

CONSTITUTIONAL GUARANTEES TO AN ACCUSED PERSON IN THE ADMINISTRATION OF CRIMINAL JUSTICE IN NIGERIA: A CRITIQUE*

Abstract

The protection of human rights is an indispensable responsibility of every state and has in recent decades occupied a prominent and focal point in global agenda. This is more so as it relates to the rights of an accused person in the criminal justice system of any nation. In Nigeria, as it is obtainable in almost all parts of the world, there are constitutional guarantees established for the protection of the rights of accused persons in criminal proceedings. However in view of recent incidents of human right abuses in the dispensation of criminal Justice in Nigeria, there have been concerns as to whether the constitutional guarantees established under the Nigerian Constitutional are adequate to ensure that the fundamental rights of accused persons are protected in the administration of criminal justice. It is against this background that this paper examines the constitutional guarantees available to accused persons under the Nigerian criminal justice system. It was found that the Nigerian criminal justice system, when it comes to the rights of accused persons, is dysfunctional and needs adequate mechanism for implementation.

Keywords: Constitutional Guarantees, Accused Person, Administration, Criminal Justice, Nigeria

1.0 Introduction

It is generally, accepted that for an effective and efficient criminal justice system, every one of the five components of the criminal justice system to wit, the law, the community, law enforcement agencies, the court system and correctional facilities; is both important, interrelated and indispensable. That is why efficient criminal justice systems across the world create link and reinforcing structures or platform for an efficient functioning of these components.

Unfortunately, the Nigerian criminal justice system lacks a coherent policy and legal framework that states the roles and expectations of the institutions forming the components of the said system. It is therefore not surprising that, in the 21st century, there is no adequate framework for the protection of rights of accused persons in Nigerian criminal justice administration system usually leading to corruption and abuse of office by judicial officers.¹

The Nigerian criminal justice system, when it comes to the rights of accused persons, is not only dysfunctional but also outdated and absolutely not fit for purpose.² In this wise, Osasana has also opined that the fundamental flaws and defects that have customarily blighted the Nigerian Criminal Justice System has continuously manifested itself overtime with increased intensity.³ This problem is predicated on the fact that the basic laws dealing

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¹ R Omote, 'Problem in the Administration of Criminal Justice in Nigeria' <<http://www.vanguardngr.com/2009/01/problems-in-the-administration-of-criminal-justice-in-nigeria>> accessed 17/05/2023

² A Ayorinde 'A Reformatory Approach to the Criminal Justice System in Nigeria' available at <http://www.mondaq.com/Nigeria/x/293894/public/order/A+Reformatory+Approval+To+The+Crime+Justice+System+In+Nigeria> (Last accessed 17/05/2023)

³ T Osasona, 'Nigeria's Criminal Justice System on 2017'. Available at <http://www.t.guardian.ng/opinion/nigerias-criminal-justice-system-in-2017> (last accessed 17/05/2023)

with Criminal Justice Administration, with the exception of the Administration of Criminal Justice Act, 2015 and the Administration of Criminal Justice Laws of various states are old colonial bequeaths, both in orientation and drafting. Thus the said laws fail to take cognizance of the ever-changing and dynamic nature of our development which requires ever-changing and dynamic laws. It is pertinent to observe that even with the introduction of the Administration of Criminal Justice Act and Laws, the problem seems not to have been resolved.

Thus, the issue of ‘awaiting trial inmates’ is getting worse; the sum allocated for the maintenance of police operational assets annually would usually not last for three months; the judiciary gets one of the lowest budgetary allocation; prison breaks and escapes have also increased in number and regions. There were also successive reports and catalogued instances of extra-judicial killings and human right abuses by security agencies in recent times. Mob justice became a regular social feature, highlighting the loss of a confidence in the Nigerian Criminal Justice System.

It is against the foregoing background that this study sets out to critically examine the legal safeguards for the protection of the rights of an accused person in the administration of criminal justice in Nigeria.

2.0 An Overview of Criminal Justice System in Nigeria

All the three arms of government are involved in the proper administration of criminal justice, although the judiciary generally plays a leading role. Generally, there are basically two methods of administration of justice or system of trial in the world– the inquisitorial and the adversarial system.

The inquisitorial system is a system whereby the judge initiates all necessary instigation and summons and examines witnesses and in which a trial is an inquiry by the court. Under this system, the court actually investigates the guilt of the accused person. The judge ‘so to speak, descends into the arena and is liable to have his vision clouded by the dust of conflict.’⁴

One hazard of this system of criminal justice and the rationale for the common law avoidance of it, is that if the Bench is allowed to join in the disputation, it would easily take sides and would not reach a proper decision. It makes it easy for the judge to be bias.

On the other hand, the adversarial system of criminal justice is the method by which facts are elicited in common law trials. The parties are to produce and tender the evidence and the judge is to take notice of what they produce only. In this system, the judge is a mere umpire and does not inquire into the disputes beyond the evidence presented by each party to the dispute. Nigeria practices this later system of criminal justice dispensation.

The courts of law having jurisdiction to try criminal cases and matters can be divided into two broad classes. Firstly, there are courts of law with jurisdiction to try all persons alleged to have committed an offence. These courts can be classified as courts of general criminal

⁴ *Yuli v Yuli* (1945) p. 15, 20, All E.R. 183.

jurisdiction. Secondly, there are courts of law with jurisdiction to try only certain identified or determine classes of persons alleged to have committed an offence and courts with jurisdiction to try only specific types of offences. These courts can be classified as court of special criminal jurisdiction.⁵

Generally, courts of general criminal jurisdiction in Nigeria are the Magistrate Court and High Court, while the Customary Courts, Juvenile Courts, Court Martial, Federal High Court, Tribunal and Coroners Courts are courts of special criminal jurisdiction. The Courts of Appeal and the Supreme Court have no original but appellate jurisdiction over both criminal and civil matters.

It must be observed however, that beyond the activities of the courts in the administration of criminal justice, there are other institutions that participate in the administration of criminal justice like the Nigerian Police and other law enforcement institutions as well as the Nigerian Correctional Service.

3.0. Constitutional Guarantees in the Administration of Criminal Justice in Nigeria

There are basically three stages of the trial process. While the first stage involves the arrest and detention by the police of the suspect, the second stage involves the trial proper in a court of law, the third stage which is the post-trial stage take care of the conviction, sentencing, imprisonment and appeal. The extent to which the principles of human rights impact on these stages of criminal trial will be examined.

3.1 Constitutional Guarantees in the Pre-Trial Stage Arrest, Detention and Interrogation

Arrest has been given different definitions by different authorities; it has been defined by Don Campbell as the restraint by one individual of another in order that he may be made amenable to justice.⁶

Detention on the other hand means the state of being kept in a place, especially a prison, and prevented from leaving. In other words, it implies keeping under restraint or confinement after arrest.⁷

Arrest and detention involve derogation from an individual's right to liberty and security of the person and, in a way, right to the freedom of movement.⁸ Both our Constitution and the African Charter on Human Right and Peoples Right clearly envisage deprivation of liberty but they require these to be effected in accordance with the due process of law.⁹

⁵ D Oluwatoyin, *Criminal Procedure in Nigeria Law and Practice* (London: Blackstone, 1990) p. 26

⁶ D Campbell, *Police: The Exercise of Power*, (England: Macdon Ltd and Evans Ltd; 1978) p. 10

⁷ *The New Collins Compact English Dictionary* (Great Britain: William Collins Sons & Co. Ltd, 1984) p. 137

⁸ AA Adeyemi, 'Criminal Justice Administrations in the Context of the African Charter on Human and Peoples Right' in A Kalu & Y Osibanjo eds, *Perspective on Human Rights* (Lagos: Federal Ministry of Justice, 1992) p. 122.

⁹ CFRN, Section 35; Art. 6 of the African Charter *supra*

After arrest and while in detention, investigation into the alleged offence is commenced. This is normally done by first obtaining the statement of the suspect, which if confessional, must be voluntary; otherwise it is inadmissible in evidence. This is known as interrogation. However, it is not unusual for the police to torture suspects and subject them to beating or other pain and sometimes denying them food and water in order to make them confess. This is clearly unjustifiable and unconstitutional in view of the fact that our Constitution confers on every individual the right to have his human dignity respected. It prohibits torture and all forms of cruel, in-human or degrading punishment and treatment.¹⁰

Rights of a Suspect at the Pre-Trial Stage

It is not every right that is lost to the incidence of arrest and detention. As a matter of fact while liberty and freedom of movement may be caged, other rights equally fundamental are appurtenant to arrest and detention. Some of these rights are right to information about reasons for arrest and detention, right to silence, right to speedy arraignment, right to pre-trial bail, right to seek redress in the event of human rights abuse or threatened abuse and right to compensation for unlawful arrest and/or detention. We shall consider these rights one by one.

a. Right of Information about Reasons for Arrest

The law requires that any person who is arrested and detained upon the suspicion of having committed a crime must be informed in writing and within a specific time of the reasons for his arrest.

Any person who is arrested or detained shall be informed in writing within twenty four hours (and in a language he understand) of the facts and grounds for his arrest or detention.¹¹

This is one of those constitutional provisions which do not seem to consider our peculiar circumstances. While commending the spirit behind the enactment, it is pertinent to point out that the requirement in writing is quite unrealistic.

However, it must be pointed out that this right is inexistent when the person arrested is in the actual course of the commission of the crime or escapes from lawful custody.¹²

b. Right to Silence

Any person who is arrested or detained shall have the right to remain silent or avoid answering any question until after consultation with a legal practitioner or any other person of his own choice.¹³

This right ends after consultation with the legal practitioner or any other person of his own choice. It must be observed however that irrespective of the existence of the foregoing right, it is better to deny the accusation and give such explanation that may exonerate the

¹⁰ S. 34 of the 1999 Constitution

¹¹ S. 35(3) 1999 Constitution

¹² O Doherty, *Criminal procedure in Nigeria Law and Practices* (UK: Blackstone Press Limited, 1990) p. 98

¹³ S. 35 (2) 1999 Constitution

suspect or consistent with innocence, than to remain silent. For instance, it is better for a person who has an alibi as a defence to a criminal act to raise same at the earliest possible time as failure to do so will defeat the defence.

It is however sad that most suspects are not aware of the existence of this right and the police have never been willing teachers in this regard. It is submitted that the Constitution be amended in order to make the police duty bound to inform any suspect of this right.

c. Right to Speedy Arraignment

It is the right of an arrested or detained person in connection with allegation of commission of an offence to be brought before a court of law within a reasonable time.¹⁴ However, the existing practice has shown that more than sixty percent of suspects stay from few days to over one month before being arraigned before a court of law for the first time contrary to the concept of reasonable time as defined by the Constitution.

Laudable as the above constitutional guarantee may seem, it is submitted that this constitutional provision is unrealistic in view of the fact that the machineries for investigation available to the law enforcement agents are grossly insufficient and outdated. The officers of the Nigerian Police usually lack the competence to handle the cases that present themselves. There is also the issue of bureaucratic red-tape. A maximum period of seven days so as to enable investigation to be completed is recommended.

d. Right to Pre-Trial/Police Bail

The arrestee/detainee is entitled to pre-trial or police bail as of right except for a person alleged to have committed a capital offence.¹⁵

Bail is defined as a delivery or bailment of a person to his sureties upon their giving, together with himself sufficient security for his appearance, he being supposed to continue in their friendly custody instead of going to prison.¹⁶ The essence is to ensure that the accused shall appear in court to take his trial.

The combined effect of the provisions of section 35 of the Constitutions, it is submitted, is that in non-capital cases, bail ought to be granted as a matter of course, unless there are good reasons to the contrary.¹⁷ Bail is also supposed to be free. However, experience and practice have shown that in more than 90 percent of the cases, the Police and other law enforcement agencies usually demand that suspected criminals pay for bail. This is so even when the said suspected criminals are represented by Legal Practitioners.

¹⁴ S. 35 (5) of the 1999 Constitution

¹⁵ Section 35 (4) 1999 Constitution

¹⁶ See Archibold Criminal Pleading: Evidence and Practice, 9th Ed. cited in T.A. Nwamara 'The Encyclopedia of the Laws of the Federal Republic of Nigeria', (1stedn, LEP, Vol. 10, 1992) p. 142

¹⁷ The 'good reason' must be adduced by the prosecutor, because the accused is *prima facie* entitled to bail. See *Ugwumba v C O P* (1974) E.C.S.L.R. 362. Where it was held that 'the grant of bail is mandatory unless the court sees good reasons to the contrary' p. 367.

e. Right to Seek Redress in the Event of Human Right Abuse or Threatened Abuse

The Constitution makes provision for judicial review to prevent human rights abuses and to seek redress for human right abuses. Section 6(6) (a) and (b) grant judicial powers extending to all inherent powers and sanctions of the court, and to all matters between persons or between the government or authority and person in Nigeria ‘...and to all actions and proceedings relating thereto, for the determination of any question as to the civil rights and obligations of any person’ (including the arrestees/detainees).

By virtue of Section 35 of the Constitution, any person who is unlawfully arrested or detained shall be entitled to compensation and public apology from the appropriate authority or person.¹⁸

3.2. Constitutional Guarantees at the Trial Stage

The Osborn’s Concise Law Dictionary defined trial as ‘the examination and decision of a matter of law or fact by a court of law’.¹⁹ Trial is a judicial examination and determination of issues between the parties in accordance with the law of the land. These issues may be civil or criminal. Where the issues between the parties are criminal, then a criminal trial is a being undertaking by the court. Criminal trial commences with arraignment through which an accused person is given an opportunity to plead to either committing or not committing the offence with which he is charged.

The fact of arrest, detention and arraignment in a court of competent jurisdiction over allegation of commission of crime does not extinguish the fundamental rights of a citizen. Rather it opens a new avenue of right or entitlement in the course of trial so that justice will not only be done, but must manifestly be seen to be done. Some of rights will be examined in this sub-chapter.

a. Arraignment

Arraignment is the initial step in a criminal prosecution whereby the defendant is brought before a court to hear the charges and to enter a plea.²⁰

On the day fixed for the hearing of the case, the registrar of the court calls out the names of the parties to the criminal cause. The law requires that the registrar of the court shall explain to the accused person such allegations, and then the accused person shall be called upon to plead thereto.

If it is a charge of more than one count, then each count must be read and explained to the Accused person. He will then be called upon to make his plea, at the end of reading each count, his plea on each count will be simultaneously recorded by the court. Also, where there is more than one Accused person, each accused person must be called upon to plead separately. The record of the court must show that this procedure is followed.²¹

¹⁸ *Akpan v FRN* (2012) 1 NWLR (pt. 1281) p. 403

¹⁹ Osborn’s Concise Law Dictionary, *supra*

²⁰ A Garner (ed), *Blacks Law Dictionary* (9th edn, St. Pauls-Minnesota: Thomson West, 2006)

²¹ *Dike v State* (1996) 5 NWLR (pt. 450) 553, *Onuoha Kalu v State* (1998) 13 NWLR (Pt. 583) 531

If the accused person does not understand the language of the court, the court has a duty to put on record the languages spoken by the Accused and the fact that the charge was read over and explained to him in that language. Non-compliance with Section 36 (6)(a) of the Constitution of the Federal Republic of Nigeria²² renders the trial null and void *ab initio*.²³

Worthy of note is that it is the duty of the Accused or that of his counsel to bring up the notice of the court at the earliest opportunity that he does not understand the language used at the trial, and the court has a duty to provide him with an interpreter, as failure to do so will occasion a miscarriage of justice, particularly where the illiterate accused person is not represented by counsel.²⁴

b. Presumption of Innocence

No one can be called guilty before a judge has sentenced him, nor can society deprive him of public protection before he has been decided that he in fact violated the conditions under which such protection was accorded him.

Thus, it is a requirement of the law that the accused must be presumed to be innocent till his guilt is proved.²⁵ The accuser has to prove beyond reasonable doubt²⁶ that the accused is guilty. If he cannot do this, the accused is acquitted. However, a proviso to Section 33 (5) of the Constitution provides that nothing in section 33 shall invalidate any law by reason only that the law imposes upon any such person the burden of proving particular facts.

Right of an Accused at the Trial Stage

a. Bail Pending Trial

As we have mentioned earlier, the essence of bail is to ensure that the accused shall appear in court to take his trial. It has been held that the inherent jurisdiction of a superior court to grant bail to an accused person before his committal continues until it has been expressly taken away by statute.²⁷ The Court takes into consideration the following factors²⁸ before bail granted to the accused person.

- a. Nature of the offence and the punishment prescribed for the offence
- b. The criminal record of the accused
- c. Possibility of the accused committing further offences while on bail;
- d. Possibility of the accused interfering with the investigation.

In addition to all these, special circumstances must exist in capital offences. If the accused is presumed not to be guilty till conviction by a court of law, it appears that the law on

²² The two Sections provides that every person who is charged with a criminal offence shall be entitled to be informed promptly in the language that he understands and in detail of the nature of the offence’.

²³ *Salisu Yahaya v The State* (2003) 3 S.C.M. (pt. 2) 146

²⁴ *Anthony Nwachukwu v the State* (2007) 12 SCM (pt. 2) 462

²⁵ S. 36 (5) of the 1999 Constitution and Art 7 of the African Charter

²⁶ S. 138 (1) Evidence Act, Cap E. 14 2004 Laws of the Federation of Nigeria (LFN)

²⁷ See *R v Augustino* (1950) 1 W.W.R. 1075

²⁸ *Ibid.* Also see O Doherty, above, page 129

capital offences is designed solely for punishment of suspects/accused. It is recommended that in all cases, the Judge should be able to grant bail if it is equitable to so do.

b. Fair Hearing

The Constitution guarantees a right to fair hearing within a reasonable time. Thus whenever an accused person is charged with a criminal offence, he shall unless the charge is withdrawn be entitled to a fair hearing in public within a reasonable time by a court or tribunal.²⁹

The right to fair hearing provided in the Constitution is a mere codification of the age-long, common law principle of natural justice, and principally it has two arms – one, no man shall be a judge in his own cause and secondly non shall be condemned unheard.³⁰ In other words, this common law rule of natural justice recognize two principles: that an adjudicator be disinterested and unbiased otherwise known as *Nemo Judex in cause sua* and that the parties be given adequate notice and opportunities to be heard –*audi alteram partem*.³¹

The later rule also implies that every person who is tried for a criminal offence must be given full opportunity to present his case and to call witnesses in his defence.³² A person liable to be directly affected by the proposed administrative acts, decision or proceeding be given adequate notice of what is proposed so as to give him an opportunity to make representations, and effectively prepare his own case and to answer the case he has to meet.³³

The first rule simply means that no man shall be a judge in his own case. This rule is regarded as so fundamental and indispensable to the administration of justice.³⁴ Thus, no matter how well conducted, a trial that breaches the rule of fair hearing is a nullity and will be reviewable by means of certiorari, prohibition, an injunction or declaration.³⁵

A fair hearing/trial may amount to a mockery if such a trial exists in perpetuity, for it is often sad that ‘justice delayed is justice denied’³⁶

There are some other complementary but equally fundamental rights that embellished the fair hearing provision of the Constitution. Thus Section 36 (6) of the 1999 Constitution provides as follows:

Every person who is charge with a criminal offence shall be entitled:

²⁹ S. 35 (4) 1999 Constitution. S. 36 (1) for a similar right as regards civil cases.

³⁰ See *Legal Practitioner Disciplinary Committee v Chief Gani Fawehinmi* (1985) 7 S.C. 178

³¹ J M Evans, *De Smith's Judicial Review of Administrative Action*, (4th Edn, London: Stevens 1980) p. 56; *Olatunbosun v NASER Council* (1988) 3 NWLR (pt. 80) 85.

³² *Tsaku v State*, (298) 1 NWLR (pt. 19) 550 at 601

³³ *Garba v University of Maiduguri* (1986) 1 NWLR (pt. 19) 550 at 601; *Adadoyin v Gov. Ondo State* (1983) 4 NCLR 7586.

Also

³⁴ *Legal Practitioners Disciplinary Committee v Fawehinmi*, *supra*

³⁵ See *Adadoyin v Gov. Ondo State* (1983) 4 NCLR, 786

³⁶ CFRN, S.36 (4); Art 7(D) African Charter. See also. Bello JSC in *Nnajofofor v Ukonu & Ors* (1985) ANLR p. 334 at 335.

- a. To be informed promptly in the language that he understands and in detail of the nature of the offence.
- b. To be given adequate time and facility for the preparation of his defence;
- c. To defend himself in person or by legal practitioners of his own choice;
- d. To examine in person or by legal practitioners the witness called by the prosecution before any court and to obtain the attendance and carry out the examination of witnesses to testify on his behalf to the witnesses called by the prosecution;
- e. To have without payment the assistance of an interpreter if he cannot understand the language used at the trial of the offence.

As most of these sub-issues have already been discussed under fair hearing, we shall examine only Section 36 (6) (c), Section 36 (8) and (12) of the Constitution.

iv. Right to Counsel – S. 36 (6) (c)

This laudable provision of our Constitution is an aspect of access to justice which is in itself a necessary component of justice. This imposes a corresponding duty on the Court to ensure, and see to that an accused is given a fair chance to defend himself and with the aid of his counsel when he is represented by one.³⁷

Our Courts have been alive to extending the frontiers of this right to include not only the traditional representation, but also in granting an adjournments based on absence of counsel.³⁸ Thus the case of *Awolowo v Usman Sarki (Minister of Internal Affairs) & Anor*³⁹ in which a restrictive approach was adopted in interpreting this constitutional provision does not conform with the current trend. A liberal approach to the interpretation of the fundamental right provision of the Constitution has been advocated.⁴⁰

v. Right not to be tried under Retrospective Laws

By the provisions of the Constitution and the African Charter on Human and People's right, no person shall be held guilty of a criminal offence on account of any act or omission that did not at the time it took place, constitute such an offence and no penalty shall be imposed for any criminal offence heavier than the penalty in force at the time the offence was committed.⁴¹

³⁷ Per C. J. Mbaneto in *Gopka v I G P* (1961) All N.L.R. 423

³⁸ *Galos Hired v The King* (1944) A.C. 149. *Udofia v The State* (1988) 7 SCJ 118

³⁹ *Supra*

⁴⁰ See *Osawe v Registrar of Trade Unions* (1983) 4 NCLR 556.

⁴¹ S. 36 (8) of the Constitution, Art 7 (2) African Charter

This provision prohibits the retrospective imposition of criminal law of penalty.⁴² This provision has also been used to extend to conviction for capital offences of young persons who were below 17 years at the time of conviction. Such had been held to be unconstitutional.⁴³ Retroactive legislation offends the rule of law; it creates a sense of injustice and unfairness and engenders disrespect for the law. It is submitted that it should have no place in our administration of criminal justice.

vi. **Right not to be convicted under an Undefined, Unwritten Offence**

By the provisions of the Constitution and the African Charter on Human and People's right, no person shall be convicted of a criminal offence unless that offence is defined and the penalty therefore prescribed in a written law.⁴⁴

By this provision, our Constitution once again enshrined as law, the other arm of the doctrine of legality briefly discussed above. The cases of *Aoko v Fagbemi (supra)* and *A.G. (Federation) v Clement Isong (supra)* were also decided with regard to this provision. This provision prohibits the formulation of offence in wide and vague terms to the extent that certainty as to the content and extent of the crime are lost. Thus in Nigeria, almost every offence is defined in the Criminal Code and Penal Code as well as other enactments criminalizing illegal conducts and the ingredients of the offences properly set out.

3.3. **Constitutional Guarantees at Post Trial Stage**

The post-trial stage commences with the delivering of judgment which may lead to acquittal if the accused person is found innocent of the allegation or conviction if otherwise. If convicted, the accused will be sentenced to either fine and/or terms of imprisonment or death depending on the gravity of the offence.

Upon conviction, all his human rights are not extinguished rather; the rights available to him depend on the judgment and punishment to which he is subjected. Mowoe⁴⁵ highlighted that the main rationale behind the accused person's right, especially at this stage, appears to be as a result of the rehabilitation function of punishment and in recognition of the criminological background to commission which acknowledge the inevitability of certain persons born under certain conditions and economic influence to become criminals.

Conviction and Sentencing

After the address by parties or their counsel, the court may deliver its judgment immediately or reserve it to a future date. It is customary for judgment to be reserved to enable the court to deliver a reasoned judgment. By the 1999 Constitution, judgment must be delivered within 3 months of the final address.⁴⁶ It must be observed however that failure to deliver the judgment within 3 months shall not render the judgment delivered a

⁴²*Ikpesa v State* (1981) 9 S.C. 7; *Aoko v Fagbemi* (1963) 1 All N.L.R. 400; *Attorney General of the Federation v Dr. Clement Isong* (1986) 1 QLRN 86

⁴³*Modupe v State* (1988) 4 N.W.L.R. pt 87 p. 130

⁴⁴S. 36 (12) of the 1999 Constitution. Also see Art. 7 (2) of the African Charter

⁴⁵KM Mowoe, 'Human Rights and the Post-Trial Process' (1993) *Jus*, Vol. 4, No. 2, p. 85 at 86

⁴⁶S. 258 (1) of the 1999 Constitution (as amended in 2011); *Shehu v The State* (1982) 1 NCRL 56, *Ifezue v Mbadugha* (1984) 1 SCNLR 427

nullity unless it is proved that the part complaining suffered a miscarriage of justice by reason thereof. The sentences provided for the law are death, imprisonment, fine, canning, hadi lashing and forfeiture.⁴⁷ We shall now discuss some of these in *ad seriatim* and *in extensor*.

Death sentence is the mandatory punishment for any person convicted of any capital offence such as murder,⁴⁸ homicide punishable with death,⁴⁹ treason,⁵⁰ instigation of invasion of Nigeria,⁵¹ treachery,⁵² armed robbery,⁵³ giving or fabricating false evidence on an account of which an innocent person suffers death, abatement of the suicide of a child or an insane person,⁵⁴ and trial by ordeal where death of a person is the result.⁵⁵ The judge has no discretion in the matter, for death is the only sentence open to the court where the accused is found guilty in a capital offence.

If the offence of which the accused was charged is not one punishable with death or where it is one punishable with death but the ingredients of the offence could not be established, but the evidence led proves the ingredients of a lesser offence, the court has to make a decision on the sanction or punishment to be meted to the convict and the specifications of the sanction is affected by different considerations. Such considerations include the character of the convict, evidence of previous convictions, age, sex and so on.

The Rights of a Convict

Before the execution of judgment or punishment of a convicted person, there are certain rights available to him. These rights may be exercised where he is dissatisfied with the judgment. These rights are:

a. Right of Appeal

An appeal is any proceeding taken by an aggrieved party to rectify an alleged erroneous discussion of a court by bringing the decision before a higher court.⁵⁶ A right of appeal must be statutory. Where there is no law providing for the right of appeal, an aggrieved party cannot appeal against the decision of the trial court.⁵⁷ The exercise of this right enables a direct review of the judgment. The protection of the individual here is to quash unjust conviction and/or reduce excessive punishment by a lower court.

b. Bail Pending Appeal

Another issue appurtenant to appeal is the issue of bail. The convict may be entitled to bail. Bail at this state is no longer as of right. The reason for this is that the presumption

⁴⁷ S. 17 CC

⁴⁸ S. 319 CC

⁴⁹ S. 221 Penal Code Cap p3, LFN, 2004

⁵⁰ S. 37 CC and S. 411 P.C.

⁵¹ S. 38 PC

⁵² S. 49 (a) (1) CC

⁵³ S. 1(2) (a) (b) – Robbery and Fire Arms (Special Provisions) Act Cap. 398 L.F.N. 2004

⁵⁴ S. 227 PC

⁵⁵ S. 214 (3) PC

⁵⁶ O Doherty, p. 335

⁵⁷ *Adili v State* (1982) 2 NWLR (pt. 103) 305. Also *Nunku v Police* 15 WACA 23

of innocence has given way to a finding of guilt and the judgment of the lower court is deemed subsisting and valid and to have been rightly done till the contrary is proved based on the principle that *omnia praesumuntur rite et solem niteresse acta*. At this stage, bail can only be granted if the convict has appealed against his conviction and if in the opinion of the court, there are special circumstances entitling the convict to bail.

c. Prerogative Order

An application for a prerogative order is any proceedings taken in a superior court by a party during or after the proceedings for the purpose of preventing inferior court or officials from exceeding the limits of their legitimate sphere of action or jurisdiction or of compelling them to exercise their function in accordance with the law in order to assure full measure of justice to the citizen.⁵⁸ Prerogative order includes habeas corpus, certiorari, prohibition, Mandamus and *quo Warranto*.

i. Habeas Corpus

This is generally a direction by a judge to anybody who has a person in custody to bring that person before the court so that the court can investigate the legality of the detention. It is particularly useful because it can be applied for by or on behalf of the person detained, unlike appeal which must be made by the convict himself. Release by way of *habeas corpus* is however not acquittal as the applicant can still be tried for the offence for which he was arrested or committed.

ii. An Order of Prohibition

This is also issued out by the High Court primarily to prevent an inferior court from exceeding its jurisdiction, or acting contrary to the rules of natural justice. An example is to prevent a Magistrate from hearing a case in which he is personally interested.⁵⁹

iii. Certiorari

This is issued to remove a suit from an inferior court which administers the same law into the High Court for the purpose of examining the legality of such proceedings or for giving further or more satisfactory effect to them than could be done by the court below.⁶⁰ Its aims are *inter alia*:⁶¹

1. Securing impartial trial, for example, where bias is alleged in the court;
2. Reviewing an excess of jurisdiction;
3. Challenging an *ultra-vires* act;
4. Quashing a judicial decision which violate the *audi alteram partem* rule and;
5. Correcting errors of law on the face of the record

⁵⁸ See Osborn's Concise Law Dictionary, *supra* p. 260-261

⁵⁹ N M Awka, *Law Student's Companion on Nigeria Law Questions and Model Answers* (2nd edn, Owerri: New African Publishing Co. 1978) p. 88

⁶⁰ *Ibid*. See also *Lawal & Ors v Senior Magistrate Quadri & Anor* (2003) 10 FR 160 @ 170

⁶¹ *Ibid*

In none of these cases is the court entertaining a straight appeal and it is not empowered to substitute its own discretion for that of the court or other agency whose act is being reviewed. It may be used before a trial to prevent an excess or abuse of jurisdiction and formally to remove the case for trial to a high court. It is invoked also after trial to quash an order which has been made without jurisdiction or in defiance of the rules of natural justice.⁶²

D. Prerogative of Mercy

The fate of a convict – whether he is sentenced to death or to terms of imprisonment not thereby finally sealed as the President/Head of State in a case where the offence against a federal law or the State Governor where the offence is against state law may grant the accused a pardon either unconditionally or upon lawful conditions, or respite either for an indefinite or specific period. The President or the Governor as the case may be, may also substitute a less severe form of punishment for any punishment imposed on that person for such offence or may remit the whole or any penalty or forfeiture otherwise due to the State on account of such an offence.⁶³

Rights of an Accused Person in Prison

The prisoner is a citizen who by the due process of law being denied his fundamental rights to personal liberty, freedom of expression, right to peaceful assembly and association and his freedom of movement.⁶⁴ Thus, by virtue of his status, the prisoner belongs to a special class of citizen.

Except for the rights enumerated above, the prisoner's entitlements to the other rights remain unaffected by the fact of imprisonment. In fact the right to life, dignity of human person, fair hearing and access to the courts for the protection of other civil rights are not impaired by loss of liberty. Right to private life and right to freedom of thought, conscience and religion are also not affected. Thus, any sub-human conditions to which a prisoner is subjected to constitute a breach of these rights especially the more fundamental rights to life and dignity of the human person which is breached not only when there is actual breach but also a threatened breach.⁶⁵

4.0. Conclusion and Recommendations

This study has conducted an enquiry into the nature of the Nigerian criminal justice system as well as an exposition into the several constitutional guarantees available to accused persons in the administration of criminal justice. It discussed application of constitutional guarantees and human right at the pre-trial stage, the trial stage and at the post-trial stage.

It has been established that there are guarantees established under the Constitution of the Federal Republic of Nigeria as well as decided cases for making sure that the fundamental

⁶² *The State v Falade & Ors* (1971) 2 All N.L.R. 219

⁶³ S.S. 175 (1) 212(1) of the 1999 Constitution

⁶⁴ TO Ifaruroti, 'The Challenges of Nigeria Prisons in the Light of Human Rights Campaigns' (1992) *JUS Vol. 3 Nos 8 & 9*, p. 109.

⁶⁵ See S. 45 (1) of the Constitution.

rights of a person who has been accused of committing a crime is not derogated. It has also been established that it is the responsibility of the state, being the prosecuting authority, to ensure the protection of the human rights of accused persons.

The above is so because human rights are the fundamental features of any true democratic setting because the essence of democracy itself is based on the idea of human rights. It is however, sad that irrespective of the legal safeguards highlighted above, there are still incidents of human rights abuses in the administration of criminal justice in Nigeria.

This is primarily so because the institutional regime for the enforcement of human right in Nigeria is not adequately positioned to ensure an effective and efficient framework for the enforcement of human right. Some of the reason for this is the existence of a poorly funded and remunerated Police, dependent and inappropriately funded judiciary, illiteracy, etc.

It is against the foregoing that this work recommends an improved periodic organization of courses and workshops for the officers of the Judiciary, the Nigerian Police and the Nigerian Correctional Service. The work also recommends the establishment of a system whereby accused persons are educated on their rights. In this wise, the courts and the correctional facilities should be mandated to educate accused persons of the Constitutional guarantees available to them so as to afford them the platform to ventilate their rights. It is further recommended that there is a need to set up a prisoner complaints commission with the responsibility of monitoring abuses in prisons and general prisons.