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PRETRIAL DETENTION IN NIGERIA AND THE NEED TO PRIORITISE A HUMAN RIGHTS APPROACH

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DEDICATION

To Allah and then to the unjustly incarcerated detainees in Nigeria who are unable to access justice due to financial, legal or institutional challenges.

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TABLE OF ABBREVIATIONS

ATDs	Awaiting Trial Detainees
ACPHR	African Charter on Human and Peoples Rights
ACJA	Administration of Criminal Justice Act
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment
CFRN	Constitution of the Federal Republic of Nigeria
ECOWAS	Economic Community of West Africa
FRN	Federal Republic of Nigeria
HIV/AIDS	Human Immunodeficiency Virus/ Acquired Immunodeficiency Syndrome
ICCPR	International Covenant on Civil and Political Rights
LFN	Laws of the Federation of Nigeria
LPELR	Legal-Pedia Electronic Law Report
NGOs	Non-Governmental Organisations
NML	Nelson Mandela Rules
PRI	Penal Reform International
UDHR	Universal Declaration of Human Rights
SARS	Special Anti-Robbery Squad
UK	United Kingdom

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1. CHAPTER ONE: INTRODUCTION

1.1. Background of the study

Pretrial detention has worldwide been disproportionately overused, despite its role in securing the presence of accused persons before courts.[1] The number of awaiting trial detainees (ATDs) worldwide has risen by 30% since 2000[2] and in over 42 countries, ATDs far outnumber convicts serving prison terms.[3] Currently, there are over three million ATDs worldwide,[4] representing around one-third of the total population of prisoners.[5] It has been argued that the overuse of pretrial detention is a widely ignored human rights violation which conservatively affects over 15 million people every year.[6] In about half of the countries in Africa, including Nigeria and Uganda, ATDs constitute over 40% of the prison population.[7]

ATDs are entitled to the enjoyment of different rights guaranteed under the international, regional, and national laws, including the right to liberty, right to fair trial, right to be presumed innocent until proved guilty, right to be tried within a reasonable time, right against torture and other ill-treatment among others.[8] Ideally, there should be, at all stages of criminal justice administration process, a balance between the rights of offenders, victims and the society at large.[9] By the international and African regional standards, an accused has the right to be released and tried within a reasonable time, and pretrial detention should be a point of last resort and an exception rather than the rule.[10] States should provide for adequate and effective non-custodial measures that can be used at all stages of criminal proceedings.[11] Alternatives to pretrial detention should be used as early as possible during the pretrial stage[12] and pretrial detention should be used only where necessary and administered with due respect to the right of ATDs to dignity.[13]

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[1] C Heard and H Fair 'Pre-trial detention and its over-use: Evidence from ten countries' (2019) *Institute for Crime & Justice Policy Research (ICPR) 1*.
[2] Penal Reform International 'Global prison trends 2021' (2021) https://cdn.penalreform.org/wp-content/uploads/2021/05/Global-prison-trends-2021.pdf (accessed 3 August 2021)
[3] As above.
[4] As above.
[5] Heard & Fair (n 1) 1.
[6] Open Society Justice Initiative 'Presumption of Guilt: the global overuse of pretrial detention' (2014*) Open Society Foundation* 1.
[7] R Walmsley 'World Pre-trial/Remand imprisonment list' (2020) https://www.prisonstudies.org/sites/default/files/resources/downloads/world_pre-trial_list_4th_edn_final.pdf (accessed 31 July 2021).
[8] See the International Covenant on Civil and Political Rights (ICCPR), articles 7, 9 & 10; Convention Against Torture and Other Cruel (CAT), Inhuman or Degrading Treatment or Punishment, article 1 & the African Charter on Human and Peoples' Rights (ACHPR), articles 4,5,6 & 7.
[9] UN Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules) 1990, para 1.4.
[10] ICCPR, Article 9(3).
[11] Tokyo Rules (n 9) para 2.3.
[12]Tokyo Rules (n 9) para 6.2.
[13] Tokyo Rules (n 9) para 6.2.

In Nigeria, there has been a continuous rise in the number of ATDs going by the statistics from 2011[14] and as of June 2021, ATDs numbered 50,765, constituting 74.8% of the total population of prisoners.[15] Many of the ATDs are held for petty offences[16] and could sometimes spend between 8-15 years[17] in deplorable and highly overcrowded prisons. Some even languish in prisons beyond the statutory terms of sentence if they had been tried and convicted.[18] It has been suggested that the innocent people in Nigerian prisons are more than the criminals[19] especially given the status and population of the ATDs. Many of the ATDs are routinely tortured and exposed to ill-treatment, especially those in custody of the Special Anti-Robbery Squad (SARS) of the Nigerian Police Force, [20] now disbanded. Prisons in Nigeria are seriously congested, and the problem has been justifiably traced to the overuse of pretrial detention.[21] For instance, as of 2019, the Ikoyi Medium Security Prison built originally to accommodate 800 inmates had over 3,113 prisoners, out of which over 2,680 were ATDs.[22] Of serious concern are the reports of inadequate feeding, poor clothing, amenities in the state of disrepair, poor ventilation, and inadequate medical and recreational facilities unkept environment, among others.[23]

Viewed from a human rights perspective, subjecting ATDs who are considered innocent to a prolonged prison term violates the right to fair trial, the right to liberty and the right to be presumed innocent, among others. Exposing them to torture and other ill-treatment and housing them in such a horrible environment violate their rights against torture and other ill-treatment, the right to respect for their dignity and the right to an adequate standard of living. Such an unhealthy

[14] U Ezekwem 'Exploring non-custodial sentencing in Magistrate courts' (2017). https://nji.gov.ng/images/Workshop_Papers/2017/Orientation_Newly_Appointed_Magistrates/s5.pdf (accessed 23 July 2021)
[15] Nigerian Correctional Service (NCS) 'Summary of inmates population by convict and awaiting trial persons as at 26th July 2021 https://www.corrections.gov.ng/statistics (accessed 4 August 2021).
[16] Prison Insider 'Nigeria: 70% of Nigerian prisoners are held without trial' (2020) https://www.prison-insider.com/en/articles/nigeria-70-of-nigerian-prisoners-held-without-trial (accessed 4 August 2021).
[17] C.T Orjiakor *et al* 'Prolonged incarceration and prisoners' wellbeing: Lived experiences of awaiting trial/pre-trial/remand prisoners in Nigeria' (2017). https://www.tandfonline.com/doi/full/10.1080/17482631.2017.1395677?scroll=top&needAccess=true (accessed 02 May 2021)
[18] As above.
[19] Prison Insider 'Nigeria: 70% of Nigerian prisoners held without trial' (2020) https://www.prison-insider.com/en/articles/nigeria-70-of-nigerian-prisoners-held-without-trial (accessed 13 September 2021).
[20] Amnesty International 'Nigeria: 'Welcome to hell fire': Torture and other ill-treatment in Nigeria' (2014) https://www.amnesty.org/en/documents/AFR44/011/2014/en/ (accessed 23 September 2021).
[21] JK Ukwayi & JT Okpa 'Critical assessment of Nigerian criminal justice system and the perennial problem of awaiting tPort Harcourt maximum prison, Rivers State' (2017)16 *Global Journal of Social Sciences*, 17-25.
[22] 'Five prisoners die of electrocution in overcrowded Nigerian prison' *Premium Times, 3 December 2019* available at https://www.premiumtimesng.com/regional/ssouth-west/366254-five-prisoners-die-of-electrocution-in-overcrowded-nigerian-prison.html (accessed 2 October 2021).
[23] I Danjuma *et al* 'Prisons' condition and treatment of prisoners in Nigeria: Towards genuine reformation of prisoners or a violation of prisoners' rights? (2018*) Commonwelth Law Bulletin*, 99 – 10; A Adegbami & CIN Uche 'Good governance and Prison Congestion in Nigeria: The case of Maximum Security Prison, Ilesa' (2015) *American Research Institute for Policy Development*

environment exposes them to numerous physical and psychological diseases, including tuberculosis, HIV/AIDs, scabies, depression, and antisocial personality disorder.[24] This violates their right to health and poses a serious threat to their right to life.

The only non-custodial measure provided under the applicable penal laws across Nigeria, including the Administration of Criminal Justice Act (ACJA), the Administration of Criminal Justice Laws (ACJL) of the various states, is bail. However, this is normally granted or refused based on the judicial discretion of courts.[25] Bail, where granted, is subject to terms and conditions which may include execution of bonds and provision of sureties of specific qualities.[26] The majority of ATDs are poor and could rarely satisfy the required condition(s).[27] Some suspects released on bail jump bail and this sometimes negatively influences the decision of courts in either granting or refusing bail.[28]

In the quest to address pretrial detention problems, there is the need to adopt a human rights approach expressly provided in numerous international and regional human rights instruments and adopted for the purpose of this topic. The approach requires that pretrial detention should be used sparingly and as a matter of last resort and that priority should, as much as possible, be given to non-custodial measures.[29] To achieve this, commendable efforts of some countries are worthy of emulation. In Brazil, for instance, the government enacted Law No. 12.403 on alternatives to pretrial detention.[30] The law provides for nine different alternatives to pretrial detention and notably prohibits a judge from imposing pretrial detention on first-time offenders standing charge for non-violent crimes.[31] The excessive use of pretrial detention in Nigeria amounts to egregious abuse of the human rights of ATDs guaranteed in international, regional and national laws. By way of corollary, the excessive use of pretrial detention has the effect of compounding the poverty situation in Nigeria, may facilitate the easy spread of infectious diseases and increase recidivism and propensity for crime.[32]

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[24] Ukwayi & Okpa (n 21) 18; JO Abdulmalik *et al* 'Prevalence and correlates of mental health problems among awaiting trial inmates in prison facility in Ibadan Nigeria' (2015) https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4682912/ (accessed 13 September 2021).
[25] See *Adegbesan Theophilous v. Federal Republic of Nigeria & Others* (2016) ALL FRLR (Part 830) p. 1374 at 1395 para. F.
[26] See *Suleiman v. Commissioner of Police, Plateau State* (2008) 8 NWLR (Part 1089) 301.
[27]Partners Global 'Reforming pre-trial detention in Nigeria (RPDN)(2018-2022)' (2018) https://www.partnersglobal.org/reforming-pre-trial-detention-in-nigeria-rpdn-2018-2022/ (accessed 23 July 2021).
[28] N Mercy 'A comparative analysis: The practice of bail pending trial in Nigeria and the Unites States of America' (2016) https://ssrn.com/abstract=2714328 (accessed 4 August 2021).
[29] See ICCPR, Article 9(3) & UN Standard Minimum Rules on Non-Custodial Measures, Rules 1.4 and 2.7
[30] Pretrial Rights International 'Federative Republic of Brazil' (2014) http://www.pretrialrights.org/brazil/ (accessed 4 August 2021).
[31]As above.
[32] Open Society Justice Initiative 'Why we need a global campaign for pre-trial justice' https://www.justiceinitiative.org/uploads/a79a098c-396c-4b9a-8aaa-4237e93d82a3/pretrialjustice_20090903.pdf (accessed 22 July 2021).

A similar pretrial detention problem confronts Uganda where, as of 2019, ATDs make up around 49.8% of the total prison population.[33] Due to Covid-19 related arrests, the figure increased to 55% as of June 2020.[34]Reports exist of arbitrary arrests and unlawful detentions and torture and ill-treatment of ATDs in harsh and life-threatening prisons.[35] Just like Nigeria, Uganda is a party to a wide range of relevant international and regional treaties, including the ICCPR, CAT and ACHPR. Bail is also the only alternative to pretrial detention[36] and is granted discretionarily by courts with conditions that are often unfavourable to indigent suspects.[37]

The urgent need to embrace a human rights approach to pretrial detention by prioritising non-custodial measures has recently been strengthened by the fight to contain the spread of COVID-19 pandemic. The United Nations Office on Drugs and Crime (UNODC), while urging the prioritisation of alternatives to pretrial detention, especially due to the pandemic, stated thus:[38]

> The extraordinary risk that COVID-19 is posing in prison settings brings back into the spotlight long-standing calls of the United Nations Office on Drug and Crime and the United Nations at large to address prison overcrowding, to limit imprisonment to a measure of last resort …

Consequently, some ATDs were released under the COVID-19 prisons decongestion schemes in many countries, but the population of ATDs has either increased or remained stable due to the creation of COVID-19 related offences, which resulted in arrests and detentions.[39] From the total number of 3,751 inmates released under the COVID-19 prison decongestion scheme in Nigeria, as of May 2020, only 1011 ATDs were beneficiaries[40] even though ATDs constitute 74.8% of the prison population.[41]

This study critically assessed the problem of pretrial detention in Nigeria and the pressing need to prioritise non-custodial alternatives as a human rights approach. The study examined the effectiveness or otherwise of the measure(s) already taken towards addressing the situation. It drew a brief comparative analysis between Nigeria and Uganda in order to determine whether pretrial detention poses similar

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[33] World Prison Brief 'Uganda' https://www.prisonstudies.org/country/uganda (accessed 2 August 2021).
[34] Penal Reform International 'Pre-trial detention' (2021) https://www.penalreform.org/global-prison-trends-2021/pre-trial-detention/ (accessed 2 August 2021).
[35] United States (US) Department of States '2020 country report on human rights practices: Uganda' (2021) https://www.state.gov/wp-content/uploads/2021/02/UGANDA-2020-HUMAN-RIGHTS-REPORT.pdf (accessed 2 August 2021).
[36] Avocats Sans Frontieres 'What are the different alternatives to pretrial detention? Uganda' https://www.asf.be/blog/detention/les-voies-de-recours/ouganda/what-are-the-different-alternatives-to-pre-trial-detention/ (accessed 24 July 2021).
[37] RK Segawa 'Pretrial detention in Uganda' (2012) *APCOF Policy Paper* 4.
[38] UNODC 'Position Paper: Covid-19 preparedness and responses in prisons' (2020) https://www.unodc.org/documents/justice-and-prison-reform/UNODC_Position_paper_COVID-19_in_prisons.pdf (accessed 20 July 2021).
[39] Penal Reform International 'Global prison trends 2021: Pre-trial detention' (2021) https://www.penalreform.org/global-prison-trends-2021/pre-trial-detention/ (accessed 2 August 2021).
[40] Washington and Lee University School of Law 'World Correctional Institutions in the COVID-19 Pandemic' https://libguides.wlu.edu/c.php?g=1043868&p=7607617 (accessed 2 August 2021).
[41] NCS (n 15).

challenges to both countries and the lessons to be learned therefrom. Based on the international and African regional standards, as well as best practices, the study made recommendations for the better management of pretrial detention in Nigeria.

1.2 Problem Statement

The overuse of pretrial detention and the maltreatment of ATDs in Nigeria contravenes the international and African regional human rights standards and renders the country wanting in its international and regional obligations. It also makes a mockery of the rule of law and human rights of ATDs guaranteed under the national laws including the right of access to justice, right to be tried within a reasonable time, right to fair trial, and the right against torture and other ill-treatment. Bail, being the only alternative to pretrial detention provided under the penal laws of Nigeria, is grossly inadequate and used below the international and regional human rights standards which require pretrial detention to be used only as a matter of last resort. Congestions and gross human rights violations in prisons will continue unabated if deserving consideration and priority are not given to pretrial detention alternatives in line with the human rights standards. The situation may diminish people's trust in the criminal justice system and ultimately weaken the rule of law.

1.3 Research Question

This research sought to answer the question whether Nigeria measures up to its international and regional obligations to protect ATDs' human rights including the right to liberty, right against torture and other ill-treatment and the right to fair trial given its legislative, policy and institutional frameworks for the administration of criminal justice. To answer this, the following sub-questions were assessed based on the available laws, literature, and relevant publications:

a. What are the international and regional obligations and standards concerning the protection of ATDs' right to liberty, right of access to justice, right to fair trial and the right against torture, cruel, inhuman, and degrading treatment, vis-à-vis the use of alternatives to pretrial detention?
b. To what extent has Nigeria complied with the relevant international and regional obligations and standards going by its legislative framework?
c. Flowing from question b above, what is the current situation of ATDs and pretrial detention in Nigeria?

1.4 Methodology

This work is a qualitative study that was based primarily on desktop research method since its focus was on the inadequacy of the available legal, policy and institutional frameworks in Nigeria in protecting the human rights of ATDs as required under the international and regional standards. The method involved

looking at relevant international, regional and domestic legal instruments, case laws, relevant government policies and published materials including textbooks, journals, news and media publications, articles and internet sources. These resources were adequate in making the necessary findings in response to the research questions and in arriving at feasible recommendations.

1.5 Objective of the research

Generally, the main objective of the study was to assess the problem of pretrial detention in Nigeria and to highlight the need to adopt a human rights approach that requires the use and priority of non-custodial measures over pretrial detention. The study was specifically aimed at identifying the main factors causing the gross overuse of pretrial detention in Nigeria with a specific focus on the legal, institutional and policy inadequacies. It also showed the current and future implications of pretrial detention on ATDs and the society. It emphasised the urgent and pressing need for a legal, institutional and policy reforms that embrace the effective use and priority of non-custodial measures in line with the human rights standards.

1.6 Limitations

The research was conducted at a time when some measures to curtail the spread of COVID-19, including travel ban and restrictions on access to public places and government institutions, were still very much operative in some countries including South Africa, Nigeria, and Uganda. This, coupled with other factors, constitute a hindrance for the consideration of interviews and as such the research was purely desktop based. Whereas there was sufficient literature on pretrial detention and the experiences of ATDs internationally, the literature on pretrial detention in Nigeria was limited.

1.7 Significance of study

Worldwide, the overuse of pretrial detention has proved to be a long-standing and lasting threat to the human rights of accused persons guaranteed under the international, regional, and national instruments. This study was significant as it identified the gaps in the legal, institutional and policy frameworks that have resulted in the gross overuse of pretrial detention in Nigeria with its attendant human rights implications. It spotlighted the real damaging implications of the problem on ATDs and the country at large while emphasising the urgent need for a legal, institutional and policy reforms in line with the human rights standards. By assessing the pretrial detention problem in Nigeria through an in-depth and comprehensive analysis of the international and regional human rights standards, it enriched the existing literature on the topic in the country.

1.8 LITERATURE REVIEW

The overuse of pretrial detention worldwide is a long-standing issue that has, over the years, attracted the attention of the international community, consequence of which several international and regional instruments were enacted to set the minimum standards for the use of pretrial detention and for the protection of the human rights of ATDs. However, pretrial detention is still grossly overused especially in

Nigeria due to factors including chiefly the inadequate provision for non-custodial measures in the existing legislation. Consequently, there have been continuous violations of the human rights of ATDs and unnecessary resort to the use of pretrial detention.

Literature review on the international and regional human rights standards

Heards and Fair examined 'pretrial detention and its overuse'[42] and maintained that the principle underlying the international and regional standards is that pretrial detention should be used sparingly and as a last resort. Concerned about the social harms and human rights infringement associated with the overuse of pretrial detention, they concluded that the problem lies in the non-recognition of pretrial detention as an exceptional measure that should be used as a last resort by policymakers, prosecutors, and judges which inevitably resulted in its overuse.

Similarly, the Open Society Justice Initiative assessed the 'presumption of guilt (vis-à-vis) the global overuse of pretrial detention'.[43] The work considered the UN Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment among other instruments in maintaining that by international standards, pretrial detention is permitted only under certain limited circumstances. The study found that the overuse of pretrial detention was a widespread human rights violation that is deeply harmful but often overlooked.

In the same vein, the International Commission of Jurists considered pretrial rights in Africa in a bid to provide a guide to the international human rights standards.[44] Based on the Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa and the Guidelines on the Conditions of Arrest, Police Custody and Pre-trial Detention in Africa among others, the work found that there is a presumption of release in favour of an accused inherent in the right to liberty and the right to be presumed innocent. Just like the relevant international standard, the African regional standard also promotes the principle that pretrial detention should be used sparingly.

Review of the literature on the relevant legal framework in Nigeria and Uganda

Commendably, the Nigerian criminal laws provide for virtually all the human rights that ATDs are guaranteed under the international instruments. Accordingly, Araromi,[45]in his work, alluded to the fundamental rights guaranteed under chapter IV of the Constitution of the Federal Republic of Nigeria

[42] Heard & Fair (n 1).
[43] Open Society Justice Initiative 'Presumption of guilt: the global overuse of pretrial detention' (2014) *Open Society Foundation.*
[44] International Commission of Jurists 'Pretrial rights in Africa: A guide to international human rights standards' (2016) *International Commission of Jurists, Geneva, Switzerland.*
[45] MA Araromi 'Prisoners' rights under the Nigerian law: Legal pathways to progressive realization and protection' (2015)6 *Journal of Sustainable Development Law and Policy.*

(CFRN)[46] and maintained that prisoners including ATDs are denied some of the fundamental rights especially due to the lack of the will to create an enabling environment for their enjoyment. Araromi concluded that Nigeria is not in compliance with the relevant international standards. This study drew inspiration from Araromi's work, especially on issues around the constitutional rights of ATDs that the overuse of pretrial detention in Nigeria violates and the consequential harms.

Despite the well-intended developments in ACJA, Olutola[47] found as inadequate the alternatives to imprisonment provided under the Nigerian laws especially at the pretrial stage and emphasised the need to fully embrace alternatives to imprisonments as outlined in the Tokyo Rules among others. Similarly, Nwosu[48] found bail practice, being the only alternative to pretrial detention in Nigeria, to be very ineffective and inadequate. This study built on Olutola's work by examining the international and regional human rights standards on the use of pretrial detention against which it measured Nigeria's level of compliance.

Uganda is also confronted with a similar problem of pretrial detention as may be appreciated from the work of Segawa[49] who ascribed the pretrial detention problem in Uganda to implementation issues. The work found that there was unnecessary resort to pretrial detention despite the deplorable state of prisons in Uganda and that factors such as difficult bail requirements posed a serious challenge to the effectiveness of bail as an alternative to detention. The work did not comprehensively consider the adequacy or otherwise of the alternatives to pretrial detention in Uganda and only made terse references to international and regional instruments, unlike this study.

Review of literature on the effects of pretrial detention in Nigeria

The ineffectiveness and inadequacy of the available alternative(s) to pretrial detention in Nigeria have left ATDs in a dire situation and this constitutes the centrepiece of Orjiakor's work.[50] The work noted with concern the notoriousness of Nigerian prisons for the overwhelming number of ATDs they hold in deplorable states. It found that prolonged pretrial detention fuels deterioration of wellbeing and emphasised the urgent need for alternatives to incarceration for ATDs. The work, unlike this study, was not meant to gauge the Nigerian laws and practices against international standards.

[46] Act No. 24, 1999 (as amended) available at https://www.refworld.org/docid/44e344fa4.html (accessed 13 September 2021).
[47] FO Olutola 'Alternatives to imprisonment in Nigeria: A sociological reflection' (2017)3 *Direct Research Journal of Social Science and Educational Studies.*
[48] M Nwosu 'A comparative analysis: the practice of bail pending trial in Nigeria and the United States of America' (2016) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2714328 (accessed 5 August 2021).
[49] Segawa (n 37) 4.
[50] CT Orjiakor *et al* 'Prolonged incarceration and prisoner's wellbeing: Livid experiences of awaiting trial/pretrial/remand prisoners in Nigeria' (2017)12 *International Journal of Qualitative Studies on Health and Well-being.*

Many accused persons, consequence of this problem, serve lengthy prison terms without sentence as exemplified in the study conducted by Ukwayi & Okpa[51] in 2017. The study revealed that in Port Harcourt prison, 48.6% of the ATDs have been in prison for less than 5 years, 37% have been there for a period between 6-10 years, 8.3 % have spent 11-15 years and 6.1% have spent between 16-20 years. Adegbami and Uche[52] lamented the fact that the majority of the prisoners in Ilesa Maximum Prison in Nigeria are young ATDs in their active economic ages. They likened Nigerian prisons to hell because over twenty persons are sometimes lumped up in one cell. This is amidst shortages of food and clean water, bed space, poor sanitary condition, and unhygienic environments, among others. This study built on their works by considering the situation of ATDs in Nigeria generally, the gaps in the Nigerian penal laws and how to abridge them, drawing from the international and regional human rights standards.

Review of literature on exacerbating factors if pretrial detention in Nigeria

Coupled with the paucity of pretrial detention alternatives in Nigeria, Ugochikwu[53] pointed to and lamented the practice of 'holding charge' by which law enforcement officials secure the remand of an accused while conducting investigation especially where serious crimes are involved. This study drew from Ugochukwu's work to establish the practice of holding charge as a factor sustaining the overuse of pretrial detention in Nigeria. This study updated the work by capturing the most recent issues and trends on the use of pretrial detention domestically, regionally and internationally.

1.9 Chapter breakdown

The study consists of five chapters. Chapter one highlights the preliminaries such as the general introduction consisting of the background of the study, statement of problem, research questions, methodology, limitations, literature review, significance of study, objective of the study and the structure and the chapter breakdown.

Chapter two discusses the international and regional legal framework on pretrial detention and the human rights of ATDs with the view to comprehensively analyse the relevant international and regional human rights standards. The chapter constitutes the yardstick for measuring the performance of Nigeria on the use of pretrial detention.

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[51] JK Ukwayi & JT Okpa 'Critical assessment of Nigerian criminal justice system and the perennial problem of awaiting trial in Port Harcourt maximum prison, Rivers State' (2017)16 *Global Journal of Social Sciences*, 17-25.

[52] A Adegbami & CIN Uche 'Good governance and Prison Congestion in Nigeria: The case of maximum Security Prison, Ilesa' (2015) https://www.researchgate.net/publication/297591595_Good_Governance_and_Prison_Congestion_in_Nigeria_The_Case_of_Maximum_Security_Prison_Ilesa (accessed 23 September 2021).

[53] U Ugochukwu 'Holding charge vis-à-vis 293 of the Administration of Criminal Justice Act, 2015' (2016) https://www.slideshare.net/UgochukwuUgwu/holding-charge-vis-a-vis-section-293-of-acja-the-thought-of-ugochukwu-ugwu-esq (accessed 11 September 2021).

Chapter three assesses the available legal, administrative and policy frameworks on the rights of ATDs and their situation in Nigeria. It discusses the alternative(s) to pretrial detention under the penal laws of Nigeria and tests the adequacy and effectiveness or otherwise of the alternative(s) by looking at the situation of the ATDs in the country. The study maintains that pretrial detention is overused in Nigeria in violation of the human rights of the ATDs and that the existing alternative(s) is grossly inadequate and used ineffectively below the minimum requirement of the international and regional human rights standards.

Chapter four considers, from a comparative perspective, pretrial detention in Uganda, with a focus on the legal framework. It argues that although both jurisdictions suffer from the same problem of pretrial detention consequence of the shortage of alternatives to pretrial detention in the domestic laws, bail is more comprehensively provided for and effectively used in Uganda than Nigeria. The study maintains that both countries share more similarities than differences in this respect and that the solution to the problem they both battle with lies in adopting and prioritising a human rights approach.

Chapter five contains the conclusion which embodies the summary of the findings and the relevant recommendations.

2. CHAPTER TWO: INTERNATIONAL AND REGIONAL LEGAL FRAMEWORK ON PRETRIAL DETENTION AND THE RIGHTS OF AWAITING TRIAL DETAINEES

2.1. Introduction

This chapter discusses the international and regional framework on pretrial detention and the rights of ATDs with the view to highlight the ideals on pretrial detention and the treatment expected of an effective criminal justice system towards ATDs. Discussions here will serve as a benchmark against which the work shall gauge the performance of Nigeria on issues concerning the protection and implementation of the rights of ATDs and the use of pretrial detention. The chapter is divided into two sections; the first section outlines and analyses the relevant international instruments, while the second section deals with the applicable African regional instruments.

2.2. Applicable international instruments

By section 12(1) of the CFRN, Nigeria adopts a dualist approach by which ratified international instruments shall have the force of law only after they have been domesticated into law by the Nigerian National Assembly. This dualist legal tradition finds reason in the idea that international and national laws operate separately[54] in line with the spirit of respect for states' sovereignty and the principle of non-interference. Against this background, even though Nigeria has not domesticated most of the relevant international instruments it has signed and ratified, this study will go on to highlight and analyse the instruments given that the applicable penal laws in Nigeria contain provisions similar to those under the international and regional instruments. Also, Nigeria's non-domestication of the instruments has not, in any way, diminished the value and relevance of the instruments as the international and regional standards.

2.2.1 The Universal Declaration of Human Rights (UDHR)[55]

The UDHR constitutes the foundation of international human rights law and has inspired the enactment of binding international human rights treaties.[56] The UDHR guarantees, among others, the right to liberty, the right against torture and other ill-treatment, the right against arbitrary arrest and detention, the right to fair trial and the right to be presumed innocent until proved guilty, all of which are relevant and applicable to ATDs.[57]

Even though the UDHR is a general and non-binding human rights instrument adopted initially as 'a common standard of achievement for all peoples and all nations',[58] it has directly or indirectly influenced

[54] EO Okebukola 'The application of international law in Nigeria and the façade of dualism' (2020)*11 Nnamdi Azikiwe University Journal of International Law and Jurisprudence*, 1.
[55] UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), available at: https://www.refworld.org/docid/3ae6b3712c.html (accessed 01 September 2021).
[56] United Nations 'The foundation of international human rights law' (2021) https://www.un.org/en/about-us/udhr/foundation-of-international-human-rights-law (accessed 14 August 2021).
[57] See UDHR, articles 3,5,9 & 11
[58] UDHR, preamble.

many domestic Constitutions that protect fundamental human rights[59] including the CFRN. The fundamental rights provisions under the CFRN could be traced to the Bill of Rights[60] including the UDHR, which later formed chapter III of the 1960 Constitution of Nigeria and those that followed[61] including the current 1999 CFRN. It has also been maintained that the UDHR has over time evolved to the status of universally binding customary international law.[62] Against this background, Nigeria owes a duty to provide all the necessary guarantees[63] for the defence of accused persons including the ATDs and the overuse of pretrial detention goes contrary to this obligation.

2.2.2 The International Covenant on Civil and Political Rights (ICCPR)[64]

The ICCPR is one of the international human rights treaties that make up the International Bill of Human Rights.[65] It guarantees, among others, the right to liberty and security of a person.[66] It requires an accused person to be brought before a court promptly and tried within a reasonable time.[67] This is to afford a detainee or his counsel the earliest opportunity to secure his/her release where the arrest or detention was made in violation of his/her right.[68]By implication, the law ensures that all issues around detention or imprisonment are subject to the control of judicial or other appropriate authorities and the human rights of an accused would be violated where not promptly brought before a court. While iterating this position, the Human Rights Committee held that detention that lasts for 48 hours without proper judicial review falls short of the requirement of 'promptness' under article 9(3) of the ICCPR.[69]

Specifically, on the use of pretrial detention, ICCPR provides:[70]

> 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…

Elaborating on the provisions of article 9 of the ICCPR, the United Nations Human Rights Committee in General Comment No. 35 maintained that a state party, upon authorizing or empowering individuals or

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[59] H Hannum 'The status of the Universal Declaration of Human Rights in national and international law' (1998)3 *The President and Fellows of Harvard College: Harvard School of Public Health* 145.
[60] The International Bill of Rights consist of the UDHR, the ICCPR and its two optional protocols and the International Covenant on Economic, Social and Cultural Rights.
[61] Federal Republic of Nigeria 'National Action Plan for the promotion and protection of human rights in Nigeria' (2013) https://www.ohchr.org/Documents/Issues/Education/Training/actions-plans/Excerpts/Nigeria09_13.pdf (accessed 01 September 2021).
[62] T Li-Ann 'Reading rights rightly: The 'UDHR' and its creeping influence on the development of Singapore public law' (2008) *National University of Singapore* 273.
[63] UDHR, art. 11(1).
[64] United Nations General Assembly *International Covenant on Civil and Political Rights* (1966) available at https://www.refworld.org/docid/3ae6b3aa0.html (accessed 01 September 2021).
[65](n 60).
[66] ICCPR, art. 9(1).
[67] ICCPR, art. 9(3).
[68] CM Upadhyay 'Human rights in pretrial detention' (1999) *APH Publishing Corporation*: India, 16.
[69] United Nations Human Rights Committee 'General Comment No 35, Article 9 (Liberty and Security of Person)2014 available at https://www.refworld.org/docid/553e0f984.html (accessed 03 September 2021).
[70] As above.

entities to arrest or detain, remains responsible to ensure compliance with the provisions of article 9 of the ICCPR. Such powers must be strictly limited and controlled against any form of misuse or abuse.[71] An accused upon arrest should be promptly brought before a court to ensure judicial control because prolonged detention without judicial control increases the chances of ill-treatment.[72] Courts must prioritise the use of alternatives such as bail, electronic bracelets or other conditions and should minimise the use of pretrial detention, however possible, as prolonged pretrial detention may jeopardise the ATDs' right to be presumed innocent until proved guilty.[73] This position was reaffirmed by the Human Rights Committee in the case of *Taright & 3 Others v. Algeria*[74] where it held that it is not just enough for a pretrial detention to be simply lawful but that it must be lawful in all respect.

Nigeria ratified the ICCPR on 29 July 1993 but has not domesticated it. This is one of the issues raised by the United Nations Human Rights Committee during the consideration of the reports submitted by states parties to the ICCPR in 2019.[75] It is evident from Nigeria's response that it conceded to its obligations and commitments under the ICCPR especially based on the fact that the provisions form a major part of the Nigerian domestic laws, particularly chapter IV of the CFRN which provides for the fundamental rights including the right to liberty and presumption of innocence until proved guilty.[76] The country is therefore under an obligation to provide adequate measures that may give effect to the provision of article 9 of the ICCPR and to ensure that domestic laws and practices conform with the ICCPR especially on issues relating to the human rights of ATDs and the use of pretrial detention.

2.1.3. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)[77]

A closer and deeper appreciation of the definition of torture under article 1(1) of CAT will no doubt reveal that CAT appeared to have been enacted considerably for the protection of ATDs especially during the interrogation phase of police investigation before proper arraignment. Article 1 provides thus:[78]

> For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or

[71] (n 69) art. 8.
[72] (n 69) art. 32.
[73] (n 69) art. 38.
[74] (2006) Human Rights Committee, Communication No. 1085/2002.
[75] UN Human Rights Committee 'ICCPR' (2019) http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhstwA%2FO2tbnhLoKp723lk4DdvtRqL3g9xjnSF%2BYnH2i0gvZsNU8%2B7smXRfurviMElKWqdKkXxL%2FQgKeyIx1H4dvw8l7tLvMFgTsJqXMQz1cohdKDJBsPsd8Hcbf6RU8NZRw%3D%3D (accessed 14 August 2021).
[76] As above.
[77] UN General Assembly *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* 1984 available at https://www.refworld.org/docid/3ae6b3a94.html (accessed 01 September 2021).
[78] CAT, article 1.

> suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

ATDs are generally at the risk of torture and other ill-treatment throughout their detention and are more likely to undergo torture in police custody during the initial stage of detention.[79] The poor detention condition generally and congestions in detention facilities often amount to inhuman, cruel, or degrading treatment or punishment.[80] This is especially appreciable from the jurisprudence of the Human Rights Committee in *Kennedy v. Trinidad and Tobago*[81] where it considered that the general condition under which the complainant was held, including overcrowding while on remand, amounted to cruel, inhuman and degrading treatment or punishment. The overuse of pretrial detention is no doubt one of the chief causes of dismal prison conditions and congestions.[82] The most effective remedy to the problems lies in providing numerous alternatives to pretrial detention and prioritising the use of non-custodial measures in line with the human rights standards.

Nigeria ratified CAT on the 28 June 2001[83] and the Optional Protocol to CAT on 27 July 2009[84] but has not directly domesticated them. However, torture, cruel, inhuman or degrading treatment or punishment is prohibited under the CFRN[85] and in 2017, the Anti-Torture Act was enacted to provide a platform for the application of the right against torture as concisely guaranteed under the CFRN. As such, Nigeria has the legal and political obligation to take every necessary measure to ensure the protection of ATDs against torture or other ill-treatment in compliance with CAT.

2.3. OTHER RELEVANT INSTRUMENTS

2.3.1 The Standard Minimum Rules for Non-Custodial Measures (the Tokyo Rules)[86]

This instrument was enacted on the premise that non-custodial measures can effectively operate to the best advantage of the society and accused persons.[87] The Rules promote the widest possible use of non-custodial measures[88] which should be implemented by states in a manner that ensures a balance between the rights

[79] Open Society Justice Initiative 'Pretrial detention and torture: Why pretrial detainees face the greatest risk' (2011) *Open Society Foundation: New York,* 27.
[80] As above.
[81] (2002) Human Rights Committee, communication No. 845/1998.
[82] T Lappi-Sappala 'Causes of Prison Overcrowding' (2010) https://www.unafei.or.jp/publications/pdf/12th_Congress/12Tapio_Lappi-Seppala.pdf (accessed 03 September 2021).
[83] United Nations 'Ratification status for Nigeria' (2021) https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=127&Lang=EN (accessed 03 September 2021).
[84] As above.
[85] CFRN, Section 34(1)(a).
[86] Adopted by National Assembly resolution 45/110 of 14 December 1990.
[87] Penal Reform International 'International Standards' https://www.penalreform.org/issues/alternatives-to-imprisonment/international-standards/ (accessed 03 September 2021).
[88] Tokyo Rules (n 9) para 1.1.

and interests of the victims, the accused and the society.[89] By the Rules, every criminal justice system should develop and provide for a wide- range of non-custodial measures that can be used at all stages of criminal proceedings and should be flexible enough to set the system on the track of decriminalisation and depenalisation.[90]

At the pretrial stage, the Rules encourage states to empower the prosecution, police or other relevant agencies to discharge accused persons where they find it unnecessary to proceed to trial and the state should provide set criteria for arriving at such decisions.[91] The Rules reaffirm the position that pretrial detention should be used as a last resort and that priority be given to alternatives.[92] The Rules prohibit unnecessary use of pretrial detention and where administered, it is to be imposed humanely and with respect for the inherent dignity of a human.[93] The Rules emphasise the need for proper supervision subject to periodic review and that where non-custodial measures are imposed subject to condition(s), such must be precise and practical, putting the victim, the accused and the society's interest into consideration.[94] The Human Rights Committee maintained that pretrial detention should be resorted to only where it is lawful, necessary and reasonable.[95] It may be deemed necessary where it is imposed to prevent the accused from absconding, interfering with investigation or committing another crime.[96] Incomplete investigation or the seriousness of a crime alone cannot, by implication, justify prolonged pretrial detention.

The instrument is generally recommendatory and non-binding, being a resolution of the United Nations and was aimed at providing a set of basic principles to guide member states on the use and application of non-custodial measures.[97] Member states are therefore expected to ensure the implementation of this resolution and other resolutions generally.[98] The recent Nigerian Correction Service Act 2019 was greatly influenced by the Tokyo Rules and other relevant instruments.

[89] Tokyo Rules, (n 9) para 1.4.
[90] Tokyo Rules (n 9) paras 1.4 and 2.7.
[91] Tokyo Rules (n 9) para 5.1.
[92] Tokyo Rules (n 9) para 6.
[93] Tokyo Rules (n 9) para 6.2.
[94] Tokyo Rules (n 9) paras 10 and 12.1.
[95] United Nations 'Human Rights and Pre-trial detention: A handbook of international standards relating to pretrial detention' (1994) *United Nations: New York, 14.*
[96] As above.
[97] See generally MD Oberg 'The Legal Effects of Resolutions of the UN Security Council and General Assembly in the jurisprudence of the ICJ' (2006)16 *The European Journal of International Law.*
[98] United Nations 'Model United Nations' https://www.un.org/en/model-united-nations/how-decisions-are-made-un (accessed 03 September 2021).

2.3.2 The United Nations (UN) Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)[99]

The Nelson Mandela Rules 'are based on an obligation to treat all prisoners with respect for their inherent dignity and value as human beings and to prohibit torture and other forms of imprisonment'.[100] The Rules consider the treatment of ATDs in police or prison custody and provide, among others, that the ATDs should be humanely treated especially given that they are presumed innocent.[101] Young ATDs should be separated from adult ATDs and generally from convicts.[102] ATDs should each be allocated separate rooms,[103] allowed, if they desire, to procure their own foods and wear their own clothing.[104] By the Rules, ATDs may not be required to work and should have legal advisers assigned to them if they are indigent.[105] Just like the Tokyo Rules, the Nelson Mandela Rules are meant to guide member states of the United Nations on the minimum standards for the treatment of prisoners including ATDs. Even though the instrument is non-binding, some of its provisions replicated in the Nigerian Correction Service Act, 2019 and other relevant laws have binding force in Nigeria.

2.4. Applicable African regional instruments

2.4.1. The African Charter on Human and Peoples' Rights (ACHPR)[106]

The ACHPR generally guarantees the right to life, right to liberty, right to the respect of human dignity, right to be presumed innocent until proved guilty, right to be tried within a reasonable time, right against arbitrary arrest or detention and right against torture and other ill-treatment, all of which are relevant to accused persons and ATDs.[107] The African Commission on Human and Peoples' Rights (the Commission), while addressing the issue of the right of an accused to trial within reasonable time and the right against arbitrary detention, held that state parties to the ACHPR must observe certain minimum standards as regards the length of pretrial detention and cannot rely on issues such as a large number of pending cases to justify excessive delay.[108] The Commission considered three years of pretrial detention to be very unacceptable[109] and seven years of pretrial detention to be in clear violation of 'reasonable time' standard required in the ACHPR.[110]

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[99] UN General Assembly Resolution No. A/RES/70/175 adopted 17 December 2015.
[100] United Nations Chronicles 'The Nelson Mandela Rules: Protecting the rights of persons deprived of liberty' https://www.un.org/en/un-chronicle/nelson-mandela-rules-protecting-rights-persons-deprived-liberty (accessed 03 September 2021).
[101] Nelson Mandela Rules (NML), rule 111(2).
[102] NML (n 101) para 112.
[103] NML (n 101) para 113.
[104] NML (101) paras 114 & 115.
[105] NML (n 101) paras 116 & 119(2).
[106] Organisation of African Unity *African Charter on Human and Peoples' Rights (Banjul Charter) (1981)* available at https://www.refworld.org/docid/3ae6b3630.html (accessed 01 September 2021).
[107] ACHPR, Articles 4,5,6 & 7.
[108] *Article 19 v. Eritrea* (2007) AHRLR 73 (ACHPR 2007).
[109] *Constitutional Rights Project and Another v. Nigeria* (2000) AHRLR 199 (ACHPR 1998).
[110] *Abubakar v. Ghana* (2000) AHRLR 124 (ACHPR 1996).

Nigeria ratified the ACHPR in 1983 and has taken a further step to domesticate it through the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act.[111] It is therefore bound by the provisions of the ACHPR and under the obligation to comply with the relevant provisions and ensure the protection of the human rights of ATDs guaranteed therein.

2.4.2 Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (The Robben Island Guidelines)[112]

In many countries, especially in Africa, ATDs are detained for years and vulnerable to torture and other ill-treatment.[113]The Robben Island Guidelines provide for specific safeguards for ATDs including the right for a relative or other third person to be notified of the detention and the right to counsel.[114] The Guidelines also guarantee the right to be brought promptly before a judicial authority, the right to challenge the lawfulness of detention, right to be separated from convicts and provide that necessary measures should be employed by states to reduce congestions in detention facilities by encouraging the use of non-custodial sentences for minor crimes.[115]

The Robben Island Guidelines basically remind states of their positive obligation to protect the moral and physical integrity of ATDs.[116]Though meant to guide states and non-binding, torture and other ill-treatment are prohibited under the CFRN[117] and the 2017 Anti-Torture Act, as previously mentioned. As such, Nigeria has an obligation to take every necessary measure to ensure the protection of ATDs against torture or other ill-treatment.

2.4.3 Guidelines on the Conditions of Arrest, Police Custody and Pre-trial Detention in Africa (the Luanda Guidelines)[118]

The instrument prohibits the imposition of detention for a criminal allegation that does not attract a custodial penalty.[119] When pretrial detention is imposed, ATDs should be detained in facilities close to their homes or communities considering issues around caretaking and other responsibilities.[120] The Guidelines provide that pretrial detention should be resorted to in line with the law and only where there are reasonable grounds to believe that the accused will abscond, commit another offence or where such release is against the interest of justice.[121] It further requires the provision of regular review of pretrial detention in national laws and that

[111] Chapter A9 Laws of the Federation of Nigeria (LFN) 2004.
[112] African Commission on Human and Peoples' Rights (the Commission), 2002.
[113] JB Niyizurugero and GP Lessene 'The Robben Island Guidelines: An essential tool for the prevention of torture in Africa' http://projects.essex.ac.uk/ehrr/V6N2/NiyizurugeroLessene.pdf (accessed 03 September 2021)
[114] Robben Island Guidelines, article 20.
[115] Robben Island Guidelines, articles 27, 32, 35, 36 & 37.
[116](n 112).
[117] CFRN, section 34(1)(a).
[118] Adopted by the Commission at its 55th Ordinary Session in Luanda, Angola in 2014.
[119] Luanda Guidelines, article 10(c).
[120] Luanda Guidelines, article 10(g).
[121] Luanda Guidelines, article 11(a)(ii).

no delay should be entertained in either investigation or judicial proceedings.[122] Other general safeguards including the right to be held in officially recognised detention facilities, the right to fair trial, trial within reasonable time, and the right to information are also provided for in the Guidelines.[123] The Guidelines complement the body of regional soft laws that seek to guide states on the rights of ATDs and accused persons generally. It is a non-binding instrument being a soft law, but domestic instruments in Nigeria such as the CFRN, the Police Act and the Correction Service Act contain enforceable provisions similar to the Luanda Guidelines.

2.4.4 The Ouagadougou Declaration and Plan of Action on Accelerating Prisons and Penal Reforms in Africa[124]

This instrument encourages the use of diversion mechanisms in cases of minor offences, especially as it relates to minor offenders and people with addiction or mental health problems, the use of traditional justice, constant resort to referrals of cases to the informal or non-state justice system and decriminalisation of some offences like prostitution, vagabond, disobedience to parents, and being a rogue.[125] It provides that detention should be used as a matter of last resort and for the shortest possible period through the increased use of cautioning, improved access to bail by involving community heads or representatives in the process, limiting the time in police custody to 48 hours and setting a time limit for remand detention.[126] Other measures include the regular review of remand detention, good case files management and the use of paralegals to provide advice and assistance at a first aid level.[127]

The common grounds noticeable through a careful perusal of the relevant provisions of the various international instruments highlighted and analysed above include the rights and safeguards accused persons and ATDs are guaranteed, the emphasis on the imposition of pretrial detention only as a matter of last resort and the mandate for states to provide for and prioritise non-custodial measures in their national legislations guided by the international and regional human rights standards on pretrial detention.

2.5. Conclusion

The chapter has analysed the provisions of relevant international and regional instruments, including the various rules, principles and guidelines on pretrial detention and the treatment of ATDs. By the international and African regional standards, pretrial detention is to be used sparingly as a matter of last resort and states are obliged to provide adequate alternatives to pretrial detention and to deploy legislative, judicial, policy and administrative measures in ensuring the use and priority of such alternatives. An unnecessary resort to

[122] Luanda Guidelines, articles 12 & 13.
[123] Luanda Guidelines, articles 10.
[124] Adopted by the Commission at the second pan-African Conference on Prison and Penal Reform in Africa held in Ougadougou, 2002
[125] Ougadougou Declaration, para. 1
[126] As above.
[127] As above.

pretrial detention is found to be in violation of various rights of ATDs guaranteed under the international and regional human rights instruments. These include the right to be presumed innocent until proved guilty and the right to adequate time and facilities to prepare for defence. The following chapter discusses the Nigerian domestic legal framework on the right of ATDs and the effect of prolonged pretrial detention in Nigeria.

3. CHAPTER THREE: Domestic legal framework on the rights of awaiting trial detainees in Nigeria and the effect of prolonged pretrial detention

3.1. Introduction

This chapter gives an overview of the Nigerian legal framework on pretrial detention and the rights of ATDs. It discusses the alternatives to pretrial detention under the Nigerian penal laws and the situation of ATDs with the view to shed light on the inadequacy and ineffectiveness of the existing alternatives, consequential human rights violations and the pressing need to adopt more alternatives and prioritise non-custodial measures at the pretrial stage of criminal proceedings. The chapter is divided into three sections; the first discusses the existing legal framework on alternatives to pretrial detention and the rights of ATDs in Nigeria. The second section examines the effects of pretrial detention and the situation of ATDs in Nigeria and the third section deals with the factors exacerbating the problem of prolonged pretrial detention in Nigeria.

3.2. Legal framework on pretrial detention and the rights of ATDs in Nigeria

3.2.1 The Constitution of the Federal Republic of Nigeria (CFRN), 1999[128]

The 1999 CFRN is the supreme law of the country.[129] Specifically, chapter IV of the CFRN contains the fundamental rights which include the right to life, right to dignity of human person, right to personal liberty and the right to fair hearing, all of which are relevant and applicable to ATDs.[130] Worthy of special consideration are the provisions of sections 35 and 36 on the rights to personal liberty and fair hearing, respectively.

By section 35 of the CFRN, every person is guaranteed the right to personal liberty and cannot be denied such right unless in some identifiable circumstances including the execution of a court order or sentence, or for the purpose of producing an accused in a court.[131] A person's right to liberty may also be limited where he/she is reasonably suspected of committing an offence or prevent him/her from committing an offence.[132] Section 35(1) provides a rider that ATDs should not be detained for a period extending beyond the maximum term of imprisonment that their alleged offences attract.[133]

Specifically addressing ATDs, section 35(4) mandates that they be brought before a court within 'reasonable time'.[134] Section 35(5) of the CFRN defines 'reasonable time' as a day period where there is a

[128] Act No. 24, 1999 (as amended) available at https://www.refworld.org/docid/44e344fa4.html (accessed 13 September 2021).
[129] CFRN, section 1(3).
[130] CFRN, see sections 33, 34, 35 and 36.
[131] CFRN, section 35.
[132] CFRN, Section 35.
[133] CFRN, section 35(1).
[134] CFRN, section 35(4).

court within a radius of forty kilometers or two days or more in other cases as may be considered reasonable based on the circumstances.[135]

There is no express mention of bail as a right in the CFRN. The closest it has got to mentioning the right to bail is in section 35(4) where it mandatorily requires that an accused person arrested and detained be brought within reasonable time before a court and that where he/she is tried within[136]

> (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 …be released either unconditionally or upon such conditions as are reasonably necessary to ensure that he appears for trial at a later date.

However, the courts have read bail into the right to be presumed innocent until proved guilty under section 36(5) of the CFRN and considered bail at the pretrial stage as a constitutional right.[137] In the case of *George & ORS v. the Federal Republic of Nigeria* (2010),[138] the court held thus:[139]

> I wish to note that before conviction bail is granted as of right to an accused person standing trial notwithstanding the gravity of the offence committed. This is because there is a constitutional presumption in favour of the liberty and innocence of the individual.

Even though bail is considered a constitutional right, it appears to be the only constitutional right that is wholly subject to the whims and discretion of courts. In the case of *Chukwuma v. The Federal Republic of Nigeria* (2021),[140] the Court of Appeal held that 'bail although a constitutional right is only temporary, conditional and discretionary and can only be granted if the Applicant shows why such discretion should be exercised in his favour'.[141] The discretionary powers of courts to either grant or refuse bail take bail outside the bounds of a 'right' which upon creation 'is not dependent upon a condition to be satisfied or an event to occur for the party in whom it is vested to enforce it' as held in *Ogundipe v. The Minister of the Federal Capital Territory and ORS (2014)*.[142]

Section 36 of the CFRN provides for the right to fair hearing and requires an accused to be tried within a reasonable time,[143]presumed innocent until proved guilty,[144] and should be afforded adequate time and facilities to prepare for defence.[145] Emphasising the accompanying benefits of bail, the court in *Obekpa*

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[135] CFRN, section 35(5).
[136] CFRN, section 35(4)
[137] See *George & ORS v. the Federal Republic of Nigeria* (2010) LPELR – 43088.
[138]as above.
[139] As above.
[140] LPELR – 54983 (CA).
[141] As above.
[142] *(2014)* LPELR – 22771 (CA).
[143] CFRN, section 4(a).
[144] CFRN, section 36(5).
[145] CFRN, section 36(6)(b).

v. the State[146] held that bail saves accused persons that might have been wrongfully accused from punishment while awaiting or undergoing trial and particularly safeguards the right to prepare for defence and the right to be presumed innocent until proved otherwise.[147]

While it is commendable that bail is considered a constitutional right, subjecting it wholly to the discretion of courts is likely to inhibit the full and unfettered enjoyment of the right and, as such, has not assumed the full character of a right it is considered to be. From the foregoing, the researcher maintains that bail being the only alternative read into the provisions of the CFRN is grossly insufficient and ineffective, especially in the face of its subjection wholly to the discretion of courts, in the exercise of which they unnecessarily resort to detention. Hence the need for the provision of more alternatives to detention that may apply to different situations and to prioritise them.

3.2.2 The Administration of Criminal Justice Act (ACJA) 2015[148]

On 28 May 2015, ACJA was signed into law repealing the two principal legislations, the Criminal Procedure Act and the Criminal Procedure Code applicable in the Southern and the Northern parts of Nigeria, respectively.[149] Widely acknowledged by academic scholars like Ojediran[150] and reputable legal practitioners like George[151] for its significant innovations, ACJA was enacted purposely to unify the criminal procedure in all parts of Nigeria, promote speedy dispensation of justice, enhance efficient management of criminal justice institutions and safeguard the rights and interests of the suspect, the victim, and the defendant.[152]

By ACJA, a suspect upon arrest shall be accorded humane treatment and shall not be subjected to torture, cruel, inhuman or degrading treatment.[153] Such an arrested person shall be brought before a court 'promptly' or released conditionally or unconditionally.[154] Where the police are unable to immediately arraign an accused due to a delay in investigation, he/she may be discharged on recognisance for a reasonable amount, with or without sureties.[155] Where not released on bail after 24 hours by police, an application can be brought on his/her behalf before a court seeking his release on bail, where the offence

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[146] (1990) 1 NCLR 420.
[147] As above.
[148] 2015, available at https://policehumanrightsresources.org/content/uploads/2017/09/Administration-of-Criminal-Justice-Act-2015-2.compressed.pdf?x96812 (accessed 13 August 2021).
[149] YA George 'An overview of the Administration of Criminal Justice Act, 2015' (2016) https://nji.gov.ng/images/Workshop_Papers/2016/Refresher_Magistrates/s02.pdf (accessed 11 September 2021).
[150] I Ojediran 'Highlights of notable innovations in the ACJA, 2015' (2016) https://www.academia.edu/37104544/HIGHLIGHTS_OF_NOTABLE_INNOVATIONS_IN_THE_ACJA_2015_docx (accessed 23 September 2021).
[151] YA George 'Summary of some of the innovative provisions of the Administration of Criminal Justice Act (ACJA) 2015 (2016) http://www.censolegs.org/publications/6.pdf (accessed 23 September 2021).
[152] ACJA, section 1.
[153] ACJA, section 8(1).
[154] ACJA, section 8(3).
[155] ACJA, section 31.

involved is a non-capital offence.[156] These provisions are specifically targeted at addressing the problem of unnecessary and prolonged detention. Further, the Chief Magistrates and High Court judges are mandated to conduct monthly inspections of police stations or detention centres and may, during such inspections, grant bail to suspects entitled to bail.[157]

Section 158, ACJA expressly guarantees the right to bail thus:[158]

> When a person who is suspected to have committed an offence or is accused of an offence is arrested or detained, or appears or is brought before a court, he shall, subject to the provisions of this Part, be entitled to bail

An accused is entitled to bail as of right going by the above provision save where he/she is charged for a capital offence, in which case, bail is only granted in exceptional circumstances including ill-health and extraordinary delay in investigation, arraignment and prosecution.[159] Capital and non-capital offences are distinguished for the purpose of bail because accused persons facing trial for capital offences may easily abscond, considering the gravity of the offence.[160]

An accused can only be denied bail when charged for offences that attract imprisonment term exceeding three years where there is apprehension that he/she may commit another offence, evade trial, interfere with the investigation or undermine the purpose and functioning of the criminal justice administration[161] in which case the discretion of the court comes to bear. Interestingly, this ACJA provision departs from the usual trend of rendering bail discretionary within the determination of the court and instead affirms it as a right grantable unless in the foregoing circumstances. In *Johnson v. Federal Republic of Nigeria (FRN),*[162] the court held that section 162 of ACJA mandates courts to grant bail except in the circumstances outlined under paragraphs (a) – (f) of the section. Also, in the case of *Akeem v. FRN),*[163] the court maintained that a marriage of section 35(4) of the CFRN and section 162 of ACJA renders bail a mandatory right that should be granted when sought.

However, ACJA allows for the exercise of discretion in the determination of bail conditions though with due consideration to the status and circumstances of the accused.[164] To ensure the affordability of bail conditions, ACJA recognises women sureties and maintains that a person shall not be prevented from standing as surety or entering recognisance only because she is a woman.[165] This is in line with the right

[156] ACJA, section 32.
[157] ACJA, section 34.
[158]ACJA, section 158.
[159] ACJA, section 161.
[160] Per Tobi, JSC in *Dokubo-Asari v. Federal Republic of Nigeria* (2007) LLER -20806 SC.
[161] ACJA, section 162.
[162] (2016) LCN/8744 (CA)
[163] (2016) LPELR – 41120 (CA).
[164] ACJA, section 165.
[165] ACJA, section 167(3).

against discrimination under the CFRN[166] and the Convention on Elimination of Discrimination Against Women.[167]

Despite the efforts to address the challenges inhibiting the effectiveness of bail in Nigeria, many courts are still very inclined to utilise the ACJA provisions to justify bail refusal. In *Ogede v. FRN* (supra), the trial court refused the accused bail on the ground that the offence for which the accused was charged attracts life imprisonment upon conviction which the judge considered a serious offence that attracts severe punishment. Based on his analogy, the trial court erroneously maintained that offences that attract life imprisonment are like offences that attract death penalty in which case the principle that bail is only grantable in capital offences in exceptional cases equally extend to offences that attract life imprisonment. The trial court, therefore, turned down the bail application. The Appeal Court considered this ruling to be 'manifestly wrong' and instead applied the provision of section 162 of ACJA to overturn the decision.

It is evident from the foregoing discussion that ACJA has tried to address the long-standing issue of unlawful detention generally and prolonged pretrial detention specifically. However, the alternative to pretrial detention which it also recognises is bail, though with commendable improvements to ensure its effectiveness, affordability and efficiency and hence the pressing need for more alternatives is manifest. Even though entering into recognisance is also recognised as an alternative to detention especially in the case of juveniles, it is often not granted as an independent alternative but rather as a bail condition. Furthermore, ACJA still retains some claw-back clauses that allow courts a very wide latitude of discretion in bail considerations which may render bail ineffective.[168] This is especially a concern in terms of misdemeanor and simple offences where bail should be granted as of right 'unless the court sees reason to the contrary'.[169]

3.2.3 The Anti Torture Act (ATA) 2017[170]

Though the CFRN prohibits torture and other ill-treatment under section 34, it does not expressly make them non-derogable rights which perhaps explains the continued use of torture and other-ill-treatments by law enforcement officials in Nigeria.[171] This is majorly the gap that the ATA came to fill. It was enacted

[166] CFRN, section 42.
[167] UN General Assembly, Convention on the Elimination of All Forms of Discrimination Against Women (1979) available at https://www.refworld.org/docid/3ae6b3970.html (accessed 23 September 2021).
[168] Such claw-back clauses include the provision of section 32 of ACJA which empowers a court to release an accused denied an administrative bail after 24 hour of detention without arraignment '*where it deems fit'*. Another claw-back clause could be found in the section 163 of ACJA which mandates a court to release an accused in any other circumstance that falls outside sections 161 and 162 '*unless the court sees reason to the contrary*'.
[169] ACJA, section 163.
[170] 2017, available at https://policehumanrightsresources.org/content/uploads/2019/10/Anti-Torture-Act-2017.pdf?x96812 (accessed 13 September 2021).
[171] C Okeke 'Nigeria: Anti-Torture Act 2017: Issues and implication for police officers' (2021) https://www.mondaq.com/nigeria/human-rights/1084406/anti-torture-act-2017-issues-and-implication-for-police-officers (accessed 23 September 2021).

purposely to criminalise the acts of torture and other other forms of ill-treatments and stipulate punishments for such acts.[172] The ATA mandates the Nigerian government to ensure respect for the rights of all persons including ATDs and accused persons under investigation or held in detention must not be subjected to any form of harm, intimidation, violence or any act at all that can impair his/her free will.[173]

The ATA considers as torture:[174]

> An act by which pain or suffering, whether physical or mental, is intentionally inflicted on a person to –
>
> a) Obtain information or a confession from him or a third person;
> b) Punish him for an act he or a third person has committed or is suspected of having committed;
>
> …
>
> When such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity provided that it does not include pain or suffering in compliance with lawful sanctions.

By ATA's zero-tolerance to torture, justifications such as internal political instability or public emergency cannot be condoned to exempt perpetrators.[175] It prohibits incommunicado detentions, solitary confinement and secrete detention facilities and evidence obtained as a result of such acts cannot be admitted in evidence before any court in Nigeria except for the use against the perpetrators of torture and such other ill-treatment.[176] By this Act, criminal responsibility for torture and other ill-treatments is specific to the person responsible for such acts, which may be direct or indirect.[177]

Although the Act is not a domesticated version of CAT, it shares the same objectives and very similar provisions with CAT. However, ATDs are still exposed to torture and other ill-treatments as evident in the various reports by non-governmental organisations (NGOs) like Amnesty International[178] and the nationwide #EndSARS demonstrations against police brutality in October 2020 which lasted for over two weeks.[179] Hence the need, to adopt more alternatives to pretrial detention like electronic monitoring, restrictive measures such as house arrest or travel restrictions, monitoring by specific agencies appointed by courts, periodic presentation before courts registries or police stations and subjection to the care of community heads or parents especially in the case of minors.[180] The use of non-custodial measures should

[172] Anti-torture Act, 2017, preamble.
[173] Anti-torture Act, section 1(a).
[174] Anti-torture Act, section 9(1).
[175] Anti-Torture Act, section 3.
[176] As above.
[177] As above.
[178] Amnesty International 'Nigeria: Time to end impunity: Torture and other human rights violations by special anti-robbery squad (SARS) (2020) https://www.amnesty.org/en/documents/afr44/9505/2020/en/ (accessed 23 September 2021).
[179] 'Timeline: #EndSARS protests in Nigeria' *Aljazeera* 22 October 2020 available at https://www.aljazeera.com/news/2020/10/22/timeline-on-nigeria-unrest (accessed 23 September 2021).
[180] TM Rytter & K Kambanella 'Reducing overcrowding in pre-trial detention and prison in the context of COVID-19: Increasing the use of non-custodial measures' (2020) *Danish Institute Against Torture, 9*.

be prioritised in line with the international human rights standards, especially to jealously guard the ATDs rights against torture and other ill-treatment and respect their human rights.

3.2.4 The Police Act, 2020[181]

Just a month prior to the #EndSARs protest in Nigeria, the Police Act 2020 came into force as an amendment of the Police Act, 1943. The 2020 Act in principle provides for a more effective and organised police force driven by the principles of transparency, accountability and protection of human rights and freedom in its operation and management.[182] The Act expressly prohibits arrest for civil wrongs or breach of contract[183] unlike the old Act which was silent. It also prohibits arrest in lieu of accused persons (arrest by proxy)[184] and mandates that the next of kin of an arrested person be immediately informed of his/her arrest and whereabouts.[185] These provisions align with the relevant provisions under ACJA. By the Act, an accused under police detention should be treated humanely with respect for his/her dignity[186] and must not be subjected to torture or any other ill-treatment.[187]

Save for capital offences; police are mandated to release on bail a suspect arrested without a warrant and where it is not practicable to present the accused before a court within 24 hours after the arrest.[188] In the event of delay in investigation, a suspect may be discharged on his entering into recognisance for a reasonable amount to appear in court when required, with or without sureties.[189]Unlike the old Act which empowered lay police officers who are not trained legal practitioners and are unfamiliar with law and rudiments of practice to prosecute criminal cases, the 2020 Act allows only police officers who are qualified legal practitioners to prosecute criminal cases unless in cases which non-qualified legal practitioners can prosecute (if any).[190] This rider has, however, received condemnations from some legal practitioners who maintained that there is no offence which a non-qualified legal practitioner can prosecute under the Nigerian penal laws and that the rider is tantamount to taking back what the law seeks to give, which is allowing lay police officers to prosecute crimes.[191] Section 106 of ACJA clearly lists out those who are entitled to prosecute, all of which are legal practitioners in various capacities to the exclusion of lay police officers. As such, the rider is, by implication, uncalled-for.

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[181] Available at https://placbillstrack.org/upload/Police%20Act,%202020.pdf (accessed 23 September 2021).
[182] Police Act, preamble.
[183] Police Act, section 32(2).
[184] Police Act, section 36.
[185] Police Act, section 35(3).
[186] Police Act, section 37(1).
[187] Police Act, section 37 (2).
[188] Police Act, section 62 (1).
[189] Police Act, section 63 (1).
[190] Police Act, Section 66.
[191] 'Debate over new Police Act and implications for criminal prosecution' *The Guardian* 20 October 2020 available at https://guardian.ng/features/debate-over-new-police-act-and-implications-for-criminal-prosecution/ (accessed 24 September 2021).

A major contribution of this Act to the protection of human rights of accused persons is that it mandates the Police force to liaise with relevant agencies to provide legal services to accused persons in need and ensure that they access justice.[192] It further requires that every Police Division be assigned at least one police officer, who is a qualified legal practitioner, to oversee and ensure compliance with human rights in the discharge of responsibilities.[193] While this Act largely aligns with the provisions of ACJA, the problem remains that police are allowed, especially where investigations are ongoing, to arraign accused before courts within 24 hours and request for remand orders after which the accused are incarcerated pending trial. Police are empowered to release accused persons arrested without warrant pending arraignment.[194] This may likely exclude many indigent ATDs as it is largely misused by some corrupt police officials to extort money from accused persons.[195] Despite the laudable provisions, the law is still being violated by some police officials who continue to arrest relatives or friends in lieu of accused persons or carry out arrests for civil wrongs[196] , which then points to implementation problems.

3.3. The effect of pretrial detention and the situation of ATDs in Nigeria

Going by the Nigerian Correctional Service statistics as of 30 August 2021, out of the total number of 68,872 prisoners in Nigeria, ATDs number 50,593 (73%).[197] This percentage of ATDs in Nigerian prisons has, over the last two decades, been stable[198] and excludes suspects in police cells and other detention facilities across the country. To have a better picture of the situation in Nigeria compared to other countries, the World Prison Brief's recent report revealed that the proportion of ATDs is 11.6% in Ghana, 12% in Algeria, 24% in Botswana, 35.7% in South Africa, 49.8% in Uganda and 74% in Nigeria.[199]

It has also been suggested based on the prisons statistics' trend that Nigerian prisons harbour more innocent people than criminals and that many ATDs were detained for what qualifies as petty or minor offences such as traffic offences and shoplifting.[200] The case of Abdullahi Muhammed, a 49 years old man arrested in May 2013 for stealing a handset'[201] and spent over five years in pretrial detention for an offence

[192] Police Act, section 5.
[193] Police Act, section 66(3).
[194] Police Act, section 62.
[195] O Arisukwu *et al* 'Police treatment of the public in police stations: Evidence from Zaria, Nigeria' (2021)15 *Policing: A Journal of Policy and Practice,* 1862.
[196] 'Despite clear stand of law and court judgments, Nigerian police still meddling in civil disputes' *Premium Times* 10 February 2021 https://www.premiumtimesng.com/news/headlines/441969-special-report-despite-clear-stand-of-law-and-court-judgments-nigerian-police-still-meddling-in-civil-disputes.html (accessed 14 October 2021).
[197] Nigerian Correctional Service 'Summary of inmate population by convict and awaiting trial persons as at 30th August, 2021' (2021) https://www.corrections.gov.ng/statistics (accessed 13 September 2021).
[198] Open Society Justice Initiative 'Alade v. the Federal Republic of Nigeria' https://www.justiceinitiative.org/litigation/alade-v-federal-republic-nigeria (accessed 13 September 2021).
[199] World Prison Brief 'World Prison Brief data: Africa' (2021) https://www.prisonstudies.org/map/africa (accessed 13 September 2021).
[200] Prison Insider 'Nigeria: 70% of Nigerian prisoners held without trial' (2020) https://www.prison-insider.com/en/articles/nigeria-70-of-nigerian-prisoners-held-without-trial (accessed 13 September 2021).
[201] As above.

that ordinarily attracts five years prison terms upon conviction, represents and exemplifies many other cases of ATDs in Nigeria.

3.3.1. Punishment without trial and conviction

Though arguably a means of rehabilitation and reducing the rate of recidivism, denial of liberty in the form of imprisonment is inherently a form of punishment that courts worldwide impose on persons convicted for alleged offences.[202] Given that ATDs enjoy innocence status until conviction, they cannot be justly compelled to serve prison terms and exposed to punishments under any guise. A study conducted at the Port-Harcourt prison, Rivers State, Nigeria, revealed that 48.6% of the ATDs have stayed for less than 5 years, 37% have stayed for between 6-10 years, 8.3 % have stayed between 11-15 years and 6.1% have stayed between 16-20 years.[203]

Many of the ATDs are not only kept in detention facilities but are exposed to torture and ill-treatments.[204] Torture and ill-treatment of ATDs were more attributed to the Special Anti-Robbery Squad (SARS) of the Nigerian Police Force which resulted in the massive #EndSARS nationwide protest.[205] The protest involved tens of thousands of Nigerian youths who demonstrated continuously for over two weeks which resulted in the dissolution of the Unit.[206] According to a report by Amnesty International, torture is routinely used by law enforcement officials in Nigeria to extract confessions from accused persons.[207] Thus, pretrial detention has the effect of exposing ATDs to torture and other ill-treatment and this mainly violates their right against torture cruel, inhuman, or degrading treatment as guaranteed under the various international, regional human rights instruments, including CAT.

3.3.2 Prison congestions and resultant inhuman conditions

There is no dispute about the serious congestions in Nigerian prisons. A good example is the Port-Harcourt Maximum Prison which was originally built to accommodate 804 inmates but held 3824 inmates as of June 2017.[208] It has rightly been maintained that the overuse of pretrial detention and the increasing number of ATDs in prisons in Nigeria chiefly account for the congestions and inhuman situations in prisons.[209] The inhuman conditions and plights of prisoners are evident in the reports of inadequate feeding, horrible

[202] UNODC 'Introducing the aims of punishment, imprisonment and the concept of prison reform' (2019) https://www.unodc.org/e4j/en/crime-prevention-criminal-justice/module-6/key-issues/1--introducing-the-aims-of-punishment--imprisonment-and-the-concept-of-prison-reform.html (accessed 21 September 2021).
[203] JK Ukwayi & JT Okpa 'Critical assessment of Nigerian criminal justice system and the perennial problem of awaiting trial in Port Harcourt maximum prison, Rivers State' (2017)16 *Global Journal of Social Sciences*, 17-25.
[204] Amnesty International 'Nigeria: 'Welcome to hell fire': Torture and other ill-treatment in Nigeria' (2014) https://www.amnesty.org/en/documents/AFR44/011/2014/en/ (accessed 23 September 2021).
[205] 'Timeline:#EndSARS protests in Nigeria' *Aljazeera* 22 October 2020 available at https://www.aljazeera.com/news/2020/10/22/timeline-on-nigeria-unrest (accessed 23 September 2021)
[206] As above.
[207] Amnesty International (n 204).
[208] Ukwayi & Okpa (n 203).
[209] As above.

sanitary conditions, poor clothing, over-used amenities, inadequate recreational, medical and vocational facilities,[210] shortage of water, poor ventilation, unkept environment and inmates sleeping on a bare floor.[211] These violate the right to respect for the dignity of a human person under the international and regional human rights instruments and domestic laws.

3.3.3. Health implications

The overcrowded nature of the Nigerian detention prisons and the poor living conditions as highlighted above have separately and collectively culminated in many health challenges including tuberculosis, rashes, HIV/AIDS, scabies, asthma[212] and facilitates the easy spread of diseases. While thankfully, there has not been a reported case of COVID 19 in Nigerian prisons, the current situation creates an enabling environment for the pandemic to spread very faster in the event of any such occurrence. An even greater concern is the prevalence of mental illness among ATDs in Nigeria.[213] A study conducted on 394 ATDs at a detention facility in Ibadan, Nigeria, revealed that 56.6% of the respondents suffered mental illness and that the commonest illnesses include depression, suicidality and antisocial personality disorder.[214] This violates the right to dignity under the ICCPR and ACHPR, as well as the right to health under International Covenant on Economic, Social and Cultural Rights.[215]

3.3.4 Social implications

Some studies have revealed that the majority of the ATDs are unemployed youths with the range of 18-45 years.[216] Most acquired tertiary education but from humble family backgrounds.[217] By implication, they do not suffer the adverse consequences of their detention alone but with their families and relatives, including their wives, mothers, sisters, children and dependent(s). This violates the rights of family members to dignity, an adequate standard of living and education, especially as it relates to children of the ATDs, in contravention of various international and regional human rights instruments.

The overuse of pretrial detention as in the Nigerian situation is no doubt a violation of numerous human rights guaranteed under the international, regional and national instruments. Such rights include chiefly the right to liberty, the right to be presumed innocent until proved guilty, the right to adequate time and facilities

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[210] I Danjuma *et al* 'Prisons' condition and treatment of prisoners in Nigeria: Towards genuine reformation of prisoners or a violation of prisoners' rights? (2018*) Commonwealth Law Bulletin*, 99 – 105.
[211] A Adegbami & CIN Uche 'Good governance and Prison Congestion in Nigeria: The case of maximum Security Prison, Ilesa' (2015) https://www.researchgate.net/publication/297591595_Good_Governance_and_Prison_Congestion_in_Nigeria_The_Case_of_Maximum_Security_Prison_Ilesa (accessed 23 September 2021).
[212] As above.
[213] JO Abdulmalik *et al* 'Prevalence and correlates of mental health problems among awaiting trial inmates in prison facility in Ibadan Nigeria' (2015) https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4682912/ (accessed 13 September 2021).
[214] As above.
[215] The UN, ICESCR, 1996 available at https://www.refworld.org/docid/3ae6b36c0.html (accessed 24 September 2021).
[216] Adegbami & Uche (n 211)1.
[217] Adegbami & Uche (n 211)1.

for defence, the right to freedom of movement, the right to dignity and the right against torture, cruel, inhuman or degrading treatment or punishment. Hence the need for the adoption of a better and more effective human rights approach, in the form of providing for and prioritising the use of non-custodial measures at the pretrial stage of criminal proceedings, to shield people from these human rights violations.

3.4. Factors exacerbating the problem of pretrial detention in Nigeria

The researcher wishes to focus on three major factors which are the (1) paucity of alternatives to pretrial detention in the Nigerian laws, (2) the practice of holding charge and (3) the delay in the administration of criminal justice. This is because other factors such as unlawful arrests including an arrest in lieu and arrest for civil-related matters like debts have been prohibited under sections 7 and 8(2) of ACJA which is the prevailing criminal law in Nigeria.

3.4.1 Paucity of alternatives to pretrial detention

From the foregoing discussion, the researcher maintains that bail is the alternative to pretrial detention provided for and often used under the Nigerian criminal justice system. It is also maintained that entering into recognisance is granted not as an independent alternative but rather as a supplement or a condition to bail normally required of sureties to accused persons. The existing alternative to pretrial detention in Nigerian laws is highly inadequate and ineffective. This is because the majority of the ATDs are poor, illiterate and marginalised citizens who do not appreciate the criminal justice procedures, their level of entitlement to bail, or afford bail condition(s), as may be gleaned from the background of this research work. Although the Legal Aid Council of Nigeria was established to cater for the justice needs of the poor, the Council is faced with challenges such as inadequate funding, understaffing, lack of passionate and sometimes competent personnel, lack of publicity, among others, which have negatively impacted the Council's efficiency and service delivery.[218] Also, no mention is made in any of the existing laws in Nigeria directing the use of and resort to pretrial detention only as a matter of last resort and where extremely expedient as against the international and regional standards. These gaps are arguably setbacks in the existing domestic laws that bring them far below the minimum requirement under the international and regional human rights standards. The situation generally is also inimical to an environment that may enable the prioritization of alternatives to pretrial detention in Nigeria.

3.4.2. The practice of holding charge

This is the practice by which the police or other law enforcement agencies in Nigeria secure remand orders from lower courts without jurisdiction to lawfully remand accused persons during investigation.[219] By

[218] AI Adeyemi 'The Legal Aid Council in Nigeria: Challenges and possible solutions' (2017) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3547025 (accessed 15 September 2021).
[219] U Ugochukwu 'Holding charge vis-à-vis 293 of the Administration of Criminal Justice Act, 2015' (2016) https://www.slideshare.net/UgochukwuUgwu/holding-charge-vis-a-vis-section-293-of-acja-the-thought-of-ugochukwu-ugwu-esq (accessed 11 September 2021).

implication, they try to buy enough time to investigate alleged offences, collect evidence and build stronger cases against accused persons before properly arraigning them. Exemplifying this practice is the case of *Sikiru Alade v. the Federal Republic of Nigeria*.[220] The applicant was arrested in March 2003 and detained in a police cell in Lagos. He was only brought before a Magistrate Court in Lagos in May 2003 on allegation of armed robbery under 'holding charge' procedure since the Magistrate had no jurisdiction to entertain the matter and the police investigation was still in progress. Pursuant to a remand order granted by the Magistrate, the applicant was detained at the Kirikiri Maximum Security Prison, Lagos. He spent over nine years without charge or trial before any competent court until the matter was brought before the Economic Community of West Africa (ECOWAS) Court of Justice. In 2012, the ECOWAS court noted with concern that the Magistrate court which issued the remand order had no jurisdiction over the alleged offence.[221] The court found Nigeria in violation of the Applicant's human right under Article 9(4) of the ECOWAS Court Protocol as amended by the Supplementary Protocol of 2005.[222] It, therefore, ordered for the immediate release of the accused and awarded two million seven hundred-thousand-naira damages to the Applicant.[223]

Prior to the enactment of the ACJA, 2015, this practice was significantly condemned by various courts' justices.[224] The then Chief Justice of Nigeria, Dahiru Mustapha, maintained that the overuse of pretrial detention is largely responsible for the congestions in Nigerian prisons and that Nigerian citizens cannot be fairly incarcerated while investigating officials scramble for evidence to prosecute them. [225] This practice has caused some ATDs to spend over seven years in prisons without trial and was condemned in *Onagoruwa v. The State*.[226] However, the practice endures among the Nigerian police force and surprisingly, ACJA, 2015 upholds the practice. It expressly provides that suspects accused of crimes beyond the jurisdiction of Magistrate courts should be brought before the Magistrate courts within reasonable time for remand.[227] The provision has been condemned as being ultra vires the fundamental rights under the Nigerian Constitution, especially the right to liberty under section 35 generally and section 35(5)(a), which specifically requires an accused to be brought before a 'competent court' within reasonable time.[228] As such, it is in the light of section 1(3) of the CFRN null and void to the extent of its inconsistency and should

[220] (2012) ECW/CCJ/APP/05/11 before the Ecowas Court of Justice, available at https://www.justiceinitiative.org/uploads/b2333999-eecd-4ac0-a3e5-cbe249417047/ecowas-alade-judgment-20120611.pdf (accessed 14 September 2021).
[221] As above.
[222] A/SP.1/01/05 available at http://www.courtecowas.org/wp-content/uploads/2018/11/Supplementary_Protocol_ASP.10105_ENG.pdf (accessed 13 September 2021).
[223] Sikiru's case (n 220).
[224] See the decision of Per Walter *Onnogen in Enwere v. COP* (1993) 6 NWLR (Pt. 229) 333 at 341 and the decision of the court in *Jimoh v COP* (2004) LPELR-11262(CA)

[225] African Criminal Justice Reform 'Chief Justice of Nigeria criticizes use of holding charges' (2011) https://acjr.org.za/resource-centre/chief-justice-of-nigeria-criticises-use-of-holding-charges (accessed 10 September 2021).
[226] (1993)7 NWLR (Pt 303) 49.
[227] ACJA, section 293(1).
[228] Ugochukwu (n 219).

be declared as such.[229]This is one of the problems with ACJA and shall remain the law defining the prevailing practice until adjudged unconstitutional by competent courts.

3.4.3 Delay in the administration of criminal justice

This is a longstanding problem that remains the foremost millstone to the effective administration of criminal justice in Nigeria. On average, criminal trials take between four to six years to conclude[230] especially as it relates to cases before High Courts and those concerning ATDs on remand orders. Such cases could not be said to have been determined within reasonable time as decided by the court in *Agiende Ayambi v. the State* where the court considered two years unreasonable for the determination of a case.[231] Unlike the Magistrate courts in Nigeria where cases drag for over 593 days averagely before judgment despite their being courts of summary jurisdiction,[232] it took an average of 157 days to deal with criminal cases before Magistrate courts in the United Kingdom (UK) from the time of complaint through completion as reported in 2018.[233]Justice Niki Tobi considered a delay in the administration of criminal justice a perennial problem that poses a serious threat to justice administration in Nigeria.[234]

Numerous factors have been variously advanced as causes of delay in the administration of criminal justice. Central to the situation of ATDs is the delay in investigation and crimes detection which is chiefly responsible for the remand of the ATDs and pretrial detention generally.[235] Reasons advanced as excuses include the frequent and unorganized transfer of investigating officers and the lack of funds and infrastructure to properly pursue and timeously conclude investigations.[236] Prosecuting counsels sometimes lack the commitment, industry and infrastructure to properly and effectively prosecute cases.[237] This also applies to many judges especially at the level of Magistrate courts in rural areas who habitually come very late to court and rise earlier than the desired time after only dealing with a few cases, invariably resulting in cases backlogs.[238] Closely linked to this is the indolence of supports staffs of courts which often accounts

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[229] As above.
[230] 'Preventing delay tactics in criminal trials in Nigeria' *Punch Nigeria* 7 April 2016 available at https://punchng.com/preventing-delay-tactics-in-criminal-trials-in-nigeria/ (accessed 13 September 2021).
[231] (1985)6 NCLR 141.
[232] J Monye, P Obiagbaoso & R Obideegwu 'Where are we in curbing delays in administration of justice in Nigeria' (2020) https://punuka.com/where-are-we-in-curbing-delays-in-administration-of-justice-in-nigeria/#_ftn12 (accessed 13 September 2021).
[233] 'Magistrate court cases take a week longer to complete' *BBC News* 17 November 2016 https://www.bbc.com/news/uk-england-37482952 (accessed 13 September 2021).
[234] A John & A Musa 'Delay in the administration of criminal justice in Nigeria: Issues from a Nigeria viewpoint' (2014)26 *Journal of Law, Policy, and Globalization*, 131.
[235] As above.
[236] As above.
[237] As above.
[238] DG Mann, JSC 'Curbing delays in the administration of justice: Case management in the magistrate court' (2017) https://nji.gov.ng/images/Workshop_Papers/2017/Orientation_Newly_Appointed_Magistrates/s2.pdf (accessed 14 September 2021).

for misplaced case files, case omissions from cause-lists, delays in services, misinterpretation of oral testimonies of illiterate witnesses, lateness to work, among others.[239]

3.5. Conclusion

This chapter has analysed the relevant provisions in the Nigerian laws on the rights of ATDs and pretrial detention. It has shown that there is a paucity of alternatives to pretrial detention in the laws and that bail remains the only main alternative provided and used in the country. The effects include punishment without trial, prison congestions, poor and inhuman conditions, serious health challenges especially mental and psychological diseases and social implications. The chapter finally examined the factors exacerbating prolonged pretrial detention in Nigeria and found that the problem is not unrelated to the paucity of available alternatives, the practice of holding charge and the delay in the administration of criminal justice. Overall, the situation results in the violation of various human rights including the right to be presumed innocent until proved guilty among numerous. The next chapter examines, from a comparative perspective, the situation of pretrial detention in Uganda and discusses the various viable alternatives to pretrial detention.

[239] As above.

4. CHAPTER FOUR: A COMPARATIVE ANALYSIS OF PRETRIAL DETENTION IN UGANDA AND EXAMINATION OF THE VIABLE ALTERNATIVES

4.1. Introduction

The international and African regional standards on pretrial detention and the treatment of ATDs have extensively been discussed in chapter two of this research work. The researcher has under chapter three demonstrated the overuse of pretrial detention in Nigeria, the causative factors and the consequential effects on ATDs, especially emphasizing the resultant human rights violations, notably, the right to liberty and security of person, the right against torture and other ill-treatment, the right to be presumed innocent until proved guilty and the right to adequate time and facilities to prepare for defence among others. This chapter discusses pretrial detention in Uganda from a comparative approach and goes further to examine the viable alternatives to pretrial detention.

4.2. Pretrial detention in Uganda

Uganda is one of the countries that wrestle with the problem of pretrial detention, although with a slightly better experience compared to Nigeria. As of 2019, about 49.8% of the total number of prisoners in Uganda are ATDs.[240] Segawa attributed the problem of pretrial detention in Uganda to the weak 'implementation of the procedural safeguards for arrest and detention'.[241] The majority of the ATDs in Uganda suffer from arbitrary arrest and detention.[242] They are denied the enjoyment of their fundamental rights enshrined in the Constitution of Uganda[243] and other relevant laws like the Prevention and Prohibition of Torture Act.[244] Fundamental rights of ATDs infringed include majorly the right to fair and trial,[245] the right to apply for bail,[246] the right to liberty,[247] the right against torture, cruel, inhuman and degrading treatment,[248] the right to respect for human dignity,[249] and the right to be presumed innocent until proved guilty.[250] Many of the detention facilities housing ATDs in Uganda are overcrowded, dilapidated and with inadequate space, ventilation and lighting.[251] As of October 2016, the occupancy rate of the Ugandan prisons generally stood at 293% and five prisons showed over 500% occupancy rate (Kisoro 906%, Ntungamo 720%, Kabale

[240] World Prison Brief 'Uganda' (2019) https://www.prisonstudies.org/country/uganda (accessed 03 September 2021).
[241] RK Segawa 'Pre-trial detention in Uganda' (2016) *APCOF Policy Papers*, 1 available at http://apcof.org/wp-content/uploads/2016/07/APCOF-PTD-Uganda-Proof-3.pdf (accessed 03 October 2021).
[242] As above.
[243] The Constitution of Uganda (1995) available at https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/44038/90491/F206329993/UGA44038.pdf (accessed 03 October 2021).
[244] (2012) available at https://media.ulii.org/files/legislation/akn-ug-act-2012-3-eng-2012-09-18.pdf (accessed 03 September 2021).
[245] Constitution of Uganda, art. 28.
[246] Constitution of Uganda, art. 23(6).
[247] Constitution of Uganda, art. 23.
[248] Constitution of Uganda, art. 24.
[249] Constitution of Uganda, art. 24.
[250] Constitution of Uganda, art. 28(3)(a).
[251] As above.

651%, Rukungiri 530% and Gulu 508%).[252] Except in Kampala, ATDs in Uganda, just like in Nigeria, are mixed with convicts[253] and they, like other prisoners, generally do not have access to adequate food, water, clothing, bedding, adequate health services, opportunities for exercise, and facilities for personal hygiene.[254]

Worthy of independent discussion is the situation of torture and other ill-treatment that ATDs, especially political dissidents, are subjected to during the investigation phase as adequately captured in the Uganda 2020 Human Rights Commission report[255] and the reports of other human rights organisations like the Network for Public Interest Lawyers.[256] During and after the November 2020 election, around 1014 individuals were arrested [257]out of which 699 were remanded with accompanying reports of torture and other ill-treatment.[258]This is despite the prohibitions and sanctions in the Prevention and Prohibition of Torture Act[259] according to which officials found wanting may be sentenced to 15 years imprisonment, fine, or life imprisonment where it involves aggravated torture.[260]

Uganda, unlike Nigeria, houses illegal and undisclosed prisons where the majority of the political dissidents arbitrarily arrested are detained without arraignment.[261] Such detainees are tortured to extract confessions and voluntarily released with traces of physical and psychological injury, killed, disappeared or biasedly arraigned before courts for charges attracting three years imprisonment and above especially as could be demonstrated by the situation in the 2021 January election and the aftermath events.[262] Unfortunately, perpetrators were not properly investigated, prosecuted or punished and there was an impunity problem.[263]

4.3. Alternative(s) to pretrial detention in Uganda

The only alternative to pretrial detention in Uganda is bail[264] which is expressly provided in the Ugandan Constitution unlike in Nigeria. Article 23(6) of the Constitution of Uganda provides that an arrested person may apply for bail and that such application may be granted on conditions that the court deems reasonable. This provision should not be understood as granting the right to bail but the right to apply for bail as clarified

[252] Prison Insider 'Uganda' (2017) https://www.prison-insider.com/countryprofile/prisonsinuganda?s=populations-specifiques#populations-specifiques (accessed 03 September 2021).
[253] As above.
[254] Segawa (n 241).
[255] Ugandan Human Rights Commission (UHRC) 'Uganda 2020 human rights report' (2021) https://www.state.gov/wp-content/uploads/2021/03/UGANDA-2020-HUMAN-RIGHTS-REPORT.pdf (accessed 03 October 2021).
[256] JN Luyombya 'The 2021 general elections in Uganda: Human rights violations and the spectacle of violence' (2021) *Network for Public Interest Lawyers (NETPIL), School of Law, Makarere University.*
[257] As above.
[258] As above.
[259] (n 244).
[260] See article 23 of the Ugandan Constitution and sections 4 & 5 of the Prevention and Prohibition of Torture Act.
[261] Luyombo (n 256) 74.
[262] Luyombo (n 256) 74
[263] UHRC (n 255)1.
[264] Avocats Sans Frontieres 'What are the different alternatives to pre-trial detention? :Uganda' https://www.asf.be/blog/detention/les-voies-de-recours/ouganda/what-are-the-different-alternatives-to-pre-trial-detention/ (accessed 03 October 2021).

in the case of ***Uganda v. Col (Rtd) Dr. Kiiza Besigye***[265] where the court held that going by the provision of Article 23(6) (a), accused persons are only entitled to the right to apply for bail. Also, in the **Foundation for *Human Rights Initiative v. Attorney General,*** the court maintained that the accused, despite enjoying the right to be presumed innocent until proved guilty, does not automatically become entitled to bail and that courts reserve the discretion to grant or refuse bail.***[266]*** The power to grant or refuse bail remains within the prerogative of the courts which is why bail is discretionary and considered not to be a right as such. [267]

Courts are, however, mandated to release, on reasonable bail conditions, accused persons who have spent one hundred and twenty days (now sixty days)[268] on remand concerning offences concurrently triable by the High court and other lower courts[269] or three hundred and sixty days (now one-hundred and eighty days)[270] concerning offences exclusively triable by the High Courts, where such accused persons have not been arraigned properly for trial[271] especially due to delay in investigation by the police. Bail becomes mandatory after the expiration of these periods as decided by the court in ***Foundation for Human Rights Initiative vs Attorney General*** *supra*. Admittedly, this provision puts the Ugandan legal framework on bail ahead of the Nigerian framework even though it has been maintained that in practice, there are many cases of prolonged pretrial detention in Uganda.[272]

The Trial on Indictments Act[273] which governs criminal procedures in High Courts empowers the Ugandan High Courts to release accused persons on bail, at any stage of the proceedings, upon entering recognizance for a reasonable sum to appear on such a date and time specified in the bond.[274]However, there is a wide latitude of discretion and unlimited power enjoyed by courts here, given the connotation of the word 'may' in the provision, unlike the Constitutional provision. Proof of exceptional circumstances such as grave illness, where the accused is a minor or of advanced age, or where there is a Certificate of No

[265] Constitutional Reference No. 20 of 2005.
[266] Constitutional Position No. 20 of 2006, as cited in *Review of bail in the criminal justice system,* (2019)https://www.ulrc.go.ug/sites/default/files/Review%20of%20Bail%20in%20the%20Criminal%20Justice%20System%20-Consultation%20paper.pdf (accessed 04 October 2021).
[267] Bare Foot Law 'Bail in Uganda' https://barefootlaw.org/bail-in-uganda/ (accessed 03 October 2021).
[268] Article 9, the Constitution of Uganda (Amendment) Act, 2005 available at file:///C:/Users/HP/Downloads/Constitutional%20Amendment%20Act%202005.pdf (accessed 04 October 2021).
[269] Constitution of Uganda, art. 23 (6)(b).
[270] As above
[271] Constitution of Uganda, art. 23(6)(c).
[272] Uganda Law Reform Commission (ULRC) 'Project: Review of bail in the criminal justice system' (2019) https://www.ulrc.go.ug/sites/default/files/Review%20of%20Bail%20in%20the%20Criminal%20Justice%20System%20-Consultation%20paper.pdf (accessed 04 October 2021).
[273] Cap 23 (1971) available at http://rodra.co.za/images/countries/uganda/legislation/THE%20TRIAL%20ON%20INDICTMENTS%20ACT.pdf (accessed 05 October 2021)
[274] Trial on Indictments Act, section 14(1).

Objection from the Director of Public Prosecution, may especially widen the chances of bail approval by the High Courts.[275]

Very relevant on bail is the Magistrates Courts Act.[276] By section 75, the Act empowers Magistrates to release accused persons on bail at any stage of the proceeding upon recognizance, for a reasonable amount, consisting of bond with or without sureties unless where the charge(s) involve serious offences such as rape, acts of terrorism under the Penal Code Act, abuse of office, defilement, corruption, offences under the Fire Arms Act and offences within the exclusive jurisdiction of the High Court.[277] During the consideration of bail applications, factors such as the nature of the offence, the severity of the punishment it might entail, the antecedents of the accused, the age and health status of the accused and whether the accused has fixed address and sureties, are to be put into consideration.[278]

While it is safe to hold that Uganda's legal framework is rich on bail and ensures its effectiveness in the administration of justice, it is, like in the Nigerian case, not 'adequate' and does not measure up to the international standards. Onerous 'cash bails' have proved to be a major drawback to the effectiveness of the bail system in Uganda especially from the perspective of indigent accused persons.[279] Furthermore, there is a cause of concern emanating from the attribution of the recent 'unprecedented' increase in crime in Uganda to the easy access of accused persons to bail and this has diminished public's confidence in the criminal justice system.[280] Thus the current move or agitation by security and legal experts to adopt a stricter legal system that may address the problem of granting bail to suspects accused of capital offences such as rape, terrorism, kidnapping, among others.[281]This development is not favourable to the move towards adopting a human rights approach to pretrial detention and the bid to measure up to the international standards. In fact the President of Uganda has long publicly aired out his position on the debate and opined that persons accused of capital offences, demonstrators and economic saboteurs should be denied bail until after spending 180 days on remand, both as a deterrence and a measure to deal with the continuous increase in the rate of crime in Uganda.[282] While understandably, there is a justifiable cause of concern from the general public with regard to the rising level of criminality in Uganda, the ascription of the problem to the liberality of bail policies in Uganda is obviously a threat to the move towards realizing a better and an enabling environment for the safety and protection of the human rights of ATDs. According to Segawa,

[275] Trial on Indictments Act, section 15.
[276] Cap 16 (1971) available at https://commons.laws.africa/akn/ug/act/1998/10/eng@2020-02-14.pdf (accessed 05 October 2021)
[277] The Magistrates Courts Act, section 75(1) & (2).
[278] The Magistrates Courts Act, section 77.
[279] ULRC (n 241)6.
[280] ULRC (n 241)6.
[281] ULRC (n 241)6.
[282] Uganda Radio Network 'Museveni insists no bail law is urgently needed' (2011) https://ugandaradionetwork.com/story/museveni-insists-no-bail-law-is-urgently-needed (accessed 04 October 2021).

challenges confronting bail in Uganda include mainly the lack of acceptance from the public, political interference, onerous bail conditions and the tendency of released persons to jump bail. [283]

4.4. Feasible Alternatives to pretrial detention

The use and priority of non-custodial measures lie at the heart of the human rights approach to pretrial detention, as earlier highlighted. The international and regional human rights instruments, despite setting the standards, do not expressly outline the alternatives to pretrial detention. However, feasible alternatives to pretrial detention have over time been developed and Nigeria and Uganda may draw from them and other relevant measures which shall be highlighted and analyzed hereunder.

a. **Bail and Bond**: in a report by Kelly, bail is defined as the process of allowing accused persons 'to continue living in their community if they provide a guarantee, financial or otherwise, that they will not abscond and will be available when needed for investigation and for trial'.[284] Usually, bail payment is made in advance.[285] In many countries, bail is the only alternative to pretrial detention and many of the ATDs remain in detention facilities because of their inability to provide the money or other securities required as their bail conditions.[286] In Nigeria, for instance, onerous bail conditions have been argued to be one of the major causes of prolonged pretrial detention as many of the ATDs are unable to perfect stringent bail conditions.[287] Some persons accused of simple offence(s) may be asked to provide sureties who are civil servants of grade level 15 and above.[288] Another limitation to the effectiveness of bail in Nigeria is the already discussed situation of holding charge where accused persons are arraigned before courts that lack jurisdiction and cannot grant bail. The situation is similar in Uganda where exorbitant amounts and/or unnecessary restrictions are imposed as bail conditions especially for political dissidents.[289] By the international human rights standards, bail conditions should be affordable, and consideration ought to be given to the financial status and peculiar circumstances of the accused persons before stipulating bail conditions.[290] Flexibility and affordability of conditions for release align with the innocence status which the accused enjoys and better shield him/her from human rights violations.

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[283] Segawa (n 241) 6.
[284] L Kelly 'Bail conditions in the criminal justice systems in Kenya, Uganda, Rwanda and Tanzania' (2020) *University of Manchester*, 2.
[285] As above.
[286] Heard & Fair (n 1) 24.
[287] Prison Insider 'Nigeria: stringent bail conditions responsible for prison congestion' (2019) https://www.prison-insider.com/en/articles/nigeria-stringent-bail-conditions-responsible-for-prison-congestion (accessed 15 September 2021)
[288] As above.
[289] His Majesty Omusinga Mumbere vs Uganda (Criminal Misc. Application No. 075 of 2016)(2017) UGHCCRD 11 (13 January 2017) available at https://old.ulii.org/ug/judgment/hc-criminal-division/2017/11 (accessed 15 September 2021)
[290] United Nations Office on Drugs and Crime (UNODC) 'Handbook on strategies to reduce overcrowding in prisons' (2010) *Criminal Justice Handbook Series, 98.*

b. **Release on personal recognizance**: according to the Kenyan National Council on the Administration of Justice (NCAJ), release on personal recognizance is the process of unconditionally releasing an accused based on the promise to comply with court orders and to appear when so required.[291] This may be effectively explored by cooperating with community leaders, tribal heads or community representatives to prevent accused persons released on personal recognizance from absconding or breaching stipulated conditions.[292] In some countries like Nigeria, bond is not often granted independently but as a further condition to bail. This may be due to the justifiable fear that accused persons may abscond without traces when released on personal recognisance without more given the porousness of African societies and the level of development. In fact, in Nigeria, accused persons may jump bail and remain within the courts' jurisdiction without trace.[293] However, this is a challenge that should be confronted by adopting good practices obtainable in advanced countries. In the United States of America, for instance, each person is assigned a security number either at birth or naturalization which makes it easy to trace anyone anywhere and very difficult for accused persons to escape without trace.[294]

   While working towards better development, the alternative may be used limitedly to cover only high profile and reputable accused persons who are facing indictment for the first time. Students in identified universities charged for petty offences may also be allowed to benefit from this alternative.

c. **Restrictive measures**: these measures include confining the suspect to a particular location like his/her home (house arrest), community or a geographical area, restricting his/her access to a place especially in cases of domestic violence, prohibiting him/her from meeting or communicating with some persons or appearing at a place.[295] Such restriction may be followed by periodic visits of appointed authorities.[296] Restrictive measures must be imposed with care and due diligence so that unnecessary harm or difficulty is not occasioned on the accused or his/her dependents. Restrictions that prevent an accused from earning a living or attending to familial or other necessary obligations may be unfair, unsustainable and in utter violation of the accused's human rights.[297]

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[291] NCAJ 'Bail and Bond: Policy guidelines' (2015) available at http://kenyalaw.org/kl/fileadmin/pdfdownloads/Bail_and_Bond_Policy_Guidelines.pdf (accessed 25 October 2021)
[292] UNODC (n 290).
[293] Nwosu (n 48)1.
[294] Nwosu (n 48)1.
[295] UNODC (n 290)100.
[296] UNODC (n 290)100.
[297] UNODC (n 290)100.

d. **The use of electronic monitoring bracelets**: this enables judicial authorities to monitor a suspect's activity from a distance.[298] This is expensive[299] and used in medium and high-income countries in the pursuit of modernizing the criminal justice system and bringing it in line with human rights standards.[300] This may be admittedly difficult to adopt in Africa and especially in Nigeria its level of development and economic strength. However, there is always room for improvement and for efforts to be geared towards keeping pace with technological advancements for effective service delivery.

Apart from the foregoing, other alternatives include monitoring by a specific agency appointed by a court, withdrawal of driving license and/or withholding of travel documents and periodic presentation before a court, police or other appointed authority.[301] In the case of a minor, he/she may be subjected to the care or supervision of the parent, guardian or institution.[302]

4.5. Other relevant measures

a. Keeping to good practice indicators which include providing ATDs with access to legal aid, periodic review of remand orders, speedy trial and availability of easy options to appeal remand orders.[303] The best way to keep track of these indicators is for there to be a uniform directive or guidelines for the prosecutors on when to demand pretrial detention and on what condition it may be suspended as practised in the Netherlands.[304]

b. Decriminalization of petty and outdated offences: petty crimes are considered inconsistent with the right to equality, non-discrimination, right to dignity and right to liberty under articles 2, 3, 5, 6 and 8 of the ACHPR.[305] The criminal laws of many low-income countries with colonial histories date back to the colonial era and include offences such as vagabond, rogue, idle, disorderliness, among others, which are relatively outdated and should be decriminalized.[306] Laws that are couched in broad or vague terms and others criminalising life-sustaining works in public places are considered inconsistent with international and regional human rights standards and should be

[298] TM Rytter & K Kambanella 'Reducing overcrowding in pre-trial detention and prison in the context of COVID-19: Increasing the use of non-custodial measures' (2020) *Danish Institute Against Torture, 9.*
[299] As above
[300] UNODC 'The use of electronic monitoring bracelets as an alternative measure to imprisonment in Panama' (2013) *United Nations Office on Drugs and Crime, Regional Office for Central America and the Caribbean, 2.*
[301] As above.
[302] As above
[303] Norwegian Ministry of Foreign Affairs & Council of Europe 'Reducing the use of custodial measures and sentences in the Republic of Armenia' (2013) https://rm.coe.int/16800ccae6 (accessed 15 August 2021).
[304] As above.
[305] African Commission 'Principles on the Decriminalisation of Petty Offences in Africa' (2017) available at file:///C:/Users/HP/Downloads/ACHPR_Principles_on_the_Decriminalisation_of_Petty_Offences.pdf (accessed 25 October 2021)
[306] The Tokyo Rules, Penal Reform International (PRI) '10 point plan: Reducing pretrial detention' (2016) https://cdn.penalreform.org/wp-content/uploads/2016/04/10-point-plan-Pre-trial-detention-WEB_final.pdf (accessed 15 August 2021).

decriminalized.[307] In an advisory opinion, the African Court on Human and Peoples' Rights held that vagrancy laws are inconsistent with States' obligation under Article 1 of the ACHPR, Article 1 of the Children Rights Charter and Article 1 of the Women Rights Protocol and State parties are obliged to amend or repeal their vagrancy laws.[308]

c. Diversion system: this is considered an initiative that provides a second chance for young and first-time offenders who are remorseful and should not be condemned for a mistake in the interest of justice.[309] The rising number of youths population, particularly in Nigeria, and the dwindling economic situation and resources may increase the number of youths engaging in criminal activities.[310] Suffice for minor or petty cases to be dealt with by prosecutors or police through warnings, a simple apology and mediation or reparation.[311] Accused persons with mental health or drug addiction problems can be directly referred for treatments.[312] In the case of Africa, referrals may be made to the informal local authorities like the community head or leaders for amicable settlement. New Zealand offers a good example of a feasible police diversion scheme due to which only more serious offences are taken to court for proper determination.[313]

d. Setting a time limit for pretrial detention: ATDs' cases should be subject to constant review and there should be a time limit for pretrial detention after which they should compulsorily be released either on bail or other conditions within their reach.[314] A good model is Ukraine where pretrial detention for serious offences is limited to 12 months and 6 months for petty offences.[315]

4.6. Conclusion

This chapter has discussed the situation of pretrial detention in Uganda from a comparative perspective and found that like Nigeria, bail is the only alternative to pretrial detention in Uganda, although more effectively used in the Ugandan criminal justice system than in Nigeria. Challenges such as onerous bail conditions, courts absolute discretion over the grant or refusal of bail applications, political interference, public's preference for the incarceration of accused persons pending trial among others constitute drawbacks to the effectiveness of bail in Uganda and the researcher considers it inadequate when measured against the international and African regional standards. The work further discussed the various viable alternatives to

[307] Principles on Decriminalisation of Petty Offences in Africa (n 305) art. 4.
[308] No 001/2018 'Advisory opinion on the compatibility of vagrancy laws with the African Charter on Human and Peoples' Rights and other human rights instruments applicable in Africa' 4 December 2020, *African Court on Human and Peoples' Rights*
[309] Schurlar Heerschop Pienaars 'Diversion: the role of diversion in South African law' https://www.shplaw.co.za/index.php/blog/22-diversion-the-role-of-diversion-in-south-african-law (accessed 15 October 2021).
[310] O Atilola 'Juvenile/Youth justice management in Nigeria: making a case for diversion programmes' (2013) https://journals.sagepub.com/doi/pdf/10.1177/1365480212474731 (accessed 15 October 2021).
[311] As above.
[312] Penal Reform International 'International Standards' https://www.penalreform.org/issues/alternatives-to-imprisonment/international-standards/ (accessed 03 September 2021).
[313] As above.
[314] As above.
[315] As above.

pretrial detention including bail and bond, release on personal recognizance, electronic monitoring and restrictive monitoring which may be adopted by Nigeria to provide various options for courts to choose from on a case-by-case basis to enrich the Nigerian legal framework on pre-trial detention and create an enabling environment for the priority of non-custodial measures. The following chapter consists of the general findings, conclusion and recommendations of this study.

5. CHAPTER FIVE: FINDINGS, CONCLUSION AND RECOMMENDATIONS

5.1 Summary of key findings

The research work set out to examine the situation of pretrial detention in Nigeria from a human rights perspective. Chapter one introduced the study and specifically considered that the overuse of pretrial detention in Nigeria goes contrary to the international and regional human rights standards and that such is a consequence of the paucity and gross underuse of alternatives to pretrial detention. It contains the background of the study, statement of problem, the research question, the objective, and the significance of the study. Chapter two analyzed the international and African regional legal framework on pretrial detention and the rights of ATDs and found that pretrial detention should be used sparingly as a matter of last resort and states are obliged to provide adequate non-custodial measures and to deploy legislative, judicial, policy and administrative measures in ensuring the use and priority of such alternatives. The overuse of pretrial detention constitutes a violation of numerous human rights, going by these standards. Chapter three assessed the domestic legal framework on the rights of ATDs and the effect and causes of prolonged pretrial detention in Nigeria. It found that the domestic laws guarantee the fundamental rights of ATDs but failed to provide adequate alternatives to pretrial detention, bail being the only available alternative. The study traced the root causes of prolonged pretrial detention in Nigeria to the paucity of alternatives, the practice of holding charge and the delay in the administration of justice. The study found that the overuse of pretrial detention in Nigeria results in congestion in prisons, poor living conditions of ATDs and other prisoners generally, numerous health challenges especially psychological diseases, all of which constitute a violation of numerous human and fundamental rights including notably the right to be presumed innocent until proved guilty, the right to adequate time and facilities to prepare for defence, the right against torture and other ill-treatment, the right to liberty and the right to respect for the dignity of human person. Chapter four assessed pretrial detention in Uganda from a comparative perspective and realized that the Ugandan experience is better compared to the situation in Nigeria especially given that the Ugandan legal framework on bail is richer than the equivalent in Nigeria. Bail in Uganda is, however, faced with challenges and still considered inadequate by the researcher. Nigeria may take a hint from the Ugandan legal framework, which stipulates timelines (60 and 120 days) within which an accused, if not arraigned for trial, even if charged for serious or capital offences, must be compulsorily released on bail. In fact, this may be further developed in Nigeria to stipulate a fixed time within which criminal cases must be concluded to ensure speedy dispensation of justice. Chapter five is the concluding section of the study which captures the summary of the key findings and recommendations.

5.2 Conclusion

This work has established that consequence of the paucity and underuse of alternatives to pretrial detention, numerous human rights of ATDs in Nigeria are grossly violated, contrary to the international and African regional human rights standards. The urgency and pressing nature of the need to ameliorate or remedy the situation could be appreciated from the degree of physical, psychological, and social implication of the situation on ATDs which in effect amount to the breach of Nigeria's international and regional obligation to respect, fulfil, protect and promote the relevant human rights. These may also render worthless and meaningless the fundamental rights guaranteed under the Nigerian Constitution and other applicable laws. To adequately measure up to the international and regional standards and uphold the human and fundamental rights of ATDs, there is an urgent need to address the situation of congestions in prisons, exposure of ATDs to torture and other ill-treatment, punishment without trial, other accompanying human rights and social implications, and the overuse of pretrial detention generally. This is realizable in Nigeria through adopting a human rights approach that promotes the use and priority of alternatives to pretrial detention. In view of the foregoing observations, this study proffers the recommendations which the researcher believes would help significantly to ameliorate or arrest the situation of prolonged pretrial detention in Nigeria.

5.3 Recommendations

5.3.1 Enactment of a specific law on pretrial detention and the use of alternatives

A specific law should be enacted on pretrial detention and the use of alternatives. The crux of the law should be the provision of various alternatives to pretrial detention and guidelines on their uses. The primary goal of the law should be to ensure that, in line with the human rights standards, pretrial detention is indeed used only as a matter of last resort and to create an enabling environment for the priority of non-custodial measures. The law should capture alternatives such as bail and bond, release on personal recognizance, restrictive measures such as house arrest and community or geographical confinement, electronic monitoring, monitoring by a specific agency appointed by a court, withholding travel documents and/or withdrawal of driving license, periodic presentation or report to court, police or other appointed authority and subjection to the care or supervision of parents, guardian or institution in the case of a minor.

Since bail is already in use, the law should try to enhance its effectiveness by mandating adequate consideration of the financial and social status of the accused persons and other necessary circumstances to ensure that equity prevails as the central tenet in the stipulation of bail conditions. This will ensure the affordability of bail conditions especially by the majority of the ATDs who are indigent. Also, the law should stipulate a time limit within which an ATD must be properly arraigned for trial and at the expiration of which the court is obliged to mandatorily release the accused on such conditions as may be reasonable depending on the circumstances. This may be between 1 – 3 months depending on the gravity of the crime

alleged, the evidence available and the punishment that it may attract if eventually convicted among other factors. The Ukraine and Ugandan models are good examples to draw from. The guidelines to be contained therein should include a uniform directive or guidelines for the courts, prosecutors, and defense lawyers on when the application for remand may be granted, how alternatives to pretrial detention should be prioritized and the yardstick for determining the reasonability or otherwise of stipulated conditions in the event of granting release order(s).

5.3.2 Stipulating a timeline for criminal prosecution

Delay in justice administration contravenes the human rights standards and fuels prolonged pretrial detention. It is recommended that the current criminal laws in Nigeria should be amended to reflect timeline(s) within which all criminal proceedings (from arrest to acquittal or conviction) must be concluded to address the unnecessary and unreasonable delay in the administration of criminal justice. This is very feasible drawing from the applicability of such practice in election petitions based on which election cases are to be concluded within 180 days at the trial court and 60 days at the appellate courts as required under section 285 (6) and (7) of the Nigerian Constitution as amended by section 29 of the Constitution (First Alteration Act, No 1)[316] of 2010 and section 9 of the Constitution (Second Alteration Act No 2 of 2010).[317] The time limit may be between 1 – 2 years. This will go a long way in addressing the issue of prolonged pretrial detention since, by implication, any case not concluded within the stipulated time limit will be automatically liable to discharge.

5.3.3 Decriminalisation and diversion system

Given that many ATDs in Nigeria are remanded for petty offences, the study recommends the enactment or amendment of laws to decriminalise petty and outdated offences such as vagabond, rogue, disorderliness among others, some of which are still very much in force under the Nigerian penal laws. Considering the pressing economic situation of Nigeria, the high rate of unemployment, the rapidly growing rate of the youths' population, and especially given that majority of the ATDs are youths in their active economic ages and first-time offenders; the proposed law should equally uphold diversion system. The system should especially consider minor or petty offences and cases involving minors, pregnant women and first-time young offenders. The African informal local authorities like community leaders or local chiefs may be co-opted to facilitate amicable settlements and other helpful measures in the diversion system.

These recommendations will go a long way in addressing the problem of pretrial detention in Nigeria, shielding the ATDs from human rights violations and strengthening the Nigerian criminal justice system.

[316] The Constitution of the Federal Republic of Nigeria (First Alteration, No 1) Act, 2010 available at https://ictpolicyafrica.org/en/document/uilbmw0n2nh?page=7 (accessed 06 October 2021).
[317] The Constitution of the Federal Republic of Nigeria (Second Alteration, No 2) Act 2010 available at https://ictpolicyafrica.org/en/document/z6vxkh1shgd?page=2 (accessed 06 October 2021).

It will, most importantly, assist Nigeria to keep up with the international and regional human rights standards and fulfil its international and regional commitments to protect and uphold human rights.

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