

EVALUATING SOME OF THE DEFENDANT'S RIGHTS UNDER THE CRIMINAL JUSTICE SYSTEM IN NIGERIA*

Abstract

There are several rights in existence for the defendant under the Nigeria Criminal Justice administration. Most of these rights are unknown to the defendant. This often presents the defendant as a helpless victim of the wheel of justice. It is often said that to secure a conviction in Nigeria's accusatorial criminal justice system is akin to the treading the proverbial horse through the needle's eye. This work therefore aims at evaluating some of these rights with a view to presenting the advantages available to a defendant in the criminal justice system. Much reliance is placed on doctrinal methodology leveraging on rich data in Nigeria criminal jurisprudence. This work highlights that the prosecution bears more burden in the Nigerian criminal justice administration. It is believed that at the end of this work, a criminal defendant will no longer be seen as helpless but as a man imbued with several rights constitutionally guaranteed in order to ensure that the proverbial innocent person is not fed through the wheels of justice while seeking to convict the actual guilty person.

Keywords: Defendant's Rights, Criminal Justice, Constitution, Nigeria, Evaluation

1. Introduction

The Nigerian criminal justice administration is shackled with several problems. These problems stem first from the agencies clothed with the power of investigation of alleged criminal conducts. The police is at the fore front of this. The Nigerian police though ranked the most corrupt institution in Nigeria¹ is by no means the worst of the institutions that are corrupt. The problem associated with investigation and issues of corruption has no doubt affected the results of criminal trials. The deliberate withholding of evidence or falsification of it speaks volume of its impact in criminal justice administration. The work of the prosecutor also impacts the final findings of the court. Where the prosecutor carries out the work nonchalantly without regard to interest of justice, the victim, the defendant, the society, rule of law, and the mischief the law is meant to curb will most often portray our criminal justice administration as not upholding the rule of law. The impact of political influence in our criminal justice system has also left much to be desired. The eminent position occupied by the judiciary in the scheme of criminal justice administration is most paramount. It is through this position that the judiciary can strike down any attempt to infringe on any of the rights of the defendant and ensure fair trial in our criminal justice administration. Upholding of the rule of law and ensuring justice for all the parties, irrespective of conviction of the defendant is of the essence. This most eminent position of the judiciary is also vulnerable by the impact of corruption. These problems notwithstanding, the defendant has ample rights enshrined in our criminal justice system to ensure that innocent persons are not convicted. These rights are open to the defendant to access. The defendant's ignorant of the existence of these rights has never been a barrier to their utilization. The judges usually bring them to the notice of the defendant to ensure fairness to the defendant. Some of these rights will now be evaluated.

2. Conceptual Clarification

Few words seek clarification here and they include:

Defendant: Prior to now, a person arrested at the police station is referred to as a suspect and when the same person is presented before the Court, he becomes an accused person. With the coming into force of the Administration of Criminal Justice Act and the Law of some of the states, such a person is now referred to as a defendant. The term 'accused' has a negative implication while 'defendant' preserves the defendant's right to presumption of innocence which the Constitution had earlier implied on such a defendant. The presumption of innocence therefore renders the term accused otiose. We can therefore safely say that a defendant in a criminal matter is a person who is under the burden of a criminal proceedings for which he is yet to be convicted and still enjoys the presumption of innocence imposed by the Constitution.

Rights: The definition of rights is actually controversial. In the conventional sense, rights are seen as the opposite of responsibilities. It is defined as what a person is entitled to when he has discharged a certain responsibility but, this is not the meaning here. 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 owed to people according to some legal system, social convention, or ethical theory.² Rights are an important concept in law and ethics, especially theories of justice and deontology.³ Therefore, one can safely say that rights as used here include the entitlement of the defendant who is facing a criminal trial as provided by the Constitution.

Criminal Justice: Criminal justice is a broad term that encompasses the laws, procedures, institutions, and policies that are in place before, during, and after the commission of a crime. It is not just about enforcing the law, but rather an ever-expanding system that oversees illegal activities, imposes sanctions on those who break the law, and works to ensure that offenders do not reoffend.⁴ It is the collective institution that the defendant goes through before conviction. In Nigeria, the criminal justice system

*By **Ogugua V.C. IKPEZE, PhD, LLB, BL, LLM, DBA, FCARB, FICMC**, Professor of Law, Nnamdi Azikiwe University, Awka; and

***Victoria NWOYE, LLM Candidate**, Faculty of Law, Nnamdi Azikiwe University, Awka, Anambra State, Nigeria.

¹Socio-Economic Rights and Accountability. <https://serap-nigeria.org/police-most-corrupt-institution-in-nigeria>. However, Nigeria Police Force was rated 7th globally as one of the worst corrupt police institutions. <https://factcheckhub.com/wp-content/uploads.2024.01.mopol.jpg>

²<https://en.wikipedia.org/wiki/Rights> accessed on 10/8/2025 at 1.50pm

³ *ibid*

⁴ Luis Mersinger, What is Criminal Justice? Criminal Justice Journal available online at www.criminaljusticejournals.com/what-is-the-definition-of-criminal-justice accessed on 10/8/2025 published on 01/07/2023.

comprises of the three organs; first is the law enforcement agencies which is primarily the Nigerian Police Force, second is the judiciary on one side and defence counsels on the other side, the last is the correctional centres. These three organs form the tripod on which the Nigerian Criminal Justice system stands. The criminal justice system therefore involves the whole process expected of the defendant from one organ to the next organ as the circumstances might determine.

Justice: Justice refers to the concept of fairness and the administration of what is just. It involves the impartial adjustment of conflicting claims and the assignment of merited rewards or punishments. Justice encompasses various aspects, including moral behavior, equality, and lawfulness, and is essential for social stability and individual rights. In its broadest sense, justice means that individuals should be treated fairly and equitably.⁵ Justice seeks to ensure that what is fair was done to all persons involved. It entails fairness and that what was right was done.

3. Rights Accruing to a Defendant

Having attempted a definition of some of the concepts used herein, we shall now turn to the next issue which is where we will list some of the rights available to the Defendant in the Nigeria Criminal Justice administration. Some of these rights are:

Right of a Defendant to Fair Hearing: In *Ariori & Ors. v Elemo & Ors*,⁶ Obaseki, J.S.C. after referring to the words 'hearing' as defined in the Pocket Law Lexicon 8th Ed. by A.W. Motion, as the trial of a suit, defined 'a fair hearing' in these words, 'fair hearing, therefore, must mean a trial conducted according to all the legal rules formulated to ensure that justice is done to the parties.'⁷ Fair hearing entails the absence of the twin pillars of natural justice which are the principle of *nemo judex in causa sua* and *audi alteram partem*. These two principles presuppose that a party cannot be a judge in his own cause and, in arriving at a just decision the parties must hear the other side. The grund norm of Law in Nigeria, the Nigerian 1999 Constitution as amended further entrenched fair hearing when it provided that in the determination of civil rights and obligations, individuals are entitled to fair hearing within a reasonable time by a court or other tribunal established by law and constituted in a manner that ensures independence and impartiality.⁸ The true test of fair hearing is the impression of a reasonable person who was present at the trial whether from his observation, justice has been done in the case.⁹ A discourse on fair hearing will definitely take the entire provisions of this work. Since this is but one of the rights, suffice it therefore to say that the term fair hearing has been defined in a plethora of cases to mean trial conducted according to all legal rules formulated to ensure that justice is done to all the parties to the case.¹⁰ It is imperative that fair hearing must be done and it should include the twin pillars of natural justice bothering on *nemo judex in causa sua* and *audi alteram partem*. It is imperative that in the quest for justice, the other party must be heard. This is why the Court is duty bound to consider all the defences raised by the defendant irrespective how ridiculous such defenses might be.

Right to Legal Representation of Choice: One of the foundational pillars of the right to a fair trial in Nigeria is the right of a defendant to legal representation. This right ensures that an accused person is not left to navigate the complex nature of the legal system without guidance and that he/she has access to professional assistance to defend his case adequately. Section 36(6)(c) of the 1999 Constitution of the Federal Republic of Nigeria (as amended), provides that every person charged with a criminal offence is entitled 'to defend himself in person or by a legal practitioner of his own choice.' This provision emphasizes that legal representation is not just a formality but an essential and enforceable right. The implication is that where an accused person is unable to afford legal representation, especially for serious offences, the court is obligated to assign a lawyer to the defendant at no cost. This is in line with the constitutional duty of the State to ensure that no trial takes place in a manner that violates the principles of fairness.¹¹ In *Nnakwe v. State*¹², the Supreme Court emphasized the significance of legal representation, holding that only the party represented has the right to challenge the authority of their counsel, thereby affirming that the accused person retains control over who represents him and whether such representation continues. Similarly, in *Isiaka & Ors v. Ogundimu & Ors*¹³ the court emphasized that every litigant has freedom to engage a counsel of his choice and to terminate such engagement at any point during proceedings. The Rules of Professional Conduct for Legal Practitioners (2023) further supports this right. Rule 8(1) clearly states that every person has a right to be represented by a legal practitioner in all courts of law sitting in Nigeria, unless a legal provision or valid exception expressly denies such representation. This aligns with the constitutional objective of ensuring equality before the law and affirms the duty of the legal profession to uphold access to justice. While international case law is not binding, but of persuasive effect, the principle stated in *Brewer v. Williams*¹⁴, is persuasive and echoes the same standards. It was stated that a defendant gains the right to legal representation at the moment judicial proceedings are initiated, whether by charge, arraignment, or formal investigation. Nigerian courts, in practice, have adopted similar standards, particularly in serious criminal trials. However, the availability of legal representation must not be reduced to just a requirement exercise to comply with the law. It must remain meaningful and effective. Legal aid, where provided, must ensure that counsel is competent and adequately prepared. An unrepresented defendant is vulnerable to procedural errors, misinterpretation of the law, and ultimately, miscarriage of justice. It is imperative to state that this choice of

⁵www.humanrightscareers.com/issues/what-is-justice/ accessed on 10/8/2025 at 2.02pm.

⁶ (1983) 1 S.C.13 at pages 23-24

⁷ *Ntukidem & Ors v. Oko & Ors* (1986) LPELR-2075(sc)

⁸ Section 36(1)

⁹ *Isiaku Mohammed v. Kano N.A.* (1968) 1 All N.L.R

¹⁰ *Nwokocha v A.G. Imo State*, 2016 LPELR 40077 (SC).

¹¹ Section 36(7)

¹² 2013 LPELR-20941 (SC),

¹³ (2006) 13 NWLR (Pt. 997) 401

¹⁴ 430 U.S. 387 (1977) (U.S. Supreme Court)

counsel is not absolute as such a defendant can only be represented by a Counsel who is entitled to practice in Nigeria and therefore bound by the Rules of Professional Conduct for Legal Practitioners, 2023.¹⁵ One can therefore safely summarize that the right to legal representation is a core component of fair trial rights under Nigerian law. It is backed by the Constitution and affirmed by case law. For the justice system to operate fairly and credibly, this right must not only be preserved in principle but upheld by the court, with particular attention to diligent and early provision of counsel, especially to illiterate or vulnerable defendants.

Presumption of Innocence: Presumption of Innocence is a fundamental principle in Common Law and an important cornerstone of the Nigerian justice system, as it is enshrined in both constitutional and statutory provisions. It safeguards accused persons from wrongful conviction and ensures that the burden of proof lies squarely on the prosecution. This legal principle is not merely procedural but forms part of the fundamental human rights guaranteed to all persons that are accused of criminal conduct. On the international level, Article 7 of the African Charter on Human and Peoples' Rights supports this notion and the Universal Declaration of Human Rights also provides for it in Articles 11(1) & 14(2). The presumption of innocence is firmly rooted in Section 36(5) of the 1999 Constitution of the Federal Republic of Nigeria (as amended), which provides that every person who is charged with a criminal offence shall be presumed to be innocent until he is proved guilty. Therefore, until a pronouncement of guilt on the accused person is made, he/she is to be treated the same as a regular person and any suggestion otherwise would be a breach of the individual's Fundamental Human Rights. The other element to the presumption of innocence is that the burden of proving the guilt of the accused person is on the prosecution. The prosecution is given the responsibility of producing sufficient evidence and arguments to prove the guilt of criminal defendants beyond a reasonable doubt. No matter what indictment or formal charges are brought against the defendant, and no matter what the personal feelings of those involved may be, if government's prosecution cannot decisively demonstrate the defendant's guilt in trial, then that person is legally not guilty and free to go.

In *Ekele v. FRN (2018)*, Peter Ige, JCA commented that proof beyond reasonable doubt is the standard of proof used to convict individuals charged with crimes in the criminal justice system. He further stated that the proposition being presented by the prosecution must be proven to the extent that there could be no 'reasonable doubt' in the mind of a 'reasonable person' that the defendant is guilty.¹⁶ Thus, the accused is not to be prejudged based on mere allegations, because everyone is entitled to a fair trial and due process, as stipulated in Section 36 (1&4) of the 1999 CFRN. In Nigeria, the principle of the presumption of innocence is increasingly being undermined due to the shortcomings of the law enforcement agencies, their frequent rights violations, and the inefficiencies within the criminal justice system. A proper example is the arrest and detention of the 72 OAU students by the EFCC in 2023, where the individuals were publicly branded as fraudsters without any proper investigation, fair trial, or court proceedings. This was an outright breach of their right to be presumed innocent. These failures threaten the integrity of the rule of law and even weaken the authority of the Constitution. Thus, upholding this presumption is essential not only for protecting individual rights, but also for maintaining public confidence in the rule of law.

Right to Protection against Double Jeopardy: The principle of protection against double jeopardy is a fundamental part of Nigerian criminal jurisprudence. It operates as a constitutional means to prevent repeated prosecutions or punishments for the same offence. It is essential to the rule of law because it guarantees the right to fair trial and protects personal liberty. Under Nigerian law, this protection is not a mere requirement, but an essential right enshrined in Section 36(9) of the 1999 Constitution of the Federal Republic of Nigeria (as amended). The section provides that no person who proves that he has been tried by any court of competent jurisdiction or tribunal for a criminal offence and was either convicted or acquitted shall again be tried for that same offence or for a criminal offence having the same ingredients as that offence, unless a superior court orders a retrial. The essence of this provision is to prevent the State from subjecting an accused person to multiple trials for the same alleged offence, thereby protecting the individual from harassment and stress of repeated litigation. In *Eze v. Federal Republic of Nigeria*¹⁷ the Supreme Court affirmed that once a competent court has adjudicated on a criminal charge and entered a judgment of conviction or acquittal, that decision is final for the purposes of criminal liability. Any subsequent prosecution of the accused on the same facts or closely related offences would be unconstitutional. Similarly, in *Nigerian Army v. Aminu-Kano*¹⁸ the Supreme Court emphasized that only judgments delivered by courts of competent jurisdiction can ground the protection against double jeopardy. If the earlier trial was a nullity or the court lacked jurisdiction, the plea would not be available in any way. The Constitution prohibits a second trial not only for the exact same offence but also for an offence sharing the same essential elements. Any attempt to circumvent this by fragmenting charges or instituting fresh proceedings arising from the same facts would be struck down. However, the practical enforcement of this right has faced challenges, especially with overlapping mandates among prosecutorial agencies such as the EFCC, ICPC, and the Nigerian Police. In such cases, poor coordination and lack of centralized records have led to repeated prosecutions based on the same facts. Where this occurs, it is the duty of the defence to raise an early objection under Section 36(9), supported by credible evidence of the prior trial and its outcome. Once successfully established, the court is barred from assuming jurisdiction. In conclusion, the prohibition against double jeopardy is a constitutional safeguard that affirms the finality of judicial decisions and the integrity of the criminal justice process. Its enforcement requires vigilance by the courts and restraint by the prosecuting bodies. Upholding this guarantee ensures that no citizen is punished or tried twice for the same wrong under Nigerian law.

¹⁵ *Supra*

¹⁶ See also, *Ahmed v. The State* (1997) 7 NWLR, (part 612) 641 at 673

¹⁷ (1987) 2 NWLR (Pt. 56) 447,

¹⁸ (2010) 5 NWLR (Pt. 1188) 429,

Right against Self Incrimination: The right against self-incrimination is a constitutional safeguard aimed at protecting individuals from being compelled to testify or provide evidence that may be used against them in criminal proceedings. This right is enshrined in Section 36(11) of the constitution which provides: 'No person who is tried for a criminal offence shall be compelled to give evidence at the trial.'¹⁹ The implication of this is that a defendant has the right to remain silent and cannot be forced to testify either during investigation or at trial. The Evidence Act, 2011 complements this right. Section 29²⁰ makes inadmissible any confession not made voluntarily²¹, while Section 217 prevents courts from drawing adverse inferences from an accused's silence.²² In *Nwangbonu v. State*, the Court emphasized that compelling an accused to testify violates their constitutional right.²³ Similarly, in *Ubierho v. State*, it was held that silence cannot be construed as guilt.²⁴ In *R v. Ikoro*, the court ruled that involuntary confessions obtained through threats or inducements are inadmissible.²⁵ The protection covers not just court testimony but also statements to law enforcement agencies. However, it does not extend to physical evidence (e.g., fingerprints, DNA) or apply to corporate bodies.²⁶ In conclusion, Nigerian law upholds the right against self-incrimination through constitutional and statutory provisions backed by judicial pronouncements. Its enforcement is crucial to safeguarding the right to a fair trial and preventing abuse by authorities.

4. Conclusion

The constitutionally guaranteed right of a defendant in a criminal trial most often creates a difficulty in securing a conviction against the defendant. It sometimes presupposes that the law set up the prosecution to fail. This should not be seen so because these rights are safeguards to ensure that a convicted person is actually guilty of the offence for which he was convicted. It is to be borne in mind that a conviction of an innocent person makes mockery of the justice system, therefore a conviction must be seen to have conformed to all aspects of the Constitution and that an innocent person should be spared the fatality of the criminal justice system.

¹⁹ Constitution of the Federal Republic of Nigeria 1999 (as amended)

²⁰ Evidence Act, 2011

²¹ Evidence Act 2011

²² *Ibid*

²³ (1994) 2 NWLR (Pt. 327) 380

²⁴ (2005) 2 NWLR (Pt. 909) 157

²⁵ (1951) 20 NLR 58

²⁶ *B.G. Ltd. v. F.B.N. Plc (2010) 2 NWLR (Pt. 1177) 1.*