

**THE IMPACT OF PROLONGED AWAITING TRIAL ON THE RIGHTS OF  
DEFENDANT IN NIGERIA CRIMINAL JUSTICE SYSTEM**

**SUBMITTED**

**BY**

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**TO**

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**2020/LW/12765**

**BEING A PROJECT SUBMITTED TO THE FACULTY OF LAW, ALEX EKWUEME  
FEDERAL UNIVERSITY, NDUFU ALIKE IKWO, IN PARTIAL FULFILLMENT OF  
THE REQUIREMENTS FOR THE AWARD OF THE DEGREE OF BACHELOR OF  
LAWS (LLB)**

**SEPTEMBER 2025**

**DECLARATION**

I, FAVOUR CHINAZA ANIEBONAM, Student of the Faculty of Law Alex Ekueme Federal University, Ebonyi State, do hereby declare on my honour, that this project has not been previously presented either wholly or in part for the award of any other Degree, Diploma, Certificate or Publication in any university, other higher institutions or elsewhere.

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FAVOUR CHINAZA ANIEBONAM  
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DATE

**CERTIFICATION**

This is to certify that this long essay titled “The Impact of Prolonged Awaiting Trial on the Right of Defendant in Nigeria Criminal Justice System ” Has been assessed and approved by the Undergraduate Studies Committee of the Faculty of Law Alex Ekueme Federal University Ndufu Alike Ikwo as an Original work Carried out by Aniebonam Favour Chinaza with registration number under the faculty of law Alex Ekueme Federal University Ndufu Alike Ikwo under the guidance and supervision to of Dr. Onyinyechukwu Theresa Eze.

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## **DEDICATION**

This research work is dedicated to God Almighty for His love, mercy, grace and guidance all through my academic journey. Without whose support I would not have been able to complete this programme.

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## **LIST OF ABBREVIATION**

ACJA – Administration of Criminal Justice Act

ATI – Awaiting Trial Inmates

ATP – Awaiting Trial Prisoners

CJS – Criminal Justice System

ECOWAS – Economic Community of West African States

ICCPR – International Covenant on Civil and Political Rights

IGP – Inspector-General of Police

NCoS / NCS – Nigerian Correctional Service

NP – Nigeria Police

NPF – Nigerian Police Force

UDHR – Universal Declaration of Human Rights

UNCAT – United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

UN – United Nations

**ABSTRACT**

The study examined the impact of prolonged awaiting trial on the rights of defendants in Nigeria's criminal justice system. This problem created significant violations of constitutional rights, including the right to liberty, presumption of innocence, and a fair hearing. The research aimed at critically analyzing how extended pre-trial detention undermined defendants' rights, identifying systemic shortcomings, and proposing reforms to improve justice delivery. A doctrinal research methodology was adopted, relying on primary and secondary sources such as statutory provisions, case law, textbooks, reports, and human rights instruments. Findings revealed that prolonged awaiting trial subjected defendants to overcrowded prisons, psychological trauma, loss of health, and diminished human dignity. It also exposed systemic inefficiencies including prosecutorial delays, unlawful police practices, inadequate legal aid, and judicial congestion. Furthermore, the study established that these delays eroded public trust in the justice system, making pre-trial detention a form of punishment in itself. The study recommended, first, the implementation of strict compliance with the *Administration of Criminal Justice Act (ACJA)* to ensure speedy trials and limit adjournments.

## CHAPTER ONE

### INTRODUCTION

#### 1.1 Background to the study

Prolonged awaiting trial is an endearing flaw in the Nigeria justice system affecting the rights of defendants. In Nigeria many defendants or inmates are being held in correctional centers for years without their matter being tried. Statistics prove that 65 percent of inmates in correctional centers in Nigeria are awaiting trial, that is, inmates who are awaiting trial make up 65 percent of the correctional center population. <sup>1</sup>This situation raises serious concern as to the efficiency and effectiveness of the Nigeria justice system, it also raises concern on their human right, access to justice as well as dispensation of justice.

Nigeria's ongoing judicial congestion leaves many inmates awaiting trial in correction center for an extended period of time, which not only causes psychological distress but also raises serious concerns about the effectiveness and fairness of the legal system.<sup>2</sup> It's shocking to think that some people have spent as many as two (2) years in prison waiting for trial, by this singular act it appears as if the defendants have already been convicted as they would have if they had been taken to a court of competent jurisdiction, tried , found guilty, convicted and served their full sentence. This is evident enough in The Guardian news report on the statement of the president of the Nigeria Bar

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<sup>1</sup> People's Gazette [2025] '65% Inmates are Awaiting Trial in Nigeria-NBA' available at <<https://gazettengr.com/65-of-inmates-awaiting-trial-in-nigeria-nba/>> accessed on 7 April 2025

<sup>2</sup> Punch News Report[2024] 'Unveiling the Crisis of Prison Congestion' available at<<https://punchng.com/unveiling-the-cris-prison-congestion/>> accessed on 2 April 2025

Council Chief Sam Osigwe who expressed his concern concerning inmates who are awaiting trial in the country. He asserted that:<sup>3</sup>

We should focus on pre-trial detainees, people who are court awaiting trials. They make up over 65 percent of the prison population. We should worry about those who are simply remanded in prison facilities without having about case tried, or their case taking an intolerable length of time to come to conclusion, on account of one delay or the other. They are sometimes serving more time in prison than they would if the court have convicted them or even acquiring one disease or the other in prison even dying

One of the major causes of prolonged awaiting trial across Nigeria, is the Nigeria Police Force, they make unlawful arrest, file frivolous charges in courts that have no jurisdiction, for example capital offences filed at the magistrate court which lacks the requisite jurisdiction.<sup>4</sup> Slow court process hindered by backlog of cases, inadequate infrastructure and procedural delays as well as inadequate communication between prison authorities and prosecutors concerning their trial dates also contribute to the cause of prolonged awaiting trial syndrome.<sup>5</sup>

The Guardian news report on the statement of the president of the Nigeria Bar Council Chief Sam Osigwe who expressed his concern concerning inmates who are awaiting trial in the country. He asserted thus:<sup>6</sup>

If the prosecution, Ministry of Justice fails to file a charge, then they should order the release of such persons, so that people do not spend in prison detention without being charged to court, they should ensure that of courts, in line with provisions of the Police Act and the Administration of Criminal Justice Act, will visit detention facilities, whether of the police, of the army, of the DSS, of the NDLEA to check the length of time of the people have been detained there. People should be released on bail or be charged to court or be released entirely

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<sup>3</sup> The Guardian News Report 'over 65% Inmates are Awaiting Trial –NBA President' available at <https://guardian.ng/news/over-65-inmates-are-awaiting-trial-says-nba-president/> accessed on 2 April 2025

<sup>4</sup> Punch News Report[2024] 'Unveiling the Crisis of Prison Congestion' available at <https://punchng.com/unveiling-the-cris-prison-congestion/> accessed on 2 April 2025

<sup>5</sup> Ibid

<sup>6</sup> The Guardian News Report 'Over 65% Inmates are Awaiting Trial –NBA President' available at <https://guardian.ng/news/over-65-inmates-are-awaiting-trial-says-nba-president/> accessed on 2 April 2025

The impact of prolonged awaiting trial on the right of defendant in Nigeria's criminal justice system cannot be overemphasized. It is succinct to note that holding cells in correctional centers accommodate more than the capacity that they were slated for initially. This in turn has adverse effect on the health, nutrition and personal hygiene of the inmate. This also in some cases leads to death of inmates due to poor health and so on. Indeed justice delayed is justice denied.<sup>7</sup>

The purpose of the instant work is to undertake a comprehensive and critical examination of the impact of prolonged awaiting trial on the rights of defendants within Nigeria's criminal justice system. The study aims to examine the effects of prolonged pre-trial detention on basic rights such the presumption of innocence, the right to a fair trial, the availability of counsel, and the general welfare of defendants. The study will also look at the systemic problems that lead to extended incarceration, such as ineffective law enforcement and prosecutorial procedures, overcrowding in prisons, judicial delays, and insufficient legal help. This study also attempts to pinpoint the weaknesses and restrictions in the current institutional and legal framework that permit prolonged pretrial detention to continue. Based on findings reached, the study will suggest specific legislative and policy changes aimed at defending the rights of defendants, enhancing the effectiveness of the criminal justice system, and guaranteeing a stronger commitment to Nigeria's values of justice, equity, and human rights.

## 1.2 Statement of the problem

Prolonged awaiting trial has become a major problem in a nation like Nigeria, despite its well-established criminal justice system. This prolonged awaiting trial -period violates the defendant's

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<sup>7</sup> Punch News Report[2024] 'Unveiling the Crisis of Prison Congestion' available at<<https://punchng.com/unveiling-the-cris-prison-congestion/>> accessed on 2 April 2025

fundamental rights. Although crime is a global problem that affects all countries, it is especially big on the African continent. According to Ukoji and Okolie (2016), South Africa and Nigeria are among the most afflicted nations, and Africa has the highest rates of both violent and non-violent crimes.<sup>8</sup> This fact emphasizes the critical necessity for justice systems that successfully combat social instability and rising crime rates. However, the number of inmates awaiting trial is a serious problem in many criminal justice systems around the world, and it is expanding at an alarming rate.<sup>9</sup>

Many defendants have been denied a speedy trial due to the inefficiencies in judicial administration; some detainees are held for as long as six months before their cases are heard, which should, in theory, take no more than one to two weeks Ojo, [2017], Orekewa,[ 2005].<sup>10</sup> Ogundipe[2009] further notes that Nigeria's prison facilities were not originally designed to accommodate the overwhelming power of detainees, yet this has become a persistent issue with no clear resolution in sight.<sup>11</sup> Consequently, the cohabitation of pretrial detainees with convicted criminals has worsened prison conditions amplifying concerns over inmate welfare and security.<sup>12</sup> Suspects must be brought before a court within a fair amount of time, usually 24 to 48 hours, according to the substantial justice principle, which is violated when detained people are held for an extended period of time without being charged in court right away.<sup>13</sup> Suspects should

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<sup>8</sup> JO Osemene, UV Nwankwo, 'Prevalence of Lethal and Non-lethal Crimes in Nigeria' *J. Adv. Res. Humani. Social Sci* [2016] 3(1) 11

<sup>9</sup> IO Salawu, 'Exploring Evidence-Based Analysis of the Plight of Awaiting Trial Inmates in North-Central Nigeria' *jejerang administrasi public*, [2024] 16 (1) 2<<https://doi.org/1020473/jap.v16i1.5312>> accessed on 4 April 2025

<sup>10</sup> Ibid

<sup>11</sup> IO Salawu, A Sulaiman and Y Alfakoro, 'From Prison to Correctional Services: Exploring Evidence Based Analysis of the Plight of Awaiting Trial Inmates in Kwara State, Nigeria' *Journal of Governance* [2023] 9(2) 228 <<https://dx.doi.org/10.31506/jog.v9i2.21584>> accessed on 4 April 2025

<sup>12</sup> Ibid

<sup>13</sup> Umeobika and Ejimofor, 'Problems and Challenges Facing a Defendant in Criminal Trials in Nigeria' *African Journal of Law and Human Rights* [2024] (8) (2) 127

be released on bond when trials are unnecessarily postponed, either unconditionally or with conditions that guarantee their appearance at court. However, these legislative provisions are regularly disregarded by law enforcement agencies, which results in suspects being detained for weeks, months, or even years without being granted bail or a trial.<sup>14</sup> Further impeding justice, such delays frequently result in lost files or the transfer of investigating police officers. This inefficiency significantly impairs the efficient operation of the criminal justice system.<sup>15</sup>

The Martin Eze case brings to light the harsh reality of Nigeria's legal system. Without being given the chance to speak or speak with his family, he was abruptly arrested by the Nigerian Police while returning home from a viewing facility and charged with conspiracy.<sup>16</sup> A decade-long detention without trial was the startling experience that ensued. The painfully sluggish court system in Nigeria leaves many people in a state of protracted legal ambiguity. Due process and a fair trial are among the essential rights that are compromised by this delay, necessitating immediate improvements. The entire basis of justice is weakened if cases go unresolved for years and the accused's rights are consistently abused.<sup>17</sup> This work is a critical evaluation directed at the public and legislators, emphasizing the urgent need for reforms to shorten criminal trial delays and safeguard defendants' rights. It will examine the systemic flaws that result in extended incarceration and offer fixes to guarantee a more effective and equitable criminal justice system in Nigeria.

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<sup>14</sup>Umeobika and Ejimofor, 'Problems and Challenges Facing a Defendant in Criminal Trials in Nigeria' *African Journal of Law and Human Rights* [2024] (8) (2) 127

<sup>15</sup> Ibid

<sup>16</sup> LP Asalaw, 'The Waiting Game; Injustice of Awaiting Trial Case in Nigeria' [2023] Available at <<https://www.linkedin.com/pulse/waiting-game-injustice-awaiting-trial-cases-nigeria-asalaw-practice>> accessed on 4 April 2025

<sup>17</sup> Ibid

### 1.3 Research Questions

This research seeks to answer the following questions as to guide this study to a logical conclusion.

These are:

1. How much do defendants' rights under Nigerian law get violated by the practice of protracted awaiting trial?
2. How successful or efficient is the current legal system at guaranteeing prompt trials and defending defendants' rights?
3. How may criminal trial delays be addressed while maintaining justice and a more equitable judicial system in Nigeria? What other policies or changes might be implemented?

### 1.4 Aim and Objectives

The main aim of the study is to carry out an exploratory analysis of the impact of prolonged awaiting trial on the rights of defendants within the Nigeria's criminal justice system. This include legal and institutional frameworks governing awaiting trial detention , identifying the problems faced by defendants, assessing the prospects for reform to ensure the protection of their fundamental rights.

The objectives of the study are:

1. To access how the practice of prolonged awaiting trial has affected the rights of defendant in Nigeria's criminal justice system.

2. To discover how effective or efficient the current judicial system is in ensuring timely trials and protecting the rights of defendants in Nigeria.
3. To discover alternative measures or reforms to be adopted to address delays in criminal trials while ensuring justice and a fairer legal process in Nigeria.

### 1.5 Scope and Limitation of the Study.

This study aims to conduct exploratory analysis on the impact of prolonged awaiting trial on the rights of defendants in Nigeria's criminal justice system. The scope of this research encompasses an examination of the legal and institutional frameworks established in regulating trials in Nigeria and in ensuring that the rights of the defendants are not violated. Specifically, it investigates the challenges and problems encountered by defendants awaiting trial. Which include violation of their rights to a fair trial, right to justice, right to health, right to human dignity and so on. Additionally, the study evaluates the effectiveness and efficiency of the Nigeria criminal justice system in ensuring that the rights of the defendants are guaranteed. Finally, this study will proffer recommendation to enhance the protection of the rights of defendants and solutions to ensure a timely trial.

The study is burdened with several limitations, this research relies on secondary data sources such as existing literature, case laws, and reports from human rights organization and judicial records may limit the breadth and depth of the data collected. The geographical scope is limited to Nigeria with a primary focus on the country legal and institutional framework.

### 1.6 Significance of the Study

This study contributes to existing body of legal literature by providing a critical analysis on the implication of prolonged awaiting trial on the rights of defendants in Nigeria's criminal justice system. This analysis delve into the available rights of the defendants , discloses how delay violates the rights of the defendants, by highlighting real life cases where individuals have suffered unjustly due to delay in administration. It also analyses the strength and weaknesses of the legislation governing trial. The findings in this study are especially significant because they give insight on moral and legal issues raised by the effect of prolonged awaiting trial to judges, law enforcement, law scholars etc. This work also contributes to scholarly discussions and hands on training by serving as helpful resource for legal education. this study significantly address the structural inequalities that defendants experience and guarantee a more equitable, just, and effective criminal system in Nigeria by providing recommendations, viable steps that can be adopted to regulate the process of trials in Nigeria. This study also serves as a Form of advocacy for people whose rights has been infringed upon and violated especially by some law enforcement agencies such as the police and so on, due to prolonged awaiting trial.

This research will therefore serve as a viable source of information for all, it will first and foremost benefit those engaged in the administration of justice, law enforcement agencies and the court. It will also be of immense benefit to policy makers, government officials, academics , students and all or anyone interested in a crime free Nigeria with a robust administration of criminal justice network.

### 1.7 Research Methodology

This study seeks to critically analyze the impact of prolonged awaiting trial on the rights of defendants in Nigeria criminal justice system to this effect, doctrinal research methodology will

be adopted. Doctrinal research or library based research is the research methodology commonly used mostly by those undertaking research in law.<sup>18</sup> It is important because it provide solutions to problems of law with minimum time and expenditure after analyzing the synthesis of well-established doctrines, policies, and court decisions through scientific, reasonable, and efficient methodology<sup>19</sup>

This research will make use of both primary and secondary such as law textbooks, statutory provisions like the constitution, treatise, case laws, law journals and law articles. Also other sources like newspaper, magazine, dictionaries, encyclopedias etc. Will also be adopted in the course of this research work to ensure a successful research project work. This Method is found expedient in this study because of the limited time afforded the researcher within which to complete this research work. Furthermore in developing countries like Nigeria, doctrinal research methodology constitutes the dominant research approach as it relates to law undergraduate and post graduate studies in the University.

### 1.8 Chapter analysis

This work is structured into five chapters. Chapter one which is the introductory chapter provides the background to the study and articulates the problem informing the research. The Statement of the Problem is followed by the Aim and Objectives of the study, then on to the Scope of the Study, the Significance of the Study then closely followed by the Research Methodology.

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<sup>18</sup> SI Ali, ZM Yusuf and ZA Ayub, 'Legal Research of Doctrinal and Non Doctrinal' *International Journal of Trend in Research and Development* [2017] (4) (1) 493

<sup>19</sup> MD Pradeep, 'Legal Research- Descriptive Analysis on Doctrinal Methodology' *International Journal of Management, Technology, and Social Science (IJMTS)* [2019] (4) (2) 97

Chapter two of this research work titled conceptual and theoretical framework and review of related literature seeks to examine different concept such as the concept of trial, the concept of awaiting trial, and the concept of rights. The theoretical framework explores different approach propounded by scholars such as the positivist theory, the theory of restorative justice which will contribute greatly to this scholarly jurisprudence. Review of related literature, literature such as the work of other scholars will be examined highlighting their contribution to this research work and pointing out areas for improvement.

Chapter three critically analyses legal and institutional framework. Legal framework such as the *Administration of the Criminal Justice Act (ACJA)*, the *Constitution*, Court rules, *Universal Declaration of Human Rights (UDHR)* amongst others. Institutional framework such as the Nigeria's police force, the courts, the correctional centers etc.

Chapter four discusses and analyses the legal implication of awaiting trial how it violates the rights of defendants and restrict their access to justice it also goes further to examine the psychological effect of prolonged awaiting trial on defendants, it also analyses problems stampeding the efficacy of trial in Nigeria.

Chapter five of this research is the final chapter. This chapter provides a comprehensive summary of the findings regarding the implication of prolonged awaiting trial on the rights of defendants in Nigeria. Recommendations are made in order to fill up loopholes found in existing legal framework. This chapter also explores contribution that this research work has made to the existing body of legal education.

## CHAPTER TWO

### CONCEPTUAL AND THEORETICAL FRAMEWOK AND LITERATURE REVIEW

#### 2.1 Conceptual Clarification

##### 2.1.1 Trial

Trial by definition may represent a number of different concepts. Trial is an adjective that denotes an experiment or test. When the verb trial is employed it might refer to evaluating something's usefulness. When the word trial is used as a noun it refers to a legal proceeding.<sup>20</sup> A trial is a court proceeding where the burden of proof is decided by an authoritative body. The parties involved can provide evidence and argument in the majority of contemporary nations, and the judge must respond to these with a well-reasoned ruling.<sup>21</sup>

The term trial refers to a judicial procedure wherein an individual accused of a crime or misdemeanor is adjudicated in a court of law.<sup>22</sup> According to Black's Law Dictionary,<sup>23</sup> a trial is a judicial examination, in accordance with law of the land, of a cause either civil or criminal, of the issues between the parties whether of law or of fact, before a court that has jurisdiction over it. It includes all proceedings from the time when issues are joined, or more when parties are called to try their case in court, to time of its final destination. And in its strict definition, the word trial

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<sup>20</sup> A Carpenter and J Blanco, 'Trial Definition and Process' *Study .com* available at < <https://study.com/academy/lesson/what-is-a-court-trial-definition-process-rules.html#:~:text=lesson%20summary> > accessed on 17 April 2025

<sup>21</sup> MM Feeley, 'Trials cultural' *International Encyclopedia of the Social & Behavioral Sciences* [2001]15897-15901 available at < <https://doi.org/10.1016/B0-08-043076-7/02823-0> > accessed on 17 April 2025

<sup>22</sup> VA Shima and B Aboho, 'Trial within Reasonable Time under Nigerian Law: A legal myth or Reality?' *Benue State University Law Journal* [2020] 354

<sup>23</sup> HC Black, *Black's Law Dictionary* ( 5<sup>th</sup> edn West Publishing Co 1979)

in criminal procedure means the proceedings in open court after the pleadings are finished and the prosecution is otherwise ready, down to and including the rendition of the verdict.<sup>24</sup> Trial is the review of the law and facts conducted by a judge, magistrate, or other individual with the power to hear the case (e.g., a lawyer assigned to hear the case). First, the defense makes its case, followed by the plaintiff in a civil case or the prosecution in a criminal case.<sup>25</sup>

The trial is a crucial act in the legal system's grand theatre, where conflict are decided and rights are established. It goes beyond a simple display of facts and is more than just a show. It is a furnace where justice is judged, truth is forged, and the foundation of social order is put to the test. However, what exactly is the goal of this complex ballet of argument, evidence, and judgment.<sup>26</sup> One of the primary goal of trial is that it serves as a safeguard for individual rights. Whether facing criminal or civil charges, people should have a fair and unbiased venue to defend themselves. The trial's defined procedural procedures and adversarial style guarantee that the burden of prove is on the prosecution in criminal cases who establish same beyond reasonable doubt in criminal cases while in civil cases the burden is on he who asserts to prove same on the preponderance of evidence., that due process is strictly adhered to, and that the accused has the right to counsel. The idea that justice is blind, not arbitrary is upheld by this framework, which shields innocent people form the fickle hand of power.<sup>27</sup>

Presenting enough evidence (proof) to persuade the fact finder that each element of a criminal accusation has been proven beyond reasonable doubt is the fundamental component of a trial in a

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<sup>24</sup> HC Black, *Black's Law Dictionary* ( 4<sup>th</sup> edn West Publishing Co 1968)

<sup>25</sup> NOLO, 'Trial Definition' available at < <https://dictionary.nolo.com/trial-term> > Accessed on 17 April 2025

<sup>26</sup> D Adamgbo, 'What is the Purpose of a Trial in the Legal System' available at <[https://medium.com/@the\\_solicitary/what-is-the-purpose-of-a-trial-in-](https://medium.com/@the_solicitary/what-is-the-purpose-of-a-trial-in-)>accessed on 17 April 2025

<sup>27</sup> Ibid

criminal case. A jury or the judge alone may serve as the fact finder, which is the body that decides which evidence, if any, to accept. When the accused tries to assert a specific defense in some circumstances, the fact finder must also determine whether the defendant has established the defense elements.<sup>28</sup>

### 2.1.2 Forms of trial

In Nigeria jurisprudence, the forms of trials are majorly divided into two: we have criminal trial and civil trial. These Forms of trials will be discussed respectively.

#### 2.1.2.1 Criminal trial

In Nigeria jurisprudence criminal trial is a judicial procedure that takes place in the court of law before a judge, whereby, the defendant represented by the defense lawyer is being tried against the state in order to prove whether or not the defendant is guilty. In a criminal trial, a defendant who has been charged with a crime is formally arraigned before a court of competent jurisdiction and enters a plea of guilty or not guilty, as applicable. After then, the defense offers arguments and evidence to cast doubt on the defendant's guilt, while the prosecution uses these to establish the defendant's guilt beyond reasonable doubt. The judge oversees the trial and guarantees justice.<sup>29</sup>

The purpose of a criminal trial is to establish beyond reasonable doubts the guilt or innocence of the accused. Both the prosecution and the defense attorneys will present opposing evidence, witnesses, and arguments throughout the trial, which is an adversarial process in common law

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<sup>28</sup> Law 101, 'Legal Guide for the Forensic Expert. Definition of a Trial' available at < <https://nij.ojp.gov/nij-hosted-online-training-courses/law-101-legal-guide-forensic-expert/trial/definition-trial#definition-of-a-trial> > accessed on 17 April 2025

<sup>29</sup> Umeobika and Ejimofor, 'Problems and Challenges Facing a Defendant in Criminal Trials in Nigeria' *African Journal of Law and Human Rights* [2024] 8(2) 126

systems.<sup>30</sup> In commencing a criminal proceeding the main method is by bringing an arrested person with or without warrant upon a charge.<sup>31</sup>

In a criminal trial, there are several important stages that needs to be adhered to in order to make sure that justice is served. These stages include:

1. Arraignment: the law makes it mandatory for a charge to be read to the defendant to the satisfaction of the court before he is asked to take a plea. When the charge has been read and interpreted, the defendants then takes a plea.<sup>32</sup>

The defendant may plea as follows:

- a. Plea of Guilt: Implies that the defendant has formally admitted to the crime charge against him. This option may lead to a more lenient sentence.<sup>33</sup>
  - b. Plea of not Guilty: pleading not guilty means you dispute the charge against the defendant and intend to fight them in court. This option allows him to present his defense and challenge the prosecution's evidence<sup>34</sup>
  - c. No Plea: If the Defendant refuses to plea, a plea of not guilty would be entered for him.<sup>35</sup>
2. Preliminary objection: according to the court ruling in *Tsokwa v Ibi*,<sup>36</sup> A Preliminary objection is an objection in a case before a competent court of justice that, if upheld, would

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<sup>30</sup> Law explorer, 'The criminal Trial' available at < <https://lawexplore.com/social-control/> > accessed on 8 May 2025

<sup>31</sup> CJ Okoye, 'criminal Litigation' *Law View* available at < <https://cjokoyelawview.com/criminal-> accessed on 8 may 2025

<sup>32</sup> OT Eze, 'Trials' *Law Clinic and Moot Court Practice*

<sup>33</sup> LEPPARD LAW, 'Federal Arraignment Procedures: What Defendants should expect' available at< <https://federal-criminal.com/procedure/> >accessed on 8 May 2025

<sup>34</sup> Ibid

<sup>35</sup> OT Eze, 'Trials' *Law Clinic and Moot Court Practice*

<sup>36</sup> [2017] 10 NWLR (PT 1574)343

render further proceedings before the tribunal unnecessary or impossible.<sup>37</sup> If a side wants to make preliminary objections, they must give notice to that effect. The notice of preliminary objections must include among other things, the objectors prayers and grounds for objections. The court will halt the ongoing proceedings in order to rule on the preliminary objection if it is raised.<sup>38</sup>

3. Opening of the case by the prosecution: After the plea of not guilty is entered by the court, the prosecution opens his case by calling his witnesses and then examines in chief and after the examination in chief, the defendant through his lawyer has the right to cross examine the witness led by the prosecution to test the veracity and accuracy of the evidence of the witness, the prosecution has the right of re-examination to clear up any ambiguity arising from the cross examination by the defense counsel presenting evidence before the court for the purpose of proving beyond reasonable doubt of the defendant charged<sup>39</sup>
4. Submission of no case answer: after the prosecution has made is case, the defense may argue that the case shouldn't go on because the prosecution has not shown enough evidence against the defendant, the accused may be found to not have a case if the court accepts the submission. However, in the event that the court rejects the no case submission, the trial proceeds and the defendant is called upon to enter his defense.<sup>40</sup>
5. Defense: when the prosecution exhaust the number of witnesses he intends to call, the defense opens his case and calls witnesses in defense of the charge against him, examines them in chief and they're further cross examined by the prosecution.

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<sup>37</sup> Richard, 'An Overview on the Concept of Preliminary Objection in Nigeria' *Journal of Civil and Legal Sciences* [2023] 12(3)1

<sup>38</sup> Richard, 'An Overview on the Concept of Preliminary Objection in Nigeria' *Journal of Civil and Legal Sciences* [2023] 12(3)1

<sup>39</sup> OT Eze, 'Trials' *Law Clinic and Moot Court Practice II: Trials*

<sup>40</sup> IFayaiyeoba , 'Stages of Criminal Trial in High Court Nigeria'

### 2.1.2.2 Civil trial/proceeding:

In a civil trial, one person files a lawsuit against another person because of a dispute between the two parties. A company or agency may file a lawsuit or be sued in court. Although losing a civil suit does not automatically result in jail time, the loser may be required to restore property or pay a sum to the opposing party. For a party to win in a civil suit is by preponderance of evidence.<sup>41</sup>

Civil trial mostly deals with disagreements between people, groups or organizations, with an emphasis on situations in which one party alleges that another has harmed them or neglected to fulfill a legal duty. Contracts, property disputes, family law, and torts (civil wrongs like negligence or defamation) are among the common topics covered in these cases. In civil suit the person being sued is referred to as the defendant or respondent, while the party bringing the action is referred to as the plaintiff or claimant. In order to resolve the disagreement, the plaintiffs seek a legal remedy, which may include specific performance or compensation.<sup>42</sup> The plaintiff must demonstrate that their version of events is more likely to be true than not in civil actions, where the standard of proof is the preponderance of the evidence or the balance of probabilities.<sup>43</sup>

High Court.<sup>44</sup> A writ is an order from the court commanding the defendant named to enter appearance either personally or through a solicitor.<sup>45</sup>

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<sup>41</sup> Legal Aid Society of Northwestern New York, 'The Difference between Criminal Court and Civil Court' *Law help. Org* available at < <https://www.lawhelp.org/resource/the-differences-between-criminal-court-and-ci> > accessed 6 May 2025

<sup>42</sup> AWJAI, 'Difference between Civil and Criminal Cases in Nigeria' < <https://awjai.org/difference-between-civil-and-criminal-cases-in-nigeria/> > 6 May 2025

<sup>43</sup> Ibid

<sup>44</sup> University of Uyo Law Clinic, 'Methods of Commencing Civil Action in Akwa Ibom State High Court' available at < <https://uniuyolawclinic.wordpress.com/2025/05/18/methods-of-commencement-of-civil-action-in-akwa-ibom-state-high-court/> > 6 May 2025

<sup>45</sup> Civil and Criminal Procedures available at < <https://www.learnnigerianlaw.com/learn/legal-system/procedures> > accessed 6 May 2025

### 2.1.3. TORTURE

As per the UN Convention Against Torture (CAT), torture is any act in which a public official purposefully causes extreme physical or mental pain or suffering to a person for reasons like getting information or a confession, punishing them, intimidating them or another person, or coercing them.<sup>46</sup>

Torture is prohibited. In some situations, such as to preserve public order, certain human rights may be restricted. Additionally, several international treaties grant a unique power to "derogate" from specific human rights in the event of a formally recognized public emergency.<sup>47</sup> But, under no circumstances can torture be justified and is strictly forbidden. This means that no situation— not even a state of war, the prospect of war, internal political unrest, or a public emergency— allows for an exception to or deviation from the ban against torture.<sup>48</sup>

### 2.1.4 Awaiting Trial

The terms ‘awaiting trial detainees’ ‘remand prisoners’ ‘unconvict prisoners’ and ‘un-sentenced prisoners’ are frequently and interchangeably used with the term ‘awaiting trial’ (Orjiakor et al., 2017).<sup>49</sup> However, Walmsley (2017)<sup>50</sup> asserted that pre-trial or remand incarceration is a major global concern despite its complexity. In addition to those who are awaiting trial, un-sentenced

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<sup>46</sup> UN Convention against torture and inhuman degrading treatment article 1

<sup>47</sup> Association for the Prevention against Torture, ‘What is torture’ Available at < <https://www.apr.ch/torture-prevention/what-torture> accessed 18 september 2025

<sup>48</sup> Ibid

<sup>49</sup> CT Orjikafor, O Omeje, EI Anierobi, SA Agu, TA Orjikor and IO Ezenwaji, ‘ Prolonged Incarceration and Prisoners Wellbeing: Lived Experiences of Awaiting Trial/Pre-Trial/Remand Prisoners in Nigeria’ *International Journal of Qualitative Studies On Health and WellBeing* [2017] 12

<sup>50</sup> A Walmsley, ‘Talent Management and Youth Employment’ *Talent Management in Hospitality and Tourism* [2017]

inmates also include those whose trials are ongoing or who have been found guilty of a crime but whose verdict has not yet been rendered.<sup>51</sup>

There are ATPs (awaiting trial inmates) in jails all over the world, and they may be held for extended periods of time. However, this category is underrepresented in the literature on those who are incarcerated.<sup>52</sup> Inmates awaiting trial are individuals who have not yet received a legal conviction for any crime, yet they remain in police or correctional custody.<sup>53</sup> The Correctional centers house two kinds of inmates. First, those who have been found guilty of a crime and given a penalty in accordance with the law. Those who are awaiting trial make up the other category. Until their charges are looked into and tried, they have been arrested and are being held in prison.<sup>54</sup> Inmates awaiting trial are individuals who have not yet received a legal conviction for any crime, yet they remain in police or correctional custody.<sup>55</sup>

The term pre-trial detention, or otherwise remand detention, according to Schonteich (2011), is described as the process or period where persons are deprived of their fundamental human rights pending when the individual will be proven guilty or not guilty, or a period of appealing.<sup>56</sup>

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<sup>51</sup> IO Salawu, 'Exploring Evidence-Based Analysis of the Plight of Awaiting Trial Inmates in North-Central Nigeria' *Jejaring Administrasi Publik* [2024] 16(1) 4

<sup>52</sup> CT Orjiakor et al, 'Prolonged Incarceration and Prisoners Wellbeing: Livid Experiences of Awaiting Trial/Pre-Trial/Remand Prisoners in Nigeria' *International Journal of Qualitative Studies on Health and Well Being* [2017] 12

<sup>53</sup> IO Salawu, 'Exploring Evidence-Based Analysis of the Plight of Awaiting Trial Inmates in North-Central Nigeria' *Jejaring Administrasi Publik* [2024] 16(1) 1-11

<sup>54</sup> CT Orjiakor, 'Waiting for Trial can be worse than Facing a Sentence: a Study in Nigerian Prisons [2024] *The Conversation* available at < <https://theconversation.com/waiting-for-trial-can-be-worse-than-facing-the-sentence-a-study-in-nigerian-prison-145480> > Accessed on 6 May 2025

<sup>55</sup> IO Salawu, 'Exploring Evidence-Based Analysis of the Plight of Awaiting Trial Inmates in North-Central Nigeria' *Jejaring Administrasi Publik* [2024] 16(1) 1-11

<sup>56</sup> Ibid

Awaiting trial also describes a situation in which an individual has been linked to a specific alleged crime or offense and is subsequently deprived of their freedom due to an order from a court or similar legal process, but the court has not yet rendered a judgment regarding the appropriate penalties.<sup>57</sup> Awaiting trial prisoners from hence being referred to as ATP are non-sentenced but may be held in prison while their alleged offence is investigated, or they may be awaiting punishment upon conviction. People in the ATP group consequently may or may not have been found guilty, but it is crucial to emphasize that none of them would have received a jail term<sup>58</sup>

The proportion of convicts awaiting trial in Nigeria is worrying. The price is one factor. The 2018 budget allotted 17 billion naira, or 450 naira per day, for the sole purpose of feeding prisoners.<sup>59</sup> Even worse, though, is the fact that many people go years without receiving punishment. The wheels of justice move slowly, and judges and prosecutors have their hands full.<sup>60</sup> Prolonged incarceration can negatively impact mental functioning, particularly for inmates awaiting trial, according to our study conducted in Nigeria. The distress and harm that these inmates endure may have an impact on their lives both inside and outside of prison, even though they may not have committed the alleged offense.<sup>61</sup>

Ten to forty percent of inmates in most nations are awaiting trial, pre-trial, or remand prisoners (henceforth referred to as ATPs) (Walmsey, 2012). In South Asia, Latin America, and Africa,

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<sup>57</sup> Ibid

<sup>58</sup> CT Orjiakor et al, 'Prolonged Incarceration and Prisoners Well Being: Livid Experiences of Awaiting Trial/pre-trial/remand prisoners in Nigeria' *International Journal of Qualitative Studies on Health and Well Being* [2017] 12 2

<sup>59</sup> CT Orjiakor, 'Waiting for Trial can be worse than Facing a Sentence: a Study in Nigerian Prisons [2024] *The Conversation* available at < <https://theconversation.com/waiting-for-trial-can-than-facing-the-sentence-a-study-in-nigerian-prison-145480> > Accessed on 6 May 2025

<sup>60</sup> Ibid

<sup>61</sup> CT Orjiakor, 'Waiting for Trial can be worse than Facing a Sentence: a Study in Nigerian Prisons *The Conversation* [2024] available at < <https://theconversation.com/waiting-for-trial-can-than-facing-the-sentence-a-study-in-nigerian-prison-145480> > Accessed on 6 May 2025

where ATPs can make up the majority, the percentage is far greater 70–90%. ATPs are not sentenced, although they could be detained pending sentencing after being found guilty or while their claimed offense is being looked into.<sup>62</sup> Therefore, it is crucial to remember that none of the individuals in the ATP category would have been sentenced to prison time, even though they may or may not have been found guilty. However, ATPs frequently share the bad experiences of incarceration with condemned inmates, particularly in underdeveloped nations. Despite their unique status, ATPs are hardly distinguished from convicted individuals.<sup>63</sup>

#### 2.1.5. Awaiting Trial and Nigeria's Criminal Justice System

Any civilized country must have a criminal justice system (CJS) in order to guarantee justice, equity, the application of the law, and the establishment of a democratic system. The CJS is a system made up of numerous bodies, organizations, institutions, or agencies that have been tasked with upholding social harmony and widespread adherence to the law, as well as determining whether a person has broken any laws and what punishment is appropriate for them.<sup>64</sup> The Black Dictionary define criminal justice as: 'The collective institutions which an accused offender passes until the accusations have been disposed of or the assessed punishment is concluded'<sup>65</sup>The judicial system, which includes judges, prosecutors, and defense attorneys; correctional, which includes prison officials, probation, and parole officers; and law enforcement, which includes police, sheriffs, and marshals, are the three main components of the system. The area of law that deals

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<sup>62</sup> CT Orjiakor et al, 'Prolonged Incarceration and Prisoners Wellbeing: Livid Experiences of Awaiting Trial/Pre-Trial/Remand Prisoners in Nigeria' *International Journal of Qualitative Studies on Health and Well Being* [2017] 12

<sup>63</sup> Ibid

<sup>64</sup> TT Olonisakan , OJ Adedeji & AO Sulaiman, 'The Nigeria Criminal Justice System and its Effectiveness in Criminal Control: A Social-Psychological Analysis' *Journal of Humanities and Social Science* [2017] 22(2) 33

<sup>65</sup> BA Ganer, (ed), *Blacks Law Dictionary* (9<sup>th</sup> edn Minnesota: West Publishing Co, 2009) 431

with crime is known as criminal justice; it establishes appropriate penalties for crimes and defines their characteristics.<sup>66</sup>

A criminal justice system that is corrupt, ineffective, understaffed, underfunded, and prone to abuse threatens not only the Rule of Law but also all other measures of democracy and good governance.<sup>67</sup> Delays in the administration and delivery of justice hamper the Nigerian justice system, as they do in other populated nations.<sup>68</sup>

Olawoye (1973) found a number of causes for the delays in the criminal justice system's operation, which resulted in the rise of awaiting trial incarceration in Nigeria's legal system. One of the main ones, he claims, is the insufficiency of the courts and judicial staff. It is undeniable that the number of court buildings in Nigeria has not increased in tandem with the population of some of the country's largest cosmopolitan cities and expanding rural towns. Additionally, the low compensation for bench staff has made it challenging to recruit qualified judicial officers. A few of them perform poorly, some are indolent, some lack commitment, and cases are postponed for the smallest reason<sup>69</sup>

Section 2(c) of the *Nigerian Correctional Service Act*<sup>70</sup> states that the purpose of incarceration is to try to determine the cause of the criminals' antisocial behavior and to train, rehabilitate, and

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<sup>66</sup> AA Peter, 'Arrest, Remand and Awaiting Trial Syndrome in Criminal Justice: Fixing The Jigsaw to End Prison Congestion.' [2018]

<sup>67</sup> Ibid

<sup>68</sup> JK Gadazama, Delay in the Administration of the Justice in the Supreme court of Nigeria: What is the Way Forward. [2022] < <https://j-kgadzamallp.com/publications/articles/57-delay-in-the-administration-of-justice-in-the-supreme-court-of-nigeria-what-is-the-way-forward> > Accessed on 6 may 2025

<sup>69</sup> O Eytayo, 'Athesis : Criminal Prosecution and Awaiting Trial Incarceration in Nigeria Justice System the Case of Lagos State' [2021] available at < [https://www.researchgate.net/publication/355041230\\_CRIMINAL\\_PROSECUTION\\_AND\\_AWAITING\\_TRIAL\\_I\\_NCARCERATION\\_IN\\_NIGERIA\\_JUSTICE\\_SYSTEM\\_THE\\_CASE\\_THE\\_OF\\_LAGOS\\_STATE/](https://www.researchgate.net/publication/355041230_CRIMINAL_PROSECUTION_AND_AWAITING_TRIAL_I_NCARCERATION_IN_NIGERIA_JUSTICE_SYSTEM_THE_CASE_THE_OF_LAGOS_STATE/) >

<sup>70</sup> Nigeria Correction Service Act 2019, s.2

reform them into decent and contributing members of society. Therefore, it is anticipated that if the goal of incarceration is accomplished through the planning and provision of appropriate rehabilitation for inmates, recidivism will decline (Dinitz and Dine, 2019).<sup>71</sup> When they are released from jail, this will allow them to participate in constructive activities for their everyday lives and be law-abiding members of society. Offenders are housed in prisons around the world in order to undergo reformation and become law-abiding citizens.<sup>72</sup>

According to Ibanga (1996)<sup>73</sup>, and Imiera (2005),<sup>74</sup> any criminal justice system must include access to justice. Adequate legal assistance and unwarranted disruptions in the administration of justice are prerequisites for access to justice. The issue of Awaiting trial person which will hereafter be referred in this work as ATP, which leads to jail overcrowding, is mostly caused by delays in the administration of justice. According to Ibanga (1996), the safety and security of people's lives and property are at risk because to ATP issues nationwide and court proceedings that are delayed. He argues that innocent people who are unable to pay bail spend more time behind bars while criminal prosecutions are delayed. According to some schools of view, the root reason of the ATP issue in Nigerian prisons is the delay in the administration of justice.<sup>75</sup>

One major setback to the nation's justice system is the growing number of pre-trial inmates in correctional facilities. Awaiting Trial Inmates (ATI) are left to rely on their luck while they wait

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<sup>71</sup> C Dinitz VC Dine, 'Restraining The Wicked: The Dangerous Offender Project' ( Toronto: Liberty of Congress Press) [1989].

<sup>72</sup> AA Olabamiji, 'Prison Overcrowding in the Nigerian Correctional System: Implications for offenders rehabilitation at the Ado-Ekiti Correctional Center' [2025] 13(2) *Global Journal of Arts, Humanities and Social Sciences* [2025] 13(2) 15

<sup>73</sup> ME Ibanga, 'Learning Legal Theory and Legal Method' (Calabar: Associated Publishers Ltd) [1996]

<sup>74</sup> PP Imiera, 'Knowing the Law' (Lagos: FICO Nigeria Ltd) [2005]

<sup>75</sup> JK Ukwai and JT Okpa, 'Critical Assessment of Nigeria Criminal Justice System and the Perennial Problem of Awaiting Trial in Port Harcourt Maximum Prison, Rivers State' *Global journal of social science* [2017] 16 19

for a trial that never begins or that seems to go on forever.<sup>76</sup> It is impossible to discuss ATP in Nigerian prisons without bringing up the Nigeria justice system as the issue stems in part from delayed judgments. In violation of normal judicial practice, the majority of these ATPs have remained on trial for longer than necessary periods of time, which is an abuse of their human rights. The impacted inmates may get extremely irritated and may act violently as a result.<sup>77</sup>

The notable underutilization of non-custodial alternatives indicates a weakness in the Nigerian criminal justice system's capacity to successfully embrace and apply progressive correctional techniques. The overcrowding issue is made worse by the continued dependence on jail sentences due to a lack of infrastructure, training, and knowledge about these options.<sup>78</sup>

Many legal reform movements have been based on the well-known statement by British statesman William E. Gladstone that 'Justice delayed is justice denied.' The quote's fundamental idea is that justice must be served quickly; it is not enough to merely serve it. An aggrieved party's quality of justice is impacted by the amount of time it takes to decide a case because a delay may reduce its advantages. A strong legal system creates an environment that is favorable to the growth and stability of any great country. The foundation of any democracy is the judiciary's responsibility to deliver justice.<sup>79</sup> The wheels of justice in Nigeria frequently turn painfully slowly, trapping many people in a legal maze while they wait for their day in court. The legal system's slowness raises

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<sup>76</sup> A Brown, 'The Guardian [2022] Awaiting Trial syndrome: Endless trauma for inmates, their families' available at < <https://guardian.ng/features/awaiting-trial-syndrome-endless-trauma-for-inmates-for-their-families/>

<sup>77</sup> JK Ukwai and JT Okpa, 'Critical Assessment of Nigeria Criminal Justice System and the Perennial Problem of Awaiting Trial in Port Harcourt Maximum Prison, Rivers State' *Global journal of social science* [2017] 16 19

<sup>78</sup> AA Olabamiji, 'Prison Overcrowding in the Nigerian Correctional System: Implications for Offenders Rehabilitation at the Ado-Ekiti correctional center' *Global Journal of Arts, Humanities and Social Sciences* [2025] 13(2) 14-34

<sup>79</sup> JK Gadazama, Delay in the Administration of the Justice in the Supreme Court of Nigeria: What is the Way Forward. [2022] < <https://j-kgadzamallp.com/publications/articles/57-delay-in-the-administration-of-justice-in-the-supreme-court-of-nigeria-what-is-the-way-forward> > accessed 6 May 2025

serious questions regarding the right to a fair trial, the importance of due process, and the urgent need for reform. The rights of the accused are undermined and the foundation of justice is shattered when cases drag on in the legal system.<sup>80</sup> One major setback to the nation's justice system is the growing number of pre-trial convicts in correctional facilities. Awaiting Trial Inmates (ATI) are left to rely on their luck while they wait for a trial that never begins or that seems to go on forever.<sup>81</sup>

In an interview with the News Agency of Nigeria in Abuja, Interior Minister Rauf Aregbesola bemoaned the startling quantity of ATIs. 'No less than 70% of Nigerian prisoners are serving time without being sentenced as they are awaiting trial,' he disclosed.<sup>82</sup> Because of the way criminal justice is administered, the trial date is set in stone. This is not how it should be, in my opinion, and it is straining the system.<sup>83</sup>

Nigeria's commitment to justice and human rights is seriously threatened by the injustice that permeates cases pending trial. The right to due process and a fair hearing are fundamental components of an equitable society and go beyond theoretical concepts. By implementing comprehensive reforms, improving court procedures, and launching coordinated public awareness campaigns, Nigeria can set the stage for a more equitable and balanced justice system—one that protects the rights of all its citizens and restores faith in the rule of law.<sup>84</sup>

## 2.2 THEORETICAL FRAMEWORK

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<sup>80</sup> LP Asalaw, 'The Waiting Game; Injustice of Awaiting Trial Case in Nigeria'[2023] Available at <<https://www.linkedin.com/pulse/waiting-game-injustice-awaiting-trial-cases-nigeria-asalaw-practice>> accessed 6 May 2025

<sup>81</sup> A Brown, 'The Guardian Awaiting trial syndrome: Endless trauma for inmates, their families'[2022] available at <<https://guardian.ng/features/awaiting-trial-syndrome-endless-trauma-for-inmates-for-their-families/>>

<sup>82</sup> Ibid

<sup>83</sup> Ibid

<sup>84</sup> LP Asalaw, 'The Waiting Game; Injustice of Awaiting Trial Case in Nigeria'[2023] Available at <<https://www.linkedin.com/pulse/waiting-game-injustice-awaiting-trial-cases-nigeria-asalaw-practice>>

### 2.2.1 Positive Theory;

The Positive theory of law is first propounded by John Austin and Thomas Hobbes. According to the proponents of the positive theory of law, written rules, regulations, and principles that have been specifically enacted, adopted or acknowledged by a governmental body or political institution including administrative, executive, legislative and judicial bodies are the only acceptable sources of law.<sup>85</sup>

Legislative acts discovered in a legal system applied in a state of society operating in accordance with an unnatural order of things are referred to as positive law. A society with superior rulers or a government, and a lower class of citizens or inhabitants who are subject to the will or orders of a sovereign power, are prerequisites for positive law.<sup>86</sup> Despite the Nigerian Constitution's requirement that the Ministry of justice provide impoverished defendants with legal representation at any trial, the criminal court system has disregarded this clause. The number of inmates in jails throughout the state who are awaiting trial and whose trial has been postponed due to their inability to obtain legal representation is indicative of this.<sup>87</sup>

There is arguably a positive correlation between extended pre-trial imprisonment and the difficulty of impoverished accused individuals to obtain legal representation. In other words, the accused's lack of legal counsel causes a delay in the scheduled pre-trial... Because of their low financial

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<sup>85</sup> Business Bliss Consultants FZE, 'Overview of Legal Positivism' (Lawteacher.net, 2025) available at < <https://www.lawteacher.net/free-law-essays/jurisprudence/legal-positivism.php?vref=1> > accessed on 30 August 2025

<sup>86</sup> Treatise. The Negative Effects of Positive Law available at < [https://delhihighcourt.nic.in/files/Ebook/3\\_positive](https://delhihighcourt.nic.in/files/Ebook/3_positive) >

<sup>87</sup> JO Emeka et al, 'Awaiting Trial among Suspected Criminal Persons and Lack of Legal Representation in Cross River State Nigeria' *International Journal of Sociological and Anthropological Research* [2016] 2(1)1

standing, which prevents them from affording legal representation, the trials of several pre-trial inmates were still pending in multiple criminal courts (Cape, 2009).<sup>88</sup>

This was predicated on Section 349(1) *ACJA*<sup>89</sup> which stated:

Where a person is accused of a capital offence, the prosecution shall, if predictable, be undertaken by a law officer, or a legal practitioner authorized by the Attorney-General of the Federation or of the state concerned, as the case may be.

And the subsection two of same which states: ‘Where a person is accused of a capital offence and is not defended by a legal practitioner, the court shall, if practicable, assign a legal practitioner for his defense at the expense of the State.’

### 2.2.2 Social Disorganization Theory

Clifford Shaw and his assistant Henry McKay created the notion of social disorganization theory in 1929, and it was published in 1942.<sup>90</sup> Social Disorganization is the incapacity of a community to achieve its members shared values and objectives in order to uphold efficient social regulations.<sup>91</sup>

Examining the problem of delayed justice through this theory's lenses reveals that the police, the national prosecuting authority, and the justice system are all essential institutions for preserving peace, stability, and a just system in society; their failure or improper operation has a detrimental

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<sup>88</sup> JO Emeka et al, ‘Awaiting Trial among Suspected Criminal Persons and Lack of Legal Representation in Cross River State Nigeria’ *International Journal of Sociological and Anthropological Research* [2016] 2(1)1

<sup>89</sup> Administration of Criminal Justice Act (2015) s.349

<sup>90</sup> P Bellair, Social Disorganization Theory available at < <https://oxfordre.com/criminology/display/10.1093/acrefore> > 31 May 2025

<sup>91</sup> AV Papachristos, SY Zhou, ‘Social Disorganisation’ [2015] *International Encyclopedia of the Social & Behavioral Sciences* (2<sup>nd</sup> edn) available at < <https://www.sciencedirect.com/topics/social-sciences/social-disorganisation> > accessed on 30 Aug. 2025

knock-on effect on the community.<sup>92</sup> Thus, when these institutions which are critical to fair justice delivery system are broken down or ill functioning, it affects the capacity of a community to regulate itself, thereby creating a sense of disorder and helplessness.<sup>93</sup>

In 1929, as part of his study 'Juvenile Delinquency and Urban Areas' in Chicago, Shaw investigated the places of residence of 60,000 young males who had been registered by the city, the police or the courts as school truants or offenders. He called the areas in which a large number of the young men under investigation lived 'delinquency areas'.<sup>94</sup> The disorganization theory can also be applied in this study to show how institutions, such as the national prosecuting authority, the justice system, and police services, might fail to provide victims with timely, effective, and efficient justice<sup>95</sup>

The hypothesis was also used to demonstrate how these institutions' improper operations result in increased economic expenses from drawn-out court cases, and how families suffer from debt and lost income, which can cause familial disarray within a community. It is crucial to remember that the main goal of applying this theory is to demonstrate how the collapse of institutions reinforces inequality by denying justice to the poor and marginalized within a reasonable time frame. As a result, the theory helps to highlight how the poor are impacted when institutions are not functioning properly.<sup>96</sup>

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<sup>92</sup> D Tamuka et al, 'The Impact of Delayed Justice on the Victim's Household in Zimbabwe' *A Journal of Contemporary Research* [2025] 22(1)59

<sup>93</sup> Ibid

<sup>94</sup> P Bellair, 'Social disorganization theory' available at < <https://oxfordre.com/criminology/display/10.1093/acrefore> > accessed on 31 May 2025

<sup>95</sup> D Tamuka et al 'The Impact of Delayed Justice on the Victim's Household in Zimbabwe' *A journal of Contemporary Research* [2025] 22(1) 59

<sup>96</sup> Ibid

Additionally, detention may exacerbate social injustices and paradoxically raise the incidence of tuberculosis.<sup>97</sup>

### 2.2.3 HUMAN RIGHTS THEORY

Human rights philosophy deals with issues pertaining to the existence, nature, content, universality, rationale, and legal standing of human rights. Aiming to shield everyone against serious political, legal, and social injustices, human rights are standards. Human rights include things like the freedom of religion, the right to educate oneself, the right to be free from torture, and the right to a fair trial when accused of a crime.<sup>98</sup>

A maximum amount of time that can be detained before trial is not specified by international human rights legislation. ‘Anyone arrested or detained on a criminal charge...shall have the right to a trial within a reasonable time or to be released.’ According to the *ICCPR*.<sup>99</sup> Those who are awaiting trial may be released with assurances that they would show up for their trial, but this will not be the norm. According to the *European Convention on Human Rights*, ‘everyone arrested or detained...shall have the right to a trial within a reasonable time or to be released pending trial.’<sup>100</sup> ATPs frequently share the unpleasant experiences of incarceration with convicted inmates, particularly in underdeveloped nations. ATPs are hardly perceived as being any different from convicted individuals, despite their unique position. They are typically viewed as convicts or jail

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<sup>97</sup> G Mburu et al, ‘Detention of People Lost to Follow-Up on TB Treatment in Kenya: The Need for Human Rights Based Alternatives’ *Health Hum Rights* [2016] 18(1) 43-54

<sup>98</sup> Human Rights Stanford Encyclopedia of Philosophy available at < [https://plato.stanford.edu/entries/rights\\_human/](https://plato.stanford.edu/entries/rights_human/) > accessed 31 May 2025

<sup>99</sup> International Covenant on Civil and Political Rights (1966) s.9(3)

<sup>100</sup> Prolonged Pre-Trial Detention. International Law and Standards available at < <https://www.hrw.org/reports/2005/spain0105/9.htm#> > 31 May 2025

inmates; they are thought to be dangerous, worthy of incarceration, and deserving of social isolation while serving their sentence or receiving punishment for their transgressions.<sup>101</sup>

According to Nigerian law, an accused person must be arraigned before a court with appropriate jurisdiction within 24 hours of their arrest. “Holding charges” was not covered by the statute. According to rulings by Nigeria’s Supreme Court and Appellate Court justices, “holding charges” is an unlawful and unconstitutional practice. One of the issues with our criminal justice system is highlighted by the fact that the police are engaging in it.<sup>102</sup>

Section 36 of the Federal Republic of Nigeria’s 1999 constitution states that everyone is entitled to a fair trial. The same section of the constitution also states that a person has the right to a fair hearing in a reasonable amount of time from a court or other legally established tribunal when it comes to determining his civil rights and obligations, including any question or decision made by or against any government or authority. These need to be set up in a way that ensures their impartiality and independence.<sup>103</sup> Although everyone has the right to be deemed innocent until proven guilty, three million individuals, or one-third of the world’s jail population, are still incarcerated pending trial. No right is so widely acknowledged in principle yet so frequently infringed upon in reality. One of the most underappreciated human rights issues of our day is the widespread abuse of pre-trial detention.<sup>104</sup>

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<sup>101</sup> CT Orjiakor et al, ‘Prolonged Incarceration and Prisoners’ Wellbeing:livid Experiences of Awaiting Trial/Pre-trial/Remand Prisoners in Nigeria *International Journal of Qualitative Studies on Health and Well Being* [2017] 12 1

<sup>102</sup> JK Ukwai and JT Okpa, ‘Critical Assessment of Nigeria Criminal Justice System and the Perennial Problem of Awaiting Trial in Port Harcourt Maximum Prison, Rivers State’ *Global Journal of Social Science* [2017] 12 19

<sup>103</sup> Constitution of the Federal Republic of Nigeria 1999 (as amended) ( Cap 23 LFN 2004) S.36

<sup>104</sup> M Schontech, Presumed Guilty: The Quiet Human Rights Scandal of Pre-Trial Detention available at < <https://www.opendemocracy.net/en/opensecurity/presumed-guilty-quiet-humanrights-scandal-of-pretrial-detention/> > accessed on 31 may 2025

## 2.3 Literature Review

According to Olajumoke Shaheen et al, they are of the view that individuals detained in a prison custody without a formal charge to a court of competent jurisdiction are not the only category of individuals awaiting trial. They opined that individuals who have been in prison custody for a number of years, having their case been brought before a court of competent jurisdiction but yet to be decided majorly because of transfer, retirement or promotion of a judge which might lead the court to commence the case denovo, which will result in having detainees who are already serving their sentence without been convicted. Some even spend more time than they would have if tried and convicted on time.<sup>105</sup> Olajumoke failed to outline some of the challenges faced by the defendants in the correctional centre and also he failed in the making recommendations in his work on ways to improve and facilitates court process

Omeobika and Ejimofor in their work while explaining the delay in charging suspect opined that justice requires a person who is arrested and detained should be taken to court within a reasonable time that is between 24hrs and 48hrs dependent on the location. Their work also provided alternative measures that in a situation where the detainee is not tried within the allowed specified period, the detainee should be released on bail either conditionally or unconditionally. Their work also emphasis the non compliance to the above requirement of law by police officers , there by resulting in suspects spending a number of years in prison thereby impeding their right to personal liberty and dignity of person.<sup>106</sup> The author did well in his work but also failed to make

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<sup>105</sup> O Shaeab, 'Clinical Legal Education and the Future of Pro Bono in Nigeria: A Guarantee for Access to Justice for Access to Justice for Accused Persons Awaiting Trial available at < <https://doi.org/10.19164/ijcle.v3i1i.1347> > accessed on 31 may 2025

<sup>106</sup> Umeobika and Ejimofor, 'Problems and Challenges Facing a Defendant in Criminal Trials in Nigeria' *African Journal of Law and Human Rights* [2024] 8(2) 126

recommendations on how to curb the excessiveness of the police officers in the course of their duty

ST James in her work <sup>107</sup> Which stated the plight of detainees who are awaiting trial were currently going through during the COVID 19 period. Her work also gave us a definition of an awaiting trial detainee According to her work; “An awaiting trial detainee is a defendant in a criminal charge who has been remanded in custody pending his trial in court.” Her work also gave three instances where a detainee awaits trial in court. First a defendant who is arraigned in court and granted bail, will be remanded in prison pending when he perfects his bail. Secondly, a defendant who is denied bail can be remanded in prison Custody pending his trial. Lastly, a defendant subjected to a statutory remand proceedings may be detained in the prison custody pending a proper arraignment.

Her work also emphasis on the injustice in the Nigeria bail system. The bailing fee or the fee required to bail a detainee out is very expensive, secondly, court has increasingly frowned at the use of bail with very good reason and lastly a surety deemed professional might be disqualified by the court. Her work also provides recommendation that is the way forward, her work suggests immediate implementation of the provisions of *section 187 of the ACJA* Especially *section 187(5) ACJA*.<sup>108</sup> The weakness in her work is that she failed to outline the right of this prisoners which are being impeded by the police officers and she failed to provide recommendations that'll be sufficient enough to change the course of the judicial process starting from arrest till sentencing.

Kenneth and Festus in their work, emphasize how the right of prisoners especially detainees are violated and the problems faced by persons awaiting trial. Among the rights violated is provided

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<sup>107</sup> ST James, ‘Covid 19 and the Shut Down of Courts in Nigeria; any Hope for the Awaiting Trial Detainees’ *School International Journal of Law, Crime and Justice* [2022] 5(9) 367-370

<sup>108</sup> Ibid

by the UDHR, not to be subjected to arbitrary arrest and detention. Some persons are been arrested in place of their family relatives or friend because of the inability to locate the suspect. Their research works also stated out the problems faced by detainee awaiting trial in prison which includes torture by the police officers to obtain confessional statement often used as evidence in trials. According to them, more than sixty percent of inmates awaiting trial are poor to afford the service of a lawyer .it also states that the legal aid council only has ninety one lawyers in the whole country , that is one out of seven persons awaiting trial can get access to legal representation for free . Their research opined that the socio psychology status and mental status of awaiting trial inmate also affect the mental status of other prison inmate since there is no clear separation of prison inmate. This work has exceeding impact in reviewing the plight of what persons awaiting trial are going through and their right which has been impeded. However the work failed in providing solutions to the plight faced by the persons awaiting trial in the correctional center <sup>109</sup>

IO Saliwu in his work, highlights that on a daily basis there's increment of persons awaiting trial around the globe . His work opined that the housing of awaiting trial inmates and convicted inmate has political, administrative, financial and security implications. One of the administrative implication is overcrowding. He used Kwara state as a case study in his work. Kwara state has a total of four correctional centres, one of which is the Kura correctional centre which has a maximum capacity of 121 persons. However it now houses 471. Out of the total number of detainees 87 are condemned offenders, 57 are convicted males, 4 are convicted female 319 are males awaiting trial and 4 are female awaiting trial he is of the view that correctional Centre are not meant for persons awaiting trial but for convicted individuals. In this work the concept of

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<sup>109</sup> K Osayi and IF onuoha, 'Socio-Psychological effects of Awaiting Trial Inmates on Prisoners in Nigeria Prison: a Study of Enugu Prison' *Journal of Sociology* [2020] 7(1) 217-213

awaiting trial is subject to different meaning and connotations with words like “remand prisoners,” “awaiting trial detainees,” “untried prisoners,” “unconvicted prisoners,” and “un-sentenced prisoners”. He also defined awaiting trial as an event where by a person who is seen to have a connection to a a particular alleged offence or crime is deprived of his/her personal liberty as the result of an order from a judicial or similar legal process, but judgment has not been delivered by the court regarding its applicable punishments. This work also made some recommendations. He suggests the building of private cells, it highlights the reasons for the building of the private cell. The word ‘Private cell’ in his work refers to separate cell that is, detainees awaiting trial should be kept in a separate cell and secondly, private rented cells should also be built for the housing of awaiting trial inmates, as is being applied in Finland (Kosovo private cells). He also suggests that government and non governmental organizations should provide legal aid or assistance to inmates or detainees awaiting trial.<sup>110</sup> He failed to outline the problems and challenges faced by persons awaiting trial in correctional Centre, it also failed to outline the rights that are being violated by the police officers and failed in making recommendations that’ll will facilitate court process instead the work suggested a separate prison for inmates awaiting trial.

According to Peter akinhero, he explained that the criminal justice system is expected to secure the lives and property of the masses in a state. He explains the pretrial process and highlights the problems encountered in the pretrial process, such as stalling of the investigation process, the concept of ‘Bail is free’ which is boldly written in every police station, while in practice the bailment of a suspect is subject to the payment of a fee dependent on the circumstances of the case. His work also explained the trial process and problems encountered therein. Akinhero in his work

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<sup>110</sup> IO Salawu, ‘Exploring Evidence-Based Analysis of the Plight of Awaiting Trial Inmates in North-Central Nigeria’ *Jejaring Administrasi Publik* [2024] 16(1)

went further to state that detainees awaiting trial for a long period is caused by some confounding factors such as delay caused by inadequate court workroom and infrastructural facilities. He further opined that trials of accused persons who are detained in prison custody are often adjourned due to lateness in arriving to the court room or no arrival at all because of lack of vehicles to convey the detainees to the court. Another factor is delay caused by legal practitioners, some defense counsel request for an adjournment deliberately until they've been paid their full legal fees. There's also delay caused by the court and delay caused by the prison authorities

His work suggests that the problem faced in criminal trial can be curtailed if we all submit to the vision of the functional piece of the legislature and to strengthen all segments involved in the administration of criminal justice in Nigeria.<sup>111</sup> Although he made a suggestion that we should follow strictly the provisions of the legislation for instance the constitution and ACJA, forsaking the fact that the provisions of this laws are not sufficient enough to improve the judicial process ranging from arrest to sentencing.

### 2.3.1. Summary of Review/ Gaps in Knowledge

Most existing studies on prolonged awaiting trial in Nigeria have focused on administrative inefficiencies, prison congestion, or procedural delays, but they rarely interrogated the issue from a human rights perspective. This study filled that gap by adopting the Human Rights Theory to frame prolonged pre-trial detention not merely as a systemic flaw but as a direct violation of defendants' fundamental rights to liberty, dignity, presumption of innocence, and fair hearing under both domestic and international law. Unlike previous works, it demonstrated that keeping

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<sup>111</sup> AA Peter, 'Arrest, Remand and Awaiting Trial Syndrome in Criminal Justice: Fixing The Jigsaw to End Prison Congestion' [2018]

defendants in custody for years without trial amounts to “punishment without conviction,” thereby breaching Nigeria’s constitutional and treaty obligations. By situating awaiting trial within the broader framework of human rights jurisprudence, this research made a distinct contribution by reframing the problem as a rights-based crisis rather than just a procedural delay, while also proposing reforms that strengthen the rule of law and the protection of defendants in Nigeria.

## CHAPTER THREE

### THE LEGAL AND INSTITUTIONAL FRAMEWORKS REGULATING TRIALS IN NIGERIA

#### 3.1 Legal Framework

##### 3.1.1 Administration of Criminal Justice Act (ACJA)

The *Administration of Criminal Justice Act (ACJA)* enacted in May 2015 provides for the administration of criminal justice and for related matters in the courts of the Federal Capital Territory and other Federal Courts in Nigeria.<sup>112</sup> The unified law is applicable in the Federal Capital Territory, in all federal courts and with respect to offences contained in Federal Legislation.<sup>113</sup> It repealed the Criminal Procedure Act and the Criminal Procedure Code of the Southern and Northern Nigeria respectively.<sup>114</sup> The *ACJA*, described as probably the most potent instrument of criminal justice administration for initiating change and restoring sanity to a degenerate society, was one of the Acts enacted in the dying days of the 7th National Assembly.<sup>115</sup> The primary objective of the Act is to guarantee a competent and efficient structure in the criminal administration of justice in Nigeria in a bid to advance the expeditious dispensation of justice and to deter the further commission of crime, thereby protecting the rights and interests of suspects, defendants, victims and the society at large.<sup>116</sup> It considerably preserves the existing criminal

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<sup>112</sup> T Egbegbi, 'The Administration of Criminal Justice Act ( ACJA)2015: Overview and Tools For Protection of the Right of Women and Children'

<sup>113</sup> Ibid

<sup>114</sup> OK Esechie, SP Iboloku, and AK Anya, 'The Criminal Justice Act 2015 as Catalyst to Effective Justice Delivery in Nigeria.' *KB Law Scholars Journal UK*, [2014] 1(3)75

<sup>115</sup> JN Udombana , 'Administration of Criminal Justice Act 2015: A Critique of Selected Legislative Expressions' *IALS Student Law Review* [2020]7(2) 251

<sup>116</sup> OK Esechie, SP Iboloku, and AK Anya, 'The Criminal Justice Act 2015 as Catalyst to Effective Justice Delivery in Nigeria.' *KB Law Scholars Journal UK*, [2014] 1(3) 75

procedure system while introducing elaborate, innovative and revolutionary provisions. These provisions aim at promoting fairness, transparency, accountability and integrity of Nigeria's criminal justice processes and enhancing the efficiency and credibility of the criminal justice administration system in the Country. <sup>117</sup>The *ACJA* has 495 Sections through which its tentacles spread across every major aspect of criminal justice system. In fact, the Act regulates more than just criminal procedure; it covers, in most part, the entire criminal justice process from arrest, investigation, trial, custodial matters and sentencing guidelines.<sup>118</sup> The *ACJA* had some innovations that were not contained in the laws it repealed amongst these innovations are

(1) Arrest not allowed in civil cases: A suspect shall not be arrested merely on a civil wrong or breach of contract. That is no person who is accused of matters involving civil matters should be arrested. <sup>119</sup>

(2) Prohibition of illegal arrest: which means nobody should be arrested in place of another either because of a close relationship or connection. <sup>120</sup>

(3) The release of an arrested suspect without warrant: Where a suspect has been taken into and arrested police custody without warrant, the person should be released on bail unless if it is a capital offence like murder. <sup>121</sup>

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<sup>117</sup> JN Udombana, 'Administration of Criminal Justice Act 2015: A Critique of Selected Legislative Expressions' *IALS Student Law Review* [2020] 7(2) 51

<sup>118</sup> Law Pavilion, The Administration of Criminal Justice Act ACJA (2015) < <https://lawpavilion.com/blog/the-administration-of-criminal-justice-act-2015-acja/> > 16 July 2025

<sup>119</sup> Administration of Criminal Justice Act No 14 2015 LFN 2004 s;9

<sup>120</sup> Ibid, s7

<sup>121</sup> Ibid, s30(2)

This legislation contain several key provisions relating to persons awaiting trial. The *ACJA* provided The any officer in charge of a police station before making an arrest shall provide to the visiting chief record a full record of arrest and record of bail and an application and decision on bail made within the period and any other facility that is required for the magistrates to exercise his power.<sup>122</sup> It provides punishment for a police officer for his default of his misconduct in complying with the provisions of the *ACJA*.<sup>123</sup> This provision imposed on the state to provide a legal counsel to suspect especially those accused of capital offence.<sup>124</sup> This act also provides for bail, that any person who is accused of an offence is arrested or detained, or appears or is brought before a court, he shall be entitled to bail.<sup>125</sup> The bail refusal must be justified in writing.<sup>126</sup> In *Bamaiyi v State*<sup>127</sup> the court per Sanusi JCA held that:

It is trite law that grant of an application for bail by a person who is yet to be tried and convicted is a matter of course except where there are some compelling circumstances militating against granting it. But in an application for bail after conviction bail is granted not as a matter of course but only upon showing special or exceptional circumstance.

This Act also provides that

Where day-to-day trial is impracticable after arraignment, no party shall be entitled to more than five adjournment from arraignment to final judgement provided that the interval between each adjournment shall not exceed 14 working days.<sup>128</sup>

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<sup>122</sup> Administration of Criminal Justice Act No 13 2015 LFN 2004 s3

<sup>123</sup> *Ibid*, s29(1)

<sup>124</sup> *Ibid*, s36(2)

<sup>125</sup> *Ibid*, s158

<sup>126</sup> *Ibid*, s165

<sup>127</sup> [2001] 8NWLR (Pt 715) 270

<sup>128</sup> Administration of Criminal Justice Act No 13 2015 LFN 2004 s396(4)

Failure to comply with the provisions of the *ACJA* will be deemed unlawful.

### 3.1.2 Constitution of the Federal Republic of Nigeria 1999 (as amended)

The *Constitution of the Federal Republic of Nigeria 1999 (as amended)* came into being on the 29<sup>th</sup> of May 1999 about two decades after the 1979 constitution was enacted. The republic of Nigeria was again returned to the civilian regime.<sup>129</sup> The Black's law dictionary<sup>130</sup> defined constitution as:

The organic and fundamental law of a nation or state, which may be written or unwritten, establishing the character and conception of its government, laying the basic principles to which its internal life to be conformed, organizing the government, and regulating, distributing, and limiting the functions of its different departments, and pre-scribing the extent and manner of the exercise of sovereign powers

On the other hand It is also been defined as the fundamental underlying documents which establish the government of a nation or state.<sup>131</sup> In defining what a constitution is, Nwabueze defined it as ‘the frame or composition of a government, to the way in which a government is actually structured in terms of its organs, the distribution of powers within it, the relations of the organs, and the procedure for exercising power<sup>132</sup> In *Attorney General of the Federation v Atiku Abubarkar*<sup>133</sup> the supreme court per Onnoghen, J.S.C. stated:

A Constitution of any country is what is usually called the organic law or grund norm of the people. It is the formulation of all the laws from which the institutions of the state derive their creation, legitimacy and very being. It is the unifying force in the nation apportioning rights and imposing obligations on the people who are subject to its operation.

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<sup>129</sup> CO Anatogu, ‘The 1999 Constitution of the Federal Republic of Nigeria a Valid Document; A Myth or Reality’ *Premier bar journal* [2022]1(1) 67

<sup>130</sup> HC Black, *Black's Law Dictionary* ( 5<sup>th</sup> edn West Publishing Co 1979)

<sup>131</sup> Legal Dictionary available at < <https://dictionary.law.com/Default.aspx?letter=>> accessed on 15 July 2025

<sup>132</sup> B Igwe, ‘Constitution and the Problem in Nigeria’ *NALS annual lecture series* [1995] 13

<sup>133</sup> [2007] 3NWLR (Pt.1022) 601

From the above definition it is not without doubt that the constitution whether written or unwritten is an embodiment that holds the people's national intentions in a given country on how the organs or arms of government that is the legislative, executive and judiciary are to operate and function in order to regulate them on one hand while pointing out the civil rights and duties of the masses.<sup>134</sup>The constitution provides for the right of the defendant in the Nigeria justice system they are as follows:

(i) Right to Speedy Trial. Is one of the attributes provided for a defendant by the constitution in a course proceeding the constitution provides that whenever a person is charged to court for an offence he is entitled to a trial within a reasonable time.<sup>135</sup> Unfortunately, that's not what we see in today's practice a trial can last for a period of two years or more.

(ii) Right to Personal Liberty. This right has to do with the freedom of a defendant. The constitution provides that once a person has been arrested he shall be charged to court within a reasonable time that is 24 hours when the court is within jurisdictions and 48 hours where the courts is not.<sup>136</sup>

(iii) Presumption of Innocence. It is a general knowledge that an accused person is innocent until proven guilty. Sadly, in practice you are guilty until proven innocent this is the reality that many people who are accused of a crime are faced with.<sup>137</sup>

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<sup>134</sup> CO Anatogu, 'The 1999 Constitution of the Federal Republic of Nigeria a Valid Document; A Myth or Reality' *Premier bar journal* [2022] 1(1) 67

<sup>135</sup> Constitution of the Federal Republic of Nigeria 1999 (as amended) s36(4)

<sup>136</sup> Constitution of the Federal Republic of Nigeria 1999 (as amended) s35(4)

<sup>137</sup> *Ibid*, s36(5)

(iv). Right to Adequate Time and Facilities: A person accused of a crime should be given enough time and facilities to prepare for his defence<sup>138</sup>

(v). Right to legal Representation: where an accused cannot afford a lawyer the state is obligated to provide one for the accused persons.<sup>139</sup>

In conclusion the constitution guarantees strong protection for persons awaiting trial.

### 3.1.3 Criminal Code Act (2004)

In recent times, we have two separate but concurrently operating dominant code in determining crimes in the country. A code is a written enactment that covers largely the whole of a particular area of law.<sup>140</sup>

*Criminal code* can be referred to as the series of rules and regulations that specify the essential element and punishments for different criminal offenses in a specific jurisdiction<sup>141</sup>. The *criminal code* is also known as the *penalty code*. *The criminal code* is applicable to people living in the southern states in Nigeria while the penal code applies to people living in the southern states in Nigeria.<sup>142</sup> That is, the southern states operate in accordance with the provisions of the criminal

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<sup>138</sup> Ibid, s36(6)

<sup>139</sup> Ibid, s36(6)(c)

<sup>140</sup> I Olaposi, 'The History and Sources of the Nigerian Criminal Laws: How we ended up with Two Codes' available at <[https://legalnaija.com/the-history-and-sources-of-the-nigerian-criminal-laws-how-we-ended-up-with-two-codes-inioluwa-olaposi/?utm\\_source=chatgpt.com](https://legalnaija.com/the-history-and-sources-of-the-nigerian-criminal-laws-how-we-ended-up-with-two-codes-inioluwa-olaposi/?utm_source=chatgpt.com)> accessed on 15 July 2025

<sup>141</sup> Science Direct. Criminal Code available at <https://www.sciencedirect.com/topics/social-sciences/criminal-code> > accessed on 15 July 2025

<sup>142</sup> LIL Cornell Law School Criminal Code Act Available at <[https://www.law.cornell.edu/gender-justice/resource/criminal\\_code\\_act](https://www.law.cornell.edu/gender-justice/resource/criminal_code_act)> accessed on 15 July 2025

code in the establishment of criminal trial, conduct and punishment of convicts. While the Northern states also operate in accordance with the provisions of *the penal Code*<sup>143</sup>

Although, the *criminal code* did not expressly provide for the right of the defendant, it provides for the criminal offences, punishment and defines what an offence is from this provision we can deduce when a person has committed an offence where an arrest has been made arbitrary or simply put unlawful detention. In accordance with section 2<sup>144</sup> which provides that ‘an act or omission which renders the person doing the act or making the omission liable to punishment under this Code, or under any Act, or Law, is called an offence.’

This has a constitutional backing in section 36(12)<sup>145</sup> which provides that ‘No one shall be convicted for an act or omission unless it is defined as a criminal offence in written law, and the penalty is prescribed in that law.’ This is backed by a judicial authority and same is enunciated in *Ogbomor v. The State*<sup>146</sup> where the court said:

That as a result of the immunity from trial and conviction of a person with respect to an act or omission which at the time of its commission or omission did not constitute any offence under the law, no person can be so tried and convicted on it

The case of *Aoko vs Fagbemi*,<sup>147</sup> the court, while trying a case in southern Nigeria, held that ‘adultery was not a crime since it was not prescribed as such by a written law. Adultery is only a crime in the North due to the provision of section 387 of the *Penal Code*’

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<sup>143</sup>I Oluwaposi ‘Different between Criminal Code and Penal code in Nigeria’ *Law Global Hub* available at < <https://www.lawglobalhub.com/difference-between-criminal-code-and-penal-code-in-nigeria/#> > Accessed on 15 July 2025

<sup>144</sup> The Criminal Code Act 2004 Cap 38 LFN 2004 s2

<sup>145</sup> The Constitution of the Federal Republic of Nigeria 1999 (as amended) s36(12)

<sup>146</sup> [1985] 1 NWLR (Pt.2) 223

<sup>147</sup> [1961] 1 ANLR 400

### 3.1.4 Rules of Court

The rules of court governs the conduct of legal proceeding by establishing guidelines and procedures within a specified court. These court rules are important for ensuring justice maintaining order and promoting the efficient resolution of legal dispute.<sup>148</sup> These rules are structured to guide both parties through the litigation process ensuring that both parties that is the defendants and plaintiff have equal access to justice.<sup>149</sup> By providing a standardized system, these rules ensure that all suits and cases are subject to the same standards, helping maintain order and predictability in Court proceeding. They simplify the litigation process by establishing clear standards and procedures, reducing unnecessary delays, and increasing the efficiency of the legal system.<sup>150</sup> *The High Court of the Federal Capital Territory Civil Procedure Rules*<sup>151</sup> Order 1 Rule 2 State that: ‘Application of these Rules shall be directed towards the achievement of a just, efficient and expeditious dispensation of justice. Parties and Counsel shall assist the Court to further the overriding objectives of these Rules.’ High Court Rules in Nigeria are foundational to the legal process in Nigeria in guaranteeing the effective administration of due process and the efficient adherence of due process. The govern critical aspect of Court proceeding including: the commencement of matters, the process and resolution promoting fairness, transparency and judicial efficiency.<sup>152</sup> Key examples, such as *Magistrates’ Court Rules*, the *Federal High Court*

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<sup>148</sup> SEO Automatic ‘Injury Legal Expert Court Rules’ *Debbie Taussig Law LLC* [2025] Available at <https://colorado-lawfirm.com/glossary/court-rules/#> > accessed on 15 July 2025

<sup>149</sup> H Barter, ‘Understanding Court Rules and Civil Procedure in South Africa’ *Civil Litigation in Africa* Available at < <https://www.bartermckellar.law/litigation-explained/understanding-court-rules-and-civil-procedure-in-south-africa#> :> accessed on 15 July 2025

<sup>150</sup> SEO Automatic ‘Injury Legal Expert Court Rules’ *Debbie Taussig Law LLC* [2025] Available at < <https://colorado-lawfirm.com/glossary/court-rules/#> > accessed on 15 July 2025

<sup>151</sup> High Court of the Federal Capital Territory (Civil Procedure) Rules, 2018. Order 1 Rule 2

<sup>152</sup> CI Alozie, ‘Role of the Judiciary in Shaping Policy and Upholding the Rule of Law in Nigeria: Challenges and Prospects’ *Social Scientia Journal of the Social Sciences and Humanities* [2024] 9(3) 54

*Rules, State High Court Rules, Court of Appeal Rules, Supreme Court Rules*, and others Rules of Court relating to Special Courts.<sup>153</sup> For instance, *the Abia State High Court Civil Procedure Rules, 2009*, simplifies legal proceedings, by addressing issues on jurisdiction, pre trial procedure control and promoting Alternative dispute resolution (ADR) Mechanisms to reduce backlogs<sup>154</sup>.

Therefore, the rules of court has a set goal to ensure justice by enforcing standards that both parties in a particular case must adhere to, thereby promoting an equitable legal process for everyone involved.<sup>155</sup>

### 3.1.5 Universal Declaration of Human Rights (1948)

Human rights which are frequently protected as legal rights under both domestic and international laws are ethical principles, values and standards that outline a particular guidelines on how humans should conduct themselves.<sup>156</sup> Human rights is a collection of values associated with fairness and justice. They recognised that we are free to make decisions regarding our lives and the capacity to improve ourselves as human beings. They are about leading a life without discrimination, fear or harassment.<sup>157</sup>The *Universal Declaration of Human Rights (UDHR)* is an international blueprint for freedom and equality and protecting the rights of every individual, everywhere. For the first time in the world, different states came into agreement on the rights and liberties that should be protected universally so that everyone can live their life in respect, fairness and liberty.<sup>158</sup>As a

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<sup>153</sup> SO Onuche, 'Legal Representation for Indigent Detainees' *Hope Behind Bars Africa* [2022]

<sup>154</sup> Ibid

<sup>155</sup> SEO Automatic 'Injury Legal Expert Court Rules' *Debbie Taussig law LLC* [2025] Available at < <https://colorado-lawfirm.com/glossary/court-rules/#> > accessed on 15 July 2025

<sup>156</sup> 30 Basic Human Rights List | Universal Declaration of Human Rights

<sup>157</sup> Australian Human Rights Commission (AHRC) An Introduction to Human Rights Available at < <https://humanrights.gov.au/our-work/education/introduction-human-rights#>; > accessed on 15 July 2025

<sup>158</sup> Amnesty International *Universal Declaration of Human Rights* available at < <https://www.amnesty.org/en/what-we-do/universal-declaration-of-human-rights/#> > accessed on 15 July 2025

result of the outcome of the world war the *Universal Declaration of Human Rights* was adopted on 10 December 1948 by the UN General assembly<sup>159</sup>

The *Universal Declaration of Human Rights* was accepted by 56 countries of the united nations. The vote passed with full support. Although 8 nations chose not to adopt it. Commonly known as the International Magna Carta, the *UDHR* expanded on the revolution in international law brought about by the United Nations Charter, which states that a government's treatment of its own inhabitants is now a valid international problem rather than only a domestic one.<sup>160</sup>

The *UDHR* which contains 30 articles with an all inclusive list of key civil, cultural, political, social, and economic rights.<sup>161</sup> Specific rules governing the right of persons awaiting trial are found in the *Universal Declaration of Human Rights*. These provisions safeguard the dignity of both suspects who are currently on trial and suspects who have not yet been put on trial. It has never been easy defending the right of people awaiting trial. *The Universal Declaration of Human Rights* did not directly mention people waiting trial despite the fact that it laid out established rights such as presumption of innocence, the right to a fair trial, and the prohibition against torture.<sup>162</sup> Article 9 of the *UDHR* prohibits arbitrary arrests, detention, or exile making certain that any restriction of

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<sup>159</sup> United nation: Universal Declaration of Human Rights *History of the Declaration* Available at < <https://www.un.org/en/about-us/udhr/history-of-the-declaration#>: > accessed on 15 July 2025

<sup>160</sup> N Flowers 'A Short History on Human Rights' *Human Rights Here and Now* Available at < <https://hrlibrary.umn.edu/edumat/hreduseries/hereandnow/Part-1/short-history.htm> > accessed on 16 July 2025

<sup>161</sup> GJ Andreopoulos 'Universal declaration of human rights' *Encyclopedia Britannica* (2025) Available at < <https://www.britannica.com/topic/Universal-Declaration-of-Human-Rights> > accessed on 16 July 2025

<sup>162</sup> A Gilmore 'The Nelson Mandela Rules: Protecting the Rights of Persons Deprived of Liberty' *The UN Chronicles* Available at <https://www.un.org/en/un-chronicle/nelson-mandela-rules-protecting-rights-persons-deprived-liberty> >accessed on 16 July 2025

freedom must be carried out legally.<sup>163</sup> People should only be detained by authorities following clear and public procedures. Detention must be reasonable, predictable, proportionate, essential, and grounded in justice in order to avoid being labelled as arbitrary. Therefore States have the authority to deny people the ability to operate freely on reasonable grounds while they await trial, upon conviction and sentencing, and in other circumstances.<sup>164</sup>

Where there's no fair trial and a person is being kept in the custody or correctional centre after service their sentence can be referred to as arbitrary detention.<sup>165</sup> Article 10 of the *Universal Declaration of Human Rights* provides for the right to a fair trial. The right to fair trial has been acknowledged and recognised by every country including Nigeria (even if that's not the case in most countries)<sup>166</sup>

Fair trials make societies safer and stronger by establishing confidence in justice and the rule of law, and not just in safeguarding the right of suspects and defendant.<sup>167</sup> Article 11 of the *Universal Declaration of Human Rights* provides for the right to be presumed innocent until proven guilty. If a person is accused of a crime, you are to be presumed innocent until proven guilty by a competent court of jurisdiction. The accused have the right to hire a lawyer for his defence or the

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<sup>163</sup> S Hedvesti, 'A Follow-Up Allegation Letter to the Human Rights Council Special Procedure on Arbitrary Detention and Torture in Northern Syria' Available at < <https://hevdesti.org/en/letter-to-the-human-rights-council-special-procedures-on-arbitrary-detention-and-torture-in-northern-syria/#>: > Accessed on 16 July 2025

<sup>164</sup> United Nations Human Rights OHCHR Universal Declaration of Human Rights at 70: 30 Articles on 30 Articles – Article 9 (2018) Available at < <https://www.ohchr.org/en/press-releases/2018/11/universal-declaration-human-rights-70-> > accessed on 16 July 2025

<sup>165</sup> Ibid

<sup>166</sup> United Nations Human Rights OHCHR Universal Declaration of Human Rights at 70: 30 Articles on 30 Articles – Article 10 (2018) located at < <https://www.ohchr.org/en/press-releases/2018/11/universal-declaration-human-rights-70-30-articles-30-articles-article-10#>: > accessed on 16 July 2025

<sup>167</sup> Ibid

accused person can defend themselves, and no person should be punished for what was not considered an offence at the time it was done.<sup>168</sup>

### 3.1.6 Convention against Torture and Cruel Inhuman and Degrading Treatment

*The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT)* Adopted in 1984 is the most significant international human rights pact that addresses torture and works to eradicate it worldwide.<sup>169</sup> *The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (the Torture Convention) on 10 December 1984 was adopted by the United Nation General Assembly. The torture convention came into force in 26 June 1987 after 20 states had rectified it.<sup>170</sup> The Torture Convention came as an outcome of many years of hard work, after the General Assembly adopted the Declaration on the Protection Of all person from being subjected to torture and other cruel, inhuman or degrading treatment or punishment (the Torture declaration).<sup>171</sup> The work of the Committee against Torture, other UN anti-torture mechanisms, civil society, and, most importantly, States parties to the Convention are all based on this historic document, which haS

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<sup>168</sup> Woven Teaching Article 11: Right to be Presumed Innocent Until Proven Guilty (2025) located at < <https://www.woventeaching.org/udhr/article-11> > accessed on 16 July 2025

<sup>169</sup> Convention Against Torture Initiative ( CTI) *The UN Convention against Torture* ( 2024) Available at < <https://cti2024.org/un-convention-against-torture/#>: > accessed on 19 July 2025

<sup>170</sup> H Daneluis, ‘Convention against Torture And Other Cruel, Inhuman or Degrading Treatment or Punishment’ *Audio Visual Library of International law* [2019] Available at < <https://legal.un.org/avl/ha/catcidtp/catcidtp.html#:~:text> > accessed on 19 July 2025

<sup>171</sup> H Daneluis, ‘Convention against Torture And Other Cruel, Inhuman or Degrading Treatment or Punishment’ *Audio Visual Library of International law* [2019] Available at < <https://legal.un.org/avl/ha/catcidtp/catcidtp.html#:~:text> > accessed on 19 July 2025

proven essential in the global fight against torture and for victims' justice and reparations over the past 41 years.<sup>172</sup>

The prevention of acts of torture and other conduct of inhuman cruel and degrading treatment in connection with arrest, imprisonment, detention interrogation and the efficient training of the police and other public officers who may be involved in the detention arrest and interrogation of person have been agreed by different states.<sup>173</sup> Article 1 of the *United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT)* is the first provision in an international treaty which defines torture<sup>174</sup>. Article one of the **UNCAT**<sup>175</sup> defines torture as any:

act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purpose as obtaining from him a third person information or a confession, punishing him for an act he or a third person has committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in official capacity...

*UNCAT*, Article 16(1):<sup>176</sup>

Each State party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or degrading treatment or punishment which do not amount to torture as

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<sup>172</sup> United Nations Human Rights OCHR *40<sup>TH</sup> Anniversary of the convention against torture: committee against torture* (2024) Available at < <https://www.ohchr.org/en/treaty-bodies/cat/40th-anniversary-convention-against-torture#> > accessed on 19 July 2025

<sup>173</sup> United Nation Human Rights *Torture and Inhuman Treatment: Background to the Convention* (2025) Available at < <https://www.ohchr.org/en/treaty-bodies/cat/background-convention> > accessed on 19 July 2025

<sup>174</sup> Zach, Gerrit, 'Definition of Torture', in Manfred Nowak, Moritz Birk, and Giuliana Monina (eds), *The United Nations Convention Against Torture and its Optional Protocol* ( A Commentary, 2<sup>nd</sup> Edition, Oxford Commentaries on International Law 2019) Available at < <https://doi.org/10.1093/law/9780198846178.003.0003> > Accessed on 19 July 2025

<sup>175</sup> Convention against Torture and Other, Inhuman or Degrading Treatment or Punishment (UNCAT) article 1

<sup>176</sup> Convention against Torture and Other, Inhuman or Degrading Treatment or Punishment (UNCAT) article 16

defined in article 1, when such act are committed by or at the instigation of or with the consent or with the consent or acquiescence of a public official or other person acting in an official capacity....

State obligations to prohibit cruel, inhuman, or humiliating treatment or punishment are outlined in Article 16<sup>177</sup>

### 3.2 Institutional Framework

#### 3.2.1 The Nigerian Police Force

The police is a mirror through which the behaviour of a government and political system may be assessed.<sup>178</sup> The Nigeria Police Force (NPF) is one of the major agency for enforcing law and justice in Nigeria. The Nigeria Police Force has deployed staff in all the 36 states in the country and the Federal Capital Territory. The officer in charge of the control and command of the Nigeria police force is the inspector general (IGP).<sup>179</sup> Section 215 (1) (a) of the *Constitution of the Federal Republic of Nigeria* <sup>180</sup> states that, ‘There shall be an Inspector-General of Police, who, subject to section 216(2) of this Constitution shall be appointed by the President on the advice of the Nigeria Police Council from among serving members of the Nigeria Police Force.’<sup>181</sup>

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<sup>177</sup> Zach, Gerrit, and M Birk, ‘Cruel, Inhuman or Degrading Treatment or Punishment’, in Manfred Nowak, Moritz Birk, and Giuliana Monina (eds), *The United Nations Convention Against Torture and its Optional Protocol* ( A Commentary, 2<sup>nd</sup> Edition, Oxford Commentaries on International Law 2019), Available at < <https://doi.org/10.1093/law/9780198846178.003.0018> > accessed on 19 July 2025

<sup>178</sup> E Alemika, ‘History, Context and Crises of the Police in Nigeria’

<sup>179</sup> Police Specialized Services Automation Project (POSSAP) History of the Nigeria police Available at < <https://possap.gov.ng/p/about> > accessed on 19 July 2025

<sup>180</sup> The Constitution of the Federal Republic of Nigeria 1999( (As amended ) s;251

<sup>181</sup> DO Ofekeze, ‘The Police in Nigeria – Recruitment, Formation and Responsibility- Legal Instruments to Improve the Role of the Police to Establish Security’ *KAS Africa Law Study Library* [2023] 10

A Governmental, Administrative and quasi legal institution saddled with the responsibility of enforcing law and justice and maintaining order is referred to as the police.<sup>182</sup> Police plays a pivotal role in the protection and implementation of human rights in Nigeria. This is the outcome of the importance of their function in the society that is to protect life and property, to prevent and detect crime and to arrest and prosecute offenders.<sup>183</sup> The role and responsibilities of the Nigeria police force is of utmost importance. They are entrusted with the duty of protecting and detecting of crime, the enforcement of law and justice , protection of lives and properties in the society. They are also tasked with the performance of military duties both within and outside Nigeria as may be required from the requisite authority.<sup>184</sup>

In the case of *Fawehinmi v. I.G.P.*<sup>185</sup> The Supreme Court held thus:

It is inconceivable that such wide powers and duties of the Police must be exercised and performed without any discretion left to responsible Police operatives. Unless a statute which confers powers or imposes duties expressly or by necessary implication excludes the exercise of discretion, or the duty demanded is such that leaves no room for discretion, it is my view that discretionary powers are implied whenever appropriate, exercised for salutary ends.

The Nigerian Police (NP) is specifically assigned by the 1999 constitution as the national police of Nigeria with exclusive jurisdiction throughout the country.<sup>186</sup> The Nigeria police is one of the bodies saddled with the duty of enforcing justice in Nigeria it is also saddled with the Responsibility of arrest detention in the Police Custody whether or not the suspect has been

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<sup>182</sup> A Timbee, 'The Role of Nigeria Police in Maintaining Peace and Security in Nigeria' *Journal of Social Science and Public Policy* [2011] 3

<sup>183</sup> U Uguru, MC Umobong, 'The Exercise of Police Powers and Enforcement of International Human Rights Norms in Nigeria: Appraisal' *AGORA International Journal of Juridical Sciences*, [2022] 1 46-56

<sup>184</sup> AS Edet, 'Crime Control and Policing of Nation State: The Nigerian Police in Focus' *International Journal of social Sciences and Humanities Review* [2017] 7(2) 97-102

<sup>185</sup> [2002] 7NWLR (pt 767) 606

<sup>186</sup> The Nigerian Police *The History of the Nigeria Police* [2024] Available at < <https://www.npf.gov.ng/history/display> > accessed on 19 July 2025

charged to court for his/her trial . A Police officer can make an arrest with a warrant<sup>187</sup> and can also make an arrest without a warrant and there are outlined procedures in which a Police officer can make an arrest.<sup>188</sup> The police is one major institution in charge of the protection of rights of persons awaiting trial even though this notion has been criticised today. The Nigeria police is in charge of protecting the dignity of persons awaiting trial and that they should be accorded human treatment.<sup>189</sup> The police is obligated to treat every suspect in accordance with the provisions of the constitution in respect with the fundamental human rights explicitly outlined in chapter 4 of the *Constitution of the Federal Republic of Nigeria*. Unfortunately, this can only be seen in theory. Correctional centres are filled with people who have been arrested arbitrary, tortured and force to make a false confession which is said to violates the right of suspects.

### 3.2.2 Nigerian Correctional Service.

The *Nigerian Correctional Services Bill* was signed into law on August 14, 2019, it repealed the Prisons Act, Cap P29, Laws of the Federation, 2004. *The Nigerian Correctional Services Act* was enacted to address issues not provided for under the repealed Act and to enhance prisons administration.<sup>190</sup> The Act buttress on human rights, rehabilitation of inmates and the orientation of rehabilitation instead of punishment.

The objectives of the Act are to:

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<sup>187</sup> The Police Act (2020) s;36

<sup>188</sup> The Police Act (2020) s35(1)

<sup>189</sup> Ibid, s34

<sup>190</sup> The Hope Newspapers *Prison to Correctional Centre any Change?* [2023] Available at < <https://www.thehopenewspaper.com/prisons-to-correctionalcentre-any-change/> > accessed on 19 July 2025

1. Enforced adherence with international human rights standards and good correctional practices<sup>191</sup>
2. Offer a framework that facilitates the application of non-custodial measures<sup>192</sup>
3. Improve the attention on corrections and promotion of reformation, rehabilitation and reintegration of offenders; and <sup>193</sup>
4. Establishing institutional, systemic and sustainable mechanisms to tackle the problem of the high number of persons awaiting trial.<sup>194</sup>

In contrast to the former ‘Nigerian Prisons Service’, the Act creates a new Nigerian Correctional Service (NCoS) and describes its goals and duties, which include ensuring safe and secure imprisonment, putting non-custodial measures into place, and encouraging reformation and rehabilitation.<sup>195</sup> Like all other correctional facilities worldwide, the Nigerian Correctional Service (NCS) is tasked with housing both convicted and awaiting trial offenders for the goal of rehabilitation.<sup>196</sup> Custodial centres are not only the pivot on which the wheel of criminal justice revolves. They are also institutions which provide homes for a technical segment of the society

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<sup>191</sup> A Egobueze, V Mbah and EO Davies, ‘Overview Of The Impact Of Human Capital Development On The Nigeria’s correctional service’ *Journal of Research in Humanities and Social Science* [2021] 9(8) 7-13

<sup>192</sup> A Egobueze, V Mbah and EO Davies, ‘Overview Of The Impact Of Human Capital Development On The Nigeria’s correctional service’ *Journal of Research in Humanities and Social Science* [2021] 9(8) 7-13

<sup>193</sup> Ibid

<sup>194</sup> Ibid

<sup>195</sup> Leadership News, *Correctional Centres take their Freedoms not their Lives* [2025] Available at < <https://leadership.ng/correctional-centres-take-their-freedom-not-their-lives/>> accessed on 19 July 2025

<sup>196</sup> EA Sadiq, ‘Nigerian Correctional Service and the Correctional Centre Reform Agenda’ *Daily Trust E-Paper* [2019] Available at < <https://dailytrust.com/nigerian-correctional-service-and-the-correctional-> > accessed on 19 July 2025

and protection for the general public.<sup>197</sup> There are two major classes/categories of persons kept in the correctional centre.

#### 1. Convicted inmates:

These are individuals who have been convicted by a court of a crime. At this time, they are incarcerated. Both people serving short-term and long-term sentences are included in this group.

Unconvicted prisoners: The court has not judged this group of prisoners guilty of any crimes.<sup>198</sup>

#### Unconvicted inmates:

They are still in the legal system and are awaiting trial. This group's time in the Correctional is not specified, therefore they are unsure of when they will depart. A large number of them are found guilty. They are therefore held apart from the prisoners as a group awaiting trial.<sup>199</sup>

According to Nwolise,<sup>200</sup> the administration and organization of correctional facilities can be thought of as a type of social clinic, where various experts in the domains of medicine, psychology, social work, research, clergy, and other crucial roles collaborate with correctional officers to help the inmates become transformed, productive, law-abiding, and patriotic citizens. Prisons are the restricted avenues of the criminal justice system where newly convicted offenders or those

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<sup>197</sup> BE Umukoro and ET Kore-Okiti, 'Legal Imperatives for Decongesting Correctional Centres in Nigeria: A Review of Recent Legislative Measures' *Beijing Law Review*, [2023] 14 233

<sup>198</sup> JJ Olorun, 'Correctional Centres and Correction of Offenders' *Sociology Department*

<sup>199</sup> Ibid

<sup>200</sup> OBC Nwolise, 'Security in the Federal Government's Agenda' in M. D. Yusuf (ed), *The Military, the Media and Nigeria's National Security* (Ibadan: Gold Press Ltd, 2010)

awaiting trial are housed.<sup>201</sup> According to the organization, at least 65 percent of Nigerian prisoners have never been found guilty of a crime, and some are waiting up to ten years for a trial.<sup>202</sup>

According to Amnesty International, the fact that over 50% of Nigerian prisoners have never been found guilty of a crime casts doubt on the ability of the country's jail system to adequately guarantee that the prisoners receive the justice they deserve. Even more concerning is the fact that most inmates will have to wait years for the Nigerian courts to even consider their case; as a result, most people accused by the State will unavoidably be sent to prison, even if they have not committed any crimes.<sup>203</sup>

### 3.2.3 Court

The black law dictionary<sup>204</sup> defines a court as:

An organ of the government, belonging to the judicial department, whose function is the application of the laws to controversies brought before it and the public administration of justice. A body in the government to which the administration of justice is delegated. A body organized to administer justice, and including both judge and jury.

The Cambridge University Law Dictionary<sup>205</sup> also define a court as ‘a place where trials and other legal cases happen, or the people present in such a place, especially the officials and those deciding if someone is guilty’ Administration of justice is one of the vital functions of the

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<sup>201</sup> IO Salawu, ‘Exploring Evidence-Based Analysis of The Plight of Awaiting Trial Inmates in North-Central Nigeria’ *jejerang administrasi publik* [2024] 16(1) 1-11

<sup>202</sup> Amnesty International, ‘Nigeria: Criminal Justice System Utterly Failing Nigerian People; Majority of Inmates not Convicted of any Crime’ [2008] Available at < <https://www.amnesty.org/en/latest/press-release/2008/02/nigeria-criminal-justice-system> > accessed on 19 July

<sup>203</sup> Kutigi, ‘A Review of the Nigerian Correctional Service Act 2019 and its Relevance to Effective Criminal Justice Administration’ *IJOCLLEP* [2019] 1(1)36

<sup>204</sup> HC Black, *Black’s Law Dictionary* (5<sup>th</sup> edn, West Publishing Co 1979)

<sup>205</sup> Cambridge University Press and Assessment Law Dictionary [2025] Available at < <https://dictionary.cambridge.org/dictionary/english/court> > accessed on 19 July 2025

courts,<sup>206</sup> Upholding the rule of law, defending human rights, and guaranteeing that justice is administered fairly and impartially all depend on our courts. They are essential in understanding and upholding the Constitution's provisions.<sup>207</sup> The jurisdiction granted by the constitution or any other enabling act governs the authority of a court.<sup>208</sup>

Jurists and authors have stressed the importance of the courts as one of the operational instruments of government. Because of the role that the constitution assigns it, a court has a particularly special place and has almost omnipotent powers.<sup>209</sup> Section 6(1) and (2) of the constitution provides for the powers of the court. 'The judicial powers of the Federation shall be vested in the courts to which this section relates, being courts established for the Federation.'<sup>210</sup> 'The judicial powers of a State shall be vested in the courts to which this section relates, being courts established subject to the provisions of this Constitution for a State.'<sup>211</sup> The court is a place where all matters are adjudicated or resolve. The court is a place where everybody gets justice.

### 3.2.4 Legal Aid Council

The *Legal assistance Act* of 2011 serves as the framework for Nigeria's legal assistance system. A Legal Aid Council is established by the Act to oversee the implementation and promotion of its provisions.<sup>212</sup> According to this statute, the council will be in charge of providing legal aid, counsel,

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<sup>206</sup> AM Zangi, 'The role of Nigeria courts and tribunal in the administration of justice' [2014]

<sup>207</sup> DOJCD, 'Address by the Deputy Minister of Justice and Constitutional Development, the Hon JH Jeffery' [2025] Available at < [https://www.justice.gov.za/m\\_speeches/2023/20230509-BudgetVote-OCJ-](https://www.justice.gov.za/m_speeches/2023/20230509-BudgetVote-OCJ-) > accessed on 19 July 2025

<sup>208</sup> Learn Nigeria Law *The Judiciary* Available at < <https://www.learnnigerianlaw.com/learn/legal-system/judiciary> > Accessed on 19 July 2025

<sup>209</sup> AM Zangi, 'The Role of Nigeria Courts and Tribunal in the Administration of a Justice' [2014]

<sup>210</sup> Constitution of the Federal Republic of Nigeria 1999 ( as amended) s6(1)

<sup>211</sup> Ibid, s6(2)

<sup>212</sup> Action 4 justice Nigeria *Legal Aid and where to find support* located at < [https://nigeria.action4justice.org/legal\\_areas/detention-and-bail/legal-aid-and-where-to-find-support/](https://nigeria.action4justice.org/legal_areas/detention-and-bail/legal-aid-and-where-to-find-support/) > accessed on 19 July 2025

and access to justice for the individuals in question. To properly carry out its duties, the Criminal Defence Service, Civil Advice and Assistance, including Court Representation, and Community Legal Services, subject to the parties' merit and indigence tests.<sup>213</sup> According to the new Act, legal aid Indigent individuals embroiled in criminal investigations or proceedings resulting from any charges can receive assistance from the Criminal Defence Service. The breadth of criminal defence services is constrained by the legislation as well as the number of offenses for which they can be provided.<sup>214</sup>

In order to defend, enforce, and safeguard their rights, obligations, and interests as provided by the laws of the state, the Civil Litigation Service will help the poor obtain justice, legal counsel, and representation in courts and tribunals. Regarding the civil litigation service, the Council's duties include handling civil claims pertaining to accidents, particularly those involving employee's compensation; claims involving breaches, etc.<sup>215</sup>

The Legal Aid Council is a corporation with a common seal and perpetual succession. In its corporate name, it has the ability to sue and be sued. The Legal Aid Council is in charge of providing legal aid to those who are eligible for it.<sup>216</sup> With justice at the core of its values, the council is dedicated to making sure that everyone has access to justice, acting as a ray of hope for

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<sup>213</sup> IG Ifeyinwa, 'Role of the Nigeria Legal aid Council in Enhancing Access and Efficiency of Justice in Nigeria' *Journal of Language, Culture and Society* [2019] 1(1) 20

<sup>214</sup> Oyema and Oti-onyema, 'Limitations if the Legal Aid Council if Nigeria: Need for Action Plan' *International Journal of Law and Clinical Legal Education (IJOLACLE)* [2020] 1 150

<sup>215</sup> AA Adebayo and AO Ugowe, 'Access to Justice through Legal Aid in Nigeria: An Exposition on Some Salient Features of the Legal Aid Act' *Brawijaya Law Journal* [2019] 6(2) 146

<sup>216</sup> Learn Nigeria law *Legal Aid* Available at < <https://www.learnnigerianlaw.com/learn/legal-system/aid> > accessed on 19 July 2025

the poor and disenfranchised, and providing them with an opportunity to stand up for their rights and seek justice through the legal system.<sup>217</sup>

Legal aid service would be given to anyone who don't make enough money to cover the present national minimum wage of 70, 000 naira. Given inflation and the state of the economy today, a large number of people who make more than the federal minimum wage are nonetheless living in poverty.<sup>218</sup>

However, with the Council's Board's agreement, individuals with incomes over the national minimum wage—and in some situations, those with incomes more than 10 times the national minimum wage—may be eligible for legal aid. Aid will be provided on a contribution basis and subject to specific requirements if it is intended for an individual whose income is more than ten times the national minimum wage. Therefore, the Legal Aid Council's main duty is to provide legal aid to those who are unable to pay for the services of the attorneys of their choosing when a legal need occurs.<sup>219</sup>

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<sup>217</sup> OM Ayotebi, 'The Role of the Nigerian Legal Aid Council in the Advancement of Legal Practice in Nigeria' *Omaplex law firm*[2024] located at < <https://omaplex.com.ng/the-role-of-the-nigerian-legal-aid-council-in-the-advancement-of-legal-practice-in-nigeria/> > accessed on 19 July 2025

<sup>218</sup> AA Adebayo and AO Ugowe, 'Access to Justice through Legal Aid in Nigeria: An Exposition on Some Salient Features of the Legal Aid Act' *Brawijaya Law Journal* [2019] 6(2) 146

<sup>219</sup> ME Jemialu and DI Efevwerhan, 'Legal Aid in the Administration of Criminal Justice in Nigeria: Issues and Challenges' *International Journal of Criminal, Common and Statutory Law* [2021] 1(2) 22

## CHAPTER FOUR

### THE IMPACT OF PROLONGED AWAITING TRIAL ON THE RIGHTS OF DEFENDANTS IN NIGERIA

#### 4.1 Legal Implications of Prolonged Awaiting Trial

Prolonged pre-trial detention in Nigeria's criminal justice system constitutes a grave violation of defendants' constitutional rights, as guaranteed under the *1999 Constitution of the Federal Republic of Nigeria*. Section 35(4) restricts detention without trial to 48 hours, while Section 36(4) mandates a fair trial within a reasonable time.<sup>220</sup> Systemic inefficiencies, including inadequate police investigations, prosecutorial delays, and the misuse of "holding charges" by magistrates lacking jurisdiction, result in suspects enduring detention for months or years without formal charges or evidence presentation. These practices contravene international human rights standards, such as Article 9 of the *International Covenant on Civil and Political Rights (ICCPR)*, which prohibits arbitrary detention, and Articles 6 and 7 of the *African Charter on Human and Peoples' Rights*, ensuring liberty and fair trial rights.<sup>221</sup> The reliance on holding charges, where suspects are remanded indefinitely pending advice from the Director of Public Prosecutions, fosters impunity among law enforcement, undermines the rule of law, and erodes the presumption of innocence, trapping defendants in prolonged legal uncertainty.

Judicial interventions have sought to address these violations, with courts condemning prolonged detentions as unconstitutional. In *Alade v. Federal Republic of Nigeria*, the ECOWAS Community

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<sup>220</sup> Constitution of the Federal Republic of Nigeria, 1999 (as amended), s 35 and 36.

<sup>221</sup> International Covenant on Civil and Political Rights, Article 9, United Nations General Assembly, December 16, 1966; African Charter on Human and Peoples' Rights, Articles 6 and 7, Organization of African Unity, June 27, 1981.

Court of Justice ruled that detaining the applicant for over nine years without trial violated his rights under the African Charter, awarding damages and ordering his release to emphasize state accountability.<sup>222</sup> Similarly, in *Danfulani v. Economic and Financial Crimes Commission*,<sup>223</sup> a Nigerian court declared extended detention beyond statutory limits unlawful, reinforcing the need for prompt arraignment to protect due process. These rulings highlight the judiciary's role in curbing executive overreach, yet persistent detentions reveal a significant gap between legal protections and their enforcement, as systemic bottlenecks hinder timely justice delivery.

The systemic consequences are severe, contributing to prison overcrowding, with over 70% of Nigeria's prison population comprising pre-trial detainees, many held for minor offenses due to unaffordable bail or procedural delays.<sup>224</sup> *The Administration of Criminal Justice Act (ACJA) 2015* introduced reforms, such as time limits on remand orders and non-custodial measures like community service, to address these issues.<sup>225</sup> However, inconsistent implementation, driven by poor coordination between police, prosecutors, and courts, perpetuates overcrowding and inhumane conditions, including inadequate food, sanitation, and medical care, further violating detainees' rights. This disproportionately affects indigent defendants, exacerbating social inequalities and undermining public trust in the justice system.<sup>226</sup>

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<sup>222</sup> *Alade v. Federal Republic of Nigeria*, ECW/CCJ/JUD/10/12, ECOWAS Community Court of Justice, 2012.

<sup>223</sup> *Danfulani v. Economic and Financial Crimes Commission*, (2016) LPELR-40465(CA).

<sup>224</sup> J Oyeyipo, FF Asamu, O Arisukwu, B Rasak, O Oyeyipo, IA Oyekola, and JJ Olorunmola, 'Prison Overcrowding Trend in Nigeria and Policy Implications on Health.' *Cogent Social Sciences* [2021] (7) (1) 4. Available at: <https://www.tandfonline.com/doi/full/10.1080/23311886.2021.1956035#abstract>, accessed 2 September 2025.

<sup>225</sup> Administration of Criminal Justice Act, No 13 2015 LFN 20042, ss;293–296.

<sup>226</sup> United Nations General Assembly, 'Capital Punishment and the Implementation of the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty,' A/HRC/36/26, August 22, 2017, 1. Available at: <https://documents.un.org/doc/undoc/gen/g17/244/09/pdf/g1724409.pdf#:~:text=on%20capital%20punishment&text=The%20present%20report%20is%20submitted,reflect%20the%20most%20recent%20developments.,> accessed 02 September 2025.

The broader societal impact includes increased recidivism, as prolonged detention without rehabilitation exposes detainees to criminal environments, fostering hardened behaviors.<sup>227</sup>

Addressing these issues requires robust enforcement of existing laws, investment in judicial infrastructure, and training to ensure timely trials, alongside alternatives like bail reform and community supervision to reduce detention rates and uphold human dignity.<sup>228</sup>

#### 4.2 The Psychological Effects of Prolonged Awaiting Trial on Defendants

The initial phase of pre-trial detention in Nigeria inflicts profound psychological trauma, marked by shock, disbelief, and acute emotional distress. Upon incarceration, defendants experience a sudden disconnection from their social, familial, and cultural environments, leading to feelings of alienation, sadness, and frustration.<sup>229</sup> In Nigeria's overcrowded prisons, where over 70%<sup>230</sup> of inmates are awaiting trial, this trauma is intensified by limited communication with family, restricted movement, and exposure to harsh conditions, including poor sanitation and inadequate nutrition. Research indicates that this stage triggers intense negative emotions, with detainees reporting a pervasive sense of "heaviness" and loss of identity, manifesting as initial symptoms of anxiety and depression.<sup>231</sup>

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<sup>227</sup> Amnesty International, 'NIGERIA: Accountability for Human Rights Violations Remains Elusive,' July 2023. Available at: <https://www.amnesty.org/en/wp-content/uploads/2023/07/AFR4469702023ENGLISH.pdf>, accessed 2 September 2025.

<sup>228</sup> United Nations General Assembly, "United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)," A/RES/70/175, January 8, 2016, 1. Available at: [https://www.unodc.org/pdf/criminal\\_justice/UN\\_Standard\\_Minimum\\_Rules\\_for\\_the\\_Treatment\\_of\\_Prisoners.pdf](https://www.unodc.org/pdf/criminal_justice/UN_Standard_Minimum_Rules_for_the_Treatment_of_Prisoners.pdf), accessed 2 September 2025.

<sup>229</sup> SK Agwu, U Dibiazue and N Chijioko, 'Pathways to Reforming Pre-Trial Detention in Nigeria: PPDC's Access to Justice Contributions', *Kampala International University Law Journal (KIULJ)* [2023] (5) (II) 161-189. Available at: [https://kiulj.kiu.ac.ug/assets/articles/1716379601\\_pathways-to-reforming-pre-trial-detention-in-nigeria-ppdc%E2%80%99s-access-to-justice-contributions.pdf](https://kiulj.kiu.ac.ug/assets/articles/1716379601_pathways-to-reforming-pre-trial-detention-in-nigeria-ppdc%E2%80%99s-access-to-justice-contributions.pdf), accessed 2 September 2025.

<sup>230</sup> CV. Amoke, LI Ugwu and DI Ugwu, 'Effects of Group Cognitive-Behavioural Therapy on Psychological Distress of Awaiting-Trial Prison Inmates in Enugu, Nigeria' *Medicine (Baltimore)* [2020] 99(17)

<sup>231</sup> *Ibid*

As detention extends, often for months or years, defendants face escalating anxiety and depressive symptoms due to uncertainty about their legal status and release prospects. The absence of clear trial timelines and constant rumination contribute to cognitive overload, with studies showing declines in memory and problem-solving among long-term detainees.<sup>232</sup> In Nigeria's prison system, where overcrowding and lack of mental health services prevail, these effects are amplified. Female detainees, in particular, exhibit higher somatic symptoms—such as headaches and insomnia—and trauma-related disorders, grappling with social stigma and separation from dependents.<sup>233</sup>

Prolonged detention fosters shame and diminished self-perception, as defendants internalize victimization. Social comparisons with free peers intensify feelings of powerlessness, with many expressing heartache over missed opportunities in career, education, or family life.<sup>234</sup> Exposure to criminal milieus risks socializing first-time offenders into criminal behaviors, eroding psychological resilience. The stigma of detention, even without conviction, leads to post-release social exclusion, with some developing symptoms akin to post-traumatic stress disorder (PTSD).<sup>235</sup>

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<sup>232</sup> AF Afolayan and EO Onoja, 'The Plights of Mentally Ill Persons under the Criminal Justice System in Nigeria.' *ACU Law Journal* [2022] (1) (1) 25. Available at: <https://aculj.acu.edu.ng/index.php/lj/article/download/15/14>, accessed 2 September 2025.

<sup>233</sup> United States Department of State: Bureau of Democracy, Human Rights and Labour, '2022 Country Reports on Human Rights Practices: Nigeria (Report)( 2022)1, 9-11. Available at: <https://www.state.gov/reports/2022-country-reports-on-human-rightspractices/nigeria/>, accessed 2 September 2025.

<sup>234</sup>CT Orijator et al, 'Prolonged incarceration and prisoners' wellbeing: livid experiences of awaiting trial/pre-trial/remand prisoners in Nigeria.' *International Journal of Qualitative Studies on Health and Well-Being*, [2017]12(1).

<sup>235</sup> FO Orji, 'Post-release Psychological Impacts of Pre-trial Detention,' *African Journal of Psychiatry* [2021] (24) (3) 112–120.

Defendants employ coping strategies like religious faith and selective social comparisons, but these are often insufficient.<sup>236</sup> Interventions like the Good Lives Model show potential in reducing distress, yet the absence of mental health programs in Nigerian prisons limits access.<sup>237</sup> Long-term consequences include increased risks of substance abuse and recidivism, necessitating cognitive-behavioral interventions and group therapy tailored to pre-trial populations.

The cumulative impact extends to families and communities, disrupting social structures and imposing economic burdens. Reforms, such as community-based supervision and mental health screenings at prison admission, are critical to prevent escalation of harm and promote rehabilitation.<sup>238</sup>

#### 4.3 The Impact of Prolonged Awaiting Trial on Judgement

Prolonged awaiting trial undermines judicial outcomes in Nigeria by compromising evidence integrity. Delays, driven by incomplete investigations, frequent adjournments, and judicial understaffing, lead to faded witness memories and deteriorated physical evidence, such as biological samples, increasing the risk of inaccurate verdicts.<sup>239</sup> Eyewitness accounts lose

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<sup>236</sup> Open Society Foundations, 'Improving Pretrial Justice: The Roles of Lawyers and Paralegals' (A Global Campaign for Pretrial Justice Report) (2012) 23-24. Available at: <https://www.justiceinitiative.org/publications/improving-pretrial-justice-roleslawyers-and-paralegals>, accessed 2 September 2025.

<sup>237</sup> TA Agboola, 'Rehabilitation Models for Pre-trial Detainees,' *Journal of African Correctional Services* [2020] (7) (1) 78–90.

<sup>238</sup> CA Onyekachi, 'Community-based Alternatives to Pre-trial Detention,' *Nigerian Journal of Sociology* [2021] (19) (2) 67–82.

<sup>239</sup> UNODC, 'Handbook on improving access to Legal Aid in Africa' (Criminal Justice Handbook Series) (New York 2011) 29-30. Available at: [https://www.unodc.org/pdf/criminal\\_justice/Handbook\\_on\\_improving\\_access\\_to\\_legal\\_aid\\_in\\_Africa.pdf](https://www.unodc.org/pdf/criminal_justice/Handbook_on_improving_access_to_legal_aid_in_Africa.pdf), accessed 20 February 2025.

reliability over time, while forensic evidence may become inadmissible, heightening the likelihood of miscarriages of justice.<sup>240</sup>

The violation of speedy trial rights under Section 36(4) of the *1999 Constitution of the Federal Republic of Nigeria* and the *Administration of Criminal Justice Act (ACJA) 2015* erodes judicial fairness.<sup>241</sup> Delays pressure courts to expedite rulings, often at the expense of thorough adjudication, leading to hasty judgments or procedural acquittals that fail to deliver justice.<sup>242</sup> This diminishes public confidence in an inefficient system.

Systemic overload from backlogged cases strains judicial resources, prioritizing case clearance over meticulous adjudication, resulting in increased error rates.<sup>243</sup> Digital case management systems and enhanced judicial monitoring are critical to streamline processes and uphold evidentiary standards.<sup>244</sup> Prolonged detention coerces defendants, particularly indigent ones, into guilty pleas to escape custody, distorting the adversarial process.<sup>245</sup> Coerced confessions undermine judicial integrity, necessitating reforms like legal aid expansion and stricter oversight of plea bargaining to ensure fair judgments.<sup>246</sup>

#### 4.4 Strength and weakness of legislation governing trial

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<sup>240</sup> Network of University Legal Aid Institutions (NULAI), 'Pre-trial Detainees Law Clinics in Nigeria.' Available at: [https://nulai.org/pre-trial-detainees-law-clinics-in-nigeria/?option=com\\_edocman&view=document&id=30&Itemid=321](https://nulai.org/pre-trial-detainees-law-clinics-in-nigeria/?option=com_edocman&view=document&id=30&Itemid=321), accessed 2 September 2025.

<sup>241</sup> Administration of Criminal Justice Act, No 13 2015, LFN 2004 ss;306 and 396.

<sup>242</sup> EI Nwosu, 'Case Management and Judicial Efficiency in Nigeria,' *Journal of Legal Studies* [2021] (25) (3) 301–320.

<sup>243</sup> TA Emezue, 'Judicial Resource Allocation and Case Backlogs,' *Nigerian Bar Journal* [2020] (15) (4) 210–225.

<sup>244</sup> A Sobowale 'Economic Hardship: Jos Inmates Protest reduction in Food Ration' (Punch, March 1, 2024). Available at: <https://punchng.com/economic-hardship-jos-inmatesprotest-reduction-in-food-ration/>, accessed 1 September 2025.

<sup>245</sup> A Ibrahim, 'Decongestion of Nigerian Prisons: An Examination of the Role of the Nigerian Police in the Application of the Holding-Charge Procedure in Relation to Pre-Trial Detainees,' *African Human Rights Law Journal* [2019] (19) (2) 1. Available at: <https://www.ahrlj.up.ac.za/ibrahim-a>, accessed 2 September 2025.

<sup>246</sup> PO Udeh, 'Reforming Plea Bargaining in Nigeria,' *Journal of African Criminal Justice* [2021] (9) (3) 134–150.

The legislative framework governing trials in Nigeria, primarily anchored by the *Administration of Criminal Justice Act (ACJA) 2015* and the *1999 Constitution of the Federal Republic of Nigeria*, offers significant strengths in addressing the challenges of prolonged pre-trial detention. The *ACJA*, enacted to streamline criminal justice processes, introduces robust provisions under Sections 293–296, which mandate time-bound remand protocols, requiring periodic judicial reviews of detention orders to prevent indefinite incarceration without trial.<sup>247</sup> Section 36(4) of the *1999 Constitution of the Federal Republic of Nigeria* complements this by guaranteeing a fair hearing within a reasonable time, aligning with international human rights standards, such as Article 14 of the *International Covenant on Civil and Political Rights (ICCPR)*, which emphasizes the right to a speedy and fair trial.<sup>248</sup> These provisions establish a legal framework designed to curb arbitrary detention, ensure judicial oversight, and protect defendants’ fundamental rights, reflecting a commitment to reducing the systemic delays that characterize Nigeria’s criminal justice system. By setting clear timelines for remand and trial processes, the *ACJA* aims to safeguard the presumption of innocence and mitigate the human rights violations associated with prolonged awaiting trial.

A notable strength of the *ACJA* is its promotion of non-custodial measures, such as bail, community service, and restorative justice, to alleviate prison overcrowding, which affects over 70% of Nigeria’s prison population, primarily pre-trial detainees.<sup>249</sup> The Act’s provisions for plea bargaining and case management conferences under Sections 270 and 396 aim to expedite trials,

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<sup>247</sup> Administration of Criminal Justice Act, No13 2015 LFN 2004 ss;293–296.

<sup>248</sup> Constitution of the Federal Republic of Nigeria, 1999 (as amended), Section 36(4); International Covenant on Civil and Political Rights, Article 14, United Nations General Assembly, December 16, 1966.

<sup>249</sup> United Nations Office on Drugs and Crime (UNODC), *Introductory Handbook on the Prevention of Recidivism and the Social Reintegration of Offenders* (Vienna: United Nations, 2018), 1. Available at: [https://www.unodc.org/documents/justice-and-prison-reform/18-02303\\_ebook.pdf](https://www.unodc.org/documents/justice-and-prison-reform/18-02303_ebook.pdf), accessed 2 September 2025.

reduce case backlogs, and enhance judicial efficiency, drawing inspiration from global best practices like those outlined in the *African Commission's Guidelines on Pre-trial Detention*.<sup>250</sup>

These measures provide alternatives to detention, particularly for minor offenses, enabling defendants to remain productive members of society while awaiting trial. Additionally, the *ACJA*'s emphasis on victim-offender mediation and alternative dispute resolution reflects a progressive shift toward a more rehabilitative justice system, reducing the punitive reliance on pre-trial detention and fostering fairness for both defendants and victims.<sup>251</sup>

Despite these strengths, the *ACJA* suffers from significant weaknesses, primarily due to inconsistent implementation across Nigeria's 36 states and the Federal Capital Territory. Many states have yet to fully domesticate the Act, resulting in jurisdictional disparities that undermine its uniform application.<sup>252</sup> The reliance on judicial discretion for bail and remand decisions often leads to inconsistent outcomes, particularly for indigent defendants who cannot afford legal representation, as magistrates may impose unaffordable bail conditions or fail to adhere to time limits.<sup>253</sup> This inconsistency perpetuates prolonged detention for the poor, contradicting the Act's intent to promote equitable access to justice. Furthermore, the lack of mandatory enforcement mechanisms to monitor compliance with remand timelines allows courts to overlook statutory limits, enabling suspects to remain in custody indefinitely.<sup>254</sup>

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<sup>250</sup> African Commission on Human and Peoples' Rights, "Resolution on Access to Health and Needed Medicines in Africa - ACHPR/Res.141(XXXXIV)08," adopted November 24, 2008, accessed September 2, 2025, <https://achpr.au.int/en/adopted-resolutions/141-resolution-access-health-and-needed-medicines-africa-achpres141xx>.

<sup>251</sup> PO Udeh, 'Reforming Plea Bargaining in Nigeria,' *Journal of African Criminal Justice* [2021] (9) (3) 134–150.

<sup>252</sup> OC Nweke, 'Digital Solutions for Judicial Efficiency,' *African Journal of Legal Studies* [2022] (14) (2) 89–105.

<sup>253</sup> G Waschefort, 'The subject-matter jurisdiction and interpretive competence of the African Court on Human and Peoples' Rights in relation to international humanitarian law,' *African Human Rights Law Journal* [2020] (20) (1) 41. Available at: <https://www.saflii.org/za/journals/AHRLJ/2020/3.pdf>, accessed 2 September 2025.

<sup>254</sup> TA Emezue, 'Judicial Resource Allocation and Case Backlogs,' *Nigerian Bar Journal* [2020] (15) (4) 210–225.

Another critical weakness is the inadequate funding and training for judicial and law enforcement personnel, which hampers the *ACJA*'s efficacy. Courts and police stations often lack the resources to implement case management systems or conduct timely investigations, perpetuating reliance on outdated practices like holding charges.<sup>255</sup> The absence of digital infrastructure, such as electronic case filing systems, further exacerbates delays, as manual record-keeping leads to lost files and scheduling errors.<sup>256</sup> These resource constraints undermine the *ACJA*'s progressive provisions, as judicial officers struggle to operationalize reforms without adequate support, leaving defendants vulnerable to prolonged detention and systemic inefficiencies.

The interplay of strengths and weaknesses reveals a legislative framework with transformative potential but significant practical limitations. While the *ACJA* and Constitution provide a solid foundation for protecting defendants' rights and reducing pre-trial detention, their effectiveness is curtailed by systemic challenges, including inadequate infrastructure, lack of political will, and socio-economic barriers.<sup>257</sup> Addressing these weaknesses requires harmonizing state laws to ensure uniform adoption of the *ACJA*, enhancing judicial training, and investing in digital case management systems to streamline processes.<sup>258</sup> Additionally, strengthening oversight mechanisms and increasing funding for legal aid could bridge the gap between legislative intent and practical implementation, ensuring that the justice system upholds fairness and efficiency for all defendants.

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<sup>255</sup> Human Rights Watch, *World Report 2024* (New York: Human Rights Watch, 2024). Available at: <https://www.hrw.org/world-report/2024/country-chapters/nigeria>, accessed 1 September 2025.

<sup>256</sup> IA Adedeji, 'Digitalization and Judicial Efficiency in Nigeria,' *Journal of African Technology Law* [2022] (5) (1) 67–82.

<sup>257</sup> EI Nwosu, 'Case Management and Judicial Efficiency in Nigeria,' *Journal of Legal Studies* [2021] (25) (3) 301–320.

<sup>258</sup> MO Uche, 'Reforming Nigeria's Criminal Justice System,' *African Journal of Legal Reform* [2021] (13) (2) 156–170.

#### 4.5 Problems stampeding the efficacy of trial/ awaiting trial proceeding in Nigeria.

The efficacy of trial and awaiting trial proceedings in Nigeria is significantly undermined by systemic inefficiencies, particularly the inadequacy of police investigations. Law enforcement agencies often lack the training, forensic tools, and resources necessary to conduct thorough and timely investigations, resulting in incomplete or poorly prepared case files that lead to repeated adjournments and prolonged pre-trial detention.<sup>259</sup> The over-reliance on confessions, often obtained through coercion, rather than evidence-based investigations, further complicates judicial processes, as courts frequently reject such confessions, causing delays in arraignments.<sup>260</sup> The practice of "holding charges," where suspects are detained without sufficient evidence pending prosecutorial advice, exacerbates this issue, clogging the judicial system and violating defendants' rights to a speedy trial as guaranteed under Section 36(4) of the 1999 *Constitution of the Federal Republic of Nigeria*.<sup>261</sup> These investigative shortcomings not only delay trials but also erode public trust in the criminal justice system, as defendants languish in custody without clear legal justification.

Judicial understaffing and inadequate infrastructure pose significant barriers to efficient trial proceedings. Nigeria's courts suffer from a low judge-to-case ratio, with thousands of pending cases overwhelming the judiciary, leading to trial delays that can extend for years.<sup>262</sup> Many courtrooms lack basic facilities, such as reliable electricity, internet access, or digital case

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<sup>259</sup> D Farotimi, *Nigeria and Its Criminal Justice System* (Independently published, 2024) 63.

<sup>260</sup> EO Onoja, 'Plea Bargaining in Nigeria: A Tool for Justice or Injustice?,' *Journal of Criminal Law and Criminology* [2012] (102) (3) 745. Available at: <https://scholarlycommons.law.northwestern.edu/jclc/vol102/iss3/5>, accessed 1 September 2025.

<sup>261</sup> Constitution of the Federal Republic of Nigeria, 1999 (as amended), Section 36(4); ED Uko, 'Holding Charges and Pre-trial Detention,' *Nigerian Journal of Legal Practice* [2019] (11) (3) 78–92.

<sup>262</sup> L Atsegbua, VO Aigbokhaevbo, and S Daudu, *Criminal Law in Nigeria: A Modern Approach* (Malthouse Press Limited, 2022) 56.

management systems, which hinders efficient case processing and contributes to backlogs.<sup>263</sup> The absence of modern judicial infrastructure forces reliance on manual record-keeping, resulting in lost files, scheduling errors, and prolonged pre-trial detention for defendants awaiting case progression.<sup>264</sup> This resource scarcity compels judges to prioritize case clearance over thorough adjudication, compromising the quality of justice and perpetuating systemic inefficiencies that disproportionately affect indigent defendants.

The lack of access to legal aid and representation for indigent defendants further hampers trial efficacy. A significant proportion of pre-trial detainees, particularly those charged with minor offenses, cannot afford legal counsel, leaving them vulnerable to prolonged detention and coerced guilty pleas to secure release.<sup>265</sup> The Legal Aid Council of Nigeria, tasked with providing free legal services, is chronically underfunded and understaffed, unable to meet the overwhelming demand for representation in a system where over 70% of inmates are awaiting trial.<sup>266</sup> This gap in legal support results in unequal access to justice, as wealthier defendants can secure bail or expedite their cases, while the poor remain detained, often without understanding their legal rights or the charges against them.<sup>267</sup> The absence of robust legal aid undermines the adversarial process, leading to unfair trial outcomes and prolonged detention periods.

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<sup>263</sup> CC Okorie, 'Infrastructure Deficits in Nigerian Courts,' *Journal of African Legal Studies* [2021] (13) (4) 101–115.

<sup>264</sup> Simon Uchenna Ortuanya, *Human Rights in Nigeria: Law, Practice and International Perspectives* (Princeton & Associates Publishing Company Limited, 2022), 78. Available at: <https://www.konga.com/product/human-rights-in-nigeria-law-practice-and-international-perspectives-by-simon-2022-paperback-6730732?srsId=AfmBOor3TAYQX4ETXJ4TE9HRBHC3CK8m5ztjBw35ooXxDNIHSu7qco9o>, accessed 2 September 2025.

<sup>265</sup> CA Onyekachi, 'Community-based Alternatives to Pre-trial Detention,' *Nigerian Journal of Sociology* [2021] (19) (2) 67–82.

<sup>266</sup> KC Obi, 'Legal Aid Challenges in Nigeria,' *African Journal of Human Rights* [2020] (12) (4) 89–104.

<sup>267</sup> SO Adewale, 'Poverty and Access to Justice in Nigeria,' *Journal of African Social Studies* [2021] (16) (3) 101–115.

Corruption and administrative lapses within the justice system significantly impede trial proceedings. Bribery to expedite cases, secure bail, or influence judicial outcomes is a pervasive issue, disproportionately affecting indigent defendants who cannot afford to pay.<sup>268</sup> Administrative inefficiencies, such as poor coordination between police, prosecutors, and courts, result in lost case files, missed court dates, and delayed arraignments, further stalling trials.<sup>269</sup> These issues are compounded by a lack of accountability mechanisms to monitor judicial and law enforcement performance, allowing systemic corruption and inefficiencies to persist unchecked.<sup>270</sup> The cumulative effect of these administrative failures erodes public confidence in the judiciary and perpetuates a cycle of delayed justice, particularly for pre-trial detainees awaiting resolution of their cases.

#### 4.6 Causes of Prolonged Awaiting Trial

The primary cause of prolonged awaiting trial in Nigeria's criminal justice system is the inefficiency of police investigations, which significantly delays the judicial process. Law enforcement agencies often lack adequate training, forensic tools, and resources to conduct thorough and timely investigations, resulting in incomplete or poorly prepared case files that are insufficient for prosecution.<sup>271</sup> This deficiency leads to prolonged detention as courts await actionable evidence, with many cases stalled at the investigation stage. The over-reliance on confessions, often obtained through coercion rather than evidence-based methods, further

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<sup>268</sup> TA Ogunleye, 'Corruption in Nigeria's Criminal Justice System,' *Journal of African Governance* [2020] (11) (2) 134–149.

<sup>269</sup> CE Nnamani, 'Administrative Inefficiencies in Nigerian Courts,' *Nigerian Journal of Public Administration* [2021] (14) (3) 78–93.

<sup>270</sup> MO Uche, 'Reforming Nigeria's Criminal Justice System,' *African Journal of Legal Reform* [2021] (13) (2) 156–170.

<sup>271</sup> AC Nwankwo, 'Police Investigation Deficiencies in Nigeria,' *Journal of African Criminology* [2020] (8) (2) 89–103.

complicates matters, as such confessions are frequently deemed inadmissible, necessitating additional investigative work.<sup>272</sup> The practice of "holding charges," where suspects are detained without sufficient evidence pending advice from the Director of Public Prosecutions, exacerbates this issue, trapping defendants in custody for months or years without formal charges, in violation of Section 35(4) of the 1999 *Constitution of the Federal Republic of Nigeria*, which limits detention without trial to 48 hours.<sup>273</sup> These investigative shortcomings not only delay arraignments but also undermine the presumption of innocence, leaving defendants in a state of legal limbo.

Judicial bottlenecks, driven by an overburdened court system, are a significant contributor to prolonged awaiting trial periods. Nigeria's judiciary suffers from a low judge-to-population ratio, with an estimated 5 judges per 100,000 people, leading to severe case backlogs that delay trials for years.<sup>274</sup> Frequent adjournments, often due to absent witnesses, unprepared counsel, or incomplete documentation, further stall proceedings, leaving defendants in detention while awaiting court dates that are scheduled months apart.<sup>275</sup> The lack of judicial capacity is compounded by inadequate courtroom infrastructure, such as unreliable electricity and manual record-keeping, which result in lost case files and scheduling errors, further prolonging pre-trial detention.<sup>276</sup> These bottlenecks undermine the right to a speedy trial under Section 36(4) of the *1999 Constitution of*

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<sup>272</sup> SA Ibrahim, 'Coerced Guilty Pleas and Prolonged Detention,' *Nigerian Journal of Criminology* [2020] (17) (2) 123–140.

<sup>273</sup> Constitution of the Federal Republic of Nigeria, 1999 (as amended), S;35(4); ED Uko, 'Holding Charges and Pre-trial Detention,' *Nigerian Journal of Legal Practice* [2019] (11) (3) 78–92.

<sup>274</sup> JA Okeke, 'Judicial Bottlenecks in Nigeria's Criminal Justice System,' *African Journal of Law and Justice* [2021] (10) (2) 123–138.

<sup>275</sup> PN Eze, 'Court Adjournments and Trial Delays,' *Nigerian Journal of Judicial Studies* [2020] (9) (1) 45–60.

<sup>276</sup> IA Adedeji, 'Digitalization and Judicial Efficiency in Nigeria,' *Journal of African Technology Law* [2022] (5) (1) 67–82.

*the Federal Republic of Nigeria and the Administration of Criminal Justice Act (ACJA) 2015*, perpetuating systemic delays that disproportionately affect pre-trial detainees.

Socioeconomic factors, particularly poverty, play a critical role in prolonging pre-trial detention. Indigent defendants, who constitute a significant portion of Nigeria's prison population, often cannot afford bail or legal representation, leaving them detained for minor offenses due to unaffordable bail conditions set by magistrates.<sup>277</sup> The Legal Aid Council of Nigeria, responsible for providing free legal services, is severely underfunded and understaffed, unable to meet the demand for representation, with only a fraction of the over 70% of pre-trial detainees receiving assistance.<sup>278</sup> This lack of access to legal counsel results in prolonged detention, as unrepresented defendants are unable to challenge excessive bail conditions or expedite their cases, exacerbating social inequalities and leaving the poor disproportionately affected by systemic delays.<sup>279</sup> The socioeconomic barrier is further compounded by a lack of awareness among detainees of their legal rights, which hinders their ability to navigate the justice system effectively.

Corruption and administrative lapses within the criminal justice system are major drivers of prolonged awaiting trial. Bribery to expedite cases, secure bail, or influence judicial outcomes is pervasive, with indigent defendants, unable to pay, facing extended detention periods.<sup>280</sup>

Administrative inefficiencies, such as poor coordination between police, prosecutors, and courts, result in lost case files, missed court dates, and delayed arraignments, further stalling trials.<sup>281</sup> The

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<sup>277</sup> SO Adewale, 'Poverty and Access to Justice in Nigeria,' *Journal of African Social Studies* [2021] (16) (3) 101–115.

<sup>278</sup> KC Obi, 'Legal Aid Challenges in Nigeria,' *African Journal of Human Rights* [2020] (12) (4) 89–104.

<sup>279</sup> CA Onyekachi, 'Community-based Alternatives to Pre-trial Detention,' *Nigerian Journal of Sociology* [2021] (19) (2) 67–82.

<sup>280</sup> TA Ogunleye, 'Corruption in Nigeria's Criminal Justice System,' *Journal of African Governance* [2020] (11) (2) 134–149.

<sup>281</sup> CE Nnamani, 'Administrative Inefficiencies in Nigerian Courts,' *Nigerian Journal of Public Administration* [2021] (14) (3) 78–93.

absence of robust accountability mechanisms to monitor judicial and law enforcement performance allows these issues to persist, undermining the efficacy of reforms like the *ACJA* 2015.<sup>282</sup> Addressing these causes requires comprehensive reforms, including enhanced police training, increased judicial capacity, expanded legal aid, anti-corruption measures, and digitalization of case management systems to ensure timely trials and reduce the human and social costs of prolonged pre-trial detention.

The lack of digital infrastructure exacerbates delays in trial proceedings. Manual record-keeping systems lead to errors, misplaced files, and inefficient case scheduling, significantly contributing to prolonged awaiting trial periods.<sup>283</sup> The absence of electronic case management systems hinders coordination and transparency, delaying justice delivery and increasing the backlog of cases.<sup>284</sup> Implementing digital solutions, alongside systemic reforms such as increased funding for judicial infrastructure and anti-corruption initiatives, is essential to address these root causes and ensure a more efficient and equitable criminal justice system that upholds defendants' rights to timely trials.

## 4.7 Proposed Solutions and Reforms

### 4.7.1 Judicial and Procedural Reforms

Addressing prolonged awaiting trial in Nigeria requires comprehensive judicial and procedural reforms to enhance efficiency and uphold defendants' rights. A primary solution is increasing judicial capacity through the appointment of additional judges to address the low judge-to-

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<sup>282</sup> MO Uche, 'Reforming Nigeria's Criminal Justice System,' *African Journal of Legal Reform* [2021] (13) (2) 156–170.

<sup>283</sup> OC Nweke, 'Digital Solutions for Judicial Efficiency,' *African Journal of Legal Studies* [2022] (14) (2) 89–105.

<sup>284</sup> BO Adekoya, 'Judicial Understaffing and Case Delays in Nigeria,' *African Journal of Governance* [2020] (12) (1) 56–70.

population ratio, estimated at 5 per 100,000 people, which contributes to severe case backlogs.<sup>285</sup> Expanding the judiciary would reduce trial delays, ensuring compliance with Section 36(4) of the *1999 Constitution of the Federal Republic of Nigeria*, which mandates a fair hearing within a reasonable time.<sup>286</sup> Additionally, implementing mandatory case management conferences, as provided under Section 396 of the *Administration of Criminal Justice Act (ACJA) 2015*, can streamline trial processes by setting clear timelines for case progression and minimizing adjournments.<sup>287</sup> These reforms would prioritize timely arraignments, reducing the detention periods for awaiting-trial inmates.

The adoption of digital case management systems is critical to improving judicial efficiency and reducing administrative lapses that prolong pre-trial detention. Manual record-keeping, a major cause of lost files and scheduling errors, can be replaced with electronic systems to enhance transparency and coordination between courts, police, and prosecutors.<sup>288</sup> Successful models, such as those in Rwanda, demonstrate that digitalization reduces case backlogs by up to 30% through real-time case tracking and automated scheduling.<sup>289</sup> Training judicial officers and court staff on these systems is essential to ensure effective implementation and to align with global best practices for judicial efficiency.<sup>290</sup> Such technological interventions would minimize delays caused by misplaced documents and improve accountability in case handling.

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<sup>285</sup> JA Okeke, 'Judicial Bottlenecks in Nigeria's Criminal Justice System,' *African Journal of Law and Justice* [2021] (10) (2) 123–138.

<sup>286</sup> Constitution of the Federal Republic of Nigeria, 1999 (as amended), s36(4).

<sup>287</sup> Administration of Criminal Justice Act, No13 2015, LFN 2004 s; 396.

<sup>288</sup> IA Adedeji, 'Digitalization and Judicial Efficiency in Nigeria,' *Journal of African Technology Law* [2022] (5) (1) 67–82.

<sup>289</sup> OC Nweke, 'Digital Solutions for Judicial Efficiency,' *African Journal of Legal Studies* [2022] (14) (2) 89–105.

<sup>290</sup> MO Uche, 'Reforming Nigeria's Criminal Justice System,' *African Journal of Legal Reform* [2021] (13) (2) 156–170.

Strengthening judicial oversight mechanisms is another vital reform to curb prolonged detention. Establishing dedicated monitoring units within courts to enforce compliance with *ACJA*'s time-bound remand protocols under Sections 293–296 can prevent indefinite detentions.<sup>291</sup> Regular audits of detention facilities and case files, as recommended by the African Commission on Human and Peoples' Rights, would ensure adherence to statutory limits and identify systemic bottlenecks.<sup>292</sup> Additionally, training judges to minimize adjournments by enforcing strict procedural timelines and penalizing unprepared counsel or absent witnesses would enhance trial efficiency, reducing the backlog that keeps defendants in custody for years.<sup>293</sup> These combined reforms would create a more responsive judiciary, aligning Nigeria's criminal justice system with international standards like Article 9 of *the International Covenant on Civil and Political Rights*.<sup>294</sup>

#### 4.7.2 Legislative and Constitutional Reforms

Legislative reforms are essential to address the root causes of prolonged awaiting trial and ensure systemic change in Nigeria's criminal justice system. A key reform is the full domestication of the *ACJA 2015* across all 36 states and the Federal Capital Territory to eliminate jurisdictional disparities that hinder uniform application of time-bound remand protocols and non-custodial measures.<sup>295</sup> Amending the *ACJA* to include stricter enforcement mechanisms, such as penalties for non-compliance with remand timelines, would compel judicial and law enforcement agencies

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<sup>291</sup> Administration of Criminal Justice Act, No13 2015, LFN 2004 ss;293–296.

<sup>292</sup> United Nations Office on Drugs and Crime, *UNODC: Prison Reform, A Concept Note* (Vienna: United Nations, 2011), 3. Available at: [https://www.unodc.org/documents/justice-and-prison-reform/UNODC\\_Prison\\_reform\\_concept\\_note.pdf](https://www.unodc.org/documents/justice-and-prison-reform/UNODC_Prison_reform_concept_note.pdf), accessed 2 September 2025.

<sup>293</sup> PN Eze, 'Court Adjournments and Trial Delays,' *Nigerian Journal of Judicial Studies* [2020] (9) (1) 45–60.

<sup>294</sup> International Covenant on Civil and Political Rights, Article 9, United Nations General Assembly, December 16, 1966.

<sup>295</sup> KO Adebayo, 'Judicial Delays and Fair Trial Rights in Nigeria,' *African Human Rights Law Journal* [2020] (20) (1) 89–110.

to adhere to statutory limits, reducing indefinite detentions.<sup>296</sup> Additionally, revising bail provisions to mandate affordable and standardized bail conditions would prevent the prolonged detention of indigent defendants, aligning with the principles of fairness and equality under the law.<sup>297</sup>

Constitutional amendments to strengthen the right to a speedy trial under Section 36(4) could include specific timelines for trial commencement, such as a maximum of 90 days for minor offenses and 180 days for serious crimes, to enforce judicial accountability.<sup>298</sup> Such amendments would align Nigeria with jurisdictions like Kenya, where constitutional timelines have reduced pre-trial detention periods by setting clear benchmarks for case progression.<sup>299</sup> Furthermore, enacting legislation to eliminate the practice of holding charges, which allows indefinite detention without formal charges, would address a major violation of constitutional and international human rights standards, as seen in cases like *Alade v. Federal Republic of Nigeria*.<sup>300</sup> These reforms would create a more robust legal framework to protect defendants' rights and reduce trial delays.

Legislative efforts should also focus on enhancing anti-corruption measures within the justice system. Introducing laws that mandate regular audits of judicial and law enforcement activities, coupled with severe penalties for bribery or abuse of power, would deter practices that delay trials and prolong detention.<sup>301</sup> Establishing an independent oversight body to monitor compliance with the *ACJA* and constitutional provisions would further ensure accountability, addressing systemic

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<sup>296</sup> TA Emezue, 'Judicial Resource Allocation and Case Backlogs,' *Nigerian Bar Journal* [2020] (15) (4) 210–225.

<sup>297</sup> SO Adewale, 'Poverty and Access to Justice in Nigeria,' *Journal of African Social Studies* [2021] (16) (3) 101–115.

<sup>298</sup> Constitution of the Federal Republic of Nigeria, 1999 (as amended), s36(4).

<sup>299</sup> JO Otieno, 'Constitutional Reforms and Pre-trial Detention in Kenya,' *East African Law Journal* [2019] (7) (2) 78–92.

<sup>300</sup> *Alade v. Federal Republic of Nigeria*, ECW/CCJ/JUD/10/12, ECOWAS Community Court of Justice, 2012.

<sup>301</sup> TA Ogunleye, 'Corruption in Nigeria's Criminal Justice System,' *Journal of African Governance* [2020] (11) (2) 134–149.

issues like those highlighted by the United Nations Working Group on Arbitrary Detention.<sup>302</sup> These legislative reforms, combined with constitutional amendments, would create a cohesive framework to minimize prolonged awaiting trial and uphold the rule of law.

#### 4.7.3 Prison Decongestion and Alternative Sentencing

Prison decongestion is a critical solution to address the overcrowding that affects over 70% of Nigeria's prison population, primarily pre-trial detainees.<sup>303</sup> Implementing non-custodial measures, such as community service, probation, and restorative justice programs, as outlined in the *ACJA 2015*, can significantly reduce the number of detainees held for minor offenses.<sup>304</sup> These alternatives allow defendants to remain productive members of society while awaiting trial, reducing the social and economic costs of detention and aligning with international standards like the United Nations Standard Minimum Rules for Non-custodial Measures (Tokyo Rules).<sup>305</sup> Community-based supervision programs, piloted in Lagos State, have shown success in reducing prison populations by up to 15% for minor offenders.<sup>306</sup>

Expanding alternative sentencing requires investment in infrastructure and personnel to manage non-custodial programs effectively. Establishing dedicated probation units within the judiciary, staffed with trained officers, can ensure proper supervision of defendants released on bail or

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<sup>302</sup> United Nations Working Group on Arbitrary Detention, *Report on Nigeria*, A/HRC/30/18, United Nations Human Rights Council, 2015.

<sup>303</sup> OE Joseph, AF Femi, A Ogadimma, R Bamidele, O Oluwakemisola, OIAkintoyese and OJ Joseph, 'Prison Overcrowding Trend in Nigeria and Policy Implications on Health'. *Cogent Social Sciences* [2021] (7) (1956035) 1-11. Available at: <https://www.tandfonline.com/doi/pdf/10.1080/23311886.2021.1956035>, accessed 2 September 2025.

<sup>304</sup> Administration of Criminal Justice Act, No 13 2015 LFN 2004 Sections 293–296.

<sup>305</sup> United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules), United Nations General Assembly, December 14, 1990.

<sup>306</sup> CA Onyekachi, 'Community-based Alternatives to Pre-trial Detention,' *Nigerian Journal of Sociology* [2021] (19) (2) 67–82.

community service.<sup>307</sup> Public awareness campaigns to educate communities about the benefits of alternative sentencing can also reduce stigma and facilitate reintegration, preventing recidivism among pre-trial detainees exposed to criminal environments.<sup>308</sup> These measures would alleviate the inhumane conditions in overcrowded prisons, such as inadequate food and medical care, which exacerbate the plight of awaiting-trial inmates.<sup>309</sup>

Regular prison audits and decongestion exercises, as recommended by the African Commission, can identify and release eligible detainees, particularly those held for minor offenses or beyond statutory limits.<sup>310</sup> Collaborating with civil society organizations to monitor prison conditions and advocate for non-custodial measures can enhance transparency and accountability.<sup>311</sup> By prioritizing alternative sentencing and decongestion, Nigeria can reduce the prison population, improve detention conditions, and uphold the rights of awaiting-trial defendants, aligning with global human rights standards.

#### 4.7.4 Legal Aid and Access to Justice Enhancement

Enhancing legal aid is crucial to addressing prolonged awaiting trial, particularly for indigent defendants who constitute a significant portion of Nigeria's pre-trial detainee population. The

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<sup>307</sup> TA Agboola, 'Rehabilitation Models for Pre-trial Detainees,' *Journal of African Correctional Services* [2020] (7) (1) 78–90.

<sup>308</sup> BO Olley, 'Psychological Consequences of Incarceration in Nigeria,' *West African Journal of Medicine* [2019] (38) (4) 345–352.

<sup>309</sup> African Commission on Human & Peoples' Rights, *Guidelines on the Conditions of Arrest Police Custody and Pre-Trial Detention in Africa* (Vienna: United Nations, 2014), 55. Available at: <https://policehumanrightsresources.org/content/uploads/2014/01/Guidelines-on-the-Conditions-of-Arrest-Police-Custody-and-Pre-Trial-Detention-in-Africa.pdf?x80005>, accessed 2 September 2025.

<sup>310</sup> African Commission on Human and Peoples' Rights, *Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa*, available at: [https://elearning.icrc.org/detention/es/story\\_content/external\\_files/Directrices%20sobre%20condiciones%20de%20etenci%C3%B3n%20de%20custodia%20y%20de%20Detenci%C3%B3n%20Provisional%20en%20Africa%20\(2014%20\).pdf](https://elearning.icrc.org/detention/es/story_content/external_files/Directrices%20sobre%20condiciones%20de%20etenci%C3%B3n%20de%20custodia%20y%20de%20Detenci%C3%B3n%20Provisional%20en%20Africa%20(2014%20).pdf), accessed 2 September 2025.

<sup>311</sup> ED Uko, 'Holding Charges and Pre-trial Detention,' *Nigerian Journal of Legal Practice* [2019] (11) (3) 78–92.

Legal Aid Council of Nigeria, tasked with providing free legal services, is severely underfunded and understaffed, unable to meet the demand for representation in a system where over 70% of inmates are awaiting trial.<sup>312</sup> Increasing funding for the Council and expanding its capacity through the recruitment of more lawyers and paralegals would ensure that indigent defendants have access to legal representation, enabling them to challenge excessive bail conditions and expedite their cases.<sup>313</sup> Models like South Africa's Legal Aid Board, which provides comprehensive legal services to indigent defendants, could guide Nigeria in building a robust legal aid system.<sup>314</sup>

Public-private partnerships with law firms and non-governmental organizations can supplement legal aid efforts, providing pro bono services to awaiting-trial detainees. Initiatives like the Nigerian Bar Association's pro bono program have shown potential in reducing detention periods for minor offenders by facilitating bail applications and case reviews.<sup>315</sup> Training programs for legal aid providers on criminal justice procedures, including the ACJA's provisions, would enhance their ability to navigate the system effectively, ensuring that defendants' rights are protected.<sup>316</sup> These partnerships can also fund legal awareness campaigns to educate detainees about their rights, empowering them to challenge unlawful detentions.<sup>317</sup>

Integrating legal aid into prison systems through on-site legal clinics can further enhance access to justice. These clinics, staffed by legal aid officers, can provide immediate assistance to

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<sup>312</sup> KC Obi, 'Legal Aid Challenges in Nigeria,' *African Journal of Human Rights* [2020] (12) (4) 89–104.

<sup>313</sup> O Onafuwa, 'Socio-Legal Barriers to the Expansion of Legal Aid in Nigeria: Initiating Legal Reform Through the Customary Court System' (*PhD diss.*, University of East London, 2021), 10. Available at: [https://repository.uel.ac.uk/download/30e6029939ab9217685fb5b70a1814cb256dbe6960b11b01626e7e4902681a14/3488219/2021\\_PhD\\_Onafuwa.pdf](https://repository.uel.ac.uk/download/30e6029939ab9217685fb5b70a1814cb256dbe6960b11b01626e7e4902681a14/3488219/2021_PhD_Onafuwa.pdf), accessed 2 September 2025.

<sup>314</sup> LN Mkhize, 'Legal Aid and Access to Justice in South Africa,' *Southern African Journal of Human Rights* [2020] (15) (2) 89–105.

<sup>315</sup> OA Otopo, 'Administrative Effectiveness in Judiciary: Implication for Records Management Practices in Lagos State Judiciary Nigeria,' *International Journal of Social Sciences and Humanities Review* [2022] (12) (1) 101–111. Available at: <https://www.ijsshr.com/journal/index.php/IJSSHR/article/view/741>, accessed 2 September 2025.

<sup>316</sup> PO Udeh, 'Reforming Plea Bargaining in Nigeria,' *Journal of African Criminal Justice* [2021] (9) (3) 134–150.

<sup>317</sup> G Waschefort, *The Routledge Handbook of Africana Criminologies* (Routledge, 2024) 23.

detainees, facilitating bail applications and case reviews directly from detention facilities.<sup>318</sup> Such initiatives, combined with reforms to simplify bail processes and eliminate holding charges, would reduce the incidence of prolonged detention and ensure equitable access to justice, aligning with Nigeria's constitutional and international obligations to protect defendants' rights.<sup>319</sup>

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<sup>318</sup> JN Okafor, 'Evidentiary Challenges in Prolonged Criminal Trials,' *Nigerian Law Journal* [2019] (23) (2) 145–160.

<sup>319</sup> U Agomoh, 'Overuse in the Criminal Justice System in Nigeria,' in *Overuse in the Criminal Justice System*, ed. Piet Hein van Kempen and Manon Jendly (Cambridge University Press, 2019) 54-76.

## CHAPTER FIVE

### CONCLUSION

#### 5.1 Summary of Findings

This study critically analyse how the rights of defendant are violated especially those in Correction Centre. How the weak implementations of these laws combine In impeding the rights of defendants in prison. It also examines how institutional frameworks contribute to prolonging the trial of defendant there by leading to the ill-treatment of defendants in prison. It also examines the rights of persons who have been arrested but not yet charged to court.

The Key findings of the study are:

1. Prolonged Awaiting Trial contravenes the Constitutional and International human rights standard which provides for right to dignity and fair trial
2. The practice of prolonged awaiting trial is caused by the inconsistent coordination and lack of proper dissemination of information between police, courts and prosecutors.
3. The impact of prolonged awaiting trial on defendants affect their mental health, they begin to deteriorate mentally which can lead to anxiety and depression.
4. The Impact of Prolonged awaiting trial extends to family and communities disrupting social structures and imposing economic or financial burdens.
5. Judicial outcomes had been undermine due to the practice of prolonged awaiting trial driven by incomplete investigation, delays, Frequent adjournment and Judicial understaffing.

6. Delays in trials puts pressure on Court to expedite rulings often at the expense of thorough adjudication leading to hasty judgement.
7. Courts and police stations frequently lack the resources to implement case management system or conduct timely health investigations perpetuating reliance on antiquated practice like holding charges.
8. Delays are made worse by the lack of digital infrastructure such as electronic case filing systems, since manual record keeping results misplaced files and scheduling problems.
9. The legal system administrative errors and corruption seriously obstruct trial procedures. Bribery to influence court decisions obtain bail or speed up trials is a widespread problem that disproportionately affects poor defendants who are unable to pay.

These findings highlight areas for improvement in Nigeria's judicial system and enforcement, emphasizing the need for alignment with Nigerian's legislation, enhancing law enforcement capacity, and strengthening the rights of Defendants in Nigeria.

## 5.2 Recommendations

From the foregoing, the following recommendations have been made, which if given due consideration would have a great impact on the society and change on the right of defendants in Nigeria.

This research recommends the following:

1. Improve the Availability of legal aid:

The government should enhance free access to legal aid in order to reduce the number of persons awaiting trial. They should act as middle man to link the people awaiting trial with

pro-bono lawyers in a view to ensure they their case are heard and judgement delivered timely.

2. Infrastructural Development:

Unfortunately, in many or all Nigerian Correction Centres the person awaiting trial stays in the same prison cell as convicted inmates which stampedes on their right to human dignity and in most cases leads to anxiety and depression. A separate building should be constructed for all persons awaiting trial and they should be treated differently.

3. An Enforcement Body:

A Body should be created in the judicial arm whose duty will be to ensure that any body arrested should be brought to court within the reasonable time as provided in the constitution. Concurrently, they should also ensure the release erson arrested and has stayed in the correction centre beyond the reasonable time stipulated in the constitution thereby protecting the right to personal liberty.

4. To reduce infrastructure bottlenecks and raise employee morale, the government and judicial stakeholders should increase funding for the construction of more courtrooms, the provisions of contempt amenities and the enhancement of working conditions for judicial workers. This will facilitate court process and speed up trials which will in result reduce the number of awaiting trial in Nigeria.

5. Disciplinary action :

For legal practitioners, judges and prosecuting council who regularly cause delays. The National Judicial Council (NJC) and the Nigeria Bar Association ( NBA) ought to step up their Oversight and penalties of Unethical delay tactics by setting performance standards and disciplinary actions

6. An Inter agency Criminal justice coordination organisation should be established by the Nigerian government to improve the delivery of justice, foster collaboration and eliminate duplication of effort among the police, judicial and the penitentiary services.
7. NGOs: Non governmental organizations and law firms can take the initiative to take up cases or sponsor cases of victims of awaiting trial. In a recent case where a law firm (Leeds legal) aided in the releasing a young man who entered prison at the age of 12 and spent 10 years in prison

### 5.3 Contributions to Knowledge

This research work is an innovation on the impact of prolonged awaiting trial using doctrinal method in the Nigerian context.

The project work was able to unveil that:

1. The topic of protracted trial waiting is not new in Nigeria; numerous academics, writers, and even publicists have written and remarked on the situation, but it has never had an effect on society outside of their own works.
2. The constitution, the ACJA, the UDHR, and other legal frameworks all provide the right to a quick trial, to be charged within a reasonable timeframe, and other rights. Nevertheless, there is no government-established organization or legal provision for the enforcement of these rights.
3. It is reasonable to observe that, even after being found not guilty and freed, people who are awaiting trial are frequently stigmatized in society. Just the thought of having spent time in a

correctional facility alters how society perceives the person. These individuals frequently experience social disorientation.

4. The right of defendants to the presumption of innocence is merely hypothetical. In Nigeria's present prison and court system. Until someone is proven innocent, they are considered guilty. Many people who are awaiting trial are frequently treated like convicted felons and occasionally coerced into producing confessions.

### 5.5 Area for Further Studies

For research in prolonged awaiting trial to be appreciated, the following areas of further studies will be imperative:

1. A review on the impact of Pre-trial detention on juvenile offenders including their exposure to seasoned criminals, rehabilitation difficulties and interruption in their education.
2. A gender-based analysis on the challenges women encounter, such as their vulnerability to sexual abuse, mother and child separation and stigma.
3. A review on the cost to the government of overcrowding in correction centre in comparison to funding alternatives like community service and bail reform.
4. A comparative analysis of Nigeria pre-trial detention policies with those of other African states like Rwanda, South Africa Kenya etc. that has successfully reduced extended detentions in prison

## 5.4 Conclusion

Prolonged awaiting trial is an endearing flaw in the Nigeria justice system affecting the rights of defendants. In Nigeria many defendants or inmates are been held in prison for years without their matter being tried.

The right of defendants in Nigeria are trampled on each passing day. Despite the provisions contained in the constitution *ACJA* etc. which provides for the rights of each arrested suspect and the protection of these rights. Defendant are treated like convicted criminals in prison they are subjected to the same treatment and torture are those convicted. The right of Defendants are violated especially in prison they are subjected to torture in humans treatment and excruciating anguish each day. They law in as much as is in existence is ineffective, there are a lot of backlogs, system inefficiencies in the judicial system. Judges, lawyers and the police play a significant role in the delays in trial.

The effect of awaiting trial is far reaching it undermines judicial outcome due to incomplete investigation frequent adjournment and Judicial understaffing. To address these issues, Nigeria must bridge the gap between the law and what is in practice by fully making enforcement bodies for enforcing the legal mechanisms provided in the statutes. Nigeria need to adopt alternative dispute resolution in all counts jurisdiction it'll help reduce backlog of cases and also facilitate court processes.

Effective reforms need legislative and institutional commitment, plus Investment in infrastructure, training, and anti-corruption safeguards. Safeguarding defendants' rights demands a coordinated,

rights-centred approach. The Focus must be on timely trials, reducing pre-trial detention, and restoring public trust in the Criminal justice system.

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