

PRISONERS' RIGHTS: SETTING A GLOBAL STANDARD FOR NIGERIAN INMATES*

Abstract

Imprisonment is a form of sentence handed down from colonial rule, which has clearly put an end to the primitive type of punishment like stoning, impaling, hanging, ostracism, banishment, selling offenders into slavery, etc. It involves the refutation of liberty where a prisoner has to be confined to prison custody. Nevertheless, imprisonment is a punishment and not an aid to punishment. A prisoner in prison detention does not totally forfeit his natural rights due him as human. In Nigeria, prisoners are treated wrongly. The state, reformatory officials and society see prisoners as a burden and no longer human beings owing to their criminal transgression. The Nigerian reformatory environment is unhealthy, congested and lack correctional infrastructure owing to neglect by the Government and corruption. In spite of the fact that national and international laws recognized their original rights first as human beings and as Nigerian citizens, inmates continue to suffer. This article tried to x-ray these essential human rights as put forward by international law and the truth that such rights are not observed in the Nigerian prison system even though Nigeria has ratified these international norms as a member state. It concluded that the condition of Nigerian prisoners is far from the globally acceptable standard. To this light, it made certain recommendations, which includes that a Commission should be formed to be solely responsible for the Nigerian reformatory services, extant laws should be amended to reflect the true aims of imprisonment, the scuffle against corruption should be intensified in Nigeria, etc. These measures if observed will improve the lot of Nigerian inmates to meet up the international most excellent practices.

Keywords: Prisoners, prisons, human rights, liberty, global standard, inmates, prisoners' rights, Nigerian prison services

1. Introduction

According to Black's Law Dictionary,¹ a prisoner is an individual who is dispossessed of his freedom against his will, kept in internment or detention in a jail for the conviction of a crime. A prison is a public structure or other arrangement for the incarceration of persons, whether as a penalty imposed by law or a bid to foster a course of the administration of justice.² Walsh and Poole³ defined imprisonment as a judicial sentence of a convicted offender of full age involving confinement in prison, either for life or for a specified period. Imprisonment replaced the death sentence for most crimes in the eighteenth century in Europe.⁴ Imprisonment is a type of punishment used on persons who committed a crime and have been tried and found guilty. A convict is kept in prison by force of law and deprived of certain liberties. Liberty is defined as ...*exemption from extraneous control, independent from all restraints, apart from that which is rightly imposed through law, under circumstances vital to the equal satisfaction of the similar privileges with others; liberty regulated by law or prohibition imposed in the interest of the community.*⁵ The word liberty includes all private privileges and satisfaction. It includes freedom from arrest or restraint, freedom to own, control and enjoy property, freedom to practise lawful trade or business, engage in contracts, and enjoy family life etc. In an ideal world, only persons tried and found guilty of a crime ought to be confined to prison custody. However, in reality, not only folks convicted of one crime or another, go to prison. Some persons end up *awaiting trial* in prison for a long time while still presumed innocent under the law.⁶ The

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¹Garner, *Black's Law Dictionary* at pg. 1232.

² Ibid.

³ D. Walsh and A. Poole (1999). *A Dictionary of Criminology*. London: Routledge and Kegan Paul pg. 10.

⁴ Ibid.

⁵ Ibid, at pg 11

⁶Section 33 of the 1999 Constitution of the Federal Republic of Nigeria, which says that an accused is presumed innocent until otherwise proven.

awaiting trial prisoners, though presumed innocent, are denied bail owing to the gravity of their offence, the likelihood of their escaping justice by *jumping bail* if granted bail, are plausible to hamper witnesses, may interfere with the course of justice or may commit another or related offence in the route of trial. Among this group of awaiting trial, are also cases of individuals who were granted bail but could not meet the bail conditions required by the court. There are also the *political prisoners*. Not all these group of prisoners may in actuality end up as convicts. Some may not actually be liable at the end of trail,⁷ some may get judicial pardon especially where they have outstayed the particular term for that offence, and some may get a state pardon thereafter. Examples, of those who have been granted a state pardon in Nigeria include, *Olusegun Obasanjo, Muhammadu Buhari, Mohammed Marwa, Dieprie Alamiesigha* etc. There are many awaiting trial cases, political prisoners and persons who could not meet the bail conditions. In addition, there are a few who have completed their jail term but erroneously, there is nobody to bring up their case for discharge, probably for the reason that they could not meet up the services of a lawyer and may perhaps not also secure some *bro bono* legal aid services. These groups put together constitute the majority in Nigerian prisons. Only below half the population in Nigerian prisons are actually convicts serving normal prison terms. Imprisonment may be by a fair legal process and in the interest of justice. It needs not be retributive or deterrent alone but ought to be a restorative, rehabilitative and correctional measure to reconcile convicts back to the public as useful citizens. The prison ought to be a place of reforming the character and personality of an offender by a well-designed treatment,⁸ with the ultimate goal of returning the offender back to humanity as a better-reformed and acceptable citizen.⁹ His is the main responsibility placed on the prisons in Nigeria. Their primary obligation is to return and rehabilitate inmates through rehabilitative programmes. On the contrary, the Nigerian reformatory services are far from being a centre of psychotherapy and reformation it is meant to be.¹⁰ The Nigerian penal institution is rather a confused establishment which is believed to have completely lost track of its aim. Contrary to whatever the law says, the Nigerian jail is a punitive rather than reformatory centre.¹¹ Convicts come out of prison hardened rather than rehabilitated. This made Ameh¹² to reiterate that the aims of imprisonment in Nigeria as put out by the white man has been defeated.

2. Aims of Imprisonment

The aim of imprisonment in the Nigerian Justice System is as provided by decree No. 9 of 1972, which placed other duties and obligations on the Nigerian Prison System to *teach* and *train* prisoners to become law-abiding and useful citizens after their incarceration term. The Nigerian prison, as noted by Igbo¹³ is also expected, to ensure the safe custody, rehabilitation and restoration of prisoners. It is expected to achieve this through well-designed and articulated rehabilitative and reformatory programmes aimed at instilling discipline, dignity in labour, as well as respect for law and order. Notwithstanding the deterrent and retributive aim of imprisonment, it ought to be a therapy for reformation and healing. All of which are aimed at making the offender a better and more useful affiliate of society on release. The main idea is for inmates to be corrected, reformed and reclaimed not retributive merely to pay them back for their wrongful conduct. In reality, the aim of imprisonment in Nigeria has been defeated since inmates come out of incarceration worse than they went in, owing to the inhuman state of prisons. They come out hardened and unreformed, frustrated and humiliated and walk straight back to crime as a way to further oust their fury on the public. This has resulted to the recidivism noticed among inmates.

⁷ Although, this is rare because of its human rights implications against the state.

⁸ C.U. Ugwuoke and A.S. Ojonugwa, 'Rehabilitation of Convicts in Nigerian Prisons: A Study of Federal Prisons in Kogi State', *Research on Humanities and Social Sciences*, Vol. 4, No. 26, 2014.

⁹ Decree No. 9 of 1972.

¹⁰ C.U. Ugwuoke (2010) *Criminology: Explaining Crime in the Nigerian Context*. Great AP Express Publishers LED. Nsukka.

¹¹ S.O. Ameh (2010), *Prison and Rehabilitation of Convicts in Nigeria: A Study of Federal Prisons in Kogi State*. Unpublished M.Sc. Thesis, University of Nigeria, Nsukka.

¹² *ibid.*

¹³ E.U. Igbo, (2007). *Introduction to Criminology*. Nsukka: University of Nigeria Press Ltd.

A prison is a place of custody for criminal offenders.¹⁴ It is a structure sited in an establishment used mainly to keep offenders in detention. The Nigerian Prison System started in 1862 and modelled after the British tradition. The first prison in Nigeria was constructed in Lagos in 1872.¹⁵ The Prison Ordinance came into being through the Supreme Court Ordinance of 1876 and commenced its function the same year. Initially, the Nigerian Prison System was controlled by the Police Force.¹⁶ This lasted between 1876 and 1920.¹⁷ Later, Decree No.9 of 1972 administered the Nigerian Prison System and presently, it is being governed by the Prison Act Cap. P29, Laws of the Federation 2004.¹⁸ The Nigerian Prison System is a very important department of the Federal Ministry of Interior and is controlled by the Comptroller-General of Prisons. A Board made up of the Immigrations, Customs and Prisons Services Board (CIPB), which is located at the Federal Capital Territory, Abuja, administers the Prison System. This Board was established by the CIPB Decree No.14 of 1986 which is currently under the Ministry of Internal Affairs. The prison is not only a place of internment for criminal offenders, but also accommodates civil prisoners and debtors, state detainees and prisoners-of-war.

3. Challenges facing the Nigerian Prison System

The challenges opposing the smooth running of the Nigerian Prison System started almost from its inception. Chief among these is prison congestion,¹⁹ poor funding, lack of correctional and rehabilitative infrastructure, archaic structures due to absence of maintenance culture, defects in extant prison laws,²⁰ corruption, and fewer prison structure in a country with an hefty population and in the face of rising rate of crime owing to appalling governance, corruption and modernization. Prison congestion and the dysfunctional and obsolete prison laws that could not adequately represent the aims of imprisonment in Nigeria have continued since independence. In addition, the difficulty of funding has undesirable effects on the condition of inmates and the state of prison structures. Funding has been on the decline while population of inmates has been rising for decades. This has generally affected the feeding and living standard in all the prisons. Even the available funds from the Federal Government go into the pockets of some top prison officials.²¹ The low ranking prison staff is not motivated in the discharge of their duties owing to lack of inspiration and incentive. They witness the money allocated being usurped by the top officers with none coming to them. This has a demoralising effect on the staff as they seek their own way to engage in corrupt practices by way of extorting money from inmates through their visiting relatives and friends, etc. Both government and prison employees see inmates as a burden. The over-crowded and dilapidated structures encourage poor hygiene even in the female wing of the prisons. This poses enormous health risks to inmates, including the under aged children of female inmates. Some of these challenges are discussed further below:

Feeding of Inmates

Nigerian inmates are poorly fed both in quality and in quantity without regard to their health. Their food is mainly unbalanced combination of foods like boiled cassava and palm oil, parboiled beans and *garri*, soaked *garri* and sugar, tasteless and watery soups devoid of meat or fish, etc. The idea is that if prisoners are malnourished, they will be too weak to carry out a jailbreak, fight against one another or against the prison

¹⁴ J.Onyekachi, (2016) 'Problems and Prospects of Administration of Nigerian Prison: Need for Proper Rehabilitation of the Inmates in Nigeria Prisons'. *Tourism Hospital* 5: 228. Doi: 10. 4172/2167-0269.1000228 at pg. 1.

¹⁵ F.K. Ekechi, (1983) 'Portrait of a Colonizer: HM Douglas in Colonial Nigeria, 1897-1920'. *African Studies Review* 26:25-50.

¹⁶ J.U. Asiegbu (1984) *Nigeria and its British Invaders, 1851-1920: A Thematic Documentary History*. New York: Nok Publishers International, C1984, N.Y.

¹⁷MC. Ogwezy. Et al (2016) 'Restorative Justice and Non-Custodial Measures: Panacea to Recidivism and Prison Congestion in Nigeria' *Nnamdi Azikiwe University Journal of International Law and Jurisprudence* 7: 69-78.

¹⁸ Recently, the Comptroller-General of Nigerian Prisons Services, Mr. Ja'faru Ahmed, seized the occasion of the 'Retreat for the Review of Amendment to Nigeria Prison Act', held in Sheraton Hotel, Lagos State in June, 2018, to call for necessary amendments to this Act to improve the operations of the Nigerian Prison Services.

¹⁹ JW Nickel (1987) *Making Sense of Human Rights: Philosophical Reflections on the Universal Declaration of Human Rights*. University of California Press, California, US.

²⁰ T Osondi and WE Obiozor (2008) 'Language and Graffiti of Exceptional Individuals: Pedagogical Strategies in West Africa'. *African Journal of Criminology and Justice Studies*.

²¹'Alleged Corruption: Officials want Probe of Nigerian Prisons Boss...' <http://www.premiumtimes.ng.com> accessed 3/4/18.

staff. A survey carried out by the Nigerian Law Reform Commission²² showed that prisoners eat poor quality foods, meals are irregular and are of very small quantity. According to Tanimu, the annual feeding rate of a prisoner in Nigeria is ₦10,800²³ and applied over 75,000 inmates, this figure is daunting indeed.²⁴

Poor Hygienic Status

The sanitary and health conditions of the prisons are another serious concern. According to Araromi,²⁵ in a situation where 100 persons occupy a room meant for four, oxygen will be on short supply and there will be more carbon dioxide in the air. Microbes thrive better in warm clammy conditions and this is a likely cause of diseases. Inmates have to sleep on damaged cemented floors owing to lack of beddings. Hygiene is lacking, as there are no detergents, soaps, disinfectants, toilet papers, etc. even for female inmates. Both staff and inmates are endangered by the unhealthy conditions of the prison.

Prison Congestion

Prison congestion is owing to many factors. The first is that the crime rate is very high in Nigeria as a result of corruption and poor governance among politicians. More so, more youths are frustrated as a consequence of the high level of unemployment in the country. The structures are not expanding to accommodate the swarming multitude being remanded in custody. The justice system is clogged with delay in the dispensation of justice by the Nigerian courts. Judicial officers seem to overuse imprisonment as a variety of punishment. The insane are kept in the same prison even though they often pose serious danger to other people. Besides, there is no proper ventilation for these inmates. This is great injustice to inmates awaiting trial and other categories of inmates who are yet to be officially tried and properly convicted for a crime and who under the Constitution are still presumed innocent. A facility originally meant for 26,000 inmates now accommodates 41,000.²⁶ The problem is that the present prison facilities in Nigeria were built during the British Colonial era. They were meant for just a handful of inmates as, then, population and crime had not grown to what it is presently. Most of the prison structures are archaic and do not fit modern-day expectations. For example, the *Shagamu* Prison, originally built for 49 inmates, carried 117 as at January 1983. Presently, the 48 prisons in Nigeria totally accommodate 70,000 more inmates than their intended capacity. Onyekachi²⁷ opined that about half of this number is serving their prison terms for the reason of their criminal conviction by the courts, less than half of this number is awaiting trial and a small percentage of the rest are debtors detained for civil offences. Another small group are the insane inmates who were committed for safe custody and who may be a threat to the entire population, including prison staff.²⁸ Ojo,²⁹ stated that some inmates have been in anticipation of trial for more than the period it would have taken them to serve their terms if convicted of their offences. In addition, as stated previously in this discuss, the Nigerian judiciary tend to favour imprisonment more than others types of sentence. There are inmates whose offences are too trivial to take them to prison. Ideally, such offences like road traffic offences, minor thefts, contempt etc. would have been better handled by the employ of non-custodial measures like probation, community service, suspended sentence, etc. Nevertheless, these ones add to the figure of inmates, thereby overloading the prison.

²²National Human Rights Commission Nigeria Report of Prison Audit, 2009, p. 129. Not much has really changed since the 2012 regarding Prison Audit Report of the Commission.

²³ B Tanimu (2010) 'Nigeria Convicts and Prison Rehabilitation Ideals'. *Journal of Sustainable Development in Africa* 12: 140-152.

²⁴ FO Fatoye, et al (2006) 'Psychological Characteristics as Correlates of Emotional Burden in Incarcerated Offenders in Nigeria'. *East African Medical Journal* 83:545-552.

²⁵ EE Alemika (1993) Trends and Conditions of Imprisonment in Nigeria. *International Journal of Offender Therapy and Comparative Criminology* 37:147-162.

²⁶ C Haney and Z Philip (1998) 'The Past and Future of US Prison Policy: Twenty-five years after the Stanford Prison Experience'. *American Psychologist* 53: 709-727.

²⁷J Onyekachi, (2016) 'Problems and Prospects' Curran (2000) Bluehaus in the big house: The rise in the elderly inmate population, its effect on the overcrowding dilemma and solutions to correct it'. *New England Journal on Criminal and civil confinement*.

²⁸ MA Etudaiye (2006) 'Reforming the Punitive Policies of Nigeria's Crime Control regime as a source of National growth'. *The University of Ilorin Law Journal*.

²⁹ MOD Ojo & RA Okunola (2014) 'the Plights of the Aged Inmates in Nigerian Prison System: A Survey of Two Prisons in Ogun State, Nigeria'. *Bangladesh Sociological Society* 11:54-73.

Lack of financial Support

Nigerian prisons are over-looked by the Federal administration. This lack of financial support has been the theme of prison reforms for decades and successive governments seem not to pay attention to this. Funding largely has prohibited the upgrading of Nigerian prisons to international most excellent standard. A current review by the UNODC³⁰ has indicated that the inadequate funding has affected human resource development in the Nigerian prisons. A better management capacity will encourage an enabling milieu for better treatment of inmates, which, in turn, will meet the United Nations standards.³¹

Poor prison facilities

The numeral of inmates is increasing daily without an equivalent increase in funding and upgrading of the physical structures and facilities.³² The only prison that has been renovated recently is the Lagos Prisons.³³ The structures put in place from the colonial era have continued to be the only significant facilities. Some of the prison lands were further development would have been carried out, are serving as farm lands³⁴ for prison staff who engage the prisoners to work on their personal farms without any form of remuneration, thereby, using inmates as beasts of burden and this no doubt adds to their frustration of these inmates. Such labour ought to be remunerated to assist inmates buy some personal needs like sanitary items, food, etc. Many would be happy to give some money to their visiting family members, no matter how small. This will encourage agricultural development in the country and a sense of dignity in labour in the inmates.

Price of Imprisonment in Nigeria

Imprisonment is a legacy the white man introduced as a form of punishment. If well managed with a human rights focus, it is superior to the crude punishments of the olden times which saw offenders beheaded, stoned, burnt alive, exiled, flogged, publicly disgraced, fined, impale, maimed or ostracized depending on the particular offence committed. Nonetheless, it is a huge venture to embark on in terms of cost.³⁵ Part of the recommendations for prison reforms in 1985 was that the high cost of maintaining the prisons in Nigeria was enormous burden on the society.³⁶ This is because, besides the huge cost on the federal government through the taxpayers' money, prisoners are subjected to dehumanizing and unfair conditions in prison. They are forced to separate from family members, lose their source of livelihood, etc. It was advised that imprisonment is exposing human beings to emotional, financial, psychological and social deprivations. Imprisonment is dehumanizing for a human being. It is worse if besides the inconveniences of imprisonment, basic rights are also denied inmates. This will amount to a greater injustice.

Extant Laws on Prisons

The extant laws on the Nigerian Prison Service need to be reviewed to cover modern day challenges regarding inmates, and become more detailed and proactive to produce better result. This is necessary for prison reforms in Nigeria because the Act ought to be the primary bases of reformation. It should be able to take care problems of overload of the existing prison structures and the operation of the criminal justice system, as regards to the capacity each prison ought not to exceed, how offenders are to be treated, etc. In fact, the extant laws should be made to take care of all the deficiencies in the Prison Services. The full objectives of imprisonment need to be reflected in the amendment. The Prison Act is out-dated and does not state clearly the aims of imprisonment. It provides a bad structure for administration of prisons; it promotes retributive characteristic of imprisonment and neglects the wants of prisoners, which of a truth should be reformation, rehabilitation, and re-integration of prisoners back to society.

³⁰O Olugasa (2013) ICT 4 'Criminal Justice System in Nigeria and Ethical Considerations'. *Social Science Research Network*.

³¹A Fasammi (2015) 'In the Shadow of being forgotten: Women Incarcerated in Nigerian prisons and the health implications'. *Agenda* 29:67-78.

³²P McCann (2014) *Challenges Associated with Prisoner intervention Programmes in Ghana: Case Studies of the Nsawam Female Prison*: Doctoral dissertation, University of Ghana.

³³EP Nwosuji (2015) 'An Overview of the Challenges and Rehabilitation of Prisoners in Nigeria'. *International Journal of Social Sciences and Humanities Review*.

³⁴U Oakpu (1985) 'Inter-Party Politics Relations in Nigeria 1979-1983'. *Africa Spectrum* 20:191-209.

³⁵AA Adeyemi (1994) *Personal Reparation in Africa and Gambia. Alternatives to Imprisonment in Comparative Perspective*, Chicago: Nelson – Hall 53-56.

³⁶BA Adeyemi (2015) 'Level of Income, Marital Status and Home background variables as predictions of criminal traits among Nigerian prisoners.' *Journal of Emerging Trends in Educational Research and Policy Studies (JETWERAPS)* 6: 244-248.

Lack of Rehabilitative and Reformatory Programmes

In recent times, the Nigerian prisons have started various educative programs like schools, vocational training and talent acquisition for inmates. Some have been able to read up to the university through the National Open University of Nigeria (NOUN). Some learn skills that will better their lot after their incarceration. Nevertheless, much desires to be done in the area of adequate facilities, conducive learning environment, hygiene, feeding, health care, etc. It is only a healthy man that can learn. The Act also failed in the area of staff motivation, welfare and training. The short of clear mental picture and intent of the Prison Act is responsible largely for the want of vision of the Nigerian prison service.

4. Prisoners' Rights are Human Rights

Loss of liberty is not loss of other rights not affected by the court sentence. A prisoner is under restraint and strict condition of living owing to prison sentence passed on him by the judge. His freedom of liberty is limited under the law. This notwithstanding, an inmate does not completely lose his fundamental rights due him by his being a human being. Therefore, prisoners retain their fundamental rights by the fact that they are still humans despite whatever offence they must have committed. These rights are not forfeited as a result of their imprisonment. Their rights should be respected and protected all through their period of incarceration. There are international and extant laws to protect the Nigerian prisoners. The Nigerian prison is far from observing the essential global standards for the management of prisoners even though their rights are guaranteed at all level. These are rights due them by virtue of their being human and by law.³⁷ These rights are so fundamental to a person's existence no matter his circumstances, and ought not to be denied him except where such right contravenes the law or can be hazardous to other humans. Previously, in the United States (US), prisoners were deemed to have lost not just their liberty but also all other personal rights because of the crime they committed. It was believed that whatever rights they have depends on what the law permits for them. They were mere slaves of government.³⁸ The state and prison officials were not under any responsibility to protect the rights of prisoners.³⁹ Nevertheless, this was ruled against as the courts began to recognize the Constitutional rights of prisoners.⁴⁰ In *Wolff v. McDonnell*,⁴¹ The United States Supreme Court held to the effect that prisoners were entitled to their Constitutional protection due them as citizens of the state despite their incarceration. International law has acknowledged the need not to subject prisoners to degrading and inhuman treatments.

The experience of prisoners in Nigeria is pathetic as they end up more hardened than rehabilitated because of the conditions they faced in prison.⁴² This no doubt is responsible for the maladjustment and recidivism, which ex-prisoners face after release from prison.⁴³ Imprisonment is punishment in itself not a means to

³⁷Supra, note 27.

³⁸ M Cranston, *What are Human Rights?* (Taplinger Publishing Co., 1973), also, E Kamenka, 'Human Rights, People's Rights' in J Crawford (ed.), *Rights of People (Oxford University Press, 1988)*, 127; J Shestak 'The Philosophical Foundations of Human Rights' in J Symonides, *Human Rights Concepts and Standards* (England; Burlington Vt.: Ash gate, 2000), 33-35.

³⁹ There are ten fundamental instruments at the international level upholding the fundamental rights of all humans. These include international Covenant on Civil and Political Rights (ICCPR); December 19, 1966. U.N.T.S. 171; International Covenant on Economic, Social and Cultural Rights (ICESCR) December 16, 1966 U.N.T.S. 3; International Convention on the Elimination of All Forms of Racial Discriminations (CERD); March 7, 1966, 660 U.N.T.S. 195; Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), December 18, 1979, 1249 U.N.T.S. 13; Convention against Torture and other Cruel, Inhumane or Degrading Treatment on Punishment, December 10, 1984, 1465 U.N.T.S. 85; Convention on the Rights of the Child, November 20, 1989, 1577 U.N.T.S. 3; International Convention on the Protection of the Rights of All Migrants Workers and Members of Their Families, December 18, 1990, 2220 U.N.T.S. 3; Convention on the Rights of Persons with Disabilities, December 13, 2006, U.N. Doc. A/61/611.

⁴⁰ This is the "hands-off doctrine". See Gary Rock (2009) "Prisoners' Rights Hand-book 1" (Angus love ed. Pa Institutional Law Project).

⁴¹ 418 U.S 539, 555 (1974).

⁴² G.A. Adetula and A.F. Fatusin, 'the Prison Subsystem Culture: Its Attitudinal Effects on Operatives, Convicts and the Free Society' (2010) Vol. 18, No. 1. *Psychological* 232-251.

⁴³ F. Chukwudi, 'Challenges of Reforms in the Nigerian Prison System: Lessons from USA and South Africa' (2012) Vol. 4 *Journal of Social Science and Public Policy*, 36.

punishment.⁴⁴In the case of *Peter Nemi v. Attorney General of Lagos State and others*,⁴⁵the Court of Appeal held that prisoners have their fundamental and civil rights intact except those denied them by law. Uwaifo, JCA as he then was, went further in that judgement to hold that even criminals on death roll still have their rights until their execution by the due course of law. Notwithstanding, such judicial pronouncements and the international and extant laws in their favour, Nigerian prisoners continue to be subjected to various human rights abuse in the hands of the reformatory officials. The National Human Rights Commission of Nigeria have noted in reality that prisoners' rights have continuously been violated in Nigeria and sometimes with impunity owing that the prisoners are ignorant of their rights, easily intimidated, afraid and handicapped to pursue their rights while in prison. The Commission was of the opinion that the prison environment consistently poses mental and physical threats to inmates and reformatory staff, especially, in the aspect of health and medical attention. They are faced with poor toilet and bedding facilities, are engaged in forced labour, and deprived of their right to justice. The status of Nigerian prisons is a sharp contrast to the UN approved standard. The Commission was aware that the poor standard of the prisons is owed to the faults of all stakeholders in the justice division in Nigeria- the Police, Courts, Reformatory Service and Government.⁴⁶Since 2012, the Commission made this observations, not much has changed. It appears government is reluctant to put into practice the recommendations of the Presidential Committee on the state of the Nigerian prisons and has not kept promises over the years.⁴⁷ Everyone is guaranteed his human rights devoid of discrimination⁴⁸and in spite of his circumstances. This is further strengthened by Rule 2 of the European Prison Rules,⁴⁹ which states that inmates retain all rights, which the prison sentence of the court has not denied them. In addition, the United Nation Human Rights Committee⁵⁰ emphasized the need for respect of the dignity of all persons. The Covenant added that all its provisions apply to all humans subject to avoidable restrictions of the law.⁵¹

5. Rights of Prisoners under Extant Law

The 1999 Constitution of Nigeria recognizes the fundamental rights of all citizens in Chapter IV. These rights are upheld as fundamental to the existence of all Nigerians, *including those in custody [sic]*. Such rights include; the right to life;⁵² right to dignity of the human person;⁵³ right to fair hearing;⁵⁴ right to private and family life;⁵⁵ right to freedom of thought; conscience and religion;⁵⁶ right to freedom of expression and the press;⁵⁷ right to peaceful assembly and associations;⁵⁸ right to freedom from discrimination;⁵⁹ and right to acquire and own immovable property anywhere in Nigeria.⁶⁰These rights are only subject to constitutional limitations where necessary and cannot be denied any Nigerian. For instance, the right to life as provided by the Constitution⁶¹ states that no one should be denied his right to life deliberately excepting where the law says so regarding a criminal transgression of which an offender has been found culpable in Nigeria. In the same vein, section 34 of the same Constitution provides for the dignity of the human person. No citizen, *including those in confinement [sic]* should be subjected to any form of torture or victimization or degrading treatment or slavery of any kind or forced labour, except where a court of law includes that as part of its

⁴⁴ Jon Vagg. *Prison System: A Comparative Study of Accountability in England, France, Germany and the Netherlands*, Clarendon Press, Oxford 1994.

⁴⁵ (1996) 6 NWLR (pt. 452), 42.

⁴⁶ National Human Rights Commission of Nigeria Report of Prison Audit, 2009, p. 129.

⁴⁷ *Ibid*.

⁴⁸ Article 14, European Convention on Human Rights.

⁴⁹ Rule 2 of the European Prison Rules (2006)

⁵⁰ General Comment No. 21.

⁵¹ United Nations Human Rights Committees (1992) General Comment No. 21 which replaced the General Comment 9 relating to inhumane treatment of persons deprived of flexibility (Art, 10); 10/04/92. CCPR General Comment No. 21. Available at <www.unhchr.ch/tbs/doc>

⁵² Section 33 of the 1999 Constitution of the Federal Republic of Nigeria.

⁵³ *Ibid*, section 34.

⁵⁴ *Ibid*, section 36.

⁵⁵ *Ibid*, section 37.

⁵⁶ *Ibid*, section 38.

⁵⁷ *Ibid*, section 39.

⁵⁸ *Ibid*, section 40.

⁵⁹ *Ibid*, section 42.

⁶⁰ *Ibid*, section 43.

⁶¹ *Supra*, note 57, section 33(1).

sentence. Prisoners' right to privacy,⁶² however, is subject to what the law of the prisons provides for the smooth administration of the prisons as far as it is for the good of the prisoners and the society.⁶³ To this effect, Nigerian inmates have no absolute privacy in their cells. The Prison Act provides that prisoners be subject to routine checks while in prison.⁶⁴ This is to make sure that they do not take in contraband like hard drugs, intoxicating liquor, alcohol, tobacco, weapons etc. which can be at their own detriment or endanger other prisoners or the reformatory staff. Thus, the clandestine right of an inmate to privacy is subject to supervision by the prison officials. An inmate has right to own property anywhere in Nigeria,⁶⁵ although, such a right can be invaded for the enforcement of a duty, tax, or rate.⁶⁶ It could be denied for breaching a law,⁶⁷ or the execution of a court judgement, etc.⁶⁸

In Nigeria, the rights of female inmates and their children are not protected.⁶⁹ They are endangered by the poor sanitary conditions, malnutrition, lack of adequate medical-care, etc. The children are exposed to the harsh life of the prison.⁷⁰ Such children are entitled to all the rights due every other Nigerian child. They are entitled to family life and parental care. Some are subject to the custody of caregiver,⁷¹ who may not be concerned about them the way their incarcerated parents would have. Nigeria has ratified the African Charter on Human and People's Rights (ACHPR), which provides to the effect that state members should assist families as the custodian of morals and traditional values.⁷² The African Charter also bestowed an obligation on every human to respect and uphold the harmony of the family.⁷³ The children being the most vulnerable of the family need adequate care, which may not be achieved due to their parent's confinement. The state is under obligation to provide protection and care to these children.⁷⁴ The Nigerian government seem not to bother about this group of children as seen from the lack of policy or legislative provision to that effect. They are a helpless group made to suffer for a crime they did not commit. International and regional laws all of which Nigeria has ratified and domesticated recognize the right of these children. A good example is the *Child Rights Act* of 2003 (CRA) and the *African Charter on the Rights and Welfare of the Child* (ACRWC). Although, this instruments did not particularly mention the children of inmates, but their general implications are children-based, children-friendly and non-discriminatory. The CRC particularly, provides for the right of children to be cared for by their parents.⁷⁵ It also, provides for the right of children to keep a constant personal relationship with their parents.⁷⁶ Nevertheless, owing to the congestion of the Nigerian prisons and coupled with the poor feeding, lack of hygiene and health related problems, it is unsafe for children. While the CRC tried to provide for children generally, the ACRWC is more specific on children of mothers in prison custody.⁷⁷ The instrument particularly put expecting and breastfeeding mothers who are in custody into consideration, including mothers of young infants. The African Charter, in addition, in considering the predicament of such children, encouraged non-custodial sanctions for mothers in this category. It also forbids a death sentence for such women.⁷⁸ Besides the economic and social rights of prisoners, prisoners are also entitled to their civil rights, which include:

⁶² Articles 12 and 16 of the Universal Declaration of Human and People's Right (UDHR); section 37 of the 1999 Constitution.

⁶³ Nigerian Prisons Act, Cap29 LFN 2004.

⁶⁴ Regulation 3 of the Prisons Regulations L.N. /1955 (a subsidiary Legislation made under the Prisons Act).

⁶⁵ Supra, note 56, section 44.

⁶⁶ Ibid, section 44(2) of the Constitution

⁶⁷ Ibid, section 44 (2)(b)

⁶⁸ Chesa Boudin, 'Children of Incarcerated Parents: The Child's Constitutional Right to the Family Relationship' (2011) Vol. 101, No. 1, *The Journal of Criminal Law and Criminology* 77.

⁶⁹ Article 30, African Charter on Human and People's Right.

⁷⁰ Supra, note 65

⁷¹ Article 18(2) of the African Charter on Human and People's Rights, 1986.

⁷² Ibid, Article 29(1).

⁷³ Ibid, Article 29(1).

⁷⁴ Article 6(1) of the ICCPR.

⁷⁵ Article 9 of the CRC.

⁷⁶ Ibid, Article 30.

⁷⁷ Supra, note 71

⁷⁸ Ibid.

Right to vote

The ACHPR⁷⁹ provides the right of prisoners to participate directly or through a representative in voting for their choice of candidates in elections. This is because their incarceration does not affect their other rights as citizens. Government policies also affect them and their families. They have the right to choose who they feel will represent their interest. Inmates are not expressly excluded from voting in Nigeria but in reality, prisoners are deprived of many of their civil rights. In *Victor Emenuwa and Others (for and on behalf of Inmates of Nigerian Prisons) v The Independent Electoral Commission (INEC) & the Comptroller-General of Prison*,⁸⁰ the Federal High Court held that denying inmates their right to vote is unconstitutional and invalid, and that being an inmate is not a crime that affects their registration and voting right under section 24 of the Electoral Act. Previously, it was believed in Britain that voting for inmates was a privilege and not a right. This informed the decision in *Hurst v. United Kingdom*.⁸¹ This was to further reduce the dignity and respect of prisoners in the society.⁸² This was based on the belief that conviction erodes the liberty and rights of a convict serving a prison term. This made the Judiciary reluctant to accept the truth that incarceration does not erode other rights of a prisoner. Thus, in *Chester v. Secretary of State for Justice and Another*⁸³ it was held that reinterpreting section 3 of the Representation of the People's Act to accommodate the right of prisoners to vote would amount to the court making its own legislation since the statutes did not make such provision. This was also the trend in *Greens and MT v The United Kingdom*, where it was held to the effect that inmates have no voting right.⁸⁴ Nevertheless, the court eventually deviated from this notion and held that Article 3 of Protocol No. 1 of the Convention be changed. It was subsequently agreed and codified to the effect that denying prisoners of their voting right constitute an infringement of such right.⁸⁵

Right to Fitness

Prisoners have the right to be physically and mentally fit. Their right to health should not be compromised. The Prisons Act⁸⁶ mandates the Director of the Nigerian Prison Services to remove prisoners to a separate abode outside the prison for safety, where there is an outbreak of disease.⁸⁷ This measure is to ensure the inmates' right to health. Prison congestion is a systemic violation of the right to health of inmates even without an outbreak of disease.⁸⁸ This is for the reason that it can encourage various infections and even death among inmates. In addition, the poor states of facilities, poor nutrition, lack of hygiene etc. encroach on the prisoner's right to health. This is not to mention the psychological and mental torture prisoners are subjected to. The power conferred on the Director of Prisons is rarely employed. The Director is also empowered to call for the taking away of a seriously ill inmate to a hospital for better medical attention.⁸⁹ It is the duty of the state to make sure that prisoners are in good health,⁹⁰ and that they get adequate medical attention when ill.⁹¹ This duty of the state stands even in the face of economic hardships.⁹² Everyone has right to enjoy the best achievable state of physical and mental health.⁹³ The federal government of Nigeria has failed in the health sector generally and to prisoners in particular. According to the Human Rights Commission, Nigeria Prisons lack adequate health facilities and qualified health personnel to guarantee the health of inmates.⁹⁴

⁷⁹ Article 13(1) ACHPR.

⁸⁰ <http://www.vanguardngr.com/2014/12/prisoners-nigeria-right-vote-election>

⁸¹ (No.2), App. No. 74025/01 (2006) 42 EHRR 41. A case held by the European Court of Human Rights' Grand Chamber.

⁸² Ibid.

⁸³ (Application Nos. 6004/08 & 60054/08).

⁸⁴ Application No. 47784/09.

⁸⁵ Article 3 of Protocol 1 of the European Convention on Human Rights (ECHR). (2009) EWHC 2923 (Admin), 26.

⁸⁶ Cap P29 Laws of the Federation of Nigeria, 2004.

⁸⁷ Section 5(2) (b) of the Prisons Act.

⁸⁸ U. Aghomoh, 'Prison Decongestion and Reforms in Nigeria: Issues and Methods' www.prawa.org accessed 7 October 2017.

⁸⁹ Section 8(1) of the Prisons Act.

⁹⁰ Article 16(2) ACHPR.

⁹¹ Andrew Coyle, 'A Human Rights Approach to Prison Management' (2002). *A Handbook for Prison Staff*, International Centre for Prison Studies 49.

⁹² Ibid.

⁹³ Article 16(1) ACHPR.

⁹⁴ Executive Summary of 2012 Prison Audit Report (No. 8) of the National Human Rights Commission.

Right to be secured

Inmates have right to be safe within the prison walls. The state is conscientiously bound to make sure that inmates are safe while in confinement.⁹⁵ Prisoners should be managed in line with human dignity.⁹⁶ This was emphasized in the case of *Paul and Edwards v. the United Kingdom*, where it was held that the state is under obligation to protect the vulnerable from criminal acts of others.⁹⁷ It follows that the use of force, torture and other degrading measures by prison officials is illegal and violates the ICCPR.⁹⁸ It is the duty of the state to guide against suicide by an inmate. The UDHR provides that everyone have a right to life, liberty and security.⁹⁹ The ICCPR¹⁰⁰ provides that all human beings have an inherent life, which shall be protected by the state. No one shall be deprived of this right. This is in line with the Constitution,¹⁰¹ which states in effect that all citizens have a right to life, and that no individual shall be denied this right, except in the execution of the law in respect of a criminal offence, where he has been found guilty. The state is duty bound to ensure the safety of inmates. This it should do by monitoring the inmates, separating dangerous inmates, regular health check-ups, screening of inmates, preventing them from the use of dangerous instruments, alcohol and hard drugs, assessment and treatment by a psychiatrist etc.¹⁰²

Right to family life

An inmate has the right to keep in touch with members of his family.¹⁰³ This right is guaranteed by the Constitution.¹⁰⁴ A prisoner should not be deprived the right to meet and relate with family members.¹⁰⁵ Imprisonment should not ostracize a prisoner from his family but should rather increase the bond and affection. This right includes freedom of correspondence. In *Campbell v. United Kingdom*,¹⁰⁶ it was held that correspondence between an inmate and his official counsel is privileged, and must be respected by prison staff. It was held that despite the call to guide against contrabands among prisoners, prison staff must make their search in the presence of inmates and with their permission.¹⁰⁷ A typical Nigerian inmate does not enjoy his constitutional right to privacy and family life¹⁰⁸ when visited by family and friends. This is evidenced by their opposition of conjugal rights. Prisoners are permitted to receive visitors in the presence of a prison official.¹⁰⁹ They are further restricted from having free association with friends and relatives.¹¹⁰ There are cases where prison officials ask for bribe before inmates could be allowed to see guests.¹¹¹ Presently, some western countries¹¹² allow unsupervised conjugal visits for inmates to be with their spouses and partner. This is to preserve intimate family bond.¹¹³

Right not to be subject to cruelty or discrimination

All persons should be free from cruel and unusual treatment.¹¹⁴ The use of extreme force by prison officials violates this right. In *Hudson v. McMillan*,¹¹⁵ the United States Supreme Court held that excessive use of force by prison staff is not to instil discipline among inmates but rather malicious and sadistic in order to

⁹⁵ Supra, note 72.

⁹⁶ UN Human Rights Committee General- Comment No. 21.

⁹⁷ ECHR, 14 March 2002, Appl. 46477/99, Para 54-56.

⁹⁸ Article 7 of the ICCPR.

⁹⁹ Article 3 of the UDHR, 1948.

¹⁰⁰ Article 6(1) of the ICCPR.

¹⁰¹ Section 33 of the 1999 Constitution

¹⁰² Piet Hein van Kempen (n. 74) 28.

¹⁰³ Article 12 of the UDHR

¹⁰⁴ Provided in the marginal notes where it states that the privacy of citizens, their homes, correspondence, telephone conversations etc. is guaranteed and protected.

¹⁰⁵ IPTR Position Paper 4 (n. 10) 8.

¹⁰⁶ (1992) Application No. 13590/88). <<http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?>>

¹⁰⁷ Ibid.

¹⁰⁸ Section 37

¹⁰⁹ No. 83, Nigerian Prison Regulations.

¹¹⁰ Ibid, No. 45.

¹¹¹ Supra, note 45.

¹¹² Such countries include Germany, Australia, Denmark, India, Mexico, Israel, Russia, Spain and Saudi Arabia

¹¹³ 'Conjugal visit'- Wikipedia <<https://en.m.wikipedia.org>> accessed 19/11.2018

¹¹⁴ Article 13(1) ACHPR; section 34, 1999 Constitution.

¹¹⁵ (1992) 503 U.S. 1, 6, 7.

harm and humiliate the inmates. In addition, in *Greg v. Georgia*,¹¹⁶ it was held that unnecessary infliction of pain is tantamount to violating the right not to be subject to cruel and inhuman treatment. The Prison's Act provides exceptional occasions when force could be used by prison authorities.¹¹⁷ Force could be employed where there is jail break, where a prisoner uses violence on prison staff or fellow inmate or where the prison official reasonably believes that his life or another's life is in danger.¹¹⁸ In *Nemi v. Attorney General of Lagos State*,¹¹⁹ the court held that even condemned criminals have the right to seek redress where their right to dignity is violated. This was also the court's decision in *Baruwa v. the State*¹²⁰ where it was held that except where the law specifically states it, prisoners should be treated with dignity.

Right to fair hearing

Everyone has the fundamental right to fair hearing.¹²¹ There are prison rules, regulations, and disciplinary measures to maintain decorum inside the prison environment. A breach of which could lead to punishment within the prison. It is important to allow the prisoner a fair hearing and due process before he is punished if found guilty. The offending prisoner has the right to know what he is being accused of in advance and who his accuser is.¹²² He must be charged without any form of delay. He also has his Constitutional right of appeal even in the prison. Where he is found guilty, punishment may be imposed ranging from losing his right to reduce his sentence, a strict warning, further restriction of movement in the prison, some other light punishments etc. The prison Regulations provide for the use of solitary confinements as punishment not exceeding two weeks.¹²³ This is a human cruelty, which should be discouraged.

6. Conclusion and Recommendations

Prisoners are human beings despite the offence they committed. Their imprisonment does not stripe them of their fundamental human rights.¹²⁴ Nigerian prisoners are exposed to various inhuman and degrading conditions against the international standards. This was the notion of the *Kampala Declaration* of 1996,¹²⁵ where it was agreed that imprisonment does not mean that the prisoner is now less than a human being. The respect for the dignity of prisoners must be guaranteed just as that of free individuals outside the prison.¹²⁶ Prisoners should be allowed to enjoy the same basic rights as free citizens in the society.¹²⁷ Government should fund the prisons. It should develop policies to promote the physical and mental health of prisoners. Prison officials should also take steps to respect, protect and promote humane treatment of prisoners. This can be achieved through its policies and in house training for prison staff. Steps should be taken to implement such policies. Much depends on government to take all possible measures to protect the fundamental human rights of its citizens including its prisoners. The success of any government depends on how well it is able to protect and secure the basic rights of its citizens. Furthermore, Nigerian inmates ought to be allowed to be visited regularly by family and friends to avoid psychological damage due to

¹¹⁶ (1976) 428 U.S. 153, 173.

¹¹⁷ Section 10(1) of the Prisons Act.

¹¹⁸ Section 10(4) of the Prison Act

¹¹⁹ (1996) 6 NWLR pt. 425, 42.

¹²⁰ (1996) 7 NWLR pt. 460, p. 302.

¹²¹ Section 36 Constitution.

¹²² Rule 30 of the Standard Minimum Rules for the Treatment of Prisoners (approved by the United Nations in 1957).

¹²³ Regulation 49(3) (a) of the Nigerian Prisons Regulations.

¹²⁴ Rule 2 of the European Prison Rules (2006) recognizes that "persons deprived of their liberty retain all rights that are not lawfully taken by the courts"

¹²⁵ Recommendation 2, Kampala Declaration on Prison Conditions in Africa (1996) adopted at the International Seminar on Prisons Conditions in Africa, 19-21 September 1996.

¹²⁶ The United Nations Human Committee in its General Comment No. 21.

¹²⁷ African Commission on Human and Peoples' Rights, Resolution 19 (XVII) 95 "Resolution on Prisons in Africa" 13-22 March 1995.

isolation.¹²⁸ Imprisonment should be geared towards reformation through humane treatment. This article further recommends that government should establish a Commission to oversee the Nigerian Prison Services. The prison system should be removed from the Ministry of Interior. Since that ministry is currently weighed down with various other responsibilities which include- taking charge of immigration services, coordination of national day celebrations, granting of Nigerian citizenship, issuance of business permits and expatriate quotas, reforming inmates, recruit prison officials, fire service, Nigerian security and civil Defence Corps etc. There is need for an independent Commission that will be solely responsible for the prison system to upgrade the standard of the Nigerian prisons.¹²⁹ The duties of such Commission should include regular checks on the welfare of prisoners and the prison environment.¹³⁰ In addition, a monitoring scheme should be formed in all the prisons in the country to encourage inmates to speak out their minds without fear or threat of harassment being adequately assured of their confidence and safety. This should be a neutral body set up to listen to the grievances and opinions of inmates with a view to providing them adequate and prompt remedies. There should be an improvement in infrastructure and more prisons should be built to solve the problem of overcrowding. Modern facilities should replace the old and dysfunctional ones. Religious bodies like churches, mosque as well as NGOs should pick up roles alongside government. Prison should be decentralized by removing it from the exclusive legislative list. States should run their own prisons.¹³¹ This will not only reduce the financial cost on the federal government but will encourage easy management, monitoring and implementation as well as periodic evaluation. Prison officials who met out cruelty on prisoners should be sanctioned heavily in a special tribunal set aside for that purpose or under a court of law. The idea of grouping prisoners together should be discouraged. Prisoners with minor offences should be kept away from hardened criminals or recidivist offenders. The insane should be kept away from the sane, etc. The judicial should be reoriented on the need for other non-custodial sentences like probation, community services, parole etc. Lesser offences like road traffic offences, minor assaults, debts and other trivial offences need not be punished with imprisonment. Imprisonment should be reserved for weighty offences. There is need to repeal the Nigerian Prison Act to reflect the international agreed standard and present realities. The effort of the Nigerian Senate to repeal this Act through a Bill currently before the National Assembly should be expedited. Finally, the fight against corruption should be intensified in every sector in Nigeria. It is true that prisons are poorly funded but even the little funds released enter into private pockets. Corruption undermines the efforts of a nation and should be fought out of the system. All these will no doubt encourage the international best practices for Nigerian prisoners.

¹²⁸ Lobel Jules, 'Prolonged Solitary confinement and the Constitution', *Legal Studies Research Paper Series*, Working Paper No. 2009-19 July, 2009. University of Pittsburgh School of Law, Pittsburgh, Pennsylvania. *Journal of Constitutional Law*, 11:1, p. 138. <http://ssrn.com/abstract=1428922> accessed

¹²⁹ <http://interior.gov.ng/index.php/the-ministry/article> The official Website of the Ministry of Interior accessed 28 August 2015.

¹³⁰ This was first proposed by Senator Abubakar Sodangi in 2006, through a Bill captioned 'Nigerian Prison Service Commission (Establishment, etc.) Bill, 200. Nevertheless, nothing has been done to this Bill until date.

¹³¹ Section 11 of the Prison Act