

PRE-TRIAL DETENTION: AN ABUSE OF HUMAN RIGHTS AND A MAJOR CONTRIBUTOR TO PRISON CONGESTION IN NIGERIA - A CRITICAL ANALYSIS

Dr. Obiora Anne Amuche*

Abstract:

Pre-trial detention is the temporary custodial restraint of persons apprehended for committing crime, pending investigation and trial. Pre-trial detainees are remanded in police cells, prison or any other place of confinement pending the conclusion of police investigations and sometimes pending the outcome of trial by court of law on such matter. This pre-trial detention in the prison can be indefinite and sometimes for up wards of ten years. It is therefore the objective of this work to show how pre-trial detention on the Nigerian prisons has contributed in no small measure to the congestion in the Nigerian prison. The condition of Nigerian prisons will also be discussed. Research methods for this work will include the following; analytical, comparative, primary and secondary.

Introduction:

Pre-trial detention is supposed to be the temporal detention of somebody indicted for having committed an offence. But the story is different in Nigerian prisons. People have stayed upwards of ten years without trial. This is in flagrant disregard of the basic and fundamental right of the person. It violets the statutory provisions and safe guards of the fundamental right of the person concerned. The infringement of the human right of a person has resulted in the dehumanizing condition existing in the Nigerian prisons across the country. Prison congestion in Nigeria has been the concern of the government since 1990. It was reported that two third of the population in our prisons is made up persons either on remand or awaiting trial. This confirms that greater percentage of prisons population in the country is made up of detainees who might after all had been rightly or wrongly accused of one crime or the other. The issue of pre-trial detention deserves urgent attention so that our prisons can be decongested and for the prison to achieve its objective of reformation and not a punishment ground.

* Senior lecturer. Head of department, public and private law. Faculty of law, Chukwuemeka Odumegwu University Igbariam. Anambra state, Nigeria. Email-ucheoraha@yahoo.com

History of Prison in Nigeria

Historically, prisons or places of detention existed in many Nigerian societies before the advent of the British colonial rule in the 19th century. In some part of the Northern Nigeria, prison existed as one of the traditional legal instrument for the maintenance of peace, law and order. The southern parts also have semblances of prison, for instance, as far back as the 13th century, Benin Kingdom was said to maintain traditional prisons system[†] as a measure for the enforcement of law and peace. Although prison and imprisonment was said not to have been widely used in the pre-colonial time, however, it was not totally a strange practice to our traditional legal system. The organized prisons system as we have it today was said to have developed alongside a new socio-political system introduced by the colonizers[‡]

Initially, the purpose for which prisons were established in the colonial era was to keep in custody those that might pose as political and economic threats to the British administration, especially by obstructing free flow of trading activities by British merchants in colonial Nigeria. The prisons introduced by the colonizers were designed to guarantee a peaceful atmosphere for colonial economic and political interest with maximum success. However, the prison system as exists today in Nigeria has gradually developed to a more conventional system and can therefore be regarded as one of the systems in Nigeria for the enforcement of law, maintenance of peace and order in the society[§]

[†] Hon. Justice Obaseki, "Causes of Congestion in Prisons and Proposal for Solution" 289-3, Law Development and Administration in Nigeria, Federal Ministry of Justice, Lagos 1990.

[‡] Ibid

[§] dSPACE.untjios.edu.ng. Assessed on the 17th March 2013 at 10:am

Functions of Nigeria Prisons

Functions of the Nigerian prison are as follows

- a. To keep safe custody of persons who are legally interned
- b. To identify the reasons for anti-social behaviors of offenders, treat and reform convicts to become disciplined and law abiding citizen of free society⁵
- c. To train convicts towards their-eventual rehabilitation on discharge and
- d. To generate funds for government through prison forms and industries.

Though this is the objective of prison in Nigeria but what is the present reality? Our prison here in Nigeria is punishment ground and where people get worse than they were before they were confined in prison. Consequently, if this is the situation in Nigeria, the aim is defeated and as such an alternative should be sought for to fulfill the aims and objectives of the prison.

Prison department in order to fulfill this aims, has the following functions:

- i. Guarding prisoners to ensure their security, and prevent their escape from lawful custody;
- ii. Categorization and classification of prisoners to facilitate their treatment;
- iii. Giving psychological and sociological treatment to effect prisoners' reformation,
- iv. Checking the correctness of sentences to avoid unlawful imprisonment;
- v. Conducting visits for inmates and their lawyers and families to ensure legal representation of inmates at courts,
- vi. Providing health care;
- vii. Liaising with the police and courts to ensure speedy disposal of cases
- viii. Construction and maintenance of prison building, plants, machinery⁶

The objectives are laudable if only pursued with vigor. However, ethically analyzing the functions it is doubtful whether a single one of these has been successfully administered or carried out either in the past or in the present situation where virtually everything has gotten out of (governments) hands due to economic depression.

One of the functions of the prisons is the duty to liaise with police and courts to speed the disposal of cases and regular inspection of prison facilities. It is evident from daily occurrence that greater number of inmates are suspects that have been under lock and key for months or years without being heard or released on bail. This category of prisoners account for majority of prison population causing congestion in prisons.

This suggests that the goal of prison to liaise with police, courts, lawyers, and suspects families to speed up trial has not been achieved due to numerous political, economic and organizational factors and inadequacies associated with the Nigerian Criminal Justice Administration system⁷

⁵ *Ibid*

⁶ *Ibid*

⁷ E.L Alemika, Pre-trial Detention and Prison Congestion in Nigeria. Dspace.unijos.edu.ng Assessed on the 17th of March at 10:00am

Causes of Pre-trial Detention in Nigeria

Entry into the criminal justice system in Nigeria is easy. Once inside/ suspects easily become entrapped in prolonged periods of pre-trial detention⁸ Nigeria pre-trial detention crisis is caused by a combination of factors. The four principal reasons for this state of affairs are as follows:

- Law enforcement practices are out of step with existing legal standards. Suspects should only be arrested if a police investigation links them to a crime. But in Nigeria arrests trigger investigation. Detainees are kept in custody while the police ckim to investigate and seek the certification of the Director of Public Prosecutions as to whether or not to prosecute. Sometimes, securing this certification may take more than five years pending this certification suspects⁹ remain detained. Also Nigeria police lack facilities to conduct effective investigations.
- Secondly, after arrest, the police, knowing that they have yet to undertake an investigation after arraigning suspects before courts that lack jurisdiction to try them but nevertheless commit them to custody pending completion of the police investigation¹⁰. There is no requirement for these courts to set time limit for completion of investigation or for monitoring of the duration of pre-trial custody. The result is that suspects suffer judicially sanctioned indefinite detention.

Another factor is lack of coordination and information. There is near total failure of coordination and information management between the various state and federal agencies involved in the criminal justice process. The police, a federal agency, have primary responsibility for investigating crimes and collecting, cataloguing, and storing evidence. Over 90 percent of recorded crimes are state crimes, prosecuted by state level prosecutors. Trial courts are mostly state courts. Cases are often stalled in terminally for instance, because the investigating Police Officer (IPO), a federal employee, is transferred from one state to another without notification to the state prosecutors with whom the IPO is working on a case or to the judges of state courts before whom the police officer will be required to appear as witness. Although empowered to control over the federal officials on whom they depend to do their work effectively. Interagency communication failure compounded the problem of pre-trial custody¹¹. Often, case files are missing between the police and the state Director of Public Prosecution (DPP), many detainees do not have records of their arrest and are uncertain of the criminal charges pending against them. Without such records, they are held interminably. A presidential committee that audited Nigeria's prison system, in 2005 found that 3.7 percent pre-trial detainees were in custody because their case files were missing; 78 percent because the IPO had been transferred; and another 17 percent because of delays in investigation¹²

Again most suspects do not receive access to legal advice or representation early in their contact with the police, who, in turn, do their best to deny them access to any form of contact with family or legal representatives until after they have incriminated themselves. The 2005

⁸ A. Nwapa, Building and Sustaining Change Pre-trial Detention Reform in Nigeria. A Publication of the Open Society Justice Initiative Spring 2008, Abuja .P.58

⁹ Ibid

¹⁰ Ibid

¹¹ Ibid

¹² Report of the Presidential working Group (February 2005) 6-7, 73

presidential committee found that nearly three-quarters of suspects in pre-trial custody do not have legal representation¹³.

The state-funded Legal Aid Council, with a presence in all of Nigeria's states, has very limited coverage of law enforcement precincts. The average accused person cannot afford private legal representation.

These are the causes of pre-trial detention in Nigeria. Pre-trial detention and prison congestion will now be discussed.

Pre-trial detention and Prison Congestion in Nigeria:

The purpose of pre-trial detention is to facilitate the presence of the availability of suspects subsequently for trial with many difficulties. Pre-trial detention also prevents or reduces the chances of suspects tampering with evidence or hindering proper investigation. The possibility of suspects running away or jumping bail or escaping justice or committing crime is also minimized- The implication for criminal justice administration is that the appearance of suspects for subsequent trial is guaranteed.¹⁴

However, the contribution of pre-trial detention to prison congestion can be discussed under the following headings:

Law and Pre-trial Detention: There are several rules and regulations governing pre-trial detention. Some are wide and discretionary in nature while some are specific and call for strict compliance and or enforcement. Constitutionally, the rights and personal liberties of individuals such as right to life, freedom of movement, dignity of human person etc. are guaranteed¹⁵. However, section 41 which is derogation from the fundamental rights provides for restriction on those rights:

*"In the interest of defense, public safety, public morality, public health or for the purpose of protecting the rights and freedom of other persons"*¹⁶

Therefore, detention that is affected in accordance with the provision of laws governing pre-trial detention is justifiable. Nevertheless, pre-trial detention is detrimental to fundamental human rights principles, since detention in practice derogates the right of movement of individual suspects¹⁷.

Police and Pre-trial Detention: Police are vested with powers and responsibilities for the enforcement of laws, maintenance of peace and order and to prevent crimes in society¹⁸. To enable police discharge their responsibilities, they are empowered to arrest and detain any person found committing crime, in their presence, without warrant. But in practice, because of the wide and discretionary nature of powers vested on the police by other statutory enactments, it has been very difficult to curtail police excesses and arbitrariness in law enforcement- Thus the pre-trial reports of brutality, killing of suspects by police at the check points and police station cells,

¹³ Ibid

¹⁴ E.I. Alemika, Pre-trial Detention and Prison Congestion in Nigeria, dspace.unijos.edu.ng- Assessed on the 15th of March 2013at2:00pm.

¹⁵ Chapter Four, Constitution of Federal Republic of Nigeria 199 (as amended)

¹⁶ Ibid

¹⁷ Op.cit

¹⁸ Section 4 Police Act cap.P19, laws of Federation of Nigeria 2004 (as amended)

extortion of bribes from suspects; falsification of evidence, etc. by Nigerian Police¹⁹ have played a leading role to prison congestion. For example, by virtue of provisions of the criminal procedure code operating in Northern Nigeria, persons who can be released on bail either by police or court could be so released at the discretion of such police even when offence for which a suspect detained is bail able.

Section 340(1) of the criminal procedure code provides that:

*any person accused of an offence punishable with imprisonment not exceeding three years seeking bail Must give security which may seem sufficient to the court or the police officer who arrested and detained such an accused and also "if in the opinion of the said police officer the granting of bail to the suspect does not constitute risk to the proper investigation of the case"*²⁰.

Section 341(2) (b) and (c)²¹ are framed in similar way for offences exceeding three years imprisonment. Section 345²² on the other hand provides that an accused person who has been detained under section 340²³ and 341 to "execute bound or such sum of money as the officer in-charge of police station or the court thinks sufficient"³

The foregoing provisions of Nigerian laws provide guidance to the scope and limit of discretion of officials in making decisions about pre-trial detention or bail of suspects. Both the police and courts are expected to carry out their responsibilities with due regard to the individual rights and personal liberties as safe guarded by the constitutions and with regards to safe guarding the availability of suspects for trials. However, bail decisions and pre-trial detentions have become weapon in the hands of officials of law enforcement agencies against *SttSp&CtS whoare&ftett unduly detained, thereby causing c&ngesti&x in pzis&tt*.

Apart from the nature of powers vested in police who allow for excesses and arbitrariness the police are generally handicapped in the course of performing their duties. They are not only expected to apprehend suspects and prevent crimes but they are also expected to thoroughly investigate offences or crimes for which suspects have been arrested .Investigations may take hours, days or months thereby forcing police into detaining suspects for longer period. Also police are ill equipped to speed up investigations, often there are no vehicles to follow-up cases, forensic laboratories are inadequate²⁴. These are predicaments for police in performing their duties. Therefore an option left to the police often is to lock up suspects in prison custody indefinitely pending the conclusion of investigation. The immediate effect of this practice is the constant supply of inmate suspects to prison and the cumulative effect of congestion in the prisons which remains an abuse of human rights of those prison inmates.

Courts, Pre-trial Detention, and Prison Congestion

Though the courts are vested with greater powers of detention, they have similar experience as the police as discussed above. According to the constitution²⁵ the police cannot

¹⁹ E.E. Alemika, "Policing and Perceptions of Police in Nigeria, Police Studies, Civil Liberties Organization (1988) Annual Report 1990 Lagos, Nigeria.

²⁰ Criminal Procedure Act, cap C41 Laws of Federation of Nigeria 2004 (as amended)

²¹ *Ibid*

²² *Ibid*

²³ *Ibid*

²⁴ E.E. Atamika.....

²⁵ Constitution of Federal Republic of Nigeria 1999

detain a suspect more than 24 hours except in special circumstances. Any detention beyond this period has to be sanctioned by the court of law. Court also has discretion to detain and remand suspects in prison pending the final determination of trials or to release suspects on bail unconditionally or upon such conditions in the circumstances as may be considered reasonable by the court²⁶. Just like the police, the discretionary powers that are net judiciously used could abase, excess and arbitrariness on the part of the court. The implication is that where a chooses to detain rather than release on bail because court by law has discretion to do the immediate result is the congestion of prisons. Judges, magistrates, and lawyers also engage in some behaviors and practices that encourage undue delay thereby slowing down the final determination of cases. For instances lawyers sometimes manipulate judges and magistrates who tend to succumb to the endless demand of adjournments. Due to this single act alone, many suspects are repeatedly sent back to or, perpetually kept in prisons especially for non-bail able offences.

Also there are large member of suspects who made up prison population who are remanded in custody either because of denial of bail by magistrates and judges or inability of :h= suspects to meet the stringent conditions of bail often set by the courts²⁷.

Apart from above in sentencing, there are express provisions of law as to what punishment should be meted out to convicted criminals; depending on the nature of crime committed. Judges can within the maximum provisions exercise discretion to vary the terms of imprisonment or imprisonment in lieu of fines, where convict cannot pay probably because the fine is too much, they are invariably sent to jail. Often many convicts that have been sentenced to jail or imprisonment as alternative to fines could have been otherwise penalized. Considering the socio-economic and health implications, for both the convicts and their families and the nation at large, the magistrates and judges need to be encouraged to use alternative penal provisions other than imprisonment, which are provided for in the law to solve problem of prison overcrowding, huge budgetary allocation and other costs associated with imprisonment. Therefore by avoiding unwarranted imprisonment, and resorting to alternatives, it would not only reduce the incessant prison congestion, but also reduce the economic burden on the nation that is often associated with imprisonment²⁸.

By imprisonment, convicts who are supposed to suffer monetary loss, (in form of fines) as punishment for their crimes often live at the expense of the government which has to cater for the well-being of the inmates who in prison.

Bail and Pre-trial Detention: Bail plays a very crucial role in pre-trial detention. This is because greater number of offences leading to pre-trial detention is ordinarily bail able offences. But because of conditions attached to it which are sometimes rigidly applied, they often defeat the purpose of the principles. But what is bail after all? It is a procedure by which a person arrested for an offence is released, on security being taken for his appearance on a day and place certain²⁹. The issue of bail arises at three points in the process of administration of criminal justice;

Firstly, it arises after a person arrested with or without warrant of arrest is taken to the police station. The officer in charge of the police station may admit the suspect to bail pending further investigation into the matter. This is known as police bail

²⁶ *Ibid*

²⁷ *Ibid*

²⁸ *Ibid*

²⁹ D. Oluwatoyin, **Criminal Procedure in Nigeria Law and Practice**, Blackstone Press Limited **London 1990, P.125**

Secondly, bail arises after the suspect has been charged to court accused of committing an offence, the accused may be admitted to bail by the court pending the final determination of the case against him. This is known as court bail.

Thirdly, bail arises after an accused person convicted of an offence has filed an appeal against his conviction. The convicted person may apply for bail pending the determination of his appeal.³⁰ In all these situations where bail can be granted, once it is denied, the accused person is remanded in prison custody. This will continue to cause overcrowding in the Nigerian prisons.

The criteria for granting bail are as follows: Conditions of Bail

The first consideration is the nature of the offence and the punishment prescribed for the offence. Where the offence is a serious one, carrying a heavy penalty, the court may not exercise its discretion in favour of granting bail to the accused. An accused person is presumed innocent until proved guilty³¹. Therefore, he should not be punished by being denied bail, in the absence of cogent and compelling reasons, but simply because of the nature of the offence alleged against him. In *Dogo v Commissioner of Police*³², it was held that bail should not be denied as a form of punishment.

Secondly, the criminal record of the accused must be taken into account. If the accused can show that he is a person of good character and he has never been convicted of criminal offence, the court ought to exercise its discretion in favour of the accused and admit him to bail, in *Eyu v the state*³³ *Oguntade JCA* (as he then was) after enumerating other factors taken into consideration in deciding to grant or withhold bail stated as follows:

Another important factor to be borne in mind is the criminal record of the accused and the likelihood of the repetition of the offence³⁴. Yet another important factor to consider is the possibility of the accused committing further offences while on bail. If an accused is unlikely to commit further offences while on bail, the court should exercise its discretion and admit the accused to bail, in *R v. Jammal*³⁵, bail was refused to the accused because he committed the offence for which he was arraigned while he was on bail for another offence.

A fourth consideration to be given before granting to an accused person is the possibility of interfering with the investigation of the offence if the accused is likely to interfere with the investigation of the offence, bail shall be refused. In *Dantata v Police*³⁶, bail was refused to the accused because he offered a bribe of £436,000 to the police in order to remain in the custody of the police.

The relevance of this condition precedent to the subject of pre-trial detention is that although these conditions are not necessarily bail in themselves, problems are encountered during application for bail. Following the rigidity visited on the principle of bail by law officials, those conditions as simple as they appear to be have kept many suspects in detention awaiting trial for a long period of time on the pretext that investigation has not been completed or that

³⁰ Ibid

³¹ Section 36(5) Constitution of the Federal Republic of Nigeria 1999 (as amended)

³² *Dogo v Commissioner of Police* 1980(1) NCR 14.

³³ *Eyu v The State* (1988) 2NWLR (pt.78) 602 at 601

³⁴ Ibid

³⁵ 16 NLR 54

³⁶ 1958 NRNCR 3

investigation would be prejudiced if the accused persons are released on bail. The practice inevitably leads to prison congestion³⁷.

It has been officially reported by the Director of Prisons in Nigeria in 1990, that... two-third of the population (in our prisons) is made up of persons either on remand or awaiting trial³⁸. This confirms that greater percentage of prisons population in the country is made up of detainees who might after all had been rightly or wrongly accused of one crime or the other. The issue of pre-trial detention therefore deserves much attention as it could serve as the most important factor responsible for congestion in Nigeria's prisons and through which the problem can be redressed or greatly reduced³⁹

Effects of Prison Congestion in Nigeria

The effect of prison congestion cannot be over-emphasized and they include the following:

It produces serious social, economic and political effects on the inmates and society at large. It has a dehumanizing effect on the inmates. The hardened criminals and first offenders are locked up in the same overcrowded prisons. The issue of classification of inmates which is one of the functions of prison service is not duly observed. Suspects like convicts are subjected to punitive measure before trial. This is contrary to the provision of law that an accused person is presumed innocent until proven guilty⁴⁰

Another effect of prison congestion on the inmates is the deterioration of their health. Consequently, there have been reported cases of outbreak of dangerous diseases of all kinds. This has led to poor health and untimely death of many inmates.

Since the inmates are vulnerable in the congested prisons, habitual criminals control the inmates' social relations, producing large number of hardened criminals with others who had no tendency to be so hardened. This has facilitated education in crime leading to a life of crime among ex-convicts. The result is a circle of event whereby, there is an increase in prison population due to high rate of recidivism causing congestion, the congestion also cause hardening of criminality and recidivist who repeatedly go back to prison to inflate the number of inmates and this cause prison congestion.

Also the individual affected by congestion having been dehumanized, sometimes finds it difficult to adjust to normal social life within the society. Therefore, they find it more comfortable engaging in anti-social behaviors which constitute social risk to the larger society of Nigeria. Revivalists are economic burden to the society as they often do not engage in any useful activities beneficial to themselves or the society⁴¹.

Criminals that have become hardened as a result of prison conditions are not likely to contribute to the political and economic growth of the nation instead they are more likely to constitute a burden to such growth. It is also politically unhealthy for a nation like Nigeria which claims to observe the fundamental human right of citizens to continue to breed new set of criminals as a

³⁷ Almika

³⁸ L. Ojo, "The State of Nigeria Prisons; The Proceedings of the National Conference on Prison Reform in Nigeria; Issues, Challenges and Strategies: Held at the International Conference Centre, Abuja, 18th June 1990

³⁹ Op cit

⁴⁰ Section 36(5) Constitution of the Federal Republic of Nigeria 1999 (as amended)

⁴¹ Adrnika

result of inadequate facilities to take care of prisoners in the prisons due to the tendency to send minor offenders to jail.

These are effects of prison congestion in Nigeria and which has a negative impact on the nation as a whole and needs to be addressed properly-Brief History of Human Rights in Nigeria

The history of human rights in Nigeria predates the advent of colonial rule. Human rights and fundamental freedoms are recognized in the traditional Nigerian societies. The idea of rights was not however conceived in the modern nation. Such values as right to family, kin and clan membership freedom of thought, speech belief and association. Right to enjoy private property and right to participate in governance of the affairs of the society were jealously guarded.

In areas where the sharia legal system was firmly entrenched, especially in the Northern part of the country, human rights and fundamental freedoms were specifically protected and guaranteed in accordance with the tenets of Islam which hold justice and equity in high esteem. Colonialism largely eroded traditional values and denied Nigerian's political and economic rights. It was not until 1922 through Clifford constitution⁴² that limited Franchise was introduced for the first time in Nigeria by the British colonial government. The struggle for better political participation by early Nigerian nationalists led to political rights in the pre-independence constitutions culminating in the Littleton constitution of 1954⁴³

The entrenchment of fundamental human rights in Nigeria in the modern sense could however be traced to the 1960 independence constitution⁴⁴ and those that followed, and the Republican constitution of 1963⁴⁵ have provisions for the protection of fundamental human rights. The 1979⁴⁶ and the 1999⁴⁷ constitutions went further by providing a bill of rights. Fundamental objectives and Directive Principles of State Policy in chapter 11 also recognized economic, social and cultural rights. The entrenchment of human rights provision in our constitutions was aimed at creating a society which protects political freedom as well as the social and economic well-being of Nigerians.

However, despite the guarantee of fundamental rights and liberties in the Nigerian constitution since 1960, the country has had the misfortune of military interruptions. This had profound and far-reaching effects on the promotion and protection of democratic values and fundamental freedoms among Nigerians.

Before the dawn of democracy in 1999, successive military regimes systematically violated the rights of Nigerians with impunity. This large-scale denial of human rights in Nigeria reached its peak between November 1994 and June 1998. The abysmal situation of human rights under this regime resulted in Nigeria becoming a pariah state at the international arena and the country was put on the agenda of the United Nations commission on Human Rights for five consecutive years. Nigerians led by human rights civil society groups and professional bodies engaged the military in the struggle for a better society governed by constitutionalism, the rule of law, social justice and respect for Human Rights. This finally resulted in the constitution of the Federal Republic of Nigeria, 1999 and the emergence of democracy and democratic institutions in 1999.

⁴² Clifford constitution 1922.

⁴³ Littleton constitution of 1954

⁴⁴ Independence constitution 1960.

⁴⁵ Republican Constitution 1963

⁴⁶ Constitution of the Federal Republic of Nigeria 1979.

⁴⁷ Constitution of the-Federal Republic of Nigeria 1999.

Conclusion

From the foregoing we have an interesting history of human rights. It did not just begin but rather has been in existence before colonialism. This goes to show the importance of human rights. If that is the case why is it that it is being trampled up in the name and form of pre-trial detention? There must be a way out of pre-trial detention because it infringes on the freedom of the individuals effected which is inimical to the human person. Consequently, pre-trial detention remains an abuse of the human right and should be highly minimized if not completely stopped.