

The Nigerian Correction Act 2019 And The United Nations Standard Minimum Rules For The Treatment Of Prisoners: The Imperative Question Of Compliance

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Abstract: One objective of correction in recent times is the rehabilitation and reintegration of inmates back into society. The Nigerian Correctional Service Act 2019 repealed the Nigerian Prison Act 2004. Apart from change of name, there are provisions for the Nigerian Correctional Service to comply with the United Nations Standard Minimum Rules for the Treatment of Prisoners. Adopting a doctrinal approach, this work examines the provision of the new law and assessed the adequacy of its provisions in relations to minimum international standard for the treatment of prisoners. It is the view of this research that the repealed law on corrections in Nigeria is a step in the right direction. The Nigerian government will need to go beyond mere legislative prescription and change of uniform of personnel of the correctional service to address serious challenges in the correctional service, ranging from poor accommodation of inmates in almost all states of Nigerian, poor feeding, delay in the investigation of awaiting trial inmates, torture and lack of basic health facilities to achieve the rehabilitation and reintegration objectives of the Act.

Keywords: Prisoner, Correction, Standard, Compliance

I. INTRODUCTION

Deviations from rules and anti-social behaviours were as old as humanity. Early records of Adam and Eve eating the forbidden fruit and the cold murder of Abel by his brother Cain in the Bible, buttress this point. God and man however, for the sake of organized society corrects. At the level of the family, in the formative days of most children, corrections are achieved by the chastisement of the child by parents for doing things that they ought not to, such as kicking of siblings,, stealing, refusing to carry out family chores or generally being truant (Tarhule, 2014). At the later stage of development at school and in the workplace corrections are done in the broader society either formally or informally.

Most state have correctional institutions set up by law. These formal institutions is an extension of informal corrections at the family level with the basic objectives of rehabilitation and reintegration. The precolonial Nigerian society had formal as well as informal institution for handling of deviant behaviours. Later formal institutions include the

Nigerian prison with its first variant established in 1872 at the Broad Street Lagos designed to accommodate 300 inmates.

The prison system in Nigeria came under serious challenges of overcrowding of inmates, poor feeding, lack of adequate health facilities, incidence of torture etc. that instead of transforming inmates into better human back into society, incidence of recidivism became common place. The recent review of the Prison Act 2004 in 2019 made provisions aimed at improving the correctional service in Nigeria. How the Nigerian state set machinery in motion with the new law to comply with International Minimum Standard for Treatment of Prisoners is the focus of this work.

A. MEANING OF CORRECTION

IN THE WORDS OF MARSHAL (1996)

When the prison gates slam behind an inmate, he does not lose his human quality, his mind does not become closed to ideas, his intelligence does not cease to feed on a free and fair

interchange of opinion; his yearning for self-respect does not end, nor his quest for self-realization concluded. If anything, the need for identity and self-respect are more compelling in the dehumanizing prison environment.

These and many more questions deluge the mind of the court in its quest to turn the offender around in choosing a particular mode of punishment. In doing so, the court bears in mind the fact that the model adopted is aimed not just at punishment for the sake of it, but also aims at turning the individual from deviant behaviour to a useful and productive member of society. In most jurisdictions, including United States of America (US), Canada, Britain and South Africa, this aspect of criminal justice delivery system is referred to as 'corrections' (Marshall, 1996).

Corrections are thus, the modes of treating offenders within a criminal justice system. What approach does a given society adopt to treat its offenders? Is the treatment enough to turn the offender around? If it does, the offender is said to be corrected, that is, he no longer exhibits criminal tendencies. Corrections are therefore, penalties or measures imposed by the courts on offenders who violate criminal laws (Marshall 1996).

B. HISTORY OF PRISONS IN NIGERIA

The first modern prison was established by the Quakers in Philadelphia in 1790. The prison was conceived as a humane alternative to the penalties that were then legally inflicted on felons. The original idea for establishing the prison also sought to subject inmates to solitary confinement, meditation and prayer for the purpose of making them to have a sober reflection on their sins so that they can learn the errors of their ways (Ugwoke, 2010).

African penal policy like those of ancient Europe has been predominantly severe and deterrent oriented. Before the advent of the British government in the nineteenth century, many ethnic communities in Nigeria had assumed the responsibility of locking up their deviant citizens. Similarly native prisons existed in both the northern and western parts of Nigeria before the advent of colonialism. These traditional prisons provided the British administrators an easy starting point since their retributive objectives were similar to those of the colonial prisons (Ugwoke, 2010). The declaration of Lagos as a colony in 1861 marked the beginning of a formal machinery of colonial governance in Nigeria. Since the pre-occupation of the colonial government was to protect legitimate business, guarantee profit of British merchants, a police force was formed of about 25 constables. This was followed by the establishment of four courts in 1863. The police and the court will need a prison for justice administration to be complete. Thus, in 1872, the Broad street prison was established. The progressive incursion of the British government into the east and hinterland marked the establishment of prisons as the last link in the criminal justice administration system. Thus by 1910 there were prisons in Degema, Calabar, Onitsha, Benin, Ibadan, Sapele, Jebba and Lokoja. There was however no unified prison system then. The prisons were poorly run and without much programme for rehabilitation and integration.

Orakwe (2014) observed that in 1917, the prison regulation was published to prescribe admission, custody, treatment and classification procedures as well as staffing, dieting and clothing. The regulation was limited in its application to those who were convicted and those who are awaiting trials. There were reforms again in 1934, 1946-1955, up to 1947 with each reforms introducing different schemes either in aid of inmates or welfare of personnel. Then in 1968, Native Authority prison was abolished with the unification of prison service in Nigeria. The white paper on this unification delayed as a result of the civil war at the time. It was released in 1971 and followed up by the Nigerian Prison Service Decree No. 9 of 1977 which spelt out the goals and orientation of Nigerian prisons service.

The 1972 reforms introduce specialized units such as the technical division in charge of general administration and provision of logistics, the inspectorate division oversee staff deployment, training and rehabilitation. There is no doubt some reforms introduced into the prisons service by the provisions of the 1972 Act especially in restructuring the prisons alongside the command structure and training through the established training schools. The reforms however is limited in view of the reforms expectations on inmates which over the years has been abysmal.

II. LEGAL FRAMEWORK ON CORRECTION

Legislation regulating correction predates Nigerian independence in 1960. More than three decades ago, the British administration promulgated the Prison Ordinance in 1926. Post-independence legislation was the Prison Decree of 1972 later referred to as the Prison Act Cap 366 laws of the Federation 1990 or Cap p29 laws of the Federation of Nigeria 2004. The Prison Act was repealed to become the Nigerian Correctional Act, 2019 under reference.

A. CONSTITUTIONALITY OF CORRECTIONS

Nigerian written constitution is a rigid as well as a supreme law of the land. It is a ground norm which provisions supersedes all other laws in the Federation. Item 48 of the Exclusive list of the Nigerian constitution refers to the prison. By implication, only the National Assembly can legislate on it. Chapter 4 of the same constitution provides for rights to freedom of movement, association, personal liberty, dignity of human person, religion etc. A prisoner as a person enjoys this rights subjects to some justifiable deviations. As a fact section 35 (a-c) of the 1999 Constitution provides:

- ✓ Every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in the following cases and in accordance with a procedure permitted by law
 - In execution of the sentence or order of a court in respect of a criminal offence of which he has been found guilty;
 - By reason of his failure to comply with the order of a court or in order to secure the fulfillment of any obligation imposed upon him by law;

- For the purpose of bringing him before a court in execution of the order of a court or upon reasonable suspicion of his having committed a criminal offence, or to such extent as may be reasonably necessary to prevent his committing a criminal offence.

On the dignity of human persons. Section 34 provides:

- ✓ Every individual is entitled to 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.

All prisoners as humans are entitled to those rights as long as there are humans. Deviations are strictly as provided by the extant laws.

B. INTERNATIONAL INSTRUMENTS ON CORRECTIONS

Apart from the Constitution, at the international level, the provisions of the Universal Declaration of Human Rights as well as the African charter on Human and Peoples rights are in force in Nigeria. Article 5 of the African Charter on Human and Peoples Rights provides:

Every individual shall have the right to the respect of the dignity inherent in all human beings, and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman and degrading punishment and treatment shall be prohibited.

III. THE CORRECTIONAL SERVICE ACT 2019

The Correctional Act of 2019 repealed the 2004 Act. It made provisions for the administration of prisons in Nigeria and other ancillary matters.

A. ADMINISTRATION OF CORRECTIONS

The 2019 Act made provisions for a command structure headed by the Controller General who is appointed by the President on the recommendation of the Board and subject to the confirmation of the Senate. Section 3 (1) (2) of the Act provides:

- ✓ The President shall appoint the Controller-General:
 - On the recommendation of the Board; and
 - Subject to confirmation by the Senate.
- ✓ The appointment shall be from serving Assistant Controllers-General who have:
 - Evidence of attendance and satisfactory performances at all mandatory training and command courses
 - Vast experiences in correctional management and administration
 - Evidence of quality leadership and good track record in the Correctional Service; and
 - Evidence of satisfactory performance in field command positions.

The Controller-General have general superintendence of the correctional service and exercise and perform all powers,

duties and functions necessary to give effect to the provisions of the Act. The Controller-General shall also have superintendence on inmate's safety and human custody, reformation, rehabilitation and reintegration of offenders. The repealed Act added non-Custodial institutions and centers as core areas of the Act under the control of the Controller General.

The Controller General is assisted by the Deputy Controller-General. They are also appointed by the President. The structure of the correctional service is in line with the principles of Nigerian federation with the structure of national, zonal and states offices.

The Act is not in any way detailed on the skill, education, versatility that may be necessary of a technocrat to be at the helm of affairs of a correctional service expected to deliver the key objectives of rehabilitation and integration of inmates. The fact that whoever will be the controller General or his deputies will have to be acceptable to political office holder like the President, Senate and the Board whose members are politically selected leaves much to be desired. There is the possibility that political considerations may outweigh sound professional considerations in this appointment. A well detailed out criteria of professionalism backed up with the requisite skill required to drive this office ought to have been outlined for the office of the Controller-General and his deputies and appointment so much subjected to the prerogative of politicians.

OTHER STAFF

The Standard Minimum Rules for Treatment of Prisoners attached so much importance to the quality of staff to drive the objectives of corrections. Section 46 of the rules provides:

- ✓ The prison administration shall provide for the careful selection of every grade of the personnel, since it is on their integrity, humanity, professional capacity and personal suitability for the work that the proper administration of the institutions depends.
- Section 47 went further on this issue:
- ✓ The personnel shall possess an adequate standard of education and intelligence.

The process of recruitment of personnel of correctional center will need a total overhaul if the correctional centers in Nigeria will meet the standard minimum rules.

B. ACCOMMODATION

The Controller General is under the Minister of Internal Affairs who has the power by order in the Federal Gazette to declare any building or place in Nigeria to be a prison and by the same or a subsequent order specify the area for which the prison is established.

The provisions of the 2004 Act has been repealed by the Correctional Service Act, 2019. The 2004 Act merely defines Prison as 'prison as declared under the Act'. Following the enigmatic problem of overcrowding in Nigerian prisons over the years and the reactions by way of criticism of prison administration, a repealed Act is expected to address this problem. Describing the problem of accommodation, it is argued that some of the prisons were built before the word

Nigeria was coined, in 1914. Azare prison was built in 1816, Bauchi prison was built in 1820, Ningi prison in 1827, Misua prison built in 1831 and Bida prison in 1884.

These and some other prisons that were built thereafter had no better designs for institutional corrections programme by way of recreational activities, such as workshop, outdoor activities, games and so on (Ogunleye, 2007). The prison Act 2004 was not elaborate on what structure qualifies to be called prison. The Correctional Service Act 2019, part 1 section 9 provides:

- ✓ The minister may, by order in the Federal government Gazette:
 - Declare any building, with requisite facilities in an appropriate location within Nigeria, to be a Custodial Centre; and
 - Specify the area and the landmass for which the Custodial Centre is established;

Provided that in every building as a Custodial Centre, sleeping accommodation shall meet all requirements of health with consideration given, among other things to adequate floor space, water and sanitation amenities, lighting and ventilation.

The above provisions seems to recognize the obvious gap in the repealed Act especially on consideration for adequate floor space, water, sanitation amenities, lighting and ventilation. This problem seems not solved as nothing is said about the so many places called prison now correctional centers which have been overcrowded and cannot be properly converted to meaningful correction centers by virtues of their location in terms of available spaces and location in urban areas of Nigeria.

By the United Nations Standard Minimum Rule for the Treatment of Prisoners, the ideal accommodation for a prisoner is one person to a room. Section 9(1) of the rules provides:

- ✓ Where sleeping accommodation is in individual cells or rooms, each prisoner shall occupy by night a cell or room by himself. If for special reasons, such as temporary overcrowding, it becomes necessary for the central prison administration to make an exception to this rule, it is not desirable to have two prisoners in a cell or room.

Although there may be deviations envisaged by this international instrument, the experience of some correctional facility in Nigeria fell far short of what is ideal under any conditions. The new Act should have declared some of the correctional facilities unfit to be called a place of correction for rehabilitation and reintegration of inmates.

C. FOOD

Section 20(1) (2) of the United Nations Standard Minimum Rules for the Treatment of Prisoners provides:

- ✓ Every prisoner shall be provided by the administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served.
- ✓ Drinking water shall be available to every prisoner whenever he needs it.

The picture of food served in Nigerian correctional facility was captured by the Newswatch Magazine thus:

Food is a major problem. The quality of the food served, especially to those awaiting trial, is so nauseating that to talk about quality is to do extreme damage to language... you couldn't call it food really... what they did was to mix a little paste of what passed for garri and give you some bitter liquid which is supposed to be soup. Prisoners remain famished and malnourished. To make matters worse, prison officers are known to pilfer food meant for prisoners.

If the objectives of the Correctional Act includes rehabilitation and integration, the inmates in any correctional center will need intake of food qualitatively and quantitatively. Poor feeding will make the inmates susceptible to diseases. One problem with the feeding of inmates is the fixed rates for the feeding. Under the 2004 Act, the feeding per day was fixed at N200.00 per day. The amount by no means cannot feed anybody in terms of quality and quantity. What is more this amount will have to go through the hands of contractors under a corrupt Nigerian system. The new Act did little to address the problem of poor feeding of prisoners. Section 30(1) (2) of the Act provides:

- ✓ There shall be for the Correctional Service funds appropriated for inmates' feeding as provided by the Government.
- ✓ Subject to subsection (1), the cost of feeding reviewed at a period not exceeding five years from the date of last review or as the national economic circumstance permits.

The first leg of this provision is in appropriation that is not binding on the government. How much to be appropriated is not tied to the number of inmates. It is one thing for the fund to be appropriated, it is another thing for the fund to be released. In an inflation prone country like Nigeria, review of the sum shall only be after five years. No wonder, nothing seems to have changed even now that the new law is in force.

D. FUNDING FOR NON CUSTODIAL SERVICE

The repealed Act has by its provisions shifted emphasis from retributive justice to reformation and rehabilitation. Its provisions on non-custodial service clearly supports this view. It states:

The Non-Custodial Service faculty is responsible for the administration of non-custodial measures, namely: 'community service, probation, parole, restorative justice measures and such other measures as a court of competent jurisdiction may order. Restorative justice measure approved in the Act includes victim-offender mediation, family group conferencing, community mediation and other conciliatory measures as may be deemed necessary at pre-trial, trial, during imprisonment or even post imprisonment stages. (John, 2019).

The Act made provisions for establishment of farms, increase use of technology for the attainment of the stated objectives. It is clear that the needed infrastructures and personnel cost for the conceived non-custodial center will require a strong political will through deliberate budgeting to achieve the desired result.

In 2019, fiscal year, South Africa budgeted R23, 848bn that is over N500bn for its correctional service even though some of the reformation projects are funded by grants and partnerships. Poor funding of the correctional centers affects other areas such as medical care, welfare of staff and almost

all the rehabilitative programmes of the corrections. The correctional centers may be consoled by budgetary provisions in the national appropriation bill, but while the budget fall short of expectations, often money released fall short of the expectations. On this, Tarhule (2014) reasoned from a research work thus:

A glimpse at the annual reports for the years 2007, indicates that N19.6 billion or 10.72% was released to the NPS for both capital and recurrent budget out of the budgeted sum of N56.5billion. For the year 2008, the sum of N6, 059, 284, 938, 09 was released to the NPS for Capital expenditure, part of this sum was only released in December of that year. For the 2013 fiscal year, as at November, 2013, only about 40% of the budget according to the National Assembly had been released. Using this as a bench mark, the prisons must be having a raw time. However from the various appropriation bills presented by the Service, provision is made for virtually all the strata's of the prison service from communication gadgets, procurement of Green Marias, provision of drugs, rehabilitation of prison hospitals, purchase of books, sewage treatment in prisons, cottage industries, construction and rehabilitation of prisons and many more.

The above picture reflects the attitude of Nigeria towards prisoners. There seems to be no sign of improvement even with the laudable provisions in the new law. The Act seems to have put in place to satisfy the interest of the international community and some provisions of conventions that Nigeria had ratified.

IV. CONCLUSION

The Nigerian Correctional Service Act 2019 became a timely legislation in aid of obsolete legislation, slow justice system and inadequate funding for inmates across many states in Nigeria. The bill was first presented and read in Senate in January 2008. The objectives of the Act are clearly stated. It bears little reflections of the expectations of Minimum Standards of Treatment of Prisoners in terms of its provisions. The Act seems to have altered some salient provisions in the 2004 Act with the aim of improving the lots of inmates towards restorative justice and reduce the problem of recidivism.

In Nigeria, it is one thing to make law, it is another for the law to be implemented. Many have expressed their fears over the implementation of the Correctional Act to achieve the desired goal. Chioma (2019) observed that Mr. Sylvester Uhaa, Executive Director, Citizens United for Rehabilitation of Errant expressed his concern in the following:

I am concerned that the Federal Government, as we have seen in the past, may not adequately fund its implementation, especially with respect to the non-custodial options, which will require significant amount of financial and human resources, political will and commitment.

Implementation of the Act will require cooperation of both the Federal and State government. Although correction falls within the exclusive list, inmates are state citizens and state will need to do more in making provisions for the elaborate programmes of the non-custodial service if funding will not make the implementation of the Act a dream that may not come into reality.

The United Nations Standard Minimum Rules for Treatment of Prisoners is not a mere prescription that amending correctional law to reflect some of its provision will mean compliance. An overhaul of the correctional centers will need an all-time inter agency cooperation between the police, judiciary and other agencies directly in charge of administration of criminal justice especially when issues of overcrowding will need to be addressed in the custodial centers.

Qualified personnel are indispensable to drive any worthwhile endeavor, corrections are not an exception. The process of recruitment of personnel into the correctional institutions will need a total overhaul to allow for competent personnel if the laudable objectives of the Act will be achieved. Those already in the system will require training and retraining especially for the non-custodial programmes of the correctional centres.

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