

EFFECTIVE MECHANISMS FOR MANAGEMENT OF PRE-TRIAL DETENTION IN SUB-SAHARAN AFRICA

BY

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Aim

To develop acceptable and sustainable strategies for managing pre-trial detention in sub-Saharan Africa.



Objectives

- Examine the reasons behind excessive use of pre-trial detention in sub-Saharan Africa.
- Identify challenges associated with pre-trial detention in sub-Saharan Africa
- Appraise the implications of arbitrary use of pre-trial detention in sub-Saharan Africa.
- Proffer possible solutions to identified challenges.

Scope

- Inferences will be drawn from four sub-Saharan African countries for comparative analysis:

- Nigeria

- The Democratic Republic of Congo (DRC)

- Kenya and;

- South Africa



Introduction

- Detention of suspects to await trial or pending the final determination of their cases is widely used in many jurisdictions across the world.
- The practice is not to vitiate the right of presumption of innocence of an accused. Hence, its application is considered legitimate only when there is a reasonable ground to suspect that the accused may interfere with the course of justice or commit another crime.
- Judicial systems in Africa however, resort to arbitrary and excessive use of pre-trial detention to address law breaking, sometimes on flimsy infractions.



Introduction Cont'd

- A third of prisoners globally are pre-trial detainees. Africa however, has about 40 percent with Central and West African sub-regions accounting for 50 percent.
- Of the world's ten prison systems with the highest proportion of pre-trial detainees, half are in Africa (Ilminska, 2016).
- The African Commission on Human and Peoples' Rights (ACHPR) observed that the justice systems in several African states are characterized by arbitrary, excessive and at times abusive recourse to police custody and pre-trial detention.



Source: <https://www.gettyimages.com>

Introduction cont'd

- UNDP (2015) noted that almost half of Africa's prison population consist of people held in pre-trial detention to await trial that may take months or years to materialize.
- No effective mechanisms to regulate the use of pre-trial detention in many jurisdictions and processes are not emplaced to ensure expeditious trial of suspects in incarceration.
- Accused persons sometimes, spend time in custody more than they would have, if found guilty of the offence for which they are charged.
- Thus, the legal principle that presumes an accused person to be deemed innocent until proven guilty is blatantly ignored.



Why suspects spend long time in prison

- There is excessive use of pre-trial detention due to:
 - Knowledge gap and inadequate equipment to carry out timely and thorough investigation and prosecution processes. This can lead to unnecessary adjournments.
- Shortage of manpower and this affects both the prosecutors and judges who are faced with multiple cases to handle at the same time.
- Political interference. Opposition to incumbent Government in some jurisdictions can be arrested and denied bail for as long as the authority deems convenient.
- Fear that a suspect released on bail may commit more heinous crimes.



Why suspects spend long time in prison cont'd

- Judicial preference for use of pre-trial detention. Judges appear to have developed a craving for the use of custodial treatment for almost every crime (Agomoh, 2022).
- Some jurisdictions have laws that favour excessive use of PTD in some cases. ‘ Habitual offenders’ who have lengthy criminal records are more likely to be refused bail even when the person has a good record of compliance with court orders (Catherine & Heard, 2019).



Why suspects spend long time in prison cont'd

- The pulse of the public especially when capital offences such as armed robbery, rape or murder is involved, the presumption of innocence goes out the window (Catherine & Heard, 2019).
- Reports have it that judges are concerned with what the public will say and would rather keep a person unnecessarily in custody for three or four days, and then grant bail, to create a perception that the courts are doing the right thing.



Why suspects spend long time in prison cont'd

- Inadequate logistics to take awaiting trial persons to court as and when due.
- The Nigerian Correctional Service in 2017 had a total inmate population of 70,212 out of which 47,044 representing 67% were Awaiting Trial Persons (ATPs) and not more than 25% of court duty vehicles were serviceable for the task.
- Therefore, many pre-trial detainees continued to miss their court appearances, unnecessarily elongating their stay in detention.



Source: NCoS 2019

Why suspects spend long time in prison cont'd

- Inadequate resources and mobilization e.g. virtual court
- Knowledge gap in the use of ICT for data management
- Poverty



Challenges/implications of PTD cont'd

Except for external jail attacks in the case of Nigeria in recent times, almost all other noticeable implications of PTD are common in sub-Saharan Africa.

i. Overcrowding.

Copious literature exist linking pre-trial detention with prison overcrowding.

This can precipitate health challenges resulting from poor ventilation, inadequate potable water, compromised feeding system, bullying, torture and other forms of human rights violations.



Source: NCoS 2019

Challenges/implications of PTD cont'd

It can breed gang formation. Pre-trial detainees lose the protective factors known to distance people from crime such as family relationship, work and home (Jacobson & Fair, 2016)

It leads to stigmatization and difficulty in securing jobs

Frustration can lead to deeper criminality when they feel they have lost all and nothing to lose anymore (Catherine & Heard, 2019)



Source: NCoS 2019

Challenges/implications of PTD cont'd

ii. Stress on personnel

It can breed unwholesome practices, bullying, torture, even psychological trauma on the personnel



- NCoS, 2016

Challenges/implications of PTD cont'd

iii. Stress on prison infrastructure

The integrity of the prison structures can be compromised, giving room for security breaches.



Challenges/implications of PTD cont'd

iv. It can make reformation and rehabilitation of inmates difficult thus, leading to recidivism



Source: NCoS 2019

Challenges/implications of PTD cont'd

iii. Security breaches

Pre-trial detention has been linked to external attacks on custodial centres.

In almost all the attacks, invaders focus on pre-trial detainees' cells to free the inmates.

Although this has not been reported in other sub-Saharan Africa but possibility cannot be overruled due to crime mobility.



Source: NCoS 2019

Some external jail attacks in Nigeria

S/N	DATE	LOCATION	NO OF ESCAPE	CASUALTIES	CAUSAL FACTOR	REMARK*
1	8/5/87	Benin Prison		24 inmates including 8 IDRs	Riot	
2	June, 2006	Onitsha	280		Riot	
3	April, 1996	Ubiaja	38		Riot	
4	June, 1996	Bauchi	35 (IDR)	1 staff	Armed Ext. Attack by hoodlums led by an escapee, Freshman	
5	August 2005	Port Harcourt	165	5 inmates	Armed External Attack to free colleagues	
6	June, 2005	Ogwashi-Uku	100		Riot	
7	Sept, 2010	Bauchi	721	5	Armed Ext. Attack by Boko Haram	
8	February, 2012	Koton-Karfe	7	1	Armed Ext. Attack by Boko Haram	
	January, 2011	Yola	Nil		Riot by Boko Haram Members	Foiled
9	February, 2011	Yola	14	6 inmates	Ext. Attack by Boko Haram members	
10	August, 2011	Port Harcourt	5		Suspected kidnapping gang	

Some external jail attacks in Nigeria cont'd

11	16/2/2012	Koton-Karfe	119	1 staff	Ext. Attack by BH	
12	February, 2012	Gombe	Nil			Foiled
13	June, 2012	Olokuta	175		Ext. Attack by hoodlums	
15	June, 202014	Ondo	17	2	Ext. Attack by hoodlums	
16	May, 2014	Bama, Borno	105	20 staff killed	Ext. Attack by Boko Haram	
17	November, 14	Koton-Karfe	144		Ext. Attack by Boko Haram	
18	November, 14	Ado-Ekiti	341	1	Ext. Attack by hoodlums	
19	March, 15	Calabar C/Centre	Nil	8 inmates	Riot	Foiled
19	June, 2016	Kuje	2 (ATP)		Negligence	
20	July, 2016	Koton-Karfe	13		Negligence	

Some external jail attacks in Nigeria cont'd

21	09/08/2016	Nsukka, Enugu	15		Negligence	
22	August, 2016	Abakaliki	Nil	6	Riot	Jailbreak foiled
23 →	June, 2016	Minna	115		Ext. Attack by hoodlums	
24	October, 2017	Enugu	2		Negligence	
25	Dec., 2017	Ikot Ekpene	36	4	Negligence	
26 →	June 2018	Minna	180	2	Ext. Attack by hoodlums	
27 →	October, 2020	Edo	1,993		Mob attack	Endsars riot
28 →	October, 20	Okitipupa, Ondo	58		Mob attack	Endsars riot
29	April, 2020	Sapele, Delta	2	6 shots		
30	October, 2020	Ikoyi	Foiled		Fire	Endsars riot
31 →	April, 2021	Owerri	1,844	4	Ext. Attack by ESN	21

Some external jail attacks in Nigeria cont'd

Sept., 2021	Kabba	114	2 officers	Armed external attack
October, 2021	Abolongo	837	1 security officer	Armed external attack
November, 2021	Jos	286	11 inmates, 1 staff	Armed external attack
July, 2022	Kuje	860	1 inmate, 1 security officer	Armed external attack

Comparative analysis

Country	Percentage PTD	Some key management strategies
Nigeria	70%	<ul style="list-style-type: none">• Virtual courts, case tracking, jail delivery, legislative intervention, legal aid and pro bono services, infrastructural intervention, encouraging Alternative Dispute Resolution mechanisms, Presidential Committee on Prison Reforms and decongestion
Kenya	42.7%	<ul style="list-style-type: none">• Decongestion programme by the Government, virtual court, Legal aid services, infrastructural intervention, encouraging Alternative Dispute Resolution Mechanisms
DRC	75%	<ul style="list-style-type: none">• Collaboration between the Ministry of Justice and Human Rights groups, inauguration of a neutral and independent committee with adequate funding to supervise human rights compliance, carrying out public advocacy
South Africa	32.9%	<ul style="list-style-type: none">• Collaboration between all stakeholders to develop a white paper to create a remand detention branch that will promote the interest of pre-trial detainees.

Comparative analysis

Comparatively, Nigeria and Kenya appear to have common strategies but the responses as shown in the percentage of awaiting trial markedly differ. The reason for this obviously requires further interrogation. The DRC may need to incorporate a good dose of legal aid and introduce virtual court system.

The four countries are however observed to have some common features, which are as follows:

- i. Overcrowding is associated with PTD and human rights violations as reported in all scenarios.
- ii. There is knowledge gap in investigation and prosecution leading to delay in trial process.
- iii. They all suffer poor funding'
- iv. There are allegations of corruption and indiscriminate arrests
- v. Logistics challenge is also reported in all scenarios

Conclusion

- While pre-trial detention remains a lawful means of temporarily restraining a suspect where there are reasonable grounds to do so, its application in Africa sub region is observed to be arbitrary, excessive and sometimes, abusive.
- This has precipitated human rights violations, degrading treatments, security risks, prison overcrowding, stress on prison infrastructure and so on.
- These challenges appear to be a common feature in most sub-Saharan Africa.
- It is of serious concern that these countries are signatories to international conventions and protocols, including local laws to address the problems of pre-trial detention, yet they remain largely unabated

Conclusion cont'd

- Although, some countries within sub-Saharan Africa have succeeded in keeping the number of awaiting trial persons low, incidence of human rights abuses is still prevalent.
- It therefore requires a coordinated and integrated strategy in identifying and cross-matching peculiar challenges and solutions from different climes to develop a workable template for better management of pre-trial detention in sub-Saharan Africa.

Recommendations

- i. The media and civil society groups should promote public awareness on the problems of pretrial detention in sub-Saharan Africa, including collecting and publishing statistics as well as the consequences of abusive use.
- ii. There should be a centralized administrative structure to whom all agencies in the criminal justice system report. This will improve coordination among actors and speedy resolution of limiting factors.
- iii. There is a dire need to advocate the use of pre-trial detention only in exceptional cases and as a last resort in sub-Saharan Africa.
- iv. There should be increased use of alternative dispute resolution mechanisms in sub-Saharan Africa.

Recommendations cont'd

- v. There is need for legislative intervention to make bail conditions less stringent so as to minimize prolonged detention.
- vi. Capacity building in investigation and prosecution procedures, including equipment should be supported in countries within the Sub-Saharan Africa.
- vii. Practices such as 'holden charge' in some jurisdictions should be abolished.
- viii. There is need to strengthen prison systems in Africa through the allocation of more resources.
- ix. Personnel in the criminal justice system require capacity building in risk and needs assessment of pre-trial detainees to enhance standard management.

Recommendations

- ix. Advocacy for pro bono services and legal aid by private legal counsels for indigent inmates should be incentivized in sub-Saharan Africa through the award of Regional honours and privileges.
- x. There should be regular visits and jail delivery exercises. It is also important that the media and civil society groups regularly monitor trial procedures to improve monitoring and accountability of actors in the system.
- xi. Access to justice should be encouraged through the establishment of virtual courts. It is important that resources are galvanized to assist countries that have far-flung detention centres from courts, which may create acute problem of logistics. Also, a platform for tracking cases should be made available.

Thank you