

WOMEN'S RIGHTS AND THE NIGERIAN CRIMINAL JUSTICE SYSTEM: A
SORRY TALE

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In any criminal proceeding, there should be respect for the rights of the victim and the accused irrespective of the sex, tribe or status. They are to be treated with justice and dignity. The existence of a criminal justice system (C.J.S.) is to guarantee the ultimate protection of the society's basic value and norms. In virtually all civilized societies, there are rights which are universal, basic and enjoyed with fellow human beings. In many societies, women are dealt with on the basis of prejudicial stereotypes. Under the C.J.S, this is becoming apparent with the increase in female criminality that is attributed to changes in sexual roles, the economy and exposure due to women's liberation movement. Generally, in present times, women cannot be likened to Caesar's wife who was "above board and beyond reproach".

In theory and legal terms, women have different rights but in practical terms these are more honoured in words than observance. According to *Schacht* "women under the Islamic criminal law and procedure, have an inferior status and they are prohibited from serving as witness although in certain cases, two female witnesses may substitute for a man. Moreso females receive half the compensation of males".

The criminal process include everything that is required to be done from the moment a woman comes into contact with the C.J.S. and at every stage, such women have rights which are not genderized except in particular issues but such rights are violated.

This paper examines the general rights that are also applicable to women as Nigerian citizens and rights peculiar to them under the C.J.S. The rights that are mostly violated are

¹ Schacht. 1996. An Introduction to Islamic Law. Clarendon Press Oxford

considered and positive solutions for solving the problems arising from such violation are proffered to assist in policy formation.

The Nigerian Criminal Justice System (C.J.S.)

The criminal justice process include everything that is required to be done from the moment of arrest of a person suspected of having committed a crime through interrogation, arraignment, prosecution, conviction, sentence and incarceration to the release by the state. Freedom may come to a person at any stage in between; because a person may be released on bail by the police or the court, the prosecution may drop the case for inadequate evidence, the Attorney General may enter a nolle prosequi, the court may dismiss the case for lack of evidence, the court may enter a verdict of not guilty at the conclusion of the hearing or the state may grant a person a state pardon on conviction.

Nigeria operates a Federal System of Government under which legislative powers is divided between the Federal, the State and Local Governments which are the three tiers of government. Only the federal and state governments however have legislative competence to enact criminal laws with certain subject matters reserved on the exclusive legislative list of the Constitution².

The criminal justice system comprises the police, the court and the prisons. A person may come in contact with any of these institutions in the above order at three stages. These are the pretrial, trial and post trial stages and the activities of the actors of the CJS at these stages determine whether there is a violation of the rights of a person or not. These institutions are considered briefly below.

The Police

This is the first institution any person including a woman comes into contact with under the C.J.S. This contact is at the point of arrest, search, seizure or detention and is hereby referred to as the pretrial stage. The police are given powers under the Police Act to effectively perform their duties³. At times, in the performance of the duties, the individual rights are violated. In many legal systems, it is said that pretrial custody accounts for more incarceration.⁴ In view of this, it is essential to establish the rights of pretrial detainees and the problems confronted.

The court

The 1999 constitution of the Federal Republic of Nigeria came into force on 5th of May 1999 and Section 6(5) gives recognition to eight superior courts of records and other lower courts. In the hierarchy of the courts, cases proceed from the lower court to the highest court, which is the Supreme Court of Nigeria. The courts are constantly confronted with the enforcement of human rights brought before them at the trial stage. There are many Constitutional rights that women are entitled to, which are violated by the courts. The protection and enforcement of these fundamental rights rest primarily on the members of the judiciary who have not lived up to expectation. Groves in a survey of the fundamental rights decision of the Nigerian courts under the 1960 Constitution noted that the judiciary took a restrained attitude to declaring legislative and executive acts unconstitutional even in cases in of obvious excesses.⁵ The attitude of the courts has not drastically changed from the one described above. This may be attributed to the excessive actions of the past military rulers under which Nigeria was subjected to for fifteen years, which resulted in the courts being ousted of their constitutional powers. This was done by the enactment of obnoxious Decrees. One of such Decrees was the State Security (Detention of Persons) Decree No 2 of 1984 which was used by the military rulers to lock up numerous

² Constitution of the Federal Republic of Nigeria 1999

³ Police Act. Cap. 359 1990 *Laws of the Federation*

⁴ National Jail Census 1970 *Washington: LEAA 1971 as quoted in National Advisory Commission Task Force on Correction.*

⁵ Groves, D.L. 1963 "The sentinels of Liberty? The Nigeria Judiciary and Fundamental Rights" Vol. 7 No 3 1963 *Journal of African Law.*

Nigerians and which allowed indefinite detention without trial on undefined grounds of security. According to Ojo "The treatment of fundamental rights both by the executive and judiciary could hardly be reconciled with constitutionalism".⁶ With much sense of relief, the Decree was repealed on May 26 1999. With the return of democracy in Nigeria, it is hoped that there will be judicial independence and the courts will take their rightful position in protecting the rights of citizens.

The Prisons

A woman comes into contact with the prison and prison officials at any of the three stages under discussion. At the pretrial stage, after arrest, a woman that is not granted bail is incarcerated. During trial, she may be incarcerated pending the determination of the case, and after conviction she may be sentenced to a term of imprisonment which is known as the post-trial stage. There are different categories of women in the prisons. There are the inmates on remand, usually called the awaiting trial cases (A T S) and convicted persons who are treated differently. In reality, awaiting trial cases suffer more and have their rights grossly violated when compared with convicted persons.

Women who come into contact with the C.J.S. are not generally given preferential treatment because of their sex. All the same they enjoy the rights contained in the law. The activities of the different institutions allow for the curtailment and not the violation of the rights. This paper considers below women's rights and the extent to which it has been curtailed, and violated.

Women's Right under the C.J.S: A Sorry Tale

Basically, the rights of person under the Nigerian Constitution are not gender biased but of general application to both sexes. Due to physiological differences however certain rights are peculiar to women. Nigeria has acceded to quite a number of International and Regional Treaties

and Covenants aimed at guaranteeing human rights to its entire citizen. The ones that are relevant to women and to this paper are discussed below.

The International Bill of Human Rights is made up of the United Nations Universal Declaration of Human Rights (UNHR) adopted in December 10 1948, the International Covenant on Economic, Social and Cultural Rights (ICESCR) adopted by the United Nations General Assembly on December 16 1966 and ratified by Nigeria in 1993; and The International Covenant on Civil and Political Rights (ICCPR) adopted by the United Nations General Assembly on December 19 1966 and ratified in Nigeria in 1993. Others are the Convention on the Elimination of Discrimination against Women (CEDAW). It was adopted by the United Nations General Assembly on 18 December 1979 and was entered into force as binding treaty on September 13 1985. The African Charter on Human and People's Rights (A.C.H.P.R) was adopted by the Organisation of African Unity on January 19 1981 and enshrined as part of municipal law by the African Charter on Human and People's Rights (Ratification and Enforcement) Act 1990. The existence of all these rights supposedly inherent in women does not guarantee compliance. There are cases of violation of rights and flouting of laws by over zealous officials. Some of these general and peculiar rights of women are discussed below under the various stages of the C.J.S.

Pretrial Rights

The first contract a woman has with the C.J.S. is with the police at the point of arrest. Everyone is presumed innocent until the contrary is proved.

Right to Life

Women have a right to life under section 33 of the Constitution subject to certain exceptions⁷. A woman shall not be deprived intentionally of her life save in execution of the sentence of a court in respect of a criminal offence of which she has been found guilty in Nigeria. There are similar provisions in the International and Regional Instruments (Article 4,

⁶ Ojo Abiola (1982) "The Judiciary and Human Rights: The Nigerian Perspectives". Paper delivered at the 12th Congress of the International Political Science Association Rio de Janeiro Brazil August 9-14, 1982

⁷ Okonkwo v The State 1998 4 Nigerian Weekly Law Report (NWLR) PT. 544. P. 145.

A.C.H.P.R.; Article 6(1) I.C.C.P.R.; Article 3 UDHR). In a CLO report of 1994, a woman's right to life was violated while she was having breakfast in her house. She was killed by a bullet from a gun fired at a bus driver who refused to stop at a police check point.⁸

Right to Personal Liberty

The presumption that everyone is innocent until the contrary is proved implied that women who are presumed innocent have absolute and unfettered right to move about in all parts of the country and carry on all lawful duties without any undue interference from any person. This right to personal liberty is fully guaranteed under Section 35 of the Constitution. It is not sufficient per se to arrest an individual. The arrest must be lawful and in accordance with the laws. There are exceptions to this right to personal liberty.

In Section 35(1) (c) where there is reasonable suspicion that a woman has committed a criminal offence, for the purpose of bringing her before the court, her right may be curtailed. At this stage, women are more likely than men to be cautioned rather than prosecuted by the police and given bail rather than remanded. This has been attributed to the chivalry hypothesis⁹. The processes by which many women get into the C.J.S, violate international and local laws such as Article 6 (ACHR) and Article 9(1) (ICCPR). From the point of arrest, some women's rights are abridged, and they suffer illegal arrests, questioning and detention. During the oppressive years of military rule in Nigeria, in the wake of the coup attempt in Nigeria in April 1990, many innocent women were arrested because they were related by blood, marriage or friendship to the alleged plotters and not as parties to the coup. Another case of unlawful arrest was that of the pregnant wife of the editor of a Nigerian Newspaper "The Republic" in June 1989. According to *Pearce*, armed policemen arrested this pregnant woman in her house when they could not find her husband who was wanted in connection with a report in the newspaper. The woman was released

⁸ CLO Annual Report 1994. A CLO report on the state of Human Rights in Nigeria by Ifowodo Ogada.

⁹ Hudson, Barbara "Justice through Punishment: A critique of the Justice" Model of correction: Macmillan Education Ltd London p.45.

the following day when her husband showed up at the police station¹⁰. Such practices were common and were noted in international reports¹¹. On March 15 1994 security agents arrested the female publisher and editor-in-chief of a magazine Christ Anyanwu in response to her magazines feature article titled "Coups update: Blood bath soon".

The right to personal liberty was the most frequently ignored of the pretrial rights under the past military regimes in Nigeria. The violation was made possible by the promulgation of obnoxious Decrees. The worst was the popular Decree No 2 State Security (Detention of Persons) 1984 amended by Decree No 3 of 1990. The Decree gave power to the Chief of General staff who needed to be satisfied that a person has been connected in acts prejudicial to state security. There was no need to give reasons to the detained person before the right of such a person is suspended. Happily the obnoxious Decree was repealed on 28 May 1999 by the immediate past military government in a farewell broadcast to the nation on the night before the return to democratic rule of the fourth republic. The decision to abrogate the Decree was taken by the Provisional Ruling Council (PRC) during the valedictory meeting on 26 May 1999 to repeal existing Decrees.

This right can be curtailed when subsection a-f applies. Even then, there are certain rights such women are still entitled to. Women awaiting trial under this section shall not continue to be kept in detention for a period longer than the maximum period of imprisonment prescribed for the offence. In line with this right, the Federal government promulgated The Criminal Justice (Release from Custody) Special Provisions Act Cap. 79 of 1990. The Act confers power of release on the Chief Justice of the Federation, the Chief Judge of the state, the Attorney General of the Federation. They may order the release on visitation to prison of prisoners who have been held in custody awaiting trial for a period longer than the maximum period of imprisonment prescribed for the offence for which they are detained.

¹⁰ Pearce, Adewale Maja "The Mark of the Beast: Nigeria in the year 1989" in index on censorship October 1989 p.14

¹¹ Country Reports on Human Rights Practices in 1995 "Report submitted to the committee on International Relations", U.S. House of Representatives and the Committee on Foreign Relations U. S. Senate by the Department of State April 1996 p.199

Women that are detained can bring applications under Section 280 of the Criminal Procedure Act (CPA) Cap 82 Laws of the Federation of Nigeria 1990 that their rights have been violated. There were cases when women were arrested for offences and detained for many months and even years without trial. In a Nigerian Newspaper report, a Lagos State High Court judge granted bail to three women who had been awaiting trial at Kirikiri women's prison for five years for different offences while their cases were pending in court. According to the newspaper report, these women were part of a group of seven female detainees who had been detained without trial for between two or seven years.¹² A similar report in the Nigerian Vanguard¹³ said that a human right group went to court in September 1989 over the continued detention of ten women who had been held since 1985. There was also the pitiful case of a nursing mother of a fourteen-month-old baby held in detention since November 1989 reported in The Guardian Newspaper. The Chief Judge of Kwara State in August 1990 ordered the High Court to decide the murder case against the woman before the end of September 1990¹⁴. These are few instances where the right to liberty of women were violated.

Right to Information after Arrest

The right to be informed in writing in a language understood by the detainee within twenty-four hours of the facts and grounds of arrest and detention is contained in Section 35(3). This right places a duty on the police to ensure that a detainee from the onset knows why the right to personal liberty is being interfered with and is then given the opportunity to prepare for the defence. This provision was suspended under the past military regime in Nigeria and was violated flagrantly. It is known that the fourth Republic elected civilian President of Nigeria, General Olusegun Obasanjo was arrested on the 13th of March 1995 without being charged for ten days before he was returned to his home.

¹² The Guardian. March 27 1992.

¹³ The Nigerian Vanguard September 13 1989

¹⁴ The Guardian. September 1 1990 p.3

This pretrial right is similar to a trial in Section 36(6)(a). The difference is that in the latter provision the accused must have been charged to court and the accused is entitled as of right to be informed in a language understood of the details of the charge. This will enable the accused prepare for the defence and protect herself after judgement against another prosecution on the same charge.¹⁵ It is observed that the courts appear to be more concerned, and have given more recognition to the trial than to the pretrial right.

Right to Silence

Before any interrogation, after the law enforcement agents have arrested any woman, there is a right in section 35(2) to remain silent until after consultation with a legal practitioner or person of the detainee's choice. This is similar to the privilege against self-incrimination under the American Constitution in *Miranda V Arizona*¹⁶. Apart from this constitutional provision, the Criminal Procedure Act (CPA) in section 287(1) and the Criminal Procedure Code (Northern States) (CPC) Cap 81 Laws of the Federation of Nigeria 1990 in section 236(1) have similar provisions. The right commences immediately a person is arrested by the police and it can be said to be non-existent in Nigeria in practical terms. This may be due to the low level of literacy in Nigeria especially among women and the technicality in the language of the law which the layman especially many women are unfamiliar with. Under the Nigerian law, unlike the provision in the Criminal Evidence Act 1984 of England, there is no duty on the police to inform the detainee of this right. The only thing which is done by the Nigerian police, is to caution the detainee in accordance with the Judges Rule before obtaining the statement. This practice does not help in remedying the right, which has already been violated, moreso when the Judges Rule is not enforceable or justiciable.

¹⁵ *Kajubo v The State*. 1988 1 Nigerian Supreme Court cases; p.475 *Josiah v State* 1985 1 Nigerian Supreme Court Cases p. 132 (NSCC) p 475.

¹⁶ 384 U.S. 36 1966

The court is given the powers under Section 236(1) of the CPC to draw inference from the silence of the accused during trial but the prosecution cannot comment on the silence.¹⁷

The Right to Bail

Accused persons or detainees are entitled to bail by virtue of Section 35(4) of the Constitution except where the offence is a capital offence which is still recognised in Nigeria. The police are given powers to grant bail at the pretrial stage under Section 17 of the CPA, Section 42 of the CPC and Section 22 of the Police Act. The court can grant bail at the trial stage under Section 18 of the CPA and Section 341 of the CPC. The law enforcement agencies especially the police and some judicial officers have constantly refused to allow women to stand as sureties to detainees contrary to the law. It is difficult to see why the sex of a proposed surety should be a factor that leads in many cases to the refusal of bail of accused persons generally and female accused in particular. This practice has been criticized by women' groups.¹⁸ The communiqué of the national seminar on women and children held in Owerri Nigeria in October 1989 stated thus "*under our law, women are not prevented from taking accused persons on bail*". It is important that relevant organs of the C.J.S. namely the police, magistrates and judges should ensure that women are not prevented from standing as surety. This act of discrimination is contrary to Section 42 of the Constitution. It is important that relevant organs of the criminal justice system should heed to the advice in the communiqué and ensure that the right of women against discrimination is enforced and protected. From the discussion above, it is clear that there are rights women are entitled to at the pretrial stage that are also available at other stages of the C.J.S. This paper now considers the rights at the trial stage.

¹⁷ *Okoro v The State* 1988 5 Nigerian Weekly Law Report (NWLR) pt. 94 p. 255; *Sugh v The State* 1988 3 NWLR pt 77 p. 475; *Babalola v The State* 1989 5 NWLR pt 115 p. 276.

¹⁸ The New Nigerian December 2 1988

Trial Rights

An offender after being arrested may be charge before a regular court of law therefore coming into contract with the next stage of the criminal justice system. In *Abiola v Federal Republic of Nigeria*¹⁹ it was stated that the courts are to enhance confidence in the administration of justice and the courts are to abstain from doing anything that will erode the root of justice. Under the past military regimes in Nigeria, in order to suppress oppositions to its rule, the regime first bypassed the regular courts in favour of tribunals and declared itself above the law by prohibiting court review of government actions. The tribunal which operated outside the constitutional court system, seriously undermined the independence of the judiciary and resulted in legal proceedings that denied the accused of due process. Their tenure of the military had tremendous negative effects on the implementation of the human rights provision of the Constitution. The regular court system was left intact by Decree one of the 1984 but a parallel system of military tribunal was established which denied due process. The regime often refused to respect the court ruling and did undercut the independence and integrity of the judiciary. According to an International Report,²⁰ the regime declared itself above the law by promulgating Decree 12 of 1994 which stated that no act of the Federal Military Government should be questioned henceforth in a court of law and divested all courts of jurisdiction in all matters concerning the authority of the Federal government.

The criminal justice procedure provides for trial within three months of arraignment for most categories of crime but inefficient administrative procedure, poor communication between the police and prison officials, transportation problems continue to cause inconsiderable delay often stretching trials to several months. The rights of women at the trial stage are discussed below.

¹⁹ 1995 7 NWLR pt. 455 p.8

²⁰ Country Report (1995) *supra*

Right to Presumption of Innocence

Under Section 36(5) of the Constitution, every person accused of a crime is presumed innocent until the contrary is proved. Where the prosecution fails to prove all the material elements of an offence charged, the accused person will be acquitted because he has no burden to prove his innocence.²¹ The majority of human rights provisions enforced by the court came under the heading right to fair hearing under Section 36 of the Constitution. There cannot be a trial without hearing. The test of a fair hearing is the impression of a reasonable person at the trial whether from all observations, justice was done in the case²².

Right to Public Hearing

In Section 36(4) of the Constitution, Section 225 CPC and Sections 203-204 CPA there is the common law principle of openness of courts of law which is based on the notion that justice must be administered openly in the face of all men and should be open to everyone. This is subject to certain exception in cases where it is in the interest of defence, public safety, public order, public morality or welfare of person not yet eighteen years, protection of private lives or in the interest of justice. On the right, Lord Shaw of Dunfermline in *Scots* case said:

"In the darkness of secrecy, sinister interest and evil in every shape have full swing. Where there is no publicity there is no justice. Publicity is the very soul of justice. It is the keenest spur of exhortation and the surest of all against improbity. It keeps the judge himself while trying under trial. The security of securities is publicity".²³

²¹ *Dimlong v Dimlong* 1988 2 NWLR pt 538 p. 384; *Alabi v The State*, 1993 9 Supreme Court of Nigeria Judgement p. 109

²² *Otapo & Ors v Sunmonu* 1987 2. Nigeria Supreme Court cases (NSCC) p. 669

²³ *Scot v Scot* 1913 AC 440 at 476

Right to Speedy Trial

This trial right is in Section 36(4) of the Constitution. Speedy trial is an essential ingredient of reasonable, fair and just procedure. The right is similar to the sixth Amendment of the American Constitution. It is enshrined right in the African Charter (Article 7(1) (d) and the ICCPR (Article 9(3)). The issue of reasonable is attached to this right and it has been held that it is not possible to prescribe a specific time limit for the conclusion of a trial but all the facts and circumstances of the case should be considered. In determining the term "reasonableness" under the law, delay of four years was held by the Supreme Court in Nigeria to be unreasonable.

Justice Obaseki stated that "reasonable time" is "the period of time which in search for justice does not wear out the parties and their witnesses and which is required to ensure that justice is not only done but appears to a reasonable person to be done"²⁴.

Right to be Informed in a Language understood of Nature of Charge and Right to an Interpreter

These rights are contained in Section 36(6)(a) and (e) of the Constitution. Women who are charged to court must be informed promptly about the details of the nature of the offence in a language that they understand. (Section 36(6)(a)). They also have the right to an interpreter in Section 36(6)(e) where they do not understand the language used the trial. The language of the court is of great importance to the parties in a case and effective communication is the essence of a fair trial. In Nigeria, there are more than one hundred different languages spoken. The accused may not understand English which is the official language in the superior courts and in some of the lower courts. It may not be surprising that a woman outside her locality may not understand the language of another community. This right cannot be compromised. It is not therefore surprising that the right is emphasized in the Constitution both at the pretrial and trial stages. The cost of providing the interpreter is on the court. The interpretation must be accurately done and

²⁴ *Artori & Others v Elemo & Others* 1983 NSCC pg. 1; *Atejiaye v Ayeni* 1998 6 NWLR p. 552 p. 135

the proceedings should be interpreted sentence by sentence. All the statement of the parties and witnesses should be interpreted to the accused²⁵.

Right to Adequate Time and Facilities

Women charged with crimes under the C.J.S. have the right to be given adequate time and facilities for the preparation of their defence. This right in Section 36(6)(b) has been violated on several occasions and the problem centers mostly around the request on the part of the accused to obtain an adjournment in order to consult a counsel or invite the witness to court. In *Gokpa vs Inspector General of Police*²⁶ the accused that was not aware of the hearing date was arrested after a bench warrant was issued because he failed to turn up in court. He was brought to court the next day and an application for an adjournment to enable him consult a counsel was granted only until the afternoon of that day. The accused was unable to consult lawyer within that short adjournment and when the court resumed sitting in the afternoon, the accused took part in the proceedings and was convicted. The court of appeal held that this right must always be upheld and cannot be sacrificed for the desire of the magistrate to dispose of long standing cases²⁷. *Gokpas* case can be compared with *Mary Kingston* case where the accused was aware of the date of hearing but failed to turn up or make alternative arrangements for the conduct of the case. This right will not be violated, where the application for adjournment is made to delay proceedings.²⁸

Right to Counsel of Choice

Women have the right to counsel of choice by virtue of Section 36(6)(c) of the Constitution. It is the root of fair hearing and a necessary foundation. As rightly stated in *Powell v Alabama*, the ordinary layman, even an intelligent and educated layman is not skilled in the science of law and he therefore needs the aid and advice of counsel²⁹. This right is qualified. In *Awolowo & Ors v Federal Minister for Internal Affairs* it was stated that the choice of an accused

²⁵ *Ajayi & Anor v Zaria Native Authority* 1964 1 Northern Region of Nigeria Law Report (NRNLR) p. 61; *Ogba v The State* 1992 2, Supreme Court of Nigeria Journal 106 at 119-123; *Ugwu v The State* 1998 7 NWLR p. 558 p. 402.

²⁶ 1961 2 ANLR p. 423

²⁷ *Olari Motors & Co. Ltd. v UBN Ltd* 1998 6 NWLR p. 502 p. 496.

²⁸ *Omego v The State* 1963 1 All Nigeria Law Report (ANLR) p. 379

person should be a legal practitioner qualified to practice in Nigeria³⁰. Under the provision, the state is not under a duty to provide a legal practitioner for the accused except where the accused has been charged with a capital offence that is punishable with death or where the accused is indigent³¹. In such cases, the court must ensure that the accused is represented if she cannot afford a counsel. Under this provision, an effective counsel must be available for the accused³².

Right to be Heard and to Examine Witnesses

This right is under Section 36(6)(d). The accused should be allowed to examine witnesses who testify against her. The court has no right to cross-examine a witness for the accused. An accused that is not represented must be duly informed of this right by the court³³.

Right against Retrospective Legislation

This right in Section 36(8) of the Constitution and Article 6(2) of the African Charter is universal and unambiguous and it is to protect a person from being prosecuted and punished for an act which when it occurred did not constitute an offence. It is to achieve the longstanding common law canon of statutory construction that statutes do not apply to the past but to a future state of circumstances. It is also to protect the imposition of a heavier punishment for an offence that would have carried lighter punishment at the time it was committed. Under the military regime, the rule against retroactive legislation was grossly violated by *Decree 20 of 1984*³⁴.

Right against Double Jeopardy

The Right against double jeopardy is in Section 36(9) of the Constitution, Section 181 of the CPA and Section 223 of the CPC. It provides that an accused person should not be tried the second time when the trial is the same or practically or substantially the same with that which he was

³⁰ *Powell v Alabama* 287 U.S. 1932

³¹ 1962 Lagos Law Report (LLR) p. 117

³² See Section 352 CPA, Section 186 CPC and Legal Aid Act Cap 205 1990 Laws of the Federation of Nigeria. This Act had many previous amendments.

³³ *Udofia v The State* 1988 3 NWLR p. 84 p. 533.

³⁴ *Ugwu v The State* (1988) *supra*; *Awode v Kagoro* 1998 4 NWLR pt. 547: P. 603

³⁴ Special Tribunal (Miscellaneous Offences) Decree No 20 of 1984. Amended by Decree 22 1986. See also *Ikpasa v The State* 1981 NSCC p. 300

originally charged or acquitted or convicted³⁵. This right found expression in the common law rule of *autrefois acquit and autrefois convict*. In Nigeria, the past military government grossly violated this right which is similar to the Fifth Amendment under the American Constitution.

Right to Copies of Judgement

By virtue of Section 36(7) of the Constitution, accused persons are entitled to copies of the judgement seven days after the conclusion of the case. This is to enable parties to prepare for the appeal if necessary. However, in view of problems confronting the courts causing delay in trials this right is violated. Such problems include inadequate personnel, lack of modernised facilities for taking down statements. It is unfortunate that the courts that should curtail the excesses of the police are equally guilty of violating the rights of accused persons. This takes us to post trial rights.

Post Trial Rights

These are rights that are inherent in convicted persons in prison custody. Lawful incarceration brings about the necessary withdrawal or limitation of many privileges and rights, which is justified by the consideration underlying the C.J.S. *Krantz* states that it is only where the fundamental rights are breached that are constitutional protection become involved³⁶. Prisoners too have rights! One of these rights was discussed under pretrial rights. This is the right to respect for the dignity of person in Section 34(1) of the Constitution.

A right peculiar to women at this post trial stage is the right of pregnant women and nursing mothers under the C.J.S. These women have been seriously neglected. Generally there are no provisions under the laws for the care of pregnant women and nursing mothers. The Prison Regulation 2 allows the child of a female prisoner to be admitted into a prison with the mother if such baby is at the breast and less than eighteen months old. The UN rules do not include pregnant prisoners among the special categories dealt with part II. Considering the

³⁵ *Madu v The State* 1976 Nigerian Monthly Law Report (NMLR) p. 155

³⁶ *Krantz*, S 1976 "Correction and Prisoners Rights West Publishing Minn

biological significance of pregnancy and the medical attention required by the pregnant women, they should be given recognition under the law. The only provision is the one that provides for special accommodation for prenatal and postnatal care and treatment (UN rule 23). Babies born or taken into prison custody with their convicted or detained mothers due to no fault of theirs are not adequately taken into consideration under the C.J.S. The care, feeding, education and health of such babies are not taken care of by the law and the officials have attributed this to the fact that there are inadequate provisions for them under the Prison Regulation and no funds are made available for them. The Prison Standing Order addressed this issue in an unsatisfactory manner in Order 418-420. The order confers a duty on the prison medical officer to provide certain things for such children when in actual fact many prisons do not have medical officers and no funds are given for such purposes. The state of nursing and pregnant women in incarceration in Nigeria violates Article 16 of the ACHPR.

There are reports to show that there are many female and male children in Nigerian prisons. According to a CLO report in 1989,

"In most female prisons, child birth takes place without adequate medical attention or infrastructure. Most of these children grow up in the prison and are kept there sharing the same cell with their mothers and other inmates".

Such babies exist on charity and kindness of inmates, visitors, prison staffs and non-governmental organizations.

The extent of damage done to such children cannot be imagined. There are negative traits which children acquire during their stay in prison. This has a net effect on the overall development of such children in the future. The psychological damage done to babies or children in incarceration plays a vital part in their mental and social development. A child's contact with its environment socially, emotionally and physically all add up to shape the personality of the child's life. The absence of good feeding, adequate medication and clothing could hurt a child's

development. According to the statement of a penal psychologist in the 1993 CLO report³⁷, the prison is an abnormal environment for a child and it affects all the development and socialization phase of the child. The quantity and quality of food is grossly inadequate and this leads to malnutrition and retardation of some development processes such as intelligence at the early stage when the child needs them most. She concluded that such a child is reared in an environment that will make it difficult for her to adapt in the mainstream environment. The child is already being groomed as a deviant that will come up and swell prison population in the near future.

Consideration for pregnant inmates is found in the prison Rules of Northern Ireland, which provides that prisoners expected to give birth before the end of their sentence should be removed from the prison to a suitable hospital for whatever period the medical officer considers necessary³⁸. In one of the prisons, the mother and baby care unit exist and prisoners keep their babies with them in the unit until the baby is nine months. The aim of prisonization in Nigeria have not been achieved with the several instances of gross violation of prisoners' rights. In many cases, the prisoners have nothing to offer the society on their release. This is again due to the violation of another right to vocation. While in prison, female prisoners rarely learn anything that would make them comfortable and more useful in life on discharge from the prison. In order to retaliate, more often than not they resort to involving themselves in more criminal activities.

The rights of females under the C.J.S. are numerous and cases of violations are countless as revealed in the discussion above. Many of the cases of violation as seen were carried out during the past oppressive military rules that Nigeria was subjected to for an unbroken period of fifteen years. With the return to democratic civilian rule on 29th May 1999, there are hopes for women under the C.J.S. It is therefore pertinent to consider the future of women under the new dispensation.

³⁷ Prisoners in the shadow. A Report on women and children in Five Nigerian Prisons. Published by CLO Lagos.

³⁸ Prison and Young offenders Centers Rules (Northern Ireland) 1995 cited in Civil Liberties in Northern Ireland. The committee on Administration of Justice. Handbook 3rd Edition by Brice Dickson 1993 Shanway Distribution.

After this, What Next

There is great expectation for a change in the way women are presently being treated under the C.J.S. There are hopes that the rights of women will be protected and enforced. It is in this light that a few recommendations are made to change the status quo of women under the C.J.S. and eventually eradicate the sorry tales on the rights of women.

The law is supposed to be one of the most potent forces for compelling human behavior. Men resist the law but the sustenance and systematize enforcement of a law gives it efficacy. Therefore those who enforce, interpret and protect the law will be useful in bringing about the changes.

1. **Roles of the Lawyer:** The role of the lawyer under the C.J.S. is to protect the law. The presence of a lawyer for an accused person at the pretrial and trial stages represents the last hope against the violation of basic rights. The lawyer should be sensitized to the rights of women in order to respond to the client's consultation with a gender sensitive approach. There is a correlation between poverty and higher susceptibility of right violation. There is the need for lawyers not to charge too much on legal services on human right issues so as to enable more women have access to justice, secure enjoyment of rights and redress violation.

2. **Roles of the Court:** Members of the bench must be thoroughly educated on the development in the area of women's rights. They must be gender sensitized so that this can reflect in their interpretation of right violation.

Until recently, the formal education curriculum did not include any course of training on human or women's rights. It is therefore necessary for members of the bench to attend seminars, workshops and conferences to enrich their knowledge. This is essential especially for members of the lower bench because the bulk of such cases come before them.

The role of the judiciary to enforce the law is very important. Judicial independence without extra judicial influences is a *sine qua non* in enforcing the rights of women under the enthroned democratic government.

The periodic visitation of the judiciary to the prisons has gone a long way in reducing cases of violation of the rights of female detainees and prisoners. Members of the bench will be of great assistance in decongesting the overcrowded prisons where some rights are violated by using alternative measures of punishment such as fines, probation in less serious cases.

3. **Roles of the Law Enforcement Agencies:** It is not only the police who are given powers to enforce laws under the C.J.S. These agencies must be well equipped for their role and must be gender sensitive. They should deemphasize the traditional discrimination and violation of women's rights.

4. **Roles of the Women:** Women in Nigeria should be encouraged to develop confidence in themselves and their abilities. They must be convinced that they are human beings with human dignity, self worth and inalienable basic and fundamental rights. They should see their rights as inherent in them and not a privilege. The female sex should have access to good quality education to develop themselves for challenges in the society. The situation of women in a bad economy is worse than that of men. There is need for economic independence for Nigerian women to enhance their status and help to pull down stereotypical and negative attitudes resulting in violation of rights.

Women's groups should come together periodically to assess and review the position of women's rights in Nigeria.

5. **Role of the Government:** The citizens need to be aware of rights that apply to them. A government, especially a democratic government must ensure that this is done as it will enhance the social, cultural and legal transformation of the people and create individual consciousness. The government should organize awareness programs for the public on

their rights. This can be through radio and television campaigns, adverts in newspapers, press, posters, brochures, drama sketches and other traditional methods such as town criers. There must be adequate funding for the law enforcement agencies and the courts to function properly. Proper equipment and infrastructures must be provided. In addition, fostering of staff training and introduction of scientific and technical innovations will reduce the delays and ensure quick and efficient administration of justice.

The school curriculum must be redesigned and restructured to include human right education to prepare the society for the challenges of the next decade. Finding a solution to gross violation of human rights in Nigeria will have little meaning unless effective methods and remedies are available for enforcing such violation. There should be appropriate remedies for violation.

6. **Role of Non Governmental Organization (NGO'S):** The NGO's have a crucial role to play because of their closeness to the people especially to the women at the grassroots. They are to sensitize and mobilize women and serve as educators to put an end to violation of rights. The activities of NGO's have been noted to be more effective in improving the law of human rights. A large number of NGO's that deal with rights of women now exist in Nigeria. They include Constitutional Right Project (CRP); Civil Liberties Organization (CLO), Legal Research and Resource Development Centre (L.R.R.D.C.), Committee for the Defence of Human Rights (CDHR), the International Federation of Women Lawyer (FIDA), Women in Nigeria (WIN) and a research centres for women – Women Documentation and Research Centre (WODORC). The approach to preserving the rights of women is multifaceted and the responsibility of all.

Conclusion

In the past, gross violation of the rights of persons especially women have earned Nigeria a place in history as a country with a high record of human rights violation. Moreover women

were conceived as being incapable of committing acts that could put them into prison. This is not the position now. Women are increasingly being found to be involved in crimes, given the fact that they are exposed to societal pressure and temptations. This is the price society is paying for the new status of women. The rights of women under CJS should be left intact and cases of violation should not be treated as isolated problems but a complex societal problem requiring integrated strategies. Nigeria must be back to the global rings as a country that protects the rights of her citizens.

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