APPRAISING THE LEGAL FRAMEWORKS TO CHALLENGE OF UNLAWFUL DETENTION IN NIGERIA: LEGAL FRAMEWORKS, SYSTEMIC CHALLENGES, AND REFORM IMPERATIVES[1]

Amah Emmanuel Ibiam* Kevin Onwuka Udude Odom Alexander Emeka*****

Abstract

Unlawful detention constitutes a grave violation of constitutional rights in Nigeria and undermines the legitimacy of its criminal justice system. Despite legal safeguards embedded in the 1999 Constitution, the Administration of Criminal Justice Act 2015, and the Nigeria Police Act 2020, pre-trial detention without charge, arbitrary arrests, and abuse of remand proceedings remain rampant. This article critically examined the legal, institutional, and socio-economic factors enabling unlawful detention, including the persistent misuse of holding charges, systemic police misconduct, lack of legal representation, and infrastructural deficiencies within Nigeria's judicial and custodial systems. Through doctrinal analysis and relevant case law, the paper exposed how these challenges erode the right to liberty and fair trial, particularly for indigent and marginalized populations. The study concluded by offering comprehensive recommendations aimed at legislative reform, institutional restructuring, and enhanced legal aid provision. It advocated for a rights-based approach to criminal justice in line with Nigeria's domestic obligations and international human rights norms.

Keywords: Unlawful Detention, Police, Administration of Criminal Justice, legal Aid, Access to Justice.

1. Introduction

The practice of unlawful detention represents one of the most persistent and egregious violations of human rights within Nigeria's criminal justice system. It undermines the rule of law, erodes public trust in state institutions, and disproportionately affects vulnerable and indigent citizens. Despite constitutional and statutory guarantees, thousands of individuals are routinely deprived of their liberty without due process, often languishing in detention for extended periods without trial, legal representation, or meaningful judicial oversight.

Unlawful detention is broadly defined as the deprivation of personal liberty in contravention of the law or without adherence to legally established procedures. In the Nigerian context, this includes arbitrary arrests, prolonged pre-trial detention, detention without charge, and the use of procedural abuses such as "holding charges" or denial of bail contrary to statute. These violations contravene both domestic legal frameworks and Nigeria's obligations under international human rights law.

Section 35 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) guarantees the right to personal liberty and prohibits arbitrary detention, save in limited circumstances

[1] ***Amah Emmanuel Ibiam** PhD, Senior Lecturer, Faculty of Law, Ebonyi State University, Abakaliki-Nigeria.

****Kevin Onwuka Udude** PhD, Senior Lecturer, Faculty of Law, Ebonyi State University, Abakaliki Nigeria.

*****Odom Alexander Emeka,** Ph.D Student at Faculty of Law, Ebonyi State University, Abakaliki Nigeria.

permitted by law. Specifically, a suspect must be brought before a court within a reasonable time—defined as 24 to 48 hours depending on the availability of a competent court—failing which continued detention becomes unlawful. Moreover, suspects who are not tried within two months (if detained without bail) or three months (if released on bail) are entitled to unconditional release pending further proceedings.[2]

In addition to the constitutional protections, the Administration of Criminal Justice Act 2015 (ACJA) and the Nigeria Police Act 2020 set out procedural safeguards designed to prevent unlawful detention. These include strict limits on police remand powers, requirements for judicial oversight of arrests and bail, and the establishment of oversight bodies such as the Police Complaints Response Unit (CRU).[3] Nonetheless, the practical implementation of these legal frameworks remains deeply flawed. Law enforcement agencies, particularly the Nigeria Police Force, are routinely implicated in extortion, illegal arrest, torture, and arbitrary detention.[4]

The persistence of unlawful detention is rooted in a complex interplay of legal, institutional, and socio-economic factors. These include systemic corruption within the police force, insufficient judicial infrastructure, underfunded legal aid services, lack of public legal awareness, and societal apathy toward detainees. The result is a justice system that routinely violates the very rights it purports to protect.

This article adopts a doctrinal and analytical approach to examine the legal foundations, manifestations, and consequences of unlawful detention in Nigeria. It interrogates statutory provisions, judicial decisions, and institutional practices, drawing on empirical reports and case studies. The objective is twofold: first, to expose the normative and structural weaknesses that facilitate unlawful detention; and second, to propose evidence-based reforms that can promote compliance with constitutional guarantees and international human rights standards.

2. Understanding Unlawful Detention in Nigeria

Unlawful detention in Nigeria is not merely a procedural anomaly; it is a systemic violation of constitutional rights and a stark indicator of institutional failure. The phenomenon cuts across various stages of the criminal justice process, from arrest to pre-trial detention, and reflects a broader disregard for the rule of law, particularly the presumption of innocence, the right to liberty, and the right to a fair hearing.

2.1 Legal Definition and Constitutional Context

Under Nigerian law, unlawful detention refers to any deprivation of liberty that occurs without lawful authority or due process.[5] It encompasses situations where individuals are arrested without a legal warrant or reasonable cause, detained beyond constitutionally permissible periods, or held

[2]Constitution of the Federal Republic of Nigeria 1999 (as amended), Section 35(1)–(6).

[3] Administration of Criminal Justice Act 2015, ss 293–299; Nigeria Police Act 2020, ss 66–70.

[4] Amnesty International, *Nigeria: Time to End Impunity for Police Brutality* (2020) https://www.amnesty.org/en/documents/afr44/9505/2020/en/ accessed 26 July 2025.

[5]*Ezeadukwa v Maduka* [1997] 8 NWLR (Pt 518) 635 (CA).

under procedural devices that lack legal basis, such as the discredited "holding charge" mechanism.[6]

Section 35 of the 1999 Constitution of the Federal Republic of Nigeria provides the foundational guarantee of personal liberty. It stipulates that "every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in the cases and in accordance with a procedure permitted by law."[7] Where a person is arrested, the Constitution mandates that they must be informed promptly, in a language they understand, of the reasons for their arrest; they must be brought before a court within a reasonable time; and, if not tried within two months (if in custody) or three months (if on bail), they must be released unconditionally.[8]

Judicial interpretations have consistently reinforced these rights. For example, in *Olatunbosun v State*, the court held that detention for even a few days without trial or a valid remand order is unconstitutional and attracts judicial censure.[9] Moreover, Nigerian courts have awarded substantial damages in civil suits for unlawful detention, including in *AdewaleAdeniyi v EFCC* and *AderindeAro v NDLEA*, where courts declared the prolonged detention of suspects without trial to be illegal, awarding ₦12 million and ₦5 million respectively in damages.[10]

2.2 Statutory Guarantees against Unlawful Detention

The statutory framework further reinforces the constitutional protections. The Administration of Criminal Justice Act 2015 (ACJA) introduces robust safeguards to prevent prolonged or arbitrary detention. Specifically, sections 293–299 outline strict procedures for remand orders, limiting initial detention to 14 days, renewable for another 14 days upon showing good cause.[11] After this period, if no charges are filed, the court must discharge the suspect and no further remand may be granted.[12]

Similarly, the Nigeria Police Act 2020 mandates humane treatment of detainees, prohibits arrest in lieu, and requires the prompt recording of arrest details, including the reasons for arrest and notification of next of kin.[13] Police officers are also obliged to inform suspects of their rights to remain silent, to legal counsel, and to free legal aid where applicable.[14] These statutory measures, though laudable in design, are often ignored in practice, leading to widespread abuse.

---

[6]Chidi Odinkalu, 'Holding Charge and the Administration of Criminal Justice in Nigeria' (2004) 1 https://www.humanrightsmonitor.org accessed 26 July 2025.

[7] Constitution of the Federal Republic of Nigeria 1999 (as amended), s 35(1).

[8] ibid, s 35(4)–(6).

[9]*Olatunbosun v State* [2013] LPELR-20298(CA).

[10]*Adewale Adeniyi v EFCC* (Unreported, FHC/L/CS/1349/2019, judgment of 20 February 2020); *AderindeAro v NDLEA* (Unreported, FHC/L/CS/178/2020, judgment of 13 April 2021).

[11] Administration of Criminal Justice Act 2015, Section 296.

[12] Ibid, Section 297(3).

[13] Nigeria Police Act 2020, ss 35–40.

[14] Ibid, Sections 36(2)(a)–(e).

2.3 Common Forms of Unlawful Detention

Unlawful detention in Nigeria manifests in several recurring patterns:

i. Detention beyond Constitutional Limits: Many suspects are detained for days or even months without being charged or brought before a court. This contravenes both constitutional and statutory timeframes.[15]
ii. Arrest Without Warrant or Probable Cause: While police may arrest without a warrant in limited circumstances, the practice of arbitrary arrest remains endemic, often motivated by extortion or abuse of power.[16]
iii. Non-Adherence to Bail Provisions: For non-capital offences, suspects are legally entitled to bail within 24 hours if they cannot be brought before a court. Yet many are held incommunicado, denied access to lawyers, and required to meet unaffordable bail conditions.[17]
iv. Detention Under "Holding Charges": Although not recognised by statute, the doctrine of holding charges—where a Magistrate remands a suspect for an offence beyond their jurisdiction without a formal charge—is still frequently used. The ACJA has attempted to curtail this, but the practice persists, especially in rural jurisdictions.[18]
v. These violations not only contravene Nigerian law but also infringe on Nigeria's obligations under international treaties such as the International Covenant on Civil and Political Rights (ICCPR), which protects the right to liberty and mandates that detention must be lawful, necessary, and subject to judicial oversight.[19]
vi.

3. Human Rights Implications and the Need for Reform

The widespread occurrence of unlawful detention in Nigeria presents not only a legal crisis but a serious human rights emergency. It undermines core constitutional guarantees, violates Nigeria's international treaty obligations, and exposes systemic dysfunction across the country's law enforcement and justice sectors. At its core, unlawful detention deprives individuals of their liberty without due process and subjects them to degrading and inhumane treatment, often under conditions that breach minimum standards of human dignity.

3.1 Violation of the Right to Personal Liberty

The right to personal liberty is foundational to human dignity and democratic governance. Enshrined in Section 35 of the 1999 Constitution, this right is routinely violated by practices such as prolonged pre-trial detention, arbitrary arrest, and denial of bail.[20] The failure of state actors to bring detainees before a court within constitutionally mandated timeframes directly contravenes

[15]*Moses Abiodun v Nigeria* (ECOWAS Court of Justice, 2019); see also Constitution (n 3) s 35(4).

[16]Human Rights Watch, *Everyone's in on the Game: Corruption and Human Rights Abuses by the Nigeria Police Force* (2010) https://www.hrw.org accessed 26 July 2025.

[17]Administration of Criminal Justice Act 2015, Sections 30–32.

[18]Amnesty International, Nigeria: The Time to End Holding Charges is Now (2017) https://www.amnesty.org accessed 26 July 2025.

[19]International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, art 9

[20] Constitution of the Federal Republic of Nigeria 1999 (as amended), Section 35(1)–(6).

the Constitution and relevant statutes, including the Administration of Criminal Justice Act 2015 (ACJA).[21] These violations are often compounded by acts of torture, extortion, and psychological abuse in detention centres.

Notably, in *Moses Abiodun v Nigeria*, the ECOWAS Court of Justice found the Nigerian state liable for detaining the applicant for 16 years without trial, in clear breach of his fundamental rights. The court awarded ₦20 million in damages and ordered his immediate release.[22] Similarly, in *IdrisAbubakar&Ors v Nigerian Police Force*, the Federal High Court in Kaduna held that the prolonged detention of three individuals for 19 months without charge violated their constitutional rights and awarded ₦2 million in compensation.[23]

3.2 Erosion of the Presumption of Innocence

The constitutional presumption of innocence, guaranteed under Section 36(5) of the Constitution, is severely undermined by the culture of unlawful detention.[24] The continued practice of detaining individuals on mere suspicion—without formal charges, without access to counsel, and without timely judicial review—treats suspects as if they were already convicted. This contravenes not only domestic law but also international standards such as Article 14(2) of the International Covenant on Civil and Political Rights (ICCPR), to which Nigeria is a signatory.[25]

3.3 Denial of Legal Representation and Access to Justice

Access to legal counsel is a critical safeguard against unlawful detention. However, over 70% of Nigeria's pre-trial detainees as of 2023 lacked legal representation.[26] The Legal Aid Council of Nigeria (LACON), constitutionally mandated to provide free legal services to indigent persons, remains underfunded, understaffed, and overburdened.[27] This gap in access to justice leaves detainees—especially those from rural, poor, or marginalized backgrounds—without the means to challenge their detention or demand a fair trial.

The structural deficiencies in legal aid delivery hinder not only the protection of detainees' rights but also the integrity of the criminal justice system. In the absence of effective legal representation, suspects are vulnerable to coerced confessions, procedural abuses, and wrongful convictions.[28]

---

[21] Administration of Criminal Justice Act 2015, ss 293–299.

[22] *Moses Abiodun v Nigeria* (ECOWAS Court of Justice, 2020) ECW/CCJ/JUD/15/20.

[23] *Idris Abubakar&Ors v Nigerian Police Force* (Unreported, FHC/KD/CS/57/2019, judgment of 9 October 2020).

[24] Constitution (n 1), Section 36(5).

[25] International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, art 14(2).

[26] Legal Aid Council of Nigeria, *Annual Report 2023* (LACON, 2024) 12.

[27] Amnesty International, *Nigeria: Country Report 2023* (2024) https://www.amnesty.org accessed 26 July 2025.

[28] Chidi Anselm Odinkalu, 'Access to Justice and the Rule of Law in Nigeria: A Critical Appraisal' (2005) 3(1) Human Rights Review 27, 30.

3.4 Contribution to Prison Overcrowding and Inhumane Conditions

Unlawful and prolonged pre-trial detention has directly contributed to the chronic overcrowding of Nigeria's custodial facilities. As of 2024, pre-trial detainees constitute over 70% of the national prison population.[29]Many correctional centres operate far beyond their original capacity, lacking adequate sanitation, ventilation, and access to medical care. These conditions amount to cruel, inhuman, and degrading treatment in violation of Article 5 of the African Charter on Human and Peoples' Rights (ACHPR), which Nigeria has domesticated.[30]

Beyond physical degradation, overcrowding imposes administrative burdens on prison staff and judicial authorities, creating a vicious cycle where delayed prosecutions and poor case management perpetuate congestion.

3.5 Undermining of Public Trust and Rule of Law

Perhaps the most far-reaching implication of unlawful detention is its corrosive impact on public trust in the justice system. When state actors—including the police, prosecutors, and magistrates—are perceived as complicit in rights violations, the legitimacy of legal institutions is severely eroded. This has led to public apathy, reluctance to report crimes, and, in extreme cases, mob justice and community reprisals.

Incidents such as the End SARS protests in 2020 underscore the public's growing frustration with police misconduct and systemic injustice. The lack of accountability for unlawful detention, extrajudicial killings, and extortion reinforces a "culture of impunity," enabling future abuses and weakening the rule of law.[31]

4. Causes of Unlawful Detention

The persistence of unlawful detention in Nigeria is rooted in a complex constellation of systemic, legal, institutional, and socio-cultural deficiencies. These factors operate both independently and interdependently, perpetuating cycles of abuse, inefficiency, and impunity. Understanding these root causes is essential to formulating holistic and sustainable reforms.

4.1 Systemic Corruption and Abuse of Office

Corruption remains a central driver of unlawful detention in Nigeria. Numerous studies and reports have documented widespread bribery, extortion, and abuse of power within the Nigeria Police Force (NPF), particularly at the point of arrest and during pre-trial detention.[32] Police officers

---

[29] Nigerian Correctional Service, *Inmate Population Statistics Q1 2024* (NCoS, April 2024) https://www.corrections.gov.ng accessed 26 July 2025.

[30] African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) 1520 UNTS 217 (ACHPR), art 5; see also African Charter (Ratification and Enforcement) Act Cap A9, Laws of the Federation of Nigeria 2004.

[31] Human Rights Watch, *Nigeria: End SARS Protest Crackdown Deepens Rights Concerns* (2021) https://www.hrw.org accessed 26 July 2025

[32]Human Rights Watch, *Everyone's in on the Game: Corruption and Human Rights Abuses by the Nigeria Police Force* (2010) https://www.hrw.org accessed 27 July 2025.

routinely demand bribes for bail, manipulate charges to extract confessions, and unlawfully detain suspects in exchange for financial gain.[33]

In its 2019 report, Transparency International ranked Nigeria 146th out of 180 countries on the Corruption Perceptions Index, with the police identified as the most corrupt public institution.[34] This perception is corroborated by reports indicating that 33% of Nigerians who had contact with the police paid bribes, often to secure release from unlawful detention.[35] The lack of effective internal discipline mechanisms within the NPF fosters a culture of impunity, where officers face little or no consequence for violating detainees' rights.

4.2 Weak Judicial Infrastructure and Delayed Case Disposal

The administration of criminal justice in Nigeria is plagued by inefficiency and procedural delays. Overburdened courts, inadequate staffing, outdated filing systems, and frequent adjournments result in delayed trials and prolonged detention of suspects.[36] Many detainees spend years in custody awaiting trial, especially where legal representation is absent or ineffective.

The structural state of custodial centres and courts further exacerbates these delays. Poor prison transportation logistics mean that detainees often miss scheduled hearings.[37] Additionally, prison facilities lack spaces for confidential attorney-client communication, undermining trial preparation and access to legal remedies.

The scarcity of legal aid lawyers—especially in rural and underserved regions—contributes significantly to prolonged pre-trial detention. Inmates often face prolonged incarceration simply due to the inability of the Legal Aid Council of Nigeria (LACON) to assign lawyers on time.[38]

4.3 Judicial Lapses in Oversight and Use of Holding Charges

Although the Administration of Criminal Justice Act (ACJA) 2015 introduced strict timelines for remand and placed limitations on judicial discretion in prolonged detention, compliance remains inconsistent. Courts have sometimes granted repeated remand orders without reviewing prosecutorial progress or the legality of continued detention.[39]

Magistrates frequently remand suspects for offences outside their jurisdiction—particularly for capital offences—under the now-criticised doctrine of "holding charge," despite its lack of statutory

---

[33] Amnesty International, *Nigeria: The Police Kill at Will* (2009) https://www.amnesty.org accessed 27 July 2025.

[34] Transparency International, *Corruption Perceptions Index 2019* https://www.transparency.org accessed 27 July 2025.

[35] United Nations Office on Drugs and Crime (UNODC), *Corruption in Nigeria: Patterns and Trends* (2019) 25.

[36] Chukwudifu Oputa, *The Administration of Justice in Nigeria* (NIALS Press 1999) 47–53.

[37] Nigerian Correctional Service, *Quarterly Report on Court Attendance and Trial Delays* (April 2024) https://www.corrections.gov.ng accessed 27 July 2025.

[38] Legal Aid Council of Nigeria, *Annual Report 2023* (LACON, 2024) 10–11.

[39] Administration of Criminal Justice Act 2015, Sections 296–299.

recognition.[40] This results in suspects being detained indefinitely while prosecutors "gather evidence" or seek legal advice from the Directorate of Public Prosecutions (DPP). Such practices have been condemned as a violation of the right to liberty and fair hearing.[41]

4.4 Socioeconomic Disadvantage, Illiteracy, and Lack of Legal Awareness

Poverty, illiteracy, and lack of public legal knowledge are key enablers of unlawful detention. Indigent suspects are more likely to be detained unlawfully due to their inability to pay bribes, secure private counsel, or navigate the bail process.[42] In rural communities, detainees are often unaware of their rights under the Constitution and ACJA, rendering them vulnerable to exploitation. Public apathy toward detainees, especially those accused of serious crimes, further diminishes the political will to address unlawful detention. Cultural perceptions that equate arrest with guilt, or incarceration with moral failing, make society less empathetic to the plight of pre-trial detainees.[43]

4.5 Inadequate Funding and Capacity Constraints in Legal Aid Delivery

Although LACON is statutorily empowered to provide legal representation to indigent defendants, chronic underfunding and limited human resources have severely curtailed its operations.[44] As of 2023, the Council operated with only a fraction of the staff required to handle the volume of indigent criminal defendants across Nigeria's thirty-six states and the Federal Capital Territory.[45] This resource gap is compounded by a general lack of support for pro bono work within the Nigerian Bar, especially in areas without active civil society interventions. NGOs providing legal aid also face difficulties accessing correctional facilities, further impeding access to justice.

5. Legal Framework Governing Arrest and Detention in Nigeria

The regulation of arrest and detention in Nigeria is governed by a network of constitutional, statutory, and international legal instruments. These frameworks are designed to balance the imperative of maintaining public order and investigating crime with the protection of individual rights. However, the persistent practice of unlawful detention reflects the gap between legal norms and actual enforcement. This section examines the principal legal regimes regulating arrest and detention in Nigeria and identifies their key provisions and practical limitations.

5.1 The Constitution of the Federal Republic of Nigeria 1999 (as Amended)

The Nigerian Constitution is the supreme law of the land.[46] Section 35 of the Constitution provides the most comprehensive protection of personal liberty. It stipulates that no person shall be deprived of liberty except in circumstances and in accordance with a procedure prescribed by law.[47] These

[40]Oludayo Amokaye, 'Abolition of Holding Charge in Nigerian Criminal Jurisprudence: A Legislative Mirage?' (2020) 6(2) Nigerian Journal of Public Law 144.

[41]Umar v FRN [2013] LPELR-20383(CA).

[42] Innocent Chukwuma, Police and Policing in Nigeria: Problems and Prospects (CLEEN Foundation 2012) 28–30.

[43]Ifeanyi Okoye, 'Societal Perception of Pre-Trial Detainees in Nigeria' (2021) 19(1) Nigerian Law and Society Review 115, 122.

[44] Legal Aid Council Act Cap L9, Laws of the Federation of Nigeria 2004, Section 9.

[45] Amnesty International (n 31).

[46] Constitution of the Federal Republic of Nigeria 1999 (as amended), Section 1(1).

[47] Ibid, Section 35(1).

circumstances include lawful arrest upon reasonable suspicion of a criminal offence, but even in such cases, the individual must be:

i. Informed in writing within 24 hours of the reasons for arrest;
ii. Allowed to remain silent and consult with legal counsel;
iii. Brought before a competent court within a reasonable time—defined as 24 hours where a court is within 40 kilometres, or 48 hours otherwise; and
iv. Released on bail if not tried within two months (for those in custody) or three months (for those on bail).[48]

Violation of any of these requirements renders the detention unlawful. Section 35(6) also grants any person unlawfully detained the right to compensation and a public apology from the appropriate authority.[49] Nigerian appellate courts have upheld these provisions in numerous cases, including *Jim-Jaja v Commissioner of Police*, where the Court of Appeal affirmed that failure to arraign a suspect within a reasonable time amounts to a constitutional breach.[50]

5.2 The Nigeria Police Act 2020

The Nigeria Police Act 2020 repealed the colonial-era Police Act and introduced a human rights-based approach to policing.[51] Its core objectives include enhancing police professionalism, promoting accountability, and aligning police functions with constitutional and democratic norms.[52]

Relevant provisions on arrest and detention include:

i. Arrest Procedures: Arrest must be carried out with minimal force and in accordance with the rights of suspects.[53] Arbitrary arrests or arrests in lieu of another person are prohibited.[54]
ii. Notification of Rights: Upon arrest, suspects must be informed of the reason for their arrest and their rights, including the right to silence, legal representation, and to have next-of-kin notified at no cost.[55]
iii. Recording of Arrests: Details of arrests must be recorded promptly at the police station.[56]
iv. Remedies for Detention beyond 24 Hours: If a non-capital offence suspect is not arraigned or released within 24 hours, they may apply to the court for bail.[57]
v. Magisterial Oversight: The Act mandates monthly reporting of all arrests without warrant to the nearest Magistrate and periodic inspections of detention facilities by Chief Magistrates.[58]

[48] Ibid, Section 35(4)–(5).

[49] Ibid, Section 35(6).

[50] *Jim-Jaja v Commissioner of Police, Rivers State* [2011] 1 NWLR (Pt 1229) 382 (CA).

[51] Nigeria Police Act 2020, s 131.

[52] Ibid, Section 4.

[53] Ibid, Sections 35–36.

[54] Ibid, Section 37.

[55] Ibid, Section 36(2).

[56] Ibid, Section 39.

[57] Ibid, Section 64(1).

[58] Ibid, Sections 64–66.

Despite these progressive provisions, enforcement remains weak due to poor oversight, entrenched practices of extortion, and inadequate officer training.[59]

5.3 The Administration of Criminal Justice Act 2015 (ACJA)

The ACJA 2015 was enacted to promote the speedy, efficient, and fair administration of criminal justice in Nigeria. It applies primarily within the Federal Capital Territory and across federal courts, but many states have adopted similar laws.[60] The Act addresses key areas relevant to arrest and detention:

A. Arrest and Safeguards for Suspects

Sections 6–10 of the ACJA reaffirm the constitutional rights of suspects, including the right to remain silent, right to legal representation, and protection from torture or degrading treatment.[61] Arrests are not permitted for civil wrongs or contractual breaches, and handcuffing or restraint must be justified by risk of escape or violence.[62]

B. Remand Procedure and Time Limits

Sections 293–299 of the ACJA introduce strict safeguards on remand applications:

i. A suspect may be remanded only upon an ex parte application and showing of probable cause;
ii. Initial remand shall not exceed 14 days, extendable for another 14 days on good cause;
iii. Thereafter, the court must issue a hearing notice to the Inspector-General of Police or Attorney-General to justify further detention;
iv. If no cause is shown, the court shall discharge the suspect and no further remand shall be granted.[63]

This "14 + 14 + 14" model represents a significant safeguard against indefinite detention. However, judicial compliance is inconsistent, and remand orders are still granted without adequate prosecutorial progress.[64]

C. Bail Provisions

Sections 158–168 of the ACJA provide that:

i. Bail shall be granted as of right for offences not punishable by death, unless the suspect is likely to interfere with witnesses or abscond;
ii. Bail conditions must not be excessive and may be reviewed;
iii. Bail for capital offences is reserved for High Courts and granted only in exceptional circumstances.[65]

---

[59] Amnesty International, *Nigeria: Time to End Impunity for Police Brutality* (2020) https://www.amnesty.org accessed 27 July 2025.

[60] ACJA 2015, Section 2; see also Administration of Criminal Justice Laws of Lagos, Ekiti, Kaduna, and other states.

[61] ACJA 2015, Sections 6–10.

[62] Ibid, Section 5(2).

[63] Ibid, Sections 293–299.

[64] Chidi Odinkalu, 'Remand and Holding Charge in Nigerian Criminal Procedure' (2018) 15(2) Nigerian Law Journal 211.

[65] ACJA 2015, Sections158–162

While the ACJA attempts to simplify the bail process, abuse by law enforcement officials and judicial delays continue to inhibit access to bail for indigent suspects.

6. Consequences of Unlawful Detention

Unlawful detention is not merely a procedural irregularity—it constitutes a serious breach of individual rights with far-reaching social, economic, and institutional consequences. Its effects are deeply structural, undermining the credibility of the criminal justice system and perpetuating cycles of injustice, poverty, and public mistrust. This section evaluates the multidimensional impact of unlawful detention on the rule of law, socio-economic development, correctional systems, and Nigeria's domestic and international obligations.

6.1 Constitutional Violations and Erosion of the Rule of Law

Unlawful detention directly contravenes constitutional guarantees such as the right to personal liberty, dignity of the person, the presumption of innocence, and access to legal representation.[66] These violations weaken the normative force of the Constitution, de legitimising the justice system and fostering a sense of lawlessness among both citizens and law enforcement agencies.

The courts have repeatedly condemned arbitrary and prolonged detention. In *Olatunde v IGP*, the court held that detaining a suspect beyond 48 hours without arraignment, even under pretext of ongoing investigation, is unconstitutional.[67] Such detentions render law enforcement actions unlawful ab initio, entitling victims to compensation. However, the failure to prosecute officers who violate these rights has entrenched a culture of impunity and disrespect for constitutional governance.[68]

6.2 Injustice, Wrongful Convictions, and Denial of Due Process

Suspects detained without access to legal counsel or judicial review are vulnerable to coercion, torture, and false confessions. These practices often result in wrongful convictions or prolonged incarceration without trial.[69]The denial of due process—especially for indigent defendants—raises serious questions about equality before the law and fair trial standards.

Inmates detained unlawfully are rarely compensated or rehabilitated, leading to loss of livelihood, psychological trauma, and social stigma.[70] The denial of procedural rights also undermines the legitimacy of any subsequent trial or conviction, compromising the integrity of the entire criminal justice process.

[66]Constitution of the Federal Republic of Nigeria 1999 (as amended), Section 34–36.

[67]*Olatunde v Inspector-General of Police* [2012] LPELR-20092(CA).

[68]Amnesty International, *Nigeria: The Police Kill at Will* (2009) https://www.amnesty.org accessed 27 July 2025.

[69]Chidi Odinkalu, 'Why More Nigerians Are in Jail Awaiting Trial Than Those Convicted' (2020) https://www.premiumtimesng.com accessed 27 July 2025.

[70]Akin Oyebode, *Human Rights and the Nigerian Criminal Justice System* (NIALS Press 2018) 89–92.

6.3 Institutional Discredit and Loss of Public Trust

A justice system that permits or condones unlawful detention loses its credibility in the eyes of the public. The Nigerian Police Force (NPF), in particular, has been subject to widespread public criticism and protest over its routine violations of detainees' rights. The 2020 End SARS demonstrations were a direct response to years of unchecked police abuse, arbitrary arrests, and extortion.[71]

This erosion of trust has far-reaching consequences. Citizens become reluctant to report crimes, participate in legal proceedings, or comply with police directives. In extreme cases, communities may resort to mob justice or other forms of extrajudicial retaliation. The resultant breakdown in social cohesion weakens the state's ability to enforce the law and maintain public order.

6.4 Socioeconomic Harm: Poverty, Family Disruption, and Stigmatization

Unlawful detention has devastating socio-economic effects on individuals, families, and communities. Many detainees are the primary breadwinners for their families. Their prolonged incarceration results in income loss, disruption of education for dependents, eviction, and long-term impoverishment.[72]

The psychological toll on detainees and their families is equally profound. Many experiences trauma, shame, and stigmatization that impede their reintegration into society.[73] Employers often terminate the employment of persons detained for long periods without trial, regardless of the eventual legal outcome.

The Nigerian Human Rights Annual Report 2024 observed that the overwhelming majority of unlawful detainees come from marginalised and low-income backgrounds. This underscores the structural inequality embedded in the justice system, where poverty increases vulnerability to state abuse.[74]

6.5 Prison Overcrowding and Human Rights Abuses

Unlawful detention is a major contributor to Nigeria's chronic prison overcrowding crisis. As of early 2024, over 70% of inmates in Nigeria's correctional facilities were awaiting trial.[75] Many have been in custody for years without a single court appearance. This state of affairs violates the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela

[71]Human Rights Watch, *Nigeria: End SARS Protest Crackdown Deepens Rights Concerns* (2021) https://www.hrw.org accessed 27 July 2025.

[72]CLEEN Foundation, *Awaiting Trial: A Journey of Injustice* (2022) https://www.cleen.org accessed 27 July 2025.

[73]IfeomaEnemo, 'Incarceration and Social Stigma in Nigeria' (2021) 25(1) Nigerian Journal of Social Psychology 57.

[74]National Human Rights Commission, *Nigerian Human Rights Annual Report 2024* (2025) 34–36.

[75]Nigerian Correctional Service, *Q1 Inmate Population Data* (April 2024) https://www.corrections.gov.ng accessed 27 July 2025.

Rules), which prohibit prolonged pre-trial detention and mandate humane conditions for all inmates.[76]

Overcrowded prisons are unable to meet minimum standards of hygiene, nutrition, or healthcare. This leads to high rates of communicable diseases, mental health disorders, and sometimes death in custody.[77] It also creates severe logistical challenges for prison authorities, who must manage a bloated inmate population with limited personnel and resources.

7. Conclusion and Recommendations

Unlawful detention in Nigeria reflects not only procedural and institutional failures but also deeper systemic flaws in the country's commitment to the rule of law and respect for fundamental human rights. Despite robust legal safeguards in the 1999 Constitution, the Administration of Criminal Justice Act 2015 (ACJA), and the Nigeria Police Act 2020,[78] the widespread practice of arbitrary arrest, prolonged detention without charge, and disregard for bail provisions continues to undermine the integrity of the Nigerian criminal justice system.

The analysis presented in this paper reveals that unlawful detention is facilitated by a confluence of factors: corruption within law enforcement, inadequate judicial infrastructure, ineffective legal aid delivery, and widespread ignorance of legal rights. These challenges disproportionately affect the poor, the illiterate, and other socially marginalised groups creating a justice system that is not only slow and inefficient but also discriminatory and abusive.

The consequences of these practices are severe: erosion of constitutional protections, overcrowded correctional centres, economic and psychological harm to detainees and their families, and a pervasive loss of public trust in law enforcement and the judiciary. The crisis of unlawful detention is not just a legal problem, it is a national human rights emergency with profound social and political implications.

Addressing this crisis requires bold and multi-pronged reforms. Legal provisions must be matched by practical enforcement; police accountability mechanisms must be insulated from political interference; and access to legal aid must be expanded and adequately funded. The holding charge doctrine must be eradicated in both law and practice, and institutional oversight of police and prosecutorial powers must be strengthened through judicial and civil society engagement.

Ultimately, the path to reform lies in the collective will of all stakeholder's government agencies, the judiciary, law enforcement, legal practitioners, civil society, and the general public. Upholding the right to personal liberty is not a favour to citizens but a constitutional and moral imperative. Without urgent reforms, Nigeria risks entrenching a justice system that punishes the innocent, protects the powerful, and perpetuates injustice.

In order to address unlawful detention in Nigeria a holistic and multi-sectoral reform agenda that integrates legal, institutional, operational, and socio-cultural interventions are required. While constitutional and statutory safeguards exist, their poor implementation reflects institutional

[76]United Nations, *Nelson Mandela Rules: Standard Minimum Rules for the Treatment of Prisoners* (UNODC 2015) Rules 1–3, 24–26.

[77]International Committee of the Red Cross (ICRC), *Nigeria: Prison Health Under Pressure* (2023) https://www.icrc.org accessed 27 July 2025

[78]Constitution of the Federal Republic of Nigeria 1999 (as amended), s 35; Administration of Criminal Justice Act 2015, Sections 6–10, 293–299; Nigeria Police Act 2020, Sections 35–66.

deficiencies, weak political will, and a culture of impunity. This section outlines practical and evidence-based reforms targeted at law enforcement, judicial institutions, legal aid systems, and public engagement.

7.1 Legal and Institutional Reforms

A. Abolition of the Holding Charge Doctrine

Although the term "holding charge" is not expressly provided for in Nigerian statutes, its continued use by law enforcement officers and Magistrates undermines the Constitution and the Administration of Criminal Justice Act 2015 (ACJA).[79] To abolish this practice:

i. The Judiciary must strictly enforce the time-bound remand limits under sections 293–299 of the ACJA.[80]
ii. The National Judicial Council should issue practice directions prohibiting remand for offences outside the jurisdiction of Magistrates.
iii. The legislature should clarify, through amendment, that holding charges are legally impermissible.

B. Strengthening Judicial Oversight

The implementation of existing oversight mechanisms must be enhanced. This includes:

i. Mandatory monthly inspection of police detention centres by Chief Magistrates in accordance with section 66 of the Nigeria Police Act 2020.[81]
ii. Strict compliance with quarterly arrest reporting by Divisional Police Officers and periodic reviews by High Courts.
iii. Digital tracking of remand orders and detainee status to prevent procedural abuses.

7.2 Enhancing Legal Aid Delivery and Access to Justice

The Legal Aid Council of Nigeria (LACON) is structurally underfunded and operationally overstretched. To strengthen access to justice:

i. Establish a National Legal Aid Fund, financed through public budgetary allocations, donor support, and pro bono levies on law firms.[82]
ii. Expand LACON's staffing and operational reach to cover all custodial facilities, particularly in rural areas.
iii. Institutionalise partnerships with Bar associations, NGOs, and university law clinics to complement state-provided legal aid.

7.3 Police Reform and Accountability

Sustainable reform of the Nigeria Police Force (NPF) is essential to curbing unlawful detention. Measures should include:

[79]ChidiOdinkalu, 'Holding Charge and the Administration of Criminal Justice in Nigeria' (2004) 1 https://www.humanrightsmonitor.org accessed 27 July 2025.

[80]Administration of Criminal Justice Act 2015, ss 293–299.

[81]Nigeria Police Act 2020, s 66.

[82]Legal Aid Council Act Cap L9, Laws of the Federation of Nigeria 2004, s 17.

i. Full operationalisation of the Police Complaints Response Unit (CRU) in all state commands, with guaranteed independence, budgetary allocation, and civilian oversight.[83]
ii. Establishment of Independent Police Complaints Tribunals comprised of representatives from the judiciary, civil society, and the Nigerian Bar Association, to adjudicate abuse allegations.[84]
iii. Enforcing disciplinary proceedings against officers who flout constitutional or statutory detention limits.
iv.

7.4 Human Rights Training and Public Legal Education

Many law enforcement officers lack knowledge of rights-based policing. To foster compliance:

i. Regular human rights training for police officers, prosecutors, and magistrates, developed in collaboration with institutions such as the United Nations Office on Drugs and Crime (UNODC), the National Human Rights Commission (NHRC), and law faculties.[85]
ii. Curriculum revision in police academies to embed the principles of the Constitution, ACJA, and international human rights instruments.
iii. Nationwide public awareness campaigns using radio, social media, community town halls, and translated materials to educate citizens on their rights during arrest and detention.[86]
iv.

7.5 Technological Integration and Transparency

The integration of digital tools can reduce human discretion and corruption in detention management:

i. Deploy **digital detainee registers** linked to national judicial databases to monitor arrest, remand, and trial timelines in real-time.
ii. Implement **virtual court proceedings** and **mobile legal aid applications** to reduce delay and increase access, particularly in remote or underserved areas.
iii.

7.6 Welfare Reform for Justice Sector Workers

Poor remuneration and working conditions for police officers and prison staff contribute to extortion and misconduct. Reforms should include:

i. Periodic salary review and prompt payment of entitlements for officers.
ii. Provision of welfare support such as housing, mental health services, and hazard allowances.
iii. Ethical training and career advancement based on merit, not patronage.

[83]Nigeria Police Act 2020, s 131(1)(g).

[84]CLEEN Foundation, *Policy Brief on Police Oversight in Nigeria* (2021) https://www.cleen.org accessed 27 July 2025.

[85]UNODC and NHRC, *Police and Human Rights Manual for Nigeria* (2022) https://www.unodc.org accessed 27 July 2025.

[86]Legal Awareness through Media Programme, 'Know Your Rights Campaign' (2023) https://www.laconnigeria.gov.ng accessed 27 July 2025