



Behind The Prison Walls: Rights Or No Rights?

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Abstract:

Who is a prisoner? Does he have rights? What human right (s) is/are taken away from him at incarceration? Why is a prisoner accorded some rights, just as other humans? Can one be adequately reformed or rehabilitated in an environment fraught with human rights abuses?

Human rights are universal and apply to all humans irrespective of their location, prisons inclusive. This is why we advocate for the enforcement of prisoners' human rights. The only right taken away from an individual by virtue of imprisonment is the right to personal liberty, and to some extent, the right to privacy.

In Nigeria, prisoners are regarded as more or less, without rights. The situation is the same or worse in a lot of detention facilities worldwide. They are treated like animals, and routinely denied their human rights. Perhaps more worrisome is the number of those who are detained unlawfully. The military and Para-military, especially the police, are responsible, directly or indirectly, for a large percentage of unlawful detentions across the country.

This article examines these and other issues. References are made to statutory and judicial authorities.

Key words: prisoners, rights, violation, Nigeria, imprisonment

1.Introduction

Principle 1 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment ¹ provides as follows:

All persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person.

A prison ² is a place in which people are physically confined and usually deprived of a range of freedoms. Under the Prisons Act³ a prison is a place so declared under the Act.⁴

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. In most countries, governments construct and operate prison systems.⁵

Prisons were introduced into the African continent by the colonial masters who used it as a tool to subdue political opponents, prisoners of conscience and “enemies of the State” as well as to administer punishment to offenders. For most of history, imprisoning has been, not a punishment in itself, but rather a way to confine criminals until corporal or capital punishment was administered. There were prisons used in Jerusalem in Old Testament times, and the Bible details the imprisonment of Joseph in Egypt. And so today, even though it is accepted that a prison is part of the institutions for the actualization of punishment, it also provides an avenue for the convicted or suspected criminal not only to be kept away from society but also for the state to rehabilitate the criminal. This is where the theory ends, at any rate in Nigeria; the reality is quite different.⁶

Imprisonment serves several universal functions, including the protection of society, the prevention of crime, retribution (revenge) against criminals, and the rehabilitation of inmates. Additional goals of imprisonment may include the assurance of justice based on a philosophy of just deserts (getting what one deserves) and the reintegration of inmates into the community following their sentences. Different countries place greater emphasis on one or more of these goals than others. For example, prisons in the Scandinavian countries stress rehabilitation and offender reintegration. Although prisons in the United States also include rehabilitation and reintegration programs, U.S. penal philosophy emphasizes societal protection, crime deterrence, and just-deserts justice.⁷ A country like Nigeria that pays little or no attention to prisons reforms and the standard of life of

inmates is certainly a country that favours punishment as a philosophy behind criminal justice.

The prisons system and conditions are always a reflection of the type of criminal justice system a country runs. Differences among prison policies in various countries depend upon the society's experience with managing criminals, as well as its experiments with different ways of correcting and improving prisoners' behaviour. Some countries' programs foster changes among inmates better than others. Cultural differences also help explain why countries emphasize one imprisonment objective over others. For example, the prison system of Germany emphasizes strict discipline, reflecting a trait commonly ascribed to German culture. The administration of German prisons is military-like and rule-oriented. Consequently, inmates in German prisons experience a more highly regimented routine than inmates in most other prison systems in the world. For instance, until recently German prisons did not permit inmates any visitors.⁸

Do prisoners have any rights under the law? If yes, what are these rights? Are these rights being respected? If not, then why? And if yes, to what extent? What steps need to be taken to remedy the situation? These issues, among others, are what this paper will briefly examine.

2. Who Is A Prisoner?

A prisoner is one who is deprived of liberty; one who is kept against his will in confinement or custody in a prison, penitentiary, jail or other correctional institutions, as a result of conviction of crime or awaiting trial.⁹ The Prisons Act defines a prisoner as any person lawfully committed to custody.¹⁰

Some reasons for imprisonment include the risk of the accused taking flight, any indication of his or her attempting to tamper with the case in any way if admitted to bail and also where the judge suspects that he or she is likely to commit more crimes or has previously committed more crimes while on bail.¹¹ In actual practice, prisoners are of two kinds: those lawfully confined and those unlawfully imprisoned. Lawful prisoners are prisoners charged with crimes or for a civil liability while unlawful prisoners are those who are not confined by virtue of any lawful, judicial, legislative or other proceeding and are entitled to release on habeas corpus.¹²

Prisoners are made up of adult males and females, young persons, children, pregnant women, nursing mothers, criminal and civil inmates, debtors, detainees, first offenders,

that is “Star prisoners” and recidivists; long – and short – term prisoners; condemned prisoners and inmates awaiting trial or being held for safe custody.

3.Prisoners’ Rights

The movement for prisoners’ rights is based on the principle that prisoners, even though they are deprived of liberty, are still entitled to basic human rights. The “Right of a Prisoner” can be defined as that quality in a prisoner by which he can do certain actions or possess certain things which belong to him by virtue of some title.

As a result of their imprisonment, inmates lose certain rights and freedoms possessed by ordinary citizens. In the 1871 decision of *Ruffin v. Commonwealth*, a Virginia judge declared that a prisoner has no constitutional rights and is “the slave of the state” while incarcerated. This position toward inmates was widely accepted in most other jurisdictions for the next 70 years. Furthermore, the courts practiced a “hands-off” doctrine, refusing to make decisions about or interfere with prison or jail administrators and their operations.¹³

The basic right taken away from prisoners by virtue of their imprisonment is the right to personal liberty. All other rights remain intact because prisoners are still humans who retain their humanity. The rights accorded prisoners are to ensure that the prison system does not aggravate the suffering inherent in such situation. Prisoners are allowed to exercise some rights primarily geared towards enhancing their welfare and to shield them from arbitrary treatment in prison. This is because deprivation of liberty does not mean deprivation of humanity.

Imprisonment in itself results in physical, emotional and psychological as well as economic distress for prisoners and so access to such conditions that will enhance their mental, social and material well-being should be provided for them in order to ease their return to normal life after incarceration.

The period of imprisonment is used to ensure, as far as possible, that upon the return of the prisoner to society, he is not only willing, but also able to lead a law-abiding and self-supporting life due to his dignity as a human being.

Until recently prisoners were accorded no rights¹⁴ but it is now widely recognized and accepted that priority should be given to the humanity and person of the prisoner, for this is the basis of the rights of prisoners. Aptly capturing this concept is the rejection, by Uwaifo, JCA, of the submission of a learned State Counsel that a condemned convict has

no rights under any legislative or judicial provision in Nigeria to enforce his fundamental rights and as such is as good as dead. According to the learned Justice,

“...does it mean that a condemned prisoner can be lawfully starved to death by the prison authorities? Can he be lawfully punished by a slow and systematic elimination of his limbs one after another until he is dead? Could his legs be soaked with petrol and set on fire under a pot to boil rice by someone wearing a smiling face while this is going on since he is as good as dead and without fundamental rights... is a condemned individual not a person or an individual?”¹⁵

Human rights are universal. This means that they must be respected everywhere.¹⁶

Almost all human rights instruments recognize and protect the rights of prisoners in the sense that their provisions are all inclusive in their affirmation of the inherent dignity and worth of the human person using such phrases as “everyone”, “all persons”, “no one”, “every individual”, etc. Among these instruments are the 1948 Universal Declaration of Human Rights, the 1966 International Covenant on Civil and Political Rights and its Optional Protocols, the 1966 International Covenant on Economic, Social and Cultural Rights, the African Charter, 1986 amongst others. In addition, national Constitutions guarantee the fundamental rights of prisoners.¹⁷

Flowing from the above, the rights of prisoners include the following:

3.1. The Right To Life¹⁸

The right to life is foundational to every person. Without this right no other right can be enjoyed. The right of the accused or convicted offender to life is therefore the basis of the duty of care which the law imposes on prison authorities.

Article 4 of the African (Banjul) Charter of Human and Peoples Rights¹⁹ provides as follows:

Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of his life.²⁰

Section 33 (1) of the 1999 Constitution provides that

“every person has a 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 offence of which he has been found guilty in Nigeria.”

Thus any person who is placed in charge of a prisoner has no right to deprive such prisoner of his life through any means, save in the execution of the order of

the courts of law. Thus practices like torturing of prisoners, subjecting them to starvation, refusing them access to health services and any other act or omission which might indirectly lead to their death is prohibited. While violence is a factor for death of prisoners, diseases due to overcrowding, malnutrition, unhygienic conditions and lack of medical care remain the most common causes of death in the prisons.

*In Aliu Bello v AG Oyo State,*²¹ the deceased who had an appeal against a death sentence pending at the Court of Appeal was executed before the determination of his appeal. His dependants sued the Attorney-General who had negligently recommended the execution of the deceased to the Governor. According to Anigolu JSC, the act

“...amounted to a reckless disregard for human life and liberty of the subject the brutal incident has bespattered the face of the Oyo State government with the paintbrush of shame.....”

Incarceration should not be a route to the death chamber. Confinement in prison is in itself a punishment. Inflicting further punishment by way of inhuman conditions in the penal institutions is cruel especially when it is realized that the majority of inmates in these prisons have not been found guilty of any offence.

Police officers are alleged to kill robbery suspects in cold blood because they are said to fear that the robbers might escape, come back and take vengeance on them. In some cases corrupt police officers are in league with the robbers and often commit the murders in order to protect their own identity.

Violations of the right to life of prisoners are not limited to third world countries but also exist in the developed nations. When Florida inmate Frank Valdez died in 1999, every rib in his body was broken, his corpse bore the imprint of boot marks, and his testicles were badly swollen; guards admitted having struggled with him, but denied they had used excessive force. They claimed most of his injuries had been “self-inflicted.”²²

The position of the law in Nigeria relating to the entitlement of prisoners to the right to life, with particular reference to condemned prisoners is in accord with international standards and Conventions on the issue. Under these, capital punishment may only be carried out pursuant to a final judgment rendered by a competent court after legal process which gives all possible safeguards to ensure a fair trial.²³ It has become increasingly clear that the death penalty has failed to achieve its anticipated result of crime deterrence. While not condoning or encouraging social deviance, the State must do all that is

possible to preserve the lives of its citizens rather than champion its termination for whatever reasons.

3.2. The Right To Dignity Of The Human Person²⁴

Section 34 of the 1999 Constitution provides as follows:

Every individual is entitled to self-respect for the dignity of his person and accordingly,

- No person shall be subjected to torture or to inhuman or degrading treatment;
- No person shall be held in slavery or servitude; and
- No person shall be required to perform forced or compulsory labour.

The right of the prisoner to the dignity of his person is core to the whole idea of prisoners' rights as respect for the dignity of the human person is the basis upon which acceptable standards of treatment is meted out to human beings. No circumstances whatever may be invoked to justify torture or other cruel, inhuman or degrading treatment or punishment.²⁵

Secret detention centers and other controversial practices used in the war against terrorism are questioning and compromising the absolute prohibition of torture and all forms of cruel, inhuman or degrading treatment meted out to prisoners. There is abundant evidence of all forms of dehumanizing torture going on in prisons. Prisoners are subjected to chaining, beating, whipping, gruesome torture, solitary confinement, denial of food, harassments, verbal intimidation and threats, the use of leg chains, shackles and forced labour, etc.²⁶ Prisoners are also reported to be forced to sleep naked on wet floors or on soaked blankets. Most death penalty convictions are based on confessions which were often extracted through torture.

Inhuman and degrading treatment and torture often lead to the death of the prisoners. The prison officials, on the other hand, attribute the death and injuries sustained by the inmates to "natural causes" and "accidents." Terrible working conditions exist for the staff of the prisons and so the disgruntled warders often express their displeasure at the system by unleashing violence on the inmates who in turn would prefer to lie low to avoid staking their necks.

Also the practice of keeping prisoners on death row for a prolonged period before execution, which in some cases may be as a result of delay in appellate proceedings or

administrative bottlenecks, may amount to inhuman or degrading treatment, which contravenes the constitutional rights of such prisoners. In *Peter Nemi and ors v. State*²⁷ where the appellant had been on death row for over 10 years, the Supreme Court stated that “to end the life of a condemned prisoner, it must be done according to the due process of law.” The prisoners were being deprived of both life and death and they suffered excruciating and sustained psychological trauma. In *Edmund Okoro and 69 ors v. Minister of Internal Affairs and Comptroller, Prisons Service, Enugu*²⁸ the appellants had been on death row for not less than 20 years. They had been in continuous incarceration despite presidential amnesty granted in their favour. Their appeal against their continued detention was upheld. This decision took into consideration the mental and psychological effects of such delay on the prisoner as well as the physical conditions of his incarceration.

Incidental to the enjoyment of this right are certain minimum standards of treatment to which prisoners are entitled.²⁹ These are aimed at improved prison conditions befitting the status of prisoners as dignified human beings, irrespective of their incarceration and the magnitude of the offences giving rise to it. The Prison Regulations fall short of the acceptable United Nations Standard Minimum Rules as they violate prisoners’ right to the dignity of the human person.

Rape of female prisoners by their fellow inmates or prison officials in Nigeria has been the subject of debates, but there is an impregnable wall surrounding issues of sexual abuse in Nigerian prisons. This has been said to be due to the strict code of silence self-imposed out of fear, terror, as well as intimidation by abusers.³⁰

A prisoner is entitled to remuneration for any labour he performs. In addition to this, a prisoner under sentence of imprisonment can only undertake light labor and such labor must be that which he is certified fit to do by the medical officer of the prison.³¹

Congestion and the resultant breakdown of facilities; the absence of a scheme of medical care for prisoners; poor feeding; the absence, collapse or failure of prisoner reformation and rehabilitation programmes; prison violence, prisoner deaths: these features characterize the Nigerian prisons today as much as, if not more than, they did in 1990 and beyond. According to Yemi Akinseye-George,³² the concrete walls of the Nigerian prisons have successfully prevented the flow of the dividends of democracy to the inmates locked up behind them. Offenders are locked up under sub-human conditions often with 100 inmates occupying a cell that was meant for at most 20 persons. They

sleep on threadbare blankets or cardboard sheets spread on the floor. In most cases they sleep on the bare floor.

Other African countries have similar problems. In the neighbouring country of Ghana, prison conditions generally are harsh and sometimes life threatening. Much of the prison population are held in buildings that were originally colonial forts or abandoned public or military buildings, with poor ventilation and sanitation, sub-standard construction, and limited space. Presently Ghana has an approximate prison population of 18,000 living in facilities designed to accommodate 4,000. N'sawam medium security prison, the most important prison of Ghana built in 1956 to accommodate 717 inmates, now has over 4,000 inmates. Thus 55 inmates can share a cell meant for 12. Today this fact contributes to a prevalence of serious and communicable diseases such as AIDS, tuberculosis, itch and cough.³³ This is in spite of the provision of Article 15 of the Ghanaian 1992 Constitution, which says "the dignity of all persons shall be inviolable and that no person whether he is arrested, restricted or detained, shall be subjected to torture or condition that detracts or is likely to detract from his dignity and worth as a human being..."³⁴

Paucity of funds released by the government coupled with mismanagement has created a situation where it is impossible to cater for the daily needs of inmates. Prison conditions only result in worsening of the health status of most inmates. Not less than two-thirds of the inmates of Nigerian prisons suffer from one form of mental health disease or the other. It is inhuman and degrading treatment to keep lunatics where they are denied access to medical attention.

In American prisons today, wanton staff brutality and degrading treatment of inmates occur across the country with distressing frequency.³⁵ A federal judge in 1999 concluded that Texas prisons were pervaded by a "*culture of sadistic and malicious violence.*" In 1995, a federal judge found a stunning pattern of staff assaults, abusive use of electronic stun devices, guns, beatings, and brutality at Pelican Bay Prison in California, and concluded the violence "appears to be open, acknowledged, tolerated and sometimes expressly approved" by high ranking corrections officials. Both men and women prisoners—but especially women—face staff rape and sexual abuse. Correctional officers will bribe, coerce, or violently force inmates into granting sexual favors, including oral sex or intercourse. Prison staff have laughed at and ignored the pleas of male prisoners seeking protection from rape by other inmates.³⁶

*3.3.Right To Personal Liberty And Freedom Of Movement*³⁷

This is the only right expressly limited or taken away from a prisoner or detainee on incarceration. For inmates, one of the fundamental consequences of their imprisonment is the lack of control over decisions about their activities. This lack of autonomy is evident in nearly all aspects of prison life. But one could still argue that the prisoner would nevertheless retain the right to movement within the prison walls.

Some prisoners were arrested in place of a family member the police could not locate. When the State arrests someone simply because they are a relative of a suspect³⁸ or because they suffer from mental illness, they are violating that person's right not to be subjected to arbitrary arrest or detention and also the right to personal liberty.

It is sad to note that suspects are detained even where they pose little or no risk to the society. Pre-trial detention routinely exceeds one year and three to four years is not unusual.

In most cases where the police say investigations are ongoing, they are actually doing nothing, either because they lack the will to investigate or because they are simply incapable of conducting investigations. Some prisoners are called forgotten inmates because they never go to court and no one knows how much longer their detention will last simply because their case files have been lost by the police.

The Police Force is widely known as one of the most shady, dishonest and dysfunctional organizations in the history of Nigeria. The Police arbitrarily arrest and detain people,³⁹ often rounding up innocent people and demanding that they prove their innocence (usually with cash). Those who cannot pay are charged to court on trumped up charges⁴⁰ and are sent to prison.

According to a Prison Warder in Enugu,

“...the greatest problem we have is the Special Anti-Robbery Squad Police. They bring in prisoners directly from their night raids, flashing their warrants and demanding the prisoners be detained in jail here. When the SARS thus bypass the normal procedures, they fill the prison with prisoners who have neither lawyers nor hearing dates and are thus lost.”⁴¹

These acts constitute gross violations of the right of personal liberty of those wrongfully arrested.

*3.4. Right To Fair Hearing*⁴²

This is central to the determination of the guilt or otherwise of the prisoner. Fair hearing is to be accomplished within a reasonable time by a court or other tribunal established by law and constituted in such a manner as to secure its independence and impartiality. Every person charged with an offence is entitled to be informed promptly and in a language he understands and in detail of the nature of his offence. This was reiterated by the court in **Amala v. The State**.⁴³ The Prisons Act provides for the prisoners' right to appear in court or any other place.⁴⁴ A prisoner cannot be held in prison on a non-existent law,⁴⁵ neither can he be held on a non-existent offence with a non-existent penalty at the time of the commission of the offence.⁴⁶ In **FRN v. Ifegwu**⁴⁷ the Supreme Court held that the laws creating offences, and consequently Sections 36(8) and (12) of the Constitution, focus on the present and future conduct of the culprit and not on their past conducts.⁴⁸ All provisions which guarantee the right to fair hearing cover the prison system complaints procedure and the prisoners' access and ability to present his defence. As decided in **Charles Okeke v. The Legal Practitioners Disciplinary Committee**,⁴⁹ fair hearing behooves of the adjudicating body to conduct its affairs so transparently open that it accords all the parties involved in the dispute the opportunity of marshalling their case adroitly to their possible best so that a common man in the street can easily see and declare that the person affected has been freely allowed to put his case forward for consideration.⁵⁰ The right to fair hearing includes the right to counsel, opportunity of calling witnesses to support his case and the provision of interpreters where necessary.⁵¹ The right of a prisoner to counsel is meaningless without access to counsel. Approximately 80% of the awaiting trial inmates are indigent and cannot afford a lawyer and they wait for years without being tried.⁵² There is no single reported incident of an allegation of torture or ill-treatment of prisoners being investigated by the authorities. Prisoners have no right to complain when their rights are violated as whatever complaints they make usually received no attention.

*3.5. Right to privacy*⁵³

The enjoyment of this right for a prisoner is limited by incarceration. Under the Prison Regulations, a prisoner cannot enjoy this right as the regulation provides that a prisoner has to be admitted into the prison. Where a female prisoner has a child who is still breastfed or under 18 months, such child is admitted along with its mother.

For the prisoner, clearly the incarceration automatically rules out his right to visit friends or family. The practice of censoring prisoners' communications by prison officials, which is backed by the Prison Regulations⁵⁴ and the Prison Standing Orders⁵⁵ infringes on the right to privacy of awaiting trial inmates, in particular, who are presumed innocent and should not be subjected to such measures.

The situation is not different in U.S prisons. Prisoners have virtually no privacy and are observable at all times by different forms of surveillance. In medium-security and maximum-security prisons, correctional officers constantly regulate and monitor inmates with state-of-the-art equipment, including video cameras and sound-detection mechanisms. This loss of liberty and privacy represents an extreme change from life in the community.⁵⁶

The right to receive visitors protects the right to private and family life. Nigerian prison authorities are most times found wanting in that a lot of restrictions and control are placed on the prisoners so much so that the whole atmosphere for such visits and communication become generally inconducive.⁵⁷

3.6.Right To Freedom Of Expression⁵⁸

Humans have an inborn desire to share their feelings and thoughts with others. This right may be partially accomplished through visits and communication, letter writing, telephone calls and granting of interviews. Everyone has a right to hold his/her own opinion without interference.⁵⁹ This right extends to the freedom to seek and receive information, suggestions etc. According to Yemi Akinseye-George,⁶⁰ threats and intimidations were used to keep the prisoners from talking to outsiders about their experiences. These threats and intimidations have resulted in a dearth of information about the prisons in some cases because once forewarned not to "*open their rotten mouths*" to whatever visitor they might have heard will soon be visiting, the prisoners were reluctant to talk. This right also covers the right of access to counsel by all categories of inmates.

Denial of contact with family and friends fall short of the United Nations standards for the treatment of prisoners. Guards frequently demand that inmates pay bribes for such "privileges" as visiting the hospital, receiving visitors, contacting their families and in some cases being allowed outside their cells at all. All these amount to a denial of the prisoners' right to freedom of expression.

3.7. Right to freedom from discrimination⁶¹

Under the Prisons Regulations, practices that are discriminatory are prohibited e.g. the right of a person to be admitted into prison can only exist if he is named in the warrant or order of commitment. An area of discrimination which is likely to arise in prisons relate to the issue of sickness or disease. A prisoner that has such disease as HIV/AIDS or tuberculosis may suffer discrimination in prison. Discrimination also occurs when it comes to receiving of visitors. In these areas and others, the well-to-do inmates usually receive preferential treatment and favours from the prison officials as they are always able to provide monetary gratification to the prison officials.

3.8. Right To Freedom Of Religion⁶²

This is the right of a person to form personal religious beliefs according to his or her own conscience and to give public expression to these beliefs in worship and teaching, restricted only by the requirement of public order. This is the only right being respected to some extent within the prison walls. Prisoners are allowed to exercise their right of worship according to their own religion. Some churches conduct services in the prison and Muslims pray whenever they need to. Indeed if there was any human right the authorities of Nigerian prisons respected, it was the right of each prisoner to worship within the confines of the prison yard. The only snag is that Christians and Muslims are more favoured in this regard, while prisoners of other religions are left out.

4. The Problems With The Nigerian Prisons System

Officially, it is claimed that the role of the Nigerian Prison Service is tripartite in nature; first, the service is responsible for the safe custody of persons legally interned; second, it provides treatment to them; and third, it seeks to rehabilitate them. The philosophy of the Nigerian Prisons Service is that treatment and rehabilitation of offenders can be achieved through carefully designed and well-articulated administrative, reformatory and rehabilitative programmes aimed at inculcating discipline, respect for law and order and regard for the dignity of honest labour. Judged by available data and information, it is very clear that the objectives, impressive as they are, are far from being realized or even realizable. It is also beyond doubt that when more than 60 percent of the total prison population is awaiting trial, the administration of criminal justice must be faulty. It is clear that imprisonment has been overused as a means of punishment. Consequently, there is need for other alternatives to imprisonment.

The huge armies of persons who are incarcerated in Nigerian prisons often do not undergo any form of reformation. Rather they come back from prison worse. One of the yardsticks for judging the effectiveness of the prison system and its reformatory capability is the number of inmates who remain outside the prison wall after completing their terms of imprisonment. It is estimated that two out of three prisoners released from the prisons often find their way back there within a short time of their release. Statistics from 19 prisons across Nigeria show that over 60% of inmates are recidivists i.e. inmates who have been convicted more than once. This is an indication that the prison system has failed in treating the anti-social behaviour of inmates. This also explains the relatively stable population of the prisons despite efforts to reduce it. All the stakeholders in the Nigerian criminal justice system are responsible for maintaining this situation.

Furthermore, after – imprisonment care which is supposed to reduce the number of recidivists is hampered by the inability of the Prison Service to provide tools and funds for the discharged inmates to start their own trades. Often, the prison system cannot even afford to pay the transport fare of the vast majority of discharged inmates on the day of discharge.

The decay in the prison system is attributable to limited infrastructure which is overstretched by a large number of inmates. Another cause is the poor distribution of prisoners. This leads to overcrowding in many prisons⁶³ while some are grossly underutilized.⁶⁴ The slow pace of Police investigation of cases (where they are ever investigated) also contributes to the overcrowding. Denial of bail to accused persons is also a contributory factor. It is common knowledge among judges that the use of torture by the police is widespread and yet the courts continue to sentence suspects to imprisonment based on confessions leading to many possibly innocent people being imprisoned.

According to Amnesty International, the Nigerian Criminal Justice System [prisons]⁶⁵ is a conveyor belt of injustice, from beginning to end, which seriously damages the physical and mental health of thousands. Some could end up spending their entire life behind bars in appalling conditions without having been convicted of any crime, sometimes simply due to their case files having been lost by the police.

A discussion of the conditions behind the prison walls cannot be complete without highlighting the plight of the Nigerian Prison staff. They have been known to be highly underpaid, understaffed and undertrained with no reasonable staff benefits coupled with working long hours. Like most organs of government, the fear or “rightsizing”,

retrenchment, poor salaries and working conditions has not boosted staff morale. Poor pay often leads to petty extortion of prisoners.

In over two decades of monitoring prisons around the world, Human Rights Watch has learned that abusive officers do not operate in a vacuum. More typically, a culture of brutality has developed in which correctional officers know they can get away with excessive, unnecessary, or even purely malicious violence. In such prisons, senior officials have failed to communicate unequivocally—through training, staff supervision, investigations, and discipline—that abuse will not be tolerated. The failures of senior prison officials are compounded by the absence of external scrutiny. Prisons are closed institutions from which the press, human rights groups, and members of the public are typically excluded. Independent expert inspections yielding public findings are rare, and usually occur only after the situation has become so bad that inmates have filed a lawsuit.⁶⁶

Nigeria has ratified and domesticated most international Conventions and treaties on human rights. This is in addition to numerous local statutes containing provisions for the protection of human rights. In the case of Ghana, none of the instruments she has ratified since independence have been adopted into domestic law. It appears that both countries are signing on to all these instruments to place them in good standing and to gain respect within the international community. Another reason they might be doing so is that, in order to get international investors and financial support from world organizations, such as the International Monetary Fund and the World Bank, a developing country must respect human rights.⁶⁷

The challenge lies in the fact that domestic laws are not being implemented systematically on a daily basis, thus making it more difficult to incorporate/implement international obligations. This begs the question of why countries sign on to all these international instruments if they do not abide by their own domestic laws.

According to researchers,

“There is an illusion that Ghana is a human rights defender and protector. This in turn can be dangerous as it fools the international community in believing the country is doing well and can therefore turn a blind eye to the real human rights violations occurring in Ghana. There is also the problem that many Ghanaians, including the Government, do not want to face reality in trying to solve some of the major human rights violations. By signing and ratifying international human rights instruments, Ghana might believe that it is doing its part in trying to protect prisoners’ rights and thus feels

satisfied with where it currently stands, preventing the elimination of human rights abuses and stumping the growth to progress in the future.”⁶⁸

The above citation aptly describes the situation on ground in Nigeria.

Despite many Presidential Commissions and Committees recommending reforms, the recommendations have not been implemented. Instead the Government has set up new committees to study, review and harmonize the previous recommendations. Current efforts seem cosmetic in the absence of a total overhaul of the criminal justice system. The Nigerian Federal Government should proceed with the prison reforms as they promised to do during their election campaign. The Federal Government needs to come to the realization that it is the sole and general overseer of the welfare of the inmates. This responsibility is solely within the domain of the government and cannot be delegated to charitable organizations.

The problems in the prisons simply reflect the problems in the Nigerian society in which we live. These problems also exist, albeit, on the same or higher magnitude outside the prison walls. The Nigerian prison system is very sick and requires not just a palliative measure but rather a thorough surgical operation to bring it back to health.

5. Concluding Remarks

The Nigerian government is simply not complying with its national and international obligations when it comes to the criminal justice system in Nigeria. In addition, some provisions of relevant National Laws fall short of acceptable minimum standards of treatment for prisoners and even where they conform they are not being implemented. The nation's judicial sector also needs improvement as without an effective judiciary, the practice of keeping large numbers of inmates awaiting trial for long periods of time will continue. There should be a reorientation of legislative mentality which relies on imprisonment as a disposal method for many offences. In addition, urgent reforms in the police sector are needed.

If these steps are not taken, it is all too likely that abuse will continue to be a part of many prison sentences. It is safe to conclude that in Nigeria and many other parts of the globe, Prisoners' rights exist only on paper.

6.Endnotes

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10. Cap P29, LFN 2004. Section 19
11. Dogo v. Commissioner of Police, 1980 91) NCR 14; Eyu v. The State [1988] 2 NWLR (Pt. 78) 602; R v. Jammal 16 NLR 54; Dantata v. Police 1958 NRNLR 3
12. Okpara. Okpara, 2009, Human Rights: Law and Practice in Nigeria, Vol. 2, Tadi Prints, Abakaliki, at page 220. See Section 36(5) Constitution; Article 7b, African Charter on Human and Peoples Rights, 1986; Principle 36, Body of Principles
13. Champion, Dean J. "Prison." Microsoft® Encarta® 2009 [DVD]. Redmond, WA: Microsoft Corporation, 2008.
14. They were regarded as slaves of the state. See Ruffin v. Commonwealth 62 Va. 790, 796 (1871); Price v. Johnston 334 U.S 266, 285 (1948); Wolff v. McDonnell, 418 U.S 539 (1974); cited in BEHIND THE WALL, A Report on Prison Conditions in Nigeria and the Nigerian Prison System by Civil Liberties Organization in 1991, page 187.
15. Peter Nemi & Ors v. Attorney General of Lagos State (1996) 6 NWLR, (Pt 452) p. 42
16. See Article 2 of the Universal Declaration of Human Rights adopted and proclaimed by General Assembly Resolution 217A (III) of December 1948;

Ayodele Atsenuwa, “Human rights Protection of Vulnerable and Marginalized Groups” in O.A Obilade ed., 1999 Text for Human Rights Teaching in Schools, Lagos: Constitutional Rights Project, page 209

17. See, for example, Chapter IV of the Nigerian Constitution, 1999
18. Section 33, 1999 Constitution
19. Adopted on 27th June 1981. Came into force on 21st October 1986
20. Article 6(1) of the International Covenant on Civil and Political Rights, to which Nigeria is also a signatory, contains similar provisions.
21. (1986) 5 NWLR (Pt 45) 828, also *Onwuka v. The State*, (1988) 1 NWLR (Pt 520) page 539
22. Prisoner Abuse: How Different are U.S. Prisons? Available at <http://www.hrw.org/news/2004/05/13/prisoner-abuse-how-different-are-us-prisons>. Accessed on 28th February 2013 at 10.38am
23. Normally, under International Treaties, any one sentenced to death shall have the right to appeal to a Court of higher jurisdiction, and steps should be taken to ensure such appeals shall become mandatory. Rules 5 and 6 of the United Nations Safeguard Guaranteeing Protection of the Rights of Those facing the Death Penalty (adopted by the UN on 27th May 1984; Articles 2 and 7 of the ACHPR
24. Section 34, 1999 Constitution
25. See Article 5, UDHR, Article 5, ACHPR and Rule 31 of the UN Standard Minimum Rules for Treatment of Prisoners
26. See generally Osaze Lanre Ebonwa, *Behind the Wall, A Report on Prison Conditions in Nigeria and the Nigerian Prison System*, (Lagos: Civil Liberties Organization, 1996) at pp 199-210
27. (1996) 6 NWLR (Pt 452) 42
28. Unreported Suit No. FHC/EN/CP/102/2000
29. In respect of accommodation, bedding, clothing, feeding, medical services, etc.
30. Bunmi Odeniyi, (2003) *Women in Prison*, Gender Issues, LEDAP page 26
31. Medical officers are non-existent in Nigerian prisons.
32. *Justice Sector Reform and Human Rights in Nigeria*, Center for Socio-Legal Studies, Abuja, 2009; with the support of the John O. and Catherine T. MacAthur Foundation.

33. Ghana Assessment , available at <http://Www.Internationalcure.Org/Afrcontry/Ghana.Htm> ; accessed on 26th February 2013; see also Ghana urged to meet international prison standards; posted on 25 April 2012. Available at <http://www.amnesty.org/en/news/ghana-improve-infrastructure-reduce-overcrowding-and-increase-prison-monitoring-meet-internatio>; accessed on 26th February 27, 2013
34. See Remand Prisoners Should Not Be Treated As Convicts – Bishop Agyin-Asare <http://www.spyghana.com/remand-prisoners-should-not-be-treated-as-convicts-bishop-agyin-asare/>; posted on Sun, May 27th, 2012; accessed on 26th February 27, 2013
35. Prisoner Abuse: How Different are U.S. Prisons? Available at <http://www.hrw.org/news/2004/05/13/prisoner-abuse-how-different-are-us-prisons>. Accessed on 28th February 2013 at 10.38am
36. Ibid
37. Sections 35(1) and 41(1) Constitution
38. In defence of arrest by proxy, one police officer said “the mother of a criminal always knows where he is”. Available at http://www.mercatornet.com/articles/view/nigerias_citadel_of_injustice/e. Accessed on 11th May 2011
39. Such raids usually take place when the police are “dry” and in urgent need of money.
40. Usually for armed robbery, murder or manslaughter.
41. http://www.mercatornet.com/articles/view/nigerias_citadel_of_injustice/e
Accessed on 11th May 2011
42. Section 36 Constitution
43. [2004] 11 MJSC 147 at 153
44. Section 6
45. Section 36(8) Constitution
46. Section 36(12) Constitution
47. [2003] 2 MJSC 36 at 40
48. Aoko v. Fagbemi (1961) 1 All NLR 400; Ogbomor v. The State (1985) 1 NWLR (Pt. 2) 223
49. [2005] 10 MJSC 1 at 13

50. See also *Alsthom S.A & Ors v. Chief O. Saraki* [2005] 3 MJSC 125; *Newswatch Comm. Ltd v. Atta* [2006] 7 MJSC 88 at 93
51. *Uwaekweghinya v. The State* [2005] 6 MJSC 1 at 5
52. Amnesty International, External Document, 13th November 2007, "Nigeria: Urgent Justice Reform Needed to protect Rights of Inmates-a Statement to the Stakeholders Summit on reform of the Magistracy and Justice Sector Reform in Lagos State,
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53. Section 37 Constitution; Article 17 ICCPR; Article 12 UDHR
54. Regulation 44
55. Order 174
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57. See further Ngozi J. Udombana, (2007) *Advancing the Well Being of the Vulnerable: Law and Women Prisoners in Nigeria*, Vol. V. Issue I *LASU Law Journal*, page 113 at 129
58. Section 39, 1999 Constitution of Nigeria
59. Article 18, UDHR; Articles 18 and 19 ICCPR; Section 38, 1999 Constitution
60. *Supra*, page 289
61. Section 42, 1999 Constitution of Nigeria
62. Section 38 1999 Constitution
63. Especially those in the Southern, Eastern and Western parts of the country
64. Especially those in the Northern parts of the country.
65. Emphasis mine
66. Prisoner Abuse: How Different are U.S. Prisons? Available at <http://www.hrw.org/news/2004/05/13/prisoner-abuse-how-different-are-us-prisons>. Accessed on 28th February 2013 at 10.38am [paraphrased]
67. Prisoners' Rights In Ghana, posted on August 12, 2006; available at <http://www.jhr.ca/en/aboutjhr/downloads/publications/Prisoners%20Rights%20in%20Ghana.%20Edudzi%20Ofori%20&%20Chelsea%20Paradis.%202006.pdf>; accessed on 26th February 2013 [paraphrased]
68. *ibid*

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