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TOPIC:

PRE-TRIAL DETENTION AND THE RULE OF LAW IN NIGERIA AND LIBERIA

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I. INTRODUCTION

All beings have the right to enjoy respect for their liberty and security. It is axiomatic that, without an effective guarantee of the liberty and security of the human person, the protection of other individual rights becomes increasingly vulnerable and often illusory. Yet, as is evidenced by the work of the international monitoring organs, arrests and detentions without reasonable cause, and without there being any effective legal remedies available to the victims concerned, are commonplace. In the course of such arbitrary and unlawful deprivations of liberty, the detainees are frequently also deprived of access both to lawyers and to their own families, and also subjected to torture and other forms of ill-treatment.¹

Although the constitutions and statutes of Nigeria and Liberia as well as other international legal instruments provide for the protection of the basic rights of individuals, including those in detention, these countries account for very high number of pre-trial detention cases with victims staying up to three or more years in detention without trial.

Constitutions and statutes of countries around the world, and other international legal instruments have made it emphatically clear, that certain rights are considered inalienable and fundamental to the existence of every person. At such those rights should always be upheld and never trampled upon, no matter the situation, by any civilized government or system of government. Amongst those rights are the right to freedom, right to liberty and movement, due process and fair trial.

Pre-trial detention is a situation in which a person is detained in a government facility while he/she awaits legal proceedings. The detainment of an accused person in a criminal case occurs before the trial takes place. Though pre-trial detainees have not been found guilty of any crime, they are still deprived of their freedom, either because they cannot afford bail or because bail has been denied. Pre-trial detention exposes countless individuals to horrific conditions and abuses for months or years before any hearing on the merits of their case.

Excessive and arbitrary pre-trial detention is an overlooked form of human rights abuse that affects millions of people each year, causing and deepening poverty, stunting economic development, spreading of disease and undermining the rule of law.²

According to Salla, Ballesteros, et al, Democracy, Human Rights and Prison Conditions in South America (Sao Paulo: 2008, Center for the Study of Violence, University of Sao Paulo), "those

¹ Human Rights in the Administration of Justice: A Manual for Judges, Prosecutors and Lawyers

² Open Society Justice Initiative Report (Why We Need a Global Campaign for Pretrial Justice)

entering pre-trial detention come from the poorest and most marginalized echelons of society, who are least equipped to deal with the criminal justice process and the experiences of detention.”³

In many countries including Nigeria and Liberia, , half of the detainees in the criminal justice system are awaiting trial. In Nigeria, the average length of pre-detention is 3.7 years, while the proportion of detainees awaiting trial in in Liberia is about 97 percent.⁴

The summary locking up of accused persons contravenes both domestic and international legal norms of both Nigeria and Liberia. Domestically, the constitutions of these two countries prohibit the violation of the fundamental rights of any person (including rights to freedom and civil liberty) unlawfully. Internationally, as signatories to conventions and charters, both countries are obliged to adhere to best practices and the rule of law regarding people’s rights. Unfortunately, this is not the case as these domestic and international legal instruments are treated as just mere writings which have no relevance in terms of practicality.

Many of those entering pre-trial detention languish in prison far beyond the statutory period authorized. Even though they are presumed to be innocent under the law until due process is accorded and a conviction entered against them, they go through prosecution while they are presumed innocent for a lengthy period. Pre-trial detainees will usually experience either of the following: 1. lengthy jail period with little or no possibility of ever being tried, 2. many of them who have already spent long period in jail are released because of lack of evidence and 3. those who are finally tried and convicted are released because they had spent two to three times the actual jail term for the crime committed. As a result of their wrongful detention or long over stay in prison, victims of pre-trial detention leave prisons without any recourse to justice. They go through the worst form of psychological warfare and many come out of prisons in need of urgent medical attention.

This research on Pre-trial Detention and the Rule of Law in Nigeria and Liberia is a desk review which looks at pretrial detention in both countries and draws a comparison between the United States of America on the one hand and that of Nigeria and Liberia on the other hand, and to see what lessons can be learned from the American practice of pretrial detention for improving the system in the two West African Countries with worsening pretrial detention conditions.

Problems

There are several factors contributing to the high number of pre-trial detention cases in both Nigeria and Liberia: Records management at courts is a serious problem for the judiciary, lay down procedures also contribute to the problem. Further, backlog of cases; insufficient magistrates,

³ Salla Ballesteros et al, Democracy, Human Rights and Prisons Conditions in South America (Sao Paolo: 2008 Center for Study of Violence, University of Sao Paolo)

⁴ Open Society Justice Initiative(Why We Need a Global Campaign for Pretrial Justice)

prosecutors and public defenders and sometimes insufficient budgetary allotments for the running of courts are also some of the main problems which account for the prolonged detention without trial.

In this period of the 21st century when the world is experiencing globalization in every sphere of life, including human rights, a solution for excessive pre-trial detention is elusive and remains a universal issue far from being resolved by the global community. Nigeria and Liberia are two countries with appalling pre-trial detention records among the comity of civilized nations of the world.

Pre-trial detention is the temporary custody of persons apprehended for committing crime, pending investigation and trial. Pre-trial detainees are remanded in police cells, prisons or any other place of confinement pending the conclusion of police investigations and sometime pending the outcome of the trial by court of law on such matter.

Categories of offenses

Offenses for which suspects can be detained fall into two categories: bailable and non-bailable offenses. Bailable offenses are minor crimes which, after sufficient interrogation by a police officer, a suspect may be released unconditionally or upon such conditions as may be required by law, pending further investigations as final determination of the case.

Non- bailable offenses on the other hand are crimes of grievous nature. No bail may be granted until the case has been investigated, brought before the court of law, and determined.

Pre-trial detention is used to facilitate the presence or the availability of suspects subsequently for trial without many difficulties. Pre-trial detention also prevents or reduces the chances of suspects tampering with evidence or hindering proper investigation. The possibility of suspects running away or jumping bail or escaping justice or committing crime is also minimized. The implication for criminal justice administration is that the appearance of a suspect for subsequent trial is guaranteed.⁵

Legal Instruments

Constitutions and statutes the world over and other international legal instruments guarantee the protection of citizens from ill-treatment and abuse that would otherwise violate their basic rights.

The constitutions of Nigeria and Liberia, the UN Declaration on Human Rights, the Convention against Torture, the African Charter of Human and Peoples' Right and many other legal instruments have unambiguously maintained that humans have dignity and, that the dignity of

⁵ E. I. Alemika, Pre-Trial Detention and Prison Congestion in Nigeria

every person lies in his freedom, liberty, equal treatment, association, unhindered movement, free speech, etc.

As members of the United Nations, the African Union, and as signatories to conventions, treaties, protocols, covenants, etc. ratified and domesticated, member states are obliged to observe and uphold basic principles that will ensure that rights of people are protected no matter the circumstance or crime charged, be it political, civil or criminal, a person is entitled to equal protection under the law. However, Nigeria and Liberia have failed miserably in protecting the rights of accused persons, imprisoned and awaiting court trial, compared to the United States of America, whose pretrial cases are far more than both countries, and yet has less number of pretrial detainees.

Chapters three and four of the Nigerian and Liberian Constitutions specifically call for the protection of 'fundamental rights' which mean that they do subscribe to the upholding and protection of the rights of every person resident within their borders.⁶ However, constitutions are mere writings which must be respected by those in authority., The danger is not that constitutions are not properly written, but that those in authority will not adhere to the rule of law. Many believe that constitutions do not safeguard against abuses. Contrary to that view is the view that constitutions do safeguard against abuses. However, where abuses like excessive pretrial detentions occur, it often the case that the ruling class is in blatant violation of provisions of the law.

To strengthen this point, a constitution is the source of power and legitimacy for all the key players (government, private sector and civil society) in the development processes. It provides the checks and balances within the entire range of the governance processes. It facilitates and regulates relationships in society, providing a consistent, fair and transparent framework for the conduct of economic, social and political activities. It provides for security and stability, promotion and enforcement of human rights, regardless of political majoritarian considerations, prejudices or status. As it assures the protection of fundamental freedoms and human rights, it empowers citizens to challenge and call to account the actions, or inactions of governments and their agents. The constitution is clearly the basic foundation for good governance.⁷

While a constitution defines powers and authority and the manner in which they should be used, constitutionalism refers to the practical habit of conforming to the constitutional provisions, and in particular to the principles of the rule of law and the due process of law, and the separation of powers. The principles of the rule of law stipulate that law is specific, impartial and non-

⁶ Constitution of the Federal Republic of Nigeria, Chapter IV, (Fundamental Rights) and Constitution of the Republic of Liberia, Chapter III, (Fundamental Rights)

⁷ Second African Governance Forum(AGF11), Final Report, 25-26 June 1998, Accra, Ghana UNDP New York, 1998, p.13

discretionary; that is, the laws are universal and applied equally to all citizens. No one is above the law. The constitution must contain, at least, the fundamental principles of the rule of law and due process of law, separation of powers, and basic individual freedoms and human rights.⁸

The rule of law compels government and those in charge of the governance processes to conduct their activities and behave in accordance with known and established legal principles. Government powers should be defined by law and be subject to legal control. If challenged, government should be able to identify the legal source of its powers, which, furthermore, must be such that they exist to protect, guide and provide adequate safeguard against the abuse of power for all people in society.

In the administration of criminal justice, the rule of law insists that punishment should only be imposed in accordance with specific provisions of the law and not subject to executive discretion. Amongst other things, people should not be subject to arbitrary arrest or detention, and the accused should be treated as innocent until proven guilty; he/she must have access to legal advice and representation, be afforded a public and fair trial in front of an independent court, be free to call witnesses, and have the right of appeal. The due process of law insists that the application of the law must conform to the strict legal procedures that are predictable, reasonable, appropriate and fair.⁹

In Africa, specifically Nigeria and Liberia, the issue of pre-trial detention is of no less concern. Detainees spend more than three years without being tried or having the opportunity to see a lawyer. In most instances, detainees spend more time languishing behind bars without trial than the time required as punishment for a particular crime when convicted. Reports on Nigeria and Liberia pretrial cases are appalling and need urgent attention. In Liberia 97 percent of the inmates are pretrial detainees. While an average time spent in pretrial detention in the European Union is estimated to be 167 days, pretrial detainees spend an average time estimated to be 3.7 years and above.

It has been widely accepted that Nigeria's criminal justice system is faulty, so the discourse has shifted to what needs to be done to fix it.¹⁰ Many stakeholders tend to agree that unless something concrete is done to reduce the thousands of pretrial detainees in Nigerian prisons, the justice system will remain broken.

⁸ Ibid.

⁹ Second African Governance Forum(AGF11), Final Report, 25-26 June 1998, Accra, Ghana UNDP New York, 1998

¹⁰ Davidson Iriekpen, This Day Newspaper, 26 July 2010

Emeka Ukiwe (not real name) was arrested in 1990, by the police and was held in jail for 18 years on suspicion of robbery. As it turned out, the alleged victim of the robbery did not exist and there were no witnesses to the alleged act. The only facts the police had were Ukiwe's statement denying the allegations of robbery. In 2008, after he had spent 18 years in detention without trial, Emeka was finally released following the intervention of lawyers from the Legal Aid Council and the non-governmental organization, Rights Enforcement and Public Law Centre (REPLACE). When he came out in 2008, because he had lost his parents, Emeka did not know how to get home; so much had changed while he was unjustly detained. Even if he had been convicted for the crime of robbery, the sentence would have been a fraction of the years he spent rotting in jail.

Another case was that of Oliver M.'s experience which is not much different. In 1985, the police in Owerri, in southeast Nigeria, arrested Oliver, then 19, on suspicion of murder. No trial ever took place, and, despite the allegation of such a serious crime, he was never charged before a competent court. Rather, he was left to sit in detention, waiting endlessly for his day in court. It never came. Twenty-one years later, in July 2006, Oliver finally regained his freedom as a broken 40-year-old.

Ernest's and Oliver's experiences are not isolated. The average period of pre-trial detention in Nigeria is nearly four years. The population awaiting trial is large and growing. In June 2010, Nigeria's Interior Minister, Emmanuel Iheanacho reported that across the country over 30,000 persons out of the total prison population of nearly 46,000—over 65%—were being held in detention while awaiting trial.¹¹

Four factors sustain this state of affairs. First, many victims of lengthy pre-trial detention are poor and therefore unable to afford the three essential "b's" of the criminal justice system—bribe, bail, and barrister. Second, the allocation of responsibilities among law enforcement institutions is not coordinated. For example, even though most offences are state-created, states' attorneys general do not have oversight of the police and the prisons. In practice, this means that the attorneys general, as chief law officers, cannot monitor the movement of suspects into and out of detention facilities within the state, and, therefore, cannot ensure compliance with the constitutionally guaranteed right to trial within a reasonable time. Third, the law requires police to investigate complaints and allegations before arrest. Regrettably, the reverse is the case in Nigeria. Finally, criminal procedure laws in most Nigerian states allow police the liberty to secure indefinite pre-trial detention orders from magistrate courts even in respect of charges—such as armed robbery and homicide—over which they do not have trial jurisdiction.

¹¹ Open Society Foundations, Voice: Don't Get Arrested in Nigeria, April 18, 2011

The problem of pre-trial detention in Liberia is not far from that of Nigeria. As mentioned, 97 percent of inmates in Liberian prisons constitute pre-trial detainees. Many reports from international organizations also speak of the worsening prison conditions in Liberian prisons.

Liberia has an appalling human rights record which speaks of widespread abuses and the level of impunity associated with those abuses. Among the most serious human rights abuses are those tied to justice: judicial inefficiency and corruption, lengthy pretrial detention, denial of due process, and harsh prison conditions. Violence against women and children, including rape and domestic violence, and child labor also were serious problems.¹²

Other important human rights abuses include unlawful deprivation of life; mob killings; police abuse, harassment, and intimidation of detainees and others; and arbitrary arrest and detention. Government in any case has not exercised the will power to prosecute and punish officials involved or responsible for these abuses.¹³

Arrest Procedures and Treatment While in Detention

The constitution requires warrants to make arrests and provides that detainees either be charged or released within 48 hours; however, arrests are often made without warrants, or warrants are sometimes issued without sufficient evidence, and detainees, particularly the majority without the means to hire a lawyer, are often held for more than 48 hours without charge. Detainees generally are informed of the charges against them upon arrest. Detainees have the right to prompt determination of the legality of their arrest, but in practice this does not always occur. The law provides for bail for all offenses except first-degree rape, murder, armed robbery, and treason. Detainees have the right to prompt access to counsel, visits from family members, and if indigent, to an attorney provided by the state in criminal and civil cases, however, the government does not always observe such rights.¹⁴

Inadequate provisions for food, sanitation, ventilation, temperature, lighting, basic and emergency medical care, and potable water contribute to harsh and life-threatening conditions in the country's 15 prisons and detention centers. Many prisoners supplement their meals by purchasing food at the prison or receiving food from visitors. With the support of the International Committee of the Red Cross (ICRC), the Bureau of Corrections undertook rehabilitation activities to improve access to clean water and sanitation facilities at Monrovia Central Prison, as well as the Bondiway,

¹² United States Department of States, 2011 Country Reports on Human Rights Practices-Liberia, 24 May 2011

¹³ Ibid.

¹⁴ Ibid

Buchanan, Fishtown, Gbarnga, Harper, Kakata, Robertsport, Tubmanburg, and Voinjama facilities. The Bureau of Corrections reported approximately 20 prisoners and detainees deaths last year.

Half the country's 1,601 prisoners are held at Monrovia Central Prison. This prison operates at more than twice its capacity due to the large number of pretrial detainees. The total prison capacity is 1,164 individuals, and the population includes 52 women and 44 juveniles. Prisons remain understaffed. Men and women are held in separate cells in larger facilities but are held together in some counties or cities that have only one detention cell. In many counties juveniles and adults are held together, and pretrial detainees generally are held with convicted prisoners. Conditions for women prisoners were similar to those for men.¹⁵

Although the law provides for the right of a defendant to receive an expeditious trial, lengthy pretrial and pre-arraignment detention remain serious problems. An estimated 79 percent of prisoners in 2011 were pretrial detainees, in spite of the release of 594 during the year by the Fast Track Court to reduce overcrowding. The length of time detainees are held in pretrial detention varied, but averaged three to six months. Improved capacity for probation and ongoing police training helped reduce the number. However, incarceration of new detainees keeps prisons overcrowded. In some cases the length of pretrial detention exceeds the maximum length of sentence that could be imposed for the alleged crime. Judicial inefficiency, corruption, and the lack of transport, court facilities, attorneys, and qualified judges caused trial delays.¹⁶

“Twelve young men are released from the Monrovia Central Prison. Four of them do not have shoes. Three of them are clutching loose trousers to their thin frames. One of them is shaking with the chills of fever in the heavy mid-day heat.”

These men represent just a fraction of the hundreds of pre-trial detainees that make up 90% of those incarcerated in Liberia. For months, they have been locked inside the dark, overcrowded cells of a prison compound holding almost 1,000 inmates in dilapidated buildings built for a maximum of 250 people. Charged with minor crimes, they have been resigned to their incarceration with scant hope that they would ever have access to a legal process and with no knowledge of their constitutional rights. In dirty, clenched fists they held their crumpled writs of arrest. All have been held for more than six months for minor crimes.

One day earlier, these young men were part of an alarming statistic in a country struggling to rebuild its justice sector after more than a decade of civil war. Today however, each one of them—represented by a defense attorney—appears before a magistrate court. Their cases are reviewed

¹⁵ United States Department of States, 2011 Country Reports on Human Rights Practices-Liberia, 24 May 2011

¹⁶Bureau of Correction 2011 Statistics, Ministry of Justice, Liberia

and they are formally released on the grounds that they have been detained without due process for longer than Liberia's laws permit.¹⁷

The Liberian Justice Minister, responding to concerns from the permanent representative at the Universal Periodic Review, acknowledged that Liberia is struggling to deal with pretrial detention. "We realize that a lot of the people in pretrial commit minor crimes. We are also asking the judiciary to open a second court for fast tracking and a second court for corruption too. Government tries to maintain a low number of pretrial detentions because it is aware that most prisoners are held longer than pretrial days."¹⁸

The lack of human rights education, poor and limited court houses and correctional centers, the destruction of family causing social, culture breakdown, trial by ordeal, the culture of impunity in public and private sectors and inadequate resources in addressing human rights issues are challenges facing the country's judicial system.¹⁹

However, efforts are being made aimed at addressing some of the problems. These include the setting up of the Law Reform Commission and the establishment of the James A. A. Pierre Judicial Institute to improve the judiciary. The Government trained and provided public defenders throughout the country.²⁰

The excessive length and use of pre-trial detention is a major cause of overcrowding in prisons. In some countries the majority of the prison population comprises detainees awaiting trial. In Nigeria, more than 25,000 prisoners are currently detained in prisons without conviction due to delays in the justice system, missing files, absent witnesses and prison mismanagement.²¹

Articles 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR) require that prisoners must be brought to trial and the proceedings completed within 'a reasonable time' or be released on bail. This reflects other principles, namely that everyone charged with a crime has the right to be presumed innocent until proven guilty and that the deprivation of liberty must be an exceptional measure. The UN Human Rights Committee has stated that: what constitutes "reasonable time" is a matter of assessment for each particular case. The lack of adequate budgetary appropriations for the administration of criminal justice does not justify unreasonable

¹⁷ United States Department of States, 2011 Country Reports on Human Rights Practices-Liberia, 24 May 2011

¹⁸ Tah, Christiana, Minister of Justice, Republic of Liberia, Paper Delivered at Universal Periodic Review, Geneva, November 2010

¹⁹ MEDIA 21, Global Journalism Network Geneva, Tuesday 09 November 2010

²⁰ Ibid.

²¹

delays in the adjudication of criminal cases, nor does the fact that investigations into a criminal case are, in their essence, carried out by way of written proceedings, justify such delays.

The UN Standard Minimum Rules for the Treatment of Prisoners sets out the standards for the detention of Pre-trial detainees. These include the right to be held separately from convicted prisoners, the right to wear their own clothes and to access medical assistance, free legal assistance and contact with family and friends.²²

Police are vested with powers and responsibilities for the enforcement of law, maintenance of order and peace and to prevent crimes in society. To enable police discharge their responsibilities, they are empowered to arrest and detain any person found committing a crime in their presence, without warrant. Although in exercising these powers, police are limited by the laws guaranteeing the individual rights against arbitrary police actions, however, in practice, because of the wide and discretionary nature of powers vested on the police by other statutory enactments, it has been very difficult to curtail police excesses and arbitrariness in law enforcement. As a result there is reported brutality, extortion of bribe from suspects, falsification of evidence, etc. by Nigerian police.²³

By virtue of the Criminal Procedure Code operating in the Northern States of Nigeria, persons who can be released on bail either by police or court could only be so released at the discretion of such police even when offenses for which a suspect is detained is bailable. Section 340(1) provides that any person accused of any offence punishable with imprisonment not exceeding three years seeking bail “must give security which may seem sufficient to the court or the police officer who arrested and detained such an accused and also “if in the opinion of the said police officer the granting of bail to the suspect does not constitute risk to the proper investigation of the case.

Bail

Bail is the releasing of an accused person (upon certain conditions) to another person who in the eyes of the law is reputable and who can guarantee the production of the accused person subsequently for trial. Bail plays a very crucial role in pre-trial detention. This is because greater numbers of offences leading to pre-trial detention are ordinarily bailable offences. But because of conditions attached to it which are sometimes rigidly applied; they often defeat the purpose of the principle. By provisions of law, bail is granted based on the following criteria:

²² Pernal Reform International, 26.12. 2011

²³ E. I. Alemika, Pre-trial Detention and Prison Congestion in Nigeria

1. Persons accused of an offence punishable with imprisonment for a term not exceeding three years shall be released on bail upon such security as may seem sufficient to the police or court;
2. Apart from security, suspects must in the opinion of the police officer or court satisfy the following conditions:
 - a. That by reason of granting bail the proper investigation of the offence would not be prejudiced
 - b. That no serious risk of the accused escaping from justice would be occasioned
3. Before an accused person can be released as provided under sections 340, 341 to 342 he must execute bond (with or without sureties) for a sum of money as the officer in charge of police station or the court thinks sufficient.

The relevance of these conditions precedent to the subject of pre-trial detention is that, although these conditions are not necessarily bad in themselves, problems are encountered during application. Because of the rigidity visited on the principle of bail by law officials, those conditions as simple as they appear to be have kept many suspects in detention awaiting trial for several months on the pretext that investigation has not been completed or that investigation would be prejudiced if accused persons are released on bail. The practice inevitably leads to prison congestion.

Improvement

After years of civil war, Liberia is struggling to rebuild its legal system. In less than two years, 1,800 detainees have been released through this special fast track court. The court does not help those accused of serious crimes, like armed robbery or rape. "That takes a special petition to a higher court. The rape committed is brutal so we don't want to let them go, instead of releasing people accused of violent crimes such as rape on a technicality, we will step up prosecution and case management"²⁴. It's that people accused of these violent crimes are not released simply because they have been held in jail too long. This means some of them spend more than seven years inside Monrovia Central Prison without ever talking to a lawyer. They are also not allowed to talk to journalists.

The government permitted the independent monitoring of prison conditions by local human rights groups, international NGOs, the UN, and the media. Some human rights groups, including national and international organizations, made regular visits to detainees held in police headquarters and prisoners in Monrovia Central Prison. The ICRC visited all 15 prisons and detention centers.

²⁴ DW.DE 2012 Deuschewelle (Christiana Tah, Minister of Justice, Republic of Liberia)

The government made efforts to improve recordkeeping, including training court clerks in Montserrado County and issuing case registration log books. The UN and nongovernmental organizations (NGOs) continued to provide medical services and improve basic sanitary conditions.

Regular visitation hours and religious observances generally were respected. Officials from the Human Rights Division of the Ministry of Justice and Bureau of Corrections visited prisons to monitor conditions during the year. Internal reports and investigations into inhumane conditions were not accessible to the public.

Comparing Pretrial Detention in the US to that of Nigeria and Liberia

The Eight Amendment of the US Constitution states that “Excessive bail shall not, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”²⁵ Pretrial records in Nigeria and Liberia are terrible and in violation of the rights of inmates (pretrial detainees) as compared to the US. Judges, court officials and police officers in the U.S. respect the rule of law and abide by those rules to the fullest applying them without favor, discretion or discrimination unlike Nigeria and Liberia that do not sometimes respect and abide by the rule of law thus violating the rights of pretrial detainees. In terms of training, better court facilities and working conditions, judicial independence and competence, the US is far ahead and better placed than Nigeria and Liberia who are yet to learn from the American experience. Not that Nigeria and Liberia cannot get to that point of being better in terms of improving their pretrial detention records, but in order to get on par with the US, both countries must have a system of checks and balances effectively put in place to reprimand judges, court officials and all those who will want to violate the rights of these inmates.

Actors of the criminal justice system in the United States are forced to adhere and obey the rule of law because the governance demands the straight adherence to the rule of law. There are prescribed punishments for anyone who violates the rules. The independence of the judiciary, and better support for the court system, makes the hearing of cases expeditious. Although the United States has more pretrial detention cases as compared to Nigeria and Liberia, pretrial detainees account for far fewer inmates in American prisons as compared to Nigeria and Liberia.

Conclusion

Approximately 10 million people per year pass through pretrial detention; many of them will spend months or even years behind bars without being tried or found guilty. Locking away millions of

²⁵ Constitution of the United States of America

people who are presumed innocent is a waste of human potential that undermines economic development.²⁶

Excessive pretrial detention has socioeconomic impact of lost employment, stunted economic growth, the spread of disease and corruption and the misuse of state resources.

The Liberian Government though described as one that respects human rights and dignity in Africa, if not only in West Africa, has admitted violating the rights of hundreds of inmates in detention facilities across the country. Over 90 percent of the inmates at various prison facilities around Liberia are pre-trial detainees. Pre-trial detainees are people detained on allegations of committing offenses but have not been tried or convicted for the acts they are accused of. Keeping people in jail without trial for a long period of time is a clear violation of their rights under Liberian laws.

In some cases, there are no records to indicate why some of those in state custody were placed there, something that is very dangerous for Liberia's democracy and the maintenance of the fragile peace.²⁷

In Nigeria, pretrial detainees spend up to four years in prison waiting to see a lawyer or to have access to court trial. There have been terrible accounts of prolonged incarceration without trial for maximum period of 18 years. One report even had it as “don't get arrested in Nigeria”, one could rot in Nigerian jail for the minor crime that has a punishment of not more than six months.

Many pretrial detainees are exposed to torture, violence and disease. They are subject to the arbitrary actions of corrupt officials. Throughout their ordeal, most never see lawyers or legal advisor and often lack information on basic rights. When they eventually reach a courtroom, they are without representation and are likely beaten down by months of mistreatment.

Excessive and arbitrary pretrial detention, compounded by inadequate representation, leads to rights abuse. Pretrial detainees may lose their jobs and homes; contract disease and suffer physical and psychological damage that last long after their detention. Prolonged pretrial detention results to gang violence, suicide and homicide. Social stigmatization, including estrangement from family and community and difficulty finding and retaining employment; increased propensity for crime-those who experience prolonged detention are more likely to commit a criminal offense after release and their children are also more likely to commit a criminal offense later in life.

²⁶ Open Society Justice Initiative and UNDP, (The Socioeconomic Impact of Pretrial Detention)

²⁷ The Probe, “Government Admits Prolonged Pretrial Detention Violates Inmates Rights”, September 2, 2011

Constitutionalism refers to the practical habit of conforming to the constitutional provisions and in particular the principles of the rule of law and the due process. “Lack of constitutionalism has been one of the major causes of bad governance in Africa. Constitutions in all African countries do provide protection for the individual. They promote human rights, enshrine the principles of the rule of law, separation of powers and the independence of the judiciary; and they provide provisions for the creation of independent tribunal. But in practice these provisions are rarely respected or observed.”²⁸

The rule of law is fundamental to all open societies. Fair and effective justice systems must be responsible not only for safeguarding and protecting the rights of the victims, but also the rights of the accused. Yet, violations of the principle are perpetuated with scant attention from governments. If Nigeria and Liberia are to become successful in their efforts to improve on their bad pretrial detention records, they will need to look to the United States and copy their example of the respect of their constitution and the rule of law.

In concluding, governments should be held responsible for compensation to inmates who suffer pretrial detention. Nigeria and Liberia should provide continuous training workshops for state prosecutors and the police, there should be fast-tracking of pretrial detention cases; the probation program must be introduced to enhance the process of decongesting prisons. The governments of Nigeria and Liberia must ensure that the judiciary and the justice system remain independent from interference from the executive or legislature. The judiciary should be given appropriate financial support in order to do its work free of corruption and manipulation. This will bring back the lost confidence in the justice systems in both countries. “The Criminal Justice System works better if there are more convicts than pretrial detainees”²⁹.

References:

1. Human Rights in the Administration of Justice: A Manual for Judges, Prosecutors and Lawyers
2. Open Society Justice Initiative Report (Why We Need a Global Campaign for Pretrial Justice)
3. Salla Ballesteros et al, Democracy, Human Rights and Prisons Conditions in South America (Sao Paolo: 2008 Center for Study of Violence, University of Sao Paolo)
4. E. I. Alemika, Pre-Trial Detention and Prison Congestion in Nigeria
5. Constitution of the Federal Republic of Nigeria, Chapter IV, (Fundamental Rights) and

²⁸ Second African Governance Forum(AGF11), Final Report, 25-26 June 1998, Accra, Ghana UNDP New York, 1998

²⁹ Tiawon Gongolo, Former Solicitor General, Republic of Liberia

6. Constitution of the Republic of Liberia, Chapter III, (Fundamental Rights)
7. Second African Governance Forum(AGF11), Final Report, 25-26 June 1998, Accra, Ghana UNDP New York, 1998, p.13
8. Davidson Iriekpen, This Day Newspaper, 26 July 2010
9. Open Society Foundations, Voice: Don't Get Arrested in Nigeria, April 18, 2011
10. United States Department of States, 2011 Country Reports on Human Rights Practices- Liberia, 24 May 2011
11. Bureau of Correction 2011 Statistics, Ministry of Justice, Liberia
12. Tah, Christiana, Minister of Justice, Republic of Liberia, Paper Delivered at Universal Periodic Review, Geneva, November 2010
13. MEDIA 21, Global Journalism Network Geneva, Tuesday 09 November 2010
14. Pernal Reform International, 26.12. 2011
15. Constitution of the United States of America
16. DW.DE 2012 Deutschewelle
17. The Probe, "Government Admits Prolonged Pretrial Detention Violates Inmates Rights", September 2, 2011
18. Open Society Justice Initiative and UNDP, (The Socioeconomic Impact of Pretrial Detention)