

**A MEMORANDUM ON THE RAIDS OF WOMEN IN CALABAR BY
OFFICERS OF THE NIGERIA POLICE FORCE AND OTHER NIGERIAN
SECURITY AGENCIES.**

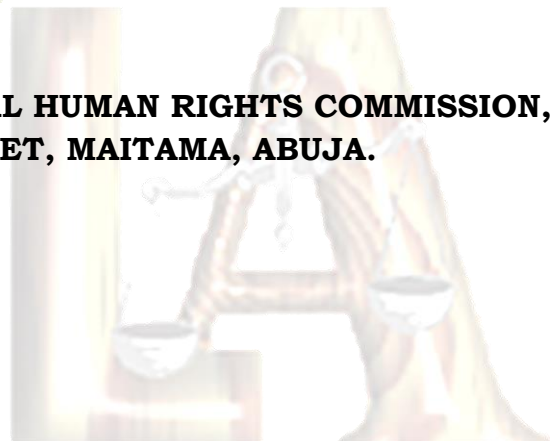


SUBMITTED BY

LAWYERS ALERT

TO THE

**EXECUTIVE SECRETARY, NATIONAL HUMAN RIGHTS COMMISSION,
19, AGUIYI IRONSI STREET, MAITAMA, ABUJA.**



OCTOBER 30, 2019.

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INTRODUCTION

Pursuant to the establishment of this panel by the Federal Government, and the call for Memoranda by same, Lawyers Alert wishes to bring to the notice of the Commission the gross violation of human rights of women in Calabar, Cross River State, by members of the Nigeria Police Force (SARS, Anti-Cultism Unit), which will be identified in this memo. These violations have lingered for so many years and are rather on the increase. At various times and on different occasions, the Nigeria Police Force has molested and violated the human rights of these ladies for no legal-based arguments. The modus operandi of the Nigeria Police Force is rather against the law, natural justice, equity and good conscience. We fear that if they are allowed to continue these operations in the way and manner they are going, things would completely fall out of place.

Further to the above, the Constitution of the Federal Republic of Nigeria, 1999 (as amended), and all International Human Rights Instruments as applicable under the Nigerian jurisprudence frown at these violations just as the Administration of Criminal Justice Act, and other laws on Women's rights do.



FACTS

In the month of August 2019, so many women were arrested in Calabar, Cross River State, by the Nigeria Police Force without informing them of the reason for their arrest. This arrest took place at a Brothel where these ladies live. On account of verifiable evidence, these ladies were arrested and detained, extorted, sexually abused, molested, raped, battered, assaulted, and verbally abused for the reason of their sexual expressions. The Nigeria Police Force has in several other cases arrested, detained, extorted, sexually abused, molested, raped, battered, assaulted and verbally abused these ladies for the reason of prostitution or indecent dressing. Between February 18, 2019, to October 2019, ladies in Calabar, Cross River State have been arrested on a regular basis by the Nigeria Police Force. Some of the dates of arrest are; February 18, April 15 & 26, May, June, August 4, September, October 2019. In the Month of September, a lady was arrested by members of the Nigeria Police Force, Calabar, Cross River State because she was seen outside her home at night. After having her spend a few days in police custody, she was raped by two police officers for bail. While she was being raped, the protection (condom) was ripped open and despite her begging for the protection to be changed, the police officers did not grant her plea. In the same month of September, some ladies were arrested by members of the Nigeria Police Force, Calabar, Cross River State. After having these ladies spend a few days in Atakpa Police Station without any reason for their arrest being communicated to them and without bail. These ladies were detained for over one month without committing any offence known to law and without bail, even though they were extorted hundreds of thousands of naira.

The ladies were taken to court, but unfortunately, the court did not sit. The ladies were thereafter transferred to Afuka Prison where they spent over one month. Eventually, the ladies were taken to court again and this time, the court sat. It was time for arraignment but the police officers who brought the ladies could not tell the court any offence the ladies had committed. For that reason, the court struck their matter out and asked that they should be released. The police, however, still asked for some money from these ladies before they were released.

Upon investigation, these raids are carried on by male police officers, and every brothel pays weekly collections to police stations in Calabar, Cross River State. These collections are paid as follows:

- Every Monday, #200 each person
- Every Friday, #1000 each person

On every arrest the police make, these ladies are made to pick out of three options as a requirement for bail. The options are as follows:

- Pay some money
- In the event that the money paid is not up to what the officers ask, these ladies are asked to pay up the balance with sex
- Sex

A lady was arrested in the month of August. After spending two days in police custody, she was asked by the police to give some money for her bail, upon her inability to produce the total sum she was asked to produce, she was raped.

Each time these ladies are arrested, they are not granted an audience, and if they persist to speak their part of the story, they are battered and assault by the police officers. On several occasions, police officers have broken into brothels arresting ladies in their numbers and leaving out their male counterparts. These ladies when arrested are neither allowed to speak nor put on some clothes before following the police officers. They are arrested and forced into police Hilux vans just as they are caught.

ISSUES

- Illegal arrest and detention: Gestapo style arrests without being informed of their offences
- Detention in undignifying conditions
- False allegations/accusations
- Torture and cruel treatment
- Denial of access to family and legal representation
- Oppression and Intimidation
- Rape
- Extortion of money

APPLICABLE LAWS

The Nigerian Constitution, 1999 & the African Charter on Human and Peoples' Rights (ACHPR)

Sections 35 and 36 of the Constitution provide as follows:

35(1)

"Every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in the following cases and in accordance with a procedure permitted by law –

(c) for the purpose of bringing him before a court in execution of the order of a court or upon reasonable suspicion of his having committed a criminal offence, or to such extent as may be reasonably necessary to prevent his committing a criminal offence...

Provided that a person who is charged with an offence and who has been detained in lawful custody awaiting trial shall not continue to be kept in such detention for a period longer than the maximum period of imprisonment prescribed for the offence."

35(3)

"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."

These sections should be read with section 15(5) of the Constitution which provides that "the State shall abolish all corrupt practices and abuse of power."

Besides, Articles 5, 6, 10, 11, and 12 of the ACPHR also recognise the various rights that have been violated here.

The Police Act of 1967

This Act contains both the specific and ambiguous powers of the police when carrying out an arrest. One section relevant to this instant case is **Section 24** which provides for the power of the police to arrest without a warrant. It states:

"(1) In addition to the powers of arrest without warrant conferred upon a police officer by section 10 of the Criminal Procedure Act, it shall be lawful for any police officer and any person whom he may call to his assistance, to arrest without warrant in the following cases—

(a) any person whom he finds committing any felony, misdemeanour or simple offence, or whom he reasonably suspects of having committed or of being about to commit any felony, misdemeanour or breach of the peace;

Another important legislation applicable in this instance is Section **121 of Nigeria Police Regulations of 1968** which provides the general duties of women police officers as follows:

“Women police officers shall as a general rule be employed on duties which are connected with women and children, and shall be Particularly employed in the following duties- (a) investigation of sexual offences against women and children; (b) recording of statements from female witnesses and female accused persons and from children; (c) attendance when women or children are being interviewed by male police officers; (d) the searching, escorting and guarding of women prisoners in police stations, and the escorting of women prisoners to or from police stations; (e) school crossing duties; (f) crowd control, where women and children are present in any numbers.”

Contrary to what the law provides, these raids are carried out on women by male police officers.

The Penal Code

It is an offence for a public officer to conduct himself in a manner to intentionally or likely cause injury to a person (section 123 of Penal Code), to frame a document in a manner that he knows to be incorrect and intending thereby to cause harm to a person (section 124 of Penal Code), to commit or keep persons in confinement knowing that he is acting contrary to the law and likely to cause injury to the person (section 126 of Penal Code).

The Administration of Criminal Justice Act

The Administration of Justice Act, 2015, states amongst others, that its purpose is “to ensure that the system of administration of criminal justice in Nigeria promotes efficient management of criminal justice institutions, speedy dispensation of justice, protection of the society from crime and protection of the rights and interests of the suspect, the defendant and the victim.”

Section 1(2) of the Act places an obligation on courts and law enforcement agencies to ensure compliance with the provisions of the Act for the realisation of its purposes.

Section 3 of the Act provides that all arrests must follow the procedural requirements in the Act:

“A suspect or a defendant alleged or charged with committing an offence established by an Act of the National Assembly shall be arrested, investigated, inquired into, tried or otherwise dealt with according to the provisions of this Act, except otherwise provided in this Act.”

Section 5 of the Act provides that suspects should not be subjected to restraint, except in certain circumstances, none of which circumstances were present in the facts of these cases.

Section 6(1) of the Act provides that suspects must be informed of the reason for the arrest. This obligation is placed on the police officer “or other persons making the arrest” to inform a suspect “immediately of the reason for the arrest”.

Furthermore, Section 14(1) of the Act reinforces the right to be informed of the charge immediately: “A suspect who is arrested, whether with or without a warrant, shall be taken immediately to a police station, or other places for the reception of the suspect, and shall be promptly informed of the allegation against him in the language he understands.”

Section 6(2) of the Act further provides that the police officer, the person making the arrest or the police officer in charge of a police station shall inform a suspect of their right to remain silent, consult a legal practitioner of their choice and their right to free legal representation by the Legal Aid Council of Nigeria. This provision was not complied with in this instant case.

Section 8(1) of the Act reinforces the constitutional right to “be accorded humane treatment having regard to his right to the dignity of his person; and not be subjected to any form of torture, cruel, inhuman or degrading treatment.”

Section 9(3) of the Act reiterates Section 121 of the Police Regulations 1968 which require female police officers to search female suspects. It states:

“Where it is necessary to search a suspect, the search shall be made decently and by a person of the same sex unless the urgency of the situation or the interest of due administration of justice makes it

impracticable for the search to be carried out by a person of the same sex.”

Section 18(1) of the Act provides for arrest without a warrant as follows:

“A police officer may, without an order of a court and without a warrant, arrest a suspect:

- (a) Whom he suspects on reasonable grounds of having committed an offence against the law in Nigeria or against the law of any other country unless the law creating the offence provides that the suspect cannot be arrested without a warrant.”

The police officer here must have reasonable grounds to suspect an offence has been committed.

Section 30 of the Act deals with the right to liberty.

“(1) Where a suspect has been taken into police custody without a warrant for an offence other than an offence punishable with death, and officer in charge of a police station shall inquire into the case and release the suspect arrested on bail subject to subsection (2) of this section, and where it will not be practicable to bring the suspect before a court having jurisdiction with respect to the offence alleged, within 24 hours after the arrest.

(2) the officer in charge of a police station shall release the suspect on bail on his entering into a recognisance with or without sureties for a reasonable amount of money to appear before the court or at the police station at the time and place named in the recognisance.”

Section 33(1) requires an officer in charge of a police station to file monthly reports on the arrests made without a warrant to the nearest magistrate within the jurisdiction. The magistrate shall then forward the report to the Criminal Justice Monitoring Committee to analyse trends and the report can also be made available to the Human Rights Commission and Legal Aid.

Section 34 provides for inspections of police cells and other places of detention by the Chief Magistrate or any Magistrate designated by the Chief Judge at least every month.

These provisions presuppose that the State has taken genuine steps to prohibit illegal arrests and detention by establishing these guidelines and is making a commitment to ensuring their implementation.

Violence Against Persons (Prohibition) Act

The Violence Against Persons (Prohibition) Act of 2015 is another legislation promulgated to “eliminate violence in private and public life, prohibit all forms of violence against persons and to provide maximum protection and effective remedies for victims and punishment of offenders and for related matters.”

Section 1 of the Act provides thus:

A person commits the offence of rape if-

- (a) He or she intentionally penetrates the vagina, anus or mouth of another person with any other part of his body or anything else;
- (b) The other person does not consent to the penetration; or
- (c) The consent is obtained by force or means of threat or intimidation of any kind or by fear of harm or by means of false and fraudulent representation as to the nature of the act or the use of any substance or additive capable of taking away the will of such person or in the case of a married person by implementing his or her spouse.

Section 4(1) of the Act provides that it is an offence to “willfully or knowingly place a person in fear of physical injury.”

Section 14(1) of the Act makes it an offence to “cause emotional, verbal and psychological abuse on another.”

Section 18(1) of the Act makes it an offence to “intimidate another”.

FUNDAMENTAL RIGHTS VIOLATIONS RESULTING FROM ARRESTS AND DETENTIONS

Nigerian courts have construed provisions of the Constitution of the Federal Republic of Nigeria, 1999 (hereafter, “Constitution”) which are pursuant to the rights and freedoms of its citizens, expansively, and with the purpose to promote the advancement of these rights and freedoms, never with the purpose to restrict.

See **Dilly v Inspector General of Police and Others** (CA/L/12/2013) [2016] NGCA 21 (22 June 2016) (CA/L/12/2013) [2016] NGCA 21 (21 June 2016).

Nigeria’s Constitution contains internal limitations to fundamental rights. Where no such internal limitations exist, the rights are non-derogable. Thus, apart from the right to freedom of movement, the other rights referred to in this section are non-derogable.

The African Commission, in **Constitutional Rights Project v Nigeria** Communication Nos 140/94, 141/94 and 145/95 (1999) at para 69, said that “the evils of limitations of rights must be strictly proportionate with and absolutely necessary for the advantages which are to be obtained.”

An international treaty entered into by the Government of Nigeria does not become binding on Nigeria as a member state until enacted into law by its National Assembly. See **General Sanni Abacha & Ors v Chief Gani Fawehinmi** (S.C. 45/1997) [2000] NGSC 17 (28 April 2000) (S.C. 45/1997) [1960] NGSC 1 (27 April 2000). However, once a treaty is so enacted, its provisions become binding as a matter of law, and courts are required to effect and interpret such measures as they would any other laws in Nigeria. Nigeria domesticated the African Charter on Human Rights and Peoples, in 1983.

Right to Dignity

Section 34(1) of the Constitution provides that “every individual is entitled to respect for the dignity of his person.”

The African Charter on Human and Peoples’ Rights, in Article 4 provides: “Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.”

In the case of **Purohit and Another v The Gambia** (2003) AHRLR 96 (ACHPR) the African Commission on Human and Peoples’ Rights (hereinafter referred to as the ‘African Commission’) held that:

“[H]uman dignity is an inherent basic right to which all human beings, regardless of their mental capabilities or disabilities as the case may be, are entitled to without discrimination. It is therefore an inherent right which every human being is obliged to respect by all means possible and on the other hand it confers a duty on every human being to respect this right.”

In addition to being a substantive right, dignity is also an underlying constitutional principle. Section 17(2) of the Constitution provides “(b) the sanctity of the human person shall be recognised and human dignity shall be maintained and enhanced; and (c) governmental actions shall be humane.”

In this regard, the South African Constitutional Court in **Dawood v Minister of Home Affairs** 2000 (3) SA 936 (CC) held that human dignity informs constitutional adjudication in many ways: It is a value that informs the interpretation of other rights; it is a constitutional value central in the analysis of limitation of rights, and it is a justiciable and enforceable right that must be protected and respected.

The African Commission on Human and People's Rights in its Principles on the Decriminalisation of Petty Offences in Africa notes that "the enforcement of petty offences may also be inconsistent with the right to dignity and freedom from ill-treatment if the enforcement involves mass arrest operations" (section 9).

Mass arrests under the auspices of section 405 of the Penal Code disregards the right to dignity by allowing the arrest and detention of persons in instances where no effort is made by the State to prove that the accused committed an offence.

The High Court of Kenya in **Anthony Njenga Mbuti & 5 Others v Attorney General & 3 Others** [2015] Constitutional Petition No 45 of 2014, at para 149, concluded that the State blatantly disregarded the "inherent dignity" of all people by subjecting them to the Peace Bond provisions that have their roots in 11th-century British criminal procedure. The Court also reasoned that subjecting people to such archaic procedures prohibit due process and equal protection under the Constitution.

The duty of officers of the Nigeria Police to respect the dignity of persons is set out in the Administration of Criminal Justice Act. It is also contained in various soft law principles:

- In 1979, the United Nations General Assembly adopted a Code of Conduct for Law Enforcement Officials (Resolution 34/169) which emphasised that police must respect the dignity and human rights at all times: Article 2 provides that "in the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons." Article 3 states that "law enforcement officials may use force only when strictly necessary and to the extent required in the performance of their duty."
- The African Commission on Human and Peoples' Rights in its Resolution 259 on Police and Human Rights in Africa (2013), called on States Parties "to ensure that in the execution of their duties, police fully comply with the respect for human rights and the rule of law" and to take appropriate

measures “to ensure that police services respect the dignity inherent in the individual in the discharge of their duties.”

The Malawi High Court in **Mayeso Gwanda v State** [2017] MWHC 23, emphasised that the police cannot just randomly arrest people, a comment which applies more so in cases of sweeping exercises. If there is no investigation and no evidence that a person intended to commit an offence, then the police cannot arrest. To presume that a person is guilty all because he or she appears to be without means is a violation of a person’s right to dignity.

Freedom from Cruel, Inhuman and Degrading Treatment

Section 34(1)(a) of the Constitution provides that “no person shall be subject to torture or to inhuman or degrading treatment.”

Article 5 of the African Charter similarly provides that “all forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.”

The freedom from cruel, inhuman and degrading treatment is also entrenched in international and regional treaties which Nigeria has ratified, such as Article 7 of the International Covenant on Civil and Political Rights has a similar provision, and the United Nations Human Rights Committee, in General Comment 20, observed that this right allows no limitation.

The African Commission, in the case of **Huri-Laws v Nigeria** (2000) AHRLR 273 (ACHPR 2000), noted: “the term ‘cruel, inhuman or degrading treatment or punishment’ is to be interpreted so as to extend to the widest possible protection against abuses, whether physical or mental.” In this case, it was contended that “being detained arbitrarily, not knowing the reason or duration of detention, is itself a mental trauma.”

The Malawi High Court in **Mayeso Gwanda v State** [2017] MWHC 23, held that arrests for behaviour that was not in fact criminal amounted to inhuman and degrading treatment

The High Court of Kenya in **Anthony Njenga Mbuti & 5 Others v Attorney General & 3 Others** [2015] Constitutional Petition No 45 of 2014 considered the Peace Bond provisions to be a class of crimes that subjects citizens to inhuman and degrading treatment because there isn’t normally any evidence of actually committing a crime, so constitutional safeguards are negated.

In instances where specific groups of people are more at risk of being stopped, questioned and arrested by the police whilst going about their daily activities, each police stop becomes a demeaning and humiliating experience which makes people feel unwanted and distrustful of the police. It creates a situation where people live in fear of being stopped when they go about their daily activities and alienates the police from the community.

See **Floyd and Others v City of New York** [2013] 08 Civ 1034 SAS.

The Applicants submit that their arrest and detention and the treatment received at the hands of the Respondents constituted cruel, inhuman and degrading treatment.

Right to Liberty and Security of Person

Section 35(1) of the Constitution provides that “every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in the following cases and in accordance with a procedure permitted by law

–

...

(c) for the purpose of bringing him before a court in execution of the order of a court or upon reasonable suspicion of his having committed a criminal offence, or to such extent as may be reasonably necessary to prevent his committing a criminal offence...

Provided that a person who is charged with an offence and who has been detained in lawful custody awaiting trial shall not continue to be kept in such detention for a period longer than the maximum period of imprisonment prescribed for the offence.”

Article 6 of the African Charter provides that “every individual shall have the right to liberty and security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.”

Under the African Commission’s Guidelines on the Use and Conditions of Arrest, Police Custody and Pre-trial Detention in Africa (the Luanda Guidelines), section 2(a) provides that:

“Persons shall only be deprived of their liberty on grounds and procedures established by law. Such laws and their implementation must be clear, accessible and precise, consistent with international standards and respect the rights of the individual.”

The African Commission, in **Amnesty International and Others v Sudan** 48/90-50/91-52/91-89/93, November 1999 concluded that Article 6 must

be interpreted in such a way as to permit arrests only in the exercise of powers normally granted to security forces in a democratic society:

“In these cases, the wording of this decree allows for individuals to be arrested for vague reasons, and upon suspicion, not proven acts, which conditions are not in conformity with the spirit of the African Charter.”

Delving further into the subject matter of personal liberty, the court in the case of **Obieque v. A. G. Fed.** (2014) 5 N.W.L.R. (PT 1399) P. 171 R.23. held:

“Personal liberty is one of the fundamental rights guaranteed under the constitution of the Federal Republic of Nigeria, 1979 as provided for in section 32 (now section 35) of the constitution. The right is crucial and its infraction, including unlawful arrests and detention, will attract the same sanction provided for in Section 32(6) [now section 35(6)] of the constitution and will result in compensation and an apology from the appropriate person or authority”.

The Court of Appeal in **Okafor v Lagos State Government and Another**, Appeal No. CA/L/1106/2014, emphasised that a limitation of the right to liberty in terms of section 35(1)(c) of the Constitution requires reasonable suspicion that the person committed a criminal offence.

The Applicants submit that indiscriminate mass arrests violate the right to liberty and security of person, as protected under section 35 of the Constitution, and the African Charter, in that they were stopped, arrested and detained arbitrarily by police.

Article 9 of the International Covenant on Civil and Political Rights similarly recognises and protects both liberty (freedom) of person and security of person.

The Human Rights Committee’s General Comment 35 explains that liberty of persons concerns freedom from the confinement of the body, whilst the security of person concerns freedom from injury to the body and the mind, or bodily and mental integrity.

In terms of General Comment 35, the right to liberty prohibits arbitrary arrest and detention and any arrest or detention that lacks any legal basis is arbitrary. “Arbitrariness” is defined as “to include elements of inappropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity and proportionality.

General Comment 35 further provides that “any substantive grounds for arrest or detention must be prescribed by law and should be defined with sufficient precision to avoid overly broad or arbitrary interpretation or application”.

The Zimbabwe Constitutional Court in 2015 ruled that the indiscriminate arrest of women at night on facts which did not disclose an offence of soliciting constituted a violation of their right to liberty. See **Nyamanhindi and Others v State** CCZ 15/15.

The Applicants submit that the Respondents’ practice of arresting women at night violates their right to liberty and other constitutional rights and encroaches on the rule of law:

- Mass arrests risk arrests without proper procedures or probable cause for arrest.
- Persons arrested under section 405 of the Penal Code are often released immediately after their arrest, suggesting that there was no probable cause for the arrest and no intention to pursue the case judicially at the time when the arrest was made.
- Arrest and detention under section 405 is often not a proportionate response to the conduct of the person arrested.
- Arrests under section 405, especially during weekends, sometimes mean that persons are detained for longer than a day for what is a very minor offence.
- Even if the detention was only for a short period, the harm caused to the individual and her family is significant.
- Once arrested under section 405, police stations provide little or no food to persons in custody, conditions are often unhygienic and hazardous, and women are subjected to verbal, physical and sexual harassment and other degradations.
- Arrests burden families who must spend scarce resources to visit the police station, bring food and pay bail.

For these reasons, the Applicants submit that the rights violations resulting from the Respondents practice of arresting women in the absence of reasonable grounds for suspecting an offence, justify interdictory relief as well as declaratory relief.

In a constitutional democracy based on the rule of law, the arrest is a *prima facie* interference with the right to liberty and accordingly the powers of arrest must be interpreted narrowly.

Right to a Fair Trial

Section 36(4) of the Constitution provides that “whenever any person is charged with a criminal offence, he shall unless the charge is withdrawn, be entitled to a fair hearing in public within a reasonable time by a court or tribunal.”

Article 7 of the African Charter provides that every individual shall have the right to have his cause heard, which includes, the right to be presumed innocent until proven guilty by a competent court or tribunal. No one may be condemned for an act or omission which did not constitute a legally punishable offence at the time it was committed. No penalty may be inflicted for an offence for which no provision was made at the time it was committed. Punishment is personal and can be imposed only on the offender.

Section 36(6) of the 1999 Constitution recognises the right of an accused to either defend himself or be defended by a Legal Practitioner of his own choice. Also, Section 349 of the Administration of Criminal Justice Act, 2015 specifies what a court should do in respect of a defendant being charged before it as to whether such defendant desired to be represented by a legal practitioner or not.

Right to be Informed of the Charge

Section 35(3) of the Constitution provides that “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.”

Section 36(6) of the Constitution provides 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.”

The African Commission in **Institute for Human Rights and Development in Africa v Angola**, Case no. 292/04 (2008) held:

“54. Article 6 of the African Charter provides for the prohibition of arbitrary arrest. In its Resolution on the Right to Recourse Procedure and Fair Trial, the African Commission further states that ‘persons who are arrested shall be informed at the time of arrest, in a language which they understand of the reason for their arrest and shall be informed promptly of any charges against them’...

55. In the present case, there is nothing from the Respondent State to indicate that the manner of victims' arrest and subsequent expulsion was not arbitrary as alleged by the complainant. As the Complainant puts it, at no point were any of the victims shown a warrant or any other document relating to the charges under which the arrests were being carried out. The African Commission thus finds the Respondent State to have violated Article 6 of the African Charter."

The Applicants submit that the Respondents' failure to provide them with information about the reasons for their arrest, both at the point of arrest and upon arrival at the police station, violated their rights under section 35(3) and 36(6) of the Constitution.

Right to Presumption of Innocence

Section 36(5) of the Constitution provides that "every person who is charged with a criminal offence shall be presumed to be innocent until he is proved guilty."

The Malawi High Court in **Mayeso Gwanda v State** [2017] MWHC 23, held that by arresting someone when no offence has been committed, the right to be presumed innocent is infringed.

In Canada, in the seminal case of **Regina v Oakes** [1986] 19 CRR 306, at page 322, Dickinson CJC explained that the right to dignity requires a State to be able to prove the guilt of an accused:

"The presumption of innocence is a hallowed principle lying at the very heart of criminal law. Although protected expressly in section 11(d) of the Charter, the presumption of innocence is referable and integral to the general protection of life, liberty and security of the person contained in section 7 of the Charter.... The presumption of innocence protects the fundamental liberty and human dignity of any and every person accused by the State of criminal conduct. An individual charged with a criminal offence faces grave social and personal consequences, including the potential loss of physical liberty, subjection to social stigma and ostracism from the community, as well as other social, psychological and economic harms. In light of the gravity of these consequences, the presumption of innocence is crucial. It ensures that until the State proves an accused's guilt beyond all reasonable doubt he or she is innocent. This is essential in a society committed to fairness and social justice. The presumption of innocence confirms our

faith in humankind; it reflects our belief that individuals are decent and law-abiding members of the community until proven otherwise.”

The right to be presumed innocent is infringed from the stage when women are arbitrarily arrested in the absence of any criminal behaviour, to when they are detained without the option of bail, to when they are coerced to plead guilty.

Freedom from Discrimination

The right to be free from discrimination is entrenched as a constitutional value, a state principle and a fundamental right.

Section 15(2) of the Constitution provides that “discrimination on the grounds of place of origin, sex, religion, status, ethnic or linguistic association or ties shall be prohibited.”

Section 17 of the Constitution goes further to provide that:

- (1) “The State social order is founded on ideals of Freedom, Equality and Justice.
- (2) In furtherance of the social order-
 - (a) every citizen shall have equality of rights, obligations and opportunities before the law;...
- (3) The State shall direct its policy towards ensuring that-
 - (a) all citizens, without discrimination on any group whatsoever, have the opportunity for securing adequate means of livelihood as well as adequate opportunity to secure suitable employment.”

Section 42(1) of the Constitution provides that “a citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person:

- (a) be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions or political opinions are not made subject; or
- (b) be accorded either expressly by, or in the practical application of, any law in force in Nigeria or any such executive or administrative action, any privilege or advantage that is not accorded to citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions or political opinions.”

Article 2 of the African Charter provides that every individual shall be entitled to the enjoyment of their rights and freedoms without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.

Article 3 of the Charter provides further that every individual shall be equal before the law and every individual shall be entitled to equal protection of the law.

The African Commission Guidelines on the Conditions of Arrest, Police Custody and Pre-trial Detention (Luanda Guidelines) in section 2(b) provides that “arrests must not be carried out on the basis of discrimination of any kind such as on the basis of race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth, disability or any other status.”

Assuming argued that section 405(1)(d) of the Penal Code, which seeks to criminalize “[a]ny common prostitute behaving in a disorderly or indecent manner in a particular public place, or persistently importuning or soliciting persons for the purpose of prostitution”, is not a status-based offence that should accordingly be so stricken on constitutional grounds, the law as it was applied to Applicants pursuant to their arrest, was applied discriminatorily on the basis of Applicants’ sex.

See **Dorothy Chioma Njemanze and Others v Federal Republic of Nigeria** ECW/CCJ/JUD/08/17 at 37, where the ECOWAS Court held that, in the absence of evidence to suggest that the Plaintiffs were seen conducting themselves in a way suggestive of prostitution as provided in the above section, the Court declared that “[f]rom the totality of evidence offered, it seems that the whole hug of the operation was targeted against women. This systematic sting operation directed against only the female gender furnishes evidence of discrimination.”

The African Commission has further cautioned that the discretionary powers provided to police in themselves violate equality.

The African Commission, in **Zimbabwe Lawyers for Human Rights & IHRD in Africa v Zimbabwe** (2009) AHRLR 268 (ACHPR 2009) held that unfettered power in the hands of an officer is tantamount to unrestrained power based on “vague and unsubstantiated reasons of a danger to public order” and destroys the right to equality before the law and violates Article 2. The Commission also considered that Article 3 should be read to mean: “The right to equality before the law does not [solely] refer to the content of legislation,

but [also] ... to its enforcement. It means that judges and administration officials may not act arbitrarily in enforcing laws.”

Mumbi Ngugi J, in the Kenya High Court linked the practice of profiling by police to a violation of the right to equal protection before the law:

“How can [it] be permissible with respect to mere suspicion that because there is lawlessness and crimes committed in a particular locality, the police can arrest, and the court lock-up, persons on mere suspicion that they are likely to commit crimes? Does this not lead to the worst form of profiling, that those who ‘appear suspicious’ ... because of their poverty ... or their economic status, should be rounded up, taken to court with no evidence of a crime being committed, yet end up in prison?”

See **Anthony Njenga Mbuti & 5 Others v Attorney General & 3 Others** [2015] Constitutional Petition No 45 of 2014, at para 158.

Furthermore, the conditions Applicants experienced as detainees were not only prima facie human rights violations, but were made more egregious because they targeted women specifically. Many of the Applicants in sworn affidavits also admitted to being groped on the buttocks and other body parts by arresting officers, and in other encounters with officials throughout their arrest and detainment.

Freedom of Movement

Section 15(3) of the Constitution provides that “it shall be the duty of the State to (a) provide adequate facilities for and encourage free mobility of people, goods and services throughout the Federation; (b) secure full residence rights for every citizen in all parts of the Federation...”

Section 41(1) of the Constitution provides that “every citizen of Nigeria is entitled to move freely throughout Nigeria and to reside in any part thereof, and no citizen of Nigeria shall be expelled from Nigeria or refused entry thereby or exit therefrom.”

Section 45 of the Constitution provides that section 41 of the Constitution may be limited in a manner that is reasonably justifiable in a democratic society -

- (a) in the interest of defence, public safety, public order, public morality or public health; or
- (b) for the purpose of protecting the rights and freedom of other persons.

Article 12 of the African Charter provides that every individual shall have the right to freedom of movement and residence within the borders of a State provided he abides by the law. Every individual shall have the right to leave any country, including his own, and to return to his country. This right may only be subject to restrictions, provided for by law for the protection of national security, law and order, public health or morality.

The Court of Appeal in **Okafor v Lagos State Government and Another**, Appeal No. CA/L/1106/2014, held: “It is therefore as clear as crystal that the right to freedom of movement relates to all corners, nooks and crannies within Nigeria. Therefore, it was a violation of the Appellant’s right to freedom of movement when the Respondents arrested her, kept her for five hours and prevented her from proceeding with her mission.”

In terms of the Human Rights Committee’s General Comment 27, “liberty of movement is an indispensable condition for the free development of a person”.

Mass arrests using the guise of section 405 offences infringe the right to freedom of movement.

This was recognised by the Malawi High Court in **Brown v Republic MWHC** Criminal Appeal No. 24 of 1996. In that case, the accused was arrested for staying at a trading centre without work. He was convicted under a vagabond offence and sentenced to five months’ imprisonment with hard labour. Overturning the conviction, the High Court of Malawi stated:

“It is not an offence merely to be found, during the night, on or near a road, highway, premises or public place. An unemployed or homeless person may be found sleeping on the veranda of public premises or beside a road or highway. He could be found loitering or sleeping at a marketplace or in a school building, just because he is poor, unemployed and homeless. It would be wrong and unjust to accuse such a person of committing an offence under section 184(1)(c). When faced with a case, such as the present, Magistrates must bear in mind the following: (1) Section 39(1) of the Constitution gives every person the right to freedom of movement and residence within the borders of Malawi; (2) Section 30(2) of the Constitution suggests that the State has a duty to provide employment to its citizens. It would, therefore, seem to me that it is a violation of an individual’s right to freedom of movement to arrest a person merely because he is found at night on or near some premises, road, highway or public place.”

CONCLUSION

In view of the recurrence of these raids, we humbly urge the commission to make concrete and far-reaching recommendations to proffer a lasting solution to this menace.

1 RECOMMENDATION

The following are recommended.

1. The Commission to summon and compel information from officers of the AEPB task force and other officers implicated in one way or the other and recommend appropriate sanctions and punishments to them.
2. The Commission to summon and compel reporters of Independent Television (ITV) and any other media houses that covered the raids for testimonies.
3. The Commission to reprimand and recommend appropriate sanctions to any media outfits found culpable.
4. The Commission to recommend compensation in the sum of N100, 000, 000.00 (One Hundred Million Naira Only) to the individuals who have suffered gross violations of their rights.
5. The Commission to recommend the review of the Abuja Environmental Protection Board (AEPB), Act to bring same in tandem with Constitution of the Federal Republic of Nigeria, 1999 (As Amended).
6. The Commission to pay regular inspection visits to police cells and other places of detention mentioned in the cases to ascertain the conditions of such places.
7. The Commission to mandate the court(s) mentioned in this case to release copies of all the processes relating to the prosecution of these women in its custody as applied for by the presenter of this memorandum.

LIST OF EVIDENCE

1. List of Victims
2. List of Testimonies {Hard & Soft Copies (USB)}

