,²⁰ right to private and family life,²¹ right to freedom of thought, conscience and religion,²² right to freedom of expression and the press,²³ right to peaceful assembly and association,²⁴ right to freedom of movement,²⁵ right to freedom from discrimination²⁶ as well as the right to acquire and own immovable property anywhere in Nigeria.²⁷ Out of these rights, the rights to life, personal liberty, dignity of the human person and fair hearing are most directly affected by the administration of criminal justice.

The provisions of the CFRN presupposes that the rights are to be enjoyed by all including accused persons and provides that the rights are inalienable and should not be surrendered except as permitted by the CFRN. For instance, the right to life is yielded only in the execution of a sentence passed by a competent court of law while the right to personal liberty is suspended once there is reasonable suspicion of having committed a criminal offence. In the same vein, under no circumstance should the right to dignity be trampled on as no one should be subjected to torture, inhuman and degrading treatment.²⁸ In *Asari v FRN*,²⁹ the court observed that where there is a threat or likelihood of threat to national security, the liberty of those suspected to be responsible is second place. In other words, no one is to be made to suffer except by the legal manner imposed by the court for a breach of law. In *Salihu v Gana and others*,³⁰ the court reaffirmed the fact that section 24 of the police Act empowers the police to arrest anybody with or without a warrant upon reasonable suspicion of committing an offence and that where it is shown that the police acted reasonably within his powers, then the curtailment of the suspect's rights cannot amount to a breach of fundamental rights. Note that once a criminal investigation is made against any citizen, it is a constitutional and statutory duty of the police to detect and investigate the crime and no authority, including a court of law, can prevent them from carrying out their functions.³¹ This was further reiterated in *A.G*

¹⁷ Section 33 CFRN

¹⁸ Section 34 CFRN

¹⁹ Section 35 CFRN

²⁰ Section 36 CFRN

²¹ Section 37 CFRN

²² Section 38 CFRN

²³ Section 39 CFRN

²⁴ Section 40 CFRN

²⁵ Section 41 CFRN

²⁶ Section 42 CFRN

²⁷ Section 43 CFRN

²⁸ AAdewumi and O Dawodu, 'The Rights of a Suspect under the Nigerian Criminal Justice System', (2016). *Akungba Law Journal* [2016] (4) (1) July, 2016 Available at SSRN <<https://ssrn.com/abstract=3758826>> Accessed on the 21st of April, 2022.

²⁹ (2007) 12 NWLR [pt. 1048] 320 (SC)

³⁰ (2014) LPELR- 23069 (CA)

³¹ *Onah v Okenawa*(2010) LPELR- 478 (CA)

*Anambra State v Uba*³² where the court held that for a person to be shielded against criminal investigation and prosecution even by a court of law, amounts to an interference with the powers given by the constitution to law officers in the control of criminal investigation. This is because any case poorly investigated or prosecuted will adversely affect the outcome of the case³³ thereby, affecting the efficiency of government in achieving its major aim.

The officials responsible for criminal justice administration including the police ought to perform their duties within permissible limits of law by upholding the rights of suspects.³⁴ In addition, the CFRN is founded on the rule of law where everything must be done according to law and government should be conducted within the framework of recognized rules and principles which restrict discretionary powers.³⁵ In *Okwudiba and Others v. Nwankwo and Others*,³⁶ it was provided that even though the police has powers to arrest and detain persons under reasonable suspicion of having committed criminal offences, they are still to discharge their said statutory duties of investigation and must ensure that a citizen's fundamental rights are not breached in any way or form while in *Dasuki v Federal Republic of Nigeria*,³⁷ the Community Court of Justice reiterated that the right to enjoy respect for liberty and security by all human beings is axiomatic and that without an efficient guarantee of the liberty and security of the human person, the protection of other individual rights is vulnerable and illusory.

The trial rights of an accused person majorly known as the right to fair hearing,³⁸ provided for by the CFRN,³⁹ has so many clauses entitling the accused person's protection against abuse and victimisation. A fair trial is a basic element of the notions of the rule of law and due process⁴⁰ which are all fundamental to the protection of human rights⁴¹. The rights associated with a fair hearing⁴² include, trial within a reasonable time,⁴³ independence and impartiality of proceedings,⁴⁴ open and public hearing,⁴⁵ presumption of innocence,⁴⁶ prompt and detailed notification of nature of offence,⁴⁷ adequate time and facilities to prepare defence,⁴⁸ right to

³² (2005) 15 NWLR [pt. 947] 44 (CA)

³³ *Ofortlette v The State* (2000) 12 NWLR [pt. 681] 415 (SC)

³⁴ MJ Omachi and MU Raphael, 'The Pre-trial Rights of Suspects in Nigeria: Issues of Compliance', [2019], *Prof John Ngwo Samba: A Festschrift*, 296

³⁵ *Miscellaneous Offences Tribunal v. Okorafor* (2001) 18 NWLR [pt. 745] 310 at 327 (SC)

³⁶ (2018) LPELR-46074(CA)

³⁷ (ECW/CCJ/JUD/23/16) [2016] ECOWASCJ 54 (CCJ-ECOWAS)

³⁸ EseMalemi, *Administrative Law*, 4th ed (Princeton Publishing Co., 2012) 280

³⁹ Section 36, CFRN

⁴⁰ C Ovey and R White, *The European Convention on Human Rights* (Oxford University Press, 2002) 139

⁴¹ R Clayton and H Tomlinson, *Fair Trial Rights* (Oxford University Press, 2001) 2

⁴² Note that a distinction exists between a fair trial and fair hearing. A fair trial has been described to be all encompassing, that is, from arraignment to the conclusion of the trial, culminating in the announcing of the decision of the court or tribunal while fair hearing, entails only processes involved from the time of arraignment to the putting of the case for defence. See AA Adeyemi, "Criminal Justice Administration in Nigeria in the Context of the African Charter on Human and Peoples' Rights" in *Perspectives on Human Rights*, A Kalu and Y Osinbajo (eds.), 1992, 121 – 141 at 12

⁴³ Section 36(1), CFRN

⁴⁴ *Ibid*

⁴⁵ Section 36(2), (3) and (4), CFRN

⁴⁶ Section 36(5), CFRN

⁴⁷ Section 36(6)(a), CFRN

⁴⁸ Section 36(6)(b), CFRN

defend by self or representation,⁴⁹ right to examine witnesses,⁵⁰ free access to an interpreter,⁵¹ right to obtain copies of judgement (within seven days),⁵² right not to be tried for an offence which was not in existence at the time of commission,⁵³ right not to be given a penalty heavier than that in force at time of committing the offence,⁵⁴ protected from double jeopardy⁵⁵ (save upon a pre-trial order by a superior court)⁵⁶ or act for which he/she has been pardoned,⁵⁷ cannot be compelled to give evidence⁵⁸ and cannot be convicted if offence and penalty are not provided for in a written law.⁵⁹

The right to fair hearing entails not only hearing a party on any issue which could be resolved to his prejudice, but also ensuring, in the interest of justice, that the hearing is fair and in accordance with the twin pillars of justice, namely *audi alteram partem* (which advocates that both parties be heard) and *nemo iudex in causa sua* (which advocates that no man should be a judge in his own cause).⁶⁰ It connotes a trial which is conducted in accordance with all the legal rules formulated to ensure that justice is done⁶¹ and it is a court's duty is to create the environment for fair hearing.⁶² The presumption of innocence is of profound importance because of its far reaching implications. It basically means that until a judicial pronouncement on the guilt or otherwise of the accused person is made, he/she is to be treated the same as a regular person.⁶³ In *Mohammed v. State*⁶⁴ the court stated that the import of section 36(1) is that any charge against an accused person shall be concluded within a reasonable time. Likewise, a detained suspect must be brought to court within a reasonable time.⁶⁵ In *Landmark University v. Anwuli And Another*,⁶⁶ this Court held that by section 35(4) and (5) of the Constitution, the Respondents who were arrested and detained for suspicion of having committed a crime, ought to have been brought before a Court of competent jurisdiction within a reasonable time. The police should, under no circumstance, detain a suspect for more than two days without taking him to court, except in respect of capital offences.⁶⁷ On being taken to court, the court should consider bail for the suspect, but can, on reasonable grounds, remand the suspect in custody pending trial. Where trial will exceed 2 months from the date of arrest, even if the person in custody is not ordinarily entitled to bail, he should be released on bail.⁶⁸ Going by this, the constitutional right to presumption of innocence should, therefore, be invoked even in

⁴⁹Section 36(6)(c), CFRN

⁵⁰Section 36(6)(d), CFRN

⁵¹Section 36(6)(e), CFRN

⁵²Section 36(7), CFRN

⁵³Section 36(8), CFRN

⁵⁴Ibid

⁵⁵Also known as multiple trial

⁵⁶Section 36(9), CFRN

⁵⁷Section 36(10), CFRN

⁵⁸Section 36(11), CFRN

⁵⁹Section 36(12), CFRN

⁶⁰ See *Ogundoyin v. Adeyemi*(2001) 13 NWLR (Pt. 730) 403 at 421 and *Saleh v. Monguno* (2003) 1 NWLR (Pt. 801) 221 at 246. (SC)

⁶¹ *Eze v FRN* (2017) 15 NWLR (Pt. 1589) 433 (SC)

⁶² *Okanlawon V State* (2015) LPELR-24838 (SC).

⁶³ *Ekele v. FRN* (unreported) **Appeal No: CA/A/238C/20 7 (CA)**

⁶⁴ (2015) 13 NWLR [pt. 1476] (CA)

⁶⁵ Section 36(1) CFRN. See also, section 35(4) CFRN

⁶⁶ (2014) LPELR 24340 (CA)

⁶⁷ Section 35(7)(a), CFRN

⁶⁸ Section 35(4)(a) CFRN

cases of capital offences especially, where a prima facie case has not been established against the accused because, unless the right to bail before trial is preserved, the presumption of innocence would lose its values.

The law provides for an accused person to be informed of the nature of the offence he is charged with so as to appreciate the nature and extent of his alleged crime and make an informed decision on whether or not to waive his right to counsel. The right to remain silent during interrogations, until after consulting somebody as well as the right to have the advice of a counsel before answering questions put to the suspect by his interrogators, is mostly due to the fact that with the aid of a legal practitioner, he can have the opportunity of establishing his innocence at the earliest possible time without having to undergo trial and may also be able to avoid contradictions in his statements while utilizing the earliest opportunity to clear himself.⁶⁹ In *Rufai v The State*,⁷⁰ it was stated that a trial may be voided where it is not shown that a suspect was informed of the nature of his offence in a language that he understands and that the evidence should be in writing. In *Ndukwe v LPDC*,⁷¹ the court provided that the requirement to be informed promptly could be called a caution on the basis that the suspect is cautioned before he volunteers a statement in answer to the allegation against him while in *Okoye and others v COP and others*,⁷² the court held that the facilities that must be afforded the suspect are the resources that would aid him prepare for his defence to the crime he is charged for and absolve him of any blame. The court further noted that once he is made aware of the formal accusation against him, he is entitled to commence the preparation for his defence and that he is even entitled to see a written description of himself given by a police officer to his superior with a view to cross-examine that officer of any discrepancies between that document and his sworn testimony. The violation of the right to remain silent has been flagrantly abused by police officers and this is especially more rampant in the Southern Nigeria, due to the fact that the police are not bound to administer the words of caution to suspects.⁷³

The right to presumption of innocence⁷⁴ places the general burden on the prosecution to prove the guilt of an accused person beyond reasonable doubt. A court, therefore, has to conduct the trial without forming an opinion on the guilt or innocence of the accused person in advance or should not make open statements tilting towards the above. An outgrowth of this right is the right to bail pending the trial of accused persons.⁷⁵ Thus, the continued detention of an accused person, pending the conclusion of a fairly long trial, negates the right to the presumption of innocence, especially where the accused person is eventually adjudged to be innocent of the charge by the trial judge. It is, therefore, an infraction of a capital offender's

⁶⁹ See the Draft Manual for Lower Court Judges on Human Rights and Administration of Justice in Nigeria, prepared by the Civil Liberty Organisation in Lagos. 27.

⁷⁰ (2001) 7SCNJ 122 (SC)

⁷¹ (2007) LPELR 197 (SC)

⁷² (2015) LPELR 24675 (SC)

⁷³ *Okeke v. The State* (2003) 2 SCNJ 199 SC.

⁷⁴ Section 36(5) CFRN

⁷⁵ See section 118 CPA which makes provision for this right. However, the CPC in section 34(1) however, expressly made capital offences non-bailable.

right to the presumption of innocence to be refused bail simply because bail pending trial in capital cases is not to be granted as a matter of right.⁷⁶ The court in *Abacha v. The State*⁷⁷ advised that an accused person should be admitted to bail after satisfying the conditions laid down by the courts irrespective of the nature of the offense.⁷⁸ Thereby, complying with the fair trial safeguard entrenched for the protection of the right to presumption of innocence.

The right to be afforded adequate time and facilities to prepare for defence⁷⁹ depends on the circumstances of each case. Hence, an accused person should not be refused an adjournment where such an adjournment is necessary. For instance, a refusal of an application by the accused person for adjournment to arrange for a counsel, will amount to a breach of that provision.⁸⁰ The facilities to prepare for defence include access to documents and other evidence that the accused person requires to prepare his case, as well as the opportunity to engage and communicate with counsel.

The right to defend by self or representation⁸¹ guarantees accused person three rights, namely, to defend themselves in person, to defend themselves through legal practitioners of their choice and, in certain circumstances, to be given free legal assistance. Free legal assistance is, however, dependent on the interest of justice, and the insufficiency of means to procure the services of a counsel as some people charged with offences cannot afford the fees of experienced counsels. It has been observed that in most cases, they are assigned counsels, who are not well grounded in law nor versed in criminal issues or who are just inexperienced. Sometimes, they are paid very little to defend them. Hence, as a result of poor remuneration, the defense counsels may not exert enough effort in such cases. It can therefore, be contended that without effective representation, an accused person cannot be said to have had a fair trial and that right becomes hollow, illusory and meaningless. In *Udofia v. State*,⁸² the Supreme Court held that fair hearing was denied when an accused person was represented improperly, ineffectively and half-heartedly.

Every person who is charged with a criminal offence shall be entitled to have without payment, the assistance of an interpreter if he cannot understand the language used at the trial of the offence.⁸³ For the denial of this right to be upheld however, it has been held in *Udosen v. The State*⁸⁴ that it is the duty of such an accused person to inform the court that he requires an interpreter.

⁷⁶ See *Omodara v. State* (2004) 1 NWLR [Pt. 853] 80 (SC)

⁷⁷ (2002) 10 NWLR (Pt. 776) 644 (SC).

⁷⁸ The factors include: (1) The likelihood of the applicant being available to stand his trial; (2) The seriousness of the charge being preferred against the applicant, and (3) The strength of the evidence against the applicant.

⁷⁹ Section 36(6)(b), CFRN

⁸⁰ ON Ogbu, *Human Rights, Law and Practice in Nigeria: An Introduction* (Cidjap Press, 1999) 162.

⁸¹ Section 36(6)(c), CFRN

⁸² (2000) 3 NWLR [pt. 84] 533 (SC). In the case, a counsel attached to the Legal Aid Council was assigned to defend the capital offender in the case. He was absent on most of the adjournment dates. Another counsel assigned, was also present on very few occasions and while present, he failed to cross examine the prosecutions' witnesses during the trial. At a stage in the matter, a youth corps member even attempted to appear for the accused person, but was disallowed by the court

⁸³ Section 36(6)(e) (CFRN)

⁸⁴ (2007) 4 NWLR [pt. 1023] 125 (SC)

Adherence to the Safeguards

It is no news that even with all these constitutional safeguards, the police and other law enforcement officers who as agents of the state are empowered to achieve a saner, regulated and orderly society through their duty of prevention and detection of crime, apprehension of offenders and preservation of law and order, trample on the guaranteed rights provided by the CFRN.⁸⁵ They have been reported to be guilty of, intimidation, arbitrary detention of accused persons, arresting accused persons for offenses not known to law, not cautioning or informing suspects of their offences, torturing suspects to admit to crimes they did not commit and many other violations.⁸⁶ In fact, the Nigeria Police Force has been described as inept, oppressive and constantly in violation of human rights.⁸⁷ Sometimes, accused persons are tortured and treated inhumanely in a bid to coerce them into making confessional statements while many suspects arrested by the police have been reported to have been summarily and extra-judicially executed infringing the most basic of all rights, the right to life.⁸⁸

In *Isaac Edoh v. Edo State Commissioner of Police*,⁸⁹ the applicant's son was arrested by the police and paraded before the media in Benin, Edo State where he was accused of an involvement in kidnapping. When the applicant visited the police station to secure his bail the police denied ever arresting his son. The tape of the son's media parade after he was arrested by the police was produced and played in court and the applicant identified his son. Upon concluding that the applicant's son must have been killed extra judicially in custody, the court declared the killing illegal and awarded the sum of N15 million as damages to the applicant. Sometimes, peoples' privacies are invaded by the police and properties seized without due process all due to the arbitrary powers they have. The Nigerian director of Avocats Sans Frontiers,⁹⁰ stated that between 2019, when the project⁹¹ started, and March, 2022, they had received 160 cases of rights violation by the police and security agencies. Out of that number, 110 had actually been taken up for litigation at the ECOWAS Court.⁹²

This culture of violence perpetrated by the police against suspects is a flagrant disregard of the right to fair hearing.⁹³ The Force is reported to be a major violator of human rights as there are several reported cases of rape, extra-judicial and arbitrary executions, torture, inhuman and

⁸⁵ Adewumi and Daodu n(17)

⁸⁶ Omachi and Raphael n(31)

⁸⁷ I Olubiyi and H Okoeguale, 'The Nigerian Criminal Justice System: Prospects and Challenges of the Administration of Criminal Justice Act 2015' [2016] (1)

African Journal of Criminal Law and Jurisprudence. Available at

<https://www.researchgate.net/publication/317901881_The_Nigerian_Criminal_Justice_System_Prospects_and_Challenges_of_the_Administration_of_Criminal_Justice_Act_2015> Accessed on the 22nd of April, 2022

⁸⁸ Network on Police Reform in Nigeria and Open Society Justice Initiative, *Criminal Force: Torture, Abuse and Extrajudicial Killings by the Nigeria Police Force* (Open Society Institute, New York, U.S.A., 2010) 59.

⁸⁹ Unreported Suit No:B/460m/2011

⁹⁰ A non-governmental organisation (NGO) commonly known as "Lawyers Without Borders".

⁹¹ For aiding victims of human rights violations by the police and other security agents to fight their cases and claim redress

⁹² F Olorok, 'Police brutality: 160 cases reported, 110 under prosecution at ECOWAS Court – Group', *Punch Newspaper*, 11th March, 2022. Available at <<https://punchng.com/police-brutality-160-cases-reported-110-under-prosecution-at-ecowas-court-group/>> Accessed on the 21st of April, 2022.

⁹³ Human Rights Watch, 'Rest in Pieces: Police Torture and Deaths in Custody in Nigeria', [2005] (17(11)) <<http://www.hrw.org/reports/2005/Nigeria/075/nigeria0705.pdf>> Accessed 5th May, 2022.

degrading treatment of suspects in police custody made against personnel of the Force.⁹⁴ In addition to the behaviour of law officers, delay in court proceedings infringes on the right to fair hearing generally but particularly affects the presumption of the innocence of an accused person.⁹⁵ One major cause of delay by the court is the absence of proper case flow management especially as a result of the inadequacy of time dedicated to court sittings.⁹⁶ It was opined that the more sittings a court achieves over the year, the more cases are handled and disposed.⁹⁷ It has been proposed⁹⁸ that there is not enough sitting time for cases to be expeditiously heard.⁹⁹ Nigeria has a history of slow dispensation of justice as trials could remain in court for as long as ten years without making any progress with all sides exploiting the loopholes in the laws.¹⁰⁰ In *Ariori v Elemo*,¹⁰¹ for instance, the case dragged for about 20 years before the determination of the appeal to the Supreme Court, which had to send the case back to the High Court for a de novo trial. Similarly, in *Atejiroye v Ayeni*,¹⁰² the case lasted for fourteen (14) years while in *Al-Mustapha v. The State*,¹⁰³ where the defendant/appellant was arrested on October 1998, the matter went up unto appeal in the year 2013 and when it was eventually concluded at the Court of Appeal it was exactly 15 years.

Also, worthy of note is the role of some lawyers and prosecutors¹⁰⁴ in the use of frivolous interlocutory applications, unnecessary adjournments and wrongful procedures in the course of trial which causes delay and makes it difficult for the accused person to fully enjoy his constitutional rights.¹⁰⁵ Others are the difficulty of securing witness attendance and testimonies, the dilemma of parties not showing up at trial, corruption within the system, flagrant disrespect for human rights, little or no engagement with victims of crime, weak

⁹⁴ CSO Coalition Report, 'State of Human Rights in Nigeria' [2009]

Submitted by Constitutional Rights Project; Access to Justice; Nigerian Bar Association; <https://lib.ohchr.org/.../JSI_NGA_UPR_S4_2009_ConstitutionalRightsProject> Accessed on the 24th of April, 2022

⁹⁵ See the case of *Shagari v COP*, the court held that the unlawful detention of accused persons from May which was the month they were arrested to September which was the month they were charged to court was unconstitutional and an abuse of police power.

⁹⁶ VA Shima and B Aboho, 'Trial within a Reasonable Time under Nigerian Law: A Legal Myth or Reality?' *Benue State University Law Journal* (2019) 374

⁹⁷ Ibid

⁹⁸ P O Okolo, 'The Judiciary as a Vessel for the Advancement of the Economic, Social and Political Development of Nigeria' A paper presented at the opening ceremony of the Benue State Judiciary 2016/2017 Legal Year on September 17, 2016, 24.

⁹⁹ Shima and Aboho cited Okolo and established that out of 365 days in a year, Judges do not sit during weekends (amounting to 104 days), public holidays (10 days), yearly court vacations (60 days), Christmas vacations (14 days), Easter vacation (14 days), conference week (7 days) and Fridays which are reserved for Judgments (52 days) amounting to a grand total of 261 days and leaving room for only 104 days of sitting thereby limiting the time for hearing and affecting the right of presumption of innocence for the accused person.

¹⁰⁰ Fatima Waziri – Azi, 'Compliance to the Administration of Criminal Justice Act, 2015 in Prosecuting High Profile Corruption Cases in Nigeria (2015 – 2017)' [2017] (5)(2) *Journal of Law and Criminal Justice* 114 (113-128) Available at <http://jlcjnet.com/journals/jlcj/Vol_5_No_2_December_2017/11.pdf> Accessed on the 17th of May, 2022

¹⁰¹ (1997)1 NWLR [pt. 481]293 (SC)

¹⁰² (1999) 6 NWLR [Pt552] 135 at 141 (CA)

¹⁰³ (2013)LPELR 20995 (CA)

¹⁰⁴ Like intentionally instituting cases in courts that lack jurisdiction

¹⁰⁵ B Daudu, 'Delays, Technicalities in Electoral Matters: The Role of the Legal Profession' A paper presented at the Nigerian Bar Association, Makurdi Branch Law Week on 6th June, 2014, 6

coordination and lack of inter-agency cooperation amongst criminal justice institutions¹⁰⁶ all of which negatively affect constitutional guarantees of suspects.

As a result of these issues still existing in the administration of criminal justice in the country, more recent enactments were provided for to give backing to the constitutional safeguards. Some of these include the provisions of the Administration of Criminal Justice Act, 2015, Nigerian Correctional Services Act, 2019 and the Nigerian Police Act, 2020 among others. These provisions addressed issues like police arbitrariness in handling suspects, speedy dispensation of cases, reformatory custodial measures, compensation, ensuring the rights of accused persons, witness protection synergy among criminal justice institutions, etcetera. However, many other areas like the inhumane treatment of offenders, corruption within the system, lack of access to legal representation and facilities for defence, efficient prosecution of cases, adherence to laws and others still need to be addressed for a holistic attainment of a standard criminal justice delivery in the country.

Conclusion and Recommendations

The CFRN has made provisions ensuring the fundamental rights and corresponding duties of those involved in criminal justice both as accused persons or as administrators, thereby attempting to balance government's interest in crime control with the privacy and liberty rights of individuals either as victims, suspects or convicted persons. These provisions align with best practices around the world and ensure that justice is served to all including the criminal, victim and society at large. However, due to a low level of adherence to the constitutional safeguards, so many cases of abuse were still recorded in the country and even though other laws have been enacted to strengthen the constitutional safeguards, more still needs to be done to ensure complete adherence to the provisions and the service of justice to all and sundry. From the foregoing, it is recommended that stronger oversight and institutional safeguards be put in place in addition to the laws already on ground to ensure that officials responsible for criminal justice delivery perform their functions within permissible limits of law, more funds should be donated to criminal justice institutions to ensure that accused persons are fairly treated especially in the areas of representation, speedy trials and reformatory measures and frequent trainings and orientation should be held for all stakeholders to keep them abreast with the laws and best practices relating to effective justice delivery.

¹⁰⁶ Ibid