



## **A CRITICAL EXAMINATION OF PRISONERS' RIGHTS IN NIGERIA**

By

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### **Abstract**

*Prisoners' rights in Nigeria are enshrined in the constitution and various legal frameworks, guaranteeing basic rights like freedom from torture and access to legal representation. However, the reality can be harsh. Overcrowding, poor sanitation, and violence are all documented issues. This paper undertakes a thorough investigation into the status of prisoner rights in Nigerian, scrutinising the legal framework, institutional practices, and societal attitudes that shape the experiences of incarcerated individuals. This paper employed a doctrinal approach through a rigorous analysis of statutes, case law, and international legal instruments as well as an historical analysis of the evolution of legal norms governing imprisonment by tracing the development of relevant jurisprudence and the interpretation of constitutional guarantees in relation to prisoner welfare. This paper concluded that there are ongoing efforts at reform, but ensuring these rights are upheld in practice remains a challenge. This paper advocates for sustainable funding, improved monitoring, increased transparency, improved prison conditions, training for prison staff and rehabilitation amongst others, to ensure that these prisoners' rights are applied in reality.*

**Keywords: Prison, Prisoners, Rights, Overcrowding and Incarceration**

### **1.0 INTRODUCTION**

The prison is an institution designed to warehouse people who have been convicted of crimes. These individuals, known as prisoners or inmates, are kept in continuous custody on a long-term basis. Individuals who commit the most serious crimes are sent to prison for one or more years; the more serious the offense, the longer the prison term imposed. For certain crimes, such as murder, offenders may be sentenced

to prison for the remainder of their lifetime. When individuals are accused of violating criminal law, they are tried in a court and either convicted or acquitted. A person who is convicted is then sentenced. The sentence may involve fines, probation or supervised release, or incarceration. Judges may sentence first-time offenders to probation instead of incarceration.<sup>1</sup>

Prisons are also called penitentiaries. The word penitentiary was coined in the late 1700s because certain groups believed that through solitary religious study of the Bible, prisoners would become penitent (remorseful) and reform their behavior and possibly be integrated back to the society. Although prison structures existed in ancient civilizations, the widespread use of long-term confinement as a form of criminal punishment began only in the 15th century. Today every industrialized nation has prisons, and the role of prisons throughout the world is to punish criminals by restricting their freedom.<sup>2</sup> In most countries, governments construct and operate prison systems. The prisons are devoted to the same general functions – administering some punishment to lawbreakers while keeping them securely in custody. However, several countries, including the United States, authorize private corporations to build and run prisons under contract for the government. This is yet to come up in Nigeria’s penal system despite the privatization/deregulation programs embarked upon by the federal government.<sup>3</sup>

## **2.0 IMPRISONMENT IN PRE-COLONIAL NIGERIA SOCIETY**

In the pre-colonial Nigeria, prisons were simply places for holding suspects pending investigation and trial. They were not used as places of under a sentence like modern day prisons.<sup>4</sup> Among the Nassarawa in north-central Nigeria, it was usual to expose a thief kept in stocks at the compound of the victim until he was redeemed by his relations, discharged or disposed of.<sup>5</sup> Stocks were used as a form of shame and humiliation and the social status of a person exposed in stocks was likely to be reduced. Among the Hausa tribe in northern Nigeria, an offender was also put in stocks in a conspicuous place by the victim’s compound where passers-by could jeer at him.<sup>6</sup>

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<sup>1</sup>Michael C. Ogwezy, From Reformation to Deformation: An Approach Towards Sustainable Development of The Defective Prison System in Nigeria. *Journal of Sustainable Development in Africa* (2011) 13(7)

<sup>2</sup> ibid

<sup>3</sup> ibid

<sup>4</sup> Ogunleye, A. *The Nigerian Prison System* (Specific Computers Publishers Ltd, Lagos 2007)

<sup>5</sup> Gunn, H.D, *Peoples of The Middle Niger Region: Northern Nigeria* (FP Conant African Institute International, 1960)

<sup>6</sup> <<https://worldscholars.org/index.php/ajhss/article/view/535/pdf>> accessed 23 March 2024

Among the Igbo tribe of the south-east, relatives would use chains to hold a murderer while inquiries were made by a diviner to ascertain what had induced him to commit such an abominable crime.<sup>7</sup> The Yoruba of the south -west held debtors in a place called *tubu*, a word synonymous with prison. It was such a widespread practice that every chief had his *tubu* for criminals. The offences for which an offender could be so held ranged from drunkenness, disobedience etc.<sup>8</sup> The ogboni society(a secret society) in yorubaland, also held offenders in their prisons for offences such as ritual murder, witchcraft, notorious burglary.<sup>9</sup> The ewedo was also a place among the Edo tribe of midwestern region for detaining offenders until they were sold into slavery or released to their relatives.<sup>10</sup> Among the Tiv tribe of the middle belt region, an offender had to agree to a sentence of imprisonment as an admission of his guilt.<sup>11</sup> In pre-colonial times among the Muslim emirates in northern Nigeria, imprisonment was a discretionary punishment (ta'zir) under Islamic law. It was used for penal purposes and as a tool for political oppression following the Fulani conquest of the 19th century.<sup>12</sup> An ancient prison existed in Sokoto where criminals were kept in a building "crowded to overflowing" with prisoners and in the center of it was a dungeon in which the worst criminals were kept.<sup>13</sup> Lord Lugard also recorded that he met prisons in Kano when he captured the city in 1900.<sup>14</sup>

### 3.0 THE HISTORY OF THE NIGERIAN PRISON SERVICE

The origin of modern Prisons Service in Nigeria dates back to the year 1861.<sup>15</sup> That was the year when conceptually, western type of prison was established in Nigeria. The declaration of Lagos as a colony in 1861 marked the beginning of the institution of formal machinery of governance.<sup>16</sup> At this stage the preoccupation of the colonial government was to protect legitimate trade, guarantee the profit of British Merchants as well as guarantee the activities of the missionaries. In a bid to realize this, the Acting Governor of the Lagos colony who was then a British merchant formed a

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<sup>7</sup>Meek, C. K, *Northern Tribes of Nigeria*, (London.1925)

<sup>8</sup> Ajisafe, A.K, 'Laws And Customs of the Yoruba People' <<https://ehrafworldcultures.yale.edu/cultures/ff62/documents/003>> accessed 23 March 2024

<sup>9</sup> Ibid

<sup>10</sup> Bradbury, R.E, *The Benin Kingdom And The Edo Speaking Peoples of South-western Nigeria* (Routledge London, 1957)

<sup>11</sup> Bohannan, P.' Justice and Judgment among the Tiv' <<https://www.routledge.com/Justice-and-Judgment-Among-the-Tiv/Bohannan/p/book/9781138489639>> accessed 25 March 2024

<sup>12</sup> Ibid

<sup>13</sup> Ibid

<sup>14</sup> Ibid

<sup>15</sup> Ifediorah. W. Orakwe, 'History of Prisons in Nigeria' <[www.prisons.gov.ng/about/history](http://www.prisons.gov.ng/about/history)> accessed 29 March 2024

<sup>16</sup> Ibid

police force of about twenty-five (25) constables. In 1863, four courts were established in Lagos, they were:

- a) Police court to resolve petty dispute,
- b) A Criminal court to try the more serious cases,
- c) A slave court to try cases arising from the efforts to abolish the trade in slaves, and,
- d) A commercial court to resolve disputes among traders and merchants.

The functioning of the Police and the Courts in that colonial era necessitated the need for the establishment of the Prisons. In 1872, the Broad Street Prison was established with an initial inmate capacity of 300. In the Niger Delta on the other hand, there was evidence of prison in Bonny at this time. However, the progression incursion of the British into the hinterland and the establishment of British protectorate towards the end of the 19<sup>th</sup> century necessitated the establishment of the prison as the last link in the criminal justice system. Thus by 1910, there already were prisons in Degema, Calabar, Onitsha, Benin, Ibadan, Sapele, Jebba and Lokoja.

In 1906, the Protectorate of Southern Nigeria was amalgamated with the colony of Lagos which effectively brought the entire Nigeria under British rule. Notwithstanding this, that did not mark the beginning of a unified Nigerian Prisons. The colonial prison at this stage was not designed to reform anyone. There was no systematic penal policy from which direction could be sought for penal administration. Instead, prisoners were majorly used for public works and other jobs for the colonial administration. Hence, there was no need for the recruitment of trained officers of the prisons and instead the police also performed prison duties. Later, ex-servicemen were recruited to do the job. The prisons were poorly run and the prison conditions varied from one place to another in their disorganization, callousness and exploitation. The prisoners also served the purpose of punishing those who had the guts to oppose colonial administration in one form or the other while at the same time cowering those who might want to stir up trouble for the colonial administration.<sup>17</sup>

The Prisons regulation was published in 1917 to prescribe admission, custody, treatment and classification procedures as well as staffing, dieting and clothing regimes for the prison although subject to certain limitations. On the other hand, those remanded in custody by the Native Courts were sent to the Native Authority Prisons. By 1934, a meaningful attempt was made to introduce relative modernization into the prison service. It was at this time that Colonel V. L Mabb was appointed Director of prisons by the then Governor, Sir Donald Cameron. Mabb focused his attention on the formation of a unified prison structure for the whole country but he failed. He

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<sup>17</sup> Ibid

however succeeded in extending the substantive Director of Prisons' Supervisory and inspectoral powers over the Native Authority Prisons which was dominant in the North. The Prison Warders Welfare Board was also formed during his tenure. His efforts were continued by his successor R.H Dolan (1946-55).<sup>18</sup>

#### 4.0 FUNCTIONS OF THE PRISON

The prison is the main avenue for making individuals pay for their crimes against society. The cardinal essence of prison is reformation. It is hoped that within the time the convict passes through the prison, he or she would be reformed and be accepted back to the society. At this point, the convict is called a prisoner.<sup>19</sup>

A Government White Paper in 1971 outlined the functions of the prison service to include: custody, diagnosis, correction, training and rehabilitation of incarcerated offenders. The Nigerian Prison Service Staff Duties Manual listed an additional function, which includes generation of funds for the government through prison farm and industries. Similarly, the colonial ordinance of 1916 and the Laws of Nigeria 1948 and 1958 identified the function of the prison to also include the safe custody of a prisoner.<sup>20</sup> Prison in Nigeria and other parts of the world are established to do the following:<sup>21</sup>

- i. Take into custody all those legally interned;
- ii. Produce them before the courts as and when due if they are on remand;
- iii. Identify the causes of their anti-social conduct;
- iv. Set in motion mechanism for their re-training and reformation preparatory to returning them back to society as normal, law-abiding citizens; and
- v. Generating revenue for the state through the use of prison farms and industries.

The Prison is a federal concern which means that no state has the power in Law to operate or maintain Prisons. One obvious advantage of this development is that no State can take political advantage of the prisons for the purpose of settling scores.<sup>22</sup> A prison therefore, is not merely a place of custody but also an institution for

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<sup>18</sup> Ibid

<sup>19</sup> Agbakoba and Olise, 'Criminal Justice Reform and Challenge of Holding Charge' <[www.nigerianbar.org/a/.../oa/criminal\\_justice\\_reform\\_article.doc](http://www.nigerianbar.org/a/.../oa/criminal_justice_reform_article.doc)> accessed 1 April 2024

<sup>20</sup> MC. Ogwezzy, 'From Reformation to Deformation: An Approach Towards Sustainable Development of The Defective Prison System in Nigeria' *Journal of Sustainable Development in Africa* (2011) 13(7)

<sup>21</sup> Agomoh Uju & Ogbozor Ernest, 'Post Colonial Reform of Nigeria Prison: Issues and Challanges, Paper' Presented at the 11th International Conference on Penal Abolition (ICOPA XI), held in Tasmania, Australia, February 9-11, 132006

<sup>22</sup> Ibid

reforming and rehabilitating prisoners. In realistic terms, Nigeria penal philosophy seems to be based on punishment and deterrence instead of reformation and rehabilitation conversed by modern prison philosophy.

According to Alemika and Alemika,<sup>23</sup> the fundamental aims of penal policy in Nigeria are punishment, deterrence, and societal protection through custodial incapacitation. No wonder then that prisons in Nigeria are used as institutions for punishment and apart from excessive use of corporal punishment against the inmates, the conditions of these prisons are so deplorable. The prisons are overcrowded, poorly ventilated, while environmental sanitation is almost none existent in most of the prisons visited. Consequently the inmates are at the mercy of diseases and epidemics which caused them poor health and even death.<sup>24</sup> Inmates are not on good diet; they are poorly fed and poorly clothed all in the name of inflicting on them a just dessert. In view of this, critics and advocates of prisons are quick to comment that the institution is generally an inefficient and ineffective means of treating and rehabilitating offenders, especially when it is used as an all-purpose repressive quarantine system.<sup>25</sup>

By law, every prisoner who is confined in a Nigerian prison is deemed to be in the legal custody of the superintendent in charge of that prison.<sup>26</sup> As a result he/she is subject to prison discipline and regulations, whether or not he is within the precincts of the prison. In the case of a prisoner who is under a sentence of death, the superintendent must at the time fixed by the authority on the day, which the sentence is to be carried out surrender the legal custody of the prisoner to the appropriate authority for the execution of the sentence. Furthermore, the law confers jurisdiction and control over that portion of the prison where the prisoner is confined and over all officers to the extent necessary for the safe custody of the prisoner during that period as well for the purpose of carrying out the sentence<sup>27</sup>. Every police officer deployed to the prison in the capacity of escort or guard is deemed to have all the powers and privileges granted to prison officers in this regard. This is so in order to ensure the safety of the prisoner while in custody and to prevent escape of the prisoner from prison. Such police officers may use such weapons which could be a gun, baton or whip on a prisoner who applied violence to another prisoner or prison officer. In any

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<sup>23</sup> EEO Alemika, and EI Alemika, 'Penal Crisis and Prison Management in Nigeria' *Lawyers Bi-Annual* (1995)1 (2), 62-80.

<sup>24</sup> EUM Igbo, *Introduction to Criminology* (Nsukka: Afro-Orbis Publications Ltd. 1990)

<sup>25</sup> Alemika, E.E.O and Alemika, E.I (n. 23)

<sup>26</sup> Section 3, Prisons Act, Cap 366, Laws of the Federation [LFN] 1990

<sup>27</sup> Ibid, Section 2

case, due warning must be given by the officer to the prisoner that he is about to shoot.<sup>28</sup>

## **5.0 PRISONERS' RIGHTS UNDER THE NIGERIAN LAW**

Prisoners, like other citizens, are entitled to the fundamental human rights entrenched and guaranteed under Part IV of the CFRN 1999, except for the right to liberty. These rights include the right to life, personal liberty, respect for privacy and family life, dignity of person, freedom of thought, conscience and religion, fair hearing, and freedom of expression, among others. In addition to the fundamental human rights, convicted prisoners are also entitled to certain rights by virtue of the Prison Act LFN 1990. These rights include the right to food, clothing, health and cleanliness, visitation and labor-free weekends, parole, and legal services. It is important to note that, even though these rights are guaranteed in Part IV of the CFRN, they have been continuously violated, especially the right to the dignity of their persons as guaranteed under section 34.<sup>29</sup>

These rights in relation to prisoners will be discussed in details as follows:

### 1) Right to Life:

Section 33 of the Constitution of Nigeria 1999 provides that every person has the right to life and no one shall be deprived intentionally of his life save in execution of the sentence of a court in respect of a criminal. This section also includes the exceptional circumstances where a person may be deprived of this right<sup>30</sup> but throughout these exceptional circumstances nothing relates to the status of a prisoner.<sup>31</sup>

Section 33(2) of the Constitution provides that:

“A person shall not be regarded as having been deprived of his life in contravention of this section, if he dies as a result of the use, to such extent and in such circumstances as are permitted by law, of such force as is reasonably necessary:

(a) For the defence of any person from unlawful violence or for the defence of property;

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<sup>28</sup> Ajayi, Johnson Olusegun, 'Nigeria Prisons and the Dispensation of Justice', *An International Journal of Arts and Humanities* Bahir Dar, Ethiopia (2012) 1 (3), 208-233.

<sup>29</sup> Ibid

<sup>30</sup> This is because, right to life is not an absolute right.

<sup>31</sup> K. O. Olaniyan, 'The Protection of The Rights of Persons in Custody: A Jurisprudential Approach' *Journal Of International Human Rights Law* (2017) 1(1)

(b) In order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) For the purpose of suppressing a riot, insurrection or mutiny.

Therefore, where a prison official for instance unlawfully kills a prisoner therefore amount to a breach of this right.<sup>32</sup> A condemned prisoner who has been sentenced to death has a right to his life until the execution time, it cannot however be said that since the prisoner has been sentenced to death, he can be killed anytime. This is the opinion of court in the case of *Bello V AG Oyo State*<sup>33</sup>. In that case the condemned criminal was executed by the Oyo State Military Governor while his appeal against his conviction was still pending in the appellate court. In declaring the execution unconstitutional, the Supreme Court established that the execution of a prisoner in breach of prescribed constitutional procedure and specifically when an appeal was pending was a violation of the prisoner's right to life.

The right to life is the most fundamental of all the rights, it is the most essential basic human rights in a democratic State. The right to life does not mean a mere physical existence or the right to live a lifeless life, the right to life includes the right to live with human dignity and all that goes along with, such as adequate nutrition, clothing, health, and shelter.<sup>34</sup> The right to life is a phrase that describes the belief that a human being has an essential right to live, particularly that a human being has the right not to be killed by another human being. Thus the right to life is undoubtedly the most fundamental of right in any human community for only a living person can lay claim to rights. The prison community is a human community therefore prisoners also have a right to live since they are part of the community.<sup>35</sup>

The right to life is also guaranteed by Article 6 of the International Covenant on Civil and Political Rights (ICCPR) Article 3 of the Universal Declaration of Human Rights (UDHR) and Article 4 of the African Charter among others internationally recognized instruments.

## 2) Right to Dignity of Human Person:

Section 34 of the Constitution provides that that every individual is entitled to respect for the dignity of his person and accordingly:

(a) No person shall be subjected to torture or to inhuman or degrading treatment;

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<sup>32</sup> Atsenuwa A. 'Human Right Protection of Vulnerable and Marginalized Groups' in Obilade O; Nwankwo C, (eds) *T'est for Human Rights Teaching in Schools* (Constitutional Rights Project) (Lagos, 1999)

<sup>33</sup> (1986) 5 NWLR (Pt 828).

<sup>34</sup> K.O Olaniyan (n. 31)

<sup>35</sup> Ibid



(b) No person shall be held in slavery or servitude; and

(c) No person shall be required to perform force or compulsory labour.

Torture, inhumane and degrading treatment must not be vetted out to prisoners by prison authorities. Torture may include causing severe pain or depriving someone of things they are entitled to. It follows therefore that, putting a suspect in solitary confinement; denial of food for the suspect; physical violence; harassment; threat and verbal intimidation on the suspects; the use of chains or shackles on the prisoners by the law enforcement agents in carrying out their duties towards prisoners' amount to a violation of this right.<sup>36</sup>

It is therefore arguable that, this right, which is very crucial to the whole scheme of persons in custody, is unfortunately the most un-litigated in our Constitution. Disrespect for dignity of a prison inmate manifests itself in several aspects of prison life and administration, such as “the condition of housing, health facilities, sanitary facilities, disciplinary measures, clothing and beddings and of course the quality and quantity of food the prisoners are fed with”.<sup>37</sup>

### 3) Right to Personal Liberty:

The constitution of the Federal Republic of Nigeria guarantees the right to personal liberty under Section 35, it states that: “*Every person shall be entitled to his personal liberty and no person may be such liberty save in the following cases and in accordance with a procedure permitted by law.*”

The exceptions are:

- a) In execution of the sentence or order of a court in respect of a criminal offence of which he has been found guilty;
- (b) By reason of his failure to comply with the order of a court or in order to secure the fulfilment of any obligation imposed upon him 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;
- (d) In the case of a person who has not attained the age of eighteen years for the purpose of his education or welfare;
- (e) In the case of persons suffering from infectious or contagious disease, persons of unsound mind, persons addicted to drugs or alcohol or vagrants, for the purpose of their care or treatment or the protection of the community; or

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<sup>36</sup> Osaze Lanre Ebonwa, *Behind the Wall: A Report on Prison Conditions in Nigeria and the Nigerian Prison System* (Lagos, CLO 1996) 187.

<sup>37</sup> K.O Olaniyan (n. 34)

(f) For the purpose of preventing the unlawful entry of any person into Nigeria or of effecting the expulsion, extradition or other lawful removal from Nigeria of any person or the taking of proceedings relating thereto: 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.<sup>38</sup>

The effect of Section 35(a) is that persons in prison (whether awaiting trial or not) or in any custody of any of the law enforcement agencies who are still expected to be presumed innocent until their guilt is proved are expected to enjoy this right. It is worthy of note here that the premise to section 35(1) of the CFRN 1999, is to the effect that a person awaiting trial who is charged with an offence and who has been detained in lawful custody shall not continue to be kept in such detention for a period longer than the maximum period of imprisonment prescribed for the offence if he were to be found guilty. This is the limit to the breach of the constitutional provision of right to personal liberty for person in custody.<sup>39</sup>

4) Right to be brought before a Court within a reasonable time:

Section 35 (4) provides that “any person who is arrested or detained in accordance with subsection (1) (c) of this section shall be brought before a court of law within a reasonable time, and if he is not tried within a period of -

(a) two months from the date of his arrest or detention in the case of a person who is in custody or is not entitled to bail; or

(b) three months from the date of his arrest or detention in the case of a person who has been released on bail, he shall (without prejudice to any further proceedings that may be brought against him) be released either unconditionally or upon such conditions as are reasonably necessary to ensure that he appears for trial at a later date. A reasonable time means

...in the case of an arrest or detention in any place where there is a court of competent jurisdiction within a radius of forty kilometres, a period of one day; and in any other case, a period of two days or such longer period as in the

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<sup>38</sup> Section 35(a)-(f) of Constitution of the Federal Republic of Nigeria, 1999

<sup>39</sup> K.O Olaniyan (n. 37)

circumstances may be considered by the court to be reasonable.<sup>40</sup>

Thus, where the place of arrest and detention is beyond a radius of fifty kilometers the law allows such person, by reason of the provision of section 35(5)(b) CFRN 1999 to be detained for a period exceeding two days. The court must however be satisfied that such detention is reasonable as regard to the circumstances of the case<sup>41</sup>

5) Right to Fair Hearing:

Fair hearing is equivalent to a fair trial. This is a constitutional right which is guaranteed under section 36 of the 1999 constitution of the Federal Republic of Nigeria (as amended) which provides as follows: 'In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality'.<sup>42</sup> This right applies to prisoners awaiting trial and those who have appealed their matter.

The right to fair hearing implies the right of everyone to have his cause heard, for if a cause is not heard, the question of fair hearing cannot arise. This right is another fundamental right upon which the full enjoyment of the other rights is hinged. In fact, the painstaking observation of this right within any society means the foundation of such a society is rooted in justice and its citizens can be reassured of fair play at all times. This in effect means that a citizen's right or obligation must not be decided until the disputing parties are heard. Upon this then is founded the historical twin pillars of justice i.e. that a man must be given the opportunity of presenting his own side of a matter (*audi alteram partem*) and that an accuser should not sit as a judge in his own cause (*nemo iudex in causa sua*). The impartiality of the judge must be assured and proceedings must take place before a court or tribunal set up according to law.<sup>43</sup>

In *Jemide Nwanne*<sup>44</sup> and *SCEN v Nwosu*<sup>45</sup>, it was held that without fair hearing the principles of natural justice are abandoned and without the guiding principle of natural justice the concept of the rule of law cannot be established and grow in the society.

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<sup>40</sup> Section 34(5) of Constitution of the Federal Republic of Nigeria, 1999

<sup>41</sup> JA Yakubu *Constitutional Law in Nigeria*, (Ibadan Demyaxs Law books 2003) 374.

<sup>42</sup> Sec 36, 1 of Constitution of the Federal Republic of Nigeria, 1999

<sup>43</sup> Adesiyan D.O *An Accused person's Rights in Nigeria Criminal Law*, (Heinmann Educational Books Nigeria Plc pub.1996), 67

<sup>44</sup> (2008) ALL FWLR Pt430 p 55

<sup>45</sup> (2008) ALL FWLR Pt 413 p 1400-1401

6) Right to Legal Representation:

Every prisoner has the right to access legal representation of his/her choice and where he or she cannot afford this, access to free legal representation shall be provided. For the purpose of his defence, an awaiting trial prisoner shall be allowed to apply for free legal aid where such aid is available, receive visits from his legal adviser, and prepare and hand to him confidential instructions.<sup>46</sup> The right of an accused to a Counsel of his own choice and indeed his rights when arrested or detained to remain silent or avoid answering any question until after consultation with a legal practitioner or any other person of his own choice is provided for under Section 35(2) of the Constitution. The Court of Appeal has held in the case of *Ola V Alaka*, that denying a party the right to a lawyer of his own choice is like denying him fair hearing.<sup>47</sup>

7) Right to be Informed Promptly:

An individual facing criminal charges has the right to a prompt and detailed explanation of the accusations against them, provided in a language they comprehend.<sup>48</sup> In *Timothy v F.R.N*<sup>49</sup>, the court held that, every accused person arraigned before the court in criminal trial must understand the nature of the charge brought against him. The charge must be read out to the accused in the language that he understands before the plea is taken. This requirement is mandatory and the failure of a trial judge to comply with the provisions of Section 36(6) (a) of the 1999 constitution will render the trial a nullity.<sup>50</sup> Where the accused understand the language of the court, which is English, it becomes unnecessary to record that fact, it is only where the accused obviously does not understand the language of the court that the law places a burden on the court to put on record a language spoken by the accused and the fact that the charge was read over and explained to him in that language is however good practice to ask the accused the question whether he understood the charge/nature as read and explained and to record his answer. Although the omission to expressly do so would not constitute non-compliance with the constitutional and procedural requirements, it is sufficient as a whole, if it would be gathered that the accused understood the nature of the charge and that he intended to plead either guilty or not guilty to the charge, this was the provision in *Timothy v FRN*.<sup>51</sup>

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<sup>46</sup> Section 252: Nigerian Prisons Service Standing Orders, (Revised Edition) 2011.

<sup>47</sup> (2002) 5 WRN 113 at 124.

<sup>48</sup> Section 36(6)(a) Constitution of the Federal Republic of Nigeria 1999

<sup>49</sup> (2008) All FWLR ( pt 402) p.1138,1139

<sup>50</sup> Bodede J, (2008) Criminal Evidence in Nigeria (Revised Edition, Florence and Lambard (Nig) Ltd. p91

<sup>51</sup> supra

8) Right not to be Detained Unlawfully:

Every prisoner has a right not to be unlawfully detained in prison without a lawful detention order issued by a competent judicial authority (court).

9) Right to be informed of rights and obligations (responsibilities):

As soon as a prisoner is admitted in a prison the prisoner must be informed of her/his rights and obligation in a language she/he understands by the reception officer.<sup>52</sup>

10) Right of Appeal:

A prisoner has a right to appeal against conviction and sentence within a specified duration from the date of sentence. An appellant will be granted the opportunity to see his legal adviser, or any other person with whom he desires to communicate regarding the prosecution of his appeal on any week-day at any reasonable hour, in the sight but not in the hearing of a prison officer.<sup>53</sup>

11) Right to Food and Drinking Water:

The Nigerian Prisons Service Standing Order states that every prisoner shall be allowed a sufficient quantity of plain and wholesome food, depending on the nature of the labour to be performed by the prisoner. In addition, every Prisoner would be provided with sufficient rations of a balanced diet. Drinking water on the other hand would be to every prisoner whenever he needs it.<sup>54</sup>

12) Right to Daily Exercises:

Incarceration shouldn't eliminate the right to physical activity. This article highlights the importance of daily exercise for prisoners and the standards that should be upheld. All prisoners, with the exception of those working outdoors, deserve access to daily exercise programs. These programs should be conducted in open-air environments, as deemed necessary by medical professionals to ensure the health and well-being of inmates. Even condemned convicts, those awaiting execution, should be provided

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<sup>52</sup> Nigeria Prisons Service, Prisoners' Information Booklet On Rights & Responsibilities Produced as part of the Human Rights Training Integration (HRTI) Project – A Project of the Nigeria Prisons Service (NPS) and the Prisoners Rehabilitation And Welfare Action (PRAWA) with the Support of the British High Commission

<sup>53</sup> Section 176 of the Nigerian Prisons Service Standing Orders (Revised Edition), 2011.

<sup>54</sup> Ibid, Section 268.

with a daily hour of supervised exercise outdoors. This ensures their basic needs are met and promotes physical and mental well-being during this challenging time.<sup>55</sup>

### 13) Right to Medical Services:

Upon arrival, every prisoner undergoes a medical examination by a qualified officer as soon as possible after admission. Their health status is then documented within the prison registry. Prior to release, no prisoner is discharged without a final medical examination. This ensures they are not suffering from any acute or potentially dangerous conditions and are fit for release. Additionally, prisoners cannot be discharged against their will while experiencing such health issues.

Prisoners scheduled for transfer to another facility are also required to undergo a medical examination within 24 hours of the move. This assessment by a medical officer guarantees the prisoner's fitness for travel.<sup>56</sup>

### 14) Rights to Receive Correspondence and Visit:

Maintaining social connections is vital for everyone, and prisoners are no exception. Here's an overview of how Nigerian prisons facilitate communication between inmates and the outside world, following strict regulations:

- i) Limited Freedom, Legal Access Preserved: While communication is generally allowed, it's subject to legal restrictions. All letters are reviewed by prison authorities (Superintendent) before delivery.
- ii) Regular Communication for Most: Most prisoners, excluding those sentenced to death, can write and receive letters and have daily communication opportunities with friends, family (except for capital offense cases), or legal advisors.
- iii) Initial Contact: Upon entering prison, inmates are assisted by a welfare officer in notifying loved ones of their whereabouts, usually via letter or phone call.
- iv) Foreign Embassies and Lawyers: Foreign inmates enjoy the right to unrestricted communication with their embassies and legal representatives.
- v) Compassionate Visits: In situations of serious illness, a medical officer can authorize visits from close relatives or friends to provide emotional support.
- vi) Death Row Communication: Those facing capital punishment retain communication rights with legal advisors and can request visits from approved family and friends through a written order from the prison head.<sup>57</sup>

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<sup>55</sup> Nigeria Prisons Service ,Prisoners' Information Booklet On Rights & Responsibilities Produced as part of the Human Rights Training Integration (HRTI) Project – A Project of the Nigeria Prisons Service (NPS) and the Prisoners Rehabilitation And Welfare Action (PRAWA) with the Support of the British High Commission p3

<sup>56</sup> Section 112 of the Nigerian Prisons Service Standing Orders (Revised Edition), 2011.

<sup>57</sup> Nigeria Prisons Service, Prisoners' Information Booklet On Rights & Responsibilities Produced as part of the Human Rights Training Integration (HRTI) Project – A Project of the Nigeria Prisons

## 15) Right to Remission Of Sentence:

Remission means a reduction of the time a prisoner has to spend in jail.<sup>58</sup> Prisoners who are serving different jail sentences are entitled to a reduction on their jail sentence. Regulation 54 made pursuant to Section 15(1) of the Prisons Act<sup>59</sup> provides that: “*every convicted prisoner undergoing different sentence of imprisonment for a period exceeding one calendar month may earn remission of sentence as the reward for industry accompanied by good conduct*”. The regulation went further to state that the maximum remission which may be earned shall be one-third of the sentence. This means that for the purpose of remission, 8 months make one calendar year. This is called the prison year.

The amount of remission of sentence a prisoner may earn shall be determined as follows:

- a. a prisoner shall be entitled to remission that is appropriate to his sentence unless he is convicted of any charge against prison discipline;
- b. if it is considered that a prisoner has not earned the right to the maximum remission of sentence on any particular day he shall be charged before the superintendent or assistant superintendent in charge of the prison;
- c. If a prisoner forfeits his right to remission of sentence, this shall be entered in the prison’s punishment book.<sup>60</sup>

In a situation where cumulative sentence is imposed at the same time together amounting to a minimum term of imprisonment of one calendar month, a prisoner would be eligible for remission of sentence for the whole period of such sentences<sup>61</sup>. However, when a cumulative sentence is passed at different times, together amounting to the minimum term of imprisonment of one calendar month, the prison shall be entitled to be eligible for remission of sentence from the date of passing of the sentence which brings the total sentence passed up to the required period.

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<sup>58</sup>Della Summers *Longman Dictionary of Contemporary English* (3<sup>rd</sup> Edition, Long Man, London 1995)

<sup>59</sup> Cap 366 Laws of the Federation of Nigerian, 2004

<sup>60</sup> Ibid

<sup>61</sup> Ibid

#### 16) Right to Access a Due Complaint Process and Redress:

Prisoners can make complaints to a prison visitor or to the officer in charge of the prison (or in the case of female to the wardress) but not to any subordinate officer except to report sickness.<sup>62</sup> In addition, if any prisoner genuinely complains of an illness shall not be compelled to labour until he has been examined and directions have been given.<sup>63</sup>

#### 17) Right to Seek Redress Against Inhuman Treatment:

Remedies are available to prisoners who have been subjected to inhumane treatment or torture.<sup>64</sup> In the case of *Peter Nemi v Attorney General, Lagos State* (supra), the court reiterated the fact that a condemned prisoner has a right to seek for redress against inhuman treatment. Inhuman treatment of prisoners was also condemned in the case of *Ireland v United Kingdom*<sup>65</sup>. In that case, the court held that “*the following factors were relevant in determining the existence of inhumane treatment. The duration of the treatment, the mental effect, the sex, age, and the state of health of the victim*”

#### 18) Right to Vote:

By virtue of a Federal High Court ruling in the case of *Victor Emenumo & Ors v INEC & Anor*,<sup>66</sup> prisoners in Nigerian prisons have the right to vote in all elections conducted in the country. Justice Mohammed Suleiman Lima, who gave the ruling also directed the defendants to ensure that the applicants were not disenfranchised, and that to deny inmates the right to vote is unconstitutional, illegal, irregular, unlawful, null and void and of no effect whatsoever.<sup>67</sup> He stated further that “*...being an inmate is not an offence that impedes their registration and voting rights under Section 24 of the Electoral Act and that the exclusion of inmates in elections conducted in Nigeria is illegal and ultravires*”.<sup>68</sup>

Notwithstanding the above ruling of the court, prisoners in Nigeria haven't been partaking in general elections. Mr. Francis Enobore, the Public Relations Officer of

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<sup>62</sup> Ibid

<sup>63</sup> Nigeria Prisons Service ,Prisoners' Information Booklet On Rights & Responsibilities Produced as part of the Human Rights Training Integration (HRTI) Project – A Project of the Nigeria Prisons Service (NPS) and the Prisoners Rehabilitation And Welfare Action (PRAWA) with the Support of the British High Commission 9

<sup>64</sup> Leo Igwe: “Child Rights and Witchcraft in Nigeria” In International Humanist and Ethical Union < <http://www.iheu.org/child-rights-and-witchcraft-nigeria>> accessed 3 April 2024

<sup>65</sup> (1979-1980) EHRR 25 paragraph 162

<sup>66</sup> Suit No. FHC/BC/CS/12/14, delivered on 16 December 2014

<sup>67</sup> Prisoners in Nigeria have right to vote in all elections, court rules. Article found on [www.vanguardngr.com/2014/12/](http://www.vanguardngr.com/2014/12/) accessed 3 April 2024

<sup>68</sup> Ibid



the Nigeria Prison Service in an interview gave the reasons prisoners were unable to vote in the general elections. He said there were absence of polling units within prison facilities nationwide and that logistic challenges made it difficult for them to do so. Enobore said in the future, INEC and NPSA would collaborate to carry out the court's order.<sup>69</sup> He further said, a center will be created in prisons for registration and voting and they would ensure that they are safely guarded to produce a conducive environment for them to vote without jeopardizing the electoral process.<sup>70</sup> On the other hand, prisoners are not entitled to be voted for as provided in the 1999 Constitution of the Federal Republic of Nigeria

Other rights include, right to be accommodated in separate units, right to have safe custody of own property, right to Training and Rehabilitation, right to suitable bedding, right to freedom of religion, right to be provided with a prison uniform, rights to access prison library books, right to special consideration for those in vulnerable situations, (for example, the elderly, the terminally ill, the mentally ill etc), right to hygiene, right not to be employed on certain designated days such as on a Sunday or on Christmas day, or on Good Friday, except it is in the interest of public health or of Government service, right not to be employed when under medical observation.<sup>71</sup>

## **6.0 PROBLEMS FACING THE NIGERIAN PRISON SYSTEM**

1. Weak judicial system: A report by Amnesty International exposed the appalling state of Nigeria's justice system. They call it a "conveyor belt of injustice" where countless Nigerians are locked up without ever being convicted. They revealed that over two-thirds of inmates haven't seen a trial, some languishing for a decade. Cases take so long to get to court, such that once an inmate has been tried and convicted, they are reluctant to launch an appeal.<sup>72</sup>
2. Poverty: Most inmates in Nigerian prisons are too poor to afford a lawyer. Only one in seven awaiting trial inmates have access to private legal representations.<sup>73</sup>
3. Severe overcrowding: This destroys the mental and physical health of thousands of inmates. It also leads to overstretching of the prison facilities and equipments.

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<sup>69</sup> Why Prisoners Can't Vote in Nigeria Yet, news found on The New Website [www.thenewsnigeria.com.ng](http://www.thenewsnigeria.com.ng) accessed 3 April 2024

<sup>70</sup> Ibid

<sup>71</sup> Nigeria Prisons Service ,Prisoners' Information Booklet On Rights & Responsibilities Produced as part of the Human Rights Training Integration (HRTI) Project – A Project of the Nigeria Prisons Service (NPS) and the Prisoners Rehabilitation And Welfare Action (PRAWA) with the Support of the British High Commission. pages 7-10 pt1

<sup>72</sup> <sup>72</sup> Amnesty International UK Press releases. February 26th, 2008. <[www.amnesty.org.uk/press-releases/nigeria-criminal-justice-system-conveyor-belt-injustice-says-amnesty](http://www.amnesty.org.uk/press-releases/nigeria-criminal-justice-system-conveyor-belt-injustice-says-amnesty)> 3 April 2024

<sup>73</sup> Ibid

4. Torture and human rights violations: Nigeria's prison system faces a multitude of challenges, but one of the most critical and concerning is the ongoing issue of torture and human rights violations. A recent report by Amnesty International exposed the brutal reality for many Nigerian inmates. The organization documented a range of torture methods used by prison officials, including beatings, suspension in painful positions, and even nail and teeth extractions. These practices not only inflict physical and psychological suffering but also violate fundamental human rights enshrined in international law.<sup>74</sup>
5. Poor record keeping: The absence of robust record-keeping mechanisms creates a critical obstacle to the fair and efficient administration of justice. In instances where case files are misplaced or lost, inmates face significant delays in their trials or even wrongful detention due to a lack of documentation outlining their legal status (awaiting trial vs. convicted). Other challenges include; Indiscriminate arrest and detention, corruption, poor health facilities etc.<sup>75</sup>

## **7.0 CONCLUSION AND RECOMMENDATIONS**

Despite the legal framework guaranteeing prisoners' rights in Nigeria, a significant gap exists between policy and practice. While the Nigerian Constitution and various regulations outline fundamental protections, harsh realities often paint a different picture. To bridge this gap and ensure the genuine upholding of prisoners' rights, the following recommendations are crucial:

- 1) Increased Transparency and Monitoring: Regular inspections by independent bodies and human rights organizations are essential. Public reporting on these inspections can expose violations and hold authorities accountable.
- 2) Improved Prison Conditions: Overcrowding, inadequate sanitation, and poor healthcare contribute to rights violations. Increased funding for prison infrastructure and healthcare is vital.
- 3) Prison Staff Training: Sensitizing prison staff on human rights principles and proper treatment procedures is critical. Training should emphasize the importance of rehabilitation alongside punishment.
- 4) Legal Aid Accessibility: Many prisoners lack access to legal representation. Expanding legal aid programs and simplifying complaint procedures can empower prisoners to defend their rights.
- 5) Community Reintegration Programs: Investing in programs that facilitate a smooth transition back to society upon release can reduce recidivism and promote respect for the law.

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<sup>74</sup> <sup>74</sup> Amnesty International UK Press releases. February 26th, 2008. Nigeria: Criminal justice system is a 'conveyor belt of injustice' says Amnesty. Prisons fail Nigerian people; most inmates not convicted of any crime. Retrieved on December 4<sup>th</sup>, 2015 from [www.amnesty.org.uk/press-releases/nigeria-criminal-justice-system-conveyor-belt-injustice-says-amnesty](http://www.amnesty.org.uk/press-releases/nigeria-criminal-justice-system-conveyor-belt-injustice-says-amnesty)

<sup>75</sup> *ibid*

- 6) Government Commitment: The Nigerian government must demonstrate a genuine commitment to upholding prisoners' rights through legislative reform, increased budgetary allocation, and a focus on improved prison management.

By implementing these recommendations, Nigeria can move closer to a reality where the legal protections afforded to prisoners are not merely words on paper, but a lived experience that fosters rehabilitation and respect for human dignity.