

## **AWAITING TRIAL AMONG SUSPECTED CRIMINAL PERSONS AND LACK OF LEGAL REPRESENTATION IN CROSS RIVER STATE- NIGERIA**

**Dr. Emeka J.O<sup>1</sup>, Dr. Ayuk A. Achu<sup>1</sup>, Dr. Udiba U. Dien<sup>2</sup> and Mr. Francis Uyang<sup>1</sup>**

<sup>1</sup>Department of Sociology, University of Calabar

<sup>2</sup>Governor's Office, Calabar, Cross River State

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**ABSTRACT:** *The work examined the relationship found to exist between awaiting trial among suspected infractors of the law and legal representation conundrum for indigent accused persons in Cross River State- Nigeria. In order to achieve this purpose, a null hypothesis was formulated to guide the research. To test the hypothesis, a questionnaire entitled "Awaiting Trial Among suspected persons (ATAP) and Lack of Legal Representation (LLR) scale. The questionnaire was administered on four hundred and ten (410) awaiting trial respondents in three (3) purposively selected prisons (OGOJA, AFOKANG AND IKOM PRISONS) in the state. The research design was survey. The split-half reliability method was adopted in determining the reliability estimate of the instrument. The hypothesis was tested at .05 level of significance while Pearson product moment correlation technique was the statistical tool used for analysis. Findings were that significant relationship exists between awaiting trial among suspected criminal prison and legal representation for the indigent accused persons in prison custody. Based on these findings, the researchers recommended that the indigent accused persons awaiting trial should be provided with lawyers to represent them.*

**KEYWORDS:** Awaiting Trial, Suspected Criminal Persons, Legal Representation, Cross River State, Nigeria

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### **INTRODUCTION**

The phenomenon of awaiting trial among suspected or accused persons in custody (unlawful) has attracted enormous debate among criminologists, social workers and prison experts. Nigeria, in all her 36 states and the Federal Capital Territory (Abuja) and with 776 Local Government Areas, each with prison facilities is confronted with large scale congestion and awaiting trial persons make up the highest number in prison custody. Awaiting trial detention sometimes last for years with majority of the accused staying beyond the period prescribed by law for the alleged offence. When greater percentage of accused persons are in custody awaiting trial is a pointer to the fact that, the criminal justice administration is arguably constrained and one of such constraints among which include; the inability of the awaiting trial detainees to access the services of a legal representative (lawyer) in defend and dilapidated accommodation which records has it that most were built within 70 to 80 years ago and lack basic functioning facilities. This is the gap this research endeavour is poised to fill.

#### **Awaiting trial of accused persons and lack of legal representation (overview)**

While the Nigerian constitution mandates the Ministry of Justice to provide for indigent accused persons with defend counsel in any trial, the criminal justice system has reneged in this constitutional provision. This is evident in the number of awaiting trial persons in prisons across the State whose trial delay is informed by their inability to access the services of legal practitioners. Collaborating this assertion Anderson (2006), avers that these categories of

detainees lacks the financial standing to procure the legal services of lawyers who could push for their speedy trial. Similarly, Bateman (2003), adduced that accused persons in developing countries suffers the snag of legal service accessibility. For instance one of the one hundred and eighty-one thousand inmates in custody in South Africa prisons, fifty-three thousand were in pre-trial detention of which twenty thousand were due to lack of access to the services of legal practitioners. In a related study, Ajomo (1991), found that over 64 percent of awaiting trial persons were yet to be charged because they are unable to hire the services of lawyers. Hence, in his submission absence of legal representation for the indigent accused persons delays their trial.

Arguably they exist a positive link between inability of indigent accused persons to access legal practitioners and prolonged pre-trial detention. Put differently, lack of legal representation for the accused persons delays timely pre-trial... as many pre-trial detainees' trial were pending in several criminal courts due to the poor financial status of the detainees which disables them from paying for legal services (Cape, 2009). Also, Kituo (2010), in a study of prison in Kenya found a significant relationship between absence of legal representation and pre-trial detention. The study revealed that majority of the pre-trial persons in custody were poor and could not afford the services of lawyers... that 49 percent of pre-trial detainees were indigent who lacked the financial wherewithal to engaged legal personnel which results in their continued detention.

In a related development Osinbajo (2006), asserted that the major reason for prolonged pre-trial detention in many third world countries is the absence of lawyers to represent majority of the accused persons in detention; though several legal practitioners do render free legal services (probono) to indigent accused persons, but insignificant to assuaged for the backlog; the number of persons awaiting trial was still very high. He observed that while the legal aid scheme was set up to assist poor persons who could not afford to hire lawyers to defend them, the services of the scheme tatamount to nothing considering the number of lawyers currently in the scheme and the percentage of indigent in detention who require their services. Human Rights Watch (2009), study of pre-trial detainees in Zambia, found that accused persons in pre-trial detention stayed for over four years after arrest before first appearance in a trial court. The findings revealed that absence of legal practitioners to defend accused persons in court accounted for the prolonged pre-trial detention. According to the study, 88 percent of adult males and 75 percent of adult females interviewed have been in prolonged pre-trial detention for lack of legal assistance.

Awaiting trial is traceable to inability of poor accused persons to engage the services of legal personnel to represent them (Rotimi, 1992). Majority of awaiting trial persons were driven into criminality because of their poor economic background. Given this circumstance, it would be practically impossible for them to procure the service of an Attorney for their representation in court. Therefore, since the accused was not likely to receive fair hearing during trial without a legal representation, and the law prevents trial of any kind without the accused being represented by a lawyer, they are left in detention until they can provide lawyers or alternatively, government provides them with legal personnel (Rotimi, 1992 & Ayuk, 2015).

Alemika *et al* (2005), adds that several inmates in pre-trial detention are those who could not pay for the attorney's service(s) vis-à-vis defend in court during trial. In their study it was found out that over 40 percent of awaiting trial persons are very poor to afford lawyers' fees, stressing that the inability of the indigent accused persons to engage the services of lawyers for themselves is a prime reason for the huge number of persons awaiting trial detainees in prisons, which of course account for prolonged pre-trial detention.

Arguably, the hallmark of justice is its accessibility and disposition to the citizens timeously (Ayuk, 2015). Elucidating more on the aptness of justice being served Ogwuche (2012), avers that an integral part of any criminal justice administration is access which among other things includes; legal representation and speedy trial. He stressed that over 48 percent of persons in pre-trial detention have no lawyers to represent them, and this is informed by the inability of detained suspected persons to pay for lawyers services which fundamentally is a major factor for their continued detention in prison.

### **Theoretical background**

In explaining the relationship between the criminal justice system and awaiting trial among suspected persons in detention and lack of legal representation, the structural-functionalist theoretical template gives an insightful trajectory to awaiting trial conundrum. Proponented by Emile Durkheim, Talcott Parson, Herbert Spencer. Assumptively, functionalism views society as a composite of many parts which independently depends largely on others for survival and the contributions each unit makes, sustains the survival of the whole or the system/society. That is, it focuses on positive evaluation of parts of the system. According to Knapp (1994), for the society or system to survive, individuals or organizations must render useful services or functions that would guarantee that survival.

Similarly, Ekong (2005), espoused that each system is assessed by the contributions its unit or part make to the system as a whole. Therefore, for any system to survive, it must put in place some mechanisms to prevent any action that could distort or infract the stability of the system. Impliedly, in ensuring that the stability of the system is not distorted and equilibrium maintained, the criminal justice system expeditiously and procedurally through its agencies arrests, detain, try and upon prove of reasonable doubt... punish offenders in tandem with the provision and specification of the law. This function rids off criminals from the society who otherwise would directly or indirectly be problem that could have unsettled the equilibrium. Emile Durkheim, a structural functionalist, adduced that there was the possibility that the system might not function smoothly if among individuals who are saddled with some responsibility(ies) reneges and refuse to be guided by the organization's norms and values (Hararambos *et al.*, 2000). Parsons (1951) also shared Durkheim's view and observed that, in the pursuit of goal achievement, if certain institutions abandon or fail to perform its institutionalized functions, problems could set it. In his submission, Parsons posits that only a commitment to common values ensures system's stability. Though structural-functionalists, stressed the possibility of instability in the system but believed that it could be kept within manageable limit.

Although the structural-functionalist perspective has some limitations as indicated by Lockwood (1970); its implication for the study is very important because it emphasizes the roles of units in a system for the achievement of overall organizationally goals and concomitantly system stability...and the consequences of failure to perform those institutionalized roles which often distorts the stability of the system. Hence, the failure of the Ministry of Justice, an indispensable arm of the criminal justice administration to provide the indigent awaiting trial of suspected person with attorneys for legal representation in court and to enhance their speedy trial, creates innumerable problem of awaiting trial and continued unabated, which resultant effect is congestion in prison.

**Hypothesis:** There is no significant relationship between the awaiting trial and lack of legal representation for indigent accused persons.

## DESIGN AND METHODOLOGY

The design adopted for the study was the survey research design. The study was conducted in Cross River State, Nigeria. The sampled population was made up of 908 awaiting trial persons in prison purposively selected in three prisons in the state. The three prisons were: Afokang(748), Ikom(95) and Ogoja prisons(65). From the three prisons, the following samples were drawn: Afokang prison 334 inmates representing 45 percent, Ikom prison 43 inmates representing 45 percent and Ogoja prison 30 inmates representing 45 percent. The instrument used for data collection was the questionnaire. For reliability of the instrument, it had 93 percent suitability. To establish the reliability of the instrument, the split-half reliability method was used. The reliability index was 0.95.

### Data analysis and discussion

The method adopted for data analysis was the Pearson product moment correlation analysis. The hypothesis was tested at .05 level of significance and 408 degree of freedom.

**TABLE 1: Result of Pearson coefficient analysis of the relationship between lack of legal representation and awaiting trial of suspected persons in prison (N = 410)**

Variables	$\bar{X}$	SD	$\sum X$	$\sum X^2$	$\sum Y$	$\sum Y^2$	$\sum xy$	$r_{xy}$
Legal representation	25.70	2.15	12644	327200				
Awaiting trial	18.90	1.93	9297	177511			238940	0.721*

\*P < .05, df = 408, Critical r = 0.088

From the Table, the result shows that calculated r-value of 0.721 is greater than the critical r-value of 0.088 at .05 level of significance with 408 degree of freedom. Therefore, the null hypothesis that stated that there is no significant relationship between awaiting trial of suspected persons and lack of legal representation was rejected, implying that a significant relationship exist between lack of legal representation and awaiting trial of suspected person in prison.

### Discussion of findings

The finding is congruent with the study of Ajomo (1991). The study revealed that majority of awaiting trial persons who are suspects were still not charged to court because they were unable to hire lawyers to defend them. Principally lack of money essentially was the major factor delaying the commencement of their trial. Similarly, the findings agrees with Ogwuche (2012), who undoubtedly enunciates that over 48 percent of inmates in pre-trial detention in various prisons do not have access to lawyer to represent them and identified the accused persons' inability to pay for the services of lawyers as a major reason for their prolonged detention in prison. In an under-developed economy where majority of the people are poor and where some

are driven into criminality as a result of harsh economic environment, it becomes difficult for those caught in crime to afford the expenses of paying personnel to represent them in court during trial.

The result of this study is consistent with Cape (2009), postulation, who posited that lack of legal representation for the indigent accused persons delays timely trial. Several pre-trial detainees' trial are pending in several courts due to their inability to procure the services of legal practitioners for defend when their case goes on trial. The findings also confirms Kituo (2010) and Rotimi(1992), prison study in Kenya. Kituo's study found that 49 percent of pre-trial detainees were poor and lacked the financial capability to engage legal personnel; they are often left in detention indefinitely until they can access legal aid. The finding of this study corroborates Alemika *et al.* (2005) study that revealed that awaiting trial persons in custody are those who could not pay for legal practitioners. The study found that over 40 percent of awaiting trial are the poor and were roundly responsible for prison congestion.

Equally Osinbajo (2006) view gave this study the verve of knowledge for relevance... that prolonged pre-trial detention could be linked with the accused persons' poor financial status. According to him, though few lawyers do render free legal services to the accused inmates in the form of *probono* services, the number of awaiting trial persons or inmates is still high and attributed this to the high cost of paying a lawyer to defend the accused.

## CONCLUSION AND RECOMMENDATIONS

From the finding of the study, it was concluded that awaiting trial among suspected persons in custody is significantly related to lack of legal representation for the indigent accused persons. Based on this conclusion, it was recommended that government through the Ministry of Justice should provide the indigent accused persons who are unable to hire the services of legal practitioners with lawyers to represent them.

This study will be beneficial to prison administrators because the reduction in the number of awaiting trial accused persons as a result of the provision of legal representation to the indigent awaiting trial inmates will lead to the decongestion of prisons and the huge sum of money being spent on feeding of such persons would be channeled to other productive sectors of the economy.

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