

Protection of Human Rights of Female Inmates with Wards in Nigerian Correctional Facilities

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ABSTRACT

According to the statistics of World Prison Brief, correction facilities in Nigeria are male-dominated; they constitute over 93% while female inmates only constitute an estimate of 1.7%. These facilities are characterized by overcrowding, unhealthy, deplorable and inhuman conditions. It is apposite to state that some of these female inmates are pregnant, others have wards they are nursing. It has been observed that, notwithstanding the vulnerability of the afore-mentioned category of persons, little or no attention is paid to their special conditions and their human rights violated. This paper therefore examines some of the plights of female inmates in Nigerian correctional facilities. It recommends among other things that, the Nigerian government should consider specific institutional action-plan to deal with this vulnerable category of inmates and guarantee their fundamental human rights in line with the Constitution of Nigeria, regional and international standards.

Keywords: Female Inmates, Prisons, Administration of Criminal Justice and fundamental human rights

INTRODUCTION

Nigeria operates the adversarial system of criminal justice, as it is found in most common law jurisdictions. Under this system, a Defendant is presumed innocent until the contrary is proven beyond every reasonable doubt against him or her by the Prosecution. This right is guaranteed under the Constitution of the Federal Republic of Nigeria 1999.¹ The prosecution in the discharge of its duty must prove its case against a Defendant beyond every reasonable doubt.² It is therefore not incumbent on a Defendant to establish his innocence; it is for the prosecution to do so. This was emphasized in the case of *Ibeziako v. C.O.P.*³ Therefore, the administration of criminal justice in Nigeria comprises of majorly the Police, the Courts and Correction facilities or Prison.⁴ Each of these players has its unique roles to play in

the chain and failure to play the role will inhibit the smooth administration of justice.

CONCEPTUAL CLARIFICATION OF FRAMEWORK

It is important to define and clarify some concepts that are used in this paper as it will help to enhance the understanding of the topic of discourse.

The Police

The police according to Black's Law Dictionary is the government department saddled with the responsibility of preserving public order, promotion of public safety, prevention and detection of crimes.⁵ It is the entry point into administration of criminal justice and an indispensable component of effective justice delivery system in any given society.⁶ This is so

¹ Constitution of the Federal Republic of Nigeria 1999 (as amended), s 36.

² Nigerian Evidence Act 2011, s 138 (1) and (2).

³ (1963) 1 All NLR 61.

⁴ CD Ebeniro, "The Problems of Administration of Justice on Female Offenders in Nigeria" (2011) 4 (2) *African Journal of Criminology and Justice Studies* 28.

⁵ BA, Garner (Ed.), Black's Law Dictionary (7th Edn., West Group Publishing 1999) 1178.

⁶ CC Igboanugo and OA Ajah, ., "Holding Charge and Pre-Trial Detention Vis-A-Vis The Doctrine of Fair Hearing In Nigeria," available online at <<http://www.thelawyerschronicle.com/holding-charge-and-pre-trial-detention-vis-a-vis-the-doctrine-of-fairhearing-in-nigeria/>> accessed 18 March 2017.

because the police is entrusted with broad powers of arrest, crime prevention, detection and even prosecution in some cases. The Police can be described as the 'gatekeeper' of the criminal justice administration.⁷

Court

A court is defined as 'the governmental body consisting of one or more judges who sit to adjudicate disputes and administer justice.'⁸ It is described as the last hope of the common man.

Its role within the administration of criminal justice cannot be overemphasized as it hears grievances of disputants and applies the law by passing appropriate sentence on persons brought before it when found guilty of charges leveled against them.⁹

Prison

Prison is defined as 'a state or federal facility of confinement for convicted criminals, especially felons.'¹⁰ It is the third pillar in the criminal justice administration. It is saddled with the responsibility of keeping custody of the products of the criminal justice process.¹¹ It follows therefore that a prisoner is one who is lawfully committed to custody.

They could be male or female who are adults, nursing mothers, pregnant women, young persons, among others.¹² It should also be noted that in Nigeria, prison population consist of awaiting trial inmates and convicted ones.

As a matter of fact, record has it that as at 3rd December 2018, the total number of inmates in Nigerian prisons was 75, 772.

It was further revealed that 51, 384 inmates which constitute 68 % of the entire prison

population were awaiting trial inmates while 24, 388 inmates which constitute 32 % of the entire population were convicts.¹³

PROBLEMS ASSOCIATED WITH NIGERIAN CORRECTION FACILITIES/PRISONS

Prisons were introduced to Nigeria by the British Colonialists whose major intention at the time was to keep under check and lock up persons who were considered oppositions to the colonial rule.¹⁴ However, considering the present Nigerian reality, it now serves different purposes from what it was in the pre-colonial Nigeria.¹⁵ Some of the purposes include: retribution, crime prevention, rehabilitation, among others. Whether a country places premium on the lives and fundamental human rights of prison inmates or not would be determined from the conditions of prison facilities.¹⁶ Nigeria as a country has been found wanting when it comes to the promotion of good welfare and living conditions for prison inmates. There has also been flagrant violation of their human rights. Prisoners have been found to live in extreme inhumane and deplorable conditions and subjected to constant abuse of their human rights. Prisoners are considered human beings thus should enjoy their fundamental human rights as guaranteed in the Constitution of the Federal Republic of Nigeria 1999 (as amended) and other relevant regional and international Instruments. It must be noted however that the only right that a prisoner should legally be deprived of is the right to personal liberty.¹⁷

This paper therefore considers the rights of female inmates and some of the challenges they face along with their wards in Nigerian prisons. These challenges often times violate international standards on the treatment of vulnerable prisoners.

HUMAN RIGHTS OF FEMALE INMATES IN NIGERIAN PRISONS

Chapter IV of the Constitution of the Federal Republic of Nigeria (FRN) 1999 provides for

See also HM Ogunwumiju, "Penal Reforms and Prison Congestion in Nigeria – Issues and Challenges" (2016) 1 *Akure Bar Journal* 4-5.

⁷ AB Dambazau, *Criminology and Criminal Justice* (Spectrum Books Ltd 2007) 178.

⁸ BA Garner (Ed.), *Black's Law Dictionary* (n 5) 356.

⁹ Yemi Akinseye-George, *Nigerian Prisons: Justice Sector Reform and Human Rights in Nigeria* (CSLS Publishing 2009) 163.

¹⁰ BA Garner (Ed.), *Black's Law Dictionary* (n 5) 1213.

¹¹ AB Dambazau (n 7) 201.

¹² Richard A. Aborisade and John A. Fayemi, "A Qualitative Exploration of the Coping Strategies of Female Offenders in Nigerian Prisons" (2016) 9 (1) *International Journal of Criminology and Sociological Theory* 3.

¹³ "The Nigerian Prisons Service Statistics as at 3rd December 2018," available online at <<http://www.prisons.gov.ng/about/statistical-info.php>> accessed 22 January 2019.

¹⁴ Tajudeen Ojo Ibraheem, "Behind the Prison Walls: Rights or No Rights?" (2013) 2 (4) *International Journal of Innovative Research and Development* 779.

¹⁵ *Ibid.*

¹⁶ *Ibid.*, 780.

¹⁷ *Ibid.*, 782.

fundamental human rights of all Nigerians. Nigeria as a nation has signed, ratified and domesticated many regional and international treaties and instrument on human rights.

Human rights are universal and must be respected by all. This position is affirmed by the Nigerian Constitution, various human rights laws, international and regional instruments including Universal Declaration of Human Right (UDHR) 1948, African Charter on Human and Peoples Rights (ACHPR) 1981, among others. These laws and instruments emphasized that no one should be discriminated against on any account and the freedom of all humans, in every sphere of life, economic, social, political, cultural, religious, among others.¹⁸ It must be noted that prisoners may have to lose their right to personal liberty, that does not mean that they should forfeit their basic human rights because of imprisonment. Moreover, a prisoner is human and human rights are conferred on individuals by virtue of their humanity, therefore, it is the person of the prisoner and his or her humanity that deserves to be protected. This paper therefore discusses the rights of female inmates and their wards that are violated by the dysfunctional prison system that is operated in Nigeria.

Right to Life

This is the most essential human right. It is so because whenever there is a deprivation of this right, no other right can be exercised. Right to life is guaranteed under Section 33 of the Constitution of Nigeria 1999. It provides thus: “every person has a right to life and non 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.”

Similarly, the African Charter on Human and Peoples Rights (hereinafter referred to as ACHPR) provides thus: “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 this right.”¹⁹ It follows therefore, that no prisoner should be deprived of his life except

¹⁸ AA Tijani and PE Oamen, “Global Best Practices on Disability Rights: What Lessons for Nigeria?,” (2016) 4 (1) *Akunba Law Journal* 38-39.

¹⁹ African Charter on Human and Peoples Rights, ACHPR (Banjul Charter) adopted 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 ILM. 58 (1982), entered into force 21 October 1986, art 4.

where a competent Court of law has ordered so. Starving prisoners of food, exposing them to dangerous diseases as a result of overcrowding, malnutrition, subjecting them to inhumane and appalling living conditions, lack of access to health care, subjecting them to torture and other inhumane treatments which are capable of causing death will amount to deprivation of life.²⁰

It has been observed that right to life of prisoners in Nigerian prisons have been violated continually as prison inmates, both male and female alike are subjected to appalling, inhumane and cruel conditions which could directly or indirectly cause the their death.²¹ Worse still, female inmates who are pregnant or have wards staying with them in custody are subjected to worse conditions which are capable of causing their death and that of their wards with little or no attention being paid to their plights. It must be stressed that there is the need for the government to guarantee the right of life of its citizens, whether a prisoner or not in accordance with international best practices. Imprisonment should not be tantamount to deprivation of life, whether expressly or impliedly.²²

Right to Dignity of Human Person

Every Nigerian citizen shall be entitled to dignity of his person.²³ The ACHPR also guarantees the right to dignity of human person.²⁴

On no account should a prisoner be subjected to any form of degrading, inhuman, cruel and unacceptable standard of treatment.²⁵ Therefore,

²⁰ Tajudeen Ojo Ibraheem (n 14) 784.

²¹ “Death in Prison Custody” *This Day Newspaper* of 18 April 2017 available online at <<https://www.thisdaylive.com/index.php/2017/04/18/death-in-prison-custody/>> accessed 18 April 2017.

²² Tajudeen Ojo Ibraheem (n 14) 785.

²³ Constitution of the Federal Republic of Nigeria 1999 (as amended) (n 1) s. 34 (1) – “ Every individual is entitled to respect for the dignity of his person, and accordingly; (a) no person shall be subjected to torture or to inhuman or degrading treatment; (b) no person shall be held in slavery or servitude; and (c) no person shall be required to perform forced or compulsory labour”

²⁴ ACHPR (n 19) art 5.

²⁵ United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) adopted by Resolution 70/175 of 17 December 2015, rules 1, 47 and 50. See also Universal Declaration of Human Rights (UDHR) adopted by the United

irrespective of the term of imprisonment or the gravity of the offence committed by a prisoner, the prisoner being a human being is entitled to certain minimum standard of treatment.²⁶ However, it has been observed that Nigeria prison system has not done well have in this regard as inmates in Nigeria prisons are subjected to torture, beating, threat, forced labour, among others. Female inmates find it worse as they are often subjected to sexual harassment and rape by male inmates and even male prison staff.²⁷

The consequences of these harassment often times leads to death, unwanted pregnancies, suicide, injuries among others. It has also been realized that when these incidents occur, the prison authorities mostly link the aforementioned consequences to natural or accidental reasons.²⁸

Still on the right of inmates to dignity of human person, the apex Court in Nigeria in the case of *Peter Nemi & Others v. State* held *inter alia* that, where a condemned prisoner is to be deprived of his life, it must be done in accordance with the law.²⁹

Therefore, a common situation in Nigeria whereby persons who have been sentenced to death by competent Courts of law are kept on the death row in prison facilities indefinitely wherein they are subjected to serious psychological trauma will amount to violation of their rights to dignity of human person.

Importantly, overcrowding of prison is tantamount to violation of right of inmates to dignity of human person.

A situation whereby 50 inmates are kept in a tiny cell which originally was created to accommodate about 10 persons with majority of them sleeping on bare floors as if they are less human is unacceptable and a clear violation of

the rights of such inmates to dignity of human person.³⁰

It must be stressed that there is the need for the Nigerian government to treat inmates in Nigerian prisons with dignity and respect in line with internationally acceptable standards bearing in mind that such inmates, particularly female inmates are also human and should by virtue of imprisonment be treated less.

Right to Personal Liberty

Everyone shall be entitled to right to personal liberty and no one shall be deprived of such liberty except when done in conformity with the law. One of the consequences of imprisonment is the limitation placed on the personal liberty of the prisoner.³¹ However, as mentioned earlier, today, awaiting trial inmates constitute over 70% of the entire prison population in Nigeria and convicts taking the other 30%.³² Section 35 (4) (a-b) of the Constitution of Nigeria 1999 provides that where a person is arrested and detained, he must be brought before a competent Court for trial within a reasonable time.³³ Such a person must be tried within two months where the person is in custody and not entitled to bail while for someone who has been released on bail, he must be tried within three months of arrest.³⁴ The implication of this statement is that the ugly situation in Nigerian prisons whereby awaiting trial inmates particularly female inmates languish in prison custody without trial indefinitely is an aberration and an outrage on the rights of such inmates to personal liberty. It is against the acceptable standard on the treatment of prisoners.

Right to Privacy

Section 37 of the Constitution of Nigeria 1999 provides thus: “The privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communication is hereby guaranteed and protected”

Article 12 of the UDHR 1948 provides thus: “No one shall be subjected to arbitrary interference with his privacy, family, home or

Nations General Assembly on 10 December 1948, arts 3, 4 and 5.

²⁶ United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (the Bangkok Rules) adopted by Resolution 2010/16 of 22 July 2010, rules 19 and 24. See also Tajudeen Ojo Ibraheem (n 14) 786.

²⁷ OL Ebonwa, “Behind the Wall, a Report on Prison Conditions in Nigeria and the Nigerian Prison System” (Civil Liberties Organization 1996) 199-205.

²⁸ Tajudeen Ojo Ibraheem (n 14) 786.

²⁹ (1996) 6 NWLR (Pt. 452) 42.

³⁰ Basic Principles for the Treatment of Prisoners adopted by Resolution 45/111 of 14 December 1990, art 1. See also Tajudeen Ojo Ibraheem (n 14) 787.

³¹ Constitution of the FRN 1999 (n 1) s 35 (1) (a).

³² “The Nigerian Prisons Service Statistics as at 31st March, 2016” (n 13).

³³ Constitution of the FRN 1999 (n 1) s 35 (4) (a) – (b).

³⁴ *Ibid.*

correspondence, nor attacks upon his honour and reputation...”

Every Nigerian citizen is guaranteed his or her right to privacy. However, in the case of inmates in Nigerian prisons, the exercise of this right is limited. It is limited in the sense that a prisoner is not allowed to fully enjoy the right to privacy as a result on incarceration since he or she will not have access to their homes, telephones, and correspondence, among others while imprisoned. This against the internationally acceptable standard.³⁵

Right to Fair Hearing

Section 36 of the Constitution of Nigeria 1999 provides that a defendant in a criminal trial shall be entitled to fair hearing within a reasonable time.³⁶ In the case of *Amala v State*,³⁷ this right was interpreted to encompass the right of a defendant to be informed about the nature and details of the offence charged, in a language that he or she understands. The offence a defendant is charged with must exist with a penalty prescribed where the guilt of an accused person is established beyond reasonable doubt through a criminal trial.³⁸ Therefore, the Court in the case of *Aoko v. Fagbemi*,³⁹ established that nobody will be punished for an act which did not constitute an offence at the time of commission.

Article 10 of the UDHR provides that “everyone is entitled to a fair and public hearing by an independent and impartial tribunal in the determination of his rights, obligations and criminal charge against him.”⁴⁰

Consequently, an awaiting trial prisoner is entitled to fair hearing by regular appearance in Court for his defence. He or she is presumed innocent until the contrary is proven and must be afforded adequate time and facility to consult with his Solicitors in preparation for his defence.⁴¹ This right also covers the opportunity for a Defendant or awaiting trial prisoner to call witnesses for his defence, access to legal aid or other pro bono legal services (if the person concerned is an indigent), provision of an

interpreter where the person does not understand the language of the court, among others.

It is documented that this right is constantly violated by prison authorities in Nigeria as awaiting trial inmates and even some who are convicts who intend to appeal their convictions are denied access to their legal representatives in preparation for their trial or appeals, as the case may be.

Similarly, the prison officials sometimes fail to take the awaiting trial inmates to Court for their trials. They mostly blame their inability to convey them to Court on logistic problems such as unavailability of vehicles to convey them to and from court for their trials. This has had far reaching implications on the administration of criminal justice in Nigeria. It has resulted in delay in the dispensation of justice and prison congestion. It must be stressed that the fact that someone is a prisoner, whether awaiting trial or a convict should not vitiate such a prisoner’s right to fair hearing. They must be allowed to exercise this right as enshrined in the Constitution and other international human rights instruments to the fullest.

Right to Freedom of Expression

It means that as Nigerian citizens, one is free to express him or her, share opinions, feelings, thoughts, request and receive among others. This right is guaranteed under the Nigerian Constitution and other international human rights instruments.⁴²

This right can be exercised in various forms including; exchange of text messages, exchange of messages on social media, visits, and phone calls, among others. It is on record that this right is denied inmates in Nigerian prisons. They are denied freedom of expressing and recounting their experiences and ordeal behind the prison walls to members of the public, family and friend. They sometimes get threats and warnings from prison officials never to disclose happenings within the prison to the public.⁴³

³⁵ Mandela Rules (n 25), rule 58. See also Bangkok Rules (n 26), rules 26, 27 and 28.

³⁶ *Ibid*, s 36.

³⁷ (2004) 11 MJSC 147 at 153.

³⁸ Constitution of the FRN 1999 (n 1) s 36 (8).

³⁹ (1961) 1 All NLR 400.

⁴⁰ Mandela Rules (n 25), rules 8 and 61.

⁴¹ *Ibid*, art 11 (1).

⁴² Constitution of the FRN 1999 (n 1) s 39 provides for right to freedom of expression. Article 19 of the Universal Declaration of Human Rights 1948 similarly provides that “everyone has the right to freedom of opinion and expression; and this right includes, freedom to hold opinions without interference, seek, receive and impart information through any media.” See also Bangkok Rules (n 26), rules 25 and 26; Mandela Rules (n 25), rule 56.

⁴³ Tajudeen Ojo Ibraheem (n 14) 790.

These inmates, particularly the female who are vulnerable and emotional are denied access to their family and friends. Occasionally, access is granted upon the payment of bribe, whether in cash or kind to prison officials.⁴⁴ They are supposed to enjoy access occasionally to their loved ones.⁴⁵ Some of these female inmates have spouses, children, parents, siblings and friends and they suffer psychological and emotional trauma on the account of their separation from their loved ones. It must be noted that imprisonment should not cause these inmates to abandon their loved ones as they are the same people that they will return to after they leave the prison.

The aforementioned habits of curtailing prisoner's freedom of expression fall short of the standard expected when it comes to the treatment of prisoners, particularly the female prisoners in Nigeria.

Freedom from Discrimination

No one shall be discriminated against based on circumstances surrounding his birth, sex, status, religion, political orientation, among others. This right is guaranteed in Section 42 of the Constitution of Nigeria 1999, Article 7 of the UDHR 1948 and other international instruments.⁴⁶

However, in Nigerian prisons, prisoners get discriminated against. They get called terrible, demeaning and degrading names by the prison officials. The wealthy inmates get preferential treatment from the prison officials at the detriment of other ordinary prisoners.⁴⁷ This preferential treatment come in various forms including: access to family and friends, access to mobile phones, getting assigned to VIP cells, better food or even access to food prepared from outside the prison, among others.⁴⁸ Female prisoners sometimes are discriminated against based on their sex. Nigeria being a society where women are regarded as second fiddle,

male inmates sometimes are considered first before the female prisoners are considered in so many areas. The vulnerable ones such as pregnant women or those with wards in prison who should ordinarily be given special treatment and attention do not get it while the male prisoners or the prisoners get the special treatment in exchange for pecuniary or other benefits. This is clearly against the United Nations standard on the treatment of prisoners.⁴⁹

Freedom of Religion and Conscience

“Everyone has right to freedom of thought, conscience and religion; this right includes freedom to change religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.”⁵⁰ Therefore, one is free to propagate his religious belief, observe, practice or teach it. He shall also be free to change his religious belief at any time. This freedom does not extend to joining of secret societies.⁵¹

RIGHTS OF WARDS OF FEMALE INMATES IN NIGERIAN PRISONS

Having discussed of the rights of female prisoners in Nigerian prisons, there is the need to discuss the rights of their wards that live with them in prison custody (where applicable). It must be noted that these wards are also human beings with inalienable rights which they must not be deprived on the account of their mother's imprisonment. The protection of rights of children under international legal regime is commendable. In examining these rights, this paper considers the United Nations Convention on the Rights of the Child (hereinafter referred to as the UN Convention on the Rights of the Child) as adopted by the 44th session of the United Nations General Assembly in November 1989 and ratified by Nigeria as member state in March 1991.⁵² It also considers the provisions of the Organization of African Unity (now African Union) Charter on the Welfare of the Child (hereinafter referred to as the OAU Charter on the Welfare of the Child) to which

⁴⁴ *Ibid.*

⁴⁵ *Ibid.*

⁴⁶ Mandela Rules (n 25) rule 2.

⁴⁷ O Lolade, “Shocking Revelation: Rich Inmates are Allowed to Copulate with Women in Prison” available online at <<http://ooduarere.com/news-from-nigeria/shocking-revelation-rich-men-inmates-are-allowed-to-copulate-with-women-for-free-in-prison/>> accessed 17 April 2017.

⁴⁸ “Kuje Inmates Protest Preferential Treatment” available online at <<http://www.frontiersnews.com/kuje-inmates-protest-alleged-preferential-treatment/>> accessed 11 April 2017.

⁴⁹ Bangkok Rules (n 26) rule 1. See also Basic Principles for the Treatment of Prisoners (n 30) art 2.

⁵⁰ UDHR (n 25) art 18. See also Basic Principles on the Treatment of Prisoners (n 30) art 3.

⁵¹ Constitution of the FRN 1999 (n 1) s 38.

⁵² UN Convention on the Rights of the Child adopted by the 44th session of the United Nations General Assembly in November 1989.

Nigeria is also a signatory.⁵³ It is the first regional treaty on the rights of children in the continent of Africa. It has similar provisions with the United Nations Convention on the Rights of the Child.

These regional and international instruments seek to protect the child in all areas, provision of basic necessities of life and giving special attention and care to the vulnerable children, for instance, children of imprisoned women who live with them in the prison. Nigeria as a nation has also put in place several measures and framework towards the protection of the Nigerian child. Of particular note is the Child Rights Act⁵⁴ which is meant to protect the rights of the child as guaranteed under the Constitution of Nigeria 1999.⁵⁵

Since the issue of protection of children is contained on the residual list in the Nigerian Constitution, it is expected that states will domesticate it in their respective states having being enacted as an Act of the National Assembly of the Federal Republic of Nigeria. While some states have gone ahead to do so, a large number of them have not.⁵⁶

The rights of children are said to be divided into three major categories. They are: Welfare-which means the right to be provided for; Protection – it means children must be kept safe from all forms of dangers, exploitations or abuse and lastly, Autonomy – the right of children to make choices.⁵⁷ Some of the basic rights of children are:

Right to Life

Every child shall have the right to life.⁵⁸ The state will ensure the overall development and

survival of the child.⁵⁹ A child shall not be sentenced to death, irrespective of the crime.⁶⁰

A situation whereby a child is allowed to stay with his or her imprisoned mother in prison custody thereby exposing such a child to starvation, sexual abuse, inhuman, cruel, degrading, unhygienic conditions and lack of access to health care which could lead to diseases and death of such a child is a violation of the right of the child to life.

This is a common occurrence in Nigerian prison facilities. There is the need to protect the rights to life of the child of a prisoner who is also in custody with the mother.

Right not to be separated from Parents or Guardians

A child shall not be separated from his parents or legal guardians except where it has been determined by a competent judicial authority that such a separation would be in the best interest of the child.⁶¹ It is trite that this provision is a very laudable one as it will ensure that a child is not forcibly separated from his or her parents and that parents have the opportunity to nurture, care for and properly bring up their children.⁶² It will also ensure that children get the best of care and protection from their parents and legal guardians. However, a situation whereby a mother is imprisoned should constitute an exception for a competent judicial authority to determine that such a child should be separated from his mother and be committed to the care of a reliable institution or government department that will see to the overall well being and development of such a child in a good atmosphere and not the prison.⁶³

Right to Freedom of Expression

Every child shall be free to seek, receive and impart information within the ambit of the law.⁶⁴ However, for a child who is living with his mother in the prison custody, this right may be curtailed as he or she may not be free to express

⁵³ OAU Charter on Rights and Welfare of the Child, Doc. CAB/LEG/24.9/49 (1990) entered into force November 29 1999.

⁵⁴ Nigerian Child Rights Act 2003.

⁵⁵ Constitution of the FRN 1999 (n 1) Chp IV. See also Child Rights Act (n 54) s 3.

⁵⁶ OL Niyi-Gafar and OB Igbayiloye, "Adopting a Rights-Based Approach Towards the Legal Protection of the Nigerian Child" (2016) 4 (1) *Akungba Law Journal* 78

⁵⁷ Smaranda Olarinde, "Reflections on the Basic Rights of the Nigerian Child under the Child Rights Act, 2003" (2005) 4 *University of Ibadan Journal of Private and Business Law* 87.

⁵⁸ UN Convention on the Rights of the Child (n 52) art VI (1) and (2). See also OAU Charter on the Rights and Welfare of the Child (n 53) art V (1).

⁵⁹ Child Rights Act (n 54) s 4.

⁶⁰ *Ibid.*

⁶¹ UN Convention on the Rights of the Child (n 52) arts IX (1) and XX; OAU Charter on the Rights and Welfare of the Child (n 53) art XIV; Child Rights Act (n 54) ss 14, 16 and 27.

⁶² Bangkok Rules (n 26), rule 58.

⁶³ OAU Charter on the Welfare of the Child (n 53) art IV.

⁶⁴ UN Convention on the Rights of the Child (n 52) art XIII. See also OAU Charter on the Rights and Welfare of the Child (n 53) art VII.

himself or herself considering the rules and regulations of the prisons, he or she may not even get his peers to whom he or she may freely relate with and impart information and ideas, among others.

Freedom of Thought, Religion and Conscience

Every child shall have the right to thought, religion and conscience.⁶⁵ The parents and legal guardians of children shall provide direction and guidance to their children when it comes to the enjoyment of this right. While admitting that the authorities of the Nigerian prisons has done well in the area of creating an enabling atmosphere for the exercise of this right by inmates of the Nigerian prisons and their children, this right cannot be fully enjoyed by these children as there are limits to which they can practice, propagate or express their religious beliefs in view of the rules and regulations of the prison. For children who are free and not imprisoned with their mothers, they will be able to express this right better than the ones living with their imprisoned mothers in prison custody.

Right to Freedom of Association and Peaceful Assembly

Every child shall have the right to freely associate with others and to join peaceful assemblies within the limits of the law.⁶⁶ It must be stressed that a child who is living with his mother or guardian in the prison cannot enjoy this right as there may not be any association or peaceful assembly whom he could join within the four walls of the prisons. This right can only be enjoyed when the child is free and not living in prison custody. This violation is contrary to the standard expected for the treatment of children of imprisoned mothers.

Right to Privacy and Family Life

Every child shall have right to privacy, family life and correspondence.⁶⁷ There shall not be any arbitrary or unlawful interference with the enjoyment of this right.⁶⁸ However, this right

will be tampered with in a situation where an innocent child would have to stay and grow in prison custody because his or her mother is remanded in custody pending her trial in Court or serving prison sentence.

Right of Access to Information

Every child shall be entitled to information from international and national sources which are capable of promoting the emotional, spiritual, moral, social and physical well being of the child.⁶⁹ This right cannot be enjoyed in the prison custody as access to information generally is limited for inmates and their dependants staying with them.

This invariably will have an adverse effect on the overall development of a child who finds himself or herself in this kind of situation as such a child may not be able to compete favorably with his peers who are free and have good access to information that could help them to develop.

Right to Education

Every child shall have right to be educated.⁷⁰ In doing this, there should be focus on the personality, talents, physical and mental abilities of the child.⁷¹

He or she should be taught about respect for human rights, preservation of African culture and values; tolerance, mutual respect, loyalty and respect for the environment.⁷² It must be stated that this right can only be exercised when a child is free.

A child who lives with his or her imprisoned mother will not be able to enjoy this right as such a child will not be able to get adequate education that would prepare him or her for a better future.

Right to Health Care

A child shall have the right to enjoy the highest attainable standard of health.⁷³ The government therefore must ensure provide necessary health care services to the child, reduce infant and child mortality rate, combat diseases and malnutrition, provide safe drinking water,

⁶⁵ *Ibid*, art XIV. See also OAU Charter on the Rights and Welfare of the Child (n 53) art IX (1) and (2); Child Rights Act (n 54) s 7.

⁶⁶ UN Convention on the Rights of the Child (n 52) art XV; OAU Charter on the Rights and Welfare of the Child (n 53) art VIII; Child Rights Act (n 54) s 6.

⁶⁷ Child Rights Act (n 54) s 8. See also Bangkok Rules (n 26), rule 64.

⁶⁸ UN Convention on the Rights of the Child (n 52) art XVI; OAU Charter on the Rights and Welfare of the Child (n 53) art IX.

⁶⁹ *Ibid*, art XVII.

⁷⁰ Child Rights Act (n 54) s 15.

⁷¹ UN Convention on the Rights of the Child (n 52) arts XXVIII and XXIX.

⁷² OAU Charter on the Rights and Welfare of the Child (n 53) art XI.

⁷³ UN Convention on the Rights of the Child (n 52) art XXIV; Child Rights Act (n 54) s 13.

ensure quality health care for pregnant women and nursing mothers, among others.⁷⁴

It has been observed that the Nigerian prison authorities have failed when it comes to the realization of this right. Most inmates and their children who live with them do not have access to health care; some of them in the process develop very dangerous diseases while others who are unlucky die.

They are subjected to live in very unhygienic environment. Pregnant women do not get adequate pre-natal attention and sometimes left unattended to when delivering their babies. Some of the babies delivered in prison do not get adequate medications and immunization like their peers who are in the free society.

Freedom from Discrimination

Every child shall be free from discrimination on the account of the circumstances of his birth, parents' origin or race, ethnic, religious, sex, among others.⁷⁵ It follows therefore that a situation whereby a child has to live with his or her mother by virtue of the mother's imprisonment will amount to a violation of the child's right not to be discriminated upon on any account. It will mean that such a child has been discriminated against based on the status of the mother as a prisoner. This is against the acceptable international standard.

Protection from Sexual Exploitation and Abuse

Every child shall be entitled to protection from sexual abuse and exploitation.⁷⁶ This right would only be guaranteed in a free society whereby the parents or legal guardians of the child are free and able to guide and protect adequate protection to the child. A situation whereby a child is living in prison with his mother cannot guarantee this right as the environment will expose such a child to some dangerous elements and even sex offenders who could easily abuse such a child sexually.

⁷⁴ OAU Charter on the Rights and Welfare of the Child (n 53) art XIV.

⁷⁵ UN Convention on the Rights of the Child (n 52) art XXX. See also OAU Charter on the Rights and Welfare of the Child (n 53) art III; Child Rights Act (n 54) s 10.

⁷⁶ UN Convention on the Rights of the Child (n 52) art XXXIV. See also OAU Charter on the Rights and Welfare of the Child (n 53) arts XVI and XXVII; Child Rights Act (n 54) ss 11 (a) -(b), 31 and 32.

Protection from Illicit Use of Narcotics and Drug Trafficking

Every child shall be protected from the illicit use and trafficking of narcotics.⁷⁷ Children of female inmates of Nigerian prisons cannot be guaranteed of this right as they exposed to illicit use of narcotics considering the environment and the caliber of persons who often times such a child spends time with in the prison. This situation is not good for the overall development and future of the child. It must be said that the protection envisaged by this right will only be realized where a child grows up in a free society and not in the prison custody.

RECOMMENDATIONS

It is apparent that the Nigeria prison authorities have failed in complying with the requisite international standards when it comes to the treatment of prisoners, particularly the vulnerable ones like female prisoners. It is therefore recommended thus:

FEMALE PRISONERS

- More attention should be given to the plights of female prisoners as well as their wards living with them in the prison so as to address such plights.
- As part of respect for the right of female prisoners to dignity of human person, objects of restraint such as chains, irons shall not be used on them during labour, during child birth and immediately after child birth.
- Prison officials assigned to work with female prisoners shall be specially trained, professional and demonstrate competence while dealing with them and their wards. They shall readily recognize and respect the human rights of these vulnerable inmates and respond appropriately in time of need.
- When female prisoners report abuse in whatever form and by whoever, adequate protection, support and counselling should be given to such a prisoner while the matter is investigated. A conducive atmosphere to report such an abuse and express their feelings without any form of intimidation or threat shall first of all be created by prison authorities and any prison official found

⁷⁷ *Ibid*, art XXXIII; OAU Charter on the Rights and Welfare of the Child (n 53) art XXVIII; Child Rights Act (n 54) ss 14 and 25.

wanting shall be sanctioned and disciplined appropriately.

- Prison authorities shall be sensitive to the special needs of pregnant women, nursing mothers and female inmates with wards living with them. Crèche or child care facilities should be provided for such wards, health care services shall be provided to such wards, medical and nutritional needs of those who have just given birth or breastfeeding shall be given priority attention. In addition, pre-natal and post-natal care shall be provided to pregnant and nursing mothers in prison. If possible, arrangement shall also be made for their babies to be born in health facilities outside the prison.
- There is the need for judicial officers and Magistrates to explore non-custodial sentencing more particularly in cases involving the vulnerable persons such as pregnant women or nursing mothers. This will forestall a situation where pregnant women have to deliver their babies under inhuman, degrading and unhygienic conditions or where babies brought into the prison will grow under inhuman and degrading conditions. The regular use of non-custodial sentences including; probation, fine, community service, house arrest, among others for criminal offences will curb prison congestion which as at today is a major problem in the administration of criminal justice in Nigeria and root cause of most human right violations in the prisons. Alternatively, these vulnerable categories of women could be kept in other institutions other than the prison.
- A commission that will solely oversee the affairs of the prison should be established by the Nigerian government. Its objective shall be to see that the Nigerian prisons system measures up to the internationally set and acceptable standard of prisons. It should have a Director-General, Zonal Directors and State Directors. It should have presence in all the states of the Federation and should be adequately funded by the Federal Government of Nigeria. The commission should have the autonomy to recruit personnel to work in the prisons, train and re-train them, discipline and sanction erring staff appropriately. Also, the commission shall collaborate and work closely with other commissions or agencies with similar

objectives in other countries, particularly in the advanced countries so as to learn from their experiences.

WARDS OF FEMALE PRISONERS

- Also important is the fact that the Nigerian government must give priority attention to the protection of rights of children, irrespective of the status of their parents. All the rights of children as provided for under the Nigerian Constitution, various regional and international instruments are should be guaranteed and protected. This should be done through enlightenment campaigns, advertisements, strict enforcement and monitoring
- To further protect the rights of children born by prisoner mothers while in prison, such fact as to the place of birth shall not be mentioned in the child's birth certificate.
- There is the need for the Nigerian government to ensure the enjoyment of the rights of children of imprisoned mothers by providing a conducive environment where such children can live rather than live with their mother in prison custody.
- Female prisoners with wards living with them must be availed the opportunity to spend quality time with their wards. In addition, such wards shall be provided with requisite facilities for his or her development such that there will be no difference between such a ward and an average child living in the free society.

CONCLUSION

The fact that someone has been imprisoned does not mean forfeiture of his or her human rights. Prisoners are not less human and should not be subjected to degrading and dehumanizing conditions. By and large, it is only the right to personal liberty of a prisoner that should be affected by imprisonment.

A prisoner in Nigeria should be free to enjoy his or her basic human rights just like any other Nigerian citizen.

Therefore, all prisoners, male, female, convict or awaiting trial detainee should be allowed to enjoy their basic human rights as enshrined in the Constitution of Nigeria, ACHPR, UDHR, among others.

In the same vein, wards of Nigerian female prisoners who are living with them in prison custody should also be entitled to their basic

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human rights as provided for by the Constitution of Nigeria as well as other regional and international instruments including OAU Charter on the Rights and Welfare of the Child, UN Convention on the Rights of the Child, among others.

Some of the basic rights that a prisoner as well as their wards are entitled to have been discussed in this paper and appropriate recommendations made in line with internationally acceptable standards.

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