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## NIGERIAN ISSUES IN WRONGFUL CONVICTIONS

*Daniel Ehighalua\*†*

### I. INTRODUCTION

Nigeria is the most populous black nation in Africa. With an official 2006 estimated population of over 151.5 million people,<sup>1</sup> more than 70 percent of whom live on less than a dollar a day;<sup>2</sup> the problem of wrongful conviction is pervasive due in large part—and as borne out by the findings of the United Nations Development Programme (UNDP) in Nigeria—to the ever continuously widening poverty gap in Nigeria. There is a direct correlation between access to justice by the haves and the have-nots. The judicial and policing infrastructures of the Nigerian state remain weak and fragile.<sup>3</sup> The police are overstretched, and the

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† This article is being published as part of a symposium that took place in April 2011 in Cincinnati, Ohio, hosted by the Ohio Innocence Project, entitled The 2011 Innocence Network Conference: An International Exploration of Wrongful Conviction. Funding for the symposium was provided by The Murray and Agnes Seasongood Good Government Foundation. The articles appearing in this symposium range from formal law review style articles to transcripts of speeches that were given by the author at the symposium. Therefore, the articles published in this symposium may not comply with all standards set forth in Texas Law Review and the Bluebook.

1. See generally NAT'L POPULATION COMMISSION NIGERIA, <http://www.population.gov.ng> (last visited May 15, 2012). The National Population Commission (NPC) of Nigeria was established by the federal government in 1988. The NPC has the statutory powers to collect, analyze and disseminate population and demographic data in the country. The NPC is also mandated to undertake demographic sample surveys, compile, collate and publish migration and civil registration statistics as well as monitor the country's Population Policy. Detailed breakdown of the 2006 population report along gender and the FCT and 36 state lines can be viewed from its website.

2. *Human Development Report Nigeria: Achieving Growth with Equity 2008–2009*, 50 UNITED NATIONS DEV. PROGRAMME (2008), [http://hdr.undp.org/en/reports/national/africa/nigeria/NHDR\\_Nigeria\\_2008-2009.pdf](http://hdr.undp.org/en/reports/national/africa/nigeria/NHDR_Nigeria_2008-2009.pdf). For 16 years (1980 to 1996), the total poverty head count rose by an annual average of 8.83 percent. The 54.4 percent official poverty prevalence in Nigeria at present translates to about 70 million poor persons. This document contains a detailed breakdown of the state of development in Nigeria, poverty index, et al. Amongst the report's conclusions is that, 20 percent of Nigerians own 65 percent of national aggregate value of assets.

3. See Innocent Chukwuma, *Civilian Oversight of Policing in Nigeria: Structure, Functions, and Challenges*, CLEEN FOUND. (Mar. 23–24, 2006), <http://www.cleen.org/Civilian%20oversight%20>

judiciary is not equipped to deal with criminal matters timely. Thus, the number of awaiting trial persons (ATP) continues to swell the ranks of persons in detention. These detention centers, though, are no more than death traps, given the unhealthy environment detainees are sequestered in and the health hazards it portends. The police and the myriad of other paramilitary and law enforcement agencies continue to undermine the most basic of rights to which even the accused persons themselves are no less ignorant of. There is widespread corruption within the Nigerian police force which fuels abuses against ordinary citizens and severely undermines the rule of law and respect for human rights.<sup>4</sup>

Corruption, broadly defined, permeates every facet of the Nigerian society, and the most recent 2011 Human Rights Watch Report on Nigeria provides anecdotal evidence to support the pervasiveness.<sup>5</sup> The judicial system, where it sometimes works, does so at such slow speed that an accused person is estimated to spend close to 3–5 years in police protective custody awaiting the hearing of his case in court. This time period only grows for felony trials like murder, manslaughter and armed robbery. This state of affairs is not for want of the basic “superstructure” of laws and international legal instruments to guide prosecutorial decisions and judicial processes, but due largely to the human operators of the justice system. In this Essay, I will attempt to examine the problems and causes and proceed to proffer credible legal and policy solutions to combating them.

## II. DEFINITIONAL PROBLEMS

The term *wrongful conviction* can have many different uses. In this

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of%20Policing%20in%20Nigeria.pdf; see also Olanrewaju Ajiboye, *Nigeria Police: Comprehensive Restructuring Is a Desideratum*, SAHARA REPS. (July 12, 2011), [www.saharareporters.com/article/nigeria-police-comprehensive-restructuring-desideratum](http://www.saharareporters.com/article/nigeria-police-comprehensive-restructuring-desideratum). The Nigerian police have a numerical strength of about 357,000 police officers and men in a country of over 151 million people—way below the UN policing policy of one policeman to 400 civilians. This is coupled with the very harsh and unbearable conditions under which they are made to perform in Nigeria. There have been strident calls for reforms, but to date any form of reform is yet to be fashioned.

4. For a detailed analysis of the level of corruption, the justice system, prison conditions, unlawful killing and extra judicial executions and consequential violation of detainees and accused persons' rights, read the State of the World's Human Rights Report by Amnesty International for 2009. It's a compelling compendium of the most vicious forms of rights abuses. *State of the World Human Rights Report*, AMNESTY INT'L, [www.report2009.amnesty.org/nigeria](http://www.report2009.amnesty.org/nigeria) (last visited May 15, 2012).

5. *Corruption on Trial? The Record of Nigeria's Economic and Financial Crimes Commission*, H.R. WATCH (Aug. 2011), <http://www.hrw.org/sites/default/files/reports/nigeria0811WebPostR.pdf>. The report details the efforts made by the Economic and Financial Crimes Commission (EFCC) at fighting corruption and regrettably losing the grip on the battle. The report summary states, thus, “Corruption is so pervasive in Nigeria that it has turned public service for many into a kind of criminal enterprise. Graft has fueled political violence, denied millions of Nigerians access to even the most basic health and education services, and reinforced police abuses and other widespread patterns of human rights violations.”

Essay, I will advisedly limit it to two. First, the “narrower” sense of wrongful convictions are those that occur in the course of trial, leading to conviction and sentence of a term of imprisonment, where it later emerges that the process was flawed.<sup>6</sup> Usually, the convicted person having suffered some form of reparable or irreparable damages in the course of imprisonment, or, prolonged trial, where the accused is dragged through the legal process and made to suffer scorn, odium and humiliation, not to speak of the socio-economic consequences loved ones and family members are put through—particularly when the trial ends up in an acquittal. The “Birmingham Six” case remains a cause célèbre. More painful is when a convict has almost served up part of the terms of their sentence as a consequence of the flawed process. An example would be when new evidence turns up, either as a result of forensics or technology. It could also be evidence of direct witnesses to the crime that was for some reason, never explored in the investigative process; or, where new corroborating evidence exculpating the convicted person comes to light, or material facts or legal technicalities that were ignored in the trial process.

The second and perhaps much wider use of the term, is broad enough to accommodate the abuse and damages suffered in the course of the judicial and prosecutorial process involving the police, judiciary and the machinery of the administration of justice. This type is prevalent in Nigeria, and the inherent lapses within the Nigerian system which produce wrongful convictions of this nature are a result of a systemic breakdown. The consequential punishment is suffered by an accused person when they suffer humiliation and are deprived of their right to liberty. The accused’s families also experience pain and suffering over a prolonged period of time. This is where the system completely neglects and fails an accused person. This Essay will deal in extension with this latter sense of the term, in light of the facts and evidence in Nigeria.

Wrongful conviction in this sense encompasses the whole gamut of miscarriages of justice beginning when an accused person is arrested, interrogated, up through the court proceedings—including the appeal, sentencing, execution and clemency stages. It is in this context that the Nigerian situation will be examined. A corollary to this will be the discussion of the role international human rights law has on wrongful

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6. The classic case of the Birmingham Six. The Birmingham Six were six men—Hugh Callaghan, Patrick Joseph Hill, Gerard Hunter, Richard McKelney, William Power and John Walker—sentenced to life imprisonment in 1975 in the United Kingdom for the Birmingham pub bombings. Their convictions were declared unsafe and overturned by the Court of Appeal on 14 March, 1991. The six men were later awarded compensation ranging from \$840,000 to \$1.2 million. The miscarriage of justice led the Home Secretary to set up a Royal Commission on Criminal Justice in 1991. The Commission reported its findings in 1993 and led to the Criminal Appeal Act of 1995 and the establishment of the Criminal Cases Review Commission in 1997.

convictions. This discourse will be centered on the following principles of the fundamental right to life: the right not to be subjected to torture; the respect for and upholding of due process—which will include the right to a fair hearing, the presumption of innocence, the right to call and examine witnesses, as well as submission of documentary evidence—the right not to self-incriminate or confess as a result of dubious or questionable means; the right to legal representation; the right of appeal to be review by a higher court, and finally, the right to liberty—not to be unjustly detained, restrained or confined, failing that, the right to be granted bail at no cost.<sup>7</sup>

In conclusion, this Essay will discuss the enormous role non-state actors like lawyers, civil society and non-governmental organizations can play in bringing this malaise to the fore of public discourse. Additionally, it will seek to show where policy makers can then seek to institute these recommendations with a view to dealing with the problem. The role of lawyers will be highlighted given that the legal profession in Nigeria appears implicated, indeed, in some cases complicit in the entire process. The dearth of pro bono legal services, the very steep professional fees and the inadequately funded legal aid scheme, all contribute to bring about this sorry state.<sup>8</sup> The accusations of incompetence and corruption leveled against the bench—particularly at the lower magisterial cadre—continue to undermine the quality of justice dispensed.<sup>9</sup> The submission then is that, the legal profession must

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7. CONSTITUTION OF NIGERIA §§ 33, 35 (1999). All of these protective provisions are copiously embodied in Chapter 1V of the 1999 constitution of Nigeria. They are to be found in sections 33(1)(2)a, b, c; 34(1)a, b, c(2); 35(1)a, b, c, d, e, f(2)(3)(4). Section 36(1) specifically provides, “In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality.” The Nigerian Supreme Court has judicially interpreted these provisions to give it the wildest possible meaning. *Legal Practitioners Disciplinary Comm. v. Gani Fawehinmi*, [1985] 2 NWLR (Part 7) 300 (Nigeria); *Denloye v. Med. & Dental Practitioners Disciplinary Comm.*, [1968] 1 All NLR 306 (Nigeria).

8. The Legal Aid Scheme in Nigeria was conceptualized during the military era in the 1970s. The current legal framework under which it now operates can be found in the Legal Aid Act, Cap 205, Laws of the Federation of Nigeria, 1990. In a paper presented by the Director General of the Legal Aid Council and put out by the Office of the Director, Planning, Research and Statistics at the Open Society Justice Initiative Legal Aid Meeting in London 18th January, 2007, the challenges of the council were highlighted. That challenge was identified primarily as the dearth of funding. The paper posited that “The underfunding has worked against the effective delivery of Legal Aid Scheme in Nigeria. Taking into consideration the size of the population about 120 million (note that this was in 2007 and the population of Nigeria has since increased to over 151 million) the vastness of the area and other peculiar circumstances, legal aid scheme deserve robust funding.” The paper then proceeded to list the upshots of poor funding to include inadequate logistics, dearth of current and relevant law reports/books and journals, poor remuneration, low publicity for the scheme, failure to introduce new initiatives and programmes and dearth of essential infrastructure.

9. *Assessment of Justice System Integrity and Capacity in Three Nigerian States*, UNITED NATIONS OFF. ON DRUGS & CRIME (May 2004), <http://www.unodc.org/pdf/crime/>

drive the process of change along with policy makers.

### III. STATEMENT OF THE PROBLEM

In Nigeria, wrongful convictions permeate through the system and remain undetected for some time. Is this a systemic problem or are the individuals within the system perverting it? Why is society acquiescing and seemingly accepting it as a fait accompli, rather than vehemently confronting the malfeasance? What obstacles stand in the way of confronting this anomaly, particularly the syndrome of awaiting trial for years? What is the excuse? Are they rooted in the skewed interpretation of the law, or is this just a case of blind justice when the veil could be lifted to see and do justice? What remedial actions are available to curb these aberrations? How do victims go about remedying the effects of wrongful convictions particularly in Nigeria where the mills of justice grind so slowly?

As a follow up to the above, we cannot avoid the intertwining of the socio-economic and political context within which these aberrant situations happen. Is there a political will to do justice? What supportive role has society or state failed to play? For instance, the Nigerian state led Legal Aid Council has remained comatose and unable to assist with taking up the legal challenge of the phenomenon. What checks and supervisory role exist within the state to detect and deal with wrongful convictions at the level of the executive and parliament? How has the National Human Rights Commission and the Public Complaints Commission (Ombudsman) fared in dealing with the plethora of police and paramilitary force abuses and brutality?<sup>10</sup> What is the role of judicial

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corruption/Justice\_Sector\_Assessment\_2004.pdf. In a 2004 Technical Research Report, conducted by Global Programme Against Corruption (GPAC) and the Nigerian Institute of Advanced Legal Studies, Nigeria (NIALS) under the aegis of the UN Office on Drugs and Crime, titled *Assessment of Justice Systems Integrity and Capacity in 3 Nigerian States*. Under broad heading of Recommendations, the report stressed the importance of access to the courts, timeliness and quality of justice delivery and trust in the justice system. Under the subhead of independence, fairness and impartiality of the judiciary, the recommendation stated, thus, "In theory, the judiciary is independent, fair and impartial. However based on the findings of this study, more reforms are required to enhance and sustain the independence of the judiciary. The lack of independence is strongly linked to corruption. A judicial system which is influenced by politics or by other factors is constantly undermined in its integrity and loses its ability to curb corruption. Curbing corruption requires a strong and independent judiciary." The Recommendation was blunter under the subhead—corruption within the justice sector. It stated, "Corruption is not peculiar to the judiciary alone in Nigeria. Nonetheless, corruption in the judiciary may turn out to be more harmful because it could undermine the credibility, efficiency, productivity, trust and confidence of the public in the judiciary as the epitome of integrity."

10. The National Human Rights Commission was established by the National Human Rights Commission Act (1995) Cap No 46, 11 LAWS OF THE FEDERATION OF NIGERIA (2004) (Nigeria). The Commission has the mandate amongst others to protect and monitor human rights violations and make recommendations to the government. In 2008, the Commission received roughly 1130 (one thousand one hundred and thirty) complaints, out of which 1115 (one thousand one hundred and fifteen) were

review of legal decisions? How can regional, continental and international tribunals and courts be useful in the fight against wrongful convictions? What is the place of science and technology in the process of criminal prosecution even after conviction and sentence? In Nigeria, these are the troubling issues.

#### IV. DECONSTRUCTING THE TRAJECTORY OF WRONGFUL CONVICTIONS IN NIGERIA

The problem of wrongful convictions in Nigeria can be identified at different levels of the justice system beginning the moment someone is arrested up through the judicial process.

##### *A. Policing Strategy*

At the level of policing and enforcement, evidence abounds which strongly suggests that the police forces severely compromise even the most basic of their duties. It is not uncommon for people to be randomly arrested and accused of grievous crimes as serious as murder in the expectation that a case will be built around such arrest that is, working towards the answer, rather than via any scientific approach towards investigation of crime and regard to the rights of the accused person. In Nigeria, it is common practice for the police to hold accused persons under the nebulous principle called a “Holden charge,” with a view towards circumventing the person’s constitutional right not to be held for an unreasonable length of time, or be charged within a reasonable time as stipulated by the constitution. It is common place for accused persons to be kept in police detention well beyond the statutory 24 hour maximum within which they should be informed of the facts and grounds for their arrest, indeed, charged in court within 48 hours of arrest as guaranteed by the constitution.<sup>11</sup> Although bail is advertised to

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considered and treated as admissible while 185 were ruled to be inadmissible. The Commission was able to conclude and close 825 cases, and that 290 others were at different stages of investigation. This record performance is so infinitesimal for a country the size of Nigeria against the tons of abuses and violations of rights of accused persons in detention and prison custody, as well as against the over 48,000 persons in detention; two thirds of that figure awaiting trial and languishing in prison. Further information—albeit scarcely made available by the Commission—regarding the activities of the Commission can be accessed via their website at NAT’L HUM. RTS. COMMISSION, [www.nigeriarights.gov.ng](http://www.nigeriarights.gov.ng) (last visited May 15, 2012).

11. CONSTITUTION OF NIGERIA (1999) § 35. Section 35(3) of the 1999 Nigerian constitution states “Any person who is arrested or detained shall be informed in writing within twenty-four hours (and in a language that he understands) of the facts and grounds for his arrest or detention.” Subsection 4 and 5 is even more poignant and specific. It states “Any person who is arrested or detained in accordance with subsection (1)(c) of this section shall be brought before a court within a reasonable time, and if he is not tried within a period of— (a) two months from the date of his arrest or detention in

be the right of an accused person, it is normal practice to deny bail even for petty crimes. This practice is commonly referred to as “police bail.” It is also not uncommon for accused persons to be denied the services of a lawyer at this preliminary stage of the process when they require legal advice the most.

### *B. Police Brutality and Torture*

It is common practice for police officers to brutalize accused persons at the point of arrest and while in police custody. The goal of this practice is to extract confessions of guilt by any means including the severest forms of torture as well as inhuman and degrading treatment. Admittedly, the Nigerian police work under very hostile conditions, but this is no excuse for the kind of flagrant disregard for the law and common decency. Article 10(1) of the International Covenant on Civil and Political Rights (ICCPR) states: “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.” This Covenant was ratified by Nigeria on the October 29, 1993.

### *C. The Paucity of Legal Representation*

In Nigeria, over 70 percent of accused persons are indigent and therefore unable to secure legal representation. To combat this problem, the government established Legal Aid Council, but as highlighted above, the program is financially handicapped. In most cases, the accused person’s first real contact with a lawyer comes when they are charged before a magistrate after being remanded into custody, which is euphemistically referred to as an “overnight case.” This is clearly at variance with the requirements of the Nigerian constitution.<sup>12</sup> In Nigeria, magistrates are usually conscious of the rights of the accused person to legal representation, but they frequently deny bail on the first

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

12. CONSTITUTION OF NIGERIA (1999) § 36(5). Section 36(5) states that “Every person who is charged with a criminal offence shall be entitled to—(a) be informed promptly in the language that he understands and in detail of the nature of the offence; (b) be given adequate time and facilities for the preparation of his defence; (c) defend himself in person or by legal practitioner of his own choice; (d) examine, in person or by his legal practitioners, the witnesses called by the prosecution before any court or tribunal and obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court or tribunal on the same conditions as those applying to the witnesses called by the prosecution; and (e) have, without payment, the assistance of an interpreter if he cannot understand the language used at the trial of the offence.



arraignment hearing, and often not proceed to hear an accused unless he has legal representation. The practice is for Magistrates to adjourn first arraignment hearings, and depending on the nature of the charges on the charge sheet, the length of sentence the offence attracts, gravity of the offence, whether he has jurisdiction to try the matter, and a host of other conditions, determine whether the accused should be given bail. This delay extends the misery of the accused as they are then returned and remanded into police custody. There is a growing body of evidence tending to support the view that the Nigerian judiciary is less than transparent, particularly at the magisterial level. Evidence of corrupt practices are notoriously difficult to prove, but it is a well-known fact amongst personnel at that level—usually in connivance with the police to extort money from accused persons—and sometimes through legal representatives—to create all manner of hurdles to stall proceedings.

#### *D. The Skewed Bail System*

Like Police bail, court bail curiously is not automatic or a right guaranteed by the law. With court bail however, it is usually down to logistics and procedural reasons, rather than any deliberate attempt to undermine the right of the accused. It is common practice for stringent conditions to be placed on guarantors and sureties, further hindering the right of the accused. The very nature of the bail requirements and conditions makes the determination of court bail application difficult to succeed at the first hearing. The facts and statistics of persons that will usually be stalled in-between this process is startling. For instance, there are 50 prisons in Nigeria, and it is estimated that there are over 48,000 prison inmates in detention, awaiting trial or convicted and serving their terms of imprisonment. Of this number, 30,000 are awaiting trial in decrepit prisons.<sup>13</sup>

#### *E. Rights Awareness and Poor Investigative Skills*

The very sluggish legal, investigative and evidence gathering process remain at the core of the wrongful conviction question in Nigeria. There

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13. *Nigeria: Prisoners' Rights Systematically Flouted*, AMNESTY INT'L (Feb. 2008), <http://www.amnesty.org/en/library/asset/AFR44/001/2008/en/4bd14275-e494-11dc-aa9-5f04e2143f64/afr440012008eng.pdf>. The outcome of the investigation was summarized, "Prisoners in Nigeria are systematically denied a range of human rights. Stakeholders throughout the Nigerian criminal justice system are culpable for maintaining this situation . . . . The judiciary fails to ensure that all inmates are tried within reasonable time . . . . The prisons cannot ensure that facilities are adequate for the health [and well-being] of the prisoners. Severe overcrowding and lack of funds have created a deplorable situation in Nigeria's prisons . . . . It is time the Nigerian government faces up to its responsibilities for those in its prisons."

is only one established forensic laboratory in Lagos, Nigeria, which is managed by the Nigerian police force, severely undermining and raising doubts about the quality of forensic results. No serious litigants use this laboratory, rather accused persons and indeed appellants requiring expert opinion on matters of forensics go abroad to procure experts or have their evidence tested professionally if they can afford to do so. The Nigerian judiciary is also seriously underfunded and is still not yet self-accounting. The judiciary's annual expenditure—federal and state budgets—are charged under the executive arm of government, rather than a First Line Charge on the Consolidated Revenue Fund which should ideally make them self-accounting. This only breeds corrupt practices as well as stymie the independence of the judiciary from the stranglehold of the executive arm of government.

The legal hurdles are so stacked against the accused person that it is usually in the accused person's interest to plead guilty rather than be dragged through the time-wasting and money-consuming process, which would end in a contrived conviction anyway. But accused and convicted persons hardly know their rights, and even if they do, the system clogs the process to deny them their rights. Although the death row phenomenon is not endemic in Nigeria, the problem however, is the dearth of, and use of technology in the process of reviewing perverse convictions. As noted above, there is only one forensic laboratory in Nigeria, and the legal cost of mounting a challenge on technical grounds of law, overwhelm a convicted person's resources, thence, he gives up and accepts his fate.

#### V. DOMESTIC AND INTERNATIONAL NORMATIVE LEGAL FRAMEWORK

The reason why international human rights law is so revolutionary—and a paradigm shift from the hitherto notions of customary international law—is that it focuses exclusively on the vertical relationship between the state and the subjects of that state, rather than the horizontal relationship between and among nation-states. International human rights law is individualistic, that is, it looks to the individual, rather than the restrictive classical notions of international law regulating the relationship and conduct inter se between states. Individuals are now the direct subjects of international human rights law, with no state intermediation. The 1948 Universal Declaration of Human Rights ensured that international human rights law was rewritten forever, with subsequent international legal instruments drawing inspiration from the declaration.

With the above premise, international human rights law potentially serves as the basis for effectively combating wrongful convictions in

Nigeria. The 1948 Universal Declaration of Human Rights (UDHR) was the touchstone in the evolution of international human rights law as a customary norm of international law, and Nigeria is Signatory to the declaration. That declaration, along with the 1966 International Covenant on Civil and Political Rights and the International Covenant on Economic and Socio Cultural rights, has been collectively referred to as the International Bill of Rights. Subsequent treaties, international and regional, have drawn their inspiration from these Instruments.<sup>14</sup> These Treaties collectively appeal to the universal character of international human rights law, not only as rights that are inherent in every human being, but ones that applies extra-territorially,<sup>15</sup> despite the inhibitions placed by sovereignty, jurisdiction and the territorial question; state responsibility and accountability, and the applicability of the trilogy of obligations to respect, protect and to fulfill. Nigeria is also Signatory to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT). She ratified this Convention on the July 28, 2001. Over the course of time, violations of some of these rights have acquired the status of norms, including the right not to be subjected to torture, inhuman, degrading treatment or punishment. Torture is absolutely prohibited irrespective of the circumstance and justification.<sup>16</sup> Article 1 of UNCAT has broadened the reach of the various forms of, and acts of torture, inhuman and degrading treatment.<sup>17</sup>

Apart from the theoretical construct which international human rights law provides for addressing the problems of wrongful convictions at the domestic level, there remains a practical role in Nigeria for international human rights law to play in challenging the phenomenon by breaking the barriers of jurisdiction and territory. For example, appeals and reviews can be taken up before regional and international courts to

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14. The 1950 European Convention for Human Rights and Fundamental Freedoms; the 1984 Covenant Against Torture and Other Cruel, Inhuman, Degrading Treatment or Punishment; the 1980 African Charter on Human and Peoples Rights; ECOWAS Ratification, Popularisation and Implementation of the African Charter on Democracy, Elections and Governance and the ECOWAS Supplementary Protocol on Democracy and Good Governance.

15. *See* D. v. United Kingdom, App. No. 30240/96, Eur. Ct. of H.R. (1997); *see also* Soering v. United Kingdom, App. No. 14038/88, Eur. Ct. of H.R. (1989).

16. See article 3 of the ECHR, which states, "No one shall be subjected to torture or to inhuman or degrading treatment or punishment." Article 7 of the ICCPR also states that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."

17. Article 1 of UNCAT defines torture as "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 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."

confront wrongful convictions, but the questions to surmount usually would be: where does domestic jurisdiction end? At what stage does foreign jurisdiction begin? Where would be the appropriate forum? These questions are inapposite as international courts are loathe to see themselves as courts of “fourth instance.”<sup>18</sup> Despite these limitations, international human rights law can circumvent these strict strictures to provide remedies to accused persons and victims of wrongful convictions. Although Nigeria makes jurisdictional provisions for reviewing adverse and perverse convictions, when new compelling evidence emerge—usually on grounds of law, and rarely on mixed facts and law—international human rights law will not only help further the process, but it will not be out of place to seek recourse to international mechanisms to address such wrongful convictions, if the Nigerian domestic courts fail to address the issues inadequately. For a like the Human Rights Committee (HRC) under the ICCPR; the UNCAT Committee; the UN Office of the High Commissioner for Human Rights and the numerous sub-regional and continental tribunals are examples of where remedial actions can be sought. Forum will be determined by who committed the violations and their egregious nature, rather than by territorial limitations.<sup>19</sup>

The recently approved Nigerian Fundamental Rights Enforcement Rules of 2009 have made it possible for the direct applicability of UNCAT, as well as other international Human Rights instruments in human rights litigation in Nigeria. The recent Human Rights Amendment Act 2011 as enacted will further expand the frontiers of these rights in terms of enforcement and respect. The 1999 Nigerian constitution, particularly the provisions of Chapter IV, deal with all the protective rights to be enjoyed by Nigerian citizens—the presumption of innocence, the right to fair hearing, the right to be informed of reasons for arrest, and the right to legal representation. Apart from the Constitution, the Police Act 1967 (as amended), the Evidence Act of

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18. This means that international courts and tribunals do not see the exercise of their jurisdiction as amounting to retrying the matter *de novo*. International courts recognize the first instance jurisdiction of domestic courts to adjudicate on the matter, within the prisms of national laws; and limit their role essentially to a review of the lawfulness of the process, serious errors of law; serious breaches and miscarriage of justice; administrative lapses that leads to serious breaches of fundamental rights of the claimants, and other international obligations of the state in question.

19. Regional, continental and international courts are now empowering and looking to individuals making applications to challenge violations of human rights. Wrongful conviction is violation of the gravest kind. The ECHR blazed the trail in a number of celebrated cases allowing individuals to bring applications before the court. In 2006, ECOWAS by Article 9(4) of the Supplementary Protocol empowered individuals and NGOs to be able to bring individual applications before the court. The court recently in *SERAP v. Federal Republic of Nigeria and Universal Basic Education Commission ECW/CCJ/APP/08/08* granted amongst other reliefs, that an NGO had *locus standi* to bring the application before the court, as well as upholding education as a basic human right.

1958 (and the recent amendment thereto of 2011), the Criminal Procedure Law (for Southern Nigeria), as well as the Criminal Procedure Code and Penal Code (for Northern Nigeria) contain ample provisions safeguarding the rights of an accused person at every stage of the criminal process.

These Codes and Laws makes provisions for the right to remain silent, the right of representation, the right of accused persons to call witnesses to support their case, the right to cross examine witnesses produced by the state, the right to challenge confessional statements secured by duress, undue influence or procured by torture, the right to challenge the jurisdictional powers of the court, the right to bail, and generally, to be able to conduct his defense within the ambit of the law, as well as appeal the conviction and sentence of the court to a higher court. In essence, there are clearly defined rights for accused and convicted persons set out in these laws. The crux of the matter is that these laws are respected more in their breach than their observance. The government and its agencies point in the direction of constraints impeding the smooth running of the administration of justice, and point instead at different Commissions, Committees and Review Papers advocating review of the criminal justice administration system. The issue, however, has remained the political will to implement these changes.<sup>20</sup>

#### VI. FURTHERING THE INNOCENCE MOVEMENT GLOBALLY: A SUB-SAHARAN APPROACH

What then should the role of NGOs be in forestalling and confronting wrongful convictions? How can NGOs spread the Innocence Project globally? NGOs have been known to, or at the behest of the bench, provide expert opinions, to act as *amicus curiae* (friend of the court), to work in concert with barristers of both sides to make available documents which have come to light even after conviction and sentence have been served. What remains to be said is that a distinction must be made between the type and nature of wrongful convictions experienced in “developed” and “developing or underdeveloped” countries and the inevitable different strategies for confronting wrongful conviction infractions. In Nigeria, there would have to be a paradigm shift in

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20. The 2005 National Working Group on Prison Reform and Decongestion; the Inter-Ministerial Summit on the State of Remand Inmates in Nigeria's Prison was set up also in 2005. In 2006, there was the Presidential Committee on Prison Reform and Rehabilitation; and in March 2006 came another Commission called the Presidential Commission on the Reform of the Administration of Justice. Finally, in April 2007, came the empanelling of the Committee on the Harmonization of Reports of Presidential Committees Working on Justice Sector Reform. Despite these litany of Committees and Commissions, the impact on the system has not changed significantly.

approach given that the phenomenon of wrongful conviction is more of a systemic breakdown of the administration of justice.

NGOs in developing countries like Nigeria are seriously hamstrung in terms of finances, in surmounting the red tape that is government bureaucracy, in the brazen manner of the violations of rights of accused persons in custody, and in the lack of effective remedial action—whether civil or criminal. The weak legal regulatory framework, corruption and the fragility of state institutions, has not helped matters; rather it has compounded the situation. It is submitted that the legal profession must drive that process pro-actively, with a pro poor approach to legal representation. This is because a majority of wrongfully convicted persons or persons who suffer deprivation of life and liberty are people at the bottom rung of societal ladder. With the dearth of legal aid, huge legal fees and barrister's fee note to contend with, it falls on the NGOs to take on the gauntlet. The case of the Birmingham Six in the United Kingdom is a classic example, as criminal law reform in the United Kingdom was anchored around the outcome of the successful overturning of the convictions of the six innocent men.

With specific reference to Nigeria, given that the phenomenon of wrongful conviction takes the shape more of the skewed system of the administration of justice, denial of basic rights, prolonged detention without trial, the awaiting trial syndrome—whilst detainees languish in very unhealthy prison conditions—NGO work must be focused primarily on re-engineering change, strengthening state institutions, as well as training and retraining of personnel involved in the administration of justice. There also remains a secondary role for Nigerian and Sub-Saharan African NGOs taking on test cases or class action suits. These sorts of actions will help push for law reform, systemic and attitudinal change. Most of these unlawful detentions are actionable and challengeable in court, with the prospect of civil actions—individual or class actions—that will lead to monetary compensation for victims. A successful hefty civil claim for aggravated damages will potentially send the right signals to government and its apparatus, about the consequences and failure to respect detainees and prisoners' rights under the law. Setting such a legal precedent will act as a catalyst for attitudinal and systemic change.

## VII. CONCLUSION

Wrongful conviction in Nigeria is anchored around the inefficient machinery of the administration of justice, and hinges largely on how the police go about their duties—usually in violation of the laws they are

constitutionally obliged to observe. The Nigerian judiciary is reputed to be fairly independent, but with its own challenges of corruption at the lower level of the bench—now inexorably extending to the higher bench. It is still a Herculean task to expect to be treated justly, fairly and impartially in court. With funding as a major constraint, the legal profession itself is unable to play the role of the defender of the accused or convicted persons. Change, however, must be driven by the legal profession in concert with NGOs, given that the majority of convicted persons or persons who suffer deprivation of their rights are indigent.