

## **AN EXAMINATION OF LEGAL PROTECTIONS AND RIGHTS GUARANTEED TO DEFENDANT IN THE NIGERIA CRIMINAL JUSTICE SYSTEM**

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### ***Abstract***

*The Nigerian criminal justice system is designed to uphold the legal protections and rights guaranteed to defendants, as enshrined in the Constitution of the Federal Republic of Nigeria 1999 (as amended) and other relevant statutes. This paper examines the basic rights and protections guaranteed to the defendants which include the presumption of innocence until proven guilty, the right to a fair and public hearing by an impartial Court, the right to legal representation, and protection against self-incrimination. Additionally, defendants are entitled to be informed of the charges against them, to have adequate time and facilities to prepare their defense, and to examine witnesses. It also considers the legal framework safeguarding defendants' rights in Nigeria, The 1999 Nigeria Constitution, The Evidence Act, The Police Act, The Correctional Service Act, Administration of Criminal Justice Act (ACJA) 2015 which introduced significant reforms aimed at reducing delays in trials, preventing arbitrary detention, and promoting respect for human rights. Also, **Legal Aid Act 2011, Anti-Torture Act 2017, African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act 1983, International Covenant on Civil and Political Rights (ICCPR), Universal Declaration of Human Rights (UDHR)**. It identifies some challenges by highlighting the gaps in implementation, overcrowded prisons, prolonged pretrial detention, limited access to legal aid/legal representation, Corruption and Abuse of Power, Judicial Delays, and systemic inefficiencies persist, undermining the full realization of these rights. It thus emphasizes the need for sustained judicial reforms, Strict Enforcement of Human Rights Laws, capacity building, Improved Legal Aid Services and public awareness to ensure that the principles of justice, fairness, and equity are upheld in the criminal justice system.*

**Keywords:** Examination, Legal Protections, Rights, Defendant, Guaranteed, Criminal Justice System.

## **1.0: INTRODUCTION**

This paper considers the various rights accorded defendant under Criminal Justice System. It is a fundamental principle of criminal justice that there should be justice for the State, justice for victim and justice for defendant. The Nigerian criminal justice system is designed to ensure fairness, justice, and protection of individual rights, particularly for defendants. These protections are rooted in the Constitution of the Federal Republic of Nigeria (1999, as amended), various statutes, and international human rights treaties to which Nigeria is a signatory. The system guarantees fundamental rights such as the right to a fair hearing, presumption of innocence, legal representation, and protection from unlawful detention or torture. These legal safeguards aim to prevent wrongful convictions, uphold due process, and maintain public confidence in the judiciary.

The concept of justice is incomplete without adequate protections for those accused of crimes. In Nigeria, defendants are entitled to specific legal rights that ensure fairness in the administration of justice. These rights serve as a safeguard against arbitrary detention, unfair trials, and other forms of injustice. This paper explores the legal framework that protects defendants, including constitutional provisions, statutory regulations, and judicial interpretations.

## **2.0: FUNDAMENTAL HUMAN RIGHTS ACCORDED CITIZEN IN THE CONSTITUTION**

The 1999 Constitution of the Federal Republic of Nigeria is the supreme law of the land.<sup>1</sup> It is the *grund norm* through which all other laws derive their validity.<sup>2</sup> This enactment is crucial to any proceedings be it criminal or civil because it is the supreme law of the land. In fact, the validity of any criminal statute is determined by its consistency with constitutional provisions. Section 1 of the constitution provides: ‘This Constitution is supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria.’<sup>3</sup> ‘If any other law is

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<sup>1</sup> Section 1(1) CFRN, 1999.

<sup>2</sup> Section 1(3) CFRN.

<sup>3</sup> Section 1 CFRN.

inconsistent with the provisions of this constitution, this shall prevail, and that other law shall be to the extent of its inconsistency be void.’<sup>4</sup>

Chapter 4 of the Constitution (that is, Sections 33-46) deals with Fundamental human rights that is applicable to both suspect and other civilians. These rights are political and civil rights. Chapter IV of the 1999 Constitution<sup>5</sup> generously replicates the provision of the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR). This category of right is guaranteed by the Constitution and their breach can be challenged by the affected individual or group of individuals. This category of rights is regarded as so fundamental that they are only capable of being derogated from only in a situation of war or other public emergency.<sup>6</sup> These rights are examined below:

## **2.1: THE RIGHT TO LIFE**

Right to life is obviously the most fundamental of all human rights.<sup>7</sup> This is because other human rights can only be exercised by a person who is alive. Indeed, all other rights add quality to the life in question and depend on the pre-existence of life itself for their utility.<sup>8</sup> The right to life is also accorded the highest position by those arguing in favour of hierarchy of rights. Even those who do not submit to the hierarchy of rights argument but favour universal fundamentality still consider the right to life as pre-eminent.<sup>9</sup> However, in the Nigerian Constitution, the rights to life is nevertheless subject to the execution of a death sentence of a court of law in respect of a criminal offence of which one has been found guilty.<sup>10</sup> In *Kalu v. the State*,<sup>11</sup> the Supreme Court of Nigeria had to consider the constitutionality of section 30(1) of the 1979 Constitution which is in tandem with section 33(1) of the 1999 upon the argument of counsel to the accused that death sentence was not constitutional. Iguh, J.S.C. observed as follows:

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<sup>4</sup> Section 3 CFRN.

<sup>5</sup> Chapter iv, CFRN, 1999.

<sup>6</sup> Steve F, *Human Rights & Civil Liberties*, (2<sup>nd</sup>ed England: Pearson Education Ltd, 2008)72.

<sup>7</sup> Section 33 (1) CFRN, 1999 and Article 4 of the African Charter of Human and People’s Rights.

<sup>8</sup> Peter A, Atudiwe ‘Judicial Review and Enforcement of Human Rights: The Red Pencil and Blue Light of the Judiciary of Ghana’ (LL.M Thesis, Queen’s University, Ontario Canada, 2008) 41.

<sup>9</sup> Smith Rhona K.M, *Textbook on International Human Rights* (Oxford: Oxford University Press, 2007) 194.

<sup>10</sup> Section 33 (1) CFRN, 1999.

<sup>11</sup> (1998) 13 NWLR (pt. 583) 531.

Under section 30 (1) of the 1979 Constitution, the right to life, although fully guaranteed, is however subject to the performance of a court of law in respect of a criminal offence of which one has been found guilty in Nigeria. The qualifying word “save” used in the section seems to be the unique key to the structure of the provision. Thus, it is basic that the 1979 Constitution can by no spring of the mind be said to have forbidden or barred the death consequence.<sup>12</sup>

However, it should be pointed out that where the constitutional provision relating to right to life is not qualified, it might be impossible for a court to impose a death sentence.<sup>13</sup> Although, the Constitution authorizes killing in execution of a sentence of a court,<sup>14</sup> it must be emphasized that killing in execution of a sentence of a court could only be justified under the provision where there is no pending appeal.<sup>15</sup> Thus, pending appeal operates as stay of execution see *Gani Fawehinmi v State*<sup>16</sup> and *Ozubulu v State*.<sup>17</sup>

## **2.2: RIGHT TO DIGNITY OF HUMAN PERSON**

The right to dignity of the human person is guaranteed by the Constitution.<sup>18</sup> It provides that dignity of all persons shall be inviolable. The effects of this section is that under no circumstance shall any person be subjected to torture whether or not he is arrested; that people not yet convicted shall not be kept with convicts; that juvenile offenders who are kept in lawful detention or custody shall be kept separately from adult offenders; that slavery and servitude are outlaw; and that no person shall be subjected to forced labour. <sup>19</sup>The legal bearing of this section is the affirmation of the sanctity elements of the human person.<sup>20</sup> This right has been violated both by government and

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<sup>12</sup> *Okoro v. The State* (1988) 5 NWLR (pt. 94) 255.

<sup>13</sup> *The State v. Makwanyane & Others* (1995) 6 BCLR 665; (1995) SACLR Lexis 218 where the Constitutional Court of South Africa held that the death penalty sentence violated the constitutional protection relating to right to life and freedom from cruel, inhuman and degrading treatment.

<sup>14</sup> Section 33 (1) CFRN, 1999.

<sup>15</sup> *Bello v. A.G. Oyo State* (1986) 5 NWLR (pt. 45) 828.

<sup>16</sup> (1990) 1 NWLR (Pt 127) 486.

<sup>17</sup> (1981) 2 NCR 680.

<sup>18</sup> Section 34 (1) CFRN, 1999, see also Article 5 on the African Charter.

<sup>19</sup> Salman Kolawole Raheem, *The Effectiveness of Nigerian National Human Rights Commission in Human Rights Protection* (Ph.D Thesis, International Islamic University Malaysia 2011) 53.

<sup>20</sup> Peter A. Atudiwe, *Judicial Review and Enforcement of Human Rights: The Red Pencil and Blue Light of the Judiciary of Ghana* (LL.M Thesis, Queen's University, Ontario Canada, 2008) 44.

individuals in Nigeria and as such, the courts have intervened at different times. Thus, while vulgar abuse has been said not to contravene rights to dignity,<sup>21</sup> torture,<sup>22</sup> on the other hand has been held to be a violation of the right.<sup>23</sup> The right to dignity of person is most commonly violated in Nigeria in relation to detainees and prisoners. Detainees in Nigeria are subjected to all manners of torture, inhuman and degrading treatment, in some cases with the purpose of extracting confessional statement from them.<sup>24</sup> Thus, the Nigeria Court had recently held that the State has a responsibility to ensure that a person under detention or custody is not to be put in undue danger of his health and safety.<sup>25</sup> See also *Ubani v Director of State Security Services*.<sup>26</sup>

### **2.3: RIGHT TO PERSONAL LIBERTY**

The Constitution equally guarantees this right.<sup>27</sup> The term ‘liberty’ used in its general term refers to basic principles of autonomy and freedom. One is free to do what one chooses and the right protects individual from state interference as to what to do, with whom to associate and what choice one make with respect to life. It may also refer to freedom of movement and freedom from detention of the person, usually by the State.<sup>28</sup> The word ‘liberty’ as used in this section could be literally or restrictively construed. For example, Nigerian court adopted liberal interpretation and held that closure of private schools amounted to interference with liberty of parents to train their children as they deem fit.<sup>29</sup> With respect, it is submitted that the section and Article 5 of the African Charter contemplate physical restraint against individual and not otherwise.<sup>30</sup> The restrictive

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<sup>21</sup>*Uzoukwu v Ezeonu II* (1991) 6 NWLR (pt. 200) 708.

<sup>22</sup>Torture is defined by UN Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment as “any act by which sever pain or suffering, whether physical or mental, is intentionally inflicted on the person for such purpose as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when pain or suffering s inflicted by or the instigation of or with the consent or acquiescence of a public official or other person action in an official capacity” (Article 1 United Nations Convention Against Torture (1984).

<sup>23</sup>*Mogaji v. Board of Custom and Excise* (1982) NCLR 552 at p. 561; see *Alaboh v. Boyles* (1984) 3 NCLR 830.

<sup>24</sup>*Peter Nemi v. A.G. Lagos State* (1996) 6 NWLR (pt. 452) 42.

<sup>25</sup>*Fawehinmi v. Abacha* (1996) 5 NWLR (pt. 447) 198.

<sup>26</sup> (1999) 11 NWLR (Pt 625) 129

<sup>27</sup> Section 35 (1) CFRN,1999; see Article 6 of the African Charter .

<sup>28</sup> Steve F, *Human Rights & Civil Liberties* 220.

<sup>29</sup>*Adewale v. Jakande* (1982) NCLR 262.

<sup>30</sup> Nwabueze B.O, *The Presidential Constitution of Nigeria* (London: C. Hurst & Company, 1982) 421.

interpretation is adopted by the European Court.<sup>31</sup> The Court emphasizes that Article 5, which is in consonance with section 35 of the Nigerian Constitution, is not concerned with restriction on mere liberty but on the physical liberty of the person.

Although, in some circumstances, the right of liberty can be deprived<sup>32</sup> but such deprivation of liberty in those circumstances must be in accordance with the procedure laid down by law. The most commonly abused of the stipulated limitations on the right is sub-section 1 (c) which authorizes deprivation of a person's liberty upon suspicion of his commission of an offence or to prevent one from committing an offence.<sup>33</sup> The Police had, on many instances used this sub-section to arrest many victims on account of suspicion. The Police often arrest relatives of the suspects perpetually or until when such shows up. This attitude has been decried by the Court in the case of *A.C.B. v. Okonkwo*<sup>34</sup> where Niki Tobi, J.C.A. said:

I know of no law which allows the police to arrest a mother for an offence done or purportedly done by son. Criminal obligation is personal and cannot be reassigned....  
A police officer who detained 'A' for the offence committed by 'B' should know that he has performed against the law. Such a police officer should in addition to burden in civil action, be disciplined by the police authority.<sup>35</sup>

A provision to section 35 (1) is to the effect that a person who is charged with an offence and who has been detained in lawful custody awaiting trial should not be in custody perpetually or longer than the maximum period of imprisonment prescribed for the offence.<sup>36</sup> The purpose of putting a person under detention to be brought before a court within a reasonable time is to enable the Court to decide whether or not to order his release.<sup>37</sup> In order to discourage unnecessary arrest and detention, the Constitution provides the payment of compensation and public apology from the

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<sup>31</sup> *Guzzardi v. Italy* (1980) 3 EHRR 333.

<sup>32</sup> Section (35) (1) (1) – (f) CFRN, 1999.

<sup>33</sup> Salman Kolawole Raheem, *The Effectiveness of Nigerian National Human Rights Commission in Human Rights Protection* 53.

<sup>34</sup> (1997) 1 NWLR (pt. 480) 194.

<sup>35</sup> *Ibid.*

<sup>36</sup> Section 35 (4) CFRN, 1999.

<sup>37</sup> Nwabueze B. O, *The Presidential Constitution of Nigeria* 425.

appropriate authority or person where it is proved that a person has been unlawfully arrested and detained.<sup>38</sup>

## **2.4: RIGHT TO FREEDOM OF THOUGHT AND CONSCIENCE**

The Constitution provides for right to freedom, thought, conscience and religion.<sup>39</sup> This right is very important in a country like Nigeria where the level of enlightenment is very high. To have failed to assure freedom of thought would have created a lot of chaos in the society. The same could be said of the right to freedom of conscience. With respect to religion, it needs be observed that this section is very essential particularly because of the religious divides between the Christians and Muslims or between various sects of the same faith. It is also important in view of the unresolved controversy of whether or not Nigeria is a secular country. This is because some are of the opinion that Nigeria is a secular state<sup>40</sup> while others have argued otherwise.<sup>41</sup> The Nigerian courts are yet to make any pronouncement in this respect. What is however clear under *Shari'ah* is that it is an apostasy and prohibition for a Muslim to change his religion to another.<sup>42</sup> The Constitution has also assured the right to manifest and propagate one's religion or belief in worship, teaching, practice and observance. The Supreme Court, while determining the constitutionality of the refusal of a patient to have blood transfusion on account of the fact that he was a member of Jehovah's Witness observed:

The right to freedom of thought, conscience or religion implies a right not to be prohibited, without lawful excuse, from selecting the course of one's life, shape don what one trusts in, and a right not to be disallowed without justification,... The sum total of the rights to privacy and of liberty of thought, conscience or religion which individual has, put in a nutshell, is that one should be left alone to choose a course of his life, unless a clear and compelling overriding state interest validates the country.

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<sup>38</sup> Section 35 (4)CFRN, 1999 See also *Joseph Odogwu v A.G Federation* (1996) 6 NWLR (pt. 456) 508.

<sup>39</sup> Section 38(1) 1999 CFRN, see Article 8 of the African Charter for similar provision.

<sup>40</sup> Osita N.O, *Human Rights Law and Practice in Nigeria: An Introduction* (Enugu: CIDJAP Press,1999) 174.

<sup>41</sup> Justice Bashir Sambo 'Nigeria is Never a secular State' *Guardian* Newspaper, (Nigeria, Monday 15 March, 1999) 16.

<sup>42</sup> For detail analysis of the meaning, concept and offence of Apostasy in *Shari'ah* see Shamrahayu Binti Ab. Aziz, *Legal Measures Regulating Offences against Islam in Malaysia*, (Ph.D. Thesis, International Islamic University Malaysia, 2007).

The law's role is to ensure the fullest of liberty when there is no danger to public interest. Ensuring liberty of conscience and freedom of religion is a vital element of that fullness.<sup>43</sup>

Other part of section 38 which are derivatives of the basic provisions is section 38(1) of the 1999 Constitution in section 38(2) of the Constitution. By this provision, a person cannot be compelled to take part in any religious worship, instruction, ceremony or observance where any of these have not been voluntarily acceded to. This sub-section is not restricted to schools. It is equally applicable to community, locality or tribe. Thus, in Theresa *Onwo v. Oke*,<sup>44</sup> the applicant was a born-again Christian and a member of the Assemblies of God. Her husband who was not a born-again Christian died and she claimed that the respondents (her husband's family) forcefully and against her will shaved her head, assaulted her grievously, striped her naked, locked her up in a room and removed all her property in order to conform to the tradition of the community of mourning the dead. The appellant contended that according to her religion and her own faith, she does not mourn the dead. Consequent upon shaving her head forcefully, she commenced the action, claiming that her right of freedom of religion has been violated.

Two major principles of law emerged from the Supreme Court decision in this case. One, it is now settled that where a person does not believe in a particular religion or practice of a particular sect or religion, such a person cannot be compelled to take part in the observance or ceremony of such belief. Where such person is forced to participate in the ceremony of such belief or observe the tenet of such belief, his right under section 38 (2) has been violated. Secondly, where an individual, group of individual or organisation violates the rights of another person, such another person can initiate proceeding against an individual, group of individual or organisation that has violated his rights under Chapter IV of the 1999 Constitution.<sup>45</sup> This settles the erroneous argument that enforcement of violation of human rights can only be instituted against government or its agents. It is now clear that enforcement can be against individual, group of individuals or government and its agents.

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<sup>43</sup> *Medical and Dental Practitioners' Disciplinary Tribunal v Okonkwo*, (2007) 7 NWLR (pt. 711) 206

<sup>44</sup> (1996) 6 NWLR (pt. 456) 612.

<sup>45</sup> *Agbai v. Okogbue* (1991) 1 NWLR (pt. 204) 391.



## **2.5: RIGHT TO FREEDOM OF EXPRESSION AND THE PRESS**

Freedom of expression and the press are guaranteed in the Constitution.<sup>46</sup> Freedom of expression has been described as one of the most essential foundations of a democratic society.<sup>47</sup> This reflects the fact that the promotion of freedom of expression is not only justified on grounds of liberty, but is also capable of achieving public benefits.<sup>48</sup> Thus, section 39 is seen not only as essential to the person exercising that right, but also as supporting the democratic process through the promotion of a free press and the public's right to information and the encouragement of open and responsible government.<sup>49</sup> The basic idea behind freedom of expression is that it involves the imparting and receiving of information and ideas. Thus, freedom of expression consists of the manifestation, via communication of that information and does not cover every autonomous action of individual. Freedom of expression is one of the fundamental concepts that have formed the basis for the historical development of political, social and educational institutions of the Western society.<sup>50</sup> This concept is regarded as "a vital means for seeking and attaining truth."<sup>51</sup> The importance of freedom of expression is summarised as (a) a necessity for the discovery of truth; (b) an aid to the growth of democracy; and (c) a useful tool for individual self-fulfillment.<sup>52</sup> See Festus **A.O. Ogwuche v. Federal Republic of Nigeria (2016) ECW/CCJ/JUD/05/16** where The ECOWAS Community Court of Justice held that imposing regulations that censor or impede the freedom of expression of defendants violates their rights. The case emphasized the need for a fair trial and the protection of individual liberties.

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<sup>46</sup> Section 39 (1) & (2) CFRN, 1999; see Article 10 African Charter.

<sup>47</sup> *Handyside v. United Kingdom* (1976) EHRR 737; see Beatson G and W. Gripps (eds.) *Freedom of Expression and Freedom of Information; Essays in Honour of Sir David Williams* (Oxford; Oxford University Press, 2002); Barendt G, *Freedom of Speech* (2<sup>nd</sup>edn) (Oxford; Oxford University Press, 2005); and Fenwick W and J. Phillipson *Media Freedom under the Human Rights Act* (Oxford ; Oxford University Press, 2006) .

<sup>48</sup> Steve, F, *Human Rights & Civil Liberties* 352.

<sup>49</sup> Barendt B, *Freedom of Speech* (2<sup>nd</sup>ed) (Oxford; OUP, 2005) 78.

<sup>50</sup> Peter A, Atudiwe, 'Judicial Review and Enforcement of Human Rights: The Red Pencil and Blue Light of the Judiciary of Ghana' 86 quoting the Canadian Supreme Court in the case of *RWDSU v. Dolphin Deliver Ltd* (1986) 2 S.C.R 573 at 583.

<sup>51</sup> Ibid.

<sup>52</sup> Ibid.

The second leg of the section specifically deals with the freedom of the Press.<sup>53</sup> Press is a vehicle for the dissemination of information and ideas and can be seen as fulfilling the role of ‘public watchdog’ and vehicle for individual and public criticism of the government and other public bodies.<sup>54</sup> In line with this, the Court held in *Tony Momoh v. Senate*<sup>55</sup> that the applicant has the right to disseminate information through media and that disclosure of sources of his information could violate his right of expression through media. However, because the Press provides mass coverage of information of ideas and because it is capable of influencing individual and public opinion, it is inevitable that it can cause greater harm if the speech that it transmits is indeed harmful. For this reason, the right to freedom of expression and the Press which includes right not to disclose one’s source of information may be curtailed by section 45 of the 1999 Constitution on account of the interest of defence, public safety, public order, public morality or for the purpose of protecting the rights and freedom of other persons.<sup>56</sup>

## **2.6: RIGHT TO PEACEFUL ASSEMBLY AND ASSOCIATION**

This is provided for by the 1999 Constitution.<sup>57</sup> This section deals with right of any person to willingly belong to any society or association with any person including any union or political party in the pursuit of his interest. Freedom of assembly and association is a necessary part of the democratic process. Democracy is essentially concerned with identifying and satisfying yearning, feelings and aspiration of individuals and group. People ventilate their feelings and desires through demonstrations and by forming interest group. Furthermore, the freedom of expression and the right to freedom of religion, thought and conscience, may be exercised in concert with others only if there is freedom of assembly and association.<sup>58</sup>

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<sup>53</sup> Section 39 (3) CFRN, 1999.

<sup>54</sup> Robertson N, *Media Law* (London: Sweet & Maxwell, 2002) 22 .

<sup>55</sup> (1984) 4 NCLR 269; The Court adopted and maintained the same position in the case of *Adikwe v Federal House of Representative* (1982) 3 NCLR 394.

<sup>56</sup> The informed various tortuous and penal laws restricting the right to freedom of expression and the Press; e.g. Sedition Act, Defamation Law. *Nwanko v. The State* (1985) 6 NCLR 228; *DPP v. Chike Obi* (1961) All NLR 186.

<sup>57</sup> Section 40 CFRN, 1999 and Article 11 of the African Charter.

<sup>58</sup> Osita N.O, *Human Rights Law and Practice in Nigeria: An Introduction* 191.

The right is often violated by the government and employers against their employees in Nigeria. The courts have had opportunities to make useful pronouncement in such situations. Thus, the courts have affirmed that the section protects two basic rights; freedom of association with others, including the right to join a trade union,<sup>59</sup> and the right to peaceful assembly.<sup>60</sup> The right as provided under this section is, of course, a conditional right and as such, restrictions may be placed on the exercise of those rights, provided they are prescribed by law and necessary in a democratic society in the interest of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others.

## **2.7: RIGHT TO FREEDOM OF MOVEMENT**

The right to freedom of movement is guaranteed by the Constitution.<sup>61</sup> This section asserts the modern phenomenon relating to fluidity of movement of person. The boundary lines of states no longer determine the extent to which one can go in pursuit of his social, economic, cultural, and religious or any other interests. With this section in place, any citizen of Nigeria can reside and move freely in any part of Nigeria without any hindrance.<sup>62</sup>

Section 38 of the 1979 Constitution, which is in *pari material* with section 41 of the 1999 Constitution, received similar judicial interpretation in the case of ***Federal Minister of Internal Affairs v. Shugaba***.<sup>63</sup> The Plaintiff was a majority leader at the Borno State House of Assembly who was purportedly deported by the Minister of Internal Affairs on the ground that he was not a Nigerian. The Court held that the deportation was an infringement of his freedom of movement guaranteed under section 38 of the Constitution. In the case of ***Director of State Security Service v. Agbakoba***,<sup>64</sup> the Supreme Court held that seizure of respondent's passport amounts to denial of right of freedom of movement. The Supreme Court further held that freedom of movement

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<sup>59</sup> *Anighoro v. Sea Trucks (Nig) Ltd* (1995) 6 NWLR (pt. 399) 35.

<sup>60</sup> *Agbai v Okogbue* (1991) 1 NWLR (pt. 204) 391, ; See also *Aniekwe v Okereke* (1996) 6 NWLR (pt. 452) 60; *Rimi v People's Redemption Party* Suit N. M/133/80 of 23/12/90.

<sup>61</sup> Section 41, CFRN, 1999; see Article 12 of the African Charter for similar provision.

<sup>62</sup> *Williams v. Majekodunmi* (1962) 1 All NLR 410; see also *Adegbenro v. A.G. Federation* (1962) All NLR 423. (1982) 3 NCLR 915.

<sup>64</sup> (1999) 3 NWLR (pt. 595) 314 ; also the courts have held similar position in *Ubani v. Director of SSS* (1999) 11 NWLR (pt. 625) 129; *Akunnia v. A.G. Anambra State* (1977) 5 SC 161; *Tukur v. Government of Gongola State* (1989) 4 NWLR (pt. 117) 517; *A.G. Federation v Ajayi* (2000) 12 NWLR (pt. 682) 509.

includes right to hold passport to ease ingress and egress of Nigerians. Thus, seizure of passport is a denial of freedom of movement which violates section 41 of the 1999 Constitution. However, in deserving circumstances, this right may be curtailed and a person may be removed from Nigeria to be tried elsewhere if there is bilateral or reciprocal agreement with the government of such elsewhere.

Finally, it needs be stated that the Constitution places restrictions and derogation on the fundamental rights as provided in the Constitution.<sup>65</sup> Thus, section 45 of the Constitution is a cautionary section with respect to Chapter IV of the Constitution dealing with fundamental rights. The legal implication of this section is that, in appropriate circumstances, the rights recognised in Chapter IV may be derogated from on account of defence, public order, public morality or public health or rights and freedom of other persons.<sup>66</sup>

### **3.0: RIGHTS ACCORDED TO THE DEFENDANT UNDER THE VARIOUS LEGAL FRAMEWORKS**

#### **3.1: THE 1999 NIGERIA CONSTITUTION**

The Constitution as the *grund norm* has made some basic provisions to ensure smooth running of the administration of criminal justice administration in Nigeria. The justification for these provisions is to ensure fair and speedy trial in the administration of criminal justice in Nigeria. The right to fair and speedy trial is one of the most fundamental tenets of constitutional democracy.<sup>67</sup> It is with the means of fair trial that citizens appreciate the rights guaranteed in the Constitution which if not, may make citizens to resort to other means to protect their interest.<sup>68</sup> This leaves us in no doubt that all criminal proceedings must be done in manners that do not conflict with constitutional provisions. In specific cases, the Constitution makes provisions for the protection of certain rights. For example, the whole of Chapter 4 of the Constitution (that is, Sections 33-46)

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<sup>65</sup> Section 45 CFRN, 1999.

<sup>66</sup> *Olawoyin v. A.G.*, Northern Nigeria (1961) 1 All NLR 269.

<sup>67</sup> Section 36(4) CFRN.

<sup>68</sup> Oyeyipo T.A, 'Professional misconduct problems and solutions' (Paper presented at the 2003 Annual General Conference of the Nigerian Bar Association 20 Aug. 24-29, 2003 also Hambali Y.D.U, '*Practice and Procedure of Criminal Litigation in Nigeria*, 2012 feat Print and Publish Ltd Lagos 12.).

that deals with fundamental rights must not be detracted from in any circumstance (except in certain situations which the Constitution itself acknowledges) and much more fundamentally,

### **3.1.1: RIGHT TO FAIR HEARING:**

Section 36 of the 1999 Constitution of Nigeria guarantees every individual accused of a crime the right to a fair hearing within a reasonable time by a competent, independent, and impartial court. This ensures that defendants receive due process and a chance to present their case. fair hearing which is the crux or bedrock of all criminal trials. Chapter IV of the Constitution provides for the fundamental rights which an accused must enjoy from the point of his arrest to the point of his conviction or acquittal. The administration of justice is at the core of any successful democracy in the world.<sup>69</sup>This makes the Court a vital institution in the administration of criminal justice in Nigeria. The essence of the various guaranteed constitutional rights are to safeguard and assure a fair and speedy trial which covers all stages of judicial proceedings, though fair and speedy trial does not necessarily begin and end with court proceedings.<sup>70</sup> For instance, in criminal trials, it starts with arrest and continues until the final disposition of cases either at the court of first instance or appeal court.<sup>71</sup> See *Oguebie v. Federal Republic of Nigeria (2019) LPELR-46580(CA)* where The Court of Appeal held that detaining an accused person for an extended period without trial violates their right to a fair hearing within a reasonable time, as enshrined in the Constitution.

### **3.1.2: PRESUMPTION OF INNOCENCE:**

Under Section 36(5) of the Constitution, every defendant is presumed innocent until proven guilty. This principle prevents authorities from treating accused persons as criminals before conviction. See *State v. Ojukwu (1986) 1 NWLR (Pt. 18) 621* where the judgment emphasized that treating an accused person as guilty before a formal conviction undermines the integrity of the justice system.

### **3.1.3: RIGHT TO LEGAL REPRESENTATION:**

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<sup>69</sup> Oyeyipo T.A, 'Professional misconduct problems and solutions' 2.

<sup>70</sup> Section 36(4) CFRN, 1999.

<sup>71</sup> Section 36(1) &36 (4) CFRN.

Defendants have the right to be defended by a lawyer of their choice. If a defendant cannot afford legal counsel, the Legal Aid Council of Nigeria (LACN) provides free legal representation, particularly for indigent persons. See *Gani Fawehinmi v. Nigerian Bar Association (1989) 2 NWLR (Pt. 105) 558* where. The Supreme Court held that denying a defendant access to counsel of their choice constitutes a violation of their constitutional rights. See also *Labaran Magayaki & Ors v. The State (2003)*

### **3.1.4: PROTECTION AGAINST SELF-INCRIMINATION:**

Under Section 36(11) of the Constitution, no defendant can be compelled to testify against themselves, ensuring that confessions or testimonies are given voluntarily. See *Ezekiel Adamu v. State (2017) LPELR-41434(CA)* where the court ruled that any confession not made voluntarily is inadmissible in court.

### **3.1.5: RIGHT TO BE ARRAIGN IN COURT WITHIN REASONABLE TIME:**

Section 35(4) See *Adebayo v Attorney General of Ogun State (2008) 14 NWLR (PT 406) 97* Where the Court of Appeal held that the detention of the applicant for 32 days without trial was a violation of his right to fair trial within reasonable time. Also see *Abiola v. Federal Republic of Nigeria (1995) 7 NWLR (Pt 406) 97* .Where the Supreme Court held that the detention of the Applicant for eighteen months without trial was a violation of his right to fair trial within reasonable time.

### **3.1.6: PROTECTION FROM TORTURE AND INHUMAN TREATMENT:**

The Anti-Torture Act 2017 and Section 34 of the Constitution prohibit the use of torture, inhuman, or degrading treatment during investigations and interrogations.

### **3.1.7: RIGHT TO BAIL AND FREEDOM FROM ARBITRARY DETENTION:**

Section 35(4) of the Nigeria Constitution. The defendants have the right to bail, especially in cases where the offense is not capital in nature.

### **3.1.8: RIGHT AGAINST ARBITRARY ARREST OR DETENTION:**

Arbitrary Arrest and detention without trial violates constitutional rights and can be challenged in court. See *Ojukwu v. Military Governor of Lagos State (1985) 2 NWLR (Pt. 10) 806*. Where The Supreme Court in this case emphasized that law enforcement agencies must adhere strictly to legal procedures when arresting and detaining individuals. Arbitrary arrests without due process were deemed unconstitutional.

### **3.1.9: RIGHT TO BE INFORMED OF CHARGES:**

Every accused person has the right to be promptly informed of the charges against them in a language they understand. This ensures that they can prepare an adequate defense.

### **3.1.10: RIGHT TO ADEQUATE TIME AND FACILITIES FOR DEFENSE:**

See *Torri v. National Park Service of Nigeria (2011) LPELR-8253(SC)* where The Supreme Court held that an accused person must be given adequate time and facilities to prepare their defense. Denying this right constitutes a breach of the principles of fair hearing.

### **3.1.11: PROTECTION AGAINST DOUBLE JEOPARDY:**

Section 36(9) of the Constitution ensures that no person shall be tried or punished twice for the same offense once they have been acquitted or convicted.

### **3.1.12: POWERS OF ATTORNEY-GENERAL;**

sections 174(1) and 211(1) of the Constitution which provide for the powers of the Attorney-General of the Federation and the Attorney-General of a State respectively to institute, take over and discontinue criminal proceedings in any court in Nigeria other than court-martial.

### **3.1.13: PREROGATIVE OF MERCY;**

Sections 175 and 212 of the Constitution empower the President and the Governor of a State respectively to exercise their Prerogative of Mercy in favour of any person concerned with or convicted of any offence created by an Act of the National Assembly or any Law of a State as the case may be.

## **3.2: RELEVANT PROVISIONS FOR THE PROTECTION OF DEFENDANT IN THE EVIDENCE ACT 2011 CAP E 14**

This is one of the legislations which, though not wholly dealing with criminal proceedings, in part make provisions regulating criminal matters and the conduct of criminal proceedings in Nigeria. The Evidence Act of 2004<sup>72</sup> was repealed and replaced with a new Evidence Act of 2011 which applies to all judicial proceedings in or before Courts in Nigeria. It is a vital law in the administration of criminal justice. Its provisions determine a lot of issues relating to evidence in civil and criminal matters. It is divided into sixteen (16) parts. Part I (sections 1-3) deals with general issues on evidence; part II (sections 4-13) deals with relevancy; part III (sections 14-36) deals with relevance and admissibility; part IV (sections 37-82) deals with hearsay evidence, expert opinion, character evidence, relevance and admissibility; part V (sections 83-120) treats documentary evidence; part VI (sections 121-124) covers proof; part VII (sections 125-127) relates to oral evidence and the inspection of real evidence; part VIII (sections 128-130) deals with exclusion of oral by documentary evidence; part IX (sections 131-144) makes provisions for production and effect of evidence; part X (sections 145-174) discusses presumptions and estoppel; part XI (sections 175-204) deals with witnesses; part XII (sections 205-247) deals with taking of oral evidence and examination of witness; part XIII (sections 248-250) deals with evidence of previous conviction; part XIV (section 251) deals with wrongful admission and rejection of evidence; Part XV (sections 252-254) is on service and execution throughout Nigeria of process to compel the attendance of witnesses before courts of the states and the Federal Capital Territory, Abuja; and part XVI (sections 255-258) deals with miscellaneous and supplementary provisions.

The following are some selected provisions from the Evidence Act that borders on criminal justice administration.

### **3.2,1: Burden of Proof:**

The general rule is that the party who is asserting the existence of any fact in issue carries the burden of proving them which will be the prosecution in criminal case.<sup>73</sup>

### **3.2,2: Presumption of Innocence in favour of the accused person:**

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<sup>72</sup> Evidence Act Cap. E 14 LFRN 2004.

<sup>73</sup> Section 131 Evidence Act.



Presumption is defined as a conclusion which may or must be drawn from a given set of facts until contrary is proved.<sup>74</sup> There are two types of presumptions namely: Presumption of Law and Presumption of Fact.

### **3.2.3: Presumption of Law:**

A presumption of law is one which is prescribed by law and which must be drawn in the absence of any evidence to the contrary.<sup>75</sup> Presumptions of law are divided into two: Rebuttable Presumption of Law and Irrebuttable Presumption of Law.

### **3.2.4: Presumption of Fact (Fact Presumed):**

A presumption of fact is one which is dependent upon logical reasoning or which a court is free to draw if it so likes.<sup>76</sup>

### **3.2.5: Confessional Statement:**

Confession is defined as an admission made at any time by a person charged with a crime stating or suggesting the inference that he committed that crime.<sup>77</sup>

### **3.2.6: Corroboration:**

This is defined as a confirmation of a witness's evidence by independent testimony. In criminal justice administration, the general rule is that, no particular number of witnesses is required for the proof of any fact. A person can be convicted of any offence on the Oath of a single adult witness.<sup>78</sup> However, corroboration may occur as a matter of law or as a matter of practice. Corroboration as a matter of law are such circumstances that are provided by law that requires corroboration before admitting such evidence. Example of such instances is breach of promise to marriage.<sup>79</sup> No plaintiff shall succeed in this action unless his testimony is

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<sup>74</sup>Section 145 (2) Evidence Act.

<sup>75</sup>Section 145 Evidence Act.

<sup>76</sup>Section 145 (2) Evidence Act.

<sup>77</sup>Section 28 Evidence Act ; also *Gira v. State* (1996) 4 NWLR {PT 443} 375 S.C.

<sup>78</sup>*Shorumo v. State* (2011) ALL FWLR (Pt 421) 797.

<sup>79</sup>*Wilcox v. Jeffrey* (1872) 26 L.T. 48.

corroborated.<sup>80</sup>For Treason and Treasonable Offences, the Evidence Act<sup>81</sup> provides that no person charged with treason or with any felonies mentioned in sections 40 - 42 of the Criminal Code shall be convicted except in his own plea of guilty or on the evidence in open court of two witnesses, at least to one overt act of the same kind of treason or felony alleged, or the evidence of one witness to one overt act and one other witness to another overt act of the same kind of treason or felony. In *R v.Omisade*,<sup>82</sup> the Supreme Court held that it is not necessary that a witness must be able to testify to an overt act in its entirety but it is sufficient if a number of witnesses give evidence of snippets, which add up to proof of an overt act.<sup>83</sup>

### **3.3: Police Act 2020**

The Police Act was enacted in 1943 and re-enacted by a decree in 1967 with only aesthetic changes<sup>84</sup> and now finally repealed in 2020.<sup>85</sup>The Act makes provision for the organisation, discipline, powers and duties of the Nigerian Police. The main functions of the Police as stipulated in the Act are: to take measures to prevent crime, to investigate crime, to prosecute suspects, to search properties and persons in order to prevent crimes, detect or investigate crimes, apprehend offenders, and collect evidence for prosecution.<sup>86</sup> The power of the Police to prosecute criminal cases up to Supreme Court was affirmed in the case of *Federal Republic Nigeria v.Osahon*.<sup>87</sup>Police officers whether lawyer or not has the power under section 23 of the Police Act to prosecute criminal cases at the Magistrate Court. The fundamental question is whether the provision of section 106 of ACJA overrides the provision of section 23 of the Police Act which empowers the Police to prosecute criminal cases. This will be addressed in due course. The Code is substantially remnants of colonial legislations and traditions and amendments have failed to effect a Nigerian-specific outline on criminal legislation.

### **3.4: Correctional Service Act 2019**

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<sup>80</sup> Section 197 Evidence Act.

<sup>81</sup> Section 201 (1) Evidence .Act.

<sup>82</sup> (1964) NMLR 67.

<sup>83</sup> *Enahoro v. R.* (1965) 1 NMLR 265.

<sup>84</sup> Osasona T, 'Time to Reform Nigeria's Criminal Justice System' 2.

<sup>85</sup> Police Act (Repeal and re enactment Act 2020).

<sup>86</sup> Sections 4, 23 &25 Police Act generally.

<sup>87</sup> (2006) 5 NWLR (Pt. 973) 87.

President Muhammadu Buhari signed into law the Act amending the name of the Nigerian Prisons Service (NPS) to Nigerian Correctional Service (NCS).<sup>88</sup>

The President's assent which was announced by his aide on National Assembly matters, Ita Enang, on August 14, 2019 which came 11 years after the bill was first presented before the National Assembly and 19 years since proposals for reform of the country's prisons were made. The bill was first presented before the Senate in January 2008 by former member of the Senate, Victor Ndoma-Egba, and was read a second time in 2010. The Senator had then argued that if passed into law, the bill would address some of the fundamental lapses inherent in the Prisons Act, stressing that a review of the Act was necessary to put in place a framework for the rehabilitation and transformation of inmates and to address the issue of inadequate funding of prisons.<sup>89</sup> The Act consists of the Custodial and Non-custodial Services. The Custodial Service, among other roles takes custody and control of persons legally interned in safe, secure and humane conditions, conveying remand persons to and from courts in motorised formations. The Non-Custodial Service on the other hand has to do with the administration of non-custodial measures like community services, probation, parole, restorative justice measures and such other measures as a court of competent jurisdiction may order.

The Act also provides for restorative justice measures which includes victim-offender mediation, family group conferencing, community mediation and other conciliatory measures as may be deemed necessary at pre-trial, trial, during imprisonment or even post- imprisonment stages, conducting risk and needs assessment aimed at developing appropriate correctional treatment methods for reformation, rehabilitation and reintegration, implementing reformation and rehabilitation programmes to enhance the reintegration of inmates back into society, initiating

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<sup>88</sup> Azu J.C, 'Major implications of Nigeria's new Correctional Act' Published Aug 20, 2019 available at <https://www.dailytrust.com.ng/major-implications-of-nigerias-new-correctional-act.html> accessed on 7 February 2020.

<sup>89</sup> Fidelis Mac-Leva Joshua Odeyemi & John Chuks Azu (Abuja), Itodo Daniel Sule (Lokoja) and Victor Edozie, 'Nigeria's prisons remain same despite name change' (Port Harcourt) Published October 23, 2019. <https://www.dailytrust.com.ng/nigerias-prisons-remain-same-despite-name-change.html> https:accessed on 7 February 2020.

behavior modification in inmates through the provision of medical and psychological, spiritual and counseling services for all offenders including violent extremists.<sup>90</sup>

Agomoh<sup>91</sup> observes that the first thing in Section 2(1) (a) - (d) of the Act is to ensure that the operations of the Nigerian Correctional Service is in tandem with international human rights practices, meaning it will be in compliance with the United Nations standard minimum rule for the treatment of prisoners known as the Mandela Rules; and that it will be in tandem with the Bangkok Rules, which deals with women.

The Act further provides that where an inmate sentenced to death has exhausted all legal procedures for appeal and a period of 10 years has elapsed without execution of the sentence, the Chief Judge may commute the sentence of death to life imprisonment. The Act also makes provision for the development of educational and vocational skills training programmes and facilitating incentives and income generation through custodial centers, farms and industries and providing support to facilitate the speedy disposal of cases of persons awaiting trial amongst others.<sup>92</sup> Section 12 of the Act empowers the State Controller of the Service to reject more intakes of inmates where it is apparent that the correctional centre in question is filled to capacity.

In an ideal situation, improvement of facilities through funding and reorienting the psyche of personnel working in the service ought to have been given priority ahead of simply changing the name of the service from NPS to NCS. Some officers observed that directorates in the service ought to have been expanded to accommodate the non-custodial aspect of the NCS operations. It was gathered that inmates are still kept in the prisons even though the new Act provides that some of them with minor offences would have had their punishments converted to parole or other non-custodial measures.<sup>93</sup>

As at June, 2020, the total number of prisons inmates in Nigeria stands at 74,081. Findings showed that there are 72,662 male inmates and 1,419 female inmates. Of the total figure, 22,390 male and

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<sup>90</sup> Ibid.

<sup>91</sup> Agomoh U, New prison law will improve Nigeria's human rights record, save money – Agomoh, prison reformer. <https://www.sunnewsonline.com/new-prison-law-will-improve-nigerias-human-rights-record-save-money-agomoh-prison-reformer/ACCESSED> 8 October 2021.

<sup>92</sup> Fidelis Mac-Leva, Joshua Odeyemi & John ChuksAzue (Abuja), Itodo Daniel Sule (Lokoja) & Victor Edozie.

<sup>93</sup> Ibid.

311 female prisoners had been convicted. There are 51,380 prisoners that are awaiting trial in various prisons across the country.<sup>94</sup>

### **3.5: Administration of criminal justice Act (ACJA)**

There were serious agitations for overhauling of the laws regulating criminal justice system specifically as regards the enabling laws due to the fact that the two principal criminal laws had become outdated. The agitations concerned both the substantive and procedural criminal codes. This led to the setting up of various reforms commissions and committees by succeeding governments and finally in 2015, they came up with Administration of Criminal Justice Act of 2015. This Act aims to ensure the efficient management of criminal justice institutions, speedy dispensation of justice, and protection of the rights of suspects and defendants in Nigeria. ACJA 2015 merged the provisions of both the Criminal Procedure Act and the Criminal Procedure Code into one and provides for a coordinated law for the whole country's criminal justice administration. Although, at first the Act was only applicable to Federal Court. The Administration of Criminal Justice Act, 2015 (ACJA) is one of the recent laws in Nigeria and it is without doubt extensive in its applicability and innovativeness in nature. The Act which came into being in May 2015 has 495-sections and divided into 49 parts relating to the administration of criminal justice and connected matters in the courts of the Federal Capital Territory and other Federal Courts in Nigeria. It is important to note that since the enactment of ACJA, each state of the federation has followed suit with eventual domestication. The ACJA is significant by integrating the major provisions of the two major criminal justice laws in Nigeria that is Criminal Procedure Act and Criminal Procedure Code. It preserves the prevailing criminal processes while introducing modern provisions that will improve the efficiency of the justice system and help fill the inadequacies identified in these laws over the course of several decades. Nigeria now has a single and integrated procedural criminal law applicable in all federal and state courts, with respect to offences contained in Federal and State Legislations.<sup>95</sup>

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<sup>94</sup> Ibid.

<sup>95</sup> Section 2. ACJA.

It is to be noted that the whole of the Act aim at protecting parties to criminal cases , notably among the beneficial sections for the protection of defendant include:

- a. Right to be informed of the reason for arrest: Section 6(2) A.C.J.A.2015.
- b. Right to remain silent: Section 7 A.C.J.A.2015.
- c. Right to Counsel: Section 6(3) A.C.J.A.2015.
- d. Right to be brought before a court: Section 8 A.C.J.A.2015.
- e. Right to bail : Section 165-173 A.C.J.A.2015.
- f. Right to a Fair trial: Section 1 A.C.J.A.2015.
- g. Right to Confrontation: Section 215 A.C.J.A.2015.
- h. Right to an Interpreter: Section 21 A.C.J.A.2015.
- i. Right to Appeal: Section 241 A.C.J.A.2015.
- j. Protection from Torture and ill treatment: Section 8 A.C.J.A.

### **3.6. Legal Aid Act 2011:**

This legislation establishes the Legal Aid Council, which provides free legal services to individuals who cannot afford legal representation, ensuring that indigent defendants have access to justice. The Act aims to: Ensure access to justice for all, particularly the vulnerable and marginalized. It provides legal assistance to those who cannot afford it and Promote fairness and equality in the justice system. The Legal Aid Council of Nigeria was established by the then Head of the Federal Military Government, General Olusegun Obasanjo on 10th November 1976 through Act No. 56 of 1976. The provisions of the Legal Aid Act was brought into force by Dr. Augustine Nnamani J.S.C., the then Attorney General of the Federation on the 2nd day of May, 1977. Over the years, the decree had been amended and later codified (except the 1994 amendment) into what is now known as Legal Aid Act. Cap 205, Laws of the Federation of Nigeria. The LAC 2001 Act repealed

the 1976 LAC Act.<sup>96</sup> It went through two amendments, and finally, in 2011, an Act was signed by President Goodluck Jonathan. Among the services rendered by Legal Scheme include claims damages for breach of fundamental human rights as guaranteed by the Constitution. The Decree was amended by the Legal Aid Act Cap L9, Law of the Federation, 2004 and to conform to the current democratic dispensation, the Law was repealed in 2011 by the Legal Aid Act 2011.<sup>97</sup>

The initiation began with the trio of Chief Timothy ChimizieIkeazor, SAN, Chief Adebawale Durosaiye Akande, SAN, and Chief Dr Solomon Daushep Lar, SAN. CON. They formed the Association of Public Defenders (later the Legal Aid Association of Nigeria) in the early 1970s. Their objective was to provide *probono* legal services to indigent, economically deficient and less privileged Nigerians.<sup>98</sup>

Legal Aid Council of Nigeria is a federal body under the supervision of the Federal Ministry of Justice. The Council has its headquarters in Abuja, conducts its operations through offices in 36 states, 6 zonal offices, Legal Aid Centres (14 for now) in Local Government Area Councils in some States and the Federal Capital Territory as part of the drive to establish legal aid offices in all the 774 Local Government Areas of the Federation.<sup>99</sup>

It renders free legal aid and access to justice to indigent persons as widely as possible within its financial resources.<sup>100</sup> The body provides legal aid to individuals or firms, whose human rights

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<sup>96</sup> Legal Aid Council of Nigeria, 'Giving Voice to the voiceless', <[http://www.legalaidcouncil.gov.ng/index.php?option=com\\_content&view=article&id=156:world-bank-report-on-acj-project-in-kaduna-state&catid=43:latest-news&lang=en](http://www.legalaidcouncil.gov.ng/index.php?option=com_content&view=article&id=156:world-bank-report-on-acj-project-in-kaduna-state&catid=43:latest-news&lang=en)> accessed on 17 June 2016.

<sup>97</sup> Abdulkadir A, 'LIFE BEGINS @ 40': The Story of Legal Aid Council of Nigeria' 1, <<http://www.autoreportafrica.com/life-begins-40-story-legal-aid-council-nigeria/>> accessed on 17 March 2017.

<sup>98</sup> Ibid.

<sup>99</sup> Ibid.

<sup>100</sup> Ibid.

have been threatened or violated, provides free legal advice to the citizens and also individual legal assistance to those who cannot afford but need it. Counsels are designated to different states to provide free legal services to the indigent across the country. It has been recognised that no meaningful development can ensue without the simultaneous availability of access to legal services that can be utilised to enforce all generations of rights and thus ensure the empowerment of all persons in the society. Springing from this premise, the concept of access to justice has attained the status of a right in the society today as it promotes establishment of a legal culture that contributes to development processes.<sup>101</sup>

The vision of the founding fathers of the Legal Aid Council was to see a new Nigerian nation where there is equal access to justice for all, irrespective of means and where all Constitutional rights are respected, protected and defended to ensure justice for all. This is reflected in its motto which is ‘Giving Voice to the Voiceless’ while the Mission Statement is ‘To remain the leading and pro-active provider of free, qualitative and timely legal aid services in Nigeria, ensuring social justice and the emancipation of the oppressed, reprieve to the weak and vulnerable thereby giving voice to the voiceless.’

The Council is not without challenges. Ayorinde<sup>102</sup> is of the view that the Council is faced with challenges of poor funding and logistics which is really affecting the efforts of the Council’s staff members.<sup>103</sup> Abdulkadr<sup>104</sup> argues that it is only now that the Council is having its own building as headquarters while a visit to some of its states’ offices shows that it needs one aid or the other. The

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<sup>101</sup> **Abdulkadir A**, ‘LIFE BEGINS @ 40”: The Story of Legal Aid Council of Nigeria’<sup>25</sup>

<sup>102</sup> Ayorinde Bolaji SAN is the former Chairman of the Governing Board of the Legal Aid Council.

<sup>103</sup> Ayorinde to *Newswatch Times* Newspaper in Abdulkadr A,

<sup>104</sup> Abdulkadr Ahmad Ibrahim former member of the Governing Board of the Legal Aid Council.



staff are either being moved randomly from one building to another by their host state governments or are provided with office accommodation in remote areas; while in some cases, tables, chairs and other office furniture at these state offices are better imagined than seen. Ordinary stationeries are sometimes provided by indigent litigants. Official vehicles of the Council are in a state of despair in some of the states' offices and where available. The monthly financial grant to cover recurring costs of maintenance and utilities among others from the headquarters was no longer regular<sup>105</sup>.

### **3.7: ANTI-TORTURE ACT 2017:**

The Anti-Torture Act 2017 was passed by the 8th National Assembly and signed into law by President Muhammadu Buhari on 29th December 2017. This Act criminalizes the use of torture by law enforcement agencies and ensures that confessions or statements obtained through torture are inadmissible in court. It prohibits torture and other forms of cruel, inhuman, or degrading treatment or punishment. The act defines torture as intentionally inflicting pain or suffering, physical or mental, to obtain information, punish, intimidate or coerce someone. The Act aims to promote human rights and dignity and its effective implementation is crucial to preventing torture in Nigeria. However, there is concern that the Act's implementation has been slow and no perpetrator has been punished under the Act yet.

### **3.8: African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act 1983:**

By incorporating the African Charter into domestic law, Nigeria commits to upholding the rights and freedoms enshrined therein, including fair trial rights. It is a Nigerian law that ratifies the African Charter on Human and Peoples' Rights. It Incorporates the Charter into Nigerian law. And provide a framework for enforcing human rights provisions. It thus has the following Implication: It aligns Nigerian law with regional human rights standards, enhances protection of human rights

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<sup>105</sup> Abdulkadr A, 'LIFE BEGINS @ 40': The Story of Legal Aid Council of Nigeria'

in Nigeria and allows individuals to invoke Charter provisions in Nigerian courts. The Act demonstrates Nigeria's commitment to regional human rights frameworks and promotes accountability for human rights protection.

### **3.9: International Covenant on Civil and Political Rights (ICCPR):**

As a signatory, Nigeria is bound to uphold the rights outlined in the ICCPR, which include various protections for defendants in criminal proceedings. It is a key international human rights treaty adopted by the United Nations General Assembly in 1966. It came into force in 1976 and has been ratified by a large number of countries worldwide. The ICCPR is a cornerstone of international human rights law and plays a crucial role in promoting and protecting civil and political rights globally. The Key Provisions include: The ICCPR outlines a broad range of civil and political rights, as follows: Right to life: States parties must protect the right to life and ensure that no one is arbitrarily deprived of their life. Freedom from torture: The Covenant prohibits torture, cruel, inhuman, or degrading treatment or punishment. Freedom from arbitrary arrest and detention: Individuals have the right to liberty and security of person, and arbitrary arrest or detention is prohibited. Right to a fair trial: The ICCPR guarantees the right to a fair and public trial, with access to legal representation and the presumption of innocence until proven guilty. Freedom of expression, assembly, and association: The Covenant protects the rights to freedom of expression, peaceful assembly, and association. Protection of minority rights: States parties are required to protect the rights of minorities, including their right to enjoy their own culture, practice their religion, and use their language. The ICCPR is monitored by the Human Rights Committee (HRC), a body of independent experts who review reports submitted by States parties on their implementation of the Covenant. The Committee also considers individual complaints (communications) from individuals who claim their rights under the ICCPR have been violated.

### **3.10: Universal Declaration of Human Rights (UDHR):**

While not legally binding, the UDHR sets out fundamental human rights principles, including the right to a fair trial, which influence Nigeria's legal framework. The Universal Declaration of Human Rights (UDHR) is a foundational document of modern human rights, adopted by the

United Nations General Assembly in 1948. It sets out fundamental human rights and freedoms, universal and inalienable, to be enjoyed by all. The UDHR comprises 30 articles, encompassing: Civil and political rights: life, liberty, security, freedom from slavery, torture, and arbitrary arrest. Economic, social, and cultural rights: work, social security, education, healthcare, and cultural participation. Equality and non-discrimination: equal rights for all, without distinction. The UDHR is significant in that it establishes human rights as universal and inalienable, Inspires national and international human rights law and guides governments, organizations, and individuals. The UDHR has Shaped international human rights law and treaties, Influenced national constitutions and laws, as well as Promoted human rights awareness and advocacy. The UDHR remains a cornerstone of human rights, inspiring efforts to protect and promote dignity, equality, and justice worldwide.

#### **4.0: CHALLENGES TO EFFECTIVE IMPLEMENTATION OF RIGHTS AND PROTECTION OF DEFENDANT IN THE NIGERIAN CRIMINAL JUSTICE SYSTEM**

Despite these legal protections, several challenges hinder their full implementation, including:

- a. Corruption and Abuse of Power: Corrupt practices always lead to prolonged detention , denial of bail and miscarriage of justice Law enforcement agencies sometimes violate defendants' rights, leading to wrongful detentions and torture.
- b. Judicial Delays: The slow pace of judicial proceedings. Cases often take years to be resolved due to inefficiencies in the court system.
- c. Limited Access to Legal Representation/legal aid: Many indigent defendants lack access to quality legal representation despite the existence of legal aid.
- d. Police Brutality and Unlawful Detention: Cases of extrajudicial killings and forced confessions continue to undermine defendants' rights.
- e. overcrowded prisons and
- f. systemic inefficiencies persist,

#### **5.0: RECOMMENDATIONS FOR STRENGTHENING DEFENDANTS' RIGHTS**

These recommendations aim to strengthen defendants' rights, promote fairness, and ensure justice. To enhance the protection of defendants' rights in Nigeria, the following measures should be taken:

Ensure timely access to legal representation: Provide defendants with prompt access to lawyers and adequate time to prepare their defense.

Improve bail procedures: Reform bail systems to ensure fairness, transparency, and consideration of individual circumstances.

Enhance access to justice: Ensure defendants have a fair and impartial trial, with adequate interpretation services and accessibility accommodations.

Strict Enforcement of Human Rights Laws: Holding law enforcement agencies accountable for rights violations.

Public Awareness Campaigns: Educating citizens about their rights to prevent abuses.

Improved Legal Aid services by expanding access to free legal representation for indigent defendants.

Protect against coerced confessions: Strengthen safeguards against torture, duress, and coercive interrogation techniques.

Improve appeals processes: Streamline appeals procedures, ensuring timely and fair review of convictions and sentences.

Provide rehabilitation and reintegration support: Offer defendants opportunities for rehabilitation, education, and reintegration into society.

Promote judicial independence and accountability: Ensure an independent judiciary, with mechanisms for accountability and oversight.

Foster a culture of respect for human rights: Encourage a culture of respect for defendants' rights among law enforcement, judiciary, and other stakeholders.

Increase transparency and accountability: Implement measures to track and address systemic issues, such as wrongful convictions.

Provide training and capacity-building: Offer training for law enforcement, judiciary, and lawyers on defendants' rights and best practices.

## **6.0: CONCLUSION**

Legal protections for defendants are crucial for maintaining the integrity of Nigeria's criminal justice system. While the country has made progress in enacting laws that safeguard these rights, enforcement remains a significant challenge. A commitment to judicial reforms, accountability in law enforcement, and increased public awareness can help ensure that every defendant in Nigeria

receives a fair trial. This paper commences by examining the fundamental human rights accorded in the constitution. it went further to examine various legal framework and basic rights and protections guaranteed to the defendants, it also considers the Challenges to effective Implementation of rights and protection of defendant in the Nigerian Criminal Justice System, it provides Recommendations for Strengthening Defendants' Rights and Conclusion.