

LEGAL REGIME FOR THE PROTECTION OF THE RIGHTS OF A DEFENDANT IN CRIMINAL PROCEEDINGS IN NIGERIA*

Abstract

Under the 1999 Constitution of the Federal Republic of Nigeria as amended the rights of defendant in a criminal trial are enshrined majorly in sections 35 and 36 of the constitution which is ground of all laws in the country. Such rights include, the right to be informed promptly in the language the he understands the details and nature of the offence of the accused, the right defend himself in person or by a legal practitioner of his own choice, the right to have an interpreter free of charge if he does not understand the language of the court, the right to have record of proceedings kept and the rights to have copies of this within seven days of the conclusion of the case, the right to remain silent during trial, the right not to be tried and convicted twice for the same offence, the right to be presumed innocent until proved guilty, the right to fair hearing and the right not to be charged for an unwritten offence. All these rights are aimed at ensuring that an accused person is not unjustly dealt with. Also the relevant provisions in the Criminal Procedure Act, the Child's Rights Act and the Administration of Criminal Justice Act 2015, Shed more light on the rights of an accused person in criminal trials. In the course of this project a doctrinal approach was adopted in analyzing all the issue discussed in the research work. This Project in its totality is channeled towards making sure that Nigerians are fully aware and informed of their rights especially the accused person and how it could be enforced. This project will not seek to look at the rights generally but most importantly the right of an accused person visa-vis the relevant provisions. The researcher concludes by recommending that the government should create awareness to the public most especially the law enforcement agencies about the rights of an accused as engraved in our constitution and ensure their enforcement so as to protect accused persons in the course of their trial. Based on the introduction of the internet in our world today, awareness should be created through the mass media about the rights of an accused person in a criminal proceeding. ICT gadget should also be employed to helps in the quick dispensation of justice in our justice system, because for a very long-time lack of use of ICT gadgets have caused huge delay in the dispensation of justice in criminal trials and this is an infringement of the rights of a defendant in a criminal proceeding. The Government should dot its best to ensure that our justice system has everything it needs to dispense quickly and correctly.

Keywords: Legal Regime, Rights, Criminal Proceedings, Nigeria

1. Introduction

Natural law theorists view human rights in the abstract¹. According to them human rights are the specie of right which can be said to inhere in every human being². In *Chief Olufunmilayo Ransome-Kuti & Ors v Attorney- General of the Federation*, Eso JSC examined the nature of fundamental rights when he said 'This is no doubt a right guaranteed to everyone including the appellants by the constitution. But what is the nature of fundamental rights? It is a right which stands above the ordinary laws of the land and which in fact is antecedent to the political society itself. It is a primary condition to a civilized existence'³. According to Onyekpere, human right as a social fact can be viewed as normative responses to expressions of oppression and domination⁴. They represent the minimum living standards for civilized humanity to wit: they are the morality of the depths. Rather than the morality of the heights.⁵ The United Nations pinpoint the origin of human right to the Year 539 BC. When the troops of Cyrus the Great conquered Babylon, Cyrus freed the slaves, declared that all people had the right to choose their own religion and established racial equality⁶. These and other precepts were recorded as a baked-clay cylinder known as the Cyrus Cylinder whose provisions served as an inspiration for the first four articles of the Universal Declaration of Human Rights⁷. The concept of human right was further broadened by the Magna Carta of 1215⁸. The Universal Declaration of Human Rights made it possible for the concept of human rights to be recognized by all countries of the world and entrenched in their constitution⁹. In the first article it stated that 'All human beings are born free and equal in dignity and rights'¹⁰. Nigerian upon gaining full political independence made considerable efforts to promote and protect human rights in Nigeria. The independence and post-independence constitution that is the 1960, 1963, 1979 and 1999 constitution not only guaranteed human rights but instituted mechanisms to ensure their enforcement. The basic civil and political rights guaranteed in the global instruments are recognized and protected by the constitutions.

Human rights in Nigeria are protected under the current constitution of 1999, these rights include inter alia, right to life, liberty and security of persons, freedom from slavery, torture, cruelty, inhuman and degrading treatment, arbitrary arrests and detentions are also prohibited. The constitution also guarantees fair and public hearing within a reasonable time, rights to private and family life, right to freedom of thought, conscience and religion, amongst others¹¹. However, for

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¹ Femi Falana, *Fundamental Rights Enforcement* (Lagos: Legal Text Publishing Company Limited 2001) P.1

² Ibid.

³ (1985) 5 NWLR (PT 10) P.229.

⁴ (JHRLP, Vol 5 NO 1 January 1999, p.13 at 30).

⁵ Ibid

⁶ <http://www.Activesustainability.com/sustainable-development/brief-history-human-rights/> accessed June 1 2022 by 12:29 pm,

⁷ Ibid,

⁸ Ibid,

⁹ Ibid,

¹⁰ Ibid.

¹¹ Constitution of the Federal Republic of Nigeria 1999 (as amended)

the purpose of this work the research focused more on the rights of a defendant in a criminal proceeding which are mostly contained in sections 35 and 36 of the constitution. Such rights include, the right to be informed promptly in the language that he understands, the details and nature of the offence of the accused, the right to be given adequate time to prepare his defence. The right to defend himself by in person of his own choice, the right to have an interpreter free of charge if he does not understand the language of the court, the right to have record of proceedings kept and the right to have copies of this within seven days of the conclusion of the case, the right to be presumed innocent until he is proved guilty and other rights as contained in sections 35 and 36 of the 1999 constitution.¹² Based on the adoption of the Universal Declaration of Human rights and the incorporation of fundamental human rights in our constitution, basic fundamental human rights have been created and should be respected by all men in Nigeria.

The problem tackled by this study is that despite the provisions of the rights of an accused person during trial under sections 35 and 36 of the 1999 constitution, the practicality has not been perfect because of the prevailing situation of unlawful treatment of suspects in the country, mostly by security agents. It is unlawful and contrary to the provisions of the constitution to treat suspects in an offence as criminal simply because they are being regarded as suspects. In *FRN v Olaolu* the court held that by virtue of section 36(6) of the 1999 Constitution of the Federal Republic of Nigeria and section 218 of the Criminal Procedure Act, a valid and proper arrangement of an accused person before a court must satisfy certain fundamental requirements¹³. This clearly shows that the judiciary is aware of the right of an accused person and that it is sacrosanct and cannot be taken away unlawfully in this country. The objective of this study is to identify the principle of the rule of law through which the rights of the accused can be respected and recognized by everyone and also to enlighten the people about their rights especially when they are suspects in a criminal trial and the best way to seek redress in court whenever their rights are being infringed upon. The methodology employed is the doctrinal method of research. The primary and secondary sources of law will be considered for the purpose of this research. The primary sources include: the constitution of the Federal Republic of Nigeria, mainly chapter IV and section 35 and 36, the Criminal Procedure Code, the Criminal Procedure Act and the Child Rights Act. The secondary sources will be derived from opinions of legal experts in this field of research envisaged in journals, textbooks, e.t.c.

2. Conceptual Review

To create a better understanding of this project, certain key terms associated with this project ought to be explained. This is due to the fact that they will be used frequently in the course of this study.

Protection according to Thesaurus Dictionary protection is the act of protection or the state of being protected. Cambridge Dictionary defined protection as the condition or state of being kept safe from injury, damage or loss. Since protecting is to shelter from harm, protection is the act of doing so. Technological advancements have empowered us to protect human rights by sharing our views with a larger audience. Protection can be provided to physical object including organisms, to systems and to intangible things like civil and political rights. The rights of an accused person in a criminal trial as contained in sections 35 and 36 of the 1999 Constitution were entrenched solely for the protection of the rights of a defendant in a criminal trial and to ensure its enforcement in our judicial system.

Right is a just claim or title, whether legal, prescriptive or oral. Right is used to refer to activate or actions that are considered to be morality good and accepted. Macmillan Dictionary defined right as something that one is morally or legally allowed to do or have. Rights are legal, social or ethical principles of freedom or entitlement; that is rights are the fundamental normative rules about what is allowed of people or owned to people according to some legal system, social convention or ethical theory. Rights are of essential importance in such discipline as laws, ethnics especially theories of justice. There are different kinds of rights: i) *Moral rights*: Rights which are based on the ethnical sense of morality and justice of the society are known as moral rights. These rights are not enforced by the state. That is why some people do not like to call them right proper for e.g. to receive maintenance from the children is recognized in the Indian society as a moral of the parents, but if some ungrateful children refuse to maintain their parents, the state will not compel them to do so. ii) *Natural rights*: Many researchers have a strong belief in natural rights. They stand that people inherit several societies from nature. Before they came to live in the society and state they used to live in a state of nature. Natural rights are parts of human nature and reason. Political theory maintains that an individual enters into society with certain basic rights and no government can deny these rights. iii) *Legal rights*: Legal rights are those rights which are accepted and enforced by the state. Any defilement of any legal right is punished by law. Law courts of the state enforce legal rights. These rights can be enforced against individuals and also against the government. In this way, legal rights are different from moral rights. Legal rights are equally available to all the citizens. All citizens follow legal rights without any discrimination. They can go to the courts to enforce their legal rights. Legal Rights are of Three Types: i) *Civil rights*: Civil rights are those rights that guarantee equal social opportunities and equal protection under the law, regardless of race, or other personal factors. Examples of civil rights include: the right to vote, the right to a fair trial, the right to government services, the right to public education and the rights to use public facilities. Civil rights are an essential component of democracy. ii) *Political rights*: Political rights refer to an individual's ability to participate in the civil and political life of the society and state without fear of discrimination or repression and is tied closely to citizenship status. Such rights include not only the right to vote in an election but also the right to join political party, run for office and participate freely in political rallies, events and protests. iii) *Economic rights*: Economic and social rights are human rights that relate to our ability to live in dignity and participate fully in our society. They include rights related to the workplaces, social security and access to housing, food, water, healthcare and education. They include

¹² Ibid.

¹³ LER (2015) SC. 163/2011.

right to fair wages and equal pay, the right to an adequate protection of income in the event of unemployment and the right to an adequate standard of living. Specifically states have an obligation to respect, protect and fulfill economic, social and cultural rights. The obligations to respect means states cannot interfere with the enjoyment of the right. The obligations to protect requires the state to reasonably prevent other actors from interfering with enjoyment of the right. The obligation to fulfill mandates that the state actively take steps to create conditions for individual's full enjoyment of the right.

An *accused* is a person charged with a crime. The person is charged will remain the accused until his case is determined by the court. Such person is also referred to as the defendant; this means that the person is answering a criminal charge against him. According to the Britannica Dictionary, an accused is a person who is charged with a crime. Your dictionary defined an accused as a person who has been arrested or formally charged by an indictment, information or presentment with a crime.

3. What is 'Criminal Proceedings'?

Criminal proceeding is an adjudication process of the criminal law. While criminal proceeding differs dramatically by jurisdiction, the process generally begins with a formal criminal charge with the person on trial either being free on bail or incarcerated and results in the conviction or acquittal of the defendant. A criminal proceeding refers to the methods used to investigate and prosecute a crime. In addition, criminal proceedings protect the rights of the defendant. Criminal proceeding can also be defined as the adversary judicial process prosecuted by a public officer and initiated by a formal complaint, information or indictment charging a person with an offence denominated criminal by applicable law and punishable by death, imprisonment or a jail term. Proof beyond reasonable doubt refers to the standard in criminal prosecutions. The prosecutor has the duty to convince the court by proof beyond a reasonable doubt of each and every element of the crime before the court will be able to convict the defendant.

4. Theoretical Framework

There are two main theories of legal rights: the will theory and the interest. Each theory presents itself as capturing an understanding of what rights do for those who hold them. Let us discuss these theories of legal rights in detail: i) *The will theory*: Hart (1907-92) a British legal scholar, is credited with developing the will theory of rights. He cited Kant as inspiring his thinking about the importance of human freedom of liberty¹⁴. Freedom is the most basic right, according to will theory. According to his theory the purpose of the law is to grant to the citizen the means of free expression of his will. Limiting anyone's freedom always requires the authorization of others' rights, and the subject of rights remain free to claim them or not. The will theory also known as the choice theory, allows right-holders free to choice to insist upon their rights or to waive them. Thus, according to this theory, right emerges from the human will. Austin, Holland, Pollock, Vinogradoff and Holmes define legal rights from will perspective as 'a capacity residing in one man of controlling with the asset and assistance of the state, of the action of others. The will theory captures the powerful link between rights and normative control. To have a right is to have the ability to determine what others may or may not do, and so exercise authority over a certain domain of affairs. For example, your right to some land is your freedom to do with it as you wish. Everyone is wrong to interfere with your freedom unless they have a right. If someone uses your land without having a right, you are free to allow it or choose to prevent it by claiming the protection of your right to legal authorities; ii) *The interest Theory*: Jeremy Bentham (1748-1832) initiated the interest theory. This theory was propounded by German Jurist, Rudolf Von Ihering (1818-1892) and further developed by John Salmond. As a utilitarian, Bentham was critical of the idea of moral rights but conceded that the rights could be useful in legal systems. Someone would have a right to something(x), against a second person, if that person had a legal duty to provide the first person with x. For example, on Bentham's interest theory, you have a right to vote if someone is legally required to provide you with the opportunity to vote and count your ballot and so on. According to Ihering, the purpose of the law is to protect the interest and not the will of the citizens. According to Salmond, a right is an interest recognized and protected by the rule of law but not necessarily one that is enforceable. Most legal rights are enforceable but enforceability is not essential to the conception of a right. For example, time barred debt, the remedy is barred but the right is not extinguished.

4. Historical Development of Human Rights in Nigeria

Nigeria which was a former colony of Britain was amalgamated in 1914 by Sir Fredrick Lord Lugard who amalgamated the Southern and Northern protectorates to form what we know today as the Federal republic of Nigeria. Prior to the coming of the Europeans particularly the British to Nigeria, the area was not a wilderness or a stateless society as such because same had empires and kingdoms with sophisticated statecraft comparable and even better than government of states in the medieval Europe¹⁵. We learnt of the existence and exploits of the Kanem Bornu Empire, the Oyo Empire, the kingdom of Benin, the Arochukwu oligarchy, the powerful kingdoms of the Amanyabos to the south, the Tarok and Idoma kingdoms etc¹⁶. This had blossomed before the coming of the British¹⁷. In the Eastern of Nigeria, the Igbos who were predominant had their own system of government which was predicated on a complex relationship whereof all had a say. With respect to their governance¹⁸. Thus, we had what Professor Adiele Afigbo of UNN calls 'Democratic

¹⁴ H. Hart. *Essays on Bentham, Studies in jurisprudence and political theory*, Oxford, Clarendon press, 1982.

¹⁵ B. O Igwenyi, *Modern Constitutional law in Nigeria* (Abakaliki: Nwamazi Printing and Publishing Company 2010) p.127.

¹⁶ Ibid

¹⁷ Ibid, p. 128.

¹⁸ Ibid

village republics and constitutional village monarchies.¹⁹ Many have argued that traditional societies gave no room for the expression of individual rights. What rather existed was group rights i.e. group rights competed with and suppressed individual entitlement in the traditional African settings. Arguably, it must be said that while modern conception of human rights is attributable western history no culture can claim nay historical glory. Most western scholars were of the view that there was no legal system in Nigeria. Therefore the concepts of human rights were alien to the pre-colonial Nigerian society. This was however based on the fact that in most traditional societies in the pre-colonial Nigeria, the law existed outside the framework of state in the modern sense. Obedience to the law was maintained through customs and religion as well as an established pattern of sanction. Most western scholars disparaged customary law or the traditional pattern of maintaining social control because it is influenced by religion, custom or magic. In contrast however many African scholars have countered the opinion of the western scholars with regard to human rights in the traditional African society²⁰. Schwad and Pollis stated that:

Individuals still perceive themselves in terms of their group identity. The concept of an autonomous individual possessed of inherent inalienable rights has been meaningless. Regardless of the particular traditional rights cultural patterns and the specific social relations, the individuals has been perceived as an integral part of a group within which has a defined role or status and if the concept of right has any relevance, it is derived from relations with others²¹.

Hence in traditional African societies the individual was not viewed as standing apart or alienated from the society. The individual enjoyed a great number of rights and duties²². These rights and duties however were enjoyed through or within the society of which the society was only a part. Within the framework of the group, the individuals enjoyed freedom of expression, freedom of religion, freedom of movement, freedom of movement, freedom of association, right to work and the right to education²³.

Despite the infringement of rights by the colonial administrations, colonialism also had positive impacts on the enforcement of human rights. Colonialism brought a structured form of government. The colonial administration abolished many customary practices such as slave trading and slavery, trial by ordeal, human scarifies, the custom of killing of twins, the Osu system and witchcraft were all abolished during the colonial era and this helped to a reasonable extent to preserve life and ensure the safety of the natives²⁴. During the 1957 constitutional conference, the Action Group proposed a motion for the creation of separate regions for ethnic minority groups and the incorporation of all bills of rights in the constitution²⁵. While conference delegates unanimously agreed that fundamental rights be entrenched in the constitution, minority of them kicked against the creation of separate regions for the ethnic minority groups²⁶. The Bills of Rights are to be found in chapter 3 of the Independent Constitution and the Republican Constitution. It has been included in both chapter four of the 1979 and 1999 Constitution of Nigeria. According to a group of East African lawyers:

In the late fifties and early sixties when the colonies were nearing independence the issue of Bill of rights came to fore. It was raised by the very powers that had been suppressing if for years. But this time there was a good reason for it, the colonialists were leaving and the good reason for it, the colonialists were leaving and the colonized were ascending power’.

The major deference between fundamental right and human rights include:

1. ‘Fundamental rights’ means the primary rights of the citizens which are justifiable and written in the constitution while human rights are the basic rights that all the human beings can enjoy no matter where they live, what they do and how they behave, etc.
2. Fundamental rights include basic rights only whereas human rights include basic and absolute rights.
3. Fundamental rights are country specific. They vary from one country to another whereas human rights are universal and have global acceptance.
4. Fundamental rights are constitutionally guaranteed i.e. they are entrenched in a country’s constitution and enforced by the government whereas human rights are only internationally guaranteed and most times are not constitutionally guaranteed.
5. Fundamental rights originated from the views of a democratic society while human rights originated from the idea of civilized nations.
6. Fundamental rights are enforceable by the court of law while human rights are enforced by the United Nations Organization.
7. Fundamental rights contain rights to freedom of religion, equality, and others are entrenched in the constitution while human rights contain civil, political, social, economic and social rights.

In summary, fundamental and human rights are essential for all human beings living at life spanning period to his or her sustainable developments and harmonious living with other neighborhood in the world.

¹⁹ Ibid

²⁰ [https:// repository. uchastings.edu/hastings- international- comparative- law- review/](https://repository.uchastings.edu/hastings-international-comparative-law-review/) accessed June1, 2022, 1.34 pm.

²¹ [https:// repository. uchastings.edu/hastings- international- comparative- law- review/](https://repository.uchastings.edu/hastings-international-comparative-law-review/) accessed June1, 2022, 1.34 pm.

²² Ibid

²³ Ibid

²⁴ Eze op. cit. p.20.

²⁵ Femi Falana op. cit, p.3.

²⁶ Ibid

5. An Appraisal on the Rights of a Defendant in Criminal Proceeding in Nigeria

The Constitution provides safeguards for hearing in criminal cases. These safeguards are in an effort to give constitutional sanctity to the rules developed by common law as the basic pre-requisites for fair-hearing. It is necessary to state that in the strict constitutional sense given in section 6 of the 1999 constitution; only a court can sentence and convict an offender for a crime. A tribunal which is not court within the meaning of section 6 of the constitution cannot sentence a criminal no matter how free and fair. Based on the adoption of the Universal Declaration of Human Rights and the inclusion of fundamental human rights in our constitution, fundamental human rights have been created should be respected by all men. It is significant to state that the constitutional safeguards for a criminal trial cannot be abridged or denied in the interest of public safety, public order, public health and public morality, in normal times equally as in periods of emergency. There are a lot of preventive measures put in place by the constitution and other laws to ensure that a defendant in a criminal trial is given a fair trial and the trial should not be fair but should be seen to be fair and this forms subject of discussion in this chapter

Right to Fair Hearing: According to Section 36 (1) of the Constitution:

In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality²⁷

Implicit in this subsection are the motion of right to have one's cause heard by a neutral adjudicating body; fair trial; within a reasonable time and the fact that a citizen's right in this area avails even against the government and any authority in the State²⁸. To be borne in mind that this right is guaranteed under article 7 of the African Charter on Human and people's Rights which has supernatural influence and has been applied by our court.²⁹ The principle of fair hearing entrenched in the Constitution of the Federal Republic of Nigeria 1999, is founded on the age long principal of natural justice³⁰. The principles of natural justice are part of the pillars that support the concept of the rule of law³¹. They are indispensable part of the process of adjudication in any civilized society. The twin pillars on which they are built are- the principles that one must be heard in his own defence before being condemned³²

Right to a Public Trial: According to section 36(3), proceedings of a court or tribunal with regard to matters relating to civil rights, obligations and criminal offences including the announcement of decisions, shall be held in public. Sitting in chambers to deliver judgment is wrong. This is because the judge's chamber is not an open court, it is not one of the regular courtrooms where the public have right of ingress and egress as of right³³. But in certain sensitive cases affecting minors and the government as the case may be, hearing may take place in camera (judge's chambers) where such evidence or document may be received and used by the court or tribunal³⁴. That was what happened in *Adebayo v Concord Press of Nigeria Ltd*³⁵. Here the document to be rendered in evidence was the meeting of State Executive Council, which the Attorney- General objected to its production in open court. But the court held that the fundamental right of the citizen under Section 33 of the 1999 Constitution was more important than the insensitivity of the document and thereafter ordered that it be received in evidence in camera. It has been held that ruling in chambers even if it done with the consent of both parties is null and void because the provisions of Section 36 (3) is mandatory³⁶.

Right to Remain Silent: Section 35 (2) of the 1999 constitution provides for the above right³⁷. Any arrested person preserves the right to remain silent. The purpose of this constitutional right is to provide a pretrial protection against the practice of eliciting incriminating statement from suspects by means of physical or psychological coercion in order to reduce the ordeal of the arrested person. The reasons adduced for this constitutional safeguard includes the fact that some suspects may not be able to understand the nature of the charge against them or that may out of fear incriminate themselves.

Right to Adequate Time and Facilities to Prepare for a Defence: According to Section 36 (6) (b): 'Every person who is charged a criminal offence shall be entitled to be given adequate time and facilities for the preparation of his defence'³⁸. The import of Section 36(6) being that the court should in no way stand on the way of the arrested person in the process for his defence³⁹. Thus, where an accused person asks for an adjournment on the first day of the case to enable him get

²⁷ Constituted of the Federal Republic of Nigeria 1999 (as amended)

²⁸ B. O. Igwenyi, *Modern Constitutional law in Nigeria* (Abakaliki: Nwamazi Printing and Publishing Company, (2010) p.369

²⁹ B. O. Igwenyi Op cit. p. 369

³⁰ A. M. Adebayo, *1999 Constitution of the Federal Republic of Nigeria as Amended (Annotated with Cases)* (Ikeja, Lagos, Princeton publishing co, 2012) p. 89.

³¹ Ibid

³² Ibid

³³ Constitution of the Federal Republic of Nigeria 1999 (as amended)

³⁴ B. O. Igwenyi, op. cit. p. 374

³⁵ (1982) 3 NCLR 434

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

³⁷ Constitution of the Federal Republic of Nigeria 1999 (as amended)

³⁸ Ibid

³⁹ B. O. Igwenyi, op. cit. p. 376

a counsel and such is refused, it will be a breach of section 36(6)(b) and would obviously invalidate the proceedings on appeal⁴⁰.

Right to Information of Crime Committed: According to Section 36(6)(A), every person who is charged with a criminal offence shall be entitled to be informed promptly in the language that he understands and in detail of the nature of the offence⁴¹.

Right to be Tried only for an Offence Known to Law: Section 36(12) of the 1999 Constitution states that 'Subject as otherwise provided by this constitution a person shall be convicted of a criminal offence unless the offence is defined and the penalty therefore is prescribed in a written law; and in this subsection a written law refers to an Act of the National Assembly or a Law of a State and subsidiary legislation or instrument under the provisions of a law'⁴².

Right to Presumption of Innocence: Innocence in criminal justice is established and guaranteed by the constitution. Section 36(5) of the constitution states that every person who is charged with criminal offence shall be presumed to be innocent until proven guilty. The standard of proof in all criminal cases is beyond reasonable doubt, as the accused is not expected to prove his innocence. The burden of proof is on the prosecution and any iota of doubt is always resolved in favour of the accused⁴³.

Right to Counsel of one's Choice: Every person who is charged with a criminal offence shall be entitled to defend himself in person or by legal practitioner of his choice. The right of an accused person to defend himself in person or by legal practitioner of his choice is given to him personally by Section 36(6) (c) of the Constitution⁴⁴.

Right to Bail: Bail is the process by which any person arrested and detained for an offence is released from custody either on the undertaking of a surety or on his own recognizance to appear on a future date. Bail is a conditional right guaranteed by Section 35 of the Constitution⁴⁵. It is therefore regarded as a right which a defendant is entitled to. It is the legal basis for the presumption of innocence of the accused or suspect which is provided for in Section 36 (5) of the Constitution⁴⁶.

Right to be Present at Trial: Section 210 of the Criminal Procedure law provides: 'Every accused person shall, subject to the provision of section 100 and of subsection (2) of section 223 of the provision of the Act, be present in court during the whole of his trial unless he conducts himself by so disrupting the proceedings or otherwise as to render their continuance in his presence impracticable'.

Right to be Tried Only Once for one Offence: Section 36 (9) provides as follows:

No person who shows that he has been tried by any court of competent jurisdiction or tribunal for a criminal offence and either convicted or acquitted shall again be tried for that offence or for a criminal offence having the same ingredients as that offence save upon the order of a superior court⁴⁷.

Right not to be convicted on Retro-Active Legislation: Section 36(8) of the 1999 Constitution states as follows:

No person shall be held guilty of criminal offence on account of any act or omission that did not, at the time it took place constitute such an offence and no penalty shall be imposed for any criminal offence heavier than the penalty in force at the time the offence was committed⁴⁸.

Right to Confront and Cross-Examine Adverse Witness: Section 36(6) (d) states as follows:

Every person who is charged with a criminal offence shall be entitled to examine, in person or by his legal practitioners, the witnesses called by the prosecution before any court or tribunal and obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court or tribunal on the same conditions as those applying to the witnesses called by the prosecution⁴⁹

Right to an Interpreter: Section (36) (6) (e) states that, a defendant in a criminal proceeding shall have without payment, the assistance of an interpreter if he cannot understand the language used at the trial of the offence⁵⁰.

6. Challenges of the Enforcement of the Rights of a Defendant during Trial

Brennan states that 'nothing rankles more in the human heart than brooding justice. Illness we can put off with. But injustice makes us want to put things down. When only the rich can enjoy the law as a doubtful luxury and the poor, who need it the most cannot have it because it expensive puts it beyond their reach the threat to the continued existence

⁴⁰ Ibid

⁴¹ Ibid

⁴² Constitution of the Federal Republic of Nigeria 1999 (as amended).

⁴³ Constitution of the Federal Republic of Nigeria 1999 (as amended).

⁴⁴ Constitution of the Federal Republic of Nigeria 1999 (as amended).

⁴⁵ Constitution of the Federal Republic of Nigeria 1999 (as amended)

⁴⁶ Ibid

⁴⁷ Constitution of the Federal Republic of Nigeria 1999 (as amended)

⁴⁸ Constitution of the Federal Republic of Nigeria 1999 (as amended)

⁴⁹ Constitution of the Federal Republic of Nigeria 1999 (as amended)

⁵⁰ Constitution of the Federal Republic of Nigeria 1999 (as amended)

of free democracy's very life depends upon making the machinery of justice so effective that every citizen shall believe in and benefit by it impartiality and fairness.⁵¹ Where a person is arrested without a lawful justification, it amounts to a breach of his fundamental human right to fair hearing are being infringed upon. In this chapter I shall be discussing the challenges of the enforcement rights of a defendant during a criminal trial and to make possible recommendation as to what could be done to salvage the situation so as to ensure that defendant's rights during trial are enforced to avoid innocent people going to prison for no just cause.

Awaiting Trial of an In-mate as an Accused Person: This has been a major concern in Nigeria's criminal justice system. Majority of the prisoners in the correctional facilities across Nigeria are those awaiting trial and, in most cases, they stay there for up to five years without their case being heard in court. This is mostly caused by their inability to get a lawyer to defend them in court and the failure of the Attorney-General of the states where the prisoners are detained to provide a defence counsel for the inmate.

Illegal Arrest, Detention and Maltreatment of Defendants by Law Enforcement Officials: Law enforcement Officials have been known for their unlawful conduct of beating accused persons when they are being detained, conducting mass arrest of persons when a crime is committed and in most cases forcing people to confess to a crime they know nothing about. A criminal suspect has the constitutional right of remaining silent or avoid answering any question until after consultation with a legal practitioner or any person of his choice.

Delay in the Hearing of Criminal Suits by Courts: The problem of delayed justice in Nigerian courts is legendary. It is often said in popular parlance that justice delayed is justice denied and the role of the courts in the administration of justice is sacrosanct to the stability of human society. The judiciary is ideally regarded as the last hope for the oppressed considering the lofty responsibility of justice dispensation assigned to them by the society. The effectiveness of the courts lies not only in their ability to fair, firm and ultimately neutral, but also for the justice to be dispensed timely.

Lack of Awareness of the Rights of a Defendant During a Criminal Trial: It is no story that majority of the people in Nigeria are unaware that they have fundamental rights especially rights as a defendant during a criminal trial that's the reason why when most people are arrested, they feel as if they are condemned for life even before they are even arraigned in court. Unlike in most developed countries where the law enforcement agents read the rights to criminal suspects and follow them, in Nigeria they are infringed upon on a daily basis and this makes people contentiously doubt if they even have rights.

This is the major reason why the fundamental rights of a defendant during trial aren't always enforced, because the security agencies aren't being sued for their illegal maltreatment of Criminal suspects based on the fact most people don't know that such rights exist.

7. Conclusion and Recommendations

Despite the entrenchment of the fundamental human rights pertaining to a defendant in a criminal proceeding, it is still heavily violated by law enforcement agents, the government should do more to ensure that these rights are enforced for they cannot enforce themselves. The National Human Rights Commission should also do more in the enlightenment of the people of their fundamental human rights. For being adamant about these rights would lead a lot of innocent people to be incarcerated so more needs to be done to prevent this mayhem. The government should establish more courts and employ more judicial officers to enable the quick hearing and determination of criminal cases to stop the issue of congestion in correctional facilities which is caused by large number of awaiting trial persons. The office of the Attorney-General of the Federation and of different states should fulfill its duties with regard to the provision of legal counsels for defendants who are unable to procure the services of lawyer due to their financial status. This has caused a lot of people to spend years in detention without appearing in court and something has to be done to salvage the situation. The Police should try its best to stop the way Police officers extract confessional statements from criminal suspects and police officers involved in such gruesome acts should be dealt with according to the law. The forceful extraction of confessional statements from criminal suspects which in most cases they confess to crime they know nothing about has led many innocent people to jail and this needs to stop. The judiciary should be independent and free from the control of the executive so as to ensure the fair trial of defendants in a criminal proceeding. Human Rights enlightenment programs should be done in the rural areas where majority have little or no access to schools and information and they should be made to know that they have rights even as an accused person and they can seek redress in court when it is being breached by anyone even the government.

⁵¹ Ibid