

RIGHT TO PERSONAL LIBERTY IN NIGERIA

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ABSTRACT

The right to personal liberty is one of the most central human rights, as it is connected to the essential rudiments of an individual's physical freedom. The right to liberty requires that the arrest or detention of an individual must be in accordance with the law. The right therefore protects the individual against the excesses of the government and its agents. The right to personal liberty is essentially a personal freedom in which no government can abridge. This right is juxtaposed with other human rights and can be formally traced back to the English Magna Carta of 1215.

One of the main quagmires of the right to liberty in Nigeria is that the executive arm of government in Nigeria, at most times, permits continuous detention without trial. Detention without trial includes persons detained by the state without criminal charges. Furthermore, there is a persistent lack of will by the judiciary to eliminate a vast number of cases where the individual is detained without recourse to the time they would have served if convicted for the crime in question. In addition, the problem continues when individuals are not released from prison even though they have completed serving their jail terms.

To understand the broad concept of this right, this Article explores the right to liberty from various international frameworks, then from a regional perspective (the African Charter on Human and Peoples Rights), and lastly, bringing it to the center, a domestic perspective with Nigeria as the focal point. Whilst exploring the right to liberty in Nigeria, this paper investigates the constitutional interpretation of the right.

INTRODUCTION

The right to personal liberty is essential in any democratic society. According to His Lordship, Justice Oputa, personal liberty “implies freedom from external coercion in the use of one's good or faculties. It is the status of not being the property or chattel of another.”¹ Lord Denning observed that the right to personal liberty means: “the freedom of every

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¹ Beatrice N. Okpalaobi & Chino N. Nzewi, *Medical Malpractice and Negligence in Nigeria: Human Rights Enforcement as a Remedy*, 3 INT'L J. COMPAR. L. & LEGAL PHIL., no. 2, 2021, at 194, 200.

law-abiding citizen to think what he will, to say what he will . . . on his lawful occasions, without let or hindrance from any other person.”²

According to the father of the rule of law, A.V. Dicey, personal liberty is the “right not to be subject to imprisonment, arrest, or other physical coercion in any manner that does not admit of legal justification.”³ The right to personal liberty is a crucial component in human rights, as it involves the issues surrounding the individual’s freedom.⁴ The existence of this right started with the imposition of the Magna Carta, the charter of English in 1215.⁵ Later, the Habeas Corpus Act of 1679 was promulgated to secure persons from arbitrary arrest and detention.⁶ The Habeas Corpus Act is aptly described by Blackstone: “Magna Carta only, in general terms, declared, that no man shall be imprisoned contrary to law: the habeas corpus act points him out effectual means, as well to release himself, though committed even by the king in council, as to punish all those who shall thus unconstitutionally misuse him.”⁷ In 1789, France promulgated the *Declaration of the Rights of Man and Citizen*, which was based on the crux and values of the French Revolution.⁸ The French Declaration of Rights ensured that the right to liberty was guaranteed to all persons.⁹ This declaration has inspired freedom and democracy in the western world.¹⁰

Equality before the law is synonymous with liberty.¹¹ In other words, liberty implies freedom.¹² In linking these concepts together, it is readily noticed that democracy could be added to form a triangular pattern as equality and freedom are essential components of a democratic society.¹³ In a democratic society, the freedom to choose political

² ALFRED DENNING, *FREEDOM UNDER THE LAW*, 5 (1949).

³ A.V. DICEY, *INTRODUCTION TO THE STUDY OF THE LAW OF THE CONSTITUTION* 124 (8th ed. 1915).

⁴ G.A. Res. 217 (III) A, *Universal Declaration of Human Rights* (Dec. 10, 1948) (discussing how all are entitled to life and liberty).

⁵ See DAVID CARPENTER & DAVID PRIOR, *MAGNA CARTA & PARLIAMENT* 4, 8 (2015).

⁶ See Helen A. Nutting, *The Most Wholesome Law – The Habeas Corpus Act of 1679*, 65 *AM. HIST. REV.* 527, 529 (1960) (explaining the legal procedures needed to make the Act effective against wrongful imprisonment).

⁷ 4 WILLIAM BLACKSTONE, *COMMENTARIES ON THE LAWS OF ENGLAND, 1765–1769*, at 432 (Univ. Chi. Press 1979).

⁸ See *DECLARATION OF THE RIGHTS OF MAN AND CITIZEN* [CONSTITUTION] Aug. 26, 1789 (Fr.).

⁹ *Id.* art 1.

¹⁰ See GEORG JELLINEK, *THE DECLARATION OF THE RIGHTS OF MAN AND OF CITIZENS* 2 (1901) (discussing how European law has been influenced by the 1789 French document).

¹¹ See IMER FLORES, *LAW LIBERTY, AND THE RULE OF LAW (IN A CONSTITUTIONAL DEMOCRACY)* 99 (Imer B. Flores & Kenneth E. Himma eds., Springer Netherlands 2013).

¹² *Id.*

¹³ See *id.*

representatives and to hold dissenting views against an elective government showcases the right to an individual's personal liberty.¹⁴ The right to liberty ensures that the individual can access the just administration of the criminal justice system.¹⁵ Thus, where an individual is suspected of committing a crime, such a person is, according to the doctrine of equality, within the ambit of "presumption of innocence" until proven guilty.¹⁶ In deciding whether a person is guilty of an offence, it is the duty of the court to enquire whether the process of finding such person guilty is in accordance with the criminal justice system, ensuring the person's liberty has not been unjustly tampered with.¹⁷

Liberty does not consist of the freedom to do any acts, but the freedom to do acts that do not impede other persons.¹⁸ The seizure of personal liberty is a preventative measure to guarantee that a person is arrested and detained when they are suspected of having committed an offence or when the person is being punished for committing a crime.¹⁹ Lord Atkin, dissenting in the case of *Liversidge v. Anderson*, noted that: "[I]n English law every imprisonment is prima facie unlawful and . . . it is for a person directing imprisonment to justify his act. The only exception is in respect of imprisonment ordered by a judge."²⁰

I. INTERNATIONAL PROTECTION

Assembled below is a series of intentional articles seeking to protect the rights and personal liberties of persons.

Article 3 of the Universal Declaration of Human Rights states: "Everyone has the right to life, liberty and security of person."²¹ Article 9 continues: "No one shall be subjected to arbitrary arrest, detention or exile."²² The International Covenant on Civil and Political Rights (ICCPR) provides a wider meaning, showing that the right to personal liberty is implicit, as the right to the safety of the law is the implementation of the right to liberty.²³ This means that the right to liberty extends to conditions

¹⁴ See G.A.I. Nwogu, *Democracy: Its Meaning and Dissenting Opinions of the Political Class of Nigeria: A Philosophical Approach*, 6 J. EDUC. & PRAC. 131, 132 (2015).

¹⁵ G.A. Res. 217 (III) A, *supra* note 4, art. 10–11.

¹⁶ U.N. OFF. OF THE HIGH COMM'R FOR HUM. RTS. WITH INT'L BAR ASS'N, HUMAN RIGHTS IN THE ADMINISTRATION OF JUSTICE: A MANUAL ON HUMAN RIGHTS FOR JUDGES, PROSECUTORS, AND LAWYERS, at 190, 196, U.N. Sales No. E.02.XIV.3 (2003) [hereinafter ADMINISTRATION OF JUSTICE].

¹⁷ *Id.* at 192.

¹⁸ FLORES, *supra* note 11.

¹⁹ ADMINISTRATION OF JUSTICE, *supra* note 16, at 164.

²⁰ *Liversidge v. Anderson* [1942] A.C. 206, 245 (Nigeria).

²¹ G.A. Res. 217 (III) A, *supra* note 4, art. 3.

²² *Id.* art. 9.

²³ International Covenant on Civil and Political Rights art. 9, Dec. 19, 1966, 999 U.N.T.S. 171, 175 (entered into force March 23, 1976).

other than the formal deprivation of liberty.²⁴ Under Article 9 of the ICCPR, “[e]veryone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.”²⁵ This Article continues:

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.²⁶

Article 10 of the ICCPR focuses on the rights of persons based on their status as human beings, as seen here:

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

...

3. The penitentiary system shall comprise treatment of

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.²⁷

Article 37 of the Convention on the Rights of the Child requires parties to the Convention to respect the dignity of children by adhering to the following principles:

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention, or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.²⁸

Seeking to protect migrant workers, Article 16 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families states:

1. Migrant workers and members of their families shall have the right to liberty and security of person.

²⁷ *Id.* art. 10.

²⁸ Convention on the Rights of a Child art. 37, Nov. 20, 1989, 1577 U.N.T.S. 3, 10 (entered into force September 2, 1990).

2. Migrant workers and members of their families shall be entitled to effective protection by the State against violence, physical injury, threats, and intimidation, whether by public officials or by private individuals, groups, or institutions.

. . . .

4. Migrant workers and members of their families shall not be subjected individually or collectively to arbitrary arrest or detention; they shall not be deprived of their liberty except on such grounds and in accordance with such procedures as are established by law.²⁹

Article 17 governs the deprivation of liberty of migrant workers and their family members.³⁰

Finally, the Convention on the Rights of Persons with Disabilities states in Article 14:

1. States Parties shall ensure that persons with disabilities, on an equal basis with others:

a) Enjoy the right to liberty and security of person;

b) Are not deprived of their liberty unlawfully or arbitrarily, and that any deprivation of liberty is in conformity with the law, and that the existence of a disability shall in no case justify a deprivation of liberty.

2. States Parties shall ensure that if persons with disabilities are deprived of their liberty through any process, they are, on an equal basis with others, entitled to guarantees in accordance with international human rights law and shall be treated in compliance with the objectives and principles of this present Convention, including by provision of reasonable accommodation.³¹

²⁹ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families art. 16, Dec. 18, 1990, 2220 U.N.T.S. 93, 99–100 (entered into force July 1, 2003).

³⁰ *Id.* art. 17.

³¹ Convention on the Rights of Persons with Disabilities art. 14, Dec. 13, 2006, 2515 U.N.T.S. 3, 79 (entered into force May 3, 2008).

II. REGIONAL PROTECTION

Assembled below are excerpts from the various authorities that seek to protect these liberties in Africa. To begin, Article 6 in the African [Banjul] Charter on Human and Peoples' Rights states: "Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained."³²

The African Commission on Human and Peoples Rights in *Aminu v. Nigeria* investigated the arrest, detention, and torture of Mr. Ayodele Ameen.³³ Allegations were made that Mr. Ameen was "being sought after by the Nigerian security agents as a result of his political inclination[s]."³⁴ Mr. Ameen attempted to receive help from the courts but was not successful.³⁵ The complaint received by the Commission alleged that the treatment of Mr. Ameen violated "Articles 3(2), 4, 6, and 10(1)."³⁶ Mr. Ameen was arrested and detained multiple times without reason or explanation by security officials, causing him to go into hiding.³⁷ The Commission found Mr. Ameen's treatment to be in violation of Articles 3(2), 4, 6, and 10(1), confirming that Nigerian Security officials will be held accountable when they deprive a citizen of their freedoms and liberty arbitrarily.³⁸

III. THE RIGHT TO LIBERTY IN NIGERIA

Section 35(1) of the 1999 Constitution, as amended, states: "Every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in the following cases and in accordance with a procedure permitted by law."³⁹ The meaning of personal liberty was construed by the court in *Adewole v. Jakande*.⁴⁰ The court held in this case that the closure of private schools by the Lagos State government was a

³² African (Banjul) Charter on Human and Peoples' Rights art. 6, Oct. 21, 1986, 21 I.L.M. 58.

³³ Kazeem Aminu v. Nigeria, Communication 205/97, African Commission on Human and Peoples' Rights [Afr. Comm'n H.P.R.] (May 11, 2000).

³⁴ *Id.* ¶ 3.

³⁵ *Id.* ¶ 4.

³⁶ *Id.* ¶ 7.

³⁷ *Id.* ¶ 15.

³⁸ *Id.* ¶¶ 18, 26.

³⁹ CONSTITUTION OF NIGERIA (1999), § 35(1).

⁴⁰ See Kayode O. Fayokun & Segun O. Adedeji, *Legal Issues in Educational Management in Nigeria*, 4 MAKERERE J. HIGHER EDUC. no. 2, 2013, at 187, 197 (citing *Adewole v. Jokande* [1981] 1 NCLR 262, 278 (H.C. of Lagos)).

violation of the personal liberty of parents to train their children where and how they deem fit.⁴¹ The court particularly stated that:

“[p]ersonal liberty” means privileges, immunities, or rights enjoyed by prescription or by grant. It denotes not merely freedom from bodily restraint, but rights to contact, to have an occupation, to acquire knowledge, to marry, have a home, children, to worship, enjoy and have privileges recognized at law for happiness of free men.⁴²

The court further approved the definition of “personal liberty” found in U.S. cases holding that personal liberty also entails the right or “the power of locomotion, of changing situation, or removing one’s person to whatsoever place one’s own inclination may direct, without imprisonment or restraint, unless by due course of law.”⁴³

Osita Ogbu opined that a better interpretation of Section 35 of the Constitution is that

[it] contemplates physical restraint against the individual. This construction becomes obvious when the two legs of the provisions the one giving to every person the right to personal liberty and the one setting out the circumstances and the manner in which a person’s liberty may be taken away- are read together.⁴⁴

Furthermore, Ogbu argued that the Nigerian version of the right to personal liberty is different from that of America.⁴⁵ The American right guarantees both freedom from physical restraint and freedom of private enterprise that is:

the right of the citizen to be free in the enjoyment of all his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or a vocation, and for that purpose enter into all contracts which may be proper,

⁴¹ *Id.*

⁴² See *My Right to Personal Liberty*, CONST. RTS. AWARENESS LIBERTY INITIATIVE (2018), <https://knowyourrightsnigeria.com/my-right-to-personal-liberty/> (citing Adewole 1 NCLR at 278) (quoting the court’s definition of personal liberty).

⁴³ *Plessy v. Ferguson*, 163 U.S. 537, 557 (1896) (Harlan, J., dissenting) (quoting the U.S. definition of personal liberty).

⁴⁴ OSITA NNAMANI OGBU, *HUMAN RIGHTS LAW AND PRACTICE IN NIGERIA* 190–91 (2d ed. 2013).

⁴⁵ *Id.* at 191.

necessary or essential to his carrying out a successful conclusion the above mentioned activities.⁴⁶

A. Limitations to the Right to Personal Liberty

The right to personal liberty under Nigerian law avails not only citizens but even aliens.⁴⁷ The right is, however, not absolute.⁴⁸ It can be deprived in circumstances prescribed by any law in accordance with the Constitution.⁴⁹ Denton-West, J.C.A., in *Bobade Olutide v. Adams Hamzat*, stated:

[T]he right to liberty as enshrined in Section 35 of our Constitution and Article 6 of the African Charter that nobody shall have right to liberty taken away, abridged, or violated is not absolute, especially when there is reasonable suspicion that a criminal offence had been committed as in this instant case.⁵⁰

In accordance with Section 35(1) of the Constitution, a person's right to personal liberty may be limited in the following situations:

- a. in execution of the sentence or order of a court in respect of a criminal offence of which he has been found guilty;
- b. by reason of his failure to comply with the order of a court or in order to secure the fulfilment of any obligation imposed upon him by law;
- c. for the purpose of bringing him before a court in execution of the order of a court or upon reasonable suspicion of his having committed a criminal offence, or to such extent as may be reasonably necessary to prevent his committing a criminal offence;
- d. in the case of a person who has not attained the age of eighteen years for the purpose of his education or welfare;

⁴⁶ *Id.*

⁴⁷ See CONSTITUTION OF NIGERIA, §§ 25–35.

⁴⁸ *Id.*

⁴⁹ B.O. NWABUEZE, THE PRESIDENTIAL CONSTITUTION OF NIGERIA 420 (St. Martin's Press 1982).

⁵⁰ *Bobade Olutide v. Adams Hamzat* [2016] 1 LCRN 8095.

- e. in the case of persons suffering from infectious or contagious disease, persons of unsound mind, persons addicted to drugs or alcohol or vagrants, for the purpose of their care or treatment or the protection of the community; or
- f. for the purpose of preventing the unlawful entry of any person into Nigeria or of effecting the expulsion, extradition, or other lawful removal from Nigeria of any person or the taking of proceedings relating thereto[.]⁵¹

By virtue of these provisions, the courts are empowered to impose imprisonment as sentences for crimes.⁵² Accordingly, the Criminal Code provides that “subject to the provisions of any other written law, the punishments which may be inflicted under this code are death, imprisonment, caning, fine, and forfeiture.”⁵³ This provision requires that to deny a person his liberty, it must be in accordance with a laid down procedure.⁵⁴ However, it must be noted that the court punishes contempt in the exercise of its inherent jurisdiction under section 6(6)(a) of the Constitution, and with no laid down procedure to govern the exercise of that power, it seems that the courts’ power to commit a person on a charge of contempt is not in accordance with the Criminal Code.⁵⁵ The express provisions of the Constitution will supersede the inherent powers of the court.⁵⁶ However, when the contempt involves violation of a court order, it can be justified under Section 35(1)(a)–(f).⁵⁷

Subsection 35(1)(b) also forms the foundation for the power of the courts to issue a subpoena or order of arrest for the purpose of enforcing judgements where there is default from any of the parties.⁵⁸ It can also be used by the courts to order arrest for failure to pay taxes and rates.⁵⁹ However, the law imposing such taxes or rates must have made provision for the deprivation of liberty of defaulters.⁶⁰ The Constitution, however, provided that a person who is charged with an offence and who has been

⁵¹ CONSTITUTION OF NIGERIA, § 35(1).

⁵² *Id.*

⁵³ Criminal Code Act (1990) ICFNL, § 17.

⁵⁴ *See Id.*

⁵⁵ *See* CONSTITUTION OF NIGERIA, § 6(6)(a); *see also* Criminal Code Act, *supra* note 53.

⁵⁶ OGBU, *supra* note 44, at 193.

⁵⁷ CONSTITUTION OF NIGERIA (1999), § 35(1)(a)–(f).

⁵⁸ *Id.* § 35(1)(b).

⁵⁹ *Id.*

⁶⁰ *See id.* § 35(1).

detained in lawful custody awaiting trial shall not continue to be kept in such detention for a period longer than the maximum period of imprisonment prescribed for the offence.⁶¹ It has also been argued that the Constitution is wide enough to accommodate the powers of the National Assembly and State Assemblies to issue a summons for the purpose of compelling witnesses to appear before them.⁶²

In 2012, the Enugu State House of Assembly exercised this power by ordering the Commissioner of Police to effect the arrest of the State's Commissioner for Human Resources and Poverty Reduction, Mr. Godwin Ogenyi, for failing to appear before the house at the time stipulated in the summons and thereby keeping the honourable members waiting.⁶³ This has however been criticized by Osita Ogbu, who argues that this is a very flimsy reason to arrest a Commissioner.⁶⁴ The writer argues that this is against the Constitution which allows the House to exercise such powers only on allegations of gross misconduct.⁶⁵

Whether this provision is broad enough to engulf all the circumstances that may warrant the denial of the right to liberty is at issue.⁶⁶ A prominent scholar, Professor Nwabueze, has stated that the provisions are sufficient as far as the limitation of the right to personal liberty is concerned.⁶⁷ He also argues further that a person should not be deprived of his liberty on the orders of a tribunal or any authority other than a competent court.⁶⁸ He notes that the powers vested in the Code of Conduct Tribunal, for instance, do not empower them to imprison any person because it is not a court exercising judicial powers as envisaged by Section 35(1)(a) of the 1999 Constitution.⁶⁹ This issue came before the court in *Doherty v. Tafawa-Balewa*.⁷⁰ The provision of the Tribunals and Inquiry Act, which empowered a Commission of Inquiry to impose imprisonment or fine as a sentence, was held to be null, void, and inconsistent with Section 20(1) of the 1960 Constitution which prohibits the breach of the right to personal liberty by any other authority except

⁶¹ *Id.* § 35(1)(f).

⁶² See generally Abiola Ojo, *The Investigatory Powers of the National Assembly Under the 1979 Constitution: Sections 82 and 83 Considered*, 12 NIGERIAN L.J. 49, 55 (1984).

⁶³ Ameh Comrade Godwin, *Enugu Commissioner Arrested for Disobeying Lawmakers*, DAILY POST NIGERIA (Dec. 19, 2012), <https://dailypost.ng/2012/12/19/enugu-commissioner-arrested-disobeying-lawmakers/>.

⁶⁴ See OGBU, *supra* note 44, at 193 n.11.

⁶⁵ See *id.* at 192–93.

⁶⁶ *Id.* at 192.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Summary of Doherty v. Tafawa-Balewa [1961]*, HBRIEFS, <https://hbriefs.com/cases/dohertybalewa1961.php> (last visited Oct. 10, 2021, 5:39PM).

the courts.⁷¹ It must, however, be noted that a judicial tribunal has the same powers as a regular court and can restrain or commit a person to prison.⁷²

It has been also held that the right to personal liberty can be limited for the purpose of protecting national security. In *Dokubo-Asari v. FRN*,⁷³ the Supreme Court, concurring with the court of appeal, held that if the nation's security is threatened or there is a real likelihood of it being under threat, personal liberty and the fundamental human rights of persons perpetrating such must be limited until national security can be sufficiently protected.⁷⁴ His Lordship Muhammad, JSC. held:

[t]he pronouncement by the court below is that where National Security is threatened or there is the real likelihood of it being threatened human rights or the individual right[s] . . . must be suspended until the National Security can be protected or well taken care of. This is not anything new. The corporate existence of Nigeria as a united, harmonious, indivisible and indissoluble sovereign nation is certainly greater than any citizen's liberty or right. Once the security of this nation is in jeopardy and it survives in pieces rather than in peace, the individual's liberty or right may not even exist.⁷⁵

Osita Ogbu disagrees with this decision.⁷⁶ He contends that Section 45 of the 1999 Constitution, which deals with the derogation of human rights, shows clearly that the only circumstance that can warrant the derogation of personal liberty is a period of emergency.⁷⁷ Also, to limit personal liberty during emergencies, a state of emergency must be formally declared in accordance with the Constitution.⁷⁸ Furthermore, an Act of the National Assembly is required to suspend the right to personal liberty during such an emergency, and such suspension must be limited to the extent required to deal with such an emergency.⁷⁹ Threats to national security should not be grounds to automatically deprive the accused persons of their right to personal liberty indefinitely.⁸⁰ This

⁷¹ *Id.*

⁷² See OGBU, *supra* note 44, at 192.

⁷³ *Dokubo-Asari v. FRN* [2007] 12 NWLR 320.

⁷⁴ *Id.* at 333.

⁷⁵ *Id.* at 336.

⁷⁶ See OGBU, *supra* note 44, at 207–08.

⁷⁷ *Id.* at 207.

⁷⁸ CONSTITUTION OF NIGERIA (1999), § 45(3) (providing a definition of period of emergency).

⁷⁹ See OGBU, *supra* note 44, at 207–08.

⁸⁰ *Id.* at 208.

provision does not avail members of the armed forces.⁸¹ The Constitution provides that nothing shall invalidate

any law by reason only that it authorises the detention for a period not exceeding three months of a member of the armed forces of the federation or a member of the Nigeria Police Force in execution of a sentence imposed by an officer of the armed forces of the federation or of the Nigeria Police Force, in respect of an offence punishable by such detention of which he has been found guilty.⁸²

B. Right to Remain Silent When Arrested

Any person who is arrested is entitled to remain silent or refuse to answer any question posed to him prior to seeing his counsel.⁸³ Section 35(2) of the Constitution provides that “any 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 own choice.”⁸⁴ This right continues even beyond the period of arrest, as the accused can choose to remain silent throughout the period of the trial.⁸⁵ Inherent in this right to remain silent is the right to counsel chosen by the accused.⁸⁶

This provision is, however, disregarded with impunity by the security agencies.⁸⁷ The police resort to torture to obtain information and extract confessional statements from accused persons in violation of their right to remain silent.⁸⁸ In *State v. Rabi*, the Supreme Court per Ngwuta, J.S.C., lamented this ugly development.⁸⁹ His Lordship stated that a confessional statement obtained by the police in contravention of Section 35(2) of the Constitution is illegal and inadmissible as evidence in accordance with Section 29(2) of the Evidence Act.⁹⁰

⁸¹ CONSTITUTION OF NIGERIA (1999), § 35(7)(b).

⁸² *Id.*

⁸³ *Id.* § 35(2).

⁸⁴ *Id.*

⁸⁵ *Adekunle v. State* [2006] 14 NWLR 717, 724–25.

⁸⁶ CONSTITUTION OF NIGERIA (1999), § 35(2).

⁸⁷ Esa Onoja, *The Relationship Between the Constitutional Right to Silence and Confessions in Nigeria*, 6 AFR. J. LEGAL STUD. 189, 189 (2013).

⁸⁸ *Id.*

⁸⁹ *State v. Rabi* [2013] 8 NWLR 585, 594–96 (Nigeria).

⁹⁰ *Id.* at 595–96.

C. Right to be Informed of the Facts and Grounds of Arrest

By virtue of Section 35(3), the accused person “shall be informed in writing within twenty-four hours (and in a language that he understands) of the facts and grounds for his arrest or detention.”⁹¹ This is similar to the position of the law in England, which was enunciated by Lord Simmons in *Christie v. Leachinsky*, stating:

it is to be remembered that the right of the constable in or out of uniform is, except for a circumstance irrelevant to the present discussion, the same as that of every other citizen. Is citizen bound to submit unresistingly to arrest by citizen in ignorance of the charge against him? I think, my Lords that cannot be the law of England. Blind unquestioning obedience is the law of tyrants and of slaves. It does not yet flourish on English soil. . . . It is a condition of lawful arrest that the man arrested should be entitled to know why he is arrested.⁹²

Thus, before a person gives himself up for arrest, the police must inform him of the reason for his arrest.⁹³ The Constitution provides that this must be done within twenty-four hours of the arrest.⁹⁴ Failure to comply with this will make the arrest unconstitutional.⁹⁵ According to Mowoe, this right is essential as it affords the accused the opportunity to clarify any misunderstanding or call the attention of the police officers to any other person for whom he might have been mistaken.⁹⁶ This aids the police in their investigation and probably frees the accused from the shackles of false accusation.⁹⁷ Where the accused person is arrested in the midst of the commission of a crime, this right may not avail him.⁹⁸ In *Agbaje v. Commissioner of Police*, where the accused person was detained for about ten days and was not informed of the reasons for his arrest, the court held that his arrest was illegal and a violation of the Constitution.⁹⁹

⁹¹ CONSTITUTION OF NIGERIA (1999), § 35(3).

⁹² *Christie v. Leachinsky* [1947] AC 573 (HL) 591 (appeal taken from Eng.).

⁹³ KEHINDE M. MOWOE, CONSTITUTIONAL LAW IN NIGERIA 332–33 (2008).

⁹⁴ CONSTITUTION OF NIGERIA (1999), § 35(3).

⁹⁵ MOWOE, *supra* note 93, at 333.

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.* (citing *Agbaje v. Comm’r of Police* [1969] 1 NMLR 137).

D. Right to be Charged to Court Within Reasonable Time

Section 35(4) states that a “person who is arrested or detained in accordance with Subsection (1)(c) of this section shall be brought before a court of law within a reasonable time.”¹⁰⁰ If this requirement is not met within

- a. two months from the date of his arrest or detention in the case of a person who is in custody or is not entitled to bail; or
- b. three months from the date of his arrest or detention in the case of a person who has been released on bail, he shall (without prejudice to any further proceedings that may be brought against him) be released either unconditionally or upon such conditions as are reasonably necessary to ensure that he appears for trial at a later date.¹⁰¹

In Subsection 5, the term “reasonable time” was defined for the purpose of Subsection 4 as follows:

- a. in the case of an arrest or detention in any place where there is a court of competent jurisdiction within a radius of forty kilometres, a period of one day; and
- b. in any other case, a period of two days or such longer period as in the circumstances may be considered by the court to be reasonable.¹⁰²

These provisions are not amenable to easy interpretation. Accordingly, Osita Ogbu observes that the only thing clear about the provisions is that “a person who is arrested or detained must be brought to court of competent jurisdiction within 24 hours or 48 hours as the case may be depending on the availability of a court within a radius of 40 kilometres or otherwise.”¹⁰³ The court construed this provision in *Eda v. Commissioner of Police*.¹⁰⁴ It was held that where a person is arrested or

¹⁰⁰ CONSTITUTION OF NIGERIA (1999), § 35(4).

¹⁰¹ *Id.*

¹⁰² *Id.* § 35(5).

¹⁰³ See OGBU, *supra* note 44, at 199.

¹⁰⁴ Chukwunonso Nathan Uwaezuoke, *The Pacta Sunt Servanda Solace for Persons Detained Indefinitely in Nigeria on Suspicion of Committing Capital Offenses*,

detained for allegedly committing an offence, the police is under a duty to bring him before a court within the period of one or two days notwithstanding the provision of any other law to the contrary.¹⁰⁵ The court therefore held on this backdrop that Section 17 of the Criminal Procedure Act and Section 27 of the Police Act, which empowers the Police to charge an accused person as soon as practicable, is unconstitutional as it breaches Section 32(1)(c), (4), and (5) of the 1979 Constitution.¹⁰⁶ These provisions stipulate that an accused must be brought to court within a reasonable time, which it defines as one or two days depending on the distance of the court within 40 kilometres of the place of arrest and detention.¹⁰⁷

In the case of *Amodu v. Commissioner of Police of Lagos State & Anor*,¹⁰⁸ Iyizoba, J.C.A stated categorically that:

[t]he Constitution of the Federal Republic of Nigeria requires that a person who is arrested and detained on suspicion of having committed a criminal offence shall be brought before a court of law within a reasonable time and if he is not tried within a period of two months from the date of his arrest or detention, he shall without prejudice to any further proceedings that may be brought against him be released either unconditionally or upon such conditions as are reasonably necessary to ensure that he appears for trial at a later date.¹⁰⁹

In *Folade v. Attorney General of Lagos State*, it was held that the court has the discretion to determine what amounts to reasonable time and can declare a period beyond two days as reasonable based on the circumstances of the case before it.¹¹⁰

4 AFR. J. CRIM. L. JURIS. 108, 111–12 (2019) (citing *Eda v. Comm’r of Police* [1982] 3 NCLR 219).

¹⁰⁵ MOWOE, *supra* note 93, at 333 (citing *Eda* 3 NCLR at 219).

¹⁰⁶ The Periodic Report on Nigeria’s Human Rights Record to the African Commission on Human and Peoples’ Rights, No. 24/93, Afr. Comm’n on Hum. and Peoples’ Rts., High Comm’n of the Fed. Republic of Nigeria, (Apr. 1, 1993), https://www.achpr.org/public/Document/file/English/staterep1_nigeria_1992_eng.pdf (discussing *Eda v. Comm’r of Police* [1982] 3 N.C.L.R 219).

¹⁰⁷ CONSTITUTION OF NIGERIA (1999), §§ 35(1)(c), 35(4), 35(5).

¹⁰⁸ *Mr. Buba Amodu v. The Commissioner of Police Lagos State & Anor* (2014), LAW CARE NIGERIA, <https://lawcarenigeria.com/mr-buba-amodu-v-the-commissioner-of-police-lagos-state-anor-2014/> (last visited Oc. 10, 2021).

¹⁰⁹ *Id.*

¹¹⁰ MOWOE, *supra* note 93, at 333 (discussing *Folade v. Att’y Gen. of Lagos* [1981] 2 NCLR 771).

In compliance with this provision, the court has held that the “holding charge”¹¹¹ often practiced by the police is a violation of the Constitution.¹¹² Accused persons have been held in custody for periods ranging from two to ten years based on this holding charge.¹¹³ His Lordship Onu J.C.A. (as he then was) in *Enwere v. Commissioner of Police* considered the issue of holding charge and held that:

[a]s it is palpable that the appellant in the instant case up till 8th March, 1993 when he was granted bail by this court still being detained under what is called a purported “holding charge” without any information filed against him before any law court, I hold that this act constitutes improper use of power or a flagrant abuse of power by the police for which they stand condemned. This particular abuse of power is all the more condemnable when it is known that there have not been exhibited proofs of witnesses “evidence evidencing police desire to prosecute the appellant placed before the trial court.”¹¹⁴

The provision of the Corrupt Practices and Other Related Offences Act permits the ICPC to arrest and detain people indefinitely until the person complies with the summons of the anti-graft agency.¹¹⁵ This Act was challenged in *A.G. Ondo State v. A.G. Federation*.¹¹⁶ The Supreme Court held that Section 35 of the Corrupt Practices and Other Related Offences Act is a violation of the right to personal liberty protected by Section 35 of the Constitution.¹¹⁷

Where the suspect is not charged to court within the stipulated time, he is entitled to be granted bail either conditionally or unconditionally.¹¹⁸ The Court held in *Olugbusi v. Commissioner of Police* that where a person charged with an offence is not tried within a reasonable time, he is entitled to be released either unconditionally or

¹¹¹ This refers to the practice whereby the police keep a suspect person in custody pending the conclusion of investigation on the matter or preferment of information by the Attorney General. *See generally* OGBU, *supra* note 44, at 209–10.

¹¹² *Enwere v. Comm’r of Police* [1993] 6 NWLR 333.

¹¹³ *See* CLEMENT NWANKWO ET AL., *THE FAILURE OF PROSECUTION: A REPORT ON THE CRIMINAL SUSPECTS IN NIGERIA* 3 (2006).

¹¹⁴ *Enwere*, 6 NWLR at 335.

¹¹⁵ Corrupt Practices and Other Related Offences Act (2000) Cap. 407, § 35.

¹¹⁶ *Att’y Gen. of Ondo v. Att’y Gen. of the Fed’n* [2002] 9 NWLR 222, 310.

¹¹⁷ *Id.*

¹¹⁸ CONSTITUTION OF NIGERIA (1999), § 35.

upon such conditions that are reasonably necessary to make sure he does not elope from trial at a later day.¹¹⁹

In *Onu Obekpa v. Commissioner of Police*, the accused person was arrested on August 30, 1980, on an allegation of theft.¹²⁰ He was brought to court on September 1, 1980.¹²¹ His offence was a bailable one.¹²² His counsel applied for his bail, which the prosecution opposed on the ground that some of the co-accused persons were still at large, and that if the bail was granted, it might be difficult to arrest the other suspects.¹²³ The Magistrate agreed with the prosecution and refused the bail application.¹²⁴ The applicant applied to the High Court for bail.¹²⁵ This was opposed by the State Counsel on the ground that the accused had not stayed up to two months in detention because Section 32(4)(1) of the 1979 Constitution did not apply.¹²⁶ Idoko J., rejecting the argument of the State Counsel, stated that:

[t]he spirit behind the provisions in section 32(4) and (b) of the Constitution (1979) is to keep an accused person out of incarceration until found guilty through the process of court trial. It is a conditional privilege which he is entitled under the constitution.¹²⁷

The judge also went further to remark on the merits of this provision of the Constitution in the following words:

[i]t allows those who might be wrongly accused to escape punishment which any period of imprisonment would inflict while awaiting trial; to stay out of prison guarantees easy accessibility to counsel and witnesses who ensure unhampered opportunity for preparation of defence. Of much further advantage in this regard is this fact that unless the right to bail or to freedom before conviction is

¹¹⁹ *Olugbusi v. Comm'r of Police* [1970] 1 (H.C. of Lagos M/240/69) (citing CONSTITUTION OF NIGERIA (1999), § 20(3)).

¹²⁰ Chukwunonso Nathan Uwaezuoke, *Limits to Duration of Criminal Trials in Nigeria: Time for the Courts to Coalesce Right to Fair Hearing with Right to Personal Liberty*, 2 PORT HARCOURT J. OF BUS. L. no. 1, 2016, at 1, 8 (citing *Obekpa v. Comm'r of Police* [1981] 2 NCLR 420).

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ See Uwaezuoke, *supra* note 120.

¹²⁷ 2 CHARLES MWALIMU, *THE NIGERIAN LEGAL SYSTEM: PRIVATE LAW* 904 (2009) (citing *Obekpa* 2 NCLR 420).

preserved, protected and allowed the presumption of innocence constitutionally guaranteed to every individual accused of a criminal offence would lose its meaning and force.¹²⁸

The judge went further to hold that where a person is charged for a non-capital offence, bail is a basic right, and, undoubtedly, his right to be released before trial was more basic if his trial would last beyond two months.¹²⁹

Kanu J. in *Commissioner of Police v. Amalu*, reasoned differently when he held that that right to pre-trial bail avails only suspects who have not been charged before a court.¹³⁰ The Court of Appeal concurred with his reasoning in *Danbaba v. The State*, where Galadima, J.C.A. stated thus:

[t]o my mind the constitutional right to pre-trial bail in section 35(4) is applicable where the suspect has not been charged before a court of law within the stipulated time. See *COP v. Amalu* [1984] 5 NCLR 443. It would appear that the provision does not mean that a suspect must be released on bail if trial is not concluded within 2 or 3 months as the case may be. The learned counsel for the appellant relied on the authority of the High Court decision in *Obekpa v COP* [1981] 2 NCLR 420 to buttress his argument that for non-capital offences, bail is a constitutional right. An interpretation of section 35(4) suggesting that the constitution intended an obligatory release, under any circumstances, after two or three months, without giving the trial Judge before whom the application is brought any discretion in the matter cannot be supported.¹³¹

In *Bamaiyi v. The State & Ors*, the appellants were charged with conspiracy to commit murder and attempted murder.¹³² They pled not guilty and were remanded to prison.¹³³ They filed an application for pre-

¹²⁸ Ndubuisi Madubuike-Ekwe & Olumide Obayemi, *Assessment of the Role of the Nigerian Police Force in the Promotion and Protection of Human Rights in Nigeria*, 23 ANN. SURV. INT'L & COMP. L. 19, 32 (2019) (citing *Obekpa* 2 NCLR 420).

¹²⁹ Emmanuel Olugbenga Akingbehin, *Capital Punishment in Nigeria: A Critical Appraisal* 237 (October 2011) (Ph.D. dissertation, University of Lagos) (on file with the school of postgraduate studies, University of Lagos) (citing *Obekpa* 2 NCLR 420).

¹³⁰ *Comm'r of Police v. Amalu* [1984] 5 NCLR 443.

¹³¹ *Danbaba v. State* [2000] 14 NWLR 396, 400.

¹³² *Bamaiyi v. State* [2001] 8 NWLR 270, 272.

¹³³ *Id.*

trial bail, which was denied by the trial court.¹³⁴ Aggrieved, they appealed to the Court of Appeal, which held that Section 35(4) does not create an automatic right to pre-trial bail.¹³⁵ Oguntade J.C.A. (as he then was) held in leading judgment that:

[i]t seems to me that the purpose of section 35(4) above is to ensure that once a person is arrested and put in custody and such a person is not granted bail, he shall within a reasonable time be brought before a court and his trial commenced within a period of two months after taking him into custody. To interpret it as meaning that the trial must be concluded in two months will create serious implementation problem as the country has not yet the manpower and other allied facilities to ensure that trials of persons who because of the seriousness of the offences alleged against them cannot be granted bail are concluded in two months.¹³⁶

The above reasoning was also echoed in the case of *Alaya v. State*, where Agube, J.C.A., stated that:

[b]y virtue of section 35(4) and 36(5) of the 1999 Constitution, an accused person is entitled to his unfettered liberty and is presumed innocent until proved guilty, and the onus is on the prosecution to prove that an accused person is not entitled to bail. However, the presumption of innocence and the right to liberty as enshrined in sections 36(5) and 35(4) respectively of the Constitution can only be invoked where there is no prima facie evidence against the accused, it would be foolhardy to allow him on bail because the Constitution could not have envisaged a situation where accused persons of every shade could be allowed bail just at the mention of the magic words of presumption of innocence and right to liberty. Thus, the provision in section 36(5) of the 1999 Constitution states that nothing in the section shall invalidate any law by reason only that the law impose upon any such persons the onus of proving particular facts.¹³⁷

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ *Alaya v. State* [2007] 16 NWLR 483, 487–88.

However, over-stringent conditions for bail may be inconsistent with the Constitution, as held in *Comptroller of Nigerian Prisons v. Adekanye*.¹³⁸ The court in this case considered the conditions for bail under the Failed Bank (Recovery of Debts) and Financial Malpractices in Banks Act, which provides that the accused person must deposit one quarter of the amount involved in the crime he was charged with as security for bail and also provide security for the remaining balance of the amount involved in the offence he allegedly committed.¹³⁹ The court held that this provision imputes a presumption that the accused is already guilty as charged and is hence unconstitutional.¹⁴⁰

E. Right to Bail for Capital Offences

The right to bail is unavailable for persons charged with capital offences due to the severity of the offence they are charged with.¹⁴¹ In *Atiku v. State*, the accused persons who were charged with murder applied for bail, which was denied by the trial court.¹⁴² They appealed to the Court of Appeal which dismissed the appeal and held that:

[t]he position of the law regarding or governing the right of an accused person being detained in connection with any offence under our laws to be released on bail pending his trial by any court of competent jurisdiction is governed by the respective states Criminal Procedure Laws . . . and section 35(4) and (7) of the 1999 Constitution

It is quite clear from the provision of the Constitution of the Federal Republic of Nigeria quoted above that bail pending trial is not normally granted as a matter of course where the offence for which the applicant for bail is charged is a capital offence or punishable with death as in the present case . . . [because] it is not in the public interest However, special circumstances may arise in any particular case to warrant the exercise of discretion by any High Court trying the accused person to release him on bail pending his trial

In all these cases, the special circumstances, which to my mind, guided this court in allowing the appellant's

¹³⁸ *Nigerian Prisons Serv. v. Adekanye* [1999] 10 NWLR 400, 421.

¹³⁹ Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Act (2004) Cap. (F2), § 21.

¹⁴⁰ *Adekanye* 10 NWLR at 421.

¹⁴¹ CONSTITUTION OF NIGERIA (1999), § 35(7)(a); see *Oladele v. State* [1993] 1 NWLR 294, 299.

¹⁴² *Atiku v. State* [2002] 4 NWLR 265, 266–67.

appeal and granting them bail is the fact that the appellants were being detained for a long time without even the knowledge when their trial would begin at the High Court having jurisdiction to try them in line with the fundamental requirements of the presumption of their innocence enshrined under section 33(4) of the 1979 Constitution then in force.¹⁴³

The court should however not remand the accused person indefinitely unless the prosecution has provided prima facie evidence of the commission of the offence charged.¹⁴⁴ In *Anaekwe v. Commissioner of Police*, the appellants were charged with conspiracy and murder.¹⁴⁵ They were remanded by the Chief Magistrate, and the appellant applied for bail at the High Court of Onitsha.¹⁴⁶ The High Court refused the application on the ground that the appellants were charged with murder.¹⁴⁷ The appellants further appealed to the Court of Appeal which held that, although the Constitution makes provision for pre-trial bail, it is generally unavailable for persons accused of capital offences.¹⁴⁸ The court further held that:

[u]nless the right to bail before trial is preserved, the presumption of innocence, secured only after centuries of struggle, would lose its meaning. [And] [t]he constitutional presumption of innocence enshrined under S.33(5) of the 1979 Constitution can be invoked in a capital offence where a *prima facie* case has not been established against the accused. However, the issue of presumption of innocence cannot arise if there is sufficient probability of guilt on the part of the accused. This is because, if the constitutional provision is applied to the letter in a bail decision, then every accused must be released on bail while awaiting trial and this will not be in the interest of enforcement of the criminal process.¹⁴⁹

¹⁴³ *Id.* at 276–78.

¹⁴⁴ See *id.* at 274–75.

¹⁴⁵ *Anaekwe v. Comm’r of Police* [1995] 3 NWLR 320, 322.

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ *Id.* at 331.

¹⁴⁹ *Id.* at 323.

F. Arrest and Detention

Section 35(1)(c) permits the authorities to deprive an individual of his right to personal liberty upon reasonable suspicion of a criminal offence or to a reasonable extent for the purpose of preventing the individual from committing a criminal offence.¹⁵⁰ This section tries to aid the work of the security agencies by counter-balancing it with human rights.¹⁵¹ A person cannot therefore rely on his right to personal liberty to shield himself from arrest by the police.¹⁵² This was the position of the court in *Attorney General of Anambra State v. Uba*, where it held that an individual cannot initiate a court process to prevent or shield himself against criminal investigation or prosecution.¹⁵³ Such is an interference with the powers constitutionally vested on the law enforcement agencies in criminal investigation.

The police however are not to arrest and detain an accused person until there is evidence which establishes a prima facie case against him.¹⁵⁴ The mere invitation to the police station for interrogation does not constitute arrest if obeyed by the affected person willingly.¹⁵⁵ Accordingly, it was held in *Ateze v. Momoh* that where:

[a constable asks a man to] accompany him to the charge office[,] and he does[,] [t]here is no arrest, no legal process, no submission and no constraint. The man is entitled to refused [sic] accompanying the constable. [I]f he does the constable is entitled to arrest and bring him with him, but he cannot compel him to come unless he arrest[s] him . . .

¹⁵⁶

G. Arrest of Another Person in Lieu of the Accused Person

The police in exercise of this power cannot arrest a person for the offence of another, such as arresting a parent for the offence of the child.¹⁵⁷ Punishment is personal and must be levied on the appropriate offender.¹⁵⁸

¹⁵⁰ CONSTITUTION OF NIGERIA (1999), § 35(1)(C).

¹⁵¹ *See id*; *see also* *Odogu v. Att’y Gen. of Fed’n* [1996] 6 NWLR 508, 522.

¹⁵² *See id.*

¹⁵³ *Att’y Gen. of Anambra v. Uba* [2005] 15 NWLR 40, 50.

¹⁵⁴ *Olugbusi v. Comm’r of Police 1* [1970] (H.C. of Lagos M/240/69).

¹⁵⁵ *See* Criminal Procedure Act (1945) Cap. P19, § 3.

¹⁵⁶ Muhammad Bello Alle, *Arrest in Nigeria Procedural Laws*, 1 BEAM: J. ARTS & SCI. 134, 140, 144 (1997) (citing *Ateze v. Momoh* [1958] NRLNR 127).

¹⁵⁷ *See* African Charter on Human and Peoples’ Rights art. 7, June 27, 2981, 21 I.L.M 58.

¹⁵⁸ *Id.*

Such arrest is a violation of Section 36(1) of the 1999 Constitution.¹⁵⁹ In the case of *A.C.B v. Okonkwo*,¹⁶⁰ the Court of Appeal per Niki Tobi J.C.A. (as he then was) held thus:

I know of no law which authorizes the police to arrest a mother for an offence committed or purportedly committed by the son. Criminal responsibility is personal and cannot be transferred A police officer who arrested “A” for the offence committed by “B” should realize that he has acted against the law. Such a police officer should, in addition to liability in civil action, be punished by the police authority.¹⁶¹

H. Remedies for Breach of Right to Personal Liberty

In *Nemi v. A. G. Lagos & Anor*, the court held that under Section 32(6) of the 1979 Constitution (now Section 35(6) of the 1999 Constitution) a violation of an individual’s right to personal liberty is remediable, at the insistence of the victim, by the appropriate authority’s compensation, public apology, and the victim’s release if he or she is still being held in unlawful detention.¹⁶² Also, in *Jim-Jaja v. Commissioner of Police*, the Supreme Court established that where the plaintiff proves unlawful arrest and detention under Section 35(6) of the 1999 Constitution, he is entitled to compensation and public apology as relief, even where he did not claim any specific amount.¹⁶³ Where asked for a specific amount, the court will evaluate the claim and determine the amount that will be reasonable to compensate the plaintiff.¹⁶⁴

CONCLUSION

Though Nigeria is said to have a solid legal framework on the right to personal liberty, this right is not effectively upheld. Those in authority must respect the laws put in place for the upholding of the right to personal liberty, and the following issues need to be addressed. First, the snail-like movement of the trial and prosecution of cases within the court system more often than not leads to the infringement of personal liberty

¹⁵⁹ CONSTITUTION OF NIGERIA (1999), § 36(1).

¹⁶⁰ *Afr. Cont’l Bank v. Okonkwo* [1996] 1 NWLR 194.

¹⁶¹ *Id.* at 196.

¹⁶² *Nemi v. Att’y Gen. of Lagos* [1996] 6 NWLR 42, 55; *see also* *Odogu* 6 NWLR at 513–14.

¹⁶³ *Jim-Jaja v. Comm’r of Police* [2012] 6 NWLR 225, 231; *see also* *Odogu* 6 NWLR at 513–14.

¹⁶⁴ *Jim-Jaja* 6 NWLR at 254.

in Nigeria.¹⁶⁵ Second, there is a lack of a mechanism or a check system to ensure that an accused's right to interpretation, right to be informed of charges against him, and right to be conveyed to a court after arrest within a reasonable time are upheld by the police.¹⁶⁶ Third, corruption within the police prevents a legal practitioner from gathering adequate evidence where his client's right has been violated.¹⁶⁷ Fourth, judges and courts exhibit a lackadaisical attitude towards personal liberty cases brought before them.¹⁶⁸ Finally, there are numerous contradictory provisions of law, an example of which can be found in the examination of *Ohimieokpu v. Commissioner of Police*, where Section 101 of the Criminal Procedure Act could be stated to be conflicting with Section 35 of the Constitution.¹⁶⁹

RECOMMENDATIONS FOR PROTECTION OF PERSONAL LIBERTY

Clear and unambiguous laws should be drawn out, eradicating all existing contrary provisions to the Constitution which would infringe on an accused's rights.¹⁷⁰ Individuals who have not been told the charges brought against them should be released after twenty-four hours, in accordance with the Writ of Habeas Corpus, which states that individuals detained must be read the charges brought against them within twenty-four hours of being detained.¹⁷¹ This will in turn decongest the prisons.¹⁷² Effectiveness should be ensured at the judiciary level by creating checks on the appearance of judges at court at the stipulated time and preventing whimsical adjournment of cases.¹⁷³ Adequate enforcement mechanisms should be established to ensure all accused persons enjoy their rights and to prevent trial inmates having to wait of over five years.¹⁷⁴ Punishment

¹⁶⁵ See Ben Ezeamalu, *Why Nigeria's Criminal Justice System is Slow — Judge*, PREMIUM TIMES (Jan. 19, 2018), <https://www.premiumtimesng.com/news/more-news/256056-nigerias-criminal-justice-system-slow-judge.html>.

¹⁶⁶ See Madubuike-Ekwe & Obayemi, *supra* note 128, at 35–43.

¹⁶⁷ *Id.* at 32–34.

¹⁶⁸ See Ezeamalu, *supra* note 165.

¹⁶⁹ Mohammed Enesi Etudaiye & Muhtar Adeiza Etudaiye, *A Legal and Constitutional Blueprint on Functionalizing "Time Frames" in Some Civil and Political Rights – A Study of Chapter IV of the Constitution of the Federal Republic of Nigeria 1999*, 7 ESSEX HUM. RTS. REV. 49, 59–62 (2011) (summarizing *Ohimieokpu v. Comm'r of Police* [1959] NRNLR 1); CONSTITUTION OF NIGERIA (1999), § 35; Criminal Procedure Act (1945) Cap. § 101.

¹⁷⁰ Etudaiye & Etudaiye, *supra* note 169.

¹⁷¹ CONSTITUTION OF NIGERIA (1999), § 35(4), § 35(5).

¹⁷² U.N. Off. on Drugs and Crime, *Ten Years of Justice Sector Reform in Nigeria: A 360 Degree View*, 14 (Apr. 2–3, 2009) [hereinafter UNODC].

¹⁷³ See generally Peter Chukwuma Obutte, *Corruption, Administration of Justice and the Judiciary in Nigeria*, SSRN, 3, 12 (Feb. 3, 2016), <https://ssrn.com/abstract=2727319>.

¹⁷⁴ See Shima, V.A. and Bem Abojo, *Trial Within a Reasonable Time Under Nigerian Law: A Legal Myth or Reality?*, 9 BENUE ST. UNIV. L.J. 352, 353 (2019).

should be meted out to defaulting police officers that exceed their powers and infringe rights in a bid to gather evidence from the accused.¹⁷⁵ Awareness programs should be organized in various local areas with more non-educated individuals in a bid to make them informed on the various rights they have as citizens against the law enforcement agencies which tend to override their rights and mistreat them.¹⁷⁶

Finally, it is this author's opinion that to effectively prevent the infringement and violation of one's right to personal liberty and combat these challenges, there has to be an analysis and well-mapped out reworking of the entire Criminal Justice System in Nigeria.¹⁷⁷

¹⁷⁵ See Omoba Oladele Opeolu Osinuga, *An Agenda for Effective Policing in Nigeria*, SSRN, 1, 8, 12, 13 (Aug. 11, 2010), <https://ssrn.com/abstract=1657221>.

¹⁷⁶ UNODC, *supra* note 172, at 11.

¹⁷⁷ Madubuike-Ekwe & Obayemi, *supra* note 128, at 44–48.