

RIGHT OF AN ACCUSED UNDER THE NIGERIAN LEGAL SYSTEM

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**BEING A PROJECT SUBMITTED TO THE DEPARTMENT
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CERTIFICATE

This is to certify that this Project titled “Right of an Accused Under The Nigerian Legal System” was conducted by me, Ebiladei Kathleen Milton, Matriculation Number DIPL/LAW/17/717, of the Department of Law, School of Foundation studies, Bayelsa State College of Arts and Science, Elebele, Yenagoa, and to the best of my knowledge, it has been submitted elsewhere in this College

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APPROVAL

This Project has been read and approved as meeting as the basic requirements for the award of Nigeria Diploma (ND) Certificate in Law f Bayelsa State College of Arts and Sciences, Elebele, Yenagoa, Bayelsa State by the following Officers:

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Quite distinguishingly, I am eternal indebted to my Foster-Father, Pastor Valour Tiabasi, founding Pastor of Surelife Grace Church who solely sponsored in totality my entities studentship. MyDaddy, God bless you with Eternity in Heaven, Amen.

DEDICATION

This Project is dedicated to the Almighty God who gave me sound Wisdom in Studies and Saving Health during my studentship; to my late Parents, Mr & Mrs Milton Engman and my Foster-Father, Pastor Valour Tiabasi who solely sponsored my studies in Bayela State College of Arts and Science.

LIST OF CASES

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- *Dominic Peter Ekanem v Assistant Inspector General of Police*
- *West African Examination Council V OmodoLapo Yemisi Adeyanju*
- *Gani Fawehinmi v Abacha*³³
- *Alie Bello v the Attorney General of Oyo State*
- *Liversidge v Anderson* ⁴⁵
- *Dele Giwa v Inspector General of Police*
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- *Torri v National Park Service of Nigeria*
- *Uwazurike v. Attorney-General of the Federation*
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- *Ugwu v The State*
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- *Nigeria custome Prison Service V. Adekeye*
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- CRIMINAL Procedure Act, Laws of Soutern Nigeria
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- Laws of Kwara State of Nigeria Vol.1 Cap 29
- Legal Aid Act Cap.Lg Vol.8 LFN 2004
- Promulgation of Cap.10 (Ratification and Enforcement ACT)LFN 1990

LIST OF ABBREVIATIONS

- ABULSJ: Ahmadu Bello University Law Society Journal
- AC: Appeal Cases
- CAP: Chapter
- FWLR: Federal Weekly Law Report
- HRLRA: Human Right Law Reports of Africa
- LFN: Law of the Federation of Nigeria
- NCC: Nigeria Constitutional Cases
- NCLR: Nigerian Constitutional Law Reports
- NLR: Nigeria Law Reports
- NSCQR: Nigerian Supreme Court Quarterly Report
- NWLR: Nigeria Weekly Law Report
- P: Page
- SC: Supreme Court
- UILSSJ University of Ilorin Law Student Society Journal
- Vol: Volume

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ABSTRACT

Under the Nigerian criminal justice the constitutional right of an accused person is enshrined in Section 35 and 36 of the Constitution of the Federal Republic of Nigeria 1999 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 in person or by 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 the proceeding kept and the right to have copies of this within seven days of the conclusion of the case, the right to remain silent during the trial, the right not to be tried and convicted twice for the same offence, the right to be presumed innocent until he is proved guilty and the right not to be charged for an unwritten offence. All these rights aimed at ensuring that an accused person is not unjustly dealt with.

Also the relevant provisions in CRIMINAL PROCEDURE CODE, CRIMINAL PROCEDURE ACT and the CHILD RIGHT ACT shed more light on the rights of an accused person in criminal trials. The thesis in its totality is channeled toward making sure that Nigerians are fully informed/aware 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 vis-a-vis the relevant provisions.

CHAPTER I

GENERAL INTRODUCTION

1.0.0: INTRODUCTION

When a suspect is described as having right, he is acknowledged to be entitled to something to which he has just claim under the law. By virtue of man's creation, he has certain rights which are common to those of all other men. Most of the fundamental rights are in a sense natural right vested in every individual and to which he is entitled without any obligation or duty on the part of the government to provide facilities for their enjoyment. Moreover, all fundamental rights are in the final analysis rights, which impose limitations on executive, legislative or judicial powers of the government and are accordingly easily justifiable. Fundamental Human Right entails universal humanity which men enjoys and shares with his fellow men whether he is a suspect or a freeman. This in its totality has informed the writing of this project.

1.1.0: DEFINITION OF TERMS

ACCUSED: One charged with an offence

AUDI ALTERAM PARTEM: The other party must be heard

LEGAL AID: Free or inexpensive legal services provided to those who cannot afford to pay full price. Legal Aid is usually administered locally by a specially established organization.

NEMO DEBET ESSE JUDEX IN PROPRIA CAUSA: No one can be a judge in his own case

PRO BONO: Being or involving uncompensated legal services especially for the public good

PUBLIC DEFENDER: A lawyer or staff of lawyers, usually publicly appointed and paid, whose duty is to represent indigent criminal defendants

SUSPECT: A person believed to have committed a crime or offence. To consider wrong doing without certain truth

UBI JUS IBI REMEDIUM: Where there is a right there is a remedy

1.2.0: LITERATURE REVIEW: Jide Bodede¹ opined that the right of fair hearing within a reasonable time is the fundamental right of every accused person guaranteed in the constitution. He emphasizes the importance of the right to fair hearing as entitled to everyone especially an accused person. Adesiyun G.O² on the right of an accused person to silence limiting his work to Nigeria says that while the police have a legal right to interrogate a suspect, any use of force made to make him answer a question is illegal and judges rule was introduced as a result of discussion.

1 Criminal Evidence in Nigeria, (Florence and Lambard, Nig. Ltd publisher 2008)p.89

2 An Accused Person's Rights in Nigeria Criminal Law, (Heinemann Educational Books Nigeria 1996) p.67

Ibrahim Imam³ View on the constitutional safeguard for an accused person rights to fair trial in the Nigerian criminal justice write extensively on the duty of counsel to an accused person in criminal proceeding that he should devote himself completely to his task irrespective of what he may think of the charge. To Onawola⁴ explained that where a bail condition is breached, the bail granted will be revoked if the accused is found supported with clear evidence to have interfered with witnesses or otherwise obstruct the cause of justice. Audi Jummai⁵ opined that human

rights contained in the constitution will be meaningless if we cannot enforce its breaches (Ubi Jus Ibi remedium).

CHAPTER 2

THE CONCEPT OF HUMAN RIGHT

2.0.0: INTRODUCTION

The issue of human right is the most widely debated issue in the world today and which cannot be meddle with. The phrase 'Human rights' are qualified as civil or legal, absolute or inalienable and fundamental or universal right.

When we talks of inalienable right, it means a right which is an integral part of an individual [dignity of human] which cannot be taken away stricto- Sensu because the taking away of such rights would be tantamount to inhuman treatment⁶, this was held in *Thomas & Four Ors v Timothy Olufosoye*

In common parlance “right” means an action or conduct which is morally good in the eyes of the law. Thus, whoever keeps the law does right and whoever violates it does wrong. Also, human right is based on the assumption of a natural law that posits that there are certain immutable rights that belong to man everywhere and which in virtue of man's security should be secured and

guaranteed to everyone. Such rights are not right 6 Bashir Y. I. Human Right in Nigeria (PHD requirement ABU Zaria 1999) p.1 7 (1966)1 ALL NLR 178 which derived from a particular station they are rights which belong to man simply because he is a man⁸.

In *Dominic Peter Ekanem V Assistant Inspector General of Police*⁹ the Supreme Court says that, every human being is entitled to fundamental right only when he is not subject to any constitutional disability....Human rights are universal- they belong to all in every human society. As Louis Henkin said 'To call these rights 'human' implies that all human beings have them equally and in equal measure by virtue of their humanity regardless of sex, race, age and regardless of social class, national origin, ethnic or tribal affiliation; regardless of wealth or poverty, occupation, talent, merit, religion, ideology location or other commitment.

These rights are entrenched in chapter IV of the Constitution of the Federal Republic of Nigeria, and they include right to life, right to personal liberty, right to fair hearing, right to private and family life, right to freedom of expression and the press, right to Freedom from Discrimination among others.

There are other international instruments on human right which are: Magna-Carta; Petition of Right¹⁶²⁸; Bill of Rights ¹⁶⁸⁹; Virginia Declaration of Rights 1776; American Declaration of Independence 1776; French Declarations of Rights of Man and of the Citizen 1789; ¹⁰

Universal Declarations of the Rights of Man and of the Citizen 1789; Universal Declaration of Human Rights 1948; European Convention for the Protection of Human Right and Freedoms 1950; American Convention for the Protection of Human Right and Freedom 1959; Written Constitution of several independent modern states and states liberated from colonialism; African Charter on Human and Peoples' Rights 1981¹⁰.

Before going into the historical background there is the need to define what human right is: Right is primarily derived from the Latin word “Rectus” meaning something to which a person has a just claim whether in land, a thing, or the privileged of doing something or saying something¹¹

Black’s Law Dictionary defines right as: Something that is due to a person by just claim, legal guarantee or moral principles, and that which is proper under the law, morality or ethnics, legally enforceable claim that another will do or not do a given act and a power privileged or immunity secured to a person by law¹².

Law Dictionary defines right as: ‘An interest, recognized and protected by law respect for which is a duty and disregard for which is a wrong’¹³

In *West African Examination Council V OmodoLapoYemisi Adeyanju*¹⁴

‘Fundamental human right is described as a right guaranteed in the Nigerian constitution and can be found entrenched in a particular chapter there in i.e. chapter IV’.

2.1.0: HISTORICAL DEVELOPMENT OF HUMAN RIGHT IN NIGERIA

Human rights themselves are not a new phenomenon or a new morality. They have a history dating back to antiquity. The rights of man as expression of political philosophy are traceable to the writings of early naturalist, Thomas pine, Hobbes, John Locke, Baron de Montesquieu, J.J Rousseau and William Kant among others¹⁵.

There were the times when the writings of publicist had great impact on law and on the society within which the law operated. According to these philosophers, every individual within society possesses certain rights which are inherent and which cannot be wantonly taken away and for

which man is beholden to no human authority; that the major reason for individual coming together to form a government is to enable these rights to be protected and fostered.

Jurisprudentially, the concept of human right has its philosophical ancestry in the natural law school that is why the expression 'human right' had been used synonymously with natural law and natural rights. Professor Maurice Cranston while defining human right in the context of natural law and natural rights said that: 'The twentieth century name for what has been traditionally known as natural right or in a more exhilarating phrase of right of man'¹⁶ Natural law is predicated on the assertion that there are objectives or moral principles which depend upon the nature of the universe and which can be discovered by reason. In other words, the theory of natural law is based on the reasoning that the rule of human conduct is a deduction from the nature of man as it reveals itself in reason and independent of any manmade enactment. More so, it can be said that natural law which human right proceeded is a rational basis for moral judgment. It should however be contended that the doctrine of natural law was responsible for many revolutions that has taken place in the past in most civilized states.

In the 1776 United States declaration of independent it was stated that:

We hold this truth to be self evident that all man are created, that they are endowed by their Creator with certain Inalienable Rights; these Rights are Rights to life liberty and the pursuit of happiness. The position was later metamorphosed to bills of rights.¹⁸

Based on this philosophy, men have over the centuries struggled for and got human rights or their understanding of them enshrined in the constitutions and political traditions of their different societies for as Frederick Douglas did apply put it.

‘Power concedes nothing without demand, it never did and it never will’ In Nigeria, the clamour for human rights dated back to the colonial day that is before Nigeria attained independence in 1960. Numerous pre-independence conferences held from 1953 helped a lot in the development of the concept of human right in Nigeria. By 1958, the British colonial government inaugurated a commission headed by Sir Henry Willink to look in to the fear of domination of the minority groups and how the fear could be allayed.

This and several other factors led to the entrenchment of justifiable rights in the country’s independence of 1960.¹⁹ Furthermore, historically the fundamental rights provisions in the 1960 independence constitution were contained in chapter III of that constitution. The full text of that chapter is similar in every respect to what was contained in the Bill of Rights of American (1791) that was first adopted as the sixth schedule to the Nigerian (constitution) order-in-council, 1954-1958. However, only 12 out of the 16 section in 18 Ibid p.6 19 Individual Right under the 1989 Constitution p.3 that chapter positively recognized certain rights for protection²⁰. These are: Inhumantreatment;²¹ Slavery and forced labour;²² Deprivation of personal liberty;²³ Determination of right;²⁴ Private and family life;²⁵ Freedom of conscience;²⁶ Freedom of expression;²⁷ Peaceful assembly and association;²⁸ Freedom of movement;²⁹ Freedom from discrimination;³⁰ Compulsory acquisition of property;³¹

These rights were repeated verbatim in 1963 Republican Constitution, the subsequent constitution of 1979 and the following one of the 1989 which is expected to be fully operative from October 1, 1992 but have since then generally remained the same in substance except for minor alteration in arrangement, nomenclature, and amplification here and there.

For instance, the arrangement of the 1979 Constitution.³² The charter held in *Ganifawehinmi V Abacha*³³ to be an integral part of the Nigerian legal system is of higher authority and more

forceful by virtue of its international standard which makes it more superior to municipal legislation. More so, the jurisdiction of the court could not be ousted in respect of the charter, this is evident in the promulgation of Cap10 (Ratification and Enforcement Act) LFN1990.

However, the provision of the charter were further held to be the same as that of chapter IV of 1979 and 1999 constitution respectively, this enables any aggrieved person to have recourse to it upon the infringement of any of the fundamental rights as against the ouster clause which characterized the military Decree no 107 of 1993.

2.2.0: DISTINCTION BETWEEN HUMAN RIGHT AND FUNDAMENTAL HUMAN RIGHT

It is very important to explain the types of right as enshrined in chapter IV of the 1999 constitution before going in to the distinction between human right and fundamental human right. The rights are: Right to life- This is provided for in the 1999 constitution, Life is sacrosanct and deliberate killing is abhorred in all societies all over the world. This provision implies that everyone is entitled to respect for his or her life and safety. Again, right to life is obviously the most fundamental of all human right;³⁴ this is because other human rights can only be exercised by a person who is a life. This section which guarantees the right to life provides that:- (1) 'Every person has a right to life, and no one shall be deprive intentionally of his life, save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria.' (2) A person shall not be regarded as having been deprived of his life in contravention of this section.³⁵

The Constitution however recognizes some exceptions to the rule relating to preservation of life. The first is in the execution of a lawful sentence of a court of Law in Nigeria in respect of a criminal offence, for instance, an armed robber sentenced to death by a tribunal, secondly, death

which results from the use of allowable force in self-defence or defence of another person from unlawful violence or for the defence of one's own property; in order to effect a lawful arrest or to prevent the escape of a person lawfully detained or for the purpose of suppressing a riot or a mutiny.³⁶ Outside these Constitutional Exceptions, it is only illegal but highly morally reprehensible for anyone to take another's life, it is the attitude which has informed debate on euthanasia or Mercy Killing as recognized by the Medical 1960 Constitution Profession, this usually occur when a person is medically dead yet is organically alive.³⁷

Also, any killing outside the exceptions in section 33 of the Constitution of the federal republic of Nigeria is in my view unconstitutional and therefore illegal. It is in the light of the above that one has to recall the unfortunate incident which occurred in Ibadan, Oyo state in 1981. An accused that had an appeal against a death sentence pending at the Federal Court of Appeal was prematurely executed before the determination of his appeal. In *Aliu Bello V the Attorney General of Oyo State*, the dependants of the deceased (Nasiru Bello) sued the Attorney General of Oyo state who was the one who negligently recommended the execution of the deceased accused. The appeal was heard by the Supreme Court en- banc, the justice of the Supreme Court including the Chief Justice himself sat over the Case.

The Supreme Court found in favour of the relatives of the deceased with each of the justice condemning the Oyo state government in a most scathing languages. Aniagolu JSC observed that, The action of the Oyo state government was '.... a reckless disregard for the life and liberty of the subject and the principle of the Rule of Law. The 37 Ajomo M.A. Fundamental Human Right Under the Nigerian Constitution (1992) Nigerian Institute of International Affairs, Victoria Island, Lagos. p.4 38 Ibid p.4 39 (1986) 5 NWLR 828 brutal incident has bespattered the face of the Oyo state government with the paint brush of shame'.

RIGHT TO DIGNITY OF HUMAN PERSON-The Constitution confers on every individual to have his right to human dignity respected. It specifically forbids any form of slavery and no one may be “pawned or sold in to bondage”⁴⁰

The right to dignity of the human person is guaranteed under the constitution of the federal republic of Nigeria 1999 in the following terms:-1. Every individual is entitled to respect for the dignity of his person, and accordingly- a) no person shall be subjected to torture or to inhuman or degrading treatment; b) no person shall be held in slavery or servitude; and c) no person shall be require to perform forced or compulsory labour.

The Constitution prohibits torture and all forms of cruel, inhuman or degrading punishment and treatment. In the word of Niki Tobi (justice of the court of appeal), ‘The word "torture" etymologically means to put a person to some form of pain which could be extreme. It also means to put a person to some form of anguish or excessive pain.... It conveys the same meaning in section 31(1) (a). The torture under the sub-section could be a physical brutalization of the human person. An inhuman treatment is a barbarous, uncouth, and cruel treatment; a treatment which has no 40 ‘Fundamental Human Rights under the Nigerian Constitution’ p.5

41 Section 34 ‘Constitution of the Federal Republic of Nigeria’ 1999 human feeling on the part of the person inflicting the barbarity or cruelty. This means that there are no circumstances which justify the police or soldiers hurting or humiliating anyone using methods such as: Torturing prisoners or subjecting them to beatings or other pain in order to make them "confess" or to punish them, Beating suspected criminals after their arrest and before their guilty is establish, Denying prisoner’s food or water to make them co-operate or confess. What is permitted is only a reasonable force which may be used to detain a suspected criminal who resist arrest.

A recent comprehensive national survey carried out by the Nigerian institute of advanced legal studies on human rights and the administration of criminal justice in Nigeria reveals the heart-rending conditions under which incarcerated persons in Nigeria prisons and police cell are kept.

In view of this we would not be exaggerating the position if one concluded that a custodial arrest of any individual in Nigeria is an automatic violation of the right to dignity of the human person.

RIGHT OF PERSONAL LIBERTY:-The constitution of the federal republic of Nigeria 1999 which guarantees the right to personal liberty provides as follow: (1) Every person shall be entitled to his personal liberty and no person shall be deprived of such liberty.

One will not be exaggerating if one asserts that this right forms one of the bases for our nationalistic struggle for independence. The need to preserve this right is probably next in importance to that of the right to life. The liberty of the individual person is central to all the advantages of a civilized society. Current happening in the former Soviet Union and the former Eastern Europe show that people prefer their liberty to bread. To therefore deprive an individual of his personal liberty without just cause is a grave step in the process of administration of justice. Lord Atkin said as much in *Liversidge V Anderson* 45 on the role of the courts in protecting the right of the individual to this liberty even in time of emergency. In one of the most celebrated Orbits in English judicial jurisprudence he said: I view with apprehension ... the attitude of judges who, on a mere question of construction when face to face with claims involving the liberty of the subject, show themselves more executive-minded than the executive. ... in this country, amid the clash of arms, the law are not silent: they may be changed, but they speak the same language in war as in peace...' it has always been one of the pillars of freedom, one of the principles of liberty for which one recent authority we are now fighting that the 45 (1942)AC 206, 244 judges are no respecters of person and stand between the subject and any attempted encroachments on his liberty by the executive, alert to see that any coercive action is justified in law.

The provision recognizes the occasional need for detention of persons pending trial, but places a limit on the duration of such detention. It also requires quick disposition of cases. Under the right to personal liberty a person accused of an offence is entitled to be brought to trial within a time limit-two month in the case of persons in custody and three month for person on bail⁴⁷ In *Dele GiwaV Inspector General of Police*⁴⁸the applicant Dele Giwa had filed an application against the Inspector General of Police and the Attorney General of the Federation alleging a breach of his fundamental human rights as entrenched in section 35 of the constitution of the Federal Republic of Nigeria. Applicant was released from custody following the order of the court in the matter.

RIGHT TO FAIR HEARING: Right to fair hearing is guaranteed in the constitution of the federal republic of Nigeria 1999.it provides as follows: ‘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 46 Fundamental Human Rights under the Nigeria Constitution p.6 47 Section 32(2) (a-b) 1979 Constitution 48 6 NCLR 369 within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality⁴⁹’.

The right to fair hearing implies the right of everyone to have his cause heard, for if a cause is not heard, the question of fair hearing cannot arise. This right is another fundamental right upon which the full enjoyment of the other rights is hinged. Infact, the painstaking observation of this right within any society means the foundation of such a society is rooted in justice and its citizens can be reassured of fair play at all times. This in effect means that a citizen's right or obligation must not be decided until the disputing parties are heard. Upon this then is founded the historical twin pillars of justice i.e. that a man must be given the opportunity of presenting his own side of a matter (*audialterampartem*) and that an accuser should not sit as a judge in his own cause

(*nemo iudex in causa sua*).⁵⁰ The impartiality of the judge must be assured and proceedings must take place before a court or tribunal set up according to law.

RIGHT TO PRIVATE AND FAMILY LIFE: The constitution of the federal republic of Nigeria 1999 guarantees the rights to private and family life as follows: 'The privacy of citizens, their homes, correspondence, telephone conversations and 49 Section 36 Constitution of the Federal Republic of Nigeria 1999 50' Human Right Law and Practice in Nigeria: An introduction P.140&142 telegraphic communications is hereby guaranteed and protected.'⁵¹ The constitution guarantees citizens the right to the privacy of their homes, correspondence, telephone conversation, and telegraphic communications.⁵² Also one must however point out that this right guarantees that security agencies should not tap one's telephone lines or subject one's house to search or his property to seizure. The most importance factor of interference remains police powers of entry in to homes in the course of arrest of a suspected criminal or investigation of criminal matter. Although the relevant law enjoins the police to obtain a search warrant, the provision is observed more in breach than in observance.

FREEDOM OF THOUGHT CONSCIENCE AND RELIGION: The constitution of Nigeria, which guarantees this right provides as follows:-'Every person shall be entitled to freedom of thought, conscience and religion, including freedom to change his religion or belief, and freedom (either alone or in community with others, and in public or in private) to manifest and propagate his religion or belief in worship, teaching, practice and observance'.

The right to freedom of thought, conscience and religion is an extension of the rights to freedom of expression, assembly and association.⁵⁵ It has been said that religion is the opium of the people and as such it is expected that the state will not foist one religion on the people, in this regard, the constitution is quite categorical in that 'The government of the federation or of a state shall not

adopt any religion as state religion⁵⁶ In other words, the state remains a secular state, secularity requires giving the over one hundred or so religions which are practiced in the country equal opportunity to flourish or perish. Unrestrained freedom has, however brought with it reckless and wanton exhibition of fanaticism which the law did not contemplate and should not tolerate, recurring incidents of religious riots in the country have continued to test the patience and tolerance of the government and other law-abiding citizens.⁵⁷

RIGHT TO FREEDOM OF EXPRESSION AND PRESS:-The constitution of the federal republic of Nigeria 1999 provides as follows:-‘Every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference’.⁵⁸ This freedom can be exercised orally in writing through press or electric media and extend even to the owning, 55Human Rights Law and Practice in Nigeria: An introduction p.17356 Section 10, Constitution Of The Federal Republic Of Nigeria 1979 57 Fundamental Human Rights under the Nigerian Constitution p.10 58 Section 39, Constitution of the Federal Republic of Nigeria 1999 establishing or operating any media whatsoever.⁵⁹ However with regard to radio and television only the federal government or state government or any person or body expressly authorized by the president can operate it. The common law principles also lead credence to reasonable restriction on this right in that no one can claim such a right to slander or libel another person.⁶⁰ The press has rightly been called the fourth estate of the realm, its role supplements that of the main organs of state, namely the executive, the legislature and the judiciary. One of the best articulations of the rationale for freedom of expression could be found in the immortal words of John Stuart Mill he wrote:

‘If all mankind minus one, were of one opinion, and only one person were of the contrary opinion, mankind would be no more justified in silencing that one person, than he, if he had the

power would be justified in silencing mankind'. The peculiar evil of silencing the expression of an opinion is that it is robbing the human race, posterity as well as the existing generation those who dissent from the opinion still more than those who hold it. if the opinion is right, they are deprived of the opportunity 59 Means of Enforcing Human Rights, Accountability and Democracy in Nigeria p.13 60 Ibid p.13-14 of exchanging error of truth; if wrong they lose, what is almost as great a benefit, the clearer perception and the livelier impression of truth, produced by its collision with error.'⁶¹

There can be no progress if man is not in a condition where he has the freedom to search for the truth, and where ideas are able to clash with each other without hindrance from the state or the society.⁶²

Again this right is usually tagged the right to information, this freedom is regarded as the bedrock of democracy, it steam from the notion that no one has the monopoly of truth.⁶³ Democracy calls for an open society, it believes that as many advances in knowledge he betters his condition and that of society and therefore man moves on the route of progress. 'If we have an assurance for the future, it lies in education, in the dissemination of correct information, in availing ourselves of the investigation of science, in the formation of a sound public opinion which must rest on a board liberal culture'. To deny others the right to express their opinion is to assume one's own infallibility, but no man is infallible and if so, it is always possible that the opinion he holds in a given case is mistaken.⁶⁴

RIGHT TO PEACEFUL ASSEMBLY AND ASSOCIATION: - The constitution of the federal republic of Nigeria provides: 'Every person shall be entitled to assemble

freely and associate with other persons, and in particular he may form or belong to any political party, trade union or any other association for the protection of his interests.⁶⁵

Freedom of assembly and association is a necessary part of the democratic process. Democracy is essentially concerned with identifying and satisfying yearnings and feelings of the individuals and groups. Peoples ventilate their feelings and desires through demonstrations and by forming interest groups without been compelled.⁶⁶

Furthermore, the freedom of expression and the right to freedom of religion, thought and conscience, may be exercised in concert with others only if there is freedom of assembly and association. Also this is an extension of the right to personal liberty.

The right to form association include the right to choose the purpose for which the association is formed, lay down who shall be the members and its mode and manner of operation, there must always be a general capacity for citizens to join, without state interference in the assembly/association in order to attain various end.⁶⁷

RIGHT TO FREEDOM OF MOVEMENT:-The right to freedom of movement guaranteed in the constitution provides: 'Every citizen of Nigeria is entitled to move freely throughout Nigeria and to reside in any part thereof, and no citizen of Nigeria shall be expelled from Nigeria or refused entry hereto or exit therefrom'.⁶⁸

The right to freedom of movement is also a one way of curtailing this right, however, is that rather than physically restrain the citizen, the government may seize the citizen's passport which is regarded as the property of the federal government. This was the case in *Braithwaite V Chief of Supreme Headquarters*.⁶⁹ The corollary of this right is that no citizen can be expelled from the country nor be denied entry in to or exit from Nigeria. The leading case on freedom of movement is *Shugaba AbduDarman V Minister of Internal Affairs*⁷¹, there the court rightly held that

Shugaba Darman, a majority leader in the Borno state house of assembly under the ticket of the great Nigerian peoples' party, during the second republic, was a Nigerian. A deportation order had been served on the pretext that he was not a Nigeria but a Chadian and was therefore deported to Chad, his Nigeria passport having been taken away from him. The court held that the deportation was an infringement of his fundamental right to freedom of movement as a Nigerian Citizen under Section 38 of Constitution of the Federal Republic of Nigeria 1979. A person's right of movement may be restricted and even altered if for example he has committed a crime in one country and has escaped to another.⁷²

RIGHT TO FREEDOM FROM DISCRIMINATION: - The constitution of the federal republic of Nigeria provides : 'A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person- (a) be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizen of Nigeria of other communities, ethnic groups, places of origin, sex, religious or political opinions are not made subject'.⁷³ This particular right is founded on the ethos of the rule of law as it prescribes legal equality for all Nigerians within the federation.⁷⁴ While this particular right represents the most noble ideal within a federation like Nigeria, enforcement has become somewhat difficult and its benefits for some citizens illusory. The problem is accentuated

by the calls for special concessions by communities who claim to be less developed and disadvantaged.⁷⁵ Discrimination becomes morally unacceptable only when it takes a particular form, namely treating a person less favourably than others on account of a consideration which is morally irrelevant.⁷⁶ The obvious limitation of this right to freedom from discrimination is that it is incompatible with the national policy of reflecting the federal character of the nation in the appointment to public offices like in the military and police forces.

RIGHT TO PROPERTY:-The 1999 constitution of Nigeria guarantees the right to acquire and own immovable property anywhere in Nigeria. This section provides: ‘Subject to the provisions of this constitution, every citizen of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria.’⁷⁷ Also, while the constitution does not positively guarantee the right to private ownership of property, it guarantees protection against deprivation of what has been lawfully acquired.⁷⁸

THE DISTINCTION

Human rights begin with abstract assumptions which aspire to universal validity. The abstract quality of human rights is the necessary condition of their aspiration to or presumption of universality.⁷⁹ Human right is referred by definition to human beings and is capable of identifying that which in terms of (essential) justice should be due to every human being. The strength of human right lies in the fact that they are after all a philosophy. Universality is an inevitable prerequisite or an inevitable implication of the concept of human right.⁸⁰ Human rights are universal, not in the sense of being a vernacular of cultural prescriptions, but rather as a language for the bestowal of moral power. Their role is not that of endowing culture with a substantive content but of seeking to condition all actors in such a way that they can liberally

fashion that counter. At the same time rather than as the cutting rigidity of deontological arms, human rights must be conceptualized as the content of a politically moulded deliberation perceptive toward consequences. According to Ignatieff, human rights are therefore “a form of politics” which must introduce moral ends into reality; moreover the rights are politics which must introduce moral ends into reality; moreover the rights are “political” because they imply a confrontation between the holders of the rights and the holders of power.

This means that “human rights” is the only universally available moral vernacular that validates the claims of women and children against the oppression they experienced in patriarchal or tribal societies; it is the only vernacular that enables 80 Ibid p.5 dependent persons to perceive themselves as moral agents and to act against practices arranged marriages, purdah, civic disenfranchisement, genital mutilation, domestic slavery and so on that are ratified by the weight and authority of their culture.⁸¹

Human rights are a minimum, Kantian, neutral, transcendental, moral, deontological condition, but they are also at the same time a structure of values, ethically framed, politically negotiable and consequence-sensitive; they are individualistic but at the same time are conditions of collective unities.⁸²

Human right concludes by bringing a deontological claim, concerning that which we owe to human beings and which is linked at least to moral theory and probably also to anthropology.⁸³

Human rights may be afflicted by tension between universal denotation – i.e. the reference to all human beings – and the particularism, as dependent on consent, of their own substantive claims: in relation to which they are even open to universal dissent.

Fundamental right makes no claim to universality, whilst on the other hand presuppose consent – or “recognition”. That consent is a condition of their 81 Ibid p.2, 82 Ibid p.3, 83 Ibid p.4 “existence”: of course, not necessarily over the whole planet, but within a given system.⁸⁴

Fundamental rights mean that the legal-political system has embarked on a journey capable of progress toward liberal democracy. Within this type of system it is plausible that conception of human rights may interact with one another and that philosophical auspices may translate themselves into new “fundamental” rights, capable of “acceptance” and capable of fulfilling that positive function of criteria of recognition. Fundamental rights focus on that which is capable of contributing to the existence of a society (or also to recommend them as that which could or should do so): this involves analysis or prescriptions which are not expressed in deontological terms, but in ethical, institutional, political or teleological terms. Fundamental rights must be concretized just as human rights must be considered in the abstract.

Fundamental rights are as encompassing those selective and substantive criteria which, together with others, enable judgments of “validity”. If some individual “rights”, such as that of life, freedom of thought, equality before the law, the right to personal pursuit of happiness, are effective within a legal system, this means that they are used every time it is necessary, and even for rejecting or pre-empting legal norms at any level that are capable of violating the substance of those rights.

The capacity of “fundamental rights” to be effective is therefore a quality which they possess by definition: but it does not depend only on the existence of legal remedies, but rather more deeply on the possibility of their playing a role which, within a general theory of law, is that of fundamental meta-norms of “substantive” nature (i.e. not simply procedural).⁸⁵

Fundamental right may carry out reflections that are less exposed to “prescriptivism”: it is possible coherently to adopt a cognitive and non-normative stance by asking which rights operate as criteria for substantive convalidation, or as meta-norms for the recognition of validity, within a given system. It is an operation which has possible performative implications, but its status is nonetheless scientifically legitimate, analogous to that of descriptive sociology, or an “ordinary” check of valid and efficacious law, etc.⁸⁶

Finally, function affiliation and relevance are the requisites which indentify a right as “fundamental” and clearly give witness in favour of the separation between fundamental and universal.

CHAPTER 3

THE CONCEPT OF RIGHTS OF AN ACCUSED PERSON

3.0.0: WHO IS THE ACCUSED PERSON

Under Chapter IV of the 1999 Constitution of the Federal Republic of Nigeria, the rights of an accused person standing trial for a criminal offence are fully guaranteed. The relevant sections are sections 35 and 36. Such right includes, the right to be informed promptly in the language that he understands and in detail the nature of the offence; right to be given adequate time and facilities for the preparation of his defence; to defend himself in person or by legal practitioner of

his own choice, to be presumed innocent until he is proved guilty, the right to remain silent, have without payment the assistance of an interpreter among others.⁸⁷

All these rights are designed to adequately protect the accused person alleged to have committed any criminal offence in the Administration of Criminal Justice, so that justice is not only done but seen to have been done and actually done.

3.1.0: RIGHT OF AN ACCUSED PERSON

The requirement or condition of the Constitutional rights of an accused person are not limited to the following but includes:-

RIGHT TO FAIR HEARING: - Fair hearing is equivalent to a fair trial. The right to a fair hearing within a reasonable time is the fundamental right of an accused person guaranteed in the constitution. This section⁸⁸ contains two distinct rights for every accused person. First, there must be a fair hearing; second, the trial must be conducted within a reasonable time. The trial judge must also ensure compliance with the fundamental rights of the accused in Section 36 (6) of the constitution and there cannot be a fair trial, when any of the constitutional rights of the accused are violated. ⁸⁹ In *Torri v. National Park Service of Nigeria*⁹⁰ ‘The right to fair hearing is described as an extreme fundamental right in the constitution and the breach thereof has its implication on the proceedings. Every person charged with a criminal offence is entitled to be heard. This right is inalienable and an indispensable requirement of any judicial decision. However, fair hearing is not some kind of abstract principle. In *Uwazurike v. Attorney-General of the Federation*⁹¹ the principle of fair hearing is described to entails a trial done in accordance with the rules of natural justice. Natural justice in the broad sense is justice done in circumstances which are just equitable and impartial. Fair hearing is really in the procedure followed in the adjudication of a case and not in the correctness of the decision. In *Olufeagba*

vAbdur-Raheem.⁹² It was said that fair hearing encompasses the twin pillars of natural justice namely: Audi Alteram Partem meaning hear the other side and Nemo debet esse Judex in propria causa— meaning no one can be a judge in his own case. NikiTobi JSC, dealt with the issue of fair hearing he stated inter alia,

The fair hearing principle entrenched in the constitution is so fundamental in the judicial process or the administration of justice that breach of it will vitiate or nullify the whole proceedings and a party cannot be heard to say that the proceedings were properly conducted and should be saved because of such proper condition. Once the appellate court comes to the conclusion that there is/was a breach of the principle of fair hearing, the proceedings (and /add decision) cannot be salvaged as they are null and void ab initio.

The yardstick for determining the observance of fair hearing in trials is not the question whether any injustice has been occasioned to any party due to want of hearing, it is rather the question whether an opportunity of hearing was afforded to parties entitled to be heard. Fair hearing lies in the procedure followed by a court at a particular time in arriving at its decision and not necessarily in the soundness of the decision. The test of a fair hearing is the impression of a reasonable man present at the trial whether, from his observation justice has been done in the case.⁹³ The onus of showing any irregularity as regards fair hearing is on the complainant. Once these four canons of criminal procedures in Nigeria are present in a trial, laid down rules and procedure, speedy trial and public hearing, unbiased or an impartial trial and absolute conformity a fair trial or fair hearing has been enforced.⁹⁴

RIGHT TO BE INFORMED PROMPTLY: - ‘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 the nature of the offence’⁹⁵. Although this requirements of law concerns the first stage at

which time an accused is charged, it is also a reinforcement of section 215 of the Criminal Procedure Act in order to guarantee fair hearing and trial of the accused, this was provided for in *Timothy v F.R.N*⁹⁶

Every accused person arraigned before the court in criminal trial must understand the nature of the charge brought against him. The charge must be read out to the accused in the language that he understands before the plea is taken. This requirement is mandatory and the failure of a trial judge to comply with the provisions of Section 36 (6) (a) of the 1999 constitution will render the trial a nullity.⁹⁷

Where the accused understand the language of the court, which is English, it becomes unnecessary to record that fact, it is only where the accused obviously does not understand the language of the court that the law places a burden on the court to put on record a language spoken by the accused and the fact that the charge was read over and explained to him in that language is however good practice to ask the accused the question whether he understood the charge/nature as read and explained and to record his answer. Although the omission to expressly do so would not constitute non-compliance with the constitutional and procedural requirements, it is sufficient as a whole, if it would be gathered that the accused understood the nature of the charge and that he intended to plead either guilty or not guilty to the charge, this was the provision in *Timothy v FRN*.⁹⁸ In *Bayo v. FRN*⁹⁹ the court emphasized the fact that, it is entitled to be informed promptly of anything said by the accused person in a language which the court does not understand. The onus is upon the, 97 Criminal Evidence in Nigeria p.91, 98 (2008) All FWLR (pt 402) p.1138,1139, 99 (2008) All FWLR (pt428) p.304,305 prosecution to prove a charge against an accused person and that onus is one beyond reasonable doubt¹⁰⁰.

The accused must have opportunity to plea to the charge or charges against him. Thus a charge is a document containing the statement and particulars of offence(s) with which a person is accused and tried before a court of law. The rule postulates that a charge must be clear enough as to give the accused person adequate notice of the offence with which he is charged. A good charge free from ambiguity will reflect, in this order, the following: The name of the accused; date of commission of the offence, place of commission of the offence, the description of the offence by the name giving to the offence by the law creating it where the law defines the offence; or so much of the particulars of the offence as will give the accused sufficient notice of the charge against him; the section of the law under which the accused will be punished and the law itself. A charge that is bad for duplicity does not necessarily invalidate the charge or the trial except it has occasioned a miscarriage of justice.¹⁰¹

The criminal justice system in Nigeria requires that the contents of a charge should not be subject of speculation and inference, rather the essential ingredient of the offence must be disclosed in the charge. 100 Solola v State 101 The Nigerian Law School Electronic Hand Book on Criminal Procedure p.39-40 This is an inalienable right of an accused person where however, a charge contains adequate and enough information for the purpose of proceedings, one cannot impute an offence different from the one contained in the charge. A charge must be provided for by statute where a charge has been framed in accordance with the format of the relevant law, explaining the

offence alleged to have been committed and spelling out the elements of that offence in good, lucid, precise, specific and readily understandable language, it is regarded as substantially proper and valid in *Timothy vFRN*.¹⁰² In *Okike v. IPDC*¹⁰³ it was held that an accused person cannot be allowed to approbate and reprobate at the same time.

RIGHT TO BE GIVEN ADEQUATE TIME AND FACILITIES FOR THE PREPARATION OF HIS DEFENCE,¹⁰⁴ the accused must be given adequate time and facilities to prepare his defence. In this area, the court should grant adjournment to the accused person either to obtain the service of a counsel where necessary or call a witness that will be material to his case.¹⁰⁵ In *Ugwu v The State*¹⁰⁶ it was said that the opportunity to defend an allegation is a cardinal rule of fair hearing and an accused charged with an offence has the right to present his defence. Therefore an person is entitled to cross-examine the prosecution witnesses and call witnesses to give evidence for the defence.

Every accused person has a constitutional right under section 36(6)(b) of the constitution to be supplied with the extra-judicial written statements of the prosecution witnesses before the trial. In criminal trials at the High Court the prosecution will always file proofs of evidence which include the written statements made by the prosecution witnesses to the police. On the other hand the written statements of the prosecution witnesses are not supplied as a matter of course in magistrate courts and defence counsel will have to request for their production. The practice of supplying proofs of evidence in the high court has constitutional authority and the failure to produce the extra-judicial written statements of the witnesses violates the provisions of section 36 (6) (b) of the 1999 Constitution¹⁰⁷. In *Udo v The State* ¹⁰⁸The Supreme Court held that a trial judge must grant adjournment in a murder charge once the defence counsel is absent at the hearing for the right of the accused person to fair hearing is not only statutory but constitutional.

Where a witness is absent and an adjournment is sought, it has been held that the accused should normally satisfy that: (a) the witness is material to his case, (b) he, the 107 Criminal Evidence in Nigeria p.94, 108 (1988) 3 NWLR 316, defendant has not been guilty of neglect in procuring the witness to attend and; (c) there is a reasonable expectation that can procure his attendant for a certain date. It is the fundamental of fair hearing that the accused person must be given adequate time and facility to be represented by a counsel of his choice. This was the case in *Ogoli v. Federal Republic of Nigeria*¹⁰⁹ the accused counsel were absent and the tribunal adjourned on two occasions for hearing. The court ordered that hearing notice be served on the counsel. The counsel still did not appear on the adjourned date. The ground for the absence was that they were not served with the hearing notice. The tribunal continued with proceeding even though it was informed that the defence counsel had not been served with the hearing notice on allegation that the accused was not given a fair hearing based on rule of Audi Alteram Partem. The Supreme court said, under Section 36(6) (b-c) of the constitution, every person charged with a criminal offence is entitled not only to be given adequate time and facility for the preparation of his offence, but he is also entitled to defend himself in person or by a legal practitioner of his choice, and the case in which he has been given such an opportunity but the legal practitioner has himself failed to discharge his duty to his client..I am satisfied that they 109 (2002)10 NSCQR(pt1) 498 were not given adequate opportunity to be represented by a legal practitioner.

RIGHT TO DEFEND HIMSELF IN PERSON OR BY LEGAL PRACTITIONERS

OF HIS OWN CHOICE;¹¹⁰ when an accused person is charged with a capital offence and is unable to secure the services of counsel, the trial judge must appoint counsel, even without the consent of the accused to conduct his defence and at the expense of the state. An indigent

accused person may apply for services of counsel through any legal aid service.¹¹¹ In *Nigeria Custom Prison Service v. Adekeye*¹¹² it was observed that it is a fundamental principle of law that an accused person standing trial upon a criminal allegation be afforded the opportunity to defend himself in person or by legal practitioners of his choice. Where leave is sought by the accused to get the service of a lawyer he must be granted leave of court. In criminal proceeding, where an accused was not afforded adequate opportunity to be represented by a legal practitioner of his choice, the proceeding is a nullity. However, where the accused has been given such adequate opportunity but the legal practitioner inadvertently failed to discharge his professional duty to his client, the proceeding is valid. This is because the accused person has the choice to disengage the counsel and employ another that would adequately represent his interest. Where 110 Section 36(6)(c) Constitution of the Federal Republic of Nigeria, the accused is brought before the court without representation, the court must inform him that he has a right to be represented by a counsel. Such rights are not waivable¹¹³.

THE RIGHT TO EXAMINE IN PERSON OR BY HIS LEGAL PRACTITIONERS: An accused has the right to examine in person or by his legal practitioners (the defence) 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 prosecution;¹¹⁴ where therefore a trial court did not allow the accused to cross examine each prosecution witness as they give evidence, but merely asked the witnesses several question, the supreme court has held that, that would amount to a breach of fair hearing and that the court is in breach of Section 36(6) (d) in *The State v. Aibangbe*¹¹⁵. The Supreme Court in the case of *Oforlete v TheState*¹¹⁶, citing Black

Stone's Criminal Practice 1991, decided that the effect of failure to cross examine a witness upon a particular matter amounts to tacit acceptance of the truth of the witness evidence. The court further stated that: 'A party who fails to cross examine a witness upon a particular matter in respect of which it is proposed to contradict him to impeach his credit by calling other witness, tacitly accepts the truth of the witness's evidence in chief on the matter, and will not thereafter be entitled to invite the jury to disbelieve him in that regard. The proper course is to challenge the witness at the witness box or at any rate, to make it plain to him at that stage that his evidence is not accepted.'¹¹⁷

In *Nkebisi v State*,¹¹⁸ the first accused person was employed as a guard at a fish pond, he was subsequently removed and replaced with the deceased; he was dissatisfied and threatened to kill the deceased in the presence of people. The deceased thereafter disappeared and was not found again. The accused persons were arrested and arraigned in the high court of Enugu State on a charge of murder. PW5, a relative of the deceased gave a graphic account of how the accused persons killed the deceased and threw his body in the river. The trial court found them guilty convicted and sentenced them to death. Aggrieved, the accused persons appealed to the Court of Appeal where their appeal was dismissed. Yet aggrieved, they appealed to the Supreme Court but it was dismissed. It was held that, a case is not lost on the ground that those who are witnesses are members of the same family or community, what is important is their credibility and that they are not tainted witnesses. The mere fact that witnesses are relations of the deceased does not mean that they are not competent witnesses for the prosecution. Evidence of a relation can be accepted, if 117 Constitutional Safeguard of the Accused Person Rights to Fair Trial in the Nigeria Criminal Law p.275, 118 (2010)All FWLR (pt521) p. 1407, 1408 cogent enough to rule out the possibility of deliberate falsehood and bias. There is no law which prohibits blood

relations from testifying for the prosecution where such a relation is the victim of the crime committed. In the instant case, the evidence given by PW5 was cogent; therefore the trial court rightly relied on it to convict the accused person.

The noble art of cross-examination constitutes a lethal weapon in the hands of the adversary to enable him effect the demolition of the case of the opposing party. It is therefore good practice for counsel not only to put across his client's cases through cross-examination, he should as a matter of the utmost necessity use the opportunity to negate the credit of that witness whose evidence is under fire.¹¹⁹

RIGHT TO AN INTERPRETER: it is the cardinal principle of criminal justice that an accused person should have a right to an interpreter. 'An accused person is entitled to have without payment, the assistance of an interpreter; if he cannot understand the language used at the trial of the offence; ¹²⁰Criminal trials in Nigeria are conducted in English but because there exists a large illiterate population, the 119 Constitutional Safeguard of the Accused Person Rights to Fair Trial in the Nigeria Criminal Law p.275, 120 Section(36)(6)(e) Constitution of the Federal Republic of Nigeria services of an interpreter is frequently required.¹²¹ In the case of *Uwaekweghinya v.State*¹²² the Supreme Court per Dahiru Musdapher JSC said thus:

Now by the provision of Section 36(6)(e) of the 1999 constitution, the law requires that there shall be adequate interpretation to the accused person of anything said in a language which he does not understand: the formal Federal Supreme Court in the case of *Queen v. Equabor*¹²³ stated that if the accused does not ask for an interpreter, the failure to supply one would be treated as a matter of procedure and a conviction may only be set aside if the failure to supply an interpreter has led to a miscarriage of justice and that if the accused is represented by counsel the objection must be taken at the trial in the first instance and not on appeal

In the case of *Ajayi v. Zaria N.A.*¹²⁴ The court allowing the appeal held that an appellant discharges the burden of showing that a failure of justice has taken place for want of interpretation or adequate interpretation by showing 'that a reasonable person who was present at the trial might have supposed that the interpretation was 121 Constitutional Safeguard of the Accused Person Rights to Fair Trial in the Nigeria Criminal Law, p.95, 122 (2005) 1 NCC 369, 379, 123 (1962) 1 All NLR 287, 124 (1963) 1 All NLR 169, defective to such an extent as to deny the appellant a fair trial'. When the presence of an interpreter is recorded at the beginning of a trial, it is not necessary to continue to record at every stage of the proceedings that he interpreted when the whole trial was conducted on the same day. *Bayo v. FRN*¹²⁵ the procedure may however be dispensed with where the accused so wishes and trial judge is of the opinion that the accused does not require any interpretation of the proceedings. The right of the accused to an interpreter cannot however be raised on appeal unless he claimed the right during his trial and was denied it. Also, the matter of interpretation is of practice. What the appellant court looks out for is, whether any substantial miscarriage of justice has resulted from a failure to follow the correct practice. An appellant who complains that the proceedings of a court were not correctly interpreted to him must point to instances where what he himself said was wrongly or incompletely interpreted; he must establish conclusively that he did not receive the benefit of a full and accurate interpretation by reference to particular omission or inaccuracies in the interpretation made to him, this was held in *Bayo v. FRN*¹²⁶ An interpreter has an important role to play in the trial of an accused person. He is not a party to the case and therefore he has no axe to grind in the facts of the case. In other words, he is not an interested person in the outcome of the case¹²⁷.

The use of an interpreter in court during the trial of an accused person has also been made mandatory. In *Bayo v. FRN*¹²⁸ there should also be adequate interpretation to the court of

anything said by the accused person in a language which the court does not understand. In other words, it is not open to the interpreter

To summarise evidence or interpret only those things he considers important for the court to hear.

NOT PUNISHING AN ACCUSED FOR AN UNWRITTEN OFFENCE: An accused person who it is seen to have been tried for, it was observed that in *Omojo v. Federal Republic of Nigeria*¹²⁹ the Constitution of the Federal Republic of Nigeria provides against retroactivity in legislation and punishing the accused person for offences not provided by statute. In other words, while¹³⁰ provides against retroactive legislation, under¹³¹ a person cannot be punished for an offence in customary law which is not written.

RIGHT TO PRESUMPTION OF INNOCENT: ‘Every person who is charge with a criminal offence shall be presumed to be innocent until he is proved guilty’;¹³² The accused is always presumed innocent until his guilt is proved beyond reasonable 128 (2008) All FWLR (pt 428) p. 304, 305, 129 (2008) All FWLR (pt415) p.1656, 1661, 130 Section(36)(8) Constitution of the Federal Republic of Nigeria 1999, 131 Ibid Section(36)(12), 132 Ibid Section(36)(5) doubt. In *Nwaobasi v State*¹³³ the duty to proof beyond reasonable doubt only requires the prosecution to provide sufficient admissible evidence that would prima facie establish that it was act/acts of the person accused and no other person else that was the cause of the killing or death of the deceased. Such evidence must exclude other reasonable possibilities of acts that could be attributed as the cause of the death or killing in question and therefore call for explanation from the person. For the accused person to be proved guilty of an offence, the evidence must show or establish a direct link between the act/acts of the deceased person and the death in question. Also, the act/acts of the person presumed innocent must have been directly connected to the death of the deceased.

RIGHT TO SILENT: ‘Similarly a person who is arrested or detained shall have the right to remain silent or avoid answering any question until after consultation with a legal practitioner or any other person of his choice;¹³⁴ person who is tried for a criminal offence shall not be compelled to give evidence at the trial;¹³⁵. Silence envisaged under the constitution is to prevent incrimination before a charge, but once there has been a formal charge, it would in view of this be unreasonable to keep silent. The right to silence of the accused is a consequence of the presumption of innocence. There is no burden on the accused to prove his innocence and therefore 133 (2008) All FWLR (pt446) p.1976, 1977, 134 Section (35)(2) Constitution of the Federal Republic of Nigeria 1999, 135 Ibid Section (36)(11), he is not bound to say anything before or during trial. The accused is not obliged to say anything during interrogation by the police and this is the basis of the mandatory caution to all suspects before police interrogation. The accused is not obliged to give evidence at any criminal trial.¹³⁶ It is however, not in all cases that an arrested or detained person for an alleged offence will remain silent when he is confronted with an allegation of a crime. Human nature, being what it is, it is natural to react to an allegation of a crime particularly when the arrested person realizes the fact that his freedom is in jeopardy or that his reputation is at stake.¹³⁷

BAIL: Bail is the detention for the procurement of the accused; the necessity to procure medical or social report pending final disposal of the case. In *Uwazurike v. Attorney General of the Federation*¹³⁸ the courts have over the years established criteria or guidelines that should be taken into consideration in an application for bail. The criteria to be followed in taking a decision in determining whether to grant bail by the court include: The evidence available against the accused; Availability of the accused to stand trial; The nature and gravity of the offence; The likelihood of the accused committing another offence while on bail, The likelihood of the

accused interfering with the course of justice; The criminal antecedents of the accused person; The likelihood of further charge being brought against the accused; The 136 An Accused Person's Rights in Nigeria Criminal Law p.24-25, 137 Ibid p.24, 138 (2009) All FWLR (pt 489) p.549,553, probability that the accused may not surrender himself for trial; The detention for the protection of the accused; The necessity to procure medical or social report pending final disposal of the case. In *Suleiman v. Commissioner of Police*¹³⁹ per Tobi JSC said: The most important consideration in the bail decision is the determination of what criteria the court should use or invoke in granting or refuse bail. The bail ability of the accused depends largely upon the weight the court attaches to one or several of the criteria open to it in any given case. The determination of the criteria is quite important because the liberty of the individual stands or falls by the decision of the court. In performing the judicial function, the court wields a very extensive discretionary power, which must be exercised judicially and judiciously. The main function of bail is to ensure the presence of the accused at the trial. That is the cynosure of all criteria it is the centre-piece, and so this criterion is 139 (2008) All FWLR (pt 425) p.1627-1628,1630 regarded as not only the omnibus ground of granting or refusing bail, but the most important'. In *Uwazurike v Attorney General of the Federation*¹⁴⁰ the attitude of the court to application for bail irrespective of the nature and gravity of offence with which a person is charged, the onus is on the prosecution to show the criminal culpability of the accused which will serve as a pointer to the fact that an accused person should not be released on bail. On the other hand, the accused has a duty to show that he is not criminally liable in order not to jeopardise his chances of bail. The discretion of the court must be based on fact and not in vacuo. Before it can be said that a judge properly exercised the discretion whether to grant or refuse bail with sufficient, correct and convincing reasons, and not on his whims and fancies, he must examine all the materials before

him and consider the applicable law.¹⁴¹ *Munir v. FRN*¹⁴² The principles upon which an applicant will be admitted to bail pending his appeal include: (1) That bail will not be granted pending an appeal save in exceptional circumstances or, (2) Where the hearing of the appeal is likely to be delayed, (3) that in dealing with the latter class of the case, the court will have regard: (A) not only to the length of time which must elapse before the appeal can be heard, but also to (B) the length of the sentence to be appealed from and further (C) that the 140 (2008) All FWLR (489) p.549, 553, 141 *Uwazurike v Attorney General of the Federation*

142 (2009) All FWLR pt500 p.775, 776, two matters will be considered in relation to one another. In other words, in the absence of special circumstances, bail will not be granted unless a refusal would have the result of a considerable proportion of the sentence being served before the appeal can be heard. In determining exceptional or special circumstances in granting bail pending appeal, the courts take into consideration the following (1) If the applicant being first offender had previously been of good behaviour. (2) If substantial grounds of law are involved in the appeal, it is useful to see if there is any prospect of success on appeal or where a sentence is manifestly contestable as to whether or not it is a sentence known to the law, bail should be granted. (3) Where having regard to the very heavy congestion of appeals pending in the courts, a refusal of bail of the applicant will have the result of the whole or a considerable portion of the sentence imposed on the applicant being served before the applicant can be heard (4) Where the application is

based on ill-health and the applicant cannot get the necessary treatment in prison or where the machine used in treating the applicant is not movable, thus cannot be moved to prison in such circumstances and in order not to put the applicant health in serious jeopardy, bail will be granted. (5) Before considering the above conditions for admitting a convicted person serving a term of imprisonment to bail pending determination of his appeal, it is necessary or imperative to ensure that the following preliminary conditions have been complied with, namely: That the applicant has indeed, in fact lodged an appeal to the Court of Appeal which is pending; Has

complied with the conditions of appeal imposed and these will show the seriousness of his application; and if he was granted bail during his trial that he has not attempted or tried to jump bail.¹⁴³ The grant or otherwise of bail pending trial or pending an appeal is discretionary like other discretions is required to be exercised judiciously and judicially to the court faced with such an application. The court must not refuse the accused bail as a punishment; this is because the accused is usually presumed innocent until his guilt is proved. The accused is only required to enter into recognizance in the sum fixed by the court; it is not a requirement of the law that he should deposit money before bail is granted. Where a magistrate to whom application for bail has been made refused or neglected to grant bail, application could be made to a judge of high court who shall have power to grant such bail. Once a court has refused to grant bail, application for bail should be filed at the higher court, not in any court of the same co-ordinate jurisdiction.¹⁴⁴

3.3.0: CRIMINAL CODE ACT

There are certain rights provided for an accused person under the Criminal Procedure Code used in the Northern States, such rights are as follows:

RIGHTS TO AN INTERPRETER: ‘When any evidence is given in a language not 143 Munir v FRN 144 Electronic Hand Book on Criminal Procedure. p.35 understood by the accused and the accused is present in court, it shall be interpreted to him in a language understood by him.’¹⁴⁵ An interpreter must be provided for an accused person for better comprehension of the charge against him because he is entitled to it.

RIGHT TO REMAIN SILENT: ‘The failure of the accused to give evidence shall not be made the subject of any comment by the prosecution, but the court may draw inferences as it thinks fit’¹⁴⁶ The accused is not obliged to give evidence at any criminal court and therefore cannot be compelled to do so.

RIGHT TO BAIL: ‘That before any person is released on bail he shall execute a bond for such sum of money as determined by the police or the court on the condition that such a person must attend at the time and place mentioned therein until otherwise directed. If the person is released on bail, the sureties must execute the same or another bond containing conditions to the same effect.’¹⁴⁷ In *Dogo v. Commissioner of Police*¹⁴⁸ ‘it was emphasized that it is the duty of the court to consider whether to grant bail once an accused person has pleaded not guilty to a charge such a situation clearly arises where an information or charge is laid before the trial court’. Where a person is arrested without a warrant for a non-capital offence, the police may release him on bail¹⁴⁹. That is where it is impracticable to charge him to court within twenty four hours, if the offence is not a felony.

3.4.0: THE RIGHT OF CRIMINAL PROCEDURE ACT

The right of an accused person under the Criminal Procedure Act of the Southern Nigeria are:

RIGHT TO BE INFORMED PROMPTLY THE NATURE AND DETAIL OF THE

OFFENCE: ‘At the commencement of the hearing, the court shall state or cause to be stated to the defendant the substance of the complaint, and shall ask him whether he is guilty or not guilty’¹⁵⁰ which deals with summary trial. The accused is only entitled to know the substance of the complaint against him when he is brought before the court and he is asked instantly to plead to the charges. Conversely by Sections 347, 348 and 349 CPA, which deals with trial by information, the accused person is given adequate time and facilities to prepare for defence.

RIGHT TO DEFEND HIMSELF IN PERSON OR BY HIS LEGAL PRACTITIONER:

*Solola v. State*¹⁵¹ deals with a valid arraignment of an accused person and the taking of his plea.

The object of an arraignment in terms of Section¹⁵² of the Criminal Procedure Law is to ensure that he understands the charge against him and so as to enable him to make his defence, the

provision are mandatory and 149 Section 340 Criminal Procedure Code, 150 Section 285(1) Criminal Procedure Act, 151 (2005) All FWLR (pt269) p.1754,1755, 152 Section 215 Criminal Procedure Act not directory as they preceded the word “shall” and an accused person is being arraigned. The requirement therein have been specifically provided to guarantee the fair hearing of an accused person and to safeguard his interest at such a trial, failure, to satisfy any of them will render the whole trial incurably defective null and void.

Where therefore the plea of an accused person was defectively taken, this will amount to a violation of the statutory provision of Section 125, and the test as to whether the provisions of the section had been complied with is an objective one.

RIGHT TO BAIL: The role of sureties in respect of an accused bail is germane.¹⁵³ The occasion is rare but it is sometime done when a suspect in the police station or an accused person arraigned before a court is granted bail in his own recognizance. It is pertinent to mention that a surety’s recognisance may be in terms of money or landed property depending on the gravity of the offence and the severity of the punishment attached to it.

CHAPTER 4

SAFEGUARD FOR THE RIGHT OF AN ACCUSED PERSON

4.0.0: INTRODUCTION

The constitutional safeguard for the right of an accused person under the Nigerian Criminal Justice System has its foundation on the principles of fair trial and fair hearing. The constitutional safeguards to ensure a fair trial for the accused includes:

Right to counsel, information of crime committed, provision of interpreter, time to prepare for trial, examination of prosecution witnesses, right to fair hearing, presumption of innocence, offence must be known to law, right to silence, one trial only for an offence and publicity of trial with the role of the Legal Aid Council and Nigeria Bar Association shall be discussed.

4.1.0 THE AWAITING TRIAL OF AN INMATE AS AN ACCUSED PERSON

An inmate awaiting trial under the Nigeria criminal justice system enjoys some rights guaranteed under the constitution. An inmate is a person confined in a prison, hospital or other institutions. In the preview of this project, we are referring to an accused person awaiting trial in prison custody. The rights enjoys by the accused includes the following:-

- (1) **Right to Counsel:** Right of the accused person to defend himself in person or by a legal practitioner of his choice.¹⁶⁰
- (2) **Information of Crime Committed:** Right to be informed promptly in the language he understands in detail, of the nature of the offence. The information must be given to the accused prior to the trial, at the time of arrest or at the beginning of the trial when he is arraigned.¹⁶¹
- (3) **Provision of Interpreter:** An accused person is entitled to an interpreter without payment of any fees.¹⁶²
- (4) **Time to prepare for trial:** The accused must be given adequate time and facilities to prepare his defence.¹⁶³
- (5) **Examination of prosecution witnesses:** Right to examine witnesses called by the prosecution.¹⁶⁴
- (6) **Fair hearing:** This right is better explained in the two traditional maxim i.e.

(a) *audi alteram partem* (the other party must be heard) (b) *nemo iudex in causa sua* (a person shall not be a judge in his own case; in which case, there must be freedom from bias).¹⁶⁵

- (7) **Presumption of Innocence:** The accused is always presumed innocent until his guilt is proved beyond reasonable doubt by the prosecution.¹⁶⁶
- (8) **Offence must be known to law:** The accused person can only be convicted of an offence defined in a written law and the punishment thereby prescribed.¹⁶⁷
- (9) **Right to silence:** The accused must not be compelled to give evidence at his trial.¹⁶⁸
- (10) **One trial only for an offence:** No person shall be tried twice for the same offence.¹⁶⁹
- (11) **Publicity of trial:** Proceedings are to be held in public except under certain situations in which they may be held in private.¹⁷⁰ 165 Ibid Section (36)(4), 166 Ibid Section (36)(5)p.8, 167 Ibid Section (36)(12), 168 Ibid Section (36)(11), 169 Ibid Section(36)(9)p.10, 170 Section (36)(3)

4.2.0 THE ROLE OF THE LEGAL AID COUNCIL AND NIGERIAN BAR ASSOCIATION

It is instructive to note that under the Nigerian Criminal justice system a person standing trial upon a criminal allegation has the right to represent himself/herself in person or through a legal practitioner of his/her choice. However, some accused person may not be able to procure the service of a legal practitioner to assist in the prosecution of their cases due to financial position.

Thus Legal Aid council is one of the institutions put in place to assist indigent criminals to prosecute their case pro bono.

The Legal Aid Council is a parastatal under the Federal Ministry of Justice, established pursuant to the promulgation of Legal Aid No. 56 of 1976 Chapter 205 Law of the Federation of Nigeria (LFN) 1990. The current enabling law is the Legal Aid Act chapter L9, Volume 8, LFN 2004 which shall hereunder be referred to as the Act as amended.¹⁷¹ The Legal Aid Council of Nigeria (LACON) is a statutory body under the supervisory jurisdiction of the Federal Ministry of Justice.¹⁷² Their slogan is Voice for the Voiceless and Justice for All.¹⁷³ 'The Council shall be a body 171 Legal Aid Council of Nigeria, Third Edition 2008 p.20, 172 Ibid p.42, 173 Legal Aids Council of Nigeria , Fifth Edition 2009 p.06, corporate with perpetual succession and a common seal and may sue and be sued in its corporate name'¹⁷⁴.

The purpose of the creation of this Council is found in¹⁷⁵ the Act and it is for the purposes of providing legal services for economically deficient Nigerian.¹⁷⁶ The Council is the only institution empowered by law and charged with the onerous responsibility of providing free Legal Aid Services to indigent Nigerians whose income does not exceed the minimum wage i.e. whose income are below N60,000.00 per annum and those who are unemployed and those whose income are above but cannot afford the services of private legal practitioner.¹⁷⁷ Legal Aid is a scheme set up to provide free legal advice and representation in court in certain criminal and civil offences. Although there is no express definition of the concept under the Act¹⁷⁸ provides that 'Legal Aid shall consist on terms provided for in the Act, of:

A. The assistance of a legal practitioner including all such assistance as it is usually given by a legal practitioner in the steps preliminary or incidental to any proceedings.

B. Representation by a legal practitioner before any court; and 174 Section 1 (1) Legal Aid Act 2004, 175 Ibid Section 1(2), 176 Legal Aids Council of Nigeria, Fifth Edition 2009 p.15, 177 Ibid p.20, 178 Section 7(4) Legal Aid Act 2004

C. Such additional aid (including advice in civil cases and matters) as may be prescribed.

By virtue¹⁷⁹ of the Act, the proceeding in connection with which legal aid may be granted shall be in respect of proceedings not so satisfied. The second schedule provides for the categories of proceedings in respect of which legal aid may be given.¹⁸⁰

Legal Aid ranges from rendering legal services through consultation, advice or representation in court. Several non-governmental legal service organizations also provide legal aid service, what they provide are usually in the form of giving legal advice and assistance and helping the people to access justice. Thus the pillar of justice sector reform, which is access to justice, incorporated Legal Aid reforms in strong terms. According to the Director-General (Laeticia Nwaka Akinlami) of the Council the idea of setting up Legal Aid Council was mooted in 1974 by spirited Nigerians who felt the need for the poor in society to get access to justice.¹⁸¹ The establishment of a statutory body to cater for the legal needs of economically deficient and less privileged Nigerians was conceptualized in the early '70s by some eminent members of the Nigerian Bar Association (NBA) under the umbrella of 179 Ibid Section 7(1), 180 Legal Aids Council of Nigeria, Third Edition 2008 p.24, 181 Ibid p.13 'Legal Aid Association of Nigeria', Chief Chimezie Ikeazor (SAN) who was ably assisted by Chief Debo Akande (SAN), Chief Solomon Lar, Rt. Hon. Chief Edwin Ume Ezeoke pioneered the group, amongst others.¹⁸²

The provision of free legal services to indigent Nigerians has been described as necessary impetus to the attainment of the rule of law in democratic settings. This is premised on the fact that it is only when a citizen has unfettered access to justice, without fear of its cost that

Nigerians of all classes can proudly be said to enjoy the dividends of democracy.¹⁸³ Legal Aid Officers are also required to ensure that justice is manifestly seen to have been done.¹⁸⁴

The support and show of interest in access to justice for all by Mr. President Musa Yar'Adua's as part of the rule of law which is his baby cannot go unnoticed in his speech ably given on his behalf by the Honourable Attorney-General of the federation and Minister of Justice, Michael Kaase Aondoakaa Esq SAN, 'Access to justice by all Nigerians shall not be hindered by lack of means'. Again, Legal Aid is a necessity for democratic equality. Zeslaw Znamierowski, (1936) 'Democratic equality before the law is seriously threatened by the fact that legal assistance may only be purchased at a market price. Dubious is the value of rights. Therefore, free of charge or inexpensive legal advice is clearly a democratic necessity'.¹⁸⁵ Former Honourable Attorney-General of the Federation (Michael Kaase Aondoakaa ESQ SAN) consistently maintained that 'Justice for all irrespective of means is achievable in Nigeria and in that regard, no Nigerian is above the law in the contest of the rule of law which is a cardinal principle of the present government in Nigeria'.¹⁸⁶

THE FRAMEWORK OF THE LEGAL AID COUNCIL

MISSION - Legal Aid Council aims to become the leading provider of free and timely legal services ensuring social justice and emancipation for the oppressed reprieve to the weak and vulnerable in giving voice to the voiceless¹⁸⁷.

VISION - One Nigeria, in which there is equal opportunity for all, all rights enshrined in our constitution are respected, protected and defended as to achieve justice for all¹⁸⁸.

VALUES - Stand for justice, respect for Human Rights and Dignity, Transparency and Accountability, Integrity and Quality Service Delivery.¹⁸⁹

185 Legal Aid Council of Nigeria. Third Edition 2008, p.08, 186 Ibid p.02, 187 Ibid p.15

188 Legal Aid Council of Nigeria. Fifth Edition 2009, p.05, 189 Legal Aids Council Of Nigeria, Third Edition, 2008 p.15

GOAL - Their goal is to strengthen the existing Legal Aid System so that Nigerians who are entitled to legal aid and who are unable to afford the service of legal practitioners of their own can have free and unhindered access to legal services and in the process obtain justice, attain equality and protected human rights. The Council will continue to honour and advance the pursuit of equal access to justice for the poor.¹⁹⁰

MANDATE- The council is charged with the responsibility of enhancing the Rule of Law through the provision of free legal assistance and advice to indigent Nigerians.¹⁹¹

Nigeria (NAN), Nigerian Television Authority (NTA), National Agency for the Prohibition of Traffic in Person and Other Related Matters (NAPTIP), Human Right Commission, Ministry of Women Affairs, Nigerian Prisons Service and Nigeria Police Force, other collaborations/assistance has been enjoyed by the Council from International Organizations as: The British Council, Mac Arthur Foundation, Lawyers Without Borders (LWB). Other organizations which have approached the Council for collaboration include Prisoners' Rehabilitation and Welfare Action (PRAWA), Agency for Africa Families in Distress and Network of University Legal Aid Institutions (NULAI).¹⁹²

The National President of the Nigerian Bar Association (Olarotimi O. Akeredolu SAN) in LACON News says that:

LACON can be said to be a brain child of NBA. LACON is a baby of the bar and NBA should be able to provide fund for the Council. The average Nigerian can be aware of the activities of the Council by having programmes continually to disseminate the programmed of the Council.

The Council should not limit itself in urban area but must go to the grassroots so that they can disseminate their activities in all languages, in radio, Jingles etc. The Council should be more aggressive in its fund drive.

They must not limit their source of funding to the government alone. They should meet people in the private sector, Non-Governmental Organizations and Donor-Agencies with the same social responsibility.¹⁹³

The role of the Nigerian Bar Association (NBA), Human Rights Institute (HRI), says 'it will provide free legal service for accused person and suspect with no or inadequate legal representation'. The scheme according to Abiola Olagunju, Secretary of NBA-HRI 'stems from a sum carried out by the association, which 193 Legal Aid Council of Nigeria Fourth Edition 2008, p.24-25 showed that most Human Right abuses resulting periods of awaiting trials usually occur when the accused person do not have legal representation. The NBA decided to establish human right desk in all the 88 branches'.

The scheme is to further boost and compliment the Human Rights Desks, which until now provide basic advice to accused persons. The pro bono scheme gives impetus to the already existing human rights making the services rendered by the lawyer's free charge thereby making access to justice easier. The Federal Ministry of Justice had also commenced a program tagged 'decongestion of prisons' where cases of persons awaiting trial in the various prisons across the country were assigned to private legal practitioners to represent the accused persons with the sole aim being to decongest the prisons¹⁹⁴.

The primary role of Legal Aid Council has gone beyond rendering legal services, inform of advice, assistance and helping the people to have access to justice. It has transited to the payment of option of fines of some of the inmates. To buttress the fact was the giant stride of the present

Director-General of Legal Aid Council of Nigeria (Mrs. Laetitia NwakaAkinlami) ‘Who not only decried the delay in adjudicating of justice in the Nigeria Law Courts but went ahead and paid the fines for six (6) inmates and registered West African Examinations Council (WAEC) for five (5) inmates at Owerri prisons in Imo State’. ¹⁹⁵

In addition, the Council provides assistance in accident and fundamental rights claims as expressed in the second schedule of the Act. The Council is the fore-runner of Legal Aid Service Provision.¹⁹⁶ The Council provides services as set out under the second schedule to the Act, in addition to its criminal jurisdiction, which covers the offence in Section 215 Criminal Procedure Act and 185 Criminal Procedure Code such areas as murder, manslaughter, malicious or grievous bodily harm, assault, occasioning actual bodily harm, stealing, affray, rape and equivalent offences under the Penal Code, etc.¹⁹⁷

The Council is empowered to undertake civil claims in respect of accidents and claims for damages for breaches of Fundamental Human Rights as guaranteed under Chapter IV of the Constitution of the Federal Republic of Nigeria 1999. By extension, the Council is concerned with enhancing the rule of law through the provision of free legal assistance and advice to the needy, which are geared towards reducing to the barest minimum, incident of human rights abuses.¹⁹⁸ Again, the Council provides legal aid to as many indigent people as possible including vulnerable groups such as women, children and the rural people.

To this end, the Council has embarked on educating Nigerians on their rights as guaranteed in the constitution and in particular what they are expected to do whenever their rights are threatened or violated by any government agency or individuals in the society.¹⁹⁹

More so, the Council is dedicated to not only finalizing matters in court but protecting the rights of people through the offering of sound and timely legal advice, mediation and the rendering of quality legal services. As a progressive government public defender, the Council has shown a

remarkable commitment to the building of a just society where each person respects the constitutional rights of others. The Council is consequently eager to participate in the further development of our justice system through continued cooperation with partners and stakeholders.²⁰⁰ The Legal Aid Council applies different systems of mechanism to assist people to access justice. This assistance includes the judicial, where lawyers are instructed by the Council to represent accused persons in criminal trials and in civil matters, through partnership with Non-governmental organization. Crosby asserted that the joy of living is living for others.²⁰¹ In this passionate sense of aforethought, the Legal Aid Council has championed the clarion call of rendering selfless service delivery to indigent citizens.

Effort is being made daily by this Council to make legitimate justice available to the citizens especially the rural poor, who are completely alienated when it comes to legal processes because of the expensive and intimidating nature of Nigerian Legal Services. In the recent decade, the Council has optimistically assumed the prime priority and prism geared to taken on so many clients not minding its limited financial and human resources.²⁰²

The Council from time to time assign cases to private legal practitioners, either directly or through local Nigerian Bar Association officers for no or token fee. Constant supply of client is ensured by the Council's legal personnel through prison visits to identify clients (Awaiting Trial Inmates) who qualify for legal assistance by both meeting the means and the criminal allegation test. All legal personnel of the Council are instructed to either maintain a steady flow of clients by visiting prisons through the court lists.²⁰³ Importantly, the Council has continued to strive unrelentless to ensure that Nigerian prisons reforms and decongestion is maximized.²⁰⁴

The Legal Aid Council also focused on relieves available to victims of arbitrary arrest, unlawful detention and prosecution.

The Council has continued to use the law courts as springboard for social reforms and to bridge the widening gap between the rich and the poor in the administration of justice and to ensure that

no citizen is prevented from obtaining justice especially where life and / or liberty is threatened just for lack of means to pay for a legal representation of his choice.²⁰⁵

The then president, Chief Olusegun Obasanjo administration contributed immensely to the enhancement of the criminal justice system by introducing National Economic Empowerment and Development Strategy (NEEDS).

The idea is that justice and democracy must be made real for individuals and groups, accessible and efficient in responding to the needs of its end users.²⁰⁶ Also, in conjunction with the police, the open society justice initiative and the National Youth Service Corps Directorate, the Legal Aid Council established the Police Duty-Solicitor Scheme to provide prompt and uninterrupted legal advice and assistance to those in conflict with the law from the point of arrest and before their statement are obtained and/or before arraignment in court. Finally, the scheme among other roles is to reduce the average duration of pre-trial detention and ensure respect for the constitutional rights of suspects, detainees and accused person.²⁰⁷

It will be very important to mention few among the numerous problem of the council since the roles have been explained above. Some of the problems are:

Access to justice in Nigeria has been a major problem. Many years of prolonged military rule has ensured that the Legal Aid scheme has underfunded and has had a low priority on the national agenda. The successive military dictatorships were characterized by suspension of constitutional provisions on rule of law; the implication was that of rule of force and near total disregard of rule of law. During this period, a lot of citizens were incarcerated without trial and this brought about what we have today as Awaiting Trial Prison Inmates Syndrome.

Finally, the criminal justice system seemed to have lost its capacity to respond quickly to the needs of the society towards checkmating the rising of waves of crime. It did appear that the Criminal Justice System has become stalled or moribund.

Access to justice became an exclusive preserve of the rich and the powerful state funding legal assistance to the poor in form of legal aid gradually whittled away.²⁰⁸

Finally, Legal Aid Council will continue to strive to bridge the existing gap between the rich and the poor in the administration of justice. The Legal Aid Council is ensuring that justice is been made accessible to all. It is in this regard that the country can be adjudged to be democratic, egalitarian and socially oriented.

4.3.0 CONCLUSION

It has been established that the Constitution guarantees an Accused Person right to Fair Hearing which is the pillar that rights rest on. The attitude of Courts to the Accused Person's Right to Fair Hearing is generally founded upon the provision of Sections 35 and 36 of the Nigerian Constitution 1999 as applied to every person charged with criminal cases. Thus, the Court idea of justice and fairness and that has been the judicial attitude in criminal cases. Thus, the Court is duty bound to uphold, enforce and enjoy the observance of this Fundamental Right as enshrined in the Law.

The Legal Aid Council and the Nigerian Bar Association must work hand in hand with great passion for humanity to ensure that the Right of an Accused is being safeguarded to the fullest by seeing to it that fair Hearing and fair Trail is been given to the Accused , so as to have a vibrant and effective Criminal Justice system. Any civilized society must uphold the tenets of Fair Hearing and recognize that justice is indeed meant to be a Three Way Traffic specifically

Justice to the Accused person, because all the full weight of the Laws fall on the side of an Accused Person.

4.4.0: RECOMMENDATIONS

It is a known fact that the practicality of this discourse is a problem, so in view of this, the Federal Government, Judiciary, Law Enforcement Agents and equally the citizens of Nigeria should work together toward the practicality of these rights. There should also be material conditions of fundamental liberties for all. The citizens of Nigeria must endeavor to do a critical and proper study of what their right is, so that they could seek redress when those rights are breached. The Federal Government must be made to observe the rule of law and not to violate the human rights of the citizen, in this regard the Nigeria government is call upon to ratify the convention against torture and cruel inhuman or degrading treatment or punishment and should ensure that the awareness is created on the rights of its citizens and should encourage the law enforcement agents to uphold the constitution of the country. The judiciary whose independence is a condition sine qua non for good functioning must be made to have direct access to its funds in terms of adequate salaries and improvement of laws courts system so that the rights will be implemented effectively. Judges should ensure liberal and effective enforcement of Fundamental Human Right and equally liberalize bail conditions. They should also assist citizens whose rights have been violated but do not have or cannot afford legal representation by referring them to the relevant NGOs, NBA, Office of Public Defenders, National Human Rights Commission and Legal Aid Council. The Legal Aid scheme must be made to have more coverage for all indigents and adequate funds and personal calibre to man its affair. Our courts should be increased in many folds and seriously updated to encourage trial and disposition of criminal matter cheaper and technicalities free, this will lead to an increase legal awareness. Access to court must be make

easier and equally encourage citing of more court rooms near the prisons and police stations so that when any suspect feels that his rights have been breached they could easily go to court.

It would equally be a welcomed idea if the human rights activists could engage in mass education, awareness, campaigns and sensitization of citizens on human right issues to make every citizens of Nigeria most especially the suspect to know that they have a right under the law. All Nigerians should work together towards attaining the international standard of the Practicality of the right of an accused because this is what is obtained in the developed countries of the world and Nigeria as a leading African nation should not be left out.

BIBLIOGRAPHY

ARTICLES IN JOURNALS

- Ashara R.O, 'Bail Phenomenon and its Abuses in Nigeria' (1997) 4 Ahmadu Bello Univ. L. J. 36.
- Audi J, 'Means of Enforcing Human Rights Accountability and Democracy in Nigeria' (1999) 6 Ahmadu Bello Univ. L. J. 1- 18.
- Onawola, 'Bail & Ball Pending' (2007), 2 Univ. of Ilorin Law Student Society J.

ARTICLES ON THE INTERNET

- Adegoke T.B, 'Blog for IBA International Probono.com: A Revolution in Legal Aid'
<<http://intprobono.blogspot.com/2010/02/revolution-in-legal-aidobligation.html>> accessed on 27 November 2010
- Gianluigi P 'From Human Rights to Fundamental Rights, Consequences of a Conceptual Distinction' European University institute

<<http://cadmus.iue.it/dspace/index.jsp>> accessed on 10 January 2011

85

□ Pro Bono Law <<http://www.hg.org/probonolaw-law.html>> accessed on 27

November 2010

BOOKS

□ Adesiyun D.O, An Accused person's Rights in Nigeria Criminal Law

(Heinmann Educational Books (Nigeria) Plc pub. 1996)

□ Ajomo M.A, Individual Rights under the 1989 Constitution (Nigeria institute of Advanced Legal Studies 1993).

□ Bodede J, Criminal Evidence in Nigeria (Revised Edition, Florence and Lambard (Nig) Ltd., 2008).

□ Ibrahim I, A Highlight on the Constitutional Safeguard for an Accused person's Rights to Fair Trial in the Nigeria Criminal Justice (The Legal issues in honour of Justice Belgore S.M.A, 2008).

CHAPTERS IN BOOKS

□ Cranston M, 'What are Human Rights' (London the Bodley Head 1973) in the Judiciary and Human Rights (Nigeria institute of international Affair, Lagos 1992) 1

NEWSPAPER REPORTS ON THE INTERNET

□ Innocent Anaba, Nigeria: 'NBA Launches Free Legal Services', Vanguard News paper (Nigeria 27 February 2011)

<<http://allafrica.com/stories/200904030916.html>> accessed on 27 November

2011

PAPERS PRESENTED AT CONFERENCES, WORKSHOPS AND SERMINARS

- Ajomo M.A, 'Fundamental Human Rights under the Nigeria Constitution'

(International Seminar on Human Rights, Lagos 1992).

- Bashir Y.I, 'Human Rights in Nigeria': An Overview (Seminar paper

Presented at Faculty of Law Ahmadu Bello Univ. Zaria 1999).

- Obaseki A.O, 'The Judiciary and Human Rights' (International Seminar on

Human Rights, Lagos 1992).

BAYELSA STATE POLYTECHNIC, ALEBIRI