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Stains of Human Rights Abuse: A Look into the Correctional Service System in Nigeria and Ghana

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Abstract

Human Rights are the inherent rights of everyone and it should not be denied anyone including prisoners. Unfortunately, prisoners are on the receiving end of Human Rights abuses meted out on them by the members of the society and the body that overlooks them i.e the correctional service. In various ways, the law has provided for different tools, international, regional and national instruments that guarantee fundamental rights to every prisoner but sadly, more often than not, they are denied the enjoyment of these rights. The use of comparative and doctrinal methodology was applied in this paper as it discusses the basic Human Rights of prisoners in Nigeria and Ghana, it looked into the various forms of abuse meted out on them and it also considered the role of correctional service staff in the whole of this. The paper also discusses the new Nigerian Correctional Service Act which is now compatible with a number of provisions of the United Nations Standard Minimum Rules for the Treatment of Prisoners (The Nelson Mandela Rules) and the United Nations Standard Minimum Rules for the Treatment of Female Offenders (Bangkok Rules). It enumerates measures by which prisoners' rights can be protected and recommend ways to go about it. The paper recommends steps that can be taken to improve on the rights of prisoners and how these rights can be made accessible so as to be enjoyed by them. In conclusion, the paper reiterates on the expected benefits of the newly enacted Nigerian Correctional Service Act.



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Keywords:

Human Rights, abuses, law, correctional service, prisoner

Introduction

Human Rights have various definitions and discussions provided for by different writers¹. According to Brendalyn² it is the various entitlements due to each person for being human. They are rights accessible to every person for the fact that they are human i.e., no one is more equal than the other as each person has access to enjoy Human Rights. The age, sex, race, class, religious beliefs etc. of individuals do not matter. Also, Henkin, is of the opinion that nothing can take Human Rights from anyone as it is universal and fundamental rights every person has access to³. They are the rights that makes it possible to treat everyone equally worldwide. These rights of people are therefore inalienable, indivisible and interdependent.

Human Rights reflect the basic needs of persons and basic standards which enables people to live in dignity. Different Human Rights tools are available to shield and advance Human Rights standards internationally, regionally and nationally.

Each nation also has its national law to guard the Rights of its citizens⁴. Aside that, the part played by international Human Rights in the society cannot be overlooked. However, to see to it that Human Rights laws and standards are efficiently maintained, international standard of Rights have to be effected nationally and regarded by the states. The reason for this is that the standard of these Rights provided for and put under the supervision of different monitoring bodies at the global level, regional level and national level⁵ are efficiently followed. A number of countries are party to the international and regional tools meant to shield and advance Human Rights within its legal system.

The Universal Declaration of Human Rights (UDHR) provides that Human Rights are universal and are to be enjoyed by everyone irrespective of where they are. It states that “the inherent dignity of all members of the human family is the foundation of freedom, justice and peace in the world”⁶. Article 1 of UDHR states the freeborn and equal status of everyman. The African Charter of Human and People’s Right (Charter) which covers African region exists to shield and advance Human Rights.

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¹ Ade Ajomo, ‘Human Rights and the Nigerian Judiciary’ in Elias John and Mike Jegede (eds) *Nigerian Essays in Jurisprudence* (Lagos M.I.J Publishers Limited, 1993) p.350

² Brendalyn A., *Democratization of the protection of Human Rights in Africa* (Greenwood publishing group 1995) 29

³ Louis Henkin, *The Age of Rights* (New York, Columbia University Press 1990) p.2.

⁴ Part 1 Para 5 of the Vienna Declaration 1993

⁵ Flavia Saldanha Kroetz, ‘Between Global Consensus of Local Deviation: A Critical Approach on the Universality of Human Rights, Regional Human Rights Systems and Cultural Diversity’ (2016) https://www.scielo.br/scielo.php?script=sci_arttext&pid=S2359-56392016000100043 accessed 11 February 2020

⁶ Universal Declaration of Human Rights (UDHR), adopted by the United Nations General Assembly resolution 217 A (III) [1948] (hereinafter UDHR)

Article 2 of the charter makes provision for everyone to enjoy the entitlements and freedoms stated in it without any form of distinction.

Despite all the available provisions of law to ensure the standards of rights laid down are not infringed on, cases of violation and abuse of Human Rights especially in developing countries are alarming. The abuse of Human Rights by law enforcement agencies, police and correctional service inclusive are never ending. The way and manner by which detained and convicted persons are treated makes them less human. That a person has been convicted of a crime does not mean that his right should be deprived him.⁷ According to Coyle, the court that convicted them and sentenced them have only deprived them of their liberty and not their humanity and therefore, no matter how grave the offence committed by such persons are, they are not to be treated less than a human being.⁸ They are still entitled to their rights to the extent to which the law permits. This paper is to discuss the notion of Human Rights, the basic principles of Human Rights, the various types of Human Rights violations, rights of inmates, the abuse meted out on them with focus on the position of correctional service staff in the whole of this.

The Notion of Human Rights

Human Rights is very elusive and slippery. It has been conceptualised variously by different scholars. It means one thing for the natural law theorists and another for the positivists. To start with, there is a need to clarify the meaning of the word “right”. Rights are due entitlements that individuals have claims to. They are mostly natural endowments as they are rights bestowed on man by nature.⁹ The concept of “Human Rights” includes all the freedoms the individual can claim on the basis of his humanity, rights which are safeguarded by society on ethical grounds¹⁰. Human Rights are rights that people are born with and to which everyone has equal entitlement regardless of gender, ethnic origin or beliefs. The notion of Human Rights is a quintessence of democracy and so in a proper democratic setting, Human Rights become an essential feature.¹¹ Human Rights are also legal prerogatives enjoyed without fear of government or any other person by every human being.¹² These rights are given to man by virtue of his humanity and not from man to man¹³. They are an

⁷ A Coyle, *Human Rights Approach to Prison Management Handbook for Prison Staff* (London, United Kingdom International Centre for Prison Studies 2002) 31

⁸ *ibid*

⁹ Sunny Nwachukwu, Austin Aghamelo, Nwaneri Stanley, ‘An Account of Human Rights Violations in Nigeria (Pre-British, British and Post-Independence) (2014) 10 European Scientific Journal, ESJ, 10

¹⁰Compass: Manual for Human Rights Education with Young people

<https://www.coe.int/en/web/compass/what-are-human-rights-> accessed 15 February 2021

¹¹ G.C Enebe, ‘The concept of Human Rights: Origin, meaning and place in the new World, in O Anichebe (ed), *Logic*

Philosophy and Human Existence 8th Ed, (Nsukka, afro-Orbis Publications 2008)

¹² Icelandic Human Rights Centre, Definitions and Classifications

<https://www.humanrights.is/en/human-rights-education-project/human-rights-concepts-ideas-and-fora/part-i-the-concept-of-human-rights/definitions-and-classifications> accessed 15 February 2021

¹³ Adetoro Adenrele, Omiyefa Olugbenga, Challenges of Human Rights Abuse in Nigeria Democratic Governance-Which Way Forward?’ (2014) Journal of Social Economics research, Vol 1, No 5, pp 87-96

essential principle in the organisation of modern society, and the very basis of peaceful cohabitation at the domestic and global grade, in the community and in the family.¹⁴ Human Rights has been classified into three (3) generations.¹⁵

The first-generation rights are mainly civil and political rights. Their target is to secure the liberty of individuals from the tyrannical action of government¹⁶. They are also referred to as negative rights because they impose negative obligations on government not to interfere with the rights of the individual.¹⁷ They have to do with the sanctity of the man and his rights within the environment he is based. These rights make it impossible for the state or society to hinder man from his basic and fundamental rights¹⁸. All rights guaranteed under the chapter 4 of the 1999 Nigerian constitution are classified under 1st generation rights.¹⁹

The second-generation rights are economic, social and cultural rights. These are positive rights because they impose some obligations on the government to provide the necessary and conducive living condition for the people. They are referred to as programmatic clauses and they do not create individual claims but rather obligate governments and the legislature to pursue social policies²⁰. They positive and responsive action of the government is needed for to have them implemented. These rights are in Articles 22 -27 of the UDHR, the African Charter also has provision for some of the 2nd generation rights and also the 1999 constitution under the heading “Fundamental Objectives and Directive Principles of State Policy” in Chapter 2.

The third-generation rights. These are rights of people and groups. It relates to development, common heritage of man, neat environment and right to self-determination²¹. The main objective of these rights is that the social well-being and political stability cannot be achieved in a nation without the economic development of those nations.²² However, these classifications are not without criticisms and despite the criticisms Human Rights has been accepted as “indivisible, interdependent and interrelated.”

¹⁴ H.E Xi Jinping, ‘Carry Forward the Five Principles of Peaceful Coexistence to Build a Better World Through Win-Win Cooperation (2014)

https://www.fmprc.gov.cn/mfa_eng/wjdt_665385/zyjh_665391/t1170143.shtml accessed 15 February 2021

¹⁵ Spasimir Domaradzki, Margaryta Khvostova, David Pupovac, ‘Karel Vasak’s Generations of Rights and the Contemporary Human Rights Discourse’ (2019) 20 Human Rights Review 423, 443

¹⁶ *ibid*

¹⁷ Spasimir Domaradzki, Margaryta Khvostova, David Pupovac, ‘Karel Vasak’s Generations of Rights and the Contemporary Human Rights Discourse’ (2019) 20 Human Rights Review 423, 443

¹⁸ *Ibid*

¹⁹ The Constitution of the Federal Republic of Nigeria Cap C4 L.F.N. 2004

²⁰ Spasimir Domaradzki, Margaryta Khvostova, David Pupovac, ‘Karel Vasak’s Generations of Rights and the Contemporary Human Rights Discourse’ (2019) 423-443, Human Rights Review, 20

²¹ *ibid*

²² *ibid*

Legal Frameworks

There are certain principles of Human Rights which can be classified as the legal framework on which Human Rights is built.

1. Human Rights are universal

According to Article 1 of UDHR, Human Rights are not specific only to a certain culture or nation. It cuts across globally and that makes them universal. Every person is entitled to human rights equally, universally and forever. They cut across equally for every person worldwide²³. Man enjoys Human Rights because he is human and not because he is a citizen of a particular country as Human Rights apply without discrimination to everybody everywhere.²⁴

2. Human Rights are Inalienable

An individual cannot lose his rights except he ceases to be a human being²⁵. They cannot be taken away from a person except such right(s) is restricted or limited by the ruling or judgement of a competent court of law neither can Human Rights be shared between two or more persons.²⁶

3. Indivisibility and Interdependency of Human Rights

No one can take away a right because it is not important or needed.²⁷ The same equal status accrues to all Human Rights. One is not more important than the other. To deny one right is the denial of all other rights. The interdependency of Human Rights is interwoven in one right to the other. E.g., the ability to participate in decision making is interwoven in the right of expression.²⁸ Each Human Rights depends on the other and when one is infringed on, it will have adverse effects on the others. To have life one must have access to good food and good standard of living. Access to basic education for a person guarantees the right to be elected to public office if the person so desires.

4. Equality and Non-Discrimination

According to Article 1 of CEDAW, every human is equal and for that each human has a right to enjoy his Human Rights without any form of discrimination.

²³ Leila Nasr, 'Are Human Rights Really Universal, Inalienable and Indivisible' (2016) <https://blogs.lse.ac.uk/humanrights/2016/09/14/are-human-rights-really-universal-inalienable-and-indivisible/> accessed 15 February 2021

²⁴ Ibid

²⁵ ibid

²⁶ ibid

²⁷ ibid

²⁸ ibid

5. Participation and Inclusion

Every human has a right to be involved actively, freely and meaningfully in processes involving decision making within its state.²⁹

6. Accountability and Rule of Law

The State and its agencies must adhere to the legal standards and provisions of Human Rights instruments. Where there is violation of any, the affected person(s) has the right to institute legal proceedings to seek redress as provided by the law.

Abuse of Human Rights in Nigeria and Ghana

Abuse of Human Rights is an intentional ill-treatment of human beings including the breach of fundamental rights provided for in the UDHR³⁰ and other Human Rights tools applicable within a particular legal system. It also refers to the infringement on the rights of an individual depriving such individual from enjoying his fundamental rights³¹. Human Rights abuse connotes the breach of Human Rights. It is when man's basic and fundamental rights are denied. It is the unfair treatment of a human being which makes him feel less of being a person. It depicts lack of respect, regard and dignity on the person of another.³² Since Human Rights have the backing of the law, once there is a violation of it, this means there is an infringement on the guaranteed right provided by law. Human Rights abuse come in different ways and include the following;

Abuse of first-generation rights: Civil rights are first generation rights provided for under the Art 3 to 21 of the UDHR, Chapter 4 of the 1999 Nigeria Constitution and Chapter 5 of the Ghanaian Constitution.³³

The abuse of civil and political rights includes causing intentional death of another, torture and degrading treatment, hindering free movement of another, disallowing another to practice the religion of his choice amongst others.

Abuse of second-generation rights: The abuses here are hinderance to good education, non-provision of good living and breach of right to good health

²⁹ Declaration on the Right to Development, Adopted by General Assembly Resolution 41/128 [1986]

³⁰ Universal Declaration of Human Rights (UDHR), adopted by the United Nations General Assembly resolution 217 A (III) [1948]

³¹ The Major Universal Human Rights Instruments and the Mechanism for their Implementation available on <https://www.ohchr.org/Documents/Publications/training9chapter2en.pdf> 15 February 2021

³² Felix Nzarga, 'An Analysis of Human Rights Violation by the Nigerian security Services' (2014) *Journal of law, Policy and Globalization*, Vol 30

³³ Constitution of the Republic of Ghana (Amendment) Act, 1996 (Act 527)

Abuse of Community Rights: these are the abuse of the third-generation rights and they include non-provision of clean and healthy environment, denial of self-determination and abuse of prisoner's/inmates' rights amongst others.

Human Rights Abuse within the Nigerian Correctional Service System

A prison is an institution that has the duty of keeping persons who have been convicted of any crime, and/or remanded on order of a competent court for an alleged crime.³⁴ The primary functions of prison include isolating, confining and restraining convicts and alleged offenders. Nigerian prison service was guided by the Nigerian Prisons Act until 2019 when the Nigerian Prison service became Nigeria correctional service and a new Act referred to as the Nigerian Correctional Service Act was enacted. The Nigerian Correctional Service Act was enacted to address a lot of issues not addressed by the old Act³⁵. The Act laid out necessary rights and the way prisoners should be treated following the Nelson Mandela rules and the Bangkok rules³⁶. The new Act plays a huge part in ensuring that correctional officers are allowed to refuse the admission of new inmates when the facility has exceeded its inmate strength.

This will help to reduce the problem of over-crowding which is a major problem in Nigerian prisons³⁷. The Act caters for every class of prisoners.³⁸ The conditions of Nigerian correctional facilities are nothing to write home about. Some of these facilities have been in existence since the time of colonization. The buildings are old and not adequately maintained. The conditions of these facilities have its toll on prisoners as they have dehumanizing effects on them. They facilities are overcrowded as the inmates in them supercede the size the facilities were originally built for. More often than not, the number of inmates awaiting trial are always more than the number of the convicts.

The government some years back initiated the decongestion of these facilities but sadly, there has been no improvement. As a result of the overcrowding in these facilities, basic and necessary facilities are not made available and those that are available are not sufficient. Prisoners have to defecate and urinate into bowls in the same cell the sleep in. Prisoners more often than not are treated as if they have no rights again. Most times, when they have to face the disciplinary panel, they are

³⁴ Tinuoye Timothy, Prison Administration in Contemporary Nigeria- A Sociological Perspective available on <http://eprints.covenantuniversity.edu.ng/10286/3/Prison%20Administration%20In%20Contemporary%20Nigeria%20-%C2%A0A%20Sociological%20Perspective.pdf> accessed 24 February 2021

³⁵ Nigerian Correctional Service Act, 2019

³⁶ Uju Agomoh, 'Nigerian Correctional Service Act Conforms to International Best Practices' The Guardian (Nigeria, 15 October, 2019)

³⁷ Ibid

³⁸ ibid

usually not accorded the right to fair hearing which is provided in constitution.³⁹ There are times that the right procedure for disciplinary hearing is not followed and the prisoner is informally found guilty and punished.⁴⁰ Whipping still takes place in Nigeria prisons and this and other forms of culpable punishment are prohibited by law⁴¹. There instances where individual correctional staff would beat up a prisoner. Disregarding the provision of the SMR, there are still instances when prisoners are placed in solitary confinement with inadequate ventilation and light.⁴² Prisoners are also chained atimes in their cells. For whatever reason, these are all inhumane treatment prohibited by Human Rights tools and the Nigeria constitution.

The condition of Nigeria correctional facilities has given room to a lot of atrocities being caried out on prisoners. Lack of good and sufficient water, lack of good food, inadequate sewage disposal, inadequate refuse disposal are all forms of unhealthy living condition faced by prisoners. The cell rooms are poorly ventilated and small to adequately accommodate the prisoners.⁴³ Food provided are insufficient and not nutritious as a result, prisoners who can afford it have to provide for their own food and atimes help those who cannot afford to. As a way of punishing prisoners, correctional staff may deny them food or medical aid and even demand money from them. Prisoners sleep on concrete floors as there are no enough bed and mattresses to cater for them. There are times that basic things provided for the prisoners by NGOs, religious bodies and good-hearted people are shared among the staff and not handed over to the prisoners. And even when handed over to them, the staff would have taken the larger and better quantity.

For the female prisoners, condition of living and survival could be harsher as a result of the physiological contrast between the male and female gender⁴⁴. The time of their menstrual flow could be a big issue as adequate provisions are not available. Most of the female prisoners use old rags, torn cloths or toilet roll during this period⁴⁵. Even when outside help supply pads, the officers share it among themselves claiming that the prisoners prohibited from using it. Unhygienic condition during menstrual flow could lead to infection. They have to ration water and during dry season, only those who can afford to pay get sufficient water to use daily⁴⁶. Some correctional staff can be unnecessary harsh and wicked towards prisoners. A lot of them are not properly

³⁹ Yahaya Abubakar, Maryam Ishaku, A.S. Hassan, 'The Rights of Prisoners in Nigeria and the Role of Prisons and Modern Penology' (2017) 60 *Journal of Law, Policy and Globalization*

⁴⁰ *ibid*

⁴¹ Marcus Araromi, 'Prisoners' Rights Under the Nigerian Law: Legal Pathways to Progressive Realization and Protection' (2015) 6(1) *Afe Babalola University: Journal of Sustainable Development Law & Policy*

⁴² Yahaya Abubakar, Maryam Ishaku, A.S. Hassan, 'The Rights of Prisoners in Nigeria and the Role of Prisons and Modern Penology' (2017) 60 *Journal of Law, Policy and Globalization*

⁴³ *ibid*

⁴⁴ Yahaya Abubakar, Maryam Ishaku, A.S. Hassan, 'The Rights of Prisoners in Nigeria and the Role of Prisons and Modern Penology' (2017) 60 *Journal of Law, Policy and Globalization*

⁴⁵ *ibid*

⁴⁶ *ibid*

trained and when trained, some of them are unable to comprehend and carry out their duties accordingly.⁴⁷

Human Rights Abuse within the Ghanaian Prison System

Ghana an African Country is a member of the United Nations. It has endorsed a number of tools on Human Rights including CEDAW and the African Charter amongst others. It respects the provisions of UDHR and has enshrined a lot of those rights in her Constitution. Like its Nigerian counterpart, it is sad that despite the available tools for the protection of every person and also conventions for the protection of prisoners, prisoners in Ghana still experience inhumane treatment and infringement of their Human Rights.

The Ghana Prison Department was established in 1841 and in 1964, it became Ghana Prison Service and ceases to be under the auspice of the Ghana Civil Service.⁴⁸ The Ghana prison Service has the responsibilities to ensure the safe custody of prisoners, safe and timely movement of offenders to and from court. It also ensures that prisoners are reformed and rehabilitated so as to enable easy reintegration for them back in to the society.⁴⁹

The 1992 Ghanaian constitution amended in 1996 provides numerous entitlements and freedoms for its citizens⁵⁰. The entitlements are not limited to right to life, fair trial, and equality before the law amongst others.⁵¹ Prisoners, like a free citizen have Human Rights and should be accorded some degree of dignity. Section 15 lays out that regard for everyone shall not be violated in any way.

No individual shall whether or not he is arrested, restricted or detained be subjected to torture or other cruel, inhuman or degrading treatment or punishment; any other condition that detracts or is likely to detract from his dignity worth as a human being.⁵²

The law also provides that person not convicted of crime should be kept separately from convicts and not be treated as a convict. Article 16 prohibits slavery or servitude of any person.⁵³

⁴⁷ *ibid*

⁴⁸ Brief History on Ghana Prison Service <http://www.ghanaprison.gov.gh/brief.html> accessed 24 February 2021

⁴⁹ *ibid*

⁵⁰ Constitution of the Republic of Ghana (Amendment) Act, 1996 (Act 527)

⁵¹ Alfred Codjoe, 'Do prisoners in Ghana have rights?

<https://www.ghanaweb.com/GhanaHomePage/features/Do-prisoners-in-Ghana-have-rights-298530#:~:text=Some%20of%20the%20rights%20and,all%20persons%20shall%20be%20inviolable> accessed 15 February 2021

⁵² Constitution of the Republic of Ghana (Amendment) Act, 1996 (Act 527)

⁵³ *ibid*

Some other Prisoners right available in the Ghana Prison Service Act include Section 2 of the Act which places responsibility on the Prisons Service to make certain that no inmate is badly or inhumanly treated. This is also in line with the provision of Article 15 of the Ghanian constitution. In Section 35 (1) of the Act, the Director General of Prisons is obligated to make sure that the prisoners are fed with good food in amounts enough for his good health, each prisoner should be supplied with clothing, toiletries, bedsheet and cover and other essential needs in sufficient amount for his use, prisoners shall have access to washing and toilet facilities for his cleanliness, every prisoner is to exercise daily outside his cell for not less than one hour. Any ill prisoner shall have timely access to his drugs and shall be given healthy meals or other things necessary for his health and this shall be prescribed by the medical officer.

Article 15 (2) of the constitution does not allow torture of prisoners and section 43 of the Act gives power to the Director of Prison or Officer in Charge to sanction any prisoner for an offence of indiscipline. The power of the Director of Prison according to Section 43 (2) shall not be delegated. Sections 44, 45 and 46 of the Act prohibits whipping, restraints by chain and exerting force on prisoners. Prisoners are entitled to clean prison surroundings as provided for in Section 36. Section 37 states that each prisoner is entitled to be placed in a cell. Visitation entitlement is provided for in S.38. Section 40 gives access to all prisoners to practice the religion of their choice. By section 41, the Director General of Prison has power to set up avenues for training and learning of skills thereby giving them access to a form of education.

Provisions for specific bodies such as Commission on Human Rights and Administrative Justice were provided for by the Ghanian constitution. A visiting committee comprising of Judges and Magistrates is to monitor how prisoners are treated. These tools set out the basis that uphold the primary standards of Human Rights. An important part of man's living is to have rights and be free. They are inherent rights that everyone has to enjoy because they are human. The foundation of Human Rights is laid on the regard for dignity and the worth of each person. Even though Ghana has these provisions of law and is a signatory to most of these instruments, the condition of living of prisoners is not palatable. According to the United Nation Third Universal Periodic Review Ghana, the Prisons in Ghana are still below international standard. There is high level of overcrowding and this leads to different types of violations ranging from poor sanitation, inadequate access to health care to insufficient nutrition.⁵⁴

General Rights of Prisoners

All persons including prisoners are entitled to basic rights for survival and rational living. When an offender is convicted, some of his rights are hindered and this is in line with the position of law depending on his sentence. This then leads to limited

⁵⁴ Joint Stakeholders Report, (United Nations, Third Universal Periodic Review, Ghana 2017)

restrictions on what he can do⁵⁵. This does not deprive him of some other basic rights which should be able to enjoy even in incarceration. Unlike advanced countries, when such rights are infringed on in Nigeria, there are no machineries in place to run to for redress. The fate of an average prisoner in Nigeria and Ghana comes to play from the day he gets convicted. As soon as such a person is convicted of the charge preferred against him, and the sentence is one that lands him in correctional facility, most people believe that such a person has no right again whatsoever. Despite the fact that a convicted person may seek to apply for bail pending appeal, it could become very difficult to grant him this constitutional right, thereby further denying him of his right to personal liberty⁵⁶. Usually securing bail and perfecting bail in Nigeria could be difficult as there are times when the police could make it frustrating.

There are also some inmates who have been forgotten in prison custody. Either their files have been misplaced or their records not up to date again. They cannot go to court and yet they are not aware of their right to apply for bail⁵⁷. At the end of the day, they would have spent more time than they should have if they have been tried, convicted and sentenced⁵⁸. The Nigerian constitution makes provision for that persons arrested or detained be taken before a court of law within a reasonable time⁵⁹ but unfortunately, there have been instances where suspects have been held without any formal charge even for simple offences and yet not taken to court⁶⁰. Before conviction, a suspect enjoys all the fundamental rights provided for in the Nigerian constitution but once convicted, to enjoy those rights becomes almost impossible as the rights of prisoners becomes limited only to rights to life, fair hearing if his case is on appeal and also right to practice any religion of his choice.⁶¹

The following are the rights that accrue to prisoners and these rights are recognised by international Human Rights tools.

Human Rights and Dignity of His Person

Various international instruments also make available protection for prisoners. African Charter in art 5 lays out that “every individual shall have the right to the respect of dignity inherent in a human being and to the recognition of his legal status”. It should be noted that individual includes a prisoner no matter the crime committed by him. International Covenant on Civil and Political Rights (ICCPR) in Art 10 also provides that “All persons deprived of their liberty shall be treated with

⁵⁵ J.O Olatoke, Mahmud, Ijaiya, Samuel, Adebowale ‘Universality of Prisoners’ Right and Appraisal of the Level of Conformity in Nigeria’ (2018) 9 (1) Nnamdi Azikiwe University Journal of International Law

⁵⁶ *ibid*

⁵⁷ *ibid*

⁵⁸ Emma Onoride, ‘Personal Liberty of a Suspect: A Reflection on Bail in Criminal Justice System in Nigeria’ (2010) 3(1) Kogi State Bi-Annual Journal of Public Law 158, 164

⁵⁹ The Constitution of the Federal Republic of Nigeria Cap C4 L.F.N. 2004

⁶⁰ *Suleiman v COP* (2008) 8 NWLR (pt. 1089), 298

⁶¹ J.O Olatoke et al ‘Universality of Prisoners’ Right and Appraisal of the Level of Conformity in Nigeria’ (2018) 9 (1) Nnamdi Azikiwe University Journal of International Law

humanity and with respect for the inherent dignity of the human persons.”⁶² Interpretation of this is that no matter the conviction of a prisoner, he is to be accorded his human dignity.

Principle 1 of the Basic Principles for the Treatment of Prisoners⁶³ provides that “All prisoners shall be treated with the respect due to their inherent dignity and value as human beings.” It can be seen from the above provisions that in every nation that practices true democracy, fundamental values of the law are protected. This includes regard for the dignity of every individual with inclusion of prisoners. The act that landed them in incarceration may be a very grievous one, but yet, the law has regard for their dignity and protects same. Prisoners are part of the special class of citizens in the country but as a result of legal processes and provisions of law, he is still to enjoy his rights.⁶⁴

The main rights that would be affected by his incarceration are his rights to personal liberty as he does not have the freedom to go and come as he would like to by virtue of the pronouncement of law on him. His private life is also restricted. He has no freedom of expression as he has to live by the rules and standards of the correctional service. His right to freedom of movement is hindered, likewise his right to peaceful assembly⁶⁵. This class of people are vulnerable and would need the protection of the law to enjoy human dignity. Once incarcerated, they become dependent on the correctional officers for their daily needs, care and protection and this makes them easy prey for abuse and ill treatment. To this extent, their Human Rights have to be protected. They have to be protected against torture, cruel acts, degrading and shameful treatment and chastising⁶⁶. According to Section 15(1) of Nigeria Correctional Act, holding inmates in slavery or servitude is prohibited.

Because Human Rights are important to the existence of man, they cannot be taken away by any legal reason except as restrained by the law therefore, prisoners are to have access and enjoy the civil rights except those taken away by law as a result of their sentence to imprisonment.⁶⁷

Right to Protection and Provision for the Children of Incarcerated Parents

Children whose parents are incarcerated may be affected by the incarceration of their parents. The children may be exposed to harm and shame in the society.⁶⁸ These

⁶² UN General Assembly, “International Covenant on Civil and Political Rights” Treaty series, Vol 999, Dec. 1966

⁶³ Basic Principles for the Treatment of Prisoners, General Assembly Resolution 45/111

⁶⁴Yahaya Abubakar, Maryam Ishaku, A.S. Hassan, ‘The Rights of Prisoners in Nigeria and the Role of Prisons and Modern Penology’ (2017) 60 Journal of Law, Policy and Globalization

⁶⁵ *ibid*

⁶⁶ *ibid*

⁶⁷ *ibid*

⁶⁸ Chesa Boudin, ‘Children of Incarcerated Parents: The Child’s Constitutional Right to the Family Relationship’ (2011) 101 (1) The Journal of Criminal Law and Criminology 77

children are not to be denied any right on the fact that their parent is imprisoned. They are to enjoy good family life and protection.⁶⁹ The African Charter in Article 18 provides that member states are to “assist the family which is the custodian of morals and traditional values recognized by the community”. Children can be very vulnerable and helpless and for that, they need to be properly cared for. The state is to make necessary provision for the child of an incarcerated person. The child should not be made to suffer as a result of his parent misdeed⁷⁰. Presently in Nigeria, there is no policy nor legislative that protects the children of prisoners except for those international instruments which Nigeria has signed the Convention on the Rights of the Child (CRC) which provides in its Article 9 that a child separated from his parent is entitled to have personal relationship and contact with the parent on a regular basis except such does not align with his interest. Section 34 of the Correctional Act also provides that nursing mothers would be allowed to have their babies with them until such baby is 18 months old. It also provides that creche would be made available for such babies.

Right to Vote

The Africa Charter to which Nigeria and Ghana are both parties to allows free participation in the government of an individual’s nation. A prisoner should not be denied this right. He should have the right to exercise his civic duty of being able to elect leaders that he believes would favor his cause. In December 2018, the Court of appeal granted the prayers of some prisoners in Nigeria who sought before it the order to enable prisoners in Nigeria to be registered for voting and be able to vote. The order was granted⁷¹. This is a relatively new development in Nigeria even though there is no law that specifically exempt prisoners from voting, there have never been any time in past elections where prisoners were considered for voting exercise. With the new development, the government should ensure that adequate means and provisions are met to carter the needs of prisoners during voter’s registration and election period.

Right to Health

Section 23 of the new Correctional Act provides for medical care for prisoners to improve their mental and physical health. Medical care is available to prevent and treat ailments. It also makes provision that health care center should be put in place within main correctional centers.

⁶⁹ Marcus Araromi, ‘Prisoners’ Rights Under the Nigerian Law: Legal Pathways to Progressive Realization and Protection’ (2015) 6(1) Afe Babalola University: Journal of Sustainable Development Law & Policy

⁷⁰ *ibid*

⁷¹ Agency Report, “Premium Times”

<https://www.premiumtimesng.com/entertainment/artsbooks/299726-nigerian-prisoners-have-voting-rights-appeal-court.html> accessed 15 February 2021

Right to Safety of Prisoners

It is an imposed duty of the government to ensure that all prisoners are safe. The state is to protect them for every form of violence or mistreatment from correctional officers and other inmates as well. Even though there is no obligation on the state to do this by any Human Rights instrument, it could be deduced from the wording of some provisions that the state has to ensure this safety⁷². The ICCPR in art 10 provides that “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of human person”⁷³. Also, Art 5 forbids every form of inhumane and degrading treatment of individuals. No inmate should be put through any irrelevant punishment. Torture, unnecessary force and ill treatment should be completely prohibited. The life of a prisoner should be safeguarded by the state so that his life is not brought to an abrupt end. Section 14(8) of the Nigerian Correctional Act also prohibits torture, inhumane treatment of prisoners, sexual and non- sexual violence of inmates. S.33 of the Nigeria Constitution provides for right to life for its citizens and none is to be hindered from this intentionally.

Right to Family Life and Correspondence

A prisoner shall not be denied the right to have contact with his family. When family relationship is maintained, it gives the prisoner a sense of belonging because when the opportunity to contact or have visit from family is denied, the family relationship may begin to fall apart⁷⁴. Family members should be encouraged to visit their incarcerated family. The UDHR in Art 12 provides that “No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence”. S.37 of the 1999 Nigerian constitution also provides for right to family life. The authority should help to maintain family contact between the prisoner and his family.

Right to Food and Clean Water

Section 30 of the Nigerian Correctional Service Act provides feeding of prisoners. There shall also be provision of basic needs including accommodation, feeding, water hygiene, sewage disposal, clothing and toiletries. Lack of good food may lead to ill health and may even lead to death.

Right to Education

Section 14 (1) and (2) of the Nigerian Correctional Service Act mandates the correctional facility to provide for educational opportunities and vocational training for the inmates. This is to help them reintegrate into the society upon release.

⁷² Piet Hein van Kempen, ‘Positive Obligations to ensure the Human Rights of Prisoners’ in Peter J.P. Tak and Manon Jendly (eds) *International and Domestic Law* (Wolf Legal Publishers 2008)

⁷³ UN General Assembly, ‘International Covenant on Civil and Political Rights’ Treaty series, Vol 999, Dec. 1966

⁷⁴ Marcus Araromi, ‘Prisoners’ Rights Under the Nigerian Law: Legal Pathways to Progressive Realization and Protection’ (2015) 6(1) Afe Babalola University: Journal of Sustainable Development Law & Policy

Right to Fair Treatment in Disciplinary Proceedings and Punishment

Fair hearing should not be hindered a prisoner. He is to enjoy it even though he has been incarcerated. The prisoner is to be aware of the guidelines and laid down regulations of the facility he is in. When such regulations are contravened, they may be a disciplinary panel to face. When a prisoner has to face such panel, he has to be given the right to fair hearing. The charge against him and the person who initiated the charge are to be disclosed to him. He has to be given adequate time to prepare his defence as well. He is to participate in the proceedings and has a right to question whoever lays the charge against him. He may also call witnesses if he so desires. Where punishment has to be meted out, it must not be outrageous to the offence committed⁷⁵. Rule 1 of the Standard Minimum Rules for the Treatment of Prisoners (SMR) prohibits corporal punishments such that entails inhumane, ill, and cruel treatment and placing prisoners in dark cell.⁷⁶

Right to Amnesty/Pardon

Just as a prisoner has a right to bail pending the appeal of his case, likewise, according to Section 175 and 212 of the 1999 constitution, he has a constitutional right to be granted amnesty or pardon as long as the necessary requirements are met. Most correctional officer use this as a way of extorting money from prisoners. Some members of the society do not know nor understand the power and provision of the constitution and therefore criticize and condemn the act of prerogative of mercy. This is an executive power that belongs to the governor or the president to grant pardon either conditionally or unconditionally⁷⁷. It is an “act of grace that mitigates or obliterates the punishment the law demands for the offence and restores the rights and the privileges on account of the offence”⁷⁸. Reason for pardon is to make the convict a new person, acquit him of all punishments and loss attached to the crime he is pardoned for except it is not a full pardon or the property cannot be gotten back because the possession of such property now vests in another person legally. Atimes when this happens, monetary compensation to enable the person recover his losses is paid.⁷⁹. By pardon, it means all the rights and benefits that the prisoner has been

⁷⁵ Marcus Araromi, ‘Prisoners’ Rights Under the Nigerian Law: Legal Pathways to Progressive Realization and Protection’ (2015) 6 (1) Afe Babalola University: Journal of Sustainable Development Law & Policy

⁷⁶ United Nations General Assembly, Standard Minimum Rules for the Treatment of Prisoners, 1955

⁷⁷ Sec 175 and 212 of the 1999 Nigeria Constitution

⁷⁸ J.A Agaba, *Practical Approach to Criminal Litigation in Nigeria* (3rd ed. Nelag & Company Ltd 2015)

⁷⁹ Zacchaeus Adangor, ‘The Presidential Pardon Granted Chief D.S.P Alamiyeseigha: Time to Revisit the President’s Pardoning Power Under section 175 of the Constitution of Nigeria’ (2015)

https://www.researchgate.net/publication/331684935_THE_PRESIDENTIAL_PARDON_GRANTED_CHIEF_D_S_P_ALAMIEYESEIGHA_TIME_TO_REVISIT_THE_PRESIDENT'S_PARDONING_POWER_UNDER_SECTION_175_OF_THE_CONSTITUTION_OF_THE_FEDERAL_REPUBLIC_OF_NIGERIA_1999_AS_AMENDED/link/5c87defc92851c1df93d3381/download accessed 157 February 202

denied by the conviction are restored⁸⁰. One of the results of pardon is that it frees an offender from the punishment and cleans out the existence of guilt after which the prisoner is deemed innocent as if he had never committed the offence⁸¹. Though a pardon is not an acquittal, it wipes the offence of the prisoner⁸². And where a person has been pardoned for an offence, he cannot be tried again for it.⁸³

Causes and Effects of Human Rights Abuse to Prisoners

There are various elements that may be the accountable for Human Rights violations on prisoners and they include the following⁸⁴:

The lack of adequate training of correctional staff makes it impossible for some of them to know how to relate with the prisoners. Illiteracy level and unawareness of prisoners as to what constitute their rights and when such rights are infringed upon, they do not even know. Also, the lack of effective reformation and rehabilitation of prisoners is an issue. The Correctional Staff are not well catered for. There is a lackadaisical attitude of authorities by not having the political will to take cases on Human Rights violations with seriousness especially when it has to do with a prisoner.

The working environment for staff of correctional facilities is not conducive. Lack of sufficient funding of the facilities is a problem and there is no adequate funding provided by the State for the management of the prison facilities.

The major effects that the Human Rights abuse has on prisoners include psychological/mental effect, as some may end up becoming depressed or mentally sick. It also has emotional effect, loneliness, sadness and for some instead of being rehabilitated to become better people when they are released, they become more hardened and that is one of the reasons why a number of prisoners who are released or discharged still end up back in.

Recommendations

To improve the dignity and human status of prisoners, everyone has a role to play. From the government to the free citizens and the correctional staff inclusive. It is recommended that upon admission of inmates into correctional facilities, written information and copies of the rules and regulations to guide them should be made available to them. Also, the government should endeavour to make available a

⁸⁰ J.A Agaba, *Practical Approach to Criminal Litigation in Nigeria* (3rd ed. Nelag & Company Ltd 2015)

⁸¹ Zacchaeus Adangor, 'The Presidential Pardon Granted Chief D.S.P Alamiyeseigha: Time to Revisit the President's Pardoning Power Under section 175 of the Constitution of Nigeria' (2015)

https://www.researchgate.net/publication/331684935_THE_PRESIDENTIAL_PARDON_GRANTED_CHIEF_D_S_P_ALAMIEYESEIGHA_TIME_TO_REVISIT_THE_PRESIDENT'S_PARDONING_POWER_UNDER_SECTION_175_OF_THE_CONSTITUTION_OF_THE_FEDERAL_REPUBLIC_OF_NIGERIA_1999_AS_AMENDED/link/5c87defc92851c1df93d3381/download accessed 17 February 2021

⁸² *ibid*

⁸³ *ibid*

⁸⁴A.I Opara, *Criminology and Penology* (Cel Bez &Co, Publisher 2005)

working mechanism that will enable prisoners to enjoy their rights and seek redress or enforcement of same when infringed upon. Regular awareness and education of prisoners' rights to prisoners should be mandated in all correctional facilities. The legal aid council or any other appropriate body should make a regular and impromptu visit to correctional facilities to oversee the enforcement of prisoners' rights. This would make the correctional officers sit tight and behave as they would not know when such visit could take place.

Adequate funding should be made provision for by the government to enhance the criminal justice system so that it would be able to function effectively. NGOs and other Human Rights organisations should be given reasonable liberty to play supervisory roles over Human Rights matters in correctional facilities. Independent Human Rights centres can be created within the premises of correctional facilities to oversee the living condition of prisoners and make regular reports to the government. NGOs and independent bodies should have free access to communicate with prisoners without the interference and unnecessary presence of correctional staffs as this would enable the prisoners to speak freely and disclose whatever negative and inhumane treatment they are faced with. It is sad that the condition of most Nigerian correctional facilities is in deplorable states, the government is to step up to this. The required grade of the United Nations Minimum Standard for the treatment of Prisoners should be met by the state. Citizens including family members should be sensitized and orientated about the rights of prisoners. There should be a general awareness that every prisoner is still a human being and therefore has the right to enjoy Human Rights.

Conclusion

Advocating Human Rights stipulates that dignity of persons should be regarded. In as much as persons can lay claim to these rights, it is the responsibility of every person to have regard for the rights of others, to shield and to offer support to those whose rights have been abused or denied⁸⁵. While all the prisoners' rights are easily enforceable in most advanced nations, irrespective of the facts that the Nigerian constitution and the Correctional service Act have provisions for the rights which prisoners are to enjoy, yet most of these rights are inaccessible to the prisoners. Hopefully, the Correctional service Act shall play its role adequately in ensuring that prisoner's rights are regarded and no more infringed on, that adequate provisions as stated by the law is made available to them and each prisoner is treated decently and with dignity. It is unfortunate that convicted inmates and the "forgotten inmates" are the worst as they are tagged to be rotten eggs that should not be accorded any regard again. Prisoners are human beings and should be treated likewise. They should have access to and enjoy their rights as provided for by the law and to the extent it is provided for in regard to their sentence.

⁸⁵ United Nations Declaration on the Right and Responsibility of Individuals, Group and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, Adopted by General Assembly Resolution 53/144 [1998]