

**AN INQUIRY INTO THE MYSTERY OF PROTRACTED STAY OF PRE-TRIAL
DETAINEES IN NIGERIAN CORRECTIONAL FACILITIES**

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ABSTRACT

In Nigeria, the problem of detention of people for a period longer than prescribed by law is very common. The protracted stay of pre-trial detainees in Nigerian correctional facilities is a thing of anxiety as record shows that higher percentage of inmates in the Nigerian correctional services falls into this category. In spite of the presumption of innocence of the accused by virtue of Section 36 (5) of the Constitution of the Federal Republic of Nigeria and Article 7 of the African Charter on Human and People's Rights, yet they experienced dehumanizing and degrading treatment as if they were already tried, convicted and serving a jail term. Against this backdrop, this paper makes deep inquiries to the factors that cause delays in the trial of pre-trial detainees. It concludes by making useful recommendations that can facilitate trial thereby reduces the agony and prolonged stay of this category of inmates in the Nigeria correctional facilities.

Key Words: Protracted stay, Pre-trial detainees and Nigerian correctional facilities.

1. INTRODUCTION

It is not in dispute that different scholars have tried to outline some of the factors that causes delays in the trial of pre-trial detainees. Investigation reveals that majority of prison inmates are awaiting trial, not convicted.

The Constitution of the Federal Republic of Nigeria Section 35 (5) (a) and (b) provides that, 'When an arrest of a criminal suspect is effected by the police, the suspect should be brought before a court of law within twenty-four hours, especially where there is a court of competent jurisdiction within forty kilometers from the place of detention, or within 48 hours if it is more than forty kilometers'

In order to circumvent or by - pass the law, the suspect will be charged to the nearby court either competent or not competent in terms of jurisdiction thereby open way for a lot of irregularities that can lead to delay in trial of such suspect.

In view of the above, this article seeks to further emphasis on the role of Nigerian government and the judiciary in giving pre-trial detainees access to justice and a prompt and speedy trial within a reasonable time which is the basis for a system which is just and fair in its application.

It is worthy of note that the prolonged length of stay by awaiting trial prison inmates are caused by a lot of factors, which are discussed in this piece of work.

Conceptualization of key terms

Pre-trial detainee

Pre-trial detainee are also known as the awaiting trial inmates.

Trial

The term trial is the examination before a competent tribunal, according to the laws of the land, of the facts or law put in issue in a cause, for the purpose of determining such issue. A trial is also the judicial examination of the issues between the parties, whether they be issues of law or of fact.¹

Speedy Trial

In criminal law, as secured by constitutional guarantees, a speedy trial means a trial conducted according to fixed rules, regulations, and proceedings of law, free from vexatious, capricious, and oppressive delays manufactured by the ministers of justice.²

Pre-trial detention refers to detaining an accused person in a criminal case before the trial takes place, either because of a failure to post bail or due to denial of release³Pre-trial detention refers to the detaining of an accused person in a criminal case before the trial has taken place or during the trial, either because of a failure to post bail or due to denial of bail⁴. Pre-trial detention is a form of detention in which someone is kept detained in a government facility while he or she awaits legal proceedings such as trial. People in detention are held in jails instead of prisons, or are held in specialized facilities. These prisoners are not guilty of any crime and they are not treated as offenders, although they are deprived of their freedom and usually have their activities restricted while they are in detention for security reasons.⁵ He may be held for two reasons, either his inability to meet up with bail conditions or he is denied bail. The essence of detention is to ensure that the accused does not flee or pose a danger to people.

The above definition has indeed shown what pre-trial detention should be. But this is a far cry from what is obtainable in Nigeria

Factors prolonging the stay of pre trial detainee are as follows:

1. STRINGENT BAIL CONDITIONS IMPOSED BY JUDGES AND MAGISTRATES

There are several instances whereby, the bail conditions granted by the judge or the magistrate as the case may be, might be difficult for the detainee to meet. Accused persons, in most cases, are remanded straight away in prison upon arraignment based on court orders, particularly in capital offences. In most instances, bails are granted with stringent conditions and the accused person

Black Law Dictionary, 2nded and the Free online legal Dictionary-the law dictionary.org/speedy-trial¹
*ibid*²

³ Definitions.uslegal.com/p/pre-trial-detention/

⁴ Definitions.uslegal.com

⁵ www.wisegeek.com/pretrialdetention

might find it really difficult to meet bail conditions given, thus they remain in prison custody until they are able to perfect the bail conditions, thus leading to congestions in prisons.⁶ Moreover, as accused persons remain in prison, they might lose their job and businesses, thus, making them unable to provide for their families, face challenges in preparing their defense and may also be downgraded by the public. It is important to say at this juncture that, the degrading prison condition that the accused goes through, is a contravention of the right to dignity of detainees.⁷ It is apposite to mention that the power given to magistrates to exercise their discretion judicially and judiciously allows them to give stringent and onerous bail conditions even on minor offences and misdemeanour. All these prolong the stay of inmates and congest prisons. Therefore, the conduct of judges and magistrates should be guided.

2. INVOLVEMENT OF JUDICIAL WORKERS ON INDUSTRIAL ACTIONS (STRIKES)

Intermittent and planned industrial action by judicial workers is also a major factor in the delay of trial of awaiting trial inmates. The Judicial Staff Union of Nigeria (JUSUN) is a union of the judicial workers in Nigeria registered under the Trade Union Act as an affiliate of the Nigerian Labours Congress (NLC), which is the registered umbrella body of the Nigerian Government Workers. Judicial workers have, on several occasions, been involved in industrial actions, either by joining the entire Nigerian work force organised by the Nigerian Labour Congress (NLC) or by embarking on their own strike to press home their unmet demands from government. This can happen either at the state or federal level since there are Federal and State Judiciaries in Nigeria. For example, in 2015, judicial workers, under the aegis of The Judicial Staff Union of Nigeria (JUSUN), embarked on industrial action, which lasted seven months (January to July). The industrial action was embarked upon to press for unpaid salaries and allowances, special salary scale, better funding, better working conditions, judicial autonomy and other demands. This paralysed the judicial system as there were no court sittings throughout the period. Imagine the effect on awaiting trial inmates, who had to remain in prisons without trial for such period of time because of industrial action.⁸

3. IMPROMPTU TRANSFER OF INVESTIGATING POLICE OFFICERS

⁶YemiAkinseye-George, *Nigerian Prisons: Justice Sector Reform and Human Rights in Nigeria-Centre for Socio Legal Studies* (CSLS Publishing 2009) 310; See Also Criminal Code Act Chapter C38 LFN, 2004, Section 120 and the case of *Tochukwu v F R N* (2005) All FWLR pt 278 at 1072-1073, where it was held inter alia.... 'To ask that a surety must not be lower in rank than that of a Director in the Federal Civil Service is to give a condition which is unattainable and therefore negates the Court's decision to grant bail'.

⁷ The Constitution of the Federal Republic of Nigeria 1999, Cap 23 LFN, 2004 Section 34; Universal Declaration of Human Rights, United Nations General Assembly Resolutions 217 A, U.N. Doc. GAOR, 217th Session, 183rd meeting, U.N. Doc. A/RES/217/A (1948) Article 5.

⁸ 'Judicial Workers End 7 Months Strike in Edo-7 July 2015' <www.newsnigeria.com.ng/judicial-workers-end-7-month-strike-in-edo> and Anambra Judiciary Workers suspends Four-Month's strike – 22 April 2015, <www.punchng.com/news/anambra-judiciary-workers-suspend-four-month-strike> accessed 16 May 2017.

It is a common thing in Nigeria to find out that an investigating police officer in a criminal case has been transferred from one station to another at the middle of trials.⁹ Poor investigative skills on the part of the police in pre-trial investigations is also a problem, if they will ever investigate in the first place.¹⁰ Moreover, it is now a common place for a policeman to take bribe or other forms of gratification to carry or desist from carrying out his assigned obligations; unless their palms are greased with one form of inducement or another, they will not do what they are employed to do. This has delayed so many trial processes. As a result, the accused person will remain in custody until the officer in charge is available before the trial can carry on.¹¹

4. INCONCLUSIVE POLICE INVESTIGATION

It is common in Nigeria for investigations (by the police) into criminal cases to last so long that by the time the offender eventually appears in court, he or she has spent months or years in custody, which, at times, is equivalent to or above the terms of imprisonment the offence demands if convicted. Unfortunately, victims of such abuse of human rights oftentimes, are kept in detention without being granted bail. In *Dambaba v the State*,¹² it was held that an accused should be granted bail except where it would prejudice police investigation. Meanwhile, the Constitution provides for the right of the person arrested or detained to be charged to a court of law within a stipulated period.¹³ However, the Nigerian Police claim that they cannot investigate a crime and interrogate suspects within such a short period of time.¹⁴ Going by the provision of the Nigerian Constitution, it is stipulated that:

A detained person has to be informed within 24 hours of the crime, and be brought before a competent court within 24 hours provided the court is within 40 kilometres from the place of detention or 48 hours if it is more than 40 kilometres.¹⁵

In addition, the accused has to be tried within two months from the date of arrest or detention, and within three months in the case of a person not entitled to bail.¹⁶ However, in practice, the case is different, particularly when the person is suspected to have committed a capital

⁹See Michael Chukwujindu Ogwezy, Akintunde Abidemi Adebayo and Alaba Ibronke Kekere 'Restorative Justice and non-Custodial Measures: Panacea to Recidivism and Prison Congestion in Nigeria' (2016) 7 *Nnamdi Azikwe University Law Journal* 69, 70.

¹⁰See generally Ojo Tajudeen Ibraheem, 'Behind the Prison Walls: Rights or No Rights?' (2013) 2 *International Journal of Innovative Research & Development* 779, 792.

¹¹Akinseye-George (n 6) 303; Alemika Etinabi O 'Trends and Conditions of Imprisonment in Nigeria' (1993) 37 *International Journal of Offender Therapy and Comparative Criminology* 147, 147; Ololade Olateru Olagbegi 'Delay and Congestion in the Administration of Justice' (2009) 1 *Akunba Law Journal* 355, 357.

¹²(2000) 14 *NWLR* pt 687.

¹³The Constitution of the Federal Republic of Nigeria (n 7), Section 35.

¹⁴See generally Adetami Oluseyi, *A Reformatory Approach to the Criminal Justice System in Nigeria* (Crest Publishers 2013) 130. 165-166.

¹⁵The Constitution of the Federal Republic of Nigeria (n 7) Section 35(5).

¹⁶*ibid* Section 35(4).

offence.¹⁷ Also, detention before trial, in some cases in Nigeria, is rarely less than five years, and in most cases, above ten years¹⁸. Under such circumstances, it is suggested that such pre-trial detainees should be considered innocent and acquitted accordingly.

5. INSUFFICIENT NUMBER OF JUDGES AND MAGISTRATES IN COURTS

Lack of adequate number of judicial officers, most especially judges and magistrates, to handle the overwhelming number of criminal trials in Nigerian courts, also contributes to delays in trials. The number of judges and magistrates, in most cases, are too low to handle the large number of criminal trials in the courts. Government, at the state and federal levels, do not always have the political will to appoint judges and magistrates to meet up with the influx of cases in the various courts. Judicial workers retire on a regular basis, some get their appointments terminated due to ethical misconduct, many become incapacitated or die in active service, while some others voluntarily resign. Unfortunately, the vacancies created by the officers who are no longer in the services of the judiciary are not always filled. Given the fact that recruitment of judges and magistrates is not done on a regular basis, and that people are leaving the services for the reasons given above, the work force continues to dwindle. This is worsened by the increasing number of cases trooping into the court as a result of the increasing rate of crime. This situation places more work load on the few judges and magistrates, thus, bringing about holdups to speedy trials. The performance of judges and magistrates with regard to efficient and prompt delivery of justice is, therefore, negatively affected, and consequently, affects Nigeria's criminal justice system.

6. DELAY IN PROVIDING LEGAL ADVICE

In Nigeria, there are many offences which must be referred to the office of the Director of Public Prosecution, to give legal advice before trial can commence.¹⁹ In most cases, it takes quite a long period (which can be for months and even years) for such legal advice to be issued.²⁰ There are even situations where such advice will never be provided. The court is left with no option than to wait for the advice for trial to commence while the accused remains in prison custody since that is what is required by the laws of Nigeria.

7. NUMEROUS ADJOURNMENTS AND DELAYS BY LEGAL COUNSEL

In many cases, even when a trial process has begun, the process becomes stalled by factors ranging from request for adjournments by legal counsels to parties, to court injunctions.²¹ In

¹⁷Marthinschoentich, *Presumption of Guilt the Global Overuse of Pretrial Detention* (Open Society Justice Initiative 2014) 7.

¹⁸ *ibid.*

¹⁹Michael ChukwujinduOgwezzy, AkintundeAbidemi Adebayo and AlabalbironkeKekere 'Restorative Justice and non-Custodial Measures: Panacea to Recidivism and Prison Congestion in Nigeria' (2016) 7 *NnamdiAzikwe University Law Journal* 69, 70.

²⁰Agbonika John and Alewo Musa, 'Delay in the Administration of Criminal Justice in Nigeria: Issues from a Nigerian view point' (2014) 26 *Journal of Law, Policy and Globalization* 130, 134.

²¹YemiAkinseye-George (n 6) 310; Henry O Omorere, *Lost Legacies: And Broken Promises of our Fathers* (Xlibris Corporation 2011) 115-116.

Nigeria, most counsels get themselves involved in this unprofessional conduct straight away in order to keep the cases pending in court in a bid to keep getting appearance fees (that is, the appearance fee collected from clients everytime they appear in court).²²

8. ARBITRARY ARRESTS AND DETENTION BY POLICE OFFICERS

Unlawful arrests and detention are still issues to contend with in the Nigerian Criminal Justice System increase. The police usually arrest arbitrarily and throw such people into prison directly on trumped up charges, particularly when such people are not able to meet their monetary demands. Such usually occur when the police are 'dry', that is, in urgent need of money.

Ordinarily, the criminal justice system is invented to be chronological, that is, from primary contact of crime, investigation, arrest, arraignment, trial, sentencing and appeal but unfortunately, what we have is arrest before investigation, thereby constituting congestion in prisons.²³ For example, TajudeenIbraheem describes the experience of a prison warder in Enugu as follows:

The greatest problem we have is the Special Anti-Robbery Squad (SARS) Police. They bring in accused persons directly from their night raids, flashing their warrants and demanding that they should be detained in jail here. When the SARS thus by-pass the normal procedures, they fill the prison with prisoners who have neither lawyers nor hearing dates and are thus, lost.²⁴

Furthermore, individuals who are not suspected of committing any crime are incarcerated in the Nigerian Prisons along with those suspected or convicted of crimes.²⁵ A check with any police station reveals that arrests are made on a regular basis. Up till now, Nigeria is yet to put in place a suitable mechanism that will ensure that these people are either granted bail or arraigned before appropriate courts within the time stipulated by the law. Thoughtful attention is, therefore, needed to be dedicated to inspection of unselective arrests and confinement in police custodies across Nigeria.

9. ABUSE OF POWER OF HOLDING CHARGE

Holding charge, as the name implies, is a frame up charge.²⁶ Holding charge has been condemned by many scholars. For example, Akinseye George maintains as follows:

It is inappropriate, unconstitutional and usually used by the police in holding an accused person in custody while they carry out investigation and gather proof to

²²Ogwezzy, Adebayo and Kekere (n 19) 69.

²³ ibid; Criminal procedure, <<http://legal-dictionary.thefreedictionary.com/Criminal+Procedure>> accessed 1 July 2017.

²⁴OjoTajudeenIbraheem, 'Behind the Prison Walls: Rights or No Rights?' (2013) 2 International Journal of Innovative Research & Development 779, 788.

²⁵BikoAgozino, 'Nigerian Women in Prisons: Hostages in Law' in Viviane Saleh-Hanna (ed), *Colonial Systems of Control: Criminal Justice in Nigeria* (University of Ottawa Press 2008) 249.

²⁶Efemini M Ovo, *Modern Nigerian Constitutional Law: Practices, Principles and Precedents* (Malthouse Press 2017) 92; YemiAkinseye-George, *Nigerian Prisons: Justice Sector Reform and Human Rights in Nigeria-Centre for Socio Legal Studies* (CSLS Publishing 2009) 305.

bring the accused person before the proper courts for trial;²⁷ the use of holding charge has constituted a main source of overcrowding in the Nigerian Prisons and a major block up of the Nigerian Criminal Justice System.²⁸

10. UNAVAILABILITY OF LEGAL REPRESENTATION

A vast number of persons awaiting trial in prisons across the country, whose trials were delayed, is as a result of their inability to access the services of legal practitioners.²⁹ Corroborating this assertion, EmekaOwanemphasises that these groups of detainees lack the financial standing to secure the legal services of lawyers, who could thrust for their quick trial.³⁰ Many of the accused are indigent and driven into criminality because of their unfortunate financial backgrounds. Going by this condition, it would be virtually impossible for them to secure the services of a lawyer. Since without a legal representation, the accused might not likely receive fair hearing during trial, hence they are left in detention until they can provide lawyers or alternatively, when government provides legal assistance through the Legal Aid Scheme, which is not always feasible.

The Best Antidote To The Problem Of The Protracted Stay Of Pre-trial Detainees In Nigerian Correctional Facilities

Foremost, the problem ofthe protracted stay of pre-trial detainees in Nigerian correctional servicesis to follow the correct procedure in the order of primary contact of crime; investigation; arrest; arraignment; trial; sentencing; and appeal (that is, investigation before arrest by the police) to be trailed in the process of criminal justice administration in Nigeria.

The use of holding charge, whereby criminal suspects are kept in prison while police investigations continue, should be discouraged. As mentioned earlier,the best antidote to the problem of holding charge in Nigeria is for the correct procedure in the order of primary contact of crime; investigation; arrest; arraignment; trial; sentencing; and appeal (that is, investigation before arrest by the police) to be followed in the process of criminal justice administration in Nigeria. Furthermore, the Nigerian Constitution provides that:

When an arrest of a criminal suspect is effected by the police, the suspect should be brought before a court of law within twenty-four hours, especially where there is a court of competent jurisdiction within forty kilometers from the place of detention, or within 48 hours if it is more than forty kilometers.³¹

²⁷ *ibid*; Ogwezzy, Adebayo and Kekere (n 19) 69.

²⁸ *ibid* AkinseyeGoege (n 6) 305-306.

²⁹See generally AyukAwungheAchu, EmekaJosephatOwan and Omono Cletus Ekok, 'The Impact of Prison Reforms on the Welfare of the Inmates: A Case Study of Afokang Prison Calabar, Cross River State, Nigeria' (2013) 13 Global Journal of Human social science Sociology &Culture 1, 2.

³⁰ *ibid* 1-2.

The Constitution of the Federal Republic of Nigeria (n 7) Section 35 (5) (a) and (b).³¹

It is unfortunate that this provision is, hitherto, without enforcement in Nigeria. Therefore, it is high time Nigeria implemented and enforced this provision without any further delay. Meanwhile, in a situation whereby investigations have not been completed by the police before charging a criminal suspect to court, it is recommended that the suspect should be released on bail pending completion of investigations. If detention becomes inevitable, particularly where the accused is not entitled to bail, such as in capital offences, there should be enforcement of a 72-day detention time limit before trial commences as provided in Section 293 of the Administration of Criminal Justice Act, 2015. Under such circumstances where an accused person has been in detention without being charged or tried, against the provisions of the law stated above, it is submitted that such a detainee should be released unconditionally or considered innocent and acquitted accordingly.

Additionally, investigating police officers in a criminal case should not be transferred by the police authority until investigation is completed and the case disposed of. It is our humble opinion that lack of jurisdiction of a court to try a criminal case should be total, that is, it should also deprive the court to order remand under any guise before the accused is charged to a court of competent jurisdiction. All the proffered solutions above would go a long way in resolving the problem of keeping criminal suspects in custody without trial, which is a major clog in the Nigerian criminal justice administrative machinery.

It is suggested that requesting for legal advice on criminal cases from the DPP's office, while the accused person is in prison, should be out-rightly cancelled. This amounts to duplication of processes. The court should have the competence to decide on accused persons who should be prosecuted and those who should not. The unfortunate aspect of it is that such legal advice is always unnecessarily delayed or sometimes may never come. Keeping a criminal suspect in detention without trial is an injustice and a gross violation of his fundamental human rights. It is a major issue in Nigeria's criminal justice system, which should not be allowed to continue. A daily schedule of criminal trials is also recommended to enhance speedy trial process. Moreover, setting a time limit to conclude a criminal trial and regulation of the number of adjournments that could be sought by lawyers, who are in the habit of delaying trial processes, could also help.

Additionally, the policy in Nigerian courts that cases start *de novo* (start afresh) following transfer of judges and magistrates from one jurisdiction to another, needs to be abolished if Nigeria's criminal justice system must work. It is advised that a judge or magistrate presiding over any criminal case, should not be transferred, and if it must happen, the case should be accorded a speedy trial and disposed of before reporting for duty at the new location. Alternatively, the new judge or magistrate should be adequately briefed by the outgoing officer so that he or she can continue with the case without starting *de novo*. This could stop a situation whereby a case may last for decades in court before it is concluded, as occasioned by transfer of the presiding judges or magistrates. This criminal justice system can only be efficient when it is just and justice is promptly delivered.

11. CONCLUSION AND RECOMMENDATION

The Constitution of the Federal Republic of Nigeria guarantees speedy trial for a criminal suspect, which is supposed to do away with the need for prolonged pre-trial detention of criminal

suspects. The Constitution provides a guideline that a person who has committed a grievous criminal offence shall after three months of detention be released unconditionally or upon such reasonable conditions as may be necessary to secure his attendance at his trial. However in reality this Constitutional provision is not adhered to. It is not uncommon to see criminal suspects remain in prolonged pre-trial detention for upward of 15 years without trial. The Nigerian government is simply not complying with its national and international obligations when it comes to the criminal justice system in Nigeria. Additionally, some provisions of relevant National Laws did not give room for speedy trials thereby prolonging the stay of prisoners, not only that, some of this laws also fall short of acceptable minimum standards of treatment for prisoners and even where they conform they are not being implemented. Therefore the Nigerian criminal justice system requires improvement, the practice of keeping large numbers of inmates awaiting trial for long periods of time cannot continue. There should be a reorientation of legislative mentality which relies on the suggestions earlier made. In addition, urgent reforms in the police sector are needed

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²Criminal Code Act Chapter C38 LFN, 2004.

³ *Tochukwu v F R N* (2005) All FWLR pt 278 at 1072-1073

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⁶Judicial Workers End 7 Months Strike in Edo-7 July 2015' <www.newsnigeria.com.ng/judicial-workers-end-7-month-strike-in-edo> and Anambra Judiciary Workers suspends Four-Month's strike – 22 April 2015, <www.punchng.com/news/anambra-judiciary-workers-suspend-four-month-strike>.

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¹⁷ Ayuk Awunghe Achu, Emeka Josephat Owan and Omono Cletus Ekok, 'The Impact of Prison Reforms on the Welfare of the Inmates: A Case Study of Afokang Prison Calabar, Cross River State, Nigeria' (2013) 13 *Global Journal of Human social science Sociology & Culture*.

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