CHAPTER ONE

GENERAL INTRODUCTION

1.1 Background to the Study

In criminal justice delivery, the society is faced with the problem of what to do with an offender or a suspect at the completion of a trial or investigation of a crime. Historically, before the advent of Western civilisation and penal system to Africa, offenders were treated informally by means of various psychological and physical punishments.[1] As physical punishment increasingly became more obsolete, reformers decided that physical punishment should be replaced with imprisonment.[2]

In Nigeria, the modern practice of imprisonment was introduced by the colonial masters who used the tool to subdue political opponents and those considered as the enemies of the state.[3] At present, the principal legislation governing prisons and its administration in Nigeria is the Prisons Act.[4] In the same vein, the Constitution of the Federal Republic of Nigeria 1999 (as amended) places the ownership and control of prisons in the Federal Government of Nigeria.[5] It follows therefore that the present problems bedeviling the Nigerian prisons flow from the insufficient attention which the Federal Government paid on the laws which provide for the maintenance of prisons and the care of the prison inmates.

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[1] In Jewish tradition, physical punishments such as beheading, stoning, hanging, crucifixion, boiling, flogging, branding, burning among others were used to humiliate offenders and deter onlookers from crimes. RM Bohm, *Introduction to Criminal Justice* (3rd edn, New York: Glencoe McGraw-Hill, 2002) p. 350. In some parts of Igboland, people who committed abomination such as murder of one's parents, brother, sister or kinsman; incest, having sexual coitus with one's sister or one of his father's wives when his father is still alive; killing or eating a domestic animal dedicated to the gods; or any other offence against the gods, may be dedicated to the shrine of a god, and they became *osu* (outcasts). C Achebe, *Things Fall Apart* (England: William Heinemann Ltd, 1958) P. 99. Other forms of physical and psychological punishments include excommunication and ostracism.

[2] ST Reid, *Criminal Justice* (3rd edn, New York: Macmillan Publishing Co., 1996) p.3.

[3] IO Tajudeen, 'Behind the Prison Walls: Rights or No Rights' (2013) 2 Issue 4 *International Journal of Innovative Research & Development*, 780

[4] Prisons Act, Cap P.29, Laws of the Federation of Nigeria, 2004.

[5] Constitution of the Federal Republic of Nigeria, 1999 (as amendment), Item 48 Part 1 second schedule.

For a long time, Nigerian prisons have been centres of human rights abuses.[6] People are detained unlawfully for as long as the police want.[7] Most detainees have no legal representation,[8] case processing is low, charge sheets frequently get lost, frequent adjournments of cases in courts and many cases lack the necessary evidence to prosecute them, thereby making a mockery of many years of awaiting trial that ended in discharge.[9] Overcrowding has been a norm rather than abnormal in the Nigerian prisons. Diseases are wide spread in prisons, violent break up of prisons and general public fear occurs thereby negating the essence of imprisonment which is to reform. A careful appraisal of the above reveals that they flow from the deficiencies in the laws regulating the Nigerian prisons. The prison laws which emphasised more on punishment than reforms.[10] The laws which exclusively reserved the management and control of prisons for the Federal Government despite the fact that majority of the inmates of Nigerian prisons are imprisoned by the State courts for violating or alleged violation of the State laws.

Apart from the above problems, several inadequacies are found in all strata of the prison service, from the administration, welfare, structures and even the quality and quantity of the personnel running the system. What is significant in Nigerian prisons is the big wall. Even though Nigerian Prison Regulations made pursuant to section 15 of the Prisons Act[11] makes provisions for basic necessaries in prisons, the question is how far has the Nigerian prisons been able to comply with the rules? A careful review of these problems shows that there is the need for new legal regimes and a change of attitude in prisons. Nigeria needs a legal regime that will introduce private prisons, decentralises ownership of prisons and place

[6] CA Omaka, 'Assessing Justice: A Challenge of Nigerian Prison Detainees', *Daily Trust*, April 4, 2008, p.6.
[7] CA Omaka, 'Decongesting Prisons in Nigeria: the EBSU Law Clinical Model' (2014) Issue 20 Volume II, *International Journal of Clinical Legal Education*, 536.
[8] I Mbanefo, 'The Prison Decongestion Project in Nigeria. An Appraisal' <www.lawfirmsinnigeria.com.> accessed on 4th November, 2015.
[9] Anon, 'The Poor State of the Prisons' <www.learinternaitonal.org> accessed on 11th April, 2010.
[10] CA Omaka,' Assessing Justice: A Challenge of Nigerian Prison Detainees', *op cit* , P.7.
[11] Prisons Act, *supra*.

more emphasis on other sentencing options such as parole system[12], probation[13], community service order, fine, discharge after conviction, payment of compensations to the victim of crime, reform than punishment among others.[14]

The motivation for this study was borne out of the desire to appraise the challenges to the protection of prisoners' rights under the Nigerian law. This was with a view to proffer useful suggestions aimed at introducing a new law for the protection of prisoners' rights in Nigeria. It is hoped that if this is done, the new law would reflect the provisions of the United Nations Standard Minimum Rules for the Treatment of prisoners (the Mandela Rules), 2015. It is the duty of everyone to ensure that prisoner's rights are protected because no one knows who next prison visitor or ultimate tenant might be and one can never knows how Nigerian prisoners are suffering until one visits the Nigerian prisons.

1.2 Statement of Problem

This work became imperative because, from the available literature, the protection of prisoners' rights in Nigeria has for many years been faced with many challenges. This is as a result of many factors, including *lacunae* in prison laws, delay in the determination of cases in court, attitudes of the Government and the public, financial incapacitations, illiteracy, overcrowding, among others. Since prisoners are entitled to all the rights of free citizens save those which are deprived of them by the consequences of their incarceration, it is important that impediments to the full realisation of these rights are examined. In order to appreciate the above problems, this work raises the following questions for consideration:

[12]Parole system is the release of a prisoner from imprisonment before the full sentence has been served. It is usually granted for good behaviour on the condition that the parolee regularly report to a supervising officer for a specified period.

[13]Probation is a sentencing option open to court to release a convicted person to the community under the supervision of a Probation Officer.

[14]Administration of Criminal Justice Act, 2015, sections 319-322 have introduced costs, compensation, damages and restitution to victim of crime in Nigeria even though the Act applies to the Federal High Courts only.

1. Are the rights of prisoners adequately protected under the existing legal regimes in Nigeria?

2. If the answer to one above is in negative, then what are the problems in Nigerian laws that inhibit the protection of prisoners' rights?

3. To what extent has overcrowding in Nigerian prisons impacted on the prisoners' rights?

4. How have the Federal Government policies and programmes impacted on the prisoners' rights?

5. To what extent has the country's sentencing options affected the rights of prisoners in Nigeria?

6. What are the impacts of imprisonment on the individual and government in Nigeria?

7. What are the impediments to the establishment of state and private prisons in Nigeria?

1.3 Purpose of Study

The purpose of this study is not only geared towards the examination of the challenges to the protection of prisoners' rights under the existing legal regimes in Nigeria but to proffer useful suggestions aimed at introducing new legal regimes for the protection of prisoners' rights in Nigeria. The objectives of the research are:

1. To expose and analyse the factors militating against the protection of prisoners' rights in Nigeria.

2. To find out the deficiencies in Nigerian prison laws that made it difficult for the Nigerian prisons to be ran on an international acceptable standard.

3. To find out how overcrowding in Nigerian prisons have impacted on the prisoners' rights.

4. To find out how Federal Government policies and programmes have impacted on the prisoners' rights.

5. To find out how the country's sentencing options have affected the rights of prisoners in Nigeria.

6. To discover the impacts of imprisonment on the individual and government in Nigeria.

7. To find out the impediments to the establishment of state and private prisons in Nigeria.

1.4 Scope of Study

The scope of this work is to appraise the challenges to the protection of prisoners' rights under the Nigerian law. The research also intends to carry out an empirical study in the Federal Prison Abakaliki, Ebonyi State; Enugu Maximum Security Prison and Kuje Medium Prison, Abuja. These prisons were selected for empirical study because of the security challenges faced recently in the said prisons. However, since the world is now a global village, this work shall in appropriate cases make reference to regional and international legal instruments on prisons as well as case law.

1.5 Significant of Study

It is hoped that this work would be a useful benchmark and reference point to governments, Non-Governmental Organisations, researchers and stakeholders on prison projects and indeed the general public. This work would strategise the basis for necessary interventions on the protection of prisoners' rights. In addition, if the recommendations are implemented, justice would be more accessible to the prisoners and ownership of prisons in Nigeria would be decentralised through the introduction of a new law on prisons in Nigeria. This would go a long way in decongesting the Nigerian prisons.

1.6 Research Methodology

This research adopted the doctrinal, empirical and narrative approach to research methods. By doctrinal method, this research examined the existing legal regimes on prisoners' rights by an appraisal. This was achieved by utilising primary sources of materials such as the Constitution of the Federal Republic of Nigeria, 1999 (as amended); the Prisons Act[15] and the Regulations thereunder; international and regional legal instruments on prisons. Case laws

[15] Cap P29, Laws of the Federation of Nigeria, 2004.

were also examined. The secondary sources of materials utilised in this research include: textbooks written by eminent legal scholars, law journals, articles, conference papers, workshop materials, newspapers, internet materials and books written by Non Governmental Organisations.

These were obtained from the public libraries, libraries of institutions of higher learning, prison department as well as internet centres. In addition, personal judgment and evaluations were used were necessary.

By the empirical research method, data were collected through valid and reliable questionnaires administered to sample prison population and some staff of the Federal Prison Abakaliki, Ebonyi State; Enugu Maximum Security Prison and Kuje Medium Prison, Abuja. In addition to the above, interviews were used to actually identify the contemporary challenges in the management of Nigerian prisons.

1.7 Literature Review

It is unfortunate that despite the fact that there are many challenges to the protection of prisoners' rights in Nigeria, not much is known on the issue in law textbooks. A careful research and perusal of books have unearthed the sad reality that our libraries do not contain much information on the challenges to the protection of prisoners' rights.[16] The reason is that there is a general apathy on the issues and matters that affect the prisoners. To some Nigerians once a person is committed to custody, that person is automatically considered to be a criminal whether he is on awaiting trial[17] list or not. Even some members of the Bench who issue remand order or conviction and some members of the Bar who defend people who are in prison custody do not boarder to know what is happening at our prisons. This may be the reason why available literature on the subject are very scanty and in most cases, consists

[16] CA Omaka, 'Decongesting Prisons in Nigeria the EBSU Law Clinic Model', *International Journal of Clinical Legal Education issue 20 volume 11,2014* (UK: Northumbria Law Press,2014) p.536.

[17] Constitution of the Federal Republic of Nigeria 1999 (as amended), section 36 (5) presumes an accused person to be innocent until he is proved guilty.

of merely articles and pamphlets which never discussed in detail the provisions of the laws relating to prisoners' rights in Nigeria.

Omaka in his article, 'Decongesting Prisons in Nigeria: the EBSU Law Clinic Model'[18] discussed the popular issue of overcrowding in the Nigerian prisons. He bases his study in the Abakaliki and Afikpo Federal Prisons in Ebonyi state. He identified a lot of factors that contribute to prison congestion in Nigeria and concludes that Nigerian prisons have become the centres for human rights abuse. We commend the author for his in-depth research; however the work failed to give details of the prisoners' rights and the challenges thereto. It is this gap in knowledge that this work intends to fill.

Ojukwu *et al* in their book, *Handbook on Prison Pre-Trail Detainee Law Clinic*[19] devoted chapter four to discussing the human rights of prisoners/pre-trial detainees under the Constitution of the Federal Republic of Nigeria and some international legal instruments such as the Convention against Torture, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the African Charter on Human and Peoples' Rights and the United Nations Standard Minimum Rules for the Treatment of Prisoners. According to them, these rights include, right to life; right to dignity of person; right to freedom of thought, conscience and religion; right to freedom of expression, among others. They also discussed the rights of vulnerable prisoners, juveniles and prisoners on death sentence. It is humbly submitted that even though the work made attempt to give insight into the nature of prisoners' rights in Nigeria, the work failed to discuss the challenges to the protection of prisoners' rights in Nigeria and offers recommendations on how to overcome these challenges. The work remains silent on the current debate on whether prisoners should vote in Nigeria. It is this gap that this work seeks to fill.

[18] *Op cit.*
[19] E Ojukwu *et al, Handbook on Prison Pre –Trail Detainee Law Clinic* (Abuja: Network of University Legal Aid Institution,2012).

Anakwe in his book, *Prison Administration and Corrections*[20] traces the emergence of the present day prison system to the introduction of the Pennsylvanian[21] and the Auburn[22] systems of prisons in the United States of America. He highlights the structure of prison administration in Nigeria which he said vests in the Controller General of Prisons who in turn established six directorates for administrative convenience. The said directorates are being manned by deputy controller generals of prisons. He exposes the mind of the reader to the processes of admitting a prisoner into prison, prison labour and the philosophy behind imprisonment. He identifies the functions of prisons to include: reformation, punishment, demonstration of state power (the ability of state to enforce discipline) and the protection of the prisoners against reprisals from the victims or members of the victim's family.

It is submitted that while the work gives the reader an insight of what is happening in the prisons; however, the work is not detailed enough to capture life in prisons especially as the author glosses over the abuse of prisoners' rights in Nigeria. He submitted that prisoners in Nigeria have access to doctors, beddings, among others. He tries to buttress this point by painting a beautiful scenario of the Kaduna Open Prison without adverting his mind to the problem of overcrowding in other prisons in Nigeria. It appears that what he did was to analyse the situation in the Kaduna Open Prison and draw a conclusion that all is well with the Nigerian prisons which this dissertation will demonstrate that it is not the case.

Tejudeen in his article, 'Behind the Walls: Right or No Rights?'[23] x-rays the historical basis of imprisonment. He defines who is a prisoner, the rights of prisoners and the problems of the Nigerian prisons system which include the inability of the Nigerian

[20] SI Anakwe, *Prison Administration and Corrections* (Abuja : Corporate Bonds and Concepts, 1999).
[21] The Pennsylvania was a system where inmates were kept in solitary cells so that they could study religious writings, reflect on their misdeed and perform handicraft work. Auburn was a system where inmates were work and ate together in silence during the day and were placed in solitary cells during nights.
[22] Auburn was a system where inmates were work and ate together in silence during the day and were placed in solitary cells during nights.
[23] IO Tejudeen, ' Behind The Walls: Rights Or No Rights', (2013) 2 Issue 4 *International Journal of Innovative Research & Development.*

government to comply with the national and international obligations when it comes to criminal justice system. He also argued that inadequacies of the relevant national laws are also challenges to Nigerian prisons system. However, the author failed to identify the areas of laws that contribute to the problems in the Nigerian prisons system. The author failed to make useful suggestions on how to tackle the identified problems. This is one the basis of this research.

Another important work that comes to mind is *The Prisons System in Nigeria*[24]. This work is a conglomerate of papers that were presented at the Conference on the prison system in Nigeria organised by the University of Lagos in 1968 as edited by Elias. Chapter one of the said work deals with the history of the Nigerian Prisons in its chronological order. According to the said Elias, the history of the prison system in Nigeria predates colonialism. The work also examines the legal framework of Nigerian Prisons and the philosophy behind imprisonment. These conference papers gave birth to a Government White Paper[25] which later became the basis of the enactment of the present Nigerian Prisons Act.[26] A careful appreciation of these papers is necessary since the present Prisons Act is based on it. If the present Prisons Act is based on the Conference of 1968, then the Prisons Act is obsolete. This is because there are current international; regional and national conferences, seminars, conventions, workshops, among others that entrenched new and the universally accepted standards for the treatment of prisoners. Apart from this shortcoming, most of the recommendations of the said conference such as suspended sentence were jettisoned by the Government. This dissertation seeks to draw the attention of the government on the current global issues on the treatment of prisoners.

[24] TO Elias *The Prison System in Nigeria* (Lagos: Faculty of Law, University of Lagos, 1968).
[25] See A statement of the Federal Government Policy on the Reorganisation of the Prison Service FGP/1968/471/750.
[26] The Prisons Act, Cap P29 Laws of the Federation Nigeria, 2004.

In another development, Ajomo & Okagbue in their work, *Human Rights and the Administration of Criminal Justice in Nigeria*[27] devoted chapter six to discussing prisons. They traced the history of Nigerian prisons from the pre-colonial Nigerian Societies to the present day prison system which according to them was 'a colonial creation'. The authors examined the legal framework on Nigerian prisons from 1960 to 1972 Prisons Act which they said vested the administration of prisons in the Ministry of Internal Affairs. The said Act provided for the administrative structure, regulations and management of prisons. They argued that the 1972 Prisons Act retained the administrative structure, regulations and management just like the 1960 Prisons Act. They acknowledge that the Act is limited in content and scope. The authors acknowledge that there are a lot of challenges to the prisoners' rights in Nigeria especially with respect to the provision of the basic necessities. Although the authors acknowledged that the Prisons Act is limited in content and scope, they did not actually draw attention of the readers to the limitations of the Prisons Act. It is our humble submission that while the work tries to give the reader an insight of how prisoners' rights are abused in Nigeria, a work written about 26 years ago cannot be said to represent the current challenges facing the Nigerian prisons. This is the basis of this work.

Ifaturoti in his article: 'The Challenges of Nigerian Prisoners in the Light of the Human Rights Campaigns'[28] x-rays some aspects of prisoners' rights which according to him are the "major rights" of prisoners. He identifies the following rights to *wit*: right to life, right to dignity of a person, right to a fair hearing, right to privacy and right to freedom of thought, conscience and religion. He discussed these rights under the aborted 1989 Constitution of the Federal Republic of Nigeria. He also examined the challenges of the Nigerian prisons which he discussed from the point of over-congestion, insufficient funding of prisons by the

[27] MA Ajomo & IE Okagbue,, *Human Rights and the Administration of Criminal Justice in Nigeria* (Lagos: University of Lagos, 1991).

[28] TO Ifaturoti, 'The Challenges of Nigerian Prisoners in the Light of the Human Rights Campaigns' In *Journal of Contemporary Legal Problems Vol.3 Nos 8 and 9* (1992).

Government, delays in the trials of prisoners on remand, methods of enforcing prison discipline and the attitudes of prison officials towards prisoners. The author observes that prison discipline is arbitrarily enforced. According to him, 'the procedures whereby prisoners are disciplined leave room for abuse by prison officials, because such discipline is enforced arbitrarily without regard to the laid down rules, and a disciplinary proceeding where no real right exists to appeal against its decision can be said to be contrary to the rule of natural justice'. He also argued that the attitudes of the prison officials towards prisoners in their care violate the aims of imprisonment.

It is humbly submitted that since the paper was written under the aborted 1989 Constitution of the Federal Republic of Nigeria it appears that it cannot be a good reference point for researchers since the sections of the law referred to appear to never exist. Furthermore, the work does not say anything on the aim of imprisonment even though it noted that the attitudes of the prison officials towards prisoners under their care undermined the aim of imprisonment. Again the work only discussed the "major rights" of prisoners according to the author without linking them to the life supporting necessaries such as food, clothing, medical care, accommodation, among others. This is one of the bases of this research.

Another important work reviewed is *Behind the Wall*[29]. This is a study carried out by the Civil Liberties Organisation on the Nigerian prisons. The study revealed that Nigerian prisons are characterised by bestiality which turned the prisons into centres of human rights abuse. The work reveals that Nigerian prisons are over congested; medical facilities are either inadequate or not in existence, poor feeding, poor hygiene, high morbidity and mortality rate. A review of the study shows that it is limited to male prisoners. That is why this research intends to cover all the categories of prisoners in Nigeria.

[29] AC Odinkalu, *Behind the Wall* (Lagos: A Publication of Civil Liberties Organisation, 1991).

In another development, the Civil Liberties Organisation in 1993 published another work, *Prisoners in the Shadows*[30]. This time the study is based on the conditions of female prisoners in five selected Nigerian prisons including the Borstal Institution at Kakuri, Kaduna State. The study agrees that the condition of female prisoners in Nigeria is not different from their male counterpart. The study observes that several pregnant women were committed to prisons and some of them later delivered in the prisons in unhygienic manner with no facilities to take care of their babies. These babies are automatically made prisoners with the emotional and psychological trauma that is associated with prison life.

The study observed that at the Borstal Institution, Kakuri Kaduna there were cases of over-crowding, dearth of educational and vocational training facilities, poor feeding, inhuman and degrading treatment, warder/inmate brutality and high rate of homosexuality among the inmates. The work draws the conclusion that the institution was not living up to its aims in reforming the youths but rather a breeding ground for criminality.

In 1996, the Civil Liberty Organisation conducted another study on the Nigerian prisons.[31] This time the study covers every aspect of Nigerian prisons and analysed the legal framework of the Nigerian Prison Service particularly the provisions of the Prisons Act, 1972, the Prisons Regulations and the Prison Standing Orders 1961. The study observes that these laws when compared with the international legal instruments and practices fall far short of the minimum standards and even these laws are not implemented to the later because: first, the laws are outdated and in the case of the Prisons Standing Orders, it is not even available; second, the Prisons Regulations and the Prisons Standing Order conflict in several particulars; and third, the phraseology of these laws is such that gives room for double interpretation. The study also examines inmates' welfare, inhuman and degrading treatment in prisons, high mortality rate, funding and structures of the prisons and concluded that all is

[30] AC Odinkalu, *Prisoners in the Shadows* (Lagos: A Publication of Civil Liberties Organisation, 1993).
[31] See the Revised Edition of *Behind the Wall,* (Lagos: A Publication of Civil Liberties Organisation, 1996).

not well with the Nigerian prisons. The study made case for prison reforms. It is our submission that even though the work made useful suggestions, this research will examine the recommendations made in the said work and find out why they are not implemented.

Champion in his book, *Corrections in the United States a Contemporary Perspective*[32] traces the development of prisons in USA. According to him, the development of prisons in USA was influenced by the English and Scottish penal methods. He acknowledges that scholars have divergent opinions on the history of prisons in the United States of America but however concluded that Newgate prison was the first state prison in USA while Walnut Street Prison which was modeled after Pennsylvania system[33] was the first true American prison that attempted the correction of offenders. He classifies functions of prisons to include: providing societal protection, punishing offenders, rehabilitating offenders and reintegrating offenders. He concluded that prisons in the United of States America are over populated. This work will be of immense assistance to this research especially as the United States of America and Nigeria run federal system of government.

In another development, Reid in his book, *Criminal Justice*[34]examines the ownership of prisons in the United States of America and submitted that majority of prisons in the United States of America are state owned while the federal government only came to own prisons from 1900. He states further that by 1988, the House Commission recommended that the federal government return the operation of prisons and other issues thereat to private entrepreneurs. Although this was heavily criticised but it nevertheless led to the establishment of private correctional homes and by 1990 the United States Marshals gave a contract to two private companies for the design and construction of detention facilities in Leavenworth Kansas. According to the author, today, the numbers of private prisons have increased and

[32] DJ Champion, *Correction in the United States a Contemporary Perspective* (4th Edn, New Jessey: Pearson Education Ltd,2005).
[33] A system modeled to correcting offenders.
[34] ST Reid, *Criminal Justice* (4th Edn New York: Brown Benchmark Publishers, 1996).

their acceptability is no longer questioned. He concluded by saying that the idea of private prison arose as a result of congestion in the United States prisons.

The importance of the work to this dissertation is to the fact that Nigeria like United States operates a federal system of government. However, unlike the United States, prisons in Nigeria are exclusively a federal matter[35] and states are completely excluded from buildings or maintaining prisons. This need not be so. Giving the background that Nigerian prisons are heavily overcrowded, it may not be out of place to allow the state governments and private entrepreneurs to establish prisons. This cannot be done without appropriate legislations in place, hence the need for new legal regimes.

Finally the learned author takes the reader through life in prison, the duties of correctional officers or prison staff and how they are punished for violating prisoners' rights especially in cases of brutalisation. He also considered how the United States Prison Officials handle issues of homosexuality, HIV/AIDS, prison work, education and how to curb prison violence. It is humbly submitted that this work will play a great role in this dissertation.

Aduba in his book examines the rights of prisoners in Nigeria and the impediments to enjoyment of those rights by the prisoners[36]. He came to the conclusion that it is now time for the government and individual to realise that confinement of a person is itself punishment and that no further harm ought to be done to prisoners in Nigeria particularly when viewed against the background that most of the prisoners in Nigeria are persons awaiting trial. This work also draws heavily from this article.

Olatunbosun in his article titled, 'Are the Condemned Persons Entitled to enforce their Fundamental Rights?'[37] examines the rights of condemned prisoners. The author takes the reader through the manner of execution of condemned prisoners by hanging in Nigeria *vis-à-*

[35] See the Constitution of the Federal Republic of Nigeria, 1999 (as amended), Item 48 part 1, Second Schedule.
[36] JN, Aduba, 'Prisoners' Rights in Nigeria: a Critique' T. Mohammed *et al* (ed), *Individual Rights and Communal Responsibility in Nigeria,* (Abuja: National Human Rights Commission, 1998).
[37] O Olatunbosun, 'Are Condemned Persons Entitled to Enforce their Fundamental Rights?'(2001) 19-20 *Ahmed Bello University Law Journal*.

vis the evolving and dynamic international clamour from other jurisdictions that the death penalty has come to be regarded in contemporary human rights jurisprudence as a violation of the right not to be subjected to torture, inhuman and degrading treatment or punishment. Olatunbosun sees the confinement of a prisoner under death sentence for prolonged length of time from date of his conviction as a violation of his right not to be subjected to torture, inhuman and degrading treatment or punishment. He discusses the rights of condemned prisoners to appeal, right to apply for prerogative of mercy, right to life, and right to be properly executed. He submitted that even though the death penalty is recognised by the Constitution of the Federal Republic of Nigeria, 1999, nevertheless execution by hanging ought to be replaced with the penalty of administering a lethal injection. By its very nature, Olatunbosun's article is limited in scope since it is concerned with condemned prisoners. Other categories of prisoners and how they are to be treated fall outside the scope of his work. This research, on the other hand is all inclusive.

Another important work that is relevant to this dissertation is the report of Amnesty International titled: *Nigeria: Prisoners' Rights Systematically Flouted.*[38] The report is a study carried out about the Nigerian prisons. The report noted that Nigerian prisons are filled with people whose human rights are systematically violated. According to the report, approximately 65 percent of the inmates are awaiting trial. Most of them had been inmates for longer than the sentence periods they would have received upon conviction. Most of the people in Nigerian prisons are too poor to be able to pay lawyers. Although governmental legal aid exists, there are too few legal aid lawyers for all the cases that require representation.

According to the report, living conditions in the prisons are appalling. They are damaging to the physical and mental well-being of inmates and in many cases constitute clear

[38] Amnesty International, *Nigeria: Prisoners Rights Systematically Flouted,* (London: Amnesty International Publications, 2008).

threat to health. Conditions such as overcrowding, poor sanitation, lack of food and medicines and the denial of contact with families and friends are breach of the United Nations Standard Minimum Rules for the Treatment of Prisoners. The reported also noted that in Nigerian prisons, inmates are ill-treated; some inmates sleep two or more on a bed and in some cases on the floor with filthy cells. Toilets are either blocked or overflowing or simply not in existence. Water scarcity is a big problem in prisons. As a result of these, diseases are widespread.

The report notes that most prisons have small clinics or sick bays although there are shortages of drugs in them. In most case, inmates have to pay for their own drugs. The report concluded by stating that the problems of Nigerian prisons are associated with lack of reform by the government. It acknowledged that there have been several presidential commissions and committees recommending reform of criminal justice system in Nigeria, these recommendations have never been implemented instead, government kept on setting up new committees and commissions to study, review and harmonise previous recommendations. The report concluded with recommendations. We submit that even though this report will be of immense assistance to us especially in making recommendations for a new legal regime in respect of treatment of prisoners in Nigeria, the report however failed to tell the reader why the federal government did implement the recommendations.

1.8 Organisational Layout

To effectively achieve the purpose of this study, this dissertation is divided into six chapters. Chapter one which is the general introduction deals with background to study, statement of problem, purpose of study, scope of study, significant of study, methodology, literature review, organisational layout and definition of relevant terms. Chapter two treats the historical development of Nigerian prisons and the philosophical basis for prisons which is broken down to include the aims of imprisonment, classification of prisons and prisoners.

Chapter three is on the analysis and discussions of data collected in the course of the empirical studies done in the sample prisons of the Federal Prison Abakaliki, Ebonyi State; Enugu Maximum Security Prison and Kuje Medium Prison, Abuja. Chapter four x-rays some provisions of international and nation legal instruments on prisoners' rights as contained with specific emphasis on the rights of prisoners under the Prisons Act to *wit*: right to receive visitors and communication; right to clothing, feeding, accommodation, environmental hygiene and health care; right to acquire skill; right to recreation and reform. Chapter five highlights on the challenges to the protection of prisoners' rights in Nigeria which include but not limited to the *lacunae* in the prison laws, delay in the determination of cases, attitude of the government and the public, financial incapability, illiteracy, overcrowding and lack of awareness. The chapter also examines the remedies for the breach of prisoners' rights which is broken down into judicial review and complaint to Ombudsman. The judicial review includes declaration, order of mandamus, order of certiorari, order of injunction, writ of habeas corpus, award of damages and offer of apology. The work is concluded in chapter six with summary of findings, recommendations, conclusion and contribution to knowledge.

1.9 Definition of Relevant Terms

In order to appreciate the subject matter under discourse, it is important to consider the meaning of some relevant terms like prison, imprisonment, prisoner and rights.

1.9.1 Prisons

Paterson saw prisons in wider sense when he said, 'we all are in prisons because it is a matter of degree'.[39] Going by the argument of Peterson, anywhere a person is restricted is his prison. Unarguably, we are all restricted to certain parts of the world may be as a result of birth, marriage, choice of job, education, political or economic conditions. However, no matter how logical the above argument may appear, the above situations are voluntary and the victims

[39] A Petersons cited by J J Olurunmolar, *Lecture Note,* Prison Staff College, Kakuri, Kaduna (July, 1990) p.1.

perhaps consciously choose the situations. This is quite different from the prisons established under the existing law of a given place.

According to *Stroud's Judicial Dictionary of Words and Phrase,* prison is 'every place where any person is restrained of his liberty'.[40] It is a place of restraint for the safe custody of a person to answer any action, personal or criminal.[41] *Mozley & Whiteley's Law Dictionary* examines the meaning of prison to be 'a place of detention in safe custody, or for punishment after conviction.[42] Curzon, *Dictionary of Law* puts it thus, 'place of detention for those committed to custody under the law, includes young offenders' institution or remand centres.[43] It is a place where persons convicted or accused of crimes are confined, a penitentiary or a jail.[44] According to *Longman Dictionary of Contemporary English,* prison is a large building where people are kept as a punishment for a crime, or while waiting to go to court for their trial.[45] *Oxford Advanced Learners Dictionary of Current English* puts it thus, 'a prison is a building where people are kept as punishment for a crime they have committed or while they are waiting for trial.[46] The *Black's Law Dictionary* puts it as a state or federal facility of confinement for convicted criminals.[47] The definition of the Black's Law Dictionary is erroneous on the ground that in Nigeria and indeed all over the world the majority of prisons populations are awaiting trial inmates. Prison is not only the facilities for convicted persons. In some cases, debtors and lunatics are also kept in prisons.

[40] *Stroud's Judicial Dictionary of Words and Phrases* (Sixth edn, London: Sweet & Maxwell, 2000) p.2045.
[41] *Ibid.*
[42] JE Penner*, Mozley & Whiteley's Law Dictionary* (12th edn, London: Edinburg, Dublin, 2001) p.273.
[43] LB Curzon, *Dictionary of Law* (5th Edn, Great Britain:Redwood Books, 1998) p.294.
[44]AH Soukhavoc, *The American Heritage dictionary of English Language* (3rd edn, New York: Houghton Muffin Company, 1996) p.1441.
[45]WK, Han, *Longman Dictionary of Contemporary English* (New edn, England: Pearson Publication, 2007) p.124.
[46] SA Hornby, *Oxford Advanced Learners Dictionary of Current English* (6th edn, Oxford University Press, 2000) p.9.26
[47]BA Garner, Black's *Law Dictionary* (9th edn, USA: Thomson West Group, 2009) p.1314.

Tajudeen, defines prison as 'a place in which people are physically confined and usually deprived of a range of freedoms'.[48] Nlerum says that prison is a place in which people are confined while on trial or for punishment. It is an institution authorised by governments and forming part of a country's judicial system or as facilities for holding prisoners of war.[49] In the same vein, Olokooba *et al* argue that 'a prison is a public building or other place of confinement of persons, whether as punishment imposed by the law or otherwise in the course of administration of justice.[50] According to the interpretation section of Prisons Act[51], 'prison means a prison declared under the Act'. Section 2(2) of Prisons Act[52] provides that: 'Every prison shall include (a) the ground and buildings within the prison enclosure, and (b) any lock-up house for the temporary detention or custody of prisoners newly apprehended or under remand which is declared by the Minister by order in the Federal Gazette to be part of the prisons'.

Olurunmolar summarised the definition of prisons as:

> A place delimited and declared as such by the law of the state and created to insure restraint and custody of individuals accused or convicted of violating' the criminal laws of the state. Civil prisoners as debtors, prisoners of war and state detained are also received and kept in prisons.[53]

From the foregoing therefore, a prison is not necessarily a house, it may be an open place designed for the purpose of keeping persons accused of crime or those convicted of a crime, among others.

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[48] IO Tajudeen, 'Behind the Prison Walls: Rights or No Rights',(2013)2 Issue 4 *International Journal of Innovative Research & Development*, 780.

[49]FE Nlerum, 'Rights of Prisoners' in O Okpara ed, *Human Right Law & Practice in Nigeria Vol. 11* (Abakaliki: Nwamazi Press, 2007) p.218.

[50] SM Olokooba *et al*, 'An Overview of the Rights of Prisoners under the Nigerian Law', *Confluence Journal of Jurisprudence and International Law* (Anyigba: Dept of Jurisprudence and International Law, Kogi State University, nd) p.135.

[51] Prisons Act, Cap P 29 Laws of the Federation of Nigeria, 2004, Section 19.

[52] *Ibid.*

[53]JJ Olurunmolar, o*p cit*, p. 2.

In this work therefore, prison means a place legal designated by the state for the purpose keeping those who are lawfully committed to custody by court law.

1.9.2 Imprisonment

Curzon *Dictionary of Law* defines 'imprisonment as the restraint of a person's liberty'.[54] It is an authorised method of punishing offenders by the government.[55] *The New Webster's Dictionary of the English Language* says that imprisonment is the state of being imprisoned.[56] It is the act of confining a person especially in a prison.[57] According to *Stroud's Judicial Dictionary of Words and Phrases*;

> Imprisonment is no other thing but the restraint of a man's liberty, whether it be in the open field or in the stocks, or cage in the streets, or in a man's own house, as well as in the common Goale; and in all these places the party so restrained is said to be a prisoner so long as he hath not his liberty freely go at all times to all places wither he will, without. [58]

Words and Phrases Legally Defined states that any total restraint of the liberty of the person for however short a time, by the use or threat of force or by confinement is an imprisonment.[59]

According to Dewhust, 'imprisonment is a penalty that the state can ascribe to an individual who has violated the law. It results in an individual being physically taken away from the larger society for a period of time'.[60]

Imprisonment may sometime not amount to punishment as one may be imprisoned for the purpose of saving him from the reprisal from the victim or members of the victim's

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[54] LB Curzon, *Dictionary of Law, op cit,* p.183.
[55] JJ Olurunmolar *Lecture Note,* p.3.
[56] EB Jones, *The New Webster's Dictionary of the English Language* (International edn, New York: Lexicon International Publishers) p.487.
[57] *Black Law Dictionary, op cit.*
[58] *Stroud's Judicial Dictionary of Words and Phrases, op cit,* p. 1206.
[59] *Words and Phrases Legally Defined Vol 3 No 1 (*2nd edn, London: Butterworth's Publication, 1969) p.14.
[60] N Dewhurst, 'A Critical Analysis of the Justification of Imprisonment as Punishment and the Culture of Punitiveness in Comparison to the Realties of Prison Life within England and Wales', *Internet Journal of Criminology* ,< www.internetjournalofcriminology.com> accessed on Wednesday, 25th November, 2015.

family. In this work, imprisonment is restrained of a person in a facility designated for that purpose as a result of his violation or alleged violation of the state law.

1.9.3 Prisoner

According to Akpala, the word prisoner is no doubt a socially pejorative term because of the perception of the average Nigerian that anyone confined in prison must be a criminal.[61] This belief appears to be erroneous considering the fact that many people held in prisons are presumed innocent until they are proven guilty. It therefore follows that since prison is a place of confinement, a prisoner is not necessarily a criminal.

According to *Oxford Advanced Learners Dictionary of Current English*, 'a prisoner is a person who is kept in prison as a punishment'.[62] This definition appears to be erroneous since the aim of imprisonment is not primarily for punishment of the offender but to reform him and make him law abiding member of the society. Again, people are put in prison for the purpose of protecting them from the reprisal from the victim of crime or members of victim's family. The *Black's Law Dictionary* explains that a prisoner is one who is deprived of liberty, one who is kept against his will in confinement or custody in prison, penitentiary, or jail or other correctional institution as a result of conviction of a crime or awaiting trial.[63] A close look at the above definition will show that the definition does not cover those held in prisons as the result of their mental problems.

In another development, Garner describes a prisoner as 'A person who is serving term in prison. A person who has been apprehended by a law-enforcement officer and is in custody, regardless of whether the person has yet been put in prison'.[64] This definition is also narrow in scope. The *Black's Law Dictionary with Pronunciations* puts it thus, 'a prisoner is

[61] S Akpala, 'Access to Justice for Detained Prisoners: an Overview', in S Akpala ed, *Legal Aid Services in Nigeria: the Humanitarian Perspective* (Enugu: Snaap Press Ltd, 2001) p.183.
[62] SA Hornby, *Oxford Advanced Learners Dictionary of Current English, op cit*, p.926.
.[63] BA Garner, The *Black's Law Dictionary* (6th Centennial edn, USA: West Publishing Co. 1991) p.1194.
[64]BA Garner, The *Black's Law Dictionary* (9th edn, St. Paul Minnesota: Thompson Business, 2004) p.1314.

one who is deprived of his liberty and one who is kept against his will in confinement or correctional institution as a result of conviction of crime or awaiting trial'.[65]

Stroud's Judicial Dictionary of Words and Phrases sees a prisoner as a person convicted of an offence or who for any cause is legally ordered into confinement.[66] As noted earlier, not every person held in prison is a convict or awaiting trial inmates, debtors and people captured during war are sometimes put in prisons.

Section 19 (1) of the Prisons Act, defines a prisoner as 'any person lawful committed to custody'.[67] Once a person is committed to custody by a valid order of a court, the person becomes a prisoner. Although the Act does not explain the meaning of 'lawfully committed to custody', however 'lawfully committed to custody', may ordinarily be interpreted to mean the confinement done in accordance with the law or as recognised by the law. On the other hand, custody according to the Black's Law Dictionary means to take care and control of a person for inspection, preservation or security.[68] In relation to Prisons Act, custody means imprisonment.

In this work therefore, a prisoner is a person who is held in lawful custody for either violating the law of the state or for the purpose of securing the public or himself from reprisal by the victim or members of the victim's family.

1.9.4 Right

Justice Niki Tobi noted that,

> Definitions by their very nature, concept and content are never accurate like mathematical solution to a problem. Definitions are definitions because they reflect the idiosyncrasies, inclinations, prejudices and emotions of the person offering them. While a definer of a word or agglomeration of words may

[65] C Henry, *Black's Law Dictionary with Pronunciations* (6th edn, St. Paul Minn West Publishing Co, 1990) p.1194.
[66] *Stroud's Judicial Dictionary of Words and Phrases,op cit*, p.2046.
[67] Prisons Act, section 19, *op .cit.*
[68] The *Black's Law Dictionary* 7th edn, *op. cit.*

> pretend to be impartial and unbiased, the final product of his definition will be a victim of partiality and bias. The definer may not know in the course of his definition that he is working into the package, his petty sentiments and prejudices, but the end product proves it all. His embellishments show his emotions and sentiments. This is a human problem, which unfortunately has no human solution. As long as our orientations, our backgrounds, and our outlooks remain distinct and distant, the problem will be with us. There is no point pretending about it.[69]

The definition of a concept in law may be likened to the proverbial story of the blind men that went to observe the size of an elephant. Each of them described the size of the said elephant based on the part felt through touch.[70] Perhaps, the above may be applicable to the definition of the word 'right'.

According to the *Black's Law Dictionary*, right means that which is proper under the law, morality, or ethics.[71] It is something that is due to a person by just claim, legal guarantee, or moral principle.[72]

In the same vein, *Oshborn's Concise Law Dictionary*[73] explains that right is 'an interest recognised and protected by the law, respect for which is a duty and disregard of which is wrong'. In another development, LB Curzon argues that right is 'that to which a person has just claim'.[74] It is an interest which will be recognised and protected by a rule of law, respect for which is a legal duty, violation of which is a legal wrong.[75]

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[69] N Tobi, *Sources of Nigerian Law* (Lagos: MIJ Professional Publishers Ltd, 1996) p.14.
[70] IO Igwe, 'An Appraisal of the Provision of Order XIII of the Fundamental Rights (Enforcement Procedure) Rules, 2009', (2011) 4 No.1 EBSU LJ, 246.
[71]BA Garner, *Black's Law Dictionary* (8th edn, USA: Thomson West Publishing Co., 2004) p.1347.
[72] *Ibid.*
[73]L Rutherford, *et al*, *Oshborn's Concise Dictionary* (8th edn, London: sweet & Maxwell, 1993) p.293.
[74] L B Curzon, *op cit*, p.33o.
[75] *Ibid.*

Okpara argues that the word 'right' is derived from the Latin word *rectus* which means, correct, straight, and not crooked.[76] It is that to which a person has a just and valid claim, whether it be land, a thing or the privilege of doing something or saying something.[77] According to Justice Oputa,

> A right in its most general sense is either the liberty (protected by law) of acting or abstaining from acting in a certain manner, or the power (enforced by law) of compelling a specific person to do or abstain from doing a particular thing. A legal right is thus the capacity residing in one man of controlling with the assent and assistance of the state, the action of others. It follows then that every right involves a person invested with the right or the person entitled; a person or persons on whom that right imposes a correlative duty or obligation, an act of forbearance which is the subject matter of the right; and in some cases an object, that is a person or thing to which the right has reference, as in the case of ownership. A right therefore is in general, a well-founded claim, and when a given claim is recognised by the civil law, it becomes an acknowledged claim or legal right enforceable by the power of the state.[78]

In the case of *Afolayan v Ogunride* & *Ors*[79] the court held that a right is an interest recognised and protected by the law. In *Uwaifo* v *A G Bendel State*[80] the Supreme Court of Nigeria held that a legal right is any advantage or benefit conferred upon a person by a rule of law.

Therefore the right of prisoners is the legal claim or benefit conferred on them by the rule of law existing within the place of their confinement.

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[76] O Okpara, *Human Rights Law & Practice in Nigeria Vol.1* (Enugu: Chenglo Ltd, 2005) p.36.
[77] ON Ogbu, *Human Rights Law and Practice in Nigeria Vol. 1* (2nd revised edn, Enugu: Snapp Press Nigeria Ltd, 2013) p.1.
[78] Hon. Justice CA Oputa, 'Human Rights in the Political and Legal Culture of Nigeria', *2nd Idigbe Memorial Lectures* (Lagos: Nigerian Law Publications Ltd, 1989) p p.38-39.
[79] [1990] 1 NWLR (pt 127) 369 at 391.
[80] [1982] 7 S C 124 at 127.

CHAPTER TWO

PRISONS IN NIGERIA: HISTORY AND JUSTIFICATION

2.1 The History of Nigerian Prisons

Holmes argued that: 'To understand what is, we must understand what has been and what it tends to become'.[81] For this purpose, it is important that the historical development of Nigerian prisons is discussed in three phases. The phases are: the pre-colonial period, the colonial period and the post-independence period.

2.1.1 The Pre-Colonial Period

For the purpose of the discussion of the pre-colonial prisons system in Nigeria, the three major tribes namely: Igbo, Yoruba and Hausa/Fulani shall be our focus. It must be settled at once that before the advent of the western civilisation and penal system in Nigeria, different tribes that make up Nigeria today had their different ways of dealing with a person adjudged to have deviated from the agreed norms. In Igboland for instance, chiefs, elders, village heads, age grades, kindred units and individual families handled different cases that involved their members according to their native laws and customs. Although there was no evidence of prisons in Igboland, offenders were punished informally by way of various psychological and physical methods. Offences like stealing, robbery, burglary, among others attracted punishment like restitution or compensation to the victim of crime and in some cases, the offender may be put to public shame before the community in the market square or playground[82] while abominable offences like murder, manslaughter among others attracted severe punishment such as excommunication and ostracism.[83]

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[81] OW Holmes, cited by KJ Peak, *Justice Administration* (2nd edn: New Jessey: Prentice Hall Incorp., 1998) p.255.

[82] ONI Ebbe, 'Social Control in Precolonial Igboland of Nigeria' (2012) 6 #s 1&2, *African Journal of Criminology and Justice Studies*, 37.

[83] C Achebe, *Things Fall Apart* (England: William Heinemann Ltd, 1958) P.99.

In pre-colonial Yoruba society, there existed the evidence of prisons (*Igbere*) where criminals awaiting trial or execution were kept[84] while in the pre-colonial Hausa/Fulani society *Yari* served as the Chief Warder of prisons and *Sarkin Dogari* took custody of prisoners charged with serious offences.[85]

2.1.2 The Colonial Period

In the words of Hawthone, 'the founders of new colony recognised among their earliest practical necessities to allot a portion of the virgin soil as a cemetery and another portion as a site of a prison'.[86] This is the situation in Nigeria. In 1861 when William McCoskry discovered that king Dosumu and his Chiefs opposed the annexation of Lagos as part of British colony, he decided to recruit police mainly from people who were freed slaves resident in Lagos.[87] This was followed by the establishment of courts in 1863 which included: the police court that resolved petty disputes; a criminal court to try serious offences; a slave court that resolved cases arising from the efforts to abolish slave trades and a commercial court that resolved disputes among merchants and traders.[88] In order to ensure that those that violated the colonial laws were adequately punished, a prison known as the Broad Street Prison was established in Lagos in 1872. The said prison had the initial capacity of 300 inmates.[89]

The progressive incursion of the British into the hinterland necessitated the enactment of the Prisons Ordinance of 1876 to ensure that prisons administration in Nigeria was modeled after the British system in terms of structure, discipline, staff training, rules and regulations. That law paved the way for the establishment of more prisons in Nigeria. By

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[84] W Bascom, *The Yoruba of Southwestern Nigeria* (New York: Holt, Rinehart and Winston, 1965) p.45.
[85] JJ Olurunmolar, *Lecture Note,* Prison Staff College Kakuri Kaduna July 1990 p.3.
[86] N Hawthone, cited by KJ Peak, *op cit*, p.210.
[87]The *Lagos Observer* of March 15, 1883, cited by PA Oluyede, *Nigerian Administrative Law* (Ibadan: University Press Plc, 1988) p.291.
[88] IW Orakwe,'The Origin of Prisons in Nigeria' <www.prisons.gov.ng/about/history.php> accessed on Friday, 13th November, 2015.
[89] A Bolanle, 'History of the Prison System in Nigeria', in TO Elias ed., *The Prison System in Nigeria* (Lagos: University of Press, 1968) p.8.

1901, prisons had been established in Degema, Calabar, Onitsha, Benin, Ibadan, Sapele, Jebba, Bonny and Lokoja.[90] At that time, the prison system was decentralised and managed by different forms of administration ranging from that of District Commissioners and Residents, to that of Native Authorities.[91]

The colonial prisons at that time were not designed to reform the offenders rather; prisoners were used for public works such as street cleaning. The result was that prisons served the purpose of punishing those who opposed the colonial administration in any form. In order to appreciate the development of Nigerian prisons system in the colonial era the contributions of Lord Fredrick Lugard, Colonel VL Mabb, RE Dolan and Carew will be discussed.

2.1.2.1 The Lord Fredrick Lugard Era

In 1914, Lord Fredrick Lugard succeeded in the amalgamation of the Southern and Northern Nigeria. This was followed by the enactment of the Prisons Ordinance of 1916 and Prison Regulations of 1917. The Ordinance gave the Governor-General extensive power to establish and regulate the administration of prisons. For instance, the Governor was empowered to declare any building in any province a prison and to make regulations for prison administration.[92] He could appoint the director of prisons and other officials. The director of prisons was in turn empowered to make standing orders for organisation, discipline, clothing of the prisoners and prison staff. He was also to ensure to the general management and superintendence of prisons.[93]

The prisons system under Lugard's administration was not uniform in the Southern and Northern Nigeria. In the South, there existed three types of prisons namely: a Convict Prison, where those sentenced to more than two years imprisonment were kept; a Provincial

[90]IW Orakwe,'The Origin of Prisons in Nigeria',*op cit*, p.2.
[91] MA Ajomo *et al*, *Human Rights and Administration of Criminal Justice in Nigeria* (Lagos: Nigeria Institution of Advanced Legal Studies, 1991) p.176.
[92] JJ Olurunmolar, *Lecture Note, op cit*, p.3.
[93] *Ibid.*

Prison where offenders serving less than two years were kept and a Divisional Prison where offenders serving less than six months were kept. The Convict and Provincial Prisons were manned by senior prison officers while the Divisional Prison was supervised by administrative officer. In the North, native authorities operated prisons on local level under the supervision of the Chief Warder (*Yari*) while *Sarki Dorgari*, the Northern Inspector-General of Police was the director of prisons.[94]

According to Ajomo and Okagbue:

> Apart from the fact that the prison system under Lugard's administration enshrined a dualistic structure of prisons in Nigeria, there existed deficient not only in terms of basic administration, organisational principles and practices but also in terms of clear philosophy for the treatment of offenders.[95]

As a result of the deplorable condition of prisons under Lugard's administration, a Commission was set up in 1923 to look into prisons condition and suggest way forward. The Commission at the conclusion of her investigation noted among others that many prison administrators were ex-service men with no previous experience in the prison service and that the concentration of both young and adult offenders in the same prison was neither in the interest of the prisoners nor that of the public.[96] The strength of the above report led to the establishment of a Juveniles Prison in 1937 as a wing of Enugu Prison for the purpose of taking care of the needs of young offenders under the age of 16.[97]

2.1.2.2 The Colonel VL Mabb Era

In 1934, the then Governor-General, Sir Donald Cameron appointed Colonel VL Mabb the Director of Prisons. The effort of Colonel Mabb towards the unification of the prisons system in the country did not yield the expected result but at the end he succeeded in extending the

[94] *Ibid*.
[95] MA Ajomo & IE Okagbue *Human Rights and Administration of Criminal Justice in Nigeria, op cit*, pp.178-179.
[96] JJ Olurunmolar, *Lecture Note, op cit.*
[97] *Ibid.*

supervisory role of the Director of Prisons to Native Authority Prisons in the North. He also introduced the Prisons Warders Welfare Board.[98]

2.1.2.3 The RH Dolan Era

In 1946, RH Dolan was appointed the Director of Prisons. According to Orakwe[99], 'Mr. Dolan was a trained prison officer and when he assumed duties in Nigeria he already had a wealth of experience in prison administration in both Britain and the colonies'.[100] Olurunmolar described Mr. Dolan as the first Director of Nigerian Prisons with considered experience in prison administration. According to him, 'This Napoleon in prison administration emphasised the philosophy of reformation and rehabilitation and set up operational guidelines on how they could be achieved'.[101] Dolan moved the Headquarters of Prisons from Enugu to Lagos to bring it closer to other departments. He initiated the classification of prisoners and introduce inmates visit by relations. To foster the goal of rehabilitation, Dolan outlined educational and vocational programmes for the prisoners. He introduced the appointment of Christian chaplains and Muslim preachers to minister to the spiritual needs of the inmates.[102]

In 1947, Dolan established a Prison Training School in Enugu to ensure to the training and retraining of prison staff. He also introduced earning scheme for long time first offenders. In 1948, he opened four reformatories in Lagos and converted part of Port-Harcourt prisons for housing and training of juveniles.[103] Ajomo and Okagbue summarised the contributions of Dolan on prison reforms when they commented that:

> The main emphasis of the Dolan reforms included the treatment of offenders, the administration of the prison system, and the education and training of

[98] IW Orakwe,'The Origin of Prisons in Nigeria', *op cit.*
[99] Dr IW Orakwe is the Controller of Prisons in charge of Social Welfare, Prisons National Headquarters Abuja.
[100] *Ibid.*
[101] JJ Olurunmolar, *op cit.*
[102] IW Orakwe, 'The Origin of Prisons in Nigeria, *op cit.*
[103] *Ibid.*

warders. All of these were guided by a liberty philosophy of penology focused more on the treatment and reformation of offenders rather than on punishment.[104]

2.1.2.4 The Carew Era

Mr. Dolan retired in 1954 after eight years of service. That led to the appointment of Mr. Carew as the Director of Prisons. According to Olurunmolar, Carew era was pre-occupied with arrangements towards self-rule and major political changes.[105] The desire for self-rule meant that less attention was paid in the development of prisons within that period.

The major achievement during Carew era was the recruitment of cadets into the prisons service in 1958 and 1959. Those cadets were later made senior cadets. In 1959, the administration of prisons was transferred to the Ministry of Internal Affairs. Carew retired in 1961 while Mr. Francis acted for the Director of Prisons for six months before he handed over to the first Nigerian Director of Prisons, Mr Giwa Osagie in 1961.[106]

2.1.3 The Post-Colonial Period

The enactment of the first indigenous prisons' legislation, the Prisons Act of 1960 actually paved the way for the appointment of a Nigerian as the Director of Prisons.[107] The said Act made provisions for the reception and treatment of prisoners; the organisation, control and constitution of the prison service; stores and accounts.[108]

Despite the enactment of the above Act, the attempt made by the Federal Government to take over the Regional Prisons in the same 1960 was strongly resisted by the native authorities. In 1966, the then Military Head of State, General JTU Aguiyironso promulgated a decree for the purpose of unifying the Nigerian prisons in line with the then

[104] MA Agomo & IE Okagbue, *op cit*, p.179.
[105] JJ Olurunmolar, *op cit.*
[106] *Ibid.*
[107] Mr. Giwa Osagie was the first indigenous Director of Prisons in Nigeria.
[108]MA Agomo & IE Okagbue, *op cit*.

Federal Military Government intention of running a Unitary Government in Nigeria.[109] The said Decree was the Prisons Control Decree No 9 of 1966[110].

Apart from the promulgation of the above Decree, the Native Authority Prisons continued to exist in the North. The said Native Authority Prisons were characterised by understaffed, over population, mismanagement and maladministration. Some of them were used as instruments for the victimisation of political opponents. Based on the above problems associated with the Native Authority Prisons of the North, the Federal Government finally abolished the Native Authority Prisons system on 1st April 1968.[111] The abolition of the Native Authority Prisons system marked the beginning of centralised prisons system in Nigeria.

On 10th April 1972, the Federal Military Government of Nigeria under the leadership of General Yakubu Gowon (Rtd) promulgated the Prisons Decree No 9 of 1972.[112] Section 1of the Prisons Act provides that:

> There shall be in the civil service of the Federation a Comptroller-General, who shall have the general charge and superintendence of the prisons system in Nigeria to be known as the "Nigerian Prisons Service", and such officers' subordinate to the Comptroller-General as maybe necessary for the proper operation of the service.

Section 16 of the Prisons Act, empowers the President of the Federal Republic of Nigeria to make standing orders for the good order, discipline and welfare of prisons while section 2(1) of the said Act provides that the Minister[113] may, by order in the Federal Gazette,

[109] Decree No1 of 1966.
[110] The Prisons Act, Cap P29 Laws of the Federation of Nigeria, 2004. Section 18 thereof provides in its saving and transitional provisions that until vesting day, local prisons shall be treated as if the Prisons (Control) Act NO 9 of 1966 were still in force with references to the Comptroller-General and this Act substituted for references to the Federal Director of Prisons.
[111] IW Orakwe, 'The Origin of Prisons in Nigeria', *op cit.*
[112]Now the Prisons Act, Cap P 29 Laws of the Federation of Nigeria, 2004.
[113] The Minister in this regard is the Minister of Internal Affairs.

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 prisons is to be established.[114] For this purpose, every prison shall include:

(a) the grounds and buildings within the prison enclosure, and

(b) any lock-up house for the temporary detention or custody of prisoner newly apprehended or under remand which is declared by the Minister by order in the Federal Gazette to be part of the prison.[115]

In the same vein, section 2 of the Appointment of Prisons Order[116] provides thus: 'The building known as the prison or specifically mentioned at each of the places named in column A of the schedule hereto are declared to be prison, as designated in column B'.[117]

In another development, in the same 1972, a campaign was launched by Alhaji Sule Katu of the Public Service Commission in all the Nigerian universities to attract university graduates into the prison service. This led to the influx of graduates into the prison service.[118] According to Olurunmolar, 'the influx of graduates into the system aroused the resignation of serving officers who perceived the exercise as a threat to frustrate them. To allay such fears, there was a promotion galore in 1972 which affected all ranks'.[119]

In 1975, prisons administration was extended to then 19 states of the federation. This paved the way for the appointment of seven Assistant Directors of Prisons to man the prisons in the new states created. With the creation of the 36 states of the federation and the Federal Capital Territory (FCT), Nigeria now has 8 Zonal Commands of Prisons, 36 State

[114] Section 2(1) of the Prisons Act, *ibid.*
[115] Section 2(2) of the Prisons Act, *ibid* .
[116] Appointment of Prisons Order is a Subsidiary Legislation to the Prisons Act, *ibid.*
[117] See the list of prisons in columns A and B of the Prisons Act.
[118] JJ Olurunmolar, *op.cit* p.12
[119] *Ibid.*

Commands, 1 FCT Command and a total of 240 Prisons facilities spread across the six geopolitical zones of the country.[120]

The prisons statistics as at 31st October 2014 revealed that Nigerian prisons' population stood at 57,121 out of which 39,577 were awaiting trial inmates while 17,544 were convicts.[121] As at 31st October 2015 the population rose to 65,000 out of which 72% (46,800) were awaiting trial inmates while 28% (18,200) were convicts.[122] In October 2016 the prison population had increased to 69,000 out of which 49,680 were awaiting trial inmates while 19320 were convicts.[123] What an unfortunate situation! Where rests the constitutional presumption of innocent until proven guilty? These and more will be discussed in detail at the appropriate chapter.

2.2The Justifications for Imprisonment

The justification for imprisonment will continue to draw flanks not only to legal scholars but also to criminologist, sociologist, psychologist among others. To some scholars, the essence of imprisonment is to protect the society by rehabilitating the offenders.[124] To others the aims of imprisonment include: retribution, deterrence, incapacitation, reforms, among others. Section 1(1) of the Administration of Criminal Justice Act, 2015, provides that the purpose of the Act is to among other things to protect the society from crime and protection of the rights and interests of the suspect, defendant, and victim. The above aims of imprisonment are hereunder discussed.

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[120] Nigerian Prison Service 'The Nigerian Prisons Statistics as at 31st October 2014', <www.prisons.gov.ng/.../satistics-info.php> accessed on Wednesday, 18th November, 2015.
[121] *Ibid*.
[122] E Ekpendu, 'Nigeria has 65,000 Prisoners', *The Sun* Wednesday 18th November, 2015, sunnewsonline,com/…/Nigeria-has-65,000-prisoners-nps, (Accessed on Wednesday, 18th November, 2015).
[123] 'The Nigerian Prisons Statistics as at October 2016',< www.prisons.gov.ng/.../satistics-info.php> accessed on Thursday, 20th October, 2016.
[124] The Standard Minimum Rules for the Treatment of Offenders (the Mandela Rules), 2015, rule 4.

2.2.1 Retribution

Retribution could mean a punishment inflicted on someone as vengeance for a wrong or criminal conduct.[125] According to Okonkwo and Nash, the first view in punishment involves a process of 'looking back' at the circumstance of the crime committed, and deciding what the accused person deserved for his conduct having regard to his criminal responsibility.[126] Section 401 (2) (f) of the Administration of Criminal Justice Act, 2015 provides that:

> In determining a sentence, the court shall have the following objectives in mind, and may decide in each case the objectives that are more appropriate or even possible: (f) retribution that is the objective of giving the convict the punishment he deserved, and giving the society or the victim revenge.

Under the Jewish tradition, 'an eye for an eye' governed the law of retribution.[127] This school of thought holds the view that if an individual deliberately violates the existing legal

order, such an individual should get proportional punishment for his criminal behaviour.[128]

In modern time, imprisonment is seen as the most severe punishment for law breakers. According to this school of thought, 'every bad behaviour should be punished by imprisonment'.[129] Scott argued that,

> We often hear the argument of the 'eye for an eye', yet such principles were developed as a means of ensuring that if a conflict existed between two Jewish tribes and lives were lost, the *lex talionis* was invoked to ensure that one tribe

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[125] M Gwinn *et al* (ed) *Oxford Dictionaries* (UK: Oxford University Press,2015), <www.oxforddictionaries.com> accessed on Thursday 26th November,2015.
[126] CO Okonkwo *et al*, *Criminal Law in Nigeria* (2nd edn, Ibadan: Spectrum Books Ltd, 2012) p.28.
[127] The *Holy Bible, King James Version* (Nashville, Tennessee: Holman Bible Publishers, 1979), Genesis 9:6, recorded that 'whoever sheds the blood of man shall his blood be shed, for God made man in his image'. Exodus 21:2 records that, 'whoever strikes a man so that he dies shall be put to death'.
[128] N Dewhurst, 'A Critical Analysis of the Justification of Imprisonment as Punishment and the Culture of Punitiveness in Comparison to the Realties of Prison Life within England and Wales' *Internet Journal of Criminology* , <www.internetjournalofcriminology.com> accessed on Wednesday, 25th November 2015.
[129] *Ibid.*

> would not be destroyed. Contrary to current understandings, this did not mean that a life was taken for life lost, but rather that a life was given from one tribe to another to ensure parity. The principle is not one of harm escalation or retribution, but one of the restorations of balance.[130]

The giving of the offender his just desert appears to be the outdated way of punishment. Since retribution means merited punishment, meting out of reward or punishment according to one deserts or something given in reward of;[131] the question may be, what benefit or compensation does the victim of crime get when the offender is imprisoned? This appears more worrisome when even if fine is ordered the offender pays to the government and where an offender is imprisoned, the victim of the crime takes care of him indirectly through payment of tax that would form part of what the government would use in the maintenance of prisons.

2.2.2 Deterrence

Another aim of imprisonment according to some scholars is deterrence. It is the thesis of this school of thought that imprisonment is made to reduce incidence of crime if it terrifies the majority of the public. It is the argued of this school of thought that once individuals are aware of the peril of prison and the stigmatisation that follows, those individuals will refrain from committing crime.[132] The aim of deterrence as a form of punishment is to serve as a lesson to the individual offender and the public. There are two types of deterrence. They are the individual and the general deterrence.

Individual deterrence hoped to deter individual. It is hoped that the experience of punishment will be so unpleasant that the offender will not be likely to commit another offence. The assignment of the court in this regard is to look to the future and select the

[130] D Scott, *Penology* (London: Sage Publications, 2008) p.26.
[131] *The New Webster's Dictionary of the English Language* (International edn, New York: Lexicon International Publishers, 1990) p.850.
[132] N Dewhurst, 'A Critical Analysis of the Justification of Imprisonment as Punishment and the Culture of Punitiveness in Comparison to the Realties of Prison Life within England and Wales' *op cit.*

sentence which is likely to have the most impact on the individual.[133] Section 401 (2) (d) of the Administration of Criminal Justice Act, 2015 provides that:

> In determining a sentence, the court shall have the following objectives in mind, and may decide in each case the objectives that are more appropriate or even possible: (d) deterrence, that is the objective of warning others not to commit offence by making an example of the convict.

Under the general deterrence, it is hoped that the threat of punishment will deter people from committing crime. At the legislative level, the law makers lay down penalties to threaten people who might contemplate committing crime. At the sentencing level, offenders are punished in order that others will be discouraged from committing crimes.[134]

The theory of deterrence rests on the assumption that the fear of sanction makes people to avoid committing crime. This is not always the case. Cavadino and Dignan, argued that, 'it has been overlooked that majority of people obey the law most of the time out of moral considerations, rather than to avoid imprisonment'.[135] To argue that individuals are not capable of refraining from committing crime unless there is a threat of sanction is a conclusion based on a wrong premise.

2.2.3 Incapacitation

According to Lawton LJ in the case of *Sargent*[136]:

> There are some offenders for whom neither deterrence nor rehabilitation works. They will go on committing crimes as long as they are able to do so. In those cases the only protection which the public has is that such persons be locked up for long period.

[133] CMV Clarkson *et al, Criminal Law Text and Materials* (4th edn, London: Sweet & Maxwell, 1998) p.36.
[134] *Ibid.*
[135] M Cavadino *et al, The Penal System: an Introduction* (London: Sage Publications, 2007) p.37.
[136] [1975] 60 Cr. App.R.74.

Incapacitation appears to be a protective sentencing aims at rendering the criminal incapable of committing more crime by incapacitating him. It is simply thought that if an offender is in prison, he cannot commit further crimes. In this way, the public will be protected. Section 401 (2) (b) of the Administration of Criminal Justice Act, 2015 provides that:

> In determining a sentence, the court shall have the following objectives in mind, and may decide in each case the objectives that are more appropriate or even possible: (b) restraint, that is the objective of keeping the convict from committing more offence by isolating him from society.

Dewhust argued that incapacitation as justification for imprisonment is riddled with objections that collude to negate its usefulness.[137] The first objection according to the author is that incapacitation simply does not prevent offenders from committing further crime. Crimes can, and are committed by some people even when they are in prison. Hale supported the above argument when he noted that, 'As a brief indicator of this, official statistics indicate that in 2010 in England and Wales, there are 14,356 assaults that occurred in prisons.'[138] By locking up of an offender, the society has not fully achieved her target because the cause of the anti-social behaviour of the offender has not been addressed. Secondly, incapacitation does not take into account that offenders carrying out their sentences in prison may likely come back more hardened criminals.

Under this head, imprisonment is regarded as a means of displacing offenders. It is submitted that the state should be more focused on how to tackle the reasons why offenders offended and how to ensure that as far as possible that upon their return to the society they are not only willing but are able to lead law-abiding and self-supporting life.

[137] N Dewhurst *op cit*, p16.
[138] C Hale, *et al*, *Criminology* (Oxford: Oxford University Press, 2005) p.560.

2.2.4 Denunciation

Denunciation aims at showing the society's abhorrence to criminal behaviour. Through denunciation, it is hoped that the collective conscience of the society is addressed when an offender is sent to prison. The essence of this is to demonstrate that society hates crime. According to Roberts and Hough, 'denunciation aims to perpetuate the 'deep-seated attachment to punishment as a response to wrongdoing' and therefore indicate that such behaviour will ultimately always result in punishment, the most severe being that of imprisonment.'[139] Denunciation is employed to demonstrate that the society condemns criminal act. Section 401 (2) (a) (e) of the Administration of Criminal Justice Act, 2015 provides that:

> In determining a sentence, the court shall have the following objectives in mind, and may decide in each case the objectives that are more appropriate or even possible: (a) prevention, that is, the objective of persuading the convict to give up committing offence in future, because the consequences of crime is unpleasant; (e) education of the public that is the objective of making a clear distinction between good and bad conduct by punishing bad conduct.

2.2.5 Rehabilitation and Reformation

Rule 3 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules), 2015 provides that,

> Imprisonment and other measures which result in cutting off persons from the outside world are afflictive by the very fact of taking from these persons the right of self-determination by depriving them of their liberty. Therefore the prison system shall not except as incidental to justifiable separation or the maintenance of discipline, aggravate the suffering inherent in such a situation.

[139] JV Roberts *et al*, 'Changing Attitudes to Punishment: Public Opinion Crime and Justice', as cited by N Dewhurst, *op cit.*

In the same vein, rule 4(1) of the said Rules provides that,

> The purpose of a sentence of imprisonment or a similar measure deprivative of a person's liberty is primarily to protect society against crime and to reduce recidivism. Those purposes can only be achieved if the period of imprisonment is used to ensure, so far as possible, the reintegration of such persons into society upon release so that they can lead a law-abiding and self-supporting life.

Rule 4 (2) of the said Rules adds that, to achieve the above objective, the prison institution should utilise all the remedial, educational, moral, spiritual and other forces and forms of assistance which are appropriate and available, and should seek to apply them according to the individual treatment needs of the prisoners.

In the United Kingdom, rule 3 of the Prisons Rules 1999 provides that 'the purpose of the training and treatment of convicted prisoners shall be to encourage and assist them to lead a good and useful life'.

Rehabilitation is concerned with the welfare of offenders in the present and future rather than inflicting pains for the past conducts. Its aim is to reform the offenders and make them better and law-abiding citizens. The rehabilitation aim of imprisonment should seek to minimise any differences between prison life and life at liberty.[140] It seeks to investigate the cause of ant-social behaviour of the offender, cure the defect and reform him to become disciplined and law-abiding citizen in a free society. Section 401 (2) (c) of the Administration of Criminal Justice Act, 2015:

> In determining a sentence, the court shall have the following objectives in mind, and may decide in each case the objectives that are more appropriate or

[140] The United Nations Standard Minimum Rules for the Treatment of Offenders (the Mandela Rules), Rule 5.

> even possible: (c) rehabilitation, that is, the objective of providing the convict with treatment or training that will make him into a reformed citizen.

The physical aspect of imprisonment will only serve as a reminder that the original behaviour of the offender was wrong. The idea of rehabilitation is to repair harm rather than escalating it. In the present days, penal system advocates rehabilitation and reform as the justification for imprisonment. But how can rehabilitation work in an environment where prisoners are considered worthless, stigmatised and rejected by the society? Goffman argued that rehabilitation cannot work where the prisons beget a 'series of abasements, degradations, humiliations and profanations of self'.[141] Nigerian penal system seems to operate on outdated and ineffective proposal. It is difficult to resist the temptation of describing our prisons system as 'hells on earth'. The reality is that too many persons are sent to prisons on an unjustifiable basis.[142] It is submitted that prisons should be reserved only for offenders who present a serious threat to the society and those who resist non-custodial measures.

2.3 Classification of Prisons

Section 2 (4) of the Prisons Act[143] provides that:

> The Minister may, for effecting the separation of classes of prisoners or for the training of any class of prisoner or for any other purpose, by order in the Federal Gazette appropriate any prison or part of a prison to particular classes of prisoners, and any prisoner of the class to which any prison or part of a prison has been appropriated may lawful be conveyed there to and imprisoned therein, whether or not the warrant or order for his imprisonment has been issued by a court having jurisdiction in the place where the prison is situated.

[141] E Goffman, *Asylum: Essay on the Social Situation of Mental Patients and Others* (London: Penguin Group, 1961) p. 24.
[142]There are some persons kept in prison custody as a result of their inability to meet up with stringent bail conditions imposed by the court.
[143] Cap P 29, Laws of the Federation of Nigeria, 2004.

In a similar development, rule 11 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules), 2015 provides that;

> The different categories of prisoners shall be kept in separate institutions or parts of institutions, taking account of their sex, age, criminal record, the legal reason for their detention and the necessities of their treatment, thus:
>
> (a) Men and women shall so far as possible be detained in separate institutions, in an institution which receives both men and women, the whole of the premises allocated to women shall be entirely separate;
>
> (b) Untried prisoners shall be kept separate from convicted prisoners;
>
> (c) Persons imprisoned for debt and other civil prisoners shall be kept separate from persons imprisoned by reason of criminal offences;
>
> (d) Young prisoners shall be kept separate from adults.

In Nigeria, prisons are classified into: Convict Prisons, Provincial Prisons, Divisional Prisons, and Juveniles Prisons[144]. There are also Lock-Ups and Prison Camps. Places where children and young persons could be detained include: Borstal Institutions and Remand Centres for persons who are not less than sixteen years of age but are under twenty-one years of age; Juveniles Custodial Institutions such as Remand Homes and Approval Institutions for detention of persons below fourteen years of age and those who are above fourteen years of age but are under seventeen years of age.

2.3.1 The Convict Prison

Convict prison receives all classes of prisoners that are serving sentence of two years and above. This kind of prison can be found at Abeokuta, Calabar, Enugu, Jos, Kakuri, Oji River,

[144] Schedule to the Prisons (Appropriation) Declaration Public Notice No 186 of 1943.

Port Harcourt, Kaduna, Ikoyi and Yaba in Lagos State.[145] Administratively, this type of prisons is called maximum security prisons.

2.3.2 The Provincial and Divisional Prisons

Provincial and Divisional Prisons hold only persons that are serving sentence of less than two years[146]. An awaiting trial inmate who was later sentenced to death or for imprisonment terms for more than two years must immediately be transferred to the convict prison. The only long term prisoners who may be found in these kinds of prisons are those kept there on special arrangements. Examples are the prisoners send to do carpentry works and bricklaying[147].

These kinds of prisoners will only be in the Provincial or Divisional prisons for the purpose of the aforementioned jobs and must be returned to their suitable prisons after the completion of the said jobs. Provincial and Divisional Prisons are located in: Benin City, Makurdi, Ogoja, Onitsha and Owerri respectively while Divisional Prisons are in: Aba, Abakaliki, Ado-Ekiti, Afikpo, Agbor, Aba, Ahoada, Aro-chukwu, Auchi, Awka, Badagry, Degema, Eket, Ijebu Ode, Ikom, Ikot-Ekpene, Ilaro, Ilesha, Itu, Kafanchan, Okigwe, Okitipupa, Opobo, Owo, Sapele, Ubiaja, Umuahia and Uyo respectively. They are also called medium security prisons.

2.5.3 The Juveniles Prison

As noted earlier, the Mandela Rules provides that:

> The different categories of prisoners shall be kept in separate institutions or parts of institutions taking account of their sex, *age*[148], criminal record, the legal reason for their detention and the necessities for their treatment. Thus:
>
> (d) Young prisoners shall be kept separate from adults Prisoners.[149]

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[145] The Appointment of Prisons Order, Section 2.
[146] Schedule to the Prisons (Appropriation) Declaration, *ibid.*
[147] JJ Olurunmolar, *op cit,* p.3.
[148] Emphasis mine.
[149] The Mandela Rules, rule 11, *op cit.*

In similar vein, rule 16(b) of the Prisons Regulations[150] provides that prisoners under the age of sixteen years shall be separated from adults. These provisions are geared towards the separation of young persons from adult offenders. In practice, Juveniles Wing is created in each Prison to keep young offenders because of the limited numbers of Borstal Institutions, Remand Homes and Approval Institutions in Nigeria. The first Juvenile Prison in Nigeria was established by the colonial government in 1937 as a wing in Enugu Prison.[151]

2.3.4 Lock-Up

Lock-up Prisons are always cited at places where there is a court of law without a prison. Lock-ups are made to receive prisoners who are sentenced for terms not exceeding three months. If a person held at Lock-up is sentenced to more than three months, he must be transferred to the nearest prison. Examples of Lock-ups are: Kafanchan (Lock-up) and Makurdi (Lock-up). This type of prisons can also be called satellite prisons. In other jurisdiction such as the United States of America it is called jail.

2.3.5 Prison Camps

Prison Camps are established for the first offenders who are not sophisticated type. It combines reformative policy with the best use of prison industry and labour. Prisoners are sent to the Camps to serve their sentences under conditions similar to their life before their admission into the prison. The primary purpose of sending first offenders or stars to the Prison Camps is to ensure that they are separated from evil influences in prisons where different classes of prisoners are held. Prison camps may be sited in any part of the country according to the needs of the Federal Government. Most often, it is annexed to the large prisons. Examples of Prison Camps are: Quarry Camp by Abeokuta Prison, Calabar Prison,

[150] Prisons Regulations No.49 of 1955 is now under the Prisons Act, *op cit*
[151] JJ Olurunmolar, *Lecture Notes, op cit*, p.3.

Ogba River Prison Camp by Benin City Prison and Mando Road Prison Camp by Kaduna Prison.[152]

In some cases, prison Camps are established temporarily at sites where land clearance is in progress, or where some major development scheme is intended and more particularly where local labour is not available.[153] A Camp may be opened near a quarry industry as in the case of Abeokuta. In this case, prisoners are employed in the quarry to hew or fashion stone.

Generally, for the purpose of administration, the Nigerian prison service adopted the designation of some prisons into maximum security prisons, medium security prisons and satellite prisons. However, this arrangement is provided for in the Nigerian the Prisons Act.

2.3.6 Rehabilitation Centres and Halfway Houses

These are transitional living places where people who have left institutions like prisons or those discharged from the hospitals on alcohol/drug addiction are kept. The inmates are helped to re-adjust to the outside world in these centres.[154] The centres provide therapy and training for rehabilitation. They may also be called sober living houses.[155] These centres are not prisons. Nigeria is yet to have a legal backup for the establishment of these types of centres.

2.3.7 Borstal Institutions and Remand Centres

Section 3 of the Borstal Institutions and Remand Centres Act[156] provides that:

> The minister may by order declare any building or place situated on land which has been set aside or acquired for the public purpose of the Federation to be:

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[152] Schedule to the Appointment of Prisons Order, the Prisons Act, Cap 29 Laws of the Federation of Nigeria, 2004.
[153] JJ Olurunmolar, *op cit*, p.4.
[154] Soukhavoc AH (ed), *America Heritage Dictionary of the English Language*, (15th edn, New York: Houghton Muffin Publishin Co, 2011) <www.articlesfactory.com> accessed on Friday, 11/12/2015.
[155] <Halfwayhouse.com> accessed on Friday, 11/12/2015.
[156] Cap B11 Laws of the Federation of Nigeria, 2004.

(a) A remand centre, that is to say a place for the detention of persons not less than sixteen but under twenty-one years of age who are remanded or committed in custody for trial or sentence; or

(b) A borstal institution, that is to say a place in which offender who were not less than sixteen but under twenty-one years of age on the day of conviction may be detained and such training and instruction as will conduce to their reformation and prevention of crime and by the same or any subsequent order declare the area for which any such building or place shall be used for the purpose of a remand centre or borstal institution.

By the above provision, an awaiting trial inmate who is not less than sixteen but under twenty-one years of age at the time of the commission of the offence may be detained in a remand centre. In the same vein, a convict that is not less than sixteen but under twenty-one years of age at the time of his conviction shall be detained in a borstal institution.

The purpose for the establishment of Borstal Institutions is provided in section 4(1) of the Borstal Institutions and Remand Centres Regulations. It provides thus:

> The objects of Borstal Training shall be to bring to bear every good influence which may establish in the inmates the will to lead a good and useful life on release, and to fit them to do so by the fullest possible development of their character, capacities and sense of personal responsibility.

In the same vein, section 123(1) of the said Regulation provides that:

> There shall be established Remand Centres for the detention for observation of persons who are though not less than sixteen years but under twenty-one years of age committed there by a court of competent jurisdiction to assist such court to determine the suitability or otherwise of such persons for Borstal training.

Persons detained in either the Borstal Institution or Remand Centre are entitled to their rights and privileges save those that are withdrawn from them as a result of their detention. For this purpose, regulation 3 of the Borstal Institutions and Remand Centres Regulations provides that the Prisons Regulations shall apply to the Borstal Institutions and Remand Centres especially the area that has to do with the welfare of prisoners. In the same vein, section 35 (1) (d) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) provides that:

> 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 the case of a person who has not attained the age of eighteen years, for the purpose of his education or welfare.

Presently, there are only three borstal institutions in Nigeria situate at Kaduna, Abeokuta and Ilorin.[157] The dearth of borstal institutions in Nigeria has led to the detention of young offenders in many Nigerian prisons. This has negatively affected the reformatory and rehabilitation aim of the detention of young offenders in Nigeria.

2.3.8 Juvenile Custodial Institutions

According to the *Black's Law Dictionary*, a juvenile is 'a person who has not reached the age of (usu. 18) at which one should be treated as an adult by the criminal judicial system.[158] In Nigeria, section 30 of the Criminal Code Act[159] and section 50 of the Penal Code Act[160] provide that a person under the age of seven years does not have criminal responsibility for any act or omission. While a person under the age of twelve years is not criminal responsible for an act or omission unless it is established that he had the capacity to know that the act or omission should not have been carried out at the time of doing the act or making the

[157] *The Nation*, 'Juvenile Justice in Nigeria: Dilemma of a Criminal Justice'< www.thenationonlineng.net> accessed on Tuesday, 1st March, 2016.
[158] The Black's Law Dictionary (9th edn, USA: Thomson Reuters Business, 2009) p.945.
[159] Cap C3 Laws of the Federation of Nigeria, 2004.
[160] Cap P 3 Laws of the Federation of Nigeria, 2004.

omission. The implication of the above is that a person is fully criminal responsible once he attains the age of twelve years and above.

The Children and Young Persons Act[161] defines a child as a person under the age of fourteen while a young person is a person who has attained the age of fourteen years but under the age of seventeen years. By the provision of section 4 of the Children and Young Persons Act:

> Where a person apparently under the age of seventeen years having been apprehended is not so released as provided in section 3[162] of this Act, the officer to whom the person is brought shall cause him to be detained in a place of detention provided under this Act until he can be brought before a court, unless the officer certifies:
>
> (a) That it is impracticable to do so; or
>
> (b) That he is of so unruly or depraved a character that he cannot be safely so detained; or
>
> (c) That by reason of his state of health or his mental or bodily condition, it is inadvisable so to detain him.

For the purpose of the above, section 15 of the Children and Young Persons Act empowers the Minister or the local authority with the approval of the Minister to establish remand homes for the purpose of the detention of a child or young person in conflict with the law.[163] In the same vein, the Minister is also empowered to establish institutions or declare

[161]The Child and Young Persons Act is applicable only to the Federal Capital Territory, Abuja while some states of the Federation have enacted their Children and Young Persons Law. Example, Children and Young Persons Law of Lagos State, 2003.

[162] Children and Young Persons Act, section 3 empowers the police to grant bail to a young person unless there is a reason to the contrary.

[163] The Children and Young Person Laws of various States of the Federation empower their respective State Governor to establish remand homes and approval institutions in their domains. In Lagos State, there are two remand homes and three approval schools. They are: Boys Remand Home, Oregun; Girls Remand Homes Idi-Araba; Senior Boys Approval School, Isheri; Junior Boys Approval School, Birrell Avenue Yaba and Girls Approval Schhol Idi-Araba.

any school or institution to be an approval institution for the purpose of taking care of the educational needs of a child or young person in conflict with the law.[164]

Under the law, a person below the age of fourteen years shall not be detained in prison[165] while persons above the age of fourteen years may be committed to prison when it is determined that they cannot suitably be dealt with in any other way.[166]

Apart from the above exception in the case of a person above the age of fourteen, the law requires that a child or a young person in conflict with the law shall be detained in juvenile custodial institutions, which are the remand homes and approval schools. These institutions are expected to provide vocational training such as tailoring, photography, welding, masonry, bricklaying, electrical installation among others as well as formal education up to General Certificate of Education to the juveniles.

In Lagos state, there exist two remand homes and three approval schools. They are: Boys Remand Home, Oregun; Girls Remand Homes Idi-Araba; Senior Boys Approval School, Isheri; Junior Boys Approval School, Birrell Avenue Yaba and Girls Approval Schhol Idi-Araba.[167] Despite the above, many states have not enacted their Children and Young Persons laws let alone establishing remand homes and approval institutions.[168] This inadequacy of juvenile custodial institutions in many states of the federation makes it difficult for the goals of the custody of a child or young person to be realised in Nigeria.

[164] Children and Young Persons Act, section 18.
[165] Children and Young Persons Act, section 11(1) provides that 'No child shall be ordered to be imprisoned'.
[166] Children and Young Persons Act, section 7(2) (3).
[167] IE Okagbue, 'Children in Conflict with the Law: the Nigerian Experience', (Lagos: Institute of Advanced Legal Studies) <www.unicef_irc.org/.../487_nigeria.htm> accessed on Wednesday, 2nd March, 2016.
[168] For example, Ebonyi State is yet to enact law to regulate the treatment of children and young persons in conflict with the law in the state.

Apart from the above, the few available ones are faced with several challenges. According to Ahire, 'There was near complete absence of medical and educational facilities at both the Yola and Bauch remand homes'.[169] In the same vein, Ogbonnaya lamented that:

> The so-called objectives of the institutions- correction, rehabilitation and reformation of young offenders are not being realised. There are numerous factors militating against proper and efficient functioning of the institutions. They include shortage of personnel, lack of fund, inadequate facilities…it is noteworthy as well that due to the poor conditions of these institutions, juveniles offenders are now kept in prisons with adult criminals and under the same facilities. For instance, at Owerri Prison, there are many young offenders in their custody.[170]

The above problems violate the constitutional rights of the children and young persons in conflict with law in Nigeria.[171] Hence the need to implement alternative non-custodial measures in Nigeria.

At this juncture, it is important that a distinction is drawn between a borstal institution or remand centres and facilities for the custody of juveniles. To start with, the establishment, administration and control of borstal institutions and remand centres are vested in the Federal Government. On the other the establishment, administration and control of remand homes and approval institutions for the purpose of the custody of a child or young person in conflict with the law are vested in both the Federal and State Governments. The Federal Government can only establish remand homes and approval institutions for the Federal Capital Territory,

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[169] PT Ahire, 'Juvenile Delinquency and the Handling of Young Persons in Nigerian Borstal Institutions', cited by H Ijaiya, 'Juvenile Justice Administration in Nigeria' *National University Juridical Sciences (NUJS) Law Review* (India: National University Juridical Sciences,2009) p. 9.

[170] C Ogbonnaya, 'Field Notes and Report on the Conditions of Juvenile Offenders in Nigeria Prisons', cited by PT Ahire, *ibid*.

[171] The 1999 Constitution, section 35 (1) (d) provides that the purpose of the detention of a child or young person is to ensure to his education or welfare.

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Abuja by virtue of the Children and Young Persons Act while the Children and Young Persons Laws of the various States of the Federation empower the governors to establish remand homes and approval institutions at their respective domains. Again, under section 3 of the Borstal Institutions and Remand Centres Act, borstal institutions or remand centres are to house offenders who are not less than sixteen years but are under the age of twenty-one years while under the Children and Young Persons Act and laws, remand homes and approval institutions are to take custody of a child under the age of fourteen or a young person who has attained the age of fourteen years but under the age of seventeen years.

The implication of the above is that a person under the age of fourteen years, that is a child cannot to be detained in a borstal institution or remand centres. In the same vein, a person who has attained the age of fourteen years but under the age of seventeen years, that is a young person may not also be detained in a borstal institution or remand centres.

2.4 Types of Prisoners

As noted earlier, rule 11 of the Mandela Rules provides that:

> The different categories of prisoners shall be kept in separate institutions or parts of institutions taking account of their sex, age, criminal record, the legal reason for their detention and the necessities for their treatment. Thus:
>
> (b) Untried prisoners shall be kept separate from convicted prisoners;
>
> (c) Persons imprisoned for debt and for other civil prisoners shall be kept separate from persons imprisoned by reason of a criminal offence.[172]

For the purpose of the classification of prisoners, some country such as Nigeria adopts the classification based on either the prisoner is a convict or non-convict.

[172] The Mandela Rules, *op cit.*

2.4.1 The Convicted Prisoners

The *Black's Law Dictionary* defines a convicted prisoner as 'a person who has been found guilty of a crime and is serving a sentence of confinement for that crime; ….'[173] This category of prisoners may further be divided into:

a) Condemned prisoners: Section 233 of the Prisons Standing Order[174] provides that, 'a prisoner under sentence of death shall be confined in a separate prison room from other prisoners'. These kinds of prisoners are not to do any kind of work in the prison.

(b) Star prisoners: These are the class of prisoners considered to be first offenders depending on the type of the sentence. They could also include selected second offenders whose crime and characters might in the opinion of the superintendent considered to be suitable for inclusion in the star class. These kinds of prisoners are given special treatment. They could be identified by their mode of dressing as they are allowed to wear special uniform consisting of shorts and shirts made from white drill with blue stripes.

(c) Ordinary class prisoners. These are those who have previous convictions and who are not found suitable for inclusion in the star class. They wear shorts and shirts made from white drill with red stripes.

Other classes of the convicted prisoners include:

(a) Juveniles under sixteen years of age.[175]

(b) Young offenders – seventeen to twenty-one years.

(c) Debtors and other non-criminal prisoners.

2.4.2 The Non-convicted Prisoners

Under this head, prisoners are classified as follows:

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[173] Garner BA (ed), *Black's Law Dictionary*, (8th ed, USA: Thomson West Publishing Co, 2004) p. 124.

[174] Prisons Standing Order is a Subsidiary Legislation made under the Prisons Act, *op. cit.*

[175] The prisons regulations, regulation 16 (b) provides that a prisoner under the age of sixteen years shall be separated from the adults.

(a) Those charged with capital offences. By virtue of regulation 61 of the Prisons Regulations:

> A prisoner charged with a capital offence may be placed under restraint by shackles or handcuffs at the discretion of the superintendent, and shall be confined in a solitary cell if a solitary cell is available. If a solitary cell is not available, he shall be confined in some safe place within the prison and if possible apart from all other prisoners.

Contrary to the provision of the Prisons Regulations above, rule 47 of the Mandela Rules provides that a prisoner may not be placed under instrument of restraint such as handcuffs, chains, irons and strait-jackets except where there is a 'danger of escaped during a transfer'[176] or on the advice of a medical officer. By the above provision of the Mandela Rules, the United Nations Minimum Standard Rules for the Treatment of Offenders permits the use of instrument of restraint only in exceptional cases such as where there is a danger of escape during a transfer or on the advice of a medical practitioner. The fact that a person is charged with a capital offence is not a ground for placing him under the instrument of restraint and/or keeping him in isolated cell. The regulation 61 of the Prisons Regulations that permits the placing of a prisoner charged with a capital offence under the instrument of restraint and/or detaining him in a solitary cell is outdated and should be amended. A pretrial prisoner is presumed innocent until proved guilty. Since he is presumed innocent until proved guilty, an allegation of a capital offence shall not be a ground of punishment by means of instrument of restraint and solitary confinement.

Other classifications of non-convicted prisoners include

(b) Those known to have previous convictions.

(c) Those not known to have previous convictions.

[176] Emphasis mine.

(d) Young person (17-21 years).

(e) The Juveniles (16 years or below).

(f) Prisoners of war: These are persons especially the members of the armed forces captured during the war by warring factions. They are usually kept in prison of their captive to be released at the end of the war.

(g) Those with mental cases. Sometimes relations of an insane person may arrange with prison authority to keep the said person in their custody pending when his case will improve. These kinds of prisoners are usually separated and kept in different wing of the prison.

In other jurisdictions such as the United States of America, prisoners are classified into very low-risk, low-risk, high-risk and highly-risk prisoners. Attention is also paid to the sex and age for the purpose of the separation of the prisoners.

The idea behind the classification of prisoners are among others, to prevent contamination of the good elements from the bad ones; to facilitate training and treatment of prisoners; to maintain discipline and thereby foster reformation; for ease of administration and for easy of identification of prisoners.

2.5 The Legal Custody of Prisoners

Under the Prisons Act, every prisoner is under the custody of the superintendent of prison where he is kept.[177] Section 3(3) of the Prisons Act provides thus;

> Every superintendent is authorised and required to keep and detain all persons duly committed to his custody by any court, judge, magistrate, justice of peace or other authority lawfully exercising civil or criminal jurisdiction, according to the terms of any warrant or order by which any such person has been committed until that person is discharged by due course of law
>
> .

[177] The Prisons Act, Section 2(1).

In a similar vein, regulation 2 of the Prisons Regulations[178] provides that:

> No person may be admitted into a prison unless accompanied by a warrant of arrest, a warrant or order of detention or a warrant of conviction or commitment; and the superintendent shall verify that the prisoner is the person named in the warrant or order, that the crime, sentence, and date of conviction are recorded therein and that the warrant or order bears the signature of the proper authority.

The above provision shows that three categories of prisoners can be admitted to prison custody; namely; prisoners under the warrant of arrest, prisoners under the warrant or order of detention and prisoners under the warrant of conviction or commitment.

Those under the warrant of arrest have not gone through the process of pre-trial before they found themselves in prison while those under the warrant of detention have gone through the process of pre-trial or remand proceedings before they are kept in prison. Those under the warrant of conviction have gone through the process of full trial, found guilty and sentenced to imprisonment.

In the case of prisoners under the warrant of conviction, especially those on death roll, section 3(2) of the Prisons Act provides that:

> … , the superintendent shall at such time on the day on which the sentence is to be carried out as may be fixed by the sheriff, hand over the legal custody of the prisoner to the sheriff, and from that time until the actual carrying out of the sentence.
>
> (a) the prisoner shall be in the legal custody of the sheriff; and
>
> (b) the sheriff shall have jurisdiction and control over that portion of the prison where the prisoner is confined and the prison officers serving therein so far as

[178] Prisons Regulations, No 49 of 1955, *op. cit.*

may be necessary for the safe custody of the prisoner during that period and for the purpose of carrying out the sentence and for any purpose relating thereto.

It appears that prisoners on the death roll are specifically kept under the charge of the sheriff by the superintendent while his duty of taking legal custody of other prisoners under his domain could be discharged through any of his officers.

CHAPTER THREE

DATA ANALYSIS AND DISCUSSIONS

3.1 Introduction

In the course of the empirical investigation of the topic under discourse, a total of 350 copies of questionnaires were distributed to the selected staff and inmates of: the Federal Prison Abakaliki, Ebonyi State; Enugu Maximum Security Prison, Enugu State and Kuje Medium Security Prison, Abuja. Out of the said 350 copies of questionnaires distributed generally, 103 copies of the questionnaires were administered directly to the selected sample of the staff and inmates of the Federal Prison Abakaliki, Ebonyi State. 120 copies of the questionnaires were also administered directly to the selected sample of the staff and inmates of Enugu Maximum Security Prison, Enugu State while the remaining 127 copies of the questionnaires were administered to the selected sample of the staff and inmates of Kuje Medium Security Prison, Abuja through the officer in charge of Welfare Department of the said Prisons. At the end of the exercise, 336 copies of the questionnaires were successfully retrieved from the respondents. 10 copies of the questionnaires were not recovered while 4 copies were not properly filled making it a total of 14 questionnaires that were lost. Out of the 14 copies that were lost generally, one was not properly filled at the Federal Prison Abakaliki, Ebonyi State. Three copies of the questionnaires were lost at Enugu Maximum Security Prison, Enugu State and two were not properly filled at the said prison. At Kuje Medium Security Prison, Abuja, seven copies of the questionnaires were lost while one was not properly filled. Hence, 96.0% recovery rate was achieved which we considered very impressive. This impressive result in the collection of data was made possible due to the assistance offered to us by the staff of the above prisons.

3.2 Data Analysis and Discussions

The result of the data collected in the three sample prisons of the Federal Prison Abakaliki, Ebonyi State; Enugu Maximum Security Prison, Enugu State and Kuje Medium Security Prison, Abuja will be analysed in this subhead. Since all the population of staff and inmates of Nigerian prisons could not be reached in this study because of financial challenges, it became imperative to carry out empirical research in the above three prisons due to the security challenges faced in the said prisons recently. This is not to say that the result of data collected in these three prisons represents a reliable result for the 240 prison facilities across the country. However, the author is to be judged based on the area this empirical study covered. Hence, the percentage average in the above three prisons is mathematically computed as $\frac{\mathbf{x}}{\mathbf{y}} \mathbf{X} \frac{\mathbf{z}}{\mathbf{1}}$.

X = number of respondents on each item.

Y = total population of the respondents in a particular prison.

Z= 100%.

Example: $\frac{\mathbf{45}}{\mathbf{102}} \mathbf{X} \frac{\mathbf{100}}{\mathbf{1}} = 49.0\%$

3.2.1 Federal Prison Abakaliki, Ebonyi State

At the Federal Prison Abakaliki, Ebonyi State, 102 respondents were recorded. Out of the said 102 respondents, 57 respondents were inmates while 45 respondents were staff.

Table A: Demographic Information

Age			**Sex**		**Marital Status**		**Religious Affliction**			**For prisoners only**	
18-30	30-50	50 and above	Male	Female	Single	Married	Christian	Moslem	Others	Convict	Awaiting Trial
45	50	7	89	13	40	62	102	0	0	20	37

Table A above shows the age group, gender, marital status, religion affliction, the number of convicts and awaiting trials inmates that responded to the 102 questionnaires administered at the Federal Prison Abakaliki Ebonyi State. The table reveals that 44.1% were between the ages of 18-30 years. 49.0% were between the ages of 30-50 years while 6.9% were between the ages of 50 years and above. The table reveals that 87.3% are male while 12.7% are female. 39.2% of the respondents were single while 60.8% of the respondents are married. The table indicates that 100% of the respondents are Christian while there was no Moslem and any member of other religion that responded to our questionnaires in the Federal Prison Abakaliki Ebonyi State. 19.6% respondents are convicts while 36.3% respondents were awaiting trial inmates.

Table B (i): Prison Facilities –Sources of Water

Sources of Water			**Is the Water Clean**	
Pipe borne water	Borehole	Well	Yes	No
0	102	0	102	0

Table B (i) shows that 100% of the respondents responded that there is a clean borehole at Federal Prison Abakaliki, Ebonyi State. From the responses above, Federal Prison Abakaliki does not have pipe borne water and well.

Table B (ii): Toilet and Sanitary Facility

Nature of Toilet			**Cleanliness of Toilet**		**Do Inmates use Toiletries**		**Do Inmates use Soap**	
Pit	Water Closet system	Bucket system	Yes	No	Yes	No	Yes	No
0	102	0	102	0	102	0	102	0

Table B (ii) indicates that 100% of the respondents agreed that there are clean water closet toilets system in Federal Prison Abakaliki, Ebonyi State while pit and bucket toilet systems do not exist in the Federal Prison Abakaliki, Ebonyi State. 100% of the respondents were also in agreement that inmates of the Federal Prison Abakaliki Ebonyi State use toiletries and soaps.

Table B (iii): Sources of Light or Power Supply

Sources of Light			**Is the Light regularly Supplied**	
EEDC	Generator	Lantern or candle	Yes	No
102	0	0	0	102

Table B (iii) shows that 100% of the respondents at the Federal Prison Abakaliki Ebonyi State said that the said prison depends solely on epileptic public power supply from the Enugu Electricity Distribution Company (EEDC). The responses show that there is no standby generator and prisoners are not allowed to use lantern/candle at the Federal Prison Abakaliki.

Table B (iv): Nature of Cells, Beddings and adequacy of Uniforms

Nature of Cells		**Number of Inmates in each Cell**			**Nature of Beddings**			**Availability of Uniforms for Inmates**	
Sin-gle	Dormitory	One	Two	Three and above	Foam	Mat	Floor	Adequate	Not Adequate
0	102	0	0	102	89	13	0	0	102

Table B (iv) reveals that 100% of the respondents responded that the only cell system existing in the Federal Prison Abakaliki Ebonyi State is dormitory and each is occupied by

more than three inmates. 87.3% of the respondents agreed that inmates sleep on foams, 12.7% said that some inmates sleep on mats while no prisoner sleeps on floor. 100% of the respondents agreed that none availability of uniforms is one of the challenges facing inmates of the Federal Prison Abakaliki.

Table C: Health Care and Recreational Facilities

Health Care Facilities			**Health Care Personnel**			**Availability of Drugs**			**Availability of Recreational Facilities**	
Hosp-ital	Clinics	None	Doctors	Nurse	None	Yes	No	Not Enough	Yes	No
0	102	0	102	0	0	0	102	0	4	98

Table C indicates the following responses: availability of hospital - 0%, availability of clinics- 100%; existence of health personnel (Doctors) - 100%; availability of drugs- 0%; availability of recreational facilities- 3.9%, inadequate recreational facilities- 96.1%. This shows that lack of drugs and recreational facilities are challenges to inmates of the Federal Prison Abakaliki.

Table D: Vocational Facilities and Feeding

Shoe Making Workshop	**Welding Workshop**	**Tailoring Workshop**	**Carpentry Workshop**	**Electrical Workshop**	**Adequate Feeding**	
99	99	99	3	3	Yes	No
					5	97

Table D shows that 97.1% of the respondents agree that there are adequate vocational facilities such shoe making workshop, welding workshop and tailoring workshop while 2.9% agree that there are carpentry and electrical workshops exist at the Federal Prison Abakaliki

Ebonyi State. 4.9% of the respondents said feeding is not the problem of the inmates of the Federal Prison Abakaliki Ebonyi State while 95.1% of the respondents said that feeding is one of the challenges to the inmates of the Federal Prison Abakaliki Ebonyi State. We also agree with the response that feeding is a challenge to the inmates of Abakaliki prison. On 18th August, 2016, the Federal Prisons Abakaliki, Ebonyi State witnessed brutal killings of the prisoners in the attempt by the security personnel to foil jailbreak in the said prison. The cause of the said attempted jailbreak was attributed to poor treatment of the prisoners which include poor feeding.[179]

Table E: The following are the Rights of Prisoners

	Yes	**No**
Right to Life	102	0
Right to Dignity of Human Person	102	0
Right to Privacy	102	0
Right to Fair Hearing	102	0
Right to Freedom of Thought, Conscience and Religion	102	0
Right to Freedom from Discrimination	102	0
Right to be admitted to Bail	102	0
Right to apply for Prerogative of Mercy	102	0
Right of Appeal	102	0
Right to vote in General Elections	0	102
Right to Acquire Skill	102	0

[179] O Agwu, 'Investigation on Attempt Jailbreak in Abakaliki Prison Begins' the *Ebonyi Patriot*, November 14, 2016, pp. 1 and 3. The Patriot reported that about 6 inmates lost their lives while others including prisons officials sustained various degrees of gunshot injuries during the incident.

Are rights of prisoners adequately protected in Nigeria?	1	101
Do sentencing options contribute to overcrowding in Nigerian prisons?	99	3

Table F shows that 100% respondents are in agreement that the following rights are available to the prisoners in Nigeria. They are: right to life; right to dignity of human person; right to privacy; right to fair hearing; right to freedom of thought, conscience and religion; right to freedom from discrimination; right to be admitted to bail; right to apply for prerogative of mercy and right to acquire skill. 100% of the respondents in the Federal Prison Abakaliki Ebonyi State responded that prisoners do have the right to vote in the general elections in Nigeria. On whether the rights of prisoners are adequately protected in Nigeria, 1.0% responded yes while 99.0% said that the rights of prisoners are not adequately protected in Nigeria. 97.1% of the respondents agree that sentencing options contribute to overcrowding in Nigerian prisons while 2.9% do not agree that sentencing options contribute to overcrowding in Nigerian prisons. From the above responses, it appears that prisoners and staff of the Federal Prison Abakaliki, Ebonyi State are unaware that prisoners have the right to vote in elections in Nigeria. There is the need to sensitise the staff and prisoners of Abakaliki prison on the right of prisoners to vote in elections.

Table F: Factors affecting the Protection of Prisoners' Rights in Nigeria include:

	Yes	**No**
Lack of adequate provisions in Prisons Laws	102	0
Practice Remand Proceedings/ Holding Charge	102	0
Poverty among some Prisoners	102	0
Attitudes of government/ the public	102	0

Delays in trial of Cases in Courts	102	0
Illiteracy and Lack of Awareness on part of some Prisoners	102	0
Lack of adequate Legal Aid Scheme	102	0
Overcrowding in Prisons	102	0
Are Nigerian prisons run on internationally accepted minimum standard?	20	82
Are there remedies for breach of prisoners' rights	98	4

Table F reveals that 100% of the respondents are in agreement that the protection of prisoners' rights in Nigeria is challenged by the following factors. They are: lack of adequate provisions in prisons laws; practice of remand proceedings/ holding charge; poverty among some prisoners; attitudes of government/the public; delays in trial of cases in courts; illiteracy and lack of awareness on part of some prisoners and lack of adequate legal aid scheme. 100% of the respondents at the Federal Prisons Abakalkik said that overcrowding is among the factors that affect the protection of prisoners' rights in Nigeria. On whether Nigerian prisons are run on the internationally accepted minimum standard, 19.6% of the respondents said yes while 80.4% respondents said no. On whether there are remedies for the breach of prisoners' rights, 96.1% of the respondents said yes while 3.9% said no.

3.2.2 Maximum Security Prison Enugu, Enugu State

At the Maximum Security Prison Enugu, Enugu State, 125 respondents were recorded. Out of the said 125 respondents, 85 respondents were inmates while 40 respondents were staff.

Table G: Demographic Information

Age			Sex		Marital Status		Religious Affliction			For prisoners only	
18-30	30-50	50 and above	Male	Female	Single	Married	Christian	Moslem	Others	Convict	Awaiting Trial
36	70	19	103	22	50	75	110	15	0	29	56

Table G above shows the age group, gender, marital status, religion affliction, the number of convicts and awaiting trial inmates that responded to the 125 questionnaires administered at the Maximum Security Prison Enugu, Enugu State. The table shows that 28.8% were between the ages of 18-30 years. 56.0% were between the ages of 30-50 years while 15.2% were between the ages of 50 years and above. It also reveals that 82.4% are male while 17.6% are female. 40.0% of the respondents were single while 60.0% of the respondents are married. The table indicates that 88.0% of the respondents are Christian, 12.0% of the respondents are Moslem while no member of other religion that responded to our questionnaires in the Maximum Security Prison Enugu, Enugu State. Out of the 85 inmates that responded to our questionnaires at the Maximum Security Prison Enugu, Enugu State, 34.1% are convicts while 65.9% were awaiting trial inmates.

Table H (i): Prison Facilities –Sources of Water

Sources of Water			Is the Water Clean	
Pipe borne water	Borehole	Well	Yes	No
36	83	6	62	63

Table H (i) reveals that 28.8% of the respondents responded that there is a pipe borne water at the Maximum Security Prison Enugu, Enugu State, 64.4% said there is a borehole

therein while 4.8% said that the said prison also have well. 49.6% of the respondents said the water is clean while 50.4% said that the water is not clean.

Table H (ii): Toilet and Sanitary Facility

Nature of Toilet			Cleanliness of Toilet		Do Inmates use Toiletries		Do Inmates use Soap	
Pit	Water Closet system	Bucket system	Yes	No	Yes	No	Yes	No
0	50	75	50	75	94	31	125	0

Table H (ii) indicates that 40.0% of the respondents said that there is water closet toilets system in the Maximum Security Prison Enugu, Enugu State; 60.0% said that bucket toilets system are still seen in the Maximum Security Prison Enugu, Enugu State but there is no pit toilet therein. 40.0% of the respondents said that the toilets were clean while 60.0% of the respondents said that the toilets were not clean. 75.5% of the respondents said that inmates use toiletries at the Maximum Security Prison Enugu, Enugu State while 24.5% responded that inmates lack toiletries thereat. 100% of the respondents agree that inmates use soaps at the Maximum Security Prison Enugu, Enugu State.

Table H (iii): Sources of Light or Power Supply

Sources of Light			Is the Light regularly Supplied	
EEDC	Generator	Lantern or candle	Yes	No
96	0	29	29	96

Table H (iii) shows that 76.8% of the respondents at the Maximum Security Prison Enugu, Enugu State said that the prison depends on the epileptic public power supply from the Enugu Electricity Distribution Company (EEDC). 23.2% of the respondents said that

lantern/candle is also a source of light at the Maximum Security Prison Enugu, Enugu State. The prison does not have a standby generator.

Table H (iv): Nature of Cells, Beddings and adequacy of Uniforms

Nature of Cells		**Number of Inmates in each Cell**			**Nature of Beddings**			**Availability of Uniforms for Inmates**	
Sin-gle	Dormitory	One	Two	Three and above	Foam	Mat	Floor	Adequate	Not Adequate
0	125	0	0	125	98	27	0	60	65

Table H (iv) reveals that 100% of the respondents agree that the only cell system existing at the Maximum Security Prison Enugu, Enugu State is dormitory and each dormitory is occupied by more than three inmates. Single cells do not exist at the Maximum Security Prison Enugu, Enugu State.78.4% of the respondents said that inmates sleep on foams, 21.6% said that some inmates sleep on mats while no inmate sleeps on floor. On whether uniforms are adequate for the inmates, 48.0% said yes while 52.0% said no. It seems that uniform is also a challenge to inmates of the Maximum Security Prison Enugu, Enugu State.

Table I: Health Care and Recreational Facilities

Health Care Facilities			**Health Care Personnel**			**Availability of Drugs**			**Availability of Recreational Facilities**	
Hosp-ital	Clinics	None	Doctors	Nurse	None	Yes	No	Not Enough	Yes	No
0	125	0	101	24	0	63	28	34	120	5

Table I indicates the following responses: availability of hospital - 0%, availability of clinics- 100%; existence of health personnel: Doctors – 80.8%, Nurses- 19.2%; drugs are

available - 50.4%; dearth of drugs -22.4%; drugs are not enough -27.2%; availability of recreational facilities- 96.0% and inadequacy of recreational facilities- 4.0%. The table shows that there are more doctors than nurses at Enugu prison.

Table J: Vocational Facilities and Feeding

Shoe Making Workshop	**Welding Workshop**	**Tailoring Workshop**	**Carpentry Workshop**	**Electrical Workshop**	**Adequate Feeding**	
125	125	125	125	125	Yes	No
					26	99

Table J shows that 100% of the respondents agree that there are adequate vocational facilities such shoe making workshop, welding workshop, tailoring workshop, carpentry and electrical workshops at the Maximum Security Prison Enugu, Enugu State. 20.8% said that inmates are well fed at the Maximum Security Prison Enugu, Enugu State while 79.2% of the respondents said that inmates are poorly fed at the Maximum Security Prison Enugu, Enugu State. This shows that feeding is a challenge to inmates of Enugu prison.

Table K: The followings are the Rights of Prisoners:

	Yes	**No**
Right to Life	125	0
Right to Dignity of Human Person	125	0
Right to Privacy	125	0
Right to Fair Hearing	125	0
Right to Freedom of Thought, Conscience and Religion	125	0

Right to Freedom from Discrimination	125	0
Right of Appeal	125	0
Right to be admitted to Bail	125	0
Right to apply for Prerogative of Mercy	125	0
Right to vote in General Elections	0	125
Right to Acquire Skill	125	0
Are rights of prisoners adequately protected in Nigeria?	0	125
Do sentencing options contribute to overcrowding in Nigerian prisons?	95	30

Table K shows that 100% respondents at the Maximum Security Prison Enugu, Enugu State agree that prisoners have: right to life; right to dignity of human person; right to privacy; right to fair hearing; right to freedom of thought, conscience and religion; right to freedom from discrimination; right to be admitted to bail; right to apply for prerogative of mercy and right to acquire skill. 100% of the respondents at the said prison said that prisoners do have the right to vote in the general elections in Nigeria. On whether the rights of prisoners are adequately protected in Nigeria, all the respondents at the Maximum Security Prison Enugu, Enugu State said no. On whether sentencing options contribute to overcrowding in Nigerian prisons, 76.0% of the respondents said yes while 24.0% answered no. From the table above, it seems that inmates and staff of Enugu prison are not aware that prisoners are not disenfranchised by any law in Nigeria.

Table L: Factors affecting the Protection of Prisoners' Rights in Nigeria include:

	Yes	**No**
Lack of adequate provisions in Prisons Laws	125	0
Practice Remand Proceedings/ Holding Charge	125	0
Poverty among some Prisoners	125	0
Attitudes of government/ the public	125	0
Delays in trial of Cases in Courts	125	0
Illiteracy and Lack of Awareness on part of some Prisoners	125	0
Lack of adequate Legal Aid Scheme	125	0
Overcrowding in Prisons	125	0
Are Nigerian prisons run on internationally accepted minimum standard?	125	0
Are there remedies for breach of prisoners' rights	87	38

Table L reveals that 100% of the respondents at the Maximum Security Prison Enugu, Enugu State agreed that the protection of prisoners' rights in Nigeria is challenged by the following factors. They are: lack of adequate provisions in prisons laws; practice of remand proceedings/ holding charge; poverty among some prisoners; attitudes of government/the public; delays in trial of cases in courts; illiteracy and lack of awareness on part of some prisoners, lack of adequate legal aid scheme and overcrowding. In the same vein, 100% of the respondents at the Maximum Security Prison Enugu, Enugu said that Nigerian prisons are not run on the internationally accepted minimum standard. A review of our prison laws will unearth why it is difficult for the Nigerian prisons to meet up with the international minimum benchmark for prison administration. On whether there are remedies for breach of prisoners' rights, 69.6% of the respondents said yes while 30.4% said no.

3.2.3 Kuje Medium Security Prison Abuja

At the Kuje Minimum Security Prison Abuja, 109 respondents were recovered. Out of the said 109 respondents, 82 respondents were inmates while 27 respondents were staff.

Table M: Demographic Information

Age			Sex		Marital Status		Religious Affliction			For prisoners only	
18-30	30-50	50 and above	Male	Female	Single	Married	Christian	Moslem	Others	Convict	Awaiting Trial
29	32	48	94	15	43	66	37	72	0	28	54

Table M above shows the age group, gender, marital status, religion affliction, the number of convicts and awaiting trial inmates that responded to the 109 questionnaires administered at the Kuje Medium Security Prison, Abuja. The table reveals that 26.6% were between the ages of 18-30 years. 29.4% were between the ages of 30-50 years while 44.0% were between the ages of 50 years and above. It also reveals that 86.2% are male while 13.8% are female. 39.4% of the respondents were single while 60.6% of the respondents are married. The table indicates that 33.9% of the respondents are Christian, 66.1% are Moslem while there were no members of other religion that responded to our questionnaires. The table also indicates that 34.1% of the respondents are convicts while 65.9% were awaiting trial inmates.

Table N (i): Prison Facilities –Sources of Water

Sources of Water			Is the Water Clean	
Pipe borne water	Borehole	Well	Yes	No
86	23	0	89	20

Table N (i) shows that 78.9% of the respondents agree that there is pipe borne water at the Kuje Medium Security Prison, Abuja. 21.1% said that Kuje Medium Security Prison, Abuja also have borehole. 81.7% said the water is clean while 18.3% said the water is not clean.

Table N (ii): Toilet and Sanitary Facility

Nature of Toilet			**Cleanliness of Toilet**		**Do Inmates use Toiletries**		**Do Inmates use Soap**	
Pit	Water Closet system	Bucket system	Yes	No	Yes	No	Yes	No
0	109	0	76	33	94	15	81	28

Table N (ii) indicates that 100% of the respondents agree that there is water closet toilets system at Kuje Medium Security Prison, Abuja. While the said prison does not have pit and bucket toilets system. 69.7% of the respondents said that the toilets are clean. 30.3% of the respondents said that the toilets are not clean. 86.2% of the respondents said that toiletries are available for the inmates of Kuje Medium Security Prison, Abuja while 13.8% said that the said prison lack toiletries. 74.3% responded that inmates use soap at the said prison while 25.7% said the soaps were not sufficient for the inmates at the said prison.

Table N (iii): Sources of Light or Power Supply

Sources of Light			**Is the Light regularly Supplied**	
AEDC	Generator	Lantern or candle	Yes	No
109	0	0	3	106

Table N (iii) shows that 100% of the respondents at the Kuje Medium Security Prison, Abuja said that the prison solely depends public power supply from the Abuja Electricity Distribution Company (AEDC). The prison does not have standby generator and inmates are

not allowed to use lantern or candle at the said prison. 2.8% of the respondents said that light is regularly supplied while 97.2% said that light is not regularly supplied.

Table N (iv): Nature of Cells, Beddings and adequacy of Uniforms

Nature of Cells		**Number of Inmates in each Cell**			**Nature of Beddings**			**Availability of Uniforms for Inmates**	
Sin-gle	Dormitory	One	Two	Three and above	Foam	Mat	Floor	Adequate	Not Adequate
94	15	0	0	109	64	23	22	16	93

Table N (iv) reveals that 86.2% of the respondents responded that Kuje Medium Security Prison, Abuja has single cell blocks while 13.8% of the respondents said that dormitories also exist in Kuje Medium Security Prison, Abuja. 100% of the respondents said that each cell in Kuje prison is occupied by more than three inmates. 58.7% of the respondents said that inmates sleep on foams, 21.1% said that inmates sleep on mats, and 20.2% said that inmates sleep on the floor. 85.3% of the respondents said that uniforms are not adequate for the inmates while 14.7% said that uniforms are adequate for the inmates.

Table O: Health Care and Recreational Facilities

Health Care Facilities			**Health Care Personnel**			**Availability of Drugs**			**Availability of Recreational Facilities**	
Hosp-ital	Clinics	None	Doctors	Nurse	None	Yes	No	Not Enough	Yes	No
0	109	0	92	17	0	25	20	64	90	19

Table O indicates the following responses on health care and recreational facilities at Kuje Medium Security Prison, Abuja: availability of hospital - 0%, availability of clinics- 100%; existence of health personnel (Doctors) – 84.4%; nurses- 15.6%; availability of drugs- 23.0%; dearth of drugs- 18.3%, drugs not enough- 58.7%; availability of recreational facilities- 82.6%, inadequate recreational facilities- 17.4%. This shows that drugs are not enough for inmates of Kuje prison, Abuja.

Table P: Vocational Facilities and Feeding

Shoe Making Workshop	**Welding Workshop**	**Tailoring Workshop**	**Carpentry Workshop**	**Electrical Workshop**	**Adequate Feeding**	
109	109	109	109	109	Yes	No
					38	71

Table P shows that 100% of the respondents responded that there are adequate vocational facilities such shoe making workshop, welding workshop, tailoring workshop, carpentry and electrical workshops at Kuje Medium Security Prison, Abuja. 34.9% of the respondents said that inmates are adequately fed at Kuje Medium Security Prison, Abuja while 65.1% said that feeding is a challenge in Kuje Medium Security Prison, Abuja.

Table Q: The followings are the Rights of Prisoners:

	Yes	**No**
Right to Life	109	0
Right to Dignity of Human Person	92	17
Right to Privacy	67	42

Right to Fair Hearing	109	0
Right to Freedom of Thought, Conscience and Religion	74	35
Right to Freedom from Discrimination	89	20
Right to be admitted to Bail	109	0
Right to apply for Prerogative of Mercy	94	15
Right of Appeal	109	0
Right to vote in General Elections	0	109
Right to Acquire Skill	109	
Are rights of prisoners adequately protected in Nigeria?	16	93
Do sentencing options contribute to overcrowding in Nigerian prisons?	109	0

Table Q shows that 100% respondents of the Kuje Prison are in agreement that prisoners have the following rights in Nigeria. They are: right to life; right to fair hearing; right to be admitted to bail; right to apply for prerogative of mercy; right of appeal and right to acquire skill. 84.4% of the respondents agreed that prisoners are entitled to right to dignity of human person while 15.6% respondents said that prisoners are not entitled to the right to dignity of human person in Nigeria. 61.5% said that right to privacy of prisoners is observed in Nigeria while 38.5% said right to privacy of prisoners is violated in Nigeria. 67.9% said that the right to freedom of thought, conscience and religion is available to the prisoners in Nigeria, 32.1% disagreed. 81.7% said prison officials practice discrimination among prisoners at Kuje prison Abuja while 18.3% said no. 100% of the respondents at the Kuje Medium Security Prison,

Abuja said that prisoners do not have the right to vote in the general elections in Nigeria. On whether the rights of prisoners are adequately protected in Nigeria, 14.7% responded that prisoners' rights are adequately protected in Nigeria while 85.3% said that the rights of prisoners are not adequately protected in Nigeria. 100% of the respondents agree that sentencing options contribute to overcrowding in Nigerian prisons. It appears that discrimination among prisoners is practice at the Kuje prison Abuja.

Table R: Factors affecting the Protection of Prisoners' Rights in Nigeria include:

	Yes	**No**
Lack of adequate provisions in Prisons Laws	109	0
Practice Remand Proceedings/ Holding Charge	109	0
Poverty among some Prisoners	109	0
Attitudes of government/ the public	109	0
Delays in trial of Cases in Courts	109	0
Illiteracy and Lack of Awareness on part of some Prisoners	91	18
Lack of adequate Legal Aid Scheme	77	32
Overcrowding in Prisons	15	94
Are Nigerian prisons run on internationally accepted minimum standard?	34	75
Are there remedies for breach of prisoners' rights	102	7

Table R reveals that 100% of the respondents are in agreement that the protection of prisoners' rights in Nigeria is challenged by the following factors. They are: lack of adequate provisions in prisons laws; practice remand of proceedings/ holding charge; poverty among some prisoners; attitudes of government/the public and delays in trial of cases in courts. 83.5% agree that illiteracy and lack of awareness on part of some prisoners is one of the

challenges to the protection of prisoners' rights in Nigeria, 16.5% disagreed.70.6% of the respondents are in agreement that lack of adequate legal aid scheme is also a challenge to the protection of prisoners' rights in Nigeria. 29.4% said it is not. 13.8% of the respondents said that overcrowding is not among the factors that affect the protection of prisoners' rights in Nigeria while 86.2% said it is. On whether Nigerian prisons are run on the internationally accepted minimum standard, 31.2% of the respondents said yes while 68.8% respondents said that Nigerian prisons are not run on the internationally accepted minimum standard. On whether there are remedies for breach of prisoners' rights, 93.6% of respondents said yes while 6.4% said no. From the responses to our questionnaires above, it generally agreed that Nigerian prisons are run below the minimum acceptable international standard. The cause of this flow from the nature of the legal instruments regulating prison administration in Nigeria. Hence, the need to address the challenges through the introduction of new legal regimes for the Nigerian prisons.

3.3 Summary of the Analysis of Data and Discussions from Tables A-R

Demographic Information					
Items	**Abakaliki prison**	**Enugu prison**	**Kuje prison**	**Total**	**Remark**
18-30 years	45	36	29	110	
31– 50 years	50	70	32	152	Abakaliki, Enugu and Kuje prisons house more people between 31- 50years
51 and above	7	19	48	74	
Male	89	103	94	286	More men are imprisoned in Abakaliki, Enugu and Kuje prisons than female
Female	13	22	15	50	
Single	40	50	43	133	

Married	62	75	66	203	Married people are more in Abakaliki, Enugu and Kuje prisons than sngle
Christian	102	110	37	249	
Moslem	0	15	72	87	
Others	0	0	0	0	
Convicts	20	29	28	77	
Awaiting trial	37	56	54	147	Awaiting trial inmates are more than convicts in Abakaliki, Enugu and Kuje prisons
Prison Facilities					
Items	**Abakaliki prison**	**Enugu prison**	**Kuje prison**	**Total**	**Remark**
Pipe borne water	0	36	86	122	
Borehole	102	83	23	208	The major source of water in Abakaliki, Enugu and Kuje prisons is borehole
Well	0	0	6	6	
The water is clean	102	62	89	253	Abakaliki, Enugu and Kuje prisons have clean water
The water is not clean	0	63	20	83	
Pit toilet	0	0	0		
Water closet system	102	50	109	261	Abakaliki, Enugu and Kuje prisons have water closet toilets system
Bucket toilet	0	75	0		Bucket toilets system still exist in Enugu prison
Clean toilet	102	50	76	228	Toilets at Abakaliki and Kuje prisons are clean
Toilet not clean	0	75	33	108	Toilets in Enugu prisons are not clean

Toiletries are available	102	94	92	288	Inmates use toiletries in Abakaliki, Enugu and Kuje prisons
Toiletries not available	0	31	17	48	
Do inmates use soap	102	125	81	308	Inmates use soap at Abakaliki, Enugu and Kuje prisons
Inmates does not use soap	0	0	28	28	
Power source from EEDC/AEDC	102	96	109	307	Abakaliki, Enugu and Kuje prisons depend on public power supply for light
Generator	0	0	0	0	
Lantern/candle	0	29	0	29	
Light is regularly supplied	0	29	3	32	
Light is not regularly supplied	102	96	106	304	Light is not regular at Abakaliki, Enugu and Kuje prisons
Single cell blocks	0	0	94	94	Kuje prison has some single cell blocks
Dormitory blocks	102	125	15	242	Abakaliki and Enugu prisons use dormitories for cell
One inmate per cell	0	0	0	0	
Two inmates per cell	0	0	0	0	
More than three inmates in a cell	102	125	109	336	Inmates are kept more than three in each cell of Abakaliki, Enugu and Kuje prisons
Inmates sleep on foam	89	98	64	251	Majority of inmates of Abakaliki, Enugu and Kuje prisons sleep on foam
Inmates sleep on mat	13	27	23	63	
Inmates sleep on floor	0	0	22	22	Some inmates sleep on floor at Kuje prison

Official Carrying capacity of the prison	387	638	560		
Number of inmates above official capacity	507	1,162	292		Abakaliki, Enugu and Kuje prisons house more inmates than their carry capacities
Total number of inmates in each prison	894	1,800	852		Enugu prison is thickly populated
Uniforms are enough for the inmates	0	60	16	76	
Uniforms not enough for the inmates	102	65	93	260	Abakaliki, Enugu and Kuje prisons lack adequate uniforms for the inmates
Health care and recreational facilities					
Items	**Abakaliki prison**	**Enugu prison**	**Kuje prison**	**Total**	**Remark**
Availability of hospital	0	0	0	0	Abakaliki, Enugu and Kuje prisons lack hospitals
Availability of clinics	102	125	109	336	Clinics are available in Abakaliki, Enugu and Kuje prisons
No hospital/clinics	0	0	0	0	
Doctors are available	102	101	92		Abakaliki, Enugu and Kuje prisons have doctors
Nurses are available	0	24	17	41	Abakaliki prison lacks nurses
Drugs are available	0	63	25	88	Abakaliki prison lacks drugs
Drugs are not available	102	28	20	150	
Drugs are not enough	0	34	64	98	Drugs are not adequately supplied to Enugu and Kuje prisons
Recreational facilities are	4	120	90	214	Enugu and Kuje prisons have

available					adequate recreational facilities
Recreational facilities are not adequate	98	5	19	122	Abakaliki prison lack adequate recreational facilities
Vocational facilities are available	99	125	109	333	Abakaliki, Enugu and Kuje prisons have enough vocational facilities
Vocational facilities not enough	3	0	0	3	
Inmates are well fed	5	26	38	69	
Inmates are not well fed	97	99	71	267	Inmates are not properly fed in the Abakaliki, Enugu and Kuje prisons
The following are rights of prisoners in Nigerian					
Items	**Abakaliki prison**	**Enugu prison**	**Kuje prison**	**Total**	**Remark**
Right to life	102	125	109	336	Available for prisoners
Right to dignity of Human person	102	125	92	319	Available for prisoners
Right to privacy	102	125	67	294	Available for prisoners
Right to fair hearing	102	125	109	336	Available for prisoners
Right to freedom of thought, conscience and religion	102	125	74	301	Available for prisoners
Right to freedom from discrimination	102	125	89	316	Available for prisoners
Right to be admitted to bail	102	125	109	336	Available for prisoners
Right to apply for prerogative of mercy	102	125	94	321	Available for prisoners
Right of appeal	102	125	109	336	Available for prisoners
Right to vote in general election	0	0	0		Not available for prisoners in Nigeria

Right to acquire skill	102	125	109		Available for prisoners
Prisoners' rights are adequately protected in Nigeria	1	0	16	17	
Prisoners' rights are not adequately protected in Nigeria	101	125	93	319	Prisoners' rights are not adequately protected in Nigeria
Sentencing options contribute to overcrowding in Nigerian prisons	99	95	109	303	Sentencing options in Nigeria contribute to overcrowding in Nigerian prisons
Sentencing options do not contribute to overcrowding in Nigerian prisons	3	30	0	33	
The followings are challenges to the protection of prisoners' rights in Nigeria					
Items	**Abakaliki prison**	**Enugu prison**	**Kuje prison**	**Total**	**Remark**
Lack of adequate provisions in prison laws	102	125	109	336	A new legal regime need to be introduced for prisoners in Nigeria
Practice of remand proceedings/holding charge	102	125	109	336	Remand proceedings/holding charges should be discouraged in Nigeria
Poverty among some prisoners	102	125	109	336	A programme should be designed to enable Nigerian prisoners earn a living while in prison
Attitude of government/the public	102	125	109	336	Nigeria Government should wake up to her responsibilities
Delay in trial of cases in courts	102	125	109	336	Cases of pretrial inmates should be given accelerated hearings in our courts

Illiteracy and lack of awareness on part of the prisoners	102	125	91	318	Awareness should be created on enforcement of prisoners' rights
Lack of adequate Legal Aid Scheme	102	125	77	304	Legal Aid Scheme in Nigeria should be strengthened
Overcrowding in Nigerian prisons is a challenged to the protection of prisoners' rights	0	125	15	140	
Overcrowding in Nigerian prisons is not a challenged to the protection of prisoners' rights	102	0	94	196	Overcrowding is a challenge to protection of prisoners' rights in Nigeria
Nigerian prisons are run on internationally accepted minimum standard	20	0	34	54	
Nigerian prisons are not run on internationally accepted minimum standard	82	125	75	282	Nigerian prisons are run below the internationally accepted minimum standard
There are remedies for breach of prisoners' rights	98	87	107	292	Prisoners have remedies for breach of their rights
There are no remedies for breach of prisoners' rights	4	38	2	44	

Detail discussions on the above prisoners' rights and challenges to the protection of prisoners' rights in Nigeria will be done in our subsequent chapters.

CHAPTER FOUR

INTERNATIONAL AND NATIONAL LEGAL INSTRUMENTS FOR THE PROECTION OF PRISONERS' RIGHTS

4.1 The United Nations Legal Instruments on Prisoners' Rights

Under this subhead, some of the United Nations (UN) legal instruments on prisoners' rights will be examined. They include the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules 2015); the Basic Principles for the Treatment of Prisoners 1990; the United Nations Standard Minimum Rules for Non-Custodial Measures (The Tokyo Rules), 1990; The United Nations Model Agreement on the Transfer of Foreign Prisoners and Recommendations on the Treatment of Foreign Prisoners, 1985, among others.

4.1.1 Basic Principles for the Treatment of Prisoners, 1990

Basic Principles for the Treatment of Prisoners was adopted and proclaimed by the United Nations General Assembly on 14th December 1990.[180] It has eleven principles. Substantial provisions of these principles are in agreement with the provisions of the United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (UN Body of Principles).[181]

Principle 1 of the said Basic Principles for the Treatment of Prisoners provides that all prisoners shall be treated with the respect due to their inherent dignity and value as human beings.[182] This is in line with article 1 the Universal Declaration of Human Rights (UDHR)[183] and article 10 of the International Covenant on Civil and Political Rights (ICCPR).[184] For this

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[180]The United Nations, 'Resolution A/Res/45/111 68th Plenary Meeting of 14 December, 1990' <www.un.org/documents/ga/.../a45r111/http> accessed on Monday, 4th January, 2016.

[181] United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment was adopted at the 76th Plenary Meeting of the United Nations General Assembly, Resolution A/RES/43/173 of 9th December, 1988. It has 39 principles.
< http://www.unhchr.ch/html/menu3/b/h_comp36.htm> accessed on Thursday, 7th January, 2016.

[182] The UN Body of Principles, Principles 1 and 6.

[183] Universal Declaration of Human Rights was adopted by the United Nations General Assembly on 10th December 1948, Resolution 217 A (III) of 10th December, 1948.

[184] International Covenant on Civil and Political Rights was adopted by the United Nations General Assembly on 16th December, 1966,UNGA Resolution 2200A (XXI) of 16th December, 1966.

purpose, article 10 of ICCPR requires that any person deprived of his liberty shall be treated with dignity and humanity. According to article 7 of the said ICCPR, no circumstance shall be considered as the justification for torture. In the same vein, article 2 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment encourages state parties to the Convention to take effective legislative, administrative, judicial or other measures to prevent act of torture and that no circumstances should be invoked as a justification for torture.[185] In *Ncube v State*,[186] the Supreme Court of Zimbabwe described punishment by whipping as 'not only inherently brutal and cruel,… it is relentless in its severity and contrary to the traditional humanity practiced by almost the whole of the civilised world, being incompatible with the evolving standards of decency.' Ifaturoti submitted that chaining and the use of solitary confinement as forms of disciplinary measures in prisons amount to torture.[187] The practice of keeping condemned prisoners on death roll for prolong periods of time, before execution amount to degrading and inhuman treatment.[188] In *Pratt v AG Jamaica*[189] the Privy Council held that prolonged custody of a condemned person from the date his conviction is affirmed by the highest court of the land constitutes an infringement on human right of the prisoner in regard of his dignity to warrant either commutation of his death sentence to terms of imprisonment or release. It is submitted that the practice of keeping prisoners on a reduced diet, denial of food, harassments, verbal intimidation, threats among others constitute mental torture. In line with the United Nations instruments, the Constitution of the Federal Republic of Nigeria 1999 (as amended) provides

[185] Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment1984 (CAT) was adopted by the United Nations General Assembly on 10th December, 1984, Resolution 39/46 of 10 December, 1984 <www.ohchr/EN/.../pages/CAT.aspx> accessed on Wednesday, 6th January, 2016. Similar document is the United Nations Declaration on the Protection of All Persons from being subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 9th December, 1975, Article 4.
[186] [1988] 14 CLB 4 p. 1260.
[187] *Ibid*.
[188] *Nemi v Attorney-General of Lagos State & Anor* [1996] 6 NWLR (Pt 452) pp.42-59.
[189] [1993] 4 All ER508.

that 'Every individual is entitled to respect for the dignity of his person and accordingly no person shall be subjected to torture or inhuman or degrading treatment'.[190]

In another development, Principle 2 of the said Basic Principles for the Treatment of Prisoners prohibits any form of discrimination against a prisoner on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or *other status*.[191] In *Odefa and Ors v Attorney-General of Federation and Ors,*[192] some prisoners in Kirikiri Maximum prisons applied to enforce their fundamental human on the ground that acts of segregation and discrimination against them by both prison officials and inmates amounted to an infraction of their rights to freedom from discrimination under section 42 (1) of the 1999 Constitution. The applicant prayer the court *inter alia* for:

> A declaration that the continuous detention and consequent segregation and discrimination of the applicants as confirmed HIV/AIDS patients is an infraction of the applicants' constitutionally guaranteed right to freedom from discrimination provided for in sections 34(1) (a) and 42 (1) of the 1999 Constitution.

Even though the application was no challenged by the respondents, the court held *inter alia* that even though it has been established in the case of *Nemi v Attorney General of Lagos & anor* [193] that prisoners are entitled to enforce their fundamental rights because of the word, used in section 46 of the 1999 Constitution that 'anybody' who alleges that any of the provision of Chapter Four has been, is being or likely to be contravened may apply for redress in a high court, nevertheless, the right to freedom from discrimination as enshrined in section 42 (1) of the Constitution did not cover discrimination by reason of illness, virus or diseases. Therefore separation of a prisoner on the ground of being infected with viral or

[190] Constitution of the Federal Republic of Nigeria 1999 (as amended), Section 34.
[191] Similar provisions are in UDHR, Article 2, The UN Body of Principles, Principle 5. Other status includes status of being ill among others. (emphasis mine).
[192] [2004] AHRLR 205 or [2005] CHR 309.
[193] *Supra.*

communicable disease will not amount to discrimination. This action may be taken by the prison authorities in order to curtail the spread of such disease in prison.

Principle 3 of the said Basic Principles encourages the authorities to respect the religious beliefs and cultural precepts of the group to which prisoners belong whenever local conditions so require. Prisoner's religious beliefs are to be respected so long as those beliefs do not interfere with or pose a threat to prison discipline and administration. In *O'Lone v Estate of Shabazz*[194] a group of Muslim inmates in New Jersey state prison challenged the prison policies which prohibited them from attending Jum'ah, a weekly Muslim religious ceremony held outside the prison. The Court after a careful review of the case held that, 'while we in no way minimise the central importance of Jum'ah to Muslims, we are unwilling to hold that prison officials are required by the Constitution to sacrifice legitimate penological objectives to that end'. In *Inmates, Washington County Jail v England,*[195] the court held that inmates of jails and prisons should enjoy the right to freedom of religion but the right is subject to restrictions. In *McCorkle v Johnson*[196] one inmate McCorkle claimed that his faith was Satanism and that human sacrifices and eating of human flesh were normal part of his satanic religious rituals. The court held that his professed satanic practices were inconsistent with maintaining prison order and security.

Principle 4 of the said Basic Principles noted that the responsibility of prisons which includes: the custody of prisoners and the protection of society against crime can only be achieved if it is in harmony with other state's social objectives. By this provision, prison authorities are encouraged to discharge their responsibilities in line with the fundamental objectives of the state for the purpose of promoting the welfare and happiness of the inmates.

Principle 5 of the said Basic Principles provides that except for those limitations that are demonstrably necessitated by the fact of incarceration, all prisoners shall retain the human

[194] 482 U.S. 342 [1987].
[195] 659 F.2nd 1081 [1980] 403.
[196] 881 F. 2nd 993(11th Cir.) [1989] 403.

rights and fundamental freedom set out in the Universal Declaration of Human Rights; the International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights and the Optional Protocols thereto. Principle 6 of the said Basic Principles provides that all prisoners shall have the right to take part in the cultural activities and education aimed at the full development of their human personality. A combine reading of the above principles shows that not only that prisoners' rights are to be respected, but that prisoners should be assisted to fully develop their talents through reformative programmes such as education, vocational training and work.

Principle 7 of the said Basic Principles encourages governments of different countries to make efforts aimed at the abolition of solitary confinement as a punishment for violating prisons' rules. Principle 8 of the said Basic Principles enjoins the authorities to create conditions that will enable the prisoners to undertake meaningful remunerated employment since this will facilitate their reintegration into the country's labour market and permit them to contribute to their own financial support and to that of their families. The implementation of the provision of principle 8 is very important in the light of the economic implications of imprisonment on prisoners. Prisoners are not only at the risk of losing their jobs at the time of imprisonment, but also risk long-term unemployment or underemployment after release. For every prisoner who loses his job as a result of imprisonment, the family and the society pay the price. In the case of his family, his spouse and even the children suffer. The children may be forced out of school. This may result in the increase in street trading, increase in juvenile delinquencies, drug abuse, prostitution among the female, among others. For the spouse, he may risk eviction where he is a tenant; he has to work extra to make up the lost income and to bear the cost of legal services and financial support to the imprisoned spouse. On the part of the society, a prisoner who loses his job may risk committing another crime upon release. But

where the provision of principle 8 above is implemented, a prisoner will not only earn income but should be able to offer financial support to his family.

Principle 9 of the said Basic Principles encourages the authorities to allow the prisoners to have access to the health services available in the country without discrimination on the ground of their legal status. Principle 10 of the said Basic Principles encourages the community and social institutions to take part in the reformation exercise aimed at the protection of the interest of the victims and creating favourable conditions of reintegrating ex-prisoners in the society. Principle 11 provides that the above principles shall be applied impartially.

Apart from the above, it is important that we consider the provisions of the United Nations Standard Minimum Rules for Non-Custodial Measures (The Tokyo Rules), 1990.

4.1.2 United Nations Standard Minimum Rules for Non-Custodial Measures (The Tokyo Rules), 1990

The United Nations Standard Minimum Rules for Non-Custodial Measures (the Tokyo Rules) was adopted by the United Nations General Assembly on the 14th December, 1990.[197] The Tokyo Rules sets out the principles to be followed by member nations in order to promote the use of non-custodial measures. These principles are to serve as the minimum safeguards for persons subject to alternatives to imprisonment. The Tokyo Rules is made up of a preamble and 23 rules. Its creation took inspiration from the impact of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and other human rights instruments. The preamble to the Tokyo Rules emphasises the need for alternatives to imprisonment as an effective means of treating offenders within the community to the best advantage of both the offenders and society.

[197] The UN General Assembly A/RES/45/110, 68th Plenary Meeting, 14 December, 1990.

Rule 1 provides that the present Standard Minimum Rules is a set of basic principles for the promotion of the use of non-custodial measures, as well as minimum safeguards for persons subject to alternatives to imprisonment. Its aim is to promote greater community involvement in the management of criminal justice, specifically in the treatment of offenders. It is also geared towards the promotion of a sense of responsibility among offenders towards society. However, the implementation of the Rules is subject to the political, economic, social and cultural conditions of each country and the aims and objectives of its criminal justice system. When implementing the Rules, member states are encouraged to ensure that they take into consideration the need to balance the interest of the offenders, the victim of the crime and the society especially as it concerns the safety of the public.

Rule 2 provides that the scope of non-custodial measures shall cover persons subject to prosecution, trial or the execution of a sentence at all stages of the administration of criminal justice and it is to be applied without discrimination on the grounds of race, colour, sex, age, language, religion, political or other opinion national or social origin, property, birth or other status. Rule 3 provides that countries shall introduce legislation in their respective domains for the purpose of the introduction of non-custodial measures and the rights of offenders subjected to non-custodial measures. The law to be introduced should provide a means of redress for any person who is aggrieved by the order of non-custodial measures. Rules 5 and 6 encourage countries to use pre-trial detention as a last resort in criminal proceedings with due regard to the investigation of the alleged offence and for the protection of society and the victim. In a similar vein, the United Nations Human Rights Committee General Comment No 08 of 30th March 1982, states that article 9 of ICCPR 'restricts the use of pre-trial detention except in exceptional circumstances which shall be for a short period of

time'.[198] On this note, the agencies responsible for crime prevention are required to timely discharge an offender where there is no sufficient evidence to proceed with the prosecution.

Rules 7 and 8 encourage the sentencing authorities to take into account the rehabilitative needs of the offender, the protection of society and the interest of the victim. For this purpose, sentencing authorities may consider the options of disposing off a case by ways of verbal sanctions such as admonition, reprimand and warning. The sentencing authorities may also adopt other options such as conditional discharge, economic sanctions, fines, confiscation or an expropriation order, restitution to the victim, compensation order, suspended or deferred sentence, probation and judicial supervision, a community service order, house arrest, among others.

Rule 9 provides for post-sentencing alternative disposition which may include furlough[199] and half-way houses, work or education releases, various forms of parole, remission and pardon. Rule 10 provides for supervision of sentence of non-custodial measures. The aim of which is to reduce reoffending and to assist the offender's reintegration into society in a way which minimises the likelihood of return to crime.

The provisions of the Tokyo Rules have been partly adopted by the Administration of Criminal Justice Act, 2015.[200] Obviously, the implementation of sentence of non-custodial measures in Nigeria will go along the way to reducing the incidence of overcrowding in Nigerian prisons and overstretching of the prisons facilities. The most common forms of this aspect of criminal justice delivery are sentence to terms community service, probation and judicial supervision rather than imprisonment. In this practice, those found guilty of minor offences may be given sentence of non-custodial measures rather than imprisonment. However, we may agree that sentencing to terms community service, probation and judicial

[198]The United Nations Human Rights Committee, 'ICCPR General Comment No 08 of 30th March 1982',<www.ohchr.org/en/...pages/ccpr.aspx> accessed on Wednesday, 16th December, 2015.
[199] Furlough in this context means rest and recreation.
[200] The Administration of Criminal Justice Act, 2015, Parts 44 and 45, Sections 453 to 468.

supervision still requires oversight and cost implications that may be difficult to meet up with when juxtaposed with the economic reality of the country presently. As a result of these, the researcher advocates for sentencing options such as admonition, reprimand and warning; conditional discharge; economic sanctions and monetary penalties such as fines, confiscation or an expropriation order; restitution to the victim or compensation order; suspended or deferred sentence as oppose to imprisonment in Nigeria. This will aid in rehabilitation of offenders in Nigeria. From the result of the questionnaires administrated in the three prisons of Abakaliki, Enugu and Abuja, 90.2% of the respondents agreed that sentencing options in Nigeria contribute to overcrowding in Nigerian prisons.

4.1.3 United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules), 2015

The initial idea for a universal standard relating to the treatment of prisoners was conceived by the International Penal and Penitentiary Commission in 1934.[201] This was manifested by the draft of a set of rules which was submitted to the League of Nations for approval in 1934.[202] However, due to the outbreak of the Second World War in 1939 and the subsequent formation of the United Nations in 1945[203], the responsibilities of the League of Nations and the Commissions created there under were assumed by the United Nations. On this note, the United Nations asked the International Penal and Penitentiary Commission in 1951 to revisit the text of the rules submitted to the League of Nations and resubmit the same to the first United Nations Congress on the Prevention of Crime and the Treatment of Offenders that would be held in Geneva in 1955.[204] The Commission was later dissolved in 1951 after it had

[201] The Introductory Note to the Standard Minimum Rules for the Treatment of Prisoners, (New York: United Nations Department of Public Information, 1984).
[202] *Ibid.*
[203] The United Nations Organisation was formed on 24th October, 1945 <https/history.state.gov/milestones/…/un> accessed on Saturday, 19 December, 2015.
[204] The Introductory Note to the Standard Minimum Rules for the Treatment of Prisoners, *op cit*.

performed that assignment.[205] At Geneva 1955, the first United Nations Congress on the Prevention of Crime and the Treatment of Offenders unanimously adopted the new rules on the 30th day of August, 1955 and recommended their approval to the Economic and Social Council.[206] The said Rules was made up of 95 rules with preliminary observations.

The said Rules continued to be the United Nations minimum standard of what was accepted to be good general principle and practice in the treatment of prisoners. It lasted for about 60 years before it was revised in 2015. The revision of the Rules was based on the United Nations General Assembly resolution 65/230 of 10th December, 2010. The said resolution requested the Commission on Crime Prevention and Criminal Justice to establish an open-ended intergovernmental expert group to; 'exchange information on the best practice…and on the revision of existing United Nations Standard Minimum Rules for the Treatment of Prisoners so that they reflect recent advances in correctional science and best practice'.[207] The Commission on her 24th session held at Vienna, Austria adopted the revised United Nations Standard Minimum Rules for the Treatment of Prisoners.[208] The said revised version of the said United Nations Standard Minimum Rules for the Treatment of Prisoners is now known as the Mandela Rules, 2015.[209]

The Mandela Rules honours the late South African President, Nelson Mandela who was imprisoned for 27 years by the country's apartheid regime. The Rules is made up of two parts with a total of 122 rules. The Rules substantially adopted the provisions of ICESCR; CAT; the United Nations Basic Principles for the Treatment of Prisoners, 1990; the United

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[205] *Ibid.*
[206] *Ibid.*
[207] UN Office on Drugs and Crime, Mandate to Revise United Nations Standard Minimum Rules for the Treatment of Prisoners' < www.penalreform.org> accessed on Monday, 21st December, 2015.
[208] In attendance are representative of the Office of the UN High Commissioner for Human Rights; the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment; the UN Office on Drugs and Crime; World Health Organisation; Special Rapporteur on Torture; American Civil Liberties Union; Amnesty International among others.
[209] The Mandela Rules was approved by the 70th Session of United Nations General Assembly on 17th December, 2015, Resolution A/RES/70/175/L.6/Rev.1, <www.penalreforms.org/.../2015/....> accessed on Monday, 2nd May, 2016.

Nations Standard Minimum Rules for Non-Custodial Measures (the Tokyo Rules), 1990; the United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, 1988; the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, 1990 among others.

Part 1 of the Rules contains rules of general application. The purpose is to set out what is generally accepted as standards of good principle and practice in the treatment of prisoners and the management of penal institutions. For this purpose, rule 1 provides that:

> All prisoners shall be treated with respect due to their inherent dignity and value as human beings. No prisoner shall be subjected to, and all prisoners shall be protected from, torture and other cruel, inhuman or degrading treatment or punishment, for which no circumstance whatsoever may be invoked as justification. The safety and security of prisoners, staff, service providers and visitors shall be ensured at all times.

Rule 2 provides that:

> 1. The present rules shall be applied impartially. There shall be no discrimination on ground of race, colour, sex, language, religion, political or other opinion national or social origin, property, birth or any other status. The religious beliefs and moral precepts of prisoners shall be respected.
>
> 2. In order for the principle of non-discrimination to be put into practice, prison administrations shall take account of the individual needs of prisoners, in particular the most vulnerable categories in prison settings. Measures to protect and promote the rights of prisoners with special needs are required and shall not be regarded as discriminatory.

Rule 3 provides that:

> Imprisonment and other measures which result in cutting off persons from the outside world are afflictive by the very fact of taking from these persons the right of self-determination by depriving them of his liberty. Therefore the prison system shall not except as incidental to justifiable separation or the maintenance of discipline, aggravate the suffering inherent in such a situation.

In the same vein, rule 4(1) of the said Rules provides that:

> The purpose of a sentence of imprisonment or a similar measure deprivative of a person's liberty is primarily to protect society against crime and to reduce recidivism. Those purposes can only be achieved if the period of imprisonment is used to ensure, so far as possible, the reintegration of such persons into society upon release so that they can lead a law-abiding and self-supporting life.

Rule 4 (2) of the said Rules adds that, to achieve the above objective, the prison institution should utilise all the remedial, educational, moral, spiritual and other forces and forms of assistance which are appropriate and available, and should seek to apply them according to the individual treatment needs of the prisoners. Rule 5(1) provides that 'the prison regime should seek to minimise any differences between prison life and life at liberty that tend to lessen the responsibility of the prisoners or their respect due to their dignity as human beings.'

The Mandela Rules also provides that prisons shall maintain a standardised prisoner file management system which may be electronic or handwritten with detailed information about the prisoner. Information supplied by the prisoner shall be kept confidential and can only be made available to those whose professional responsibilities require access to such records.[210] Apart from maintaining a standardised prisoner file, prison authorities are to

[210] The Mandela Rules, Rules 7, 8, 9 and 10.

ensure to the proper separation of prisoners. The said separation shall be based on gender, types, age, criminal records, the legal reason for their detention and the necessities of their treatment.[211]

In another development, the Mandela Rules emphasises on the provisions of adequate accommodation, lighting, heating, ventilation of prisons' rooms and sanitary facilities in prisons.[212] The Rules acknowledged the need for personal hygiene of the prisoners.[213] In order to achieve the personal hygiene of the prisoners, the Rules advocates for regular bath and regular hair cut. In the same vein, rules 19, 20 and 21 provide that where prisoners are not allowed to wear their own cloths, they should be provided with clean clothing and bedding suitable for the climate conditions of the place where they are imprisoned.

Again, under the Rules, prison authorities are to ensure that prisoners are provided with food of nutritional value and drinking water adequate for health and strength.[214] In order to ensure that prisoners maintain their physical fitness, the Mandela Rules provides that prisoners should be allowed to have a daily outdoor exercise and sport if the weather permits.[215]

The Mandela Rules emphasises that it is the responsibility of a state to provide free healthcare to prisoners and that prisoners should have access to the same standard care that is available in the community. Health care service should include treatment for medical conditions, including HIV, tuberculosis and other infectious diseases, and drug dependence. In addition to the above, each prison should have an interdisciplinary health care system including medical personnel with experience in psychology and psychiatry to ensure that both the physical and mental health needs of prisoners are addressed.[216]

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[211] Rule 11, *ibid.*
[212] Rules 12, 13,14,15,16 and17, *ibid.*
[213] Rule 18, *ibid.*
[214] Rule 22, *ibid.*
[215] Rule 23, *ibid.*
[216] Rules 24, 25, 26, 27, 28, 30, 31,32,33,34, and 35 , *ibid.*

On disciplinary action and punishment in prisons, the Mandela Rules provides that although prison authorities are permitted to make regulations on conducts constituting disciplinary offences, however, prison authorities are encouraged to adopt alternative dispute resolution mechanism in dealing with prison offence instead of punishment.[217] The Rules also provides that prison authorities are to ensure that any allegation of disciplinary offence against a prisoner shall be promptly investigated and the prisoner involved given fair hearing including an opportunity to seek judicial review in case any disciplinary sanctions is eventually imposed on him.[218] On this note, the Rules restrict the use of solitary confinement as a method of enforcing prison discipline. For this purpose, solitary confinement can only be used as a last resort when all other measures have failed and it shall be for a very short period. According to the Rules, solitary confinement means 'confinement of prisoners for 22 hours or more daily without meaningful human contact'.[219] However, the order of placing a prisoner in solitary confinement shall be subjected to independent review and must be authorised by a competent authority.[220] The Rules specifically prohibits the placing of prisoners suffering from mental or physical disabilities in solitary confinement if this would exacerbate their existing medical conditions.[221] In the same vein, women and children are not to be placed in solitary confinement in any circumstance.[222]

On the use of instruments of restraint, the Rules prohibits the use of chains, irons or other instrument of restraint on prisoners except to guide against escape during transfer or on the advice of a physician. In any case, the said advice of the physician must be in the best interest of the prisoners concerned.[223]

[217] Rule 38, *ibid*.
[218] Rule 41, *ibid*.
[219] Rule 44, *ibid*.
[220] Rule 45(1), *ibid*.
[221] Rule 45 (2), *ibid*.
[222] *ibid.*
[223] Rule 47, *ibid.*

Rule 54 of the Mandela Rules places a duty on the prison authorities to provide every prisoner upon admission with written information about the regulations governing the treatment of prisoners of his category. This shall include: the disciplinary requirements of the institution, the authorised methods of seeking information and making complaints, and such other matters as are necessary to enable him understand both his rights and obligations while in prison. It is also the duty of prison authorities to ensure that the information is available in the most commonly used language of the prison population. Where a prisoner is an illiterate, the information should be given to him orally. Any prisoner with sensory disabilities should be provided with information in such a way that meets his needs.[224] In any case, where the prisoner does not understand any of the language commonly used by the prison population, he shall be entitled to free service of an interpreter.[225]

On the search of prisoners and cells, the Mandela Rules provides that respect for the inherent human dignity and privacy of individuals to be searched must be taken into account and such a search must be done in accordance with the international standards and norms.[226]

The Mandela Rules permits the prisoners to have contact with outside world. The Rules provides that prisoners shall be allowed under necessary supervision, to communicate with their family, friends and their lawyers through the use of communication methods available in the locality.[227] On this note, the Rules advises that it is desirable that prisoners should be kept in prisons close to their homes or their places of social rehabilitation.[228] Prisoners are to have access to books and to be allowed to attend to their spiritual needs.[229]

[224] Rules 55, *ibid.*
[225] *Ibid*.
[226] Rules 50, 51, 52 and 53, *ibid.*
[227]Rule 58, *ibid*.
[228] Rules 58, 59, 60, 61, 62 and 63, *ibid.*
[229] Rules 64, 65 and 66, *ibid.*

Rule 67 of the Mandela Rules places a duty on the prison authorities to ensure that all money, valuables, clothing and other effects belonging to a prisoner are properly kept and release to him upon his discharge from prison.

In another development, the Rules places a duty on prison authorities to investigate cases of deaths or illness in custody and allegations of torture in prisons.[230] If a prisoner dies or is seriously ill, the prison director should immediately contact the next of kin and as long as the prison director has reasonable ground to suspect that the death of a prisoner was caused by act of torture, he shall immediately contact the independent national authority to conduct investigation to that effect.[231] In the same vein, a prisoner is entitled to be informed about the death of a relation.

The Mandela Rules provides for the training of relevant prison staff to ensure to the effective implementation of the Rules.[232] The Rules provide for both internal and external prison inspections.[233]

Part 11 of the Mandela Rules contain rules applicable to special categories of prisoners. These special categories of prisoners include:

(a) Prisoners under sentence. For this purpose, rule 87 provides that prison authorities shall take necessary steps to ensure that before a prisoner under this category completes his sentence, arrangement has to be made to ensure his gradual return to life in society. On this note, the treatment of prisoners in this category should emphasise more on their reintegration into the society. Prisoners under this category are entitled to work, have access to educational and recreational facilities geared towards their rehabilitation.[234]

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[230] Rule 68, *ibid*.
[231] Rules 68, 69,70, 71 and 72, *ibid.*
[232] Rules 74, 75, 76, 77, 78, 79 ,80, 81 and 82, *ibid.*
[233] Rules 83, 84 and 85, *ibid.*
[234] Rules 86, 87, 88, 89, 90, 91, 92 93, 94, 95 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107 and 108, *ibid*.

(b) Prisoners with mental disabilities and/or health conditions. These categories of prisoners may be transferred to health facilities under the supervision of qualified health-care professionals if the prison does not have the facilities to take care of them.[235]

(c) Prisoners under arrest or waiting trial. These categories of prisoners are presumed innocent and should be treated as such.[236]

(d) Civil prisoners. Rule 121 of the Mandela Rules provides that in country where law permits imprisonment for debt or by order of a court under any other non-criminal process, persons so imprisoned should not be subjected to any greater restriction or severity than necessary to ensure safe custody and good order.

(e) Persons arrested or detained without charge. Rule 122 of the Mandela Rules provides that persons arrested and imprisoned without charge shall be accorded the protection under the Rules and are to be presumed innocent.

The Mandela Rules has been viewed in many quarters as representing a minimum bench mark upon which a nation is judged in terms of the treatment of her prisoners. On this note, the Executive Director of the United Nations Office on Drugs and Crime Prevention, Yury Fedotov while commenting on the Mandela Rules stated that: 'the world now has an updated blueprint offering practical guidance on how prisoners should be managed safely, securely and humanly'.[237] According to him, 'countries are encouraged to reflect the Mandela Rules in their national legislation so that prison administrators can apply them in their daily work.'[238] He acknowledged that the rules stress the overriding principle that all prisoners shall be treated with respect due to their inherent and value as human beings. The Rules represents one of the most significant human rights advances in the recent years.

[235] Rules 109 and 110, *ibid.*
[236] Rules 111, 112, 113,114, 115, 116, 117, 118, 119 and 120, *ibid.*
[237] Y Fedotov, 'Mandela Rules Passed Standard on the Treatment of Prisoners Enhanced for the 21st Century', <www.unodc.org> accessed on Sunday, 20th December, 2015.
[238] *Ibid.*

In the same vein, the Secretary-General of the United Nations, Ban Ki-Moon, noted that the Mandela Rules is 'a great step forward'.[239] The United Nations General Assembly President, Mogens Lykketoft while recalling the spirit of Nelson Mandela said that, 'no one truly knows a nation until one has been inside jail'[240] and 'a nation should not be judged by how it treats its highest citizens but its lowest citizens'.[241] Lykketoft argued that 'the crucial challenge to member states will be to translate these rules into a reality and to increase co-operation both within and outside the UN system to improve the lives of prisoners throughout the world'.[242]

It expected that Nigeria as a giant of Africa should take the lead by adopting the provisions of the Mandela Rules as part of her legal regime on prisons administrations. This can only be if a new legal regime will be introduced in prison administrations in Nigeria. We need to put smiles on the faces of the Nigerian prisoners.

4.1.4 United Nations Model Agreement on the Transfer of Foreign Prisoners and Recommendations on the Treatment of Foreign Prisoners, 1985

The idea of international transfer of prisoners was initiated at the Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Geneva in 1975.[243] The Congress recommended that, 'in order to facilitate the return to their domicile of persons serving sentences in foreign countries, policies and practices should be developed by utilising regional cooperation and starting bilateral agreements'.[244] Following this recommendation, some basic principles were drafted and presented for consideration by the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders

[239] Ban Ki-Moon, 'UN Launches Mandela Rules for Prisoners'<www.southafrica.info/mandela> accessed on Sunday, 20th December, 2015.
[240] M Lykketoft, 'UN Launches Mandela Rules for Prisoners', *ibid.*
[241] *Ibid.*
[242] *Ibid.*
[243] United Nations Office on Drugs and Crime 'The Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Geneva, 12th September 1975' < https://www.undoc.org/...congress//> accessed on Friday, 7th December, 2016.
[244] *Ibid.*

held at Caracas, Venezuela, from 25th August to 5th September 1980. This was in preparation for a draft of model guidelines for the transfer of foreign prisoners.[245] The purpose of the principles was to promote the social rehabilitation of persons convicted of crimes abroad by facilitating their return to their home country to serve their sentence.[246] Such transfers had to be based on the consent of both states and the sentenced person. Accordingly, the proposed scheme would be based on international cooperation founded on respect for national sovereignty and jurisdiction. On this note, the Sixth Congress on the Prevention of Crime and the Treatment of Offenders adopted resolution 13 on the transfer of prisoners. In this resolution, member states were urged:

> To consider the establishment of procedures whereby such transfers of offenders may be effected, recognising that any such procedure can only be undertaken with the consent of both the sending and the receiving countries and either with the consent of the prisoner or in his interest.[247]

The said resolution 13 also requested the Committee on Crime Prevention and Control to give priority to the development of a model agreement for the transfer of prisoners. At its seventh session, the Committee suggested that the question of foreign prisoners, the ways and means of meeting their specific needs, including transfer, should be dealt with during the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders. The said suggestion was endorsed by the Economic and Social Council.[248] At its eighth session, the Committee considered a draft model agreement on the transfer of foreign prisoners and recommendations on the treatment of foreign prisoners. On the recommendation of the Committee, the Economic and Social Council, resolved to transmit the draft resolution to

[245] *Ibid.*
[246] United Nations Office on Drugs and Crime, *Handbook on International Transfer of Sentenced Persons,* (New York: United Nations, 2012) p.69.
[247] *Ibid.*
[248] Resolution1982/29 of the Economic and Social Council, cited by United Nations Office on Drugs and Crime in the *Handbook on International Transfer of Sentenced Persons, ibid.*

which the draft model agreement and recommendations were annexed, to the UN Seventh Congress on the Prevention of Crime and the Treatment of Offenders.[249] In order to assist the Seventh Congress in its deliberations, the Secretariat of the Committee on Economic and Social Council prepared an explanatory note on the Model Agreement on the Transfer of Foreign Prisoners and recommendations for the treatment of foreign prisoners.[250] As a result, the UN Seventh Congress on the Prevention of Crime and the Treatment of Offenders did not waste time in adopting the Model Agreement, together with the recommendations on the treatment of foreign prisoners during its meeting of 26 August to 6 September, 1985. The Agreement was later endorsed by the United Nations General Assembly.[251] Since then, the United Nations has continued to encourage the international transfer of prisoners in the context of other international initiatives it has taken to prevent organised crime, drug trafficking, corruption and other international crimes such as genocide, crimes against

[249] Resolution 1984/153 of the Economic and Social Council, *Handbook on International Transfer of Sentenced Persons, ibid.*

[250] Similar provision is contained in Convention against Corruption and the Organised Crime, 1988, article 45. Article 17 of the said Convention specifically provides that, States Parties may consider entering into bilateral or multilateral agreements or arrangements on the transfer to their territory of persons sentenced to imprisonment or other forms of deprivation of liberty for offences covered by this Convention, in order that they may complete their sentences there.

[251] United Nations General Assembly Resolution 40/32 of 1985.

humanity and war crimes. [252]

The United Nations Model Agreement on the Transfer of Foreign Prisoners not only facilitates the fair treatment and social rehabilitation prisoners[253] but is also a tool of international cooperation.[254] The essence is to enable prisoners have access to visits from friends and families. Its intention is to facilitate bilateral and multilateral agreements on prisoners' transfer.[255]

The requirements of transfer include that the sentence of conviction must be final,[256] the prisoner to be transfer must have finished or about to finish serving his sentence,[257] the offence for which the prisoner was convicted of by the sentencing State must also be an

[252] The International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 and the International CriminalTribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1st January and 31st December 1994 were both established by the UN Security Council. Although the tribunals both have detention facilities, they do not have prisons in which sentences can be served in the long term. They both therefore rely on cooperating States that enter into bilateral enforcement agreements to implement the sentences in their national prison facilities. Similar transfer arrangements may be required to deal with prisoners sentenced by other international tribunals, such as the Special Court for Sierra Leone. In order to implement the sentences it will impose, the International Criminal Court will also be dependent on transferring the persons it sentences to serve their terms in national prisons. International prisoner transfers are also likely to become a key component of the UNODC Counter-Piracy Programme. Until there is a functioning and fair criminal justice system in Somalia, many suspected pirates, apprehended by either regional or foreign navies, are being tried in nearby countries, such as Kenya and Seychelles. Although extensive refurbishment, building and training is ongoing in both States to improve prison conditions for both the foreign nationals on trial for piracy and the local prison population, the ultimate goal is to transfer those convicted of piracy in Kenya and Seychelles to Somalia to serve their sentences of imprisonment in their home country. In order to do that, steps are being taken to ensure that treatment in Somali prisons is in accordance with international standards and that an adequate level of supervision is provided to ensure that prisoners are neither subject to human rights abuses nor able to secure undue advantage through the corruption of staff. To that end, UNODC is intending to renovate and construct new prisons in Puntland and Somaliland and to train custodial staff and prison management with the aim of facilitating the transfer of sentenced persons from Kenya and Seychelles to Somalia once prison conditions meet minimum international standards. An agreement to allow for the transfer of sentenced persons has been signed between Seychelles and Somalia. See R Mulgrew, 'On the Enforcement of Sentences Imposed by International Courts: Challenges faced by the Special Court for Sierra Leone, (2009) 7 No2 JICJ, pp. 373-396. See UNODC, 'Counter-Piracy Programme, Support to the Trial and Related Treatment of Piracy Suspects', issue five (February 2011), issue six (June 2011) and issue eight (February 2012). Convention against Corruption and the Organised Crime, 1988, articles 17 and 45 also permit international transfer of prisoners.

[253] United Nations Model Agreement on the Foreign Prisoners Transfer, Principle 1.

[254] United Nations Model Agreement on the Foreign Prisoners Transfer, Principle 2.

[255] Council of Europe adopted transfer agreement on foreign prisoners on 1st July, 1985, Inter-American Convention on Serving Criminal Sentences Abroad was adopted on 6th September, 1993, Some bilateral agreement involving foreign prisoners transfer are those between the United Kingdom and Hong Kong, China, Lao People's Democratic Republic, Morocco, Thailand and Viet Nam.

[256] Model Agreement on the Foreign Prisoners Transfer, Principle 10.

[257] Model Agreement on the Foreign Prisoners Transfer, Principle 11.

offence recognised by the law of the receiving State.[258] In *R v Secretary of State for the Home Department, Ex Parte Read*[259] the House of Lords held that the words 'similar offence' in article 10 of the European Convention refers that the two countries for the purpose of transfer must have similar provisions in their laws'.

Nigeria and the United Kingdom signed a Prisoners' Transfer Agreement[260] on 10th January, 2014.[261] Reacting to the development, Nigerians serving various prison terms in the United Kingdom described the signing of the said agreement as wickedness on the part of Nigerian government. According to the Tafida,[262] 'some Nigerians serving various jail terms in the UK kicked against the recently signed Prisoners' Transfer Agreement between Nigeria and British governments citing poor prison facilities and stigma.'[263] Amnesty International said it is 'extremely concerned' about sending back criminals from Britain to Nigeria where prison conditions have been described as 'hash and self-threatening'.[264] A London based human rights group's deputy Africa director, Aster Van Kregten argued that the Nigerian prison conditions such as overcrowding, poor sanitation, lack of food and medicines and denial of contact with friends and family fall short of the United Nations Standard Minimum Rules for the Treatment of Offenders. The condition is appalling and damaging to the physical and mental well being of inmates.[265]

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[258] Model Agreement on the Foreign Prisoners Transfer, Principle 3.
[259] [1988] 3 WLR 948
[260] The Agreement is yet to be domesticated by the National Assembly by virtue of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), section 12 (1).
[261] D Cameron, 'Nigeria Britain Cement Prisoners' Transfer Agreement, <www.news_eye.info/nigeria_britain_cementprisoners'transferagreement> accessed on Friday, 8th January, 2016.
[262] Dr Dalhatu Tafida was a Nigerian High Commissioner to UK.
[263] D Tafida, 'Nigerian Prisoners in UK Kick against Transfer Agreement', *Vanguard*, April, 4, 2014, p.1.
[264] Amnesty International, 'UK/Nigeria signed a Prisoner Transfer Agreement' <https://www.gov.uk.com/.../uk_nigeria_signedprisonerstransferagreement> accessed on Friday, 8th January, 2016.
[265] *Ibid.*

A situation whereby Nigerians prefer to serve their prison terms abroad instead of their father land is indeed unfortunate. Hence the need to protect the prisoners' rights through a review of Nigerian prison laws.

4.2 The Protection of Prisoners' Rights under the African Union

Frankly speaking, those incarcerated in African prisons face years of confinement in often cramped and dirty quarters, with insufficient food, inadequate hygiene, little or no clothing and lack of basic amenities. While these conditions are not uniform throughout the African continent, their prevalence in most countries raised concerns and the need to adequately address the issues *via* a proper legal frameworks has arisen. For this purpose, it is important to examine some of the African regional legal instruments on the protection of prisoners' rights.

4.2.1 African Charter on Human and Peoples' Rights (the Banjul Charter), 1981

African Charter on Human and Peoples' Rights (the Banjul Charter) was adopted in Nairobi on 27th June, 1981 and it came into force on 21st October, 1986.[266] Article 1 of the Charter provides that Member States shall recognise the rights, duties and freedoms enshrined in the Charter and shall undertake to adopt legislative or other measures to give effect to them.[267] Article 2 of the African Charter provides thus:

> Every individual shall be entitled to the enjoyment of the rights and freedoms recognised and guaranteed in the present charter without distinction of any kind such as race, ethnic group/colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or *other status*.[268]

[266]Office of the African Commission on Human and Peoples' Rights 'History of the African Charter' <www.ochpr.org/insteuments/achpr/history>accessed on Wednesday, 13th January, 2016.
[267] Nigeria has domesticated the African Charter by virtue of African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act Cap P10 Laws of the Federation of Nigeria, 2004.
[268] Emphasises added, other status in the context of article 2 above could mean status of being in prisoner.

Those rights that are to be enjoyed by every person without distinction according to article 2 of the African Charter include equity before the law[269], right to life[270], right to dignity of human person[271], right to be heard[272], freedom of thought and religion[273], freedom of expression[274] ,association[275], among others.

Article 26 of the African Charter provides that:

> State parties to the present Charter shall have the duty to guarantee the independence of the courts and shall allow the establishment and improvement of appropriate national institutions entrusted with the promotion and protection of the rights and freedoms guaranteed by the present Charter.

Article 30 of the Charter provides for the establishment of an African Commission on Human and Peoples' Rights (hereinafter called the Commission) for purpose of promoting human and peoples' rights and ensuring their protection in Africa. Article 45(1)(b) of the said Charter mandates the Commission to *inter alia* formulate and lay down, principles and rules aimed at solving legal problems relating to human and peoples' rights and fundamental freedoms upon which African Governments may base their legislations.

In pursuit of the above mandate and to ensure that rights of prisoners are protected, the Commission in 1995 adopted the Resolution on Prisons in Africa at its Ordinary Session held in Lome, Togo.[276] The Resolution states that the rights established and guaranteed under African Charter on Human and Peoples' Rights shall extend to all categories of persons

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[269] African Charter, Article 3.
[270] African Charter, Article 4; similar provision is the Constitution of the Federal Republic of Nigeria 199 9as amended), Section 33.
[271] African Charter, Article 5; similar provision is the Constitution of the Federal Republic of Nigeria 199 9as amended), Section 34.
[272] African Charter, Article 7; similar provision is the Constitution of the Federal Republic of Nigeria 199 9as amended), Section 36.
[273] African Charter, Article 8; similar provision is the Constitution of the Federal Republic of Nigeria 199 9as amended), Section 38.
[274]African Charter, Article 9.
[275] African Charter, Article 10.
[276] African Commission on Human and Peoples' Rights '17th Ordinary Session the of African Commission on Human and Peoples' Rights held from 13th to 22nd of March, 1995, Lome, Togo, Resolution 19' <www.achr.org/session/17th/.../19/> accessed on Wednesday, 13th January, 2016.

including the prisoners, detainees and other persons deprived of their liberty. The Resolution urges state parties to the African Charter on Human and Peoples' Rights to include in the reports submitted to the Commission under article 62 of the Charter information on human rights of prisoners. It noted that prison conditions in many African countries do not conform with the articles of the African Charter on Human and Peoples' Rights and to international norms. The conditions violate the standards for the protection of human rights of prisoners under ICCPR, the United Nations Standard Minimum Rules for the Treatment of Prisoners, among others. The Commission has also adopted the Kampala Declaration on Prison Conditions in Africa in 19996, the Kadoma Declaration on Community Service Orders in Africa 1997, the Arusha Declaration on Good Prison Practice 1999, the Ouagadougou Declaration and Plan of action on Accelerating Prison and Penal Reform in Africa 2002 and the Robben Island Guidelines 2002. All these instruments contain recommendations on how to reduce overcrowding in African prisons, how to promote rehabilitation and reintegration programmes in African prisons, how to make prison administrations more accountable for their actions and more self sufficient, how to encourage best practices in African prisons, how to promote the African Charter and support the development of a Charter on the Basic Rights of Prisoners in Africa. Some of these instruments will be examined. The Commission also established the office of a Special Rapporteur on Prisons and Conditions of Detention in Africa in its 20th Session held in October 1996 at Mauritius. This will also be examined.

4.2.2 Legal Instruments for the Protection of Prisoners' Rights in Africa

As noted earlier, the Commission has as a result of carrying out its mandate adopted some legal instruments for the protection of prisoners' rights in Africa. Some of these instruments shall be examined hereunder.

4.2.2.1 Kampala Declaration on Prison Conditions in Africa, 1996

The Kampala Declaration on Prison Conditions in Africa was adopted in Kampala, Uganda in 1996 by the African Commission on Human and Peoples' Rights. This Declaration was a product of the International Seminar on Prison Conditions in Africa held in Kampala, Uganda in 1996. The Declaration is annexed' to the United Nations Economics, Social and Cultural Rights Committee's Resolution 1997/36 on 'International Cooperation for the Improvement of Prison Conditions.'[277]

The Kampala Declaration noted that one of the greatest problems facing African Prisons is overcrowding. This has result in the inhuman treatment meted to persons deprived of their liberty in Africa. The situation culminated into lack of hygiene, insufficient or poor food, difficult in access to medical care, lack of physical activities, education as well as inability to maintain family tie in African prisons.[278]

The Kampala Declaration noted that although prisoners are deprived of their liberty, nevertheless, they are entitled to enjoy the right to human dignity and those other rights which are not expressly taken away from them. It also observed that African prisons do not take care of vulnerable groups such as juveniles, women, the old, the mentally and physically challenged persons.[279]

The Kampala Declaration noted that prisons in Africa are overcrowded and inadequately resourced. These conditions cause hardship on both the prisoners and staff. The cause of the overcrowding in African prisons according to the Declaration is because of high rate of the awaiting trial inmates. In African prisons, the number of the inmates awaiting trial is far greater than those serving terms. This is as a result of the procedures and policies

[277] UN Economics, Social and Cultural Rights Committee 'Resolution 1997/36' <www.un.Org/documents/ecosoc/res/1997/eres 1997-36.htm> accessed on Wednesday, 13th January, 2016.
[278] Preamble to the Kampala Declaration on Prison Conditions in Africa.
[279] *Ibid.*

adopted by the police, the prosecuting authorities, the judiciary and lawyers.[280] It is possible through change of tactics by the police, prosecuting authorities, the judiciary and lawyers to reduce this problem to a minimum. This can be done by collaborating with the prison administration in seeking solutions to reducing overcrowding in prisons.

According to the Kampala Declaration, the road to reducing overcrowding in African prisons can only be accessible only if alternative sentencing procedures are adopted. On this note, the Declaration advocated that petty offences such as vagrancy, loitering, prostitution, failure to pay debt, and disobedience to parents should be dealt with in accordance with customary practices. However, such customary practice must meet up with the requirement for respect to human rights and that those involved must agree to its application.[281]

In order to ensure that there is an improved condition of imprisonment in Africa, the Kampala Declaration recommends:

(i) that government should review penal policy to coincide with international and regional standards;

(ii) that NGOs and other concerned agencies should co-operate with government to ensure that penal review is a success;

(iii) that research into non-custodial sentencing options, including community service, should be undertaken and broadly disseminated to assist governments in determining and implementing penal policy;

(iv) that urgent and concrete measures should be adopted aimed at improving conditions for vulnerable groups in prisons and other places of detention;

(v) that human rights of prisoners should be safeguarded at all times and that non-governmental agencies should have a special role to play in this respect;

(vi) that prisoners should have living conditions which are compatible with human dignity;

[280]Paragraph 2 (1) (2)(3), *ibid*.
[281] Paragraph 3(1), *ibid.*

(vii) that prisoners should be given the opportunity to maintain and develop links with their families and outside world;

(viii) that prisoners should be given access to education and skill acquisition training in order to make it easier for them to be reintegrate into the society after their release; and

(ix) that the detrimental effects of imprisonment should be minimised so that prisoners do not lose their self-respect and sense of personal responsibility after release.[282] It appears from the responses to our questionnaires that vocational facilities are available in Nigerian prisons.

4.2.2.2 Kadoma Declaration on Community Service Orders in Africa, 1997

In another development, the African Commission on Human and Peoples' Rights adopted the Kadoma Declaration on Community Service Orders in Africa at the International Conference on Community Service Order held in Kadoma, Zimbabwe in 1997.[283] The Kadoma Declaration considers limited effectiveness of imprisonment especially for those serving short sentences and the cost of imprisonment to the whole world when compared with the growing interest of many countries in measures that can replace custodial measures. The Declaration agrees that the use of prison should be strictly limited as a measure of last resort. According to the Declaration, prisons represent a waste of scarce resources and human potential. As a result of the above, community service should be developed as a positive and cost-effective alternative that should be preferred to custodial measures. This community service model is in line with the African traditions of dealing with offenders. This will go along the way to healing the damage caused by crime within the community.[284]

4.2.2.3 Arusha Declaration on Good Prison Practice, 1999

In 1999, the African Commission on Human and Peoples' Rights adopted the Arusha

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[282] Paragraph 1, *ibid.*

[283] African Commission on Human and Peoples' Rights, 'Kadoma Declaration on Community Service Orders in Africa Kadoma Declaration on Community Service Orders in Africa' <www.penalreform.org/.../kadoma> accessed on Friday, 15th January, 2106.

[284] The Kadoma Declaration, Paragraphs 1, 2 and 3.

Declaration on Good Prison Practice at Arusha, Tanzania.[285] The Declaration agrees to promoting and implementing good prison practice in line with international standards as provided in African Charter on Human and Peoples' Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Standard Minimum Rules for the Treatment of Offenders, among others. It encourages the amendment of the national laws to meet up with the above standards.

4.2.2.4 Ouagadougou Declaration and Plan of action on Accelerating Prison and Penal Reform in Africa, 2002

In another development, the African Commission on Human and Peoples' Rights adopted Ouagadougou Declaration and Plan of action on Accelerating Prison and Penal Reform in Africa in 2002.[286] The Ouagadougou Declaration recommends the following measures as forming part of a plan action to implementing the Declaration:

(a) The reduction of overcrowding in prison by the use of alternative to penal prosecution. Accordingly, minor offences, offences involving young offenders and people with mental health or addiction problems should be handled through restorative justice as opposed to punishment. By this, the administration of criminal justice system is to adopt: the use of family group conferencing, victim offender mediation and sentencing circles. Nevertheless, in adopting the traditional justice system as a way of dealing with crime, the rights of the offenders, the victim of crime and the community are to be taken into account. The Declaration also urges the African states to improve referral mechanisms between the formal (state) justice system and the informal (non-state) justice system and as such decriminalise

[285] African Commission on Human and Peoples' Rights' 'Arusha Declaration on Good Prison Practice, 27th February, 1999', <www.penalreform.org/.../arusha>, accessed on Saturday, 16th January, 2016.

[286] African Commission on Human and Peoples' Rights, Ouagadougou Declaration and Plan of action on Accelerating Prison and Penal Reform in Africa <www.achpr.org/.../ouagadougou> accessed on Saturday, 16th January, 2016.

some of offences such as vagrancy, loitering, prostitution, failure to pay debts and disobedience to parents.[287]

The ways of achieving these recommendations are: by the co-operation between the police, the prison services and the courts to ensure that trials are speedily processed. The way to reducing long detention is through:

(i) regular meetings of caseload management committees including all criminal justice agents at the district, regional and national levels;

(ii) awarding costs against lawyers for unnecessary adjournments;

(iii) targeting cases of vulnerable groups.

The Declaration emphasises that detention of persons awaiting trial can only be used as a last resort and for the shortest time possible. On this note, African states are encouraged to:

(i) adopt caution and discharge as alternative to imprisonment in minor offences;

(ii) improved access to bail through widening police powers of bail and involving community representatives in the bail process;

(iii) restricting the time in police custody to 48 hours and setting time limit for trial of people on remand in prison custody;

(iv) ensuring good management of case files and regular review of the status of remand prisoners;

(v) involving greater use of paralegals in the criminal process to provide legal literacy, assistance and advice at a first aid level.[288]

The strategy for reducing the numbers of sentenced prisoners is by setting a target for reducing the prison population. This can be achieved through the use of proven effective alternatives to imprisonment such as community service, suspended sentence, probation and

[287] The Plan of Action to Ouagadougou Declaration.
[288] *Ibid*.

correctional supervision. This will pave the way for the imposition of sentences of imprisonment as a last resort only for the most serious offences and when no other sentence is appropriate. It is also important to consider prison capacity when taking decisions to imprison and the length and terms of imprisonment. In the same vein, there should be a review and monitoring of sentencing practice to ensure consistency. However, the powers of courts should be increased to review decisions to imprison, with a view to substituting community services in place of prison.[289]

(b)The Declaration also made recommendation on how to make African Prisons more self-sufficient through the adoption of measures such as: (i) the encouragement of prison agriculture, workshop and staff training; (ii) the development of appropriate technology to reduce costs (example: use of stoves) (iii) promoting transparent management of prisons (iv) encouraging training courses and study visits for staff on the best practices in prisons management (v) the involvement of staff and prisoners in agricultural production and prison industries through the establishment of management committees.[290]

(c) It was also recommended that rehabilitation and reintegration of prisoners should be promoted in the society through the development of programmes during the period of imprisonment or non-custodial sentence schemes. This can be done by ensuring that sentenced prisoners have access to the programmes. These programmes shall emphasise on literacy and skills training linked to employment opportunities. On this note, vocational training programmes should be certificated to national standards.[291]

(d) The Declaration also recommends that the rule of law should apply in prison administration. On this note, the prison authority and government should ensure that prisons are governed by prison rules that are publicised and made known to prisoners and staff. They should review prison legislation in line with national constitutional guarantees and

[289] *Ibid.*
[290] *Ibid*.
[291] *Ibid.*

international human rights laws. African states are to encourage independent prison inspection mechanism including the national media and civic society groups. They should also ensure that staff are trained in the application of the relevant laws and international principles and rules governing the management of prisons and the respect for prisoners' rights.[292]

(e) On the fifth plan of action, the Declaration recommends that government should encourage best practice in prisons. On this note, it is recommended that the provisions of the Kampala Declaration on Prison Conditions in Africa 1996 be publicised by African states in their respective domains. The publication of the above document will pave the way to encouraging: adequate staffing of prisons, adoption of alternative sentencing in minor offences and reintegration of prisoners in the society after discharge from prisons.[293]

Finally, the plan of Action advises that prison administrators should be made to account for their abuses of prisoners' rights.[294]

4.2.2.5 Robben Island Guidelines, South Africa, 2002

In the same 2002, the African Commission on Human and Peoples' Rights adopted the Robben Island Guidelines in South Africa as another instrument that ensures that measures are taken to prevent all forms of torture, cruel, inhuman or degrading treatment or punishment in African prisons.[295] Articles 33 to 37 of the Guidelines reminded states parties to the African Charter of their positive obligations to protect the physical and moral integrity of prisoners by improving on the conditions of imprisonment in their respective domains.

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[292] *Ibid.*
[293] *Ibid.*
[294] *Ibid.*
[295] The Robben Island Guidelines were formulated during a workshop jointly organised by the Association for the Prevention of Torture and African Commission on Human and Peoples' Rights from 12th to 14th February, 2002 on Robben Island, a South African Island where Nelson Mandela and other anti-apartheid activists were imprisoned for many years. The African Commission on Human and Peoples' Rights adopted the Robben Island Guidelines during its 32nd session in October 2002. In July 2003, the African Union Summit of Heads of State and Government endorsed the Robben Island Guidelines as a result of the adoption of the 16th report of the African Commission on Human and Peoples' Rights. 'Sixteenth Annual Activity Report of the ACHPR 2002-2003'<www.achpr.org/eng/activity_reports/activity16_en.pdf> accessed on Tuesday, 19th January, 2016.

According to the Guidelines, the measures to be adopted by African nations to ensure that prisoners' rights are protected include the implementation of international and regional standards for the treatment of prisoners. The only way to achieving this objective, is by taking appropriate steps to incorporating the Guidelines and the United Nations Standard Minimum Rules for the Treatment of Prisoners in their national legislations.[296] The Guidelines noted that overcrowding, under funding, failure to carter for the vulnerable groups in the prisons, among others are some of the challenges facing African prisons. On this note, the Guidelines recommends: improved physical conditions of prisons, the use of alternative sentencing to mitigate overcrowding, the judicial independence, increasing awareness and training of staff, and the separation of vulnerable groups such as women, children, mentally challenge persons from other classes of prisoners, among others.[297] The Guidelines also encourages the states parties, the NGOs and the media to distribute information concerning the provisions of the said Guidelines in African.[298]

In order to ensure that the provisions of the Robben Island Guidelines are implemented, the African Commission on Human and Peoples' Rights sets up a Follow-up Committee and encourages the Special Rapporteur on Prisons and Conditions of Detention in Africa to promote the application of the Guidelines in his missions.

4.2.3 The Special Rapporteur on Prisons and Conditions of Detention in Africa

The first all African Conference on Prison Conditions held in Kampala, Uganda in 1995 adopted a Resolution to extend the rights set forth in articles 5[299] and 6[300] of the African Charter to the detainees in Africa.[301] The Resolution also recommended for the appointment

[296] Robben Island Guidelines, Article 33.
[297] Robben Island Guidelines, Articles 34, 35, 36, 37, 38, 42and 45.
[298] Robben Island Guidelines, Articles 47 and 48.
[299] African Charter, Article 5 provides for the right to the respect of the dignity inherent in human being.
[300] African Charter, Article 6 provides for the right to liberty and to security of person.
[301]The African Commission on Human and Peoples' Rights, 'Resolution on Prisons in Africa, 1995', <www.achr.up.ac.za/hr_docs/african/docs/achpr/achpr26.doc> accessed on Wednesday, 20th January, 2016.

of a Special Rapporteur on Prisons and Conditions of Detention in Africa.[302] Based on the above recommendation, the Africa Commission on Human Rights in its 19th Ordinary Session agreed to create the office of the Special Rapporteur on Prisons and Conditions of Detention in Africa. However, the said office was later created during the 20th Ordinary Session of the Commission in Kampala, 1996.[303]

The mandate of Special Rapporteur on Prisons is to examine the situation of persons deprived of their liberty within the territories of states parties to the Africa Charter. The mandate extends to other detention centres such as reform centres and police cells. It covers detainees awaiting trial and convicts.[304]

The role of the Special Rapporteur on Prisons includes among others to inspect and report on prison conditions in order to protect the rights of those held therein. The Special Rapporteur on prisons researches on Prisons conditions, communicates with African governments regarding the state of their penal systems, entertains individual complaints about prison conditions, and reports to the Commission on a yearly basis.[305] The Special Rapporteur on Prisons also proposes solutions to the challenges facing African prisons. The Special Rapporteur on Prisons also trains law enforcement personnel, police, prison guards and administrators, and lawyers on how to improve prison conditions in their respective domains. In addition, the Special Rapporteur on Prisons also examines prison facilities, analyses national and penal legislations to ensure their compliance with international and regional legal instruments.[306]

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[302] *Ibid*.
[303] MSK Kaggwa, 'Report of the Special Rapporteur on Prisons and Conditions of Detention in Africa', presented at the 52nd Ordinary Session of the African Commission on Human and Peoples' Rights, held from 9th to 22nd October, 2012 at Yamoussoukro, Cote d 'Ivoire, <www.achpr.org> accessed on Wednesday, 20th January, 2016.
[304] MSK Kaggwa, 'Report of the Special Rapporteur on Prisons and Conditions of Detention in Africa', *ibid*.
[305] *Ibid*., p.6.
[306] *Ibid*.

The Special Rapporteur on Prisons carries out his work by visiting countries, inspecting their prisons, and reporting on conditions found therein. Sometimes, he also conducts follow-up visits. On this note, the Special Rapporteur on Prisons in Africa has visited the following African countries; Ethiopia, Benin, Zimbabwe, Mali, Mozambique, Madagascar, Gambia, Central African Republic, Malawi, Nigeria, Namibia, Uganda, Cameroon, South Africa, Democratic Republic of Congo, Botswana, Chad, Djibouti, Senegal, Sudan, Seychelles, Rwanda, Burundi, Tanzania, Ghana, Swaziland, Lesotho, Liberia, Tunisia, Mauritius, Burkina Faso, guinea Bissau, sierra Leone, among others.[307] In each of the country visited, the Special Rapporteur on Prisons first meets with government authorities and holds a press conference prior to visiting various prisons, police holding cells, and reform schools. At each site, he meets with administrators, tours the grounds, and meets with inmates both in and beyond the presence of prison officials.[308] Once the Special Rapporteur has concluded his visits, he again meets with government officials to make recommendations on pressing demands of their prisons. After his visit, the Special Rapporteur drafts a report to which the government may respond. A final draft of the report, accompanied with the government response is then prepared and made public.[309]

Even though reports of Special Rapporteur have varied from country to country, the Special Rapporteurs reports have overwhelmingly called for additional resources to be allocated to prisons in Africa. In addition, the Special Rapporteur has often called for improved training of prison officials in the area of human rights. Lastly, the Special Rapporteur on Prisons reports often highlight the need for improved intra-prisoner relations as a means of prisoners' rights protection.[310]

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[307] *Ibid*.,p.7.
[308] *Ibid.*
[309] F Viljoen, 'The Special Rapporteur on Prisons and Conditions of Detention in Africa: Achievements and Possibilities', (2005) 27 HRQJ, p.125.
[310] *Ibid*

According to MSK Kaggwa, in about twenty years of the creation of the office of the Special Rapporteur on Prisons in Africa, the Special Rapporteur on Prisons continues to receive disturbing revelations through investigations into prisons of some African countries.[311] Investigation in some prisons in Africa countries revealed that some African countries are still confronted with criminal justice systems that are the legacy of the colonial era. This is coupled with retributive philosophy as the justification for imprisonment in some African countries. [312] The above aim is at variance with rights-based approaches emphasising rehabilitation and reform.[313]

According to the Report of the Special Rapporteur on Prisons and Conditions of Detention in Africa in 2012, despite the substantial increase in populations and crime rates in recent decades, the capacity of prison systems in Africa has barely changed.[314] The Report noted that whilst governments claim reform and rehabilitation as the aim of criminal justice, in practice, prison systems fail to deliver as expected and recent reports have shown that prison systems in most Africa countries are in crisis, burdened with overcrowding and inability to satisfy basic human rights standards.[315] Yet, some states in Africa have ratified some regional and international protocols and conventions on the protection of human rights.[316] This flows from the inability of some African countries to domesticate into their national legislations the provisions of the relevant regional and international legal instruments that they ratified.[317]

Despite numerous efforts of the African Commission on Human and Peoples' Rights aimed at the protection and promotion of prisoners' rights in Africa, the Commission is faced

[311]MSK Kaggwa is a Commissioner with the African Commission on Human and Peoples' Rights. He is a Special Rapporteur on Prisons and Conditions of Detention in Africa.
[312]*Ibid*.
[313] *Ibid*.
[314] *Ibid*.
[315] *Ibid*.
[316] *Ibid*.
[317] The Constitution of the Federal Republic of Nigeria 1999 (as amended) provides that no treaty entered into by the government of Nigeria shall have the force of law until it is legislated upon by the National Assembly, Section 12(1).

with a lot of challenges. For instance, NJ Udombana stated that the African Commission on Human and Peoples' Rights is a toothless bulldog.[318] He argued that the Commission cannot award damages to the victim of human rights abuses, it cannot order for restitution or reparations. It cannot condemn an offending state. It can only perform postmortem examination by making recommendations.[319] To buttress his argument, Udombana cited two instances where the recommendations of the Commission were ignored by state parties to the African Charter:

(1) On 31st October, 1995, Ken Saro-Wiwa, Nigerian environmental rights advocate and a leader of the Movement for the Survival of the Ogoni Peoples (MOSOP) and eight of his Kinsmen[320] were sentenced to death by a Special Tribunal for Civil Disturbances.[321] The African Commission was immediately alerted by the Constitutional Rights Project (CRP), a Non-governmental Organisation in the field of human rights in Nigeria. The CRP later submitted an emergency supplement to its earlier complaint alleging that the Nigerian government had violated the African Charter specifically article 7 which guarantees the right to fair trial. The CRP then filed an application for a stay of execution before the Federal High Court sitting in Lagos.[322] In response, the Secretariat of the African Commission immediately faxed a note *verbale* to the Nigerian government and OAU (now AU) invoking emergency provisional measures and asked that the execution be delayed until the Commission had considered the pending case and discussed it with Nigerian authorities. Flagrantly disregarding the Commission's jurisdiction, Sani Abacha led government confirmed the

[318] NJ Udombana, *Human Rights and Contemporary Issues in African* (Lagos: Malthouse Press Ltd, 2003) p.129.
[319] *Ibid.*
[320] MOSOP represents the rights of those who live in oil producing areas of Ogoni land. Saro-Wiwa's Kinsmen were Saturday Dobee, Felix Nuate, Nordu Eawo, Paul Levura, Daniel Gbokoo, Barinem Kiobel, John Kpunien and Baribor Bera.
[321] Special Tribunal for Civil Disturbances established by virtue of Decree No 2 of 1987.
[322] See Suit No: FHC/L/SC/1297 (Nig) (unreported) Federal High Court sitting in Lagos.

sentence on 7th November, 1995 and the execution was carried as scheduled. What an unfortunate story?

(2) Another instance is the case of twenty-two persons charged and convicted for the alleged involvement in 1994 genocide in Rwanda. The Rwandese authorities had announced that the twenty-two persons charged and convicted for the act of genocide would be executed on 24th April, 1998. The Amnesty International quickly informed the Commission of the planned execution by the Rwandese authorities. According to the Amnesty International complaint, the twenty-two persons so convicted were not given fair trial in line with international legal standard. Based on that, their execution would violate articles 4 and 7 of the African Charter, which guarantees the right to life and fair trial respectively. The Commission immediately sent a letter to the Rwandese authorities and reminded the Rwandese government of its undertaking under the African Charter and appealed to them to suspend the execution pending the Commission's consideration on the matter. The Rwandese government disregarded the Commission's appeal and went on to carry out the execution as scheduled.[323]

In order to cure the above defect, the African Union established the African Court on Human and Peoples' Rights in 2004.[324] The aim of establishing the Court is to complement and reinforces the functions of the African Commission on Human and Peoples' Rights. On this note, the Court is empowered to take binding decisions. According to the article 5 and rule 33 of the Protocol to the African Charter, the Court may receive complaints and/or applications submitted to it by any of the following groups or individuals:

(i) African Commission on Human and Peoples' Rights; or

(ii) State parties to the Protocol; or

(iii) African Inter-governmental Organisations; or

[323] NJ Udombana, *Human Rights and Contemporary Issues in African, op cit*., p.131.

[324] The Protocol to establish African Court was adopted in 1998 at Burkina Faso by the African Union and it came to force on 25th January, 2004 <www.ihrda,org/.../african_court_on_human_rights> accessed on Thursday, 21st January, 2016.

(iv) Non-governmental Organisations with observer status before the African Commission on Human and Peoples' Rights; or

(v) Individuals from states which have made a Declaration accepting the jurisdiction of the Court under article 34(6) of the Protocol.

Nigeria has not made a Declaration to accept the jurisdiction of the African Court on Human and Peoples' Rights as required by article 34(6) of the Protocol to the African Charter.[325] The implication is that cases cannot be brought against Nigeria directly by individuals or NGOs. A case can only be brought against Nigeria in the African Court by other African states since Nigeria has ratified the Protocol to the African Charter. According to Justice Eric Ikhilae[326], 'right now, direct access to the court is only limited to the people bringing matter against states who have made the declaration'.[327] However, individuals are encouraged to sue at the ECOWAS Court since Nigeria has consented to the jurisdiction of ECOWAS Court.[328]

What emerges from the discussion on the above subheads is that there are a lot of international legal instruments asserting pressure in favour of the protection of prisoners' rights. These instruments cannot come to the aid of the Nigerian prisoners unless Nigeria reflects them in her national laws. As long as Nigeria remains adamant on the reflection of these international instruments in her national laws Nigerian prisons will remain centres for human rights abuse. The United Nations General Assembly President, Mogens Lykketoft

[325]'Falana Sues AU over Denial of Access to African Human Rights Court', <www.saharareporters.com/.../falana-sues-au-over-denial-of-access-court,> accessed on Thursday, 21st January, 2016.
[326] Justice Eric Ikhilae was a Nigerian Judge to the African Court on Human and Peoples' Rights.
[327] E IKhilae,' Why Nigerians Can't Access African Court' *The Nation*, <www.thenationonlineng.net/why_nigerians_can't_access_african_court> accessed on Thursday, 21st January, 2016.
[328]*Sambo Dasuki v. The Federal Republic of Nigeria* ECW/CCJ/APP/01/2016, 'Sambo Dasuki drags Nigeria to ECOWAS Court for alleged unlawful detention, the Punch'< www.punchng.com/weve-jurisdiction-to-hear-dasukisuit> accessed on Monday, 12th April, 2016.

argued that, 'no one truly knows a nation until one has been inside jail'[329] and 'a nation should not be judged by how it treats its highest citizens but its lowest citizens'.[330] This is a message to Nigeria. Nigeria needs to act now before it will be blacklisted as one of the nations that have no regard for prisoners' rights.

4.3 The Rights of Prisoners under the Nigerian Laws

It is beyond argument that the inroad which incarceration necessarily makes upon prisoners' rights is very considerable. They no long have freedom of movement. They do not have choice regarding the place of their imprisonment. Their contacts with the outside world are regulated. They must submit to the discipline of prison life and to the rules and regulations which prescribed how they must conduct themselves and how they are to be treated while in prison. In fact, people who are in prison custody belong to special class of citizens who their fundamental rights to self-determination of personal liberty, privacy, freedom of expression, right to peaceful assembly and association, freedom of movement, among others are regulated by the laws governing the prisons. Upon incarceration, the first set of rights a prisoner loses is the right to freedom of movement and association. Despite the above, there are still other rights which prisoners are entitled to and if denied, then legal redress may be sought.

According to the United States Supreme Court in the case of *Wolff v McDonell*:[331]

> Though prisoner's rights may be diminished by the needs and exigencies of the institutional environment, a prisoner is not wholly stripped of constitutional protections when he is imprisoned for crime. There is no iron curtain drawn between the Constitution and the prisons of this country.

In the Nigeria, the Court of Appeal Lagos Division held in *Nemi v AG Lagos &*

[329] M Lykketoft, 'UN Launches Mandela Rules for Prisoners' <www.southafrica.info/mandela> accessed on Sunday, 20th December, 2015.
[330] *Ibid.*
[331] 481 US 539 [1974].

Anor[332] that prisoners still have their rights intact, except those rights deprived of them by law as a result of imprisonment. This research acknowledges that prisoners are entitled to right to life[333], right to dignity of human person[334], right to fair hearing[335], freedom of thought, conscience and religion[336], freedom from discrimination[337] ,right to vote in general elections[338], among others. However the research is limited to exclusive rights of prisoners the Constitution of the Federal Republic of Nigeria 1999 (as amended) and the rights of prisoners under the Nigerian prison laws.

4.3.1 Special Rights of Prisoners under the Constitution of the Federal Republic of Nigeria 1999 (as amended)

Under this subhead, the research is restricted to examining some special rights of prisoners under the Constitution of the Federal Republic of Nigeria 1999 (as amended). These rights include: right of appeal; right to be admitted to bail and right to apply for prerogative of mercy. References shall be made to the general human rights where necessary.

4.3.1.1 Right to be admitted to Bail

Unarguably, the first fundamental human right that prisoners loose upon confinement is the right to liberty of his person.[339] Where a person arrested by the police is not charge within the reasonable time as stipulated in section 35(4) of the Constitution of the Federal Republic of Nigeria 1999 (as amended), he may be admitted to bail pending his arraignment and trial. This constitutional provision was replicated by the Court of Appeal, Kaduna Division in *Danfulani v. E.F.C.C.*[340] wherein the court held that:

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[332] [1996] 6 NWLR (Pt. 452) p.42.
[333] Constitution of the Federal Republic of Nigeria 1999 (as amended), Section 33; *Bello v. Attorney General of Oyo State* [1986] 5 NWLR (Pt.45) pp826-828.
[334] the Constitution of the Federal Republic of Nigeria 1999 (as amended), Section 34.
[335] Constitution of the Federal Republic of Nigeria 1999 (as amended), Section 36.
[336] Constitution of the Federal Republic of Nigeria 1999 (as amended), Section 38.
[337]Constitution of the Federal Republic of Nigeria 1999 (as amended), Section 42.
[338]*Victor Emenuwe & 4 Ors v INEC & Anor* Unreported suit number FHC/B/CS/12/14 delivered on Tuesday, 16th December, 2014.
[339] The Constitution of the Federal Republic 1999 (as amended), Section 35 (1) (a) – (f).
[340] [2016] 1 NWLR (Pt. 1493) 223 at 231 ratios 10 and 11.

By the provision of section 35(4) (a) & (b) of the 1999 Constitution, any person who is arrested or detained in accordance with subsection (1) (c) of the section shall be brought before a court of law within a reasonable time, and if he is not tried within a period of-

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

(b) three months from the date of his arrest or detention in the case of a person who has been released on bail,

He shall (without prejudice to any further proceedings that may be brought against him) be released either unconditionally or upon such conditions as are reasonably necessary to ensure that he appears for trial at a letter date

Bail is a process by which a person arrested, detained and/or prosecuted in connection with a crime may be released on security being taken for his appearance on the day and place as may be determined by the person or authority affecting the release. Bail may be granted to the suspect before his arraignment, after his arraignment or after conviction as the case may be. Where the offence for which an accused person is standing trial is bailable and the accused person is arraigned before a competent court, bail is always granted him as of right. Even where the accused person is arraigned before a court that does not have jurisdiction to try him, the court may apart from making an order for his remand remind him of his right to apply to a higher court for his bail.

In capital offences, bail is not readily allowed. In *Chinemelu v. COP*[341] the Court of Appeal Enugu Division held that, 'it is true that bail pending trial is not normally granted *ex-debito justitiae* where the offence is a capital offence. However special circumstance may

[341] [1995] 4 NWLR (Pt. 390) 467 at 472 ratio 8; *Anaekwe v. COP* [1996] 3NWLR (Pt. 436) 320, the Court of Appeal Enugu Division held that 'although the Constitution generally provided for the right to bail, the pre-trial freedom is restricted particularly in capital offence'. An accused person who wants the court to admit him to bail in a capital offence has the duty to make an application with a supporting affidavit stating special circumstances why he should be admitted to bail.

exist to warrant the grant of bail pending trial in capital offence'. In *Ani v. the State,*[342] the appellant was charged for murder of his wife. In the affidavit in support of his application for bail, he deposed that he was suffering from diabetes mellitus and other serious sicknesses as evidenced by his medical report attached to his affidavit. The High Court refused his application holding that he did not disclose special circumstance. On appeal, the Court of Appeal in allowing the appeal held that: 'Since it is only the living that can praise God, so it is only the living that can be tried, convicted and punished for an offence no matter how heinous the offence may be'. Based on the medical report attached to the appellant's affidavit in support of his application, the Court of Appeal admitted him to bail pending the outcome of his trial. It must be noted that mere allegation of ill-health without more will not be sufficient ground to admitting an accused person charged with a capital offence to bail. In *Chinemelu v. COP*[343]the appellant and nine others were arraigned on 2nd December 1994 for conspiracy and murder of Anthony Mbanusi alias Tony Curtis and David Onyeka separately before the Chief Magistrate Court, Onitsha. Their separate applications for bail were refused by a High Court of Justice, Onitsha. On appeal, part of the applicant reason for praying the Court of Appeal to admit him to bail was that he was sick. The Court of Appeal held that 'the mere fact that an applicant for bail is sick, and without more will not qualify him for bail'. However, in *Fawehinmi v. State*[344] the applicant was convicted of contempt and sentenced to 12 months imprisonment by a High Court Judge. On application for bail after conviction and sentence, the applicant deposed that he was a hypertensive patient who sees a specialist cardiologist every other day for medical examination and there are prescribed drugs which he has to use upon the regular advise of the cardiologist for the purpose of dosage control and that the medical equipment being used for his check-up are not normally moveable. The Court of Appeal held that bail is not normally granted to an applicant who has been convicted

[342] [2001] FWLR (Pt 81), p.1715.
[343] *Supra*.
[344] [1990] 1 NWLR (Pt. 127) 486.

and sentenced except in very exceptional circumstance. And that the fact that the medical equipment being used for his check-up are not normally moveable is a special circumstance warranting the court to admit applicant to bail.

Delay or failure to prepare the proof of evidence or file information against the accused in a competent court within a reasonable time by the prosecution will constitute special circumstance to warrant the court to admit a person charged with capital offence to bail. In *Anaekwe v. COP*[345]the appellant and nine others were charged for conspiracy and murder before the Chief Magistrate Court, Onitsha on the 2nd day of December 1994. The learned Chief Magistrate ordered that the appellant together with the other nine accused persons be remanded in prison custody. The application for bail of the appellant was refused by the High Court of Justice, Onitsha on the ground that the offence alleged committed by the appellant was murder. The appellant appealed to the Court of Appeal. The Court held that:

> Where the prosecution merely parades to the court the word 'murder' without tying it with the offence, a court of law is bound to grant bail. And the only way to intimidate the court not to grant bail is to prefer information and proof of evidence to show that there is *prima facie* evidence of commission of the offence. Thus although bail is normally not granted to a person accused of murder, a situation where there is no material before the trial court to show that the appellant is facing a charge of murder, including proof of evidence, certainly qualifies as a special circumstance in which the court can grant bail.

According to the said Court of Appeal,

> To allow the respondent to continue the detention of the appellant as it were, in perpetuity in this circumstance would unreasonably deprive a citizen of his right of liberty and unwillingly sow the seed of improper use, or abuse of

[345] *Supra*.

> power by the police or the executive to the chagrin of a citizen whose innocence in relation to certain sordid acts of murder is yet to be disproved.[346]

A prosecutor cannot oppose bail merely as a routine procedure and it is not the function of the prosecutor to rush a charge to a Magistrate Court that does not have the jurisdiction to try the offence in order to play for a time while the investigation last.[347] In the same vein, bail is not to be withheld merely as punishment to the accused person.[348] The mere averment by the prosecution that an accused will not appear to stand his trial in the absence of any concrete evidence to support the allegation should not warrant the court to refuse bail.[349]

On what happens in a situation whereby there is a delay in the trial of a detained prisoner's case? It is submitted that the proviso to section 35 (1) of the Constitution of the Federal Republic of Nigeria (as amended) says that: '… a person who is charged with an offence and who has been detained in lawful custody awaiting trial shall not continue to be kept in such detention for a period longer than the maximum period of imprisonment prescribed for the offence'. On this note, long delay in the trial of a prisoner is enough ground for him to apply to court to admit him to bail. In *Theophilous v. FRN*,[350] Ikyegh JCA of the Court of Appeal Lagos Division held that:

> The length of sentence *vis-a- vis* the period of incarceration pending trial also appear to me to be one of the relevant factors for the consideration of a bail application. If the whole sentence would be exhausted or spent during the trial of the appellant who had not been released on bail and it turned out that the appellant is absolved of the crime(s) by the court below, the pain and unsavoury result would be that the appellant served a sentence he had not deserved or required to serve.

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[346] *Anaekwe v. COP, supra, chinemelu v. COP, supra. Enwere v. COP [1993]* 6 NWLR (Pt. 299) 333.
[347] *Supra*.
[348] *Dogo v. COP* [1980] 1 NCR 771.
[349] *Theophilous v. FRN* [2016] 2 WRN 92 at 95 ratio 1
[350] *Supra*.

The burden of proof is always on the applicant to show why he should be admitted to bail by the court. Normally, what is required of the applicant is to challenge his detention in custody and show that in the period for which he was incarcerated the prosecution had had ample time to collate and put forward evidence relied upon to justify the allegation against the accused. In *Abiola v. FRN*[351] Abdullahi JCA (as he then was) held that, 'it is when the applicant has placed some material for the consideration of the court that the onus will move to the door steps of the prosecution to show cause why the bail should not be granted'.

The decision to grant or refuse bail is at the discretion of the court. However, the said discretion must be exercised judiciously and judicially.[352] The court must therefore exercise discretion based on the evidence placed before him.

In Nigeria, cases emanating from remand proceedings have been the major factor that has contributed to the surging increase in the prison populations. The concept of remand proceeding may be described as the process of sending the accused person to prison for the purpose of giving the police or the prosecution the opportunity to take further action in his case. Remand proceeding is often used interchangeably with holding charge. Holding charge may be described as a judicial cover or blanket issued in favour of the police to protect it from violating the rights of the suspect particularly if the police are unable to conclude investigation and prosecute a suspect within time. It could be also seen as a means of abusing the rights of a suspect who refuses to pay bribes to the police.[353] In *Onagoruwa v The State*[354], Niki Tobi JSC (as he then was) held that:

> In good number of cases the police in this country rush to the court on what is generally referred to as a 'holding charge' ever before they conduct investigation, where investigation does not successes in assembling the

[351] [1995] 1 NWLR (Pt. 370) 155 at 179.
[352] *Anaekwe v. COP, supra, Chinemelu v. COP, supra. Enwere v. COP [1993]* 6 NWLR (Pt. 299) 333.
[353] E Ojukwu *et al, Handbook on Prison Pre-Trial Detainee Law Clinic* (Abuja: Network of University Legal Aid Institutions, 2012) p.54.
[354] [1993] 7 NWLR (Pt. 303), 49 at 107.

> relevant evidence to prosecute the accused to secure conviction, the best discretion is to abandon the matter and throw in the towel.

The different between remand proceeding and holding charge is that in remand proceeding, the prosecutor is required to make an *ex parte* application which shall be accompanied with verifying affidavit disclosing the reasons for request for the remand. While in holding charge, the prosecution only takes the suspect with a charge sheet to the magistrate for the purpose of securing an order to commit the suspect to prison custody. Whichever way the pendulum swings, our contention is that since a pre-trial prisoner is presumed innocent until proved guilty, he ought to be granted bail as soon as possible if his tried cannot commence immediately. This will go along the way to avoiding a situation whereby an awaiting trial inmate remains in prison custody for many years only to be discharged at the end of the day may be through jail delivery.

According to Justice Idoko, in *Onuobekpa v. COP:*[355]

> As it appears that the spirit behind the provision of section 32(4)[356] of the 1979 Constitution is to keep an accused person out of incarceration until found guilty through the process of a court trial. It is a constitutional privilege, which is entitled to under the constitution.

It is submitted that since the accused person is presumed innocent in Nigeria until proved guilty, the liberalisation of bail conditions in Nigeria will help in decongesting our prisons. We say so because most of our courts are in the habit of giving stringent bail conditions that most times become difficult for an accused person to meet with. For example, it was discovered that in Abakaliki Federal Prison Ebonyi state there was a woman with two children remanded in the said prison for alleged stealing Cocoa Yam worth ₦400. The reason for her remand was that the magistrate granted her bail with two sureties who must be

[355] [1987] 2 NCLR 422.
[356] Similar provision is in of the1999 Constitution, section 35 (4).

officials of Government at level sixteen.[357] One would imagine how a woman who had to steal Cocoa Yam worth ₦400 can secure two sureties of level sixteen to take her on bail.

4.3.1.2 Right to Apply for Prerogative of Mercy

According to Wade and Philips, prerogative of mercy is the only way of reviewing judicially the judgment of a criminal court of final jurisdiction as a veritable method of rectifying any injustice through the grant of pardon.[358] For this purpose, Section 175(1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) provides that:

> The president may –
>
> (a) grant any person concerned with or convicted of any offence created by an Act of the National Assembly a pardon, either free or subject to lawful conditions;
>
> (b) grant to any person a respite, either for an indefinite or for a specified period, of the execution of any punishment imposed on that person for such an offence;
>
> (c) substitute a less severe form of punishment for any punishment on that person for such an offence; or
>
> (d) remit the whole or any part of any punishment imposed on that person for such an offence or of any penalty or forfeiture otherwise due to the State on account of such an offence.[359]

The above constitutional provision is for the benefit of both pre-trial and convicted prisoners. By extension, the President may even grant any person concerned with any offence pardon

[357] O Agwu, 'NHRC decries Conditions of Abakaliki Prisons', *Ebonyi Patriot*, November 14, 2016, pp. 1 and 3.
[358] Wade and Philips, *Constitutional Law* (6th edn, London: sweet & Maxwell, 1978) p.303.
[359] Similar provision as it concerns the power of the Governor of a State on prerogative of Mercy is in the Constitution of the Federal Republic of Nigeria 1999 (as amended), Section 212. In the exercise of this power, Governor David Nweze Umahi of Ebonyi state had on the 1st October, 2016 during his 56th Independence Anniversary of Nigeria granted 32 inmates unconditional pardon and commuted death sentences of 14 others to life imprisonment. The *Premium Times*, < www.premiumtimes.com> accessed on Monday 3rd October, 2016.

before his arraignment in court or during his trial.[360]

The implication of the above is that a pre-trial prisoner must not wait until he is convicted and probably sentenced before he exercises his right to apply for prerogative of mercy. Therefore, a prisoner has a choice to apply for mercy either before trial, during trial or after trial. For the convicts, section 409 of the Administration of Criminal Justice Act, 2015, specifically provides that:

(1) (b) Where a convict desires to have his case considered by the Committee on Prerogative of Mercy, he shall forward his request through his legal practitioner or officer in charge of the Prison in which he is confined to the Committee on Prerogative of Mercy.

(2) The Committee on Prerogative of Mercy shall consider the request and make report to the Council of State which shall advice the President.

Based on the advice of the Council of State, the President shall have the power to decide whether or not to recommend that the sentence should be commuted to imprisonment for life, or that the sentence be commuted to any specific period, or that the convict be pardoned.[361]

A convicted person may apply in person or through someone on his behalf or the prison authorities may forward his report for the purpose of periodical review to the President or Governor of a State for clemency. An application of this nature is routed through the office of the Attorney-General and must be accompanied with the following information: the court that convicted the applicant, the suit number, whether an appeal is pending and if so the particulars of the appeal,[362] the prison where the applicant is kept, the testimonial from

[360] The Constitution of the Federal Republic of Nigeria 1999 (as amended), Section 175 (1) (a).
[361] The Administration of Criminal Justice Act,205, Section 410(1).
[362] If an appeal is pending, the applicant will be informed that his application would be considered on the determination of the appeal.

reputable person supporting the application and if convicted of murder, the particulars of the applicant's local government.[363]

In practice, favouritism, political interest and bribery play a lot of roles in this kind of application. The question then is how can a poor man exercise this right? Who attests to poor prisoners? Can this right be exercise in Nigeria without money exchanging hands? We are just thinking aloud. From the answers to the questionnaires we administered at the three prisons of Abakaliki, Enugu and Abuja, the prisoners in Nigeria are aware that they are entitled to apply for prerogative of mercy.

4.3.1.3 Right of Appeal

In *FRN v. Dairo*[364] the court held that by virtue of section 241(1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) an appeal shall lie from decisions of the Federal High Court or a High Court to the Court of Appeal as of right in the following cases:

(a) final decisions in any civil or criminal proceedings before the Federal High Court or a High Court sitting at first instance;

(b) where the ground of appeal involves question of law alone from decisions in any civil or criminal proceedings;

(c) decisions in any civil or criminal proceedings on questions as to the interpretation or application of this Constitution;

(d) decisions in any civil or criminal proceedings on questions as to whether any of the provisions of Chapter IV of this Constitution has been, is being or is likely to be, contravened in relation to any person;

(e) decisions in any criminal proceedings in which the Federal High Court or a High Court has imposed a sentence of death.

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[363] A Olatunbosun, 'Death-Row Phenomenon: Between Wages of Crime and Burden of State Obligations', AI Abikan *et al* ed, *Nigeria Judiciary: Contemporary Issues in Administration of Justice, Easy in Honour of Hon. Justice Isa Ayo Salami* (Ilorin: Unilorin Press, 2013) p.234.

[364] [2015] 6 NWLR (Pt. 1454) 141 at 150; *Dada v. Sikuade* [2014] 17 NWLR (Pt. 1435) 72 at 88 ratio 17.

In other instances, appeal lies with the leave of either the Federal High Court or a High Court of a State to Court of Appeal by virtue of section 242 of the Constitution, *Baa v. Adamawa Emirate Council*.[365]

The Supreme Court has appellate jurisdiction in all the above stated instances from the decisions of the Court of Appeal by virtue of the section 33 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

The right of appeal open to prisoners is fundamental and must be honoured in all its ramifications. A prisoner cannot be blamed for taking part in the judicial process of appeal even if the exercise of this right constitutes a delay in the process of executing a sentence. In *Nemi v Attorney-General of Lagos State,* the Supreme Court held that a convict prisoner is entitled under the Constitution to appeal against his sentence up to the Supreme Court and the authority cannot be blamed for allowing him to exercise his constitutional rights through the judicial exercise of this right.[366] In *Bello v. The Attorney- General of Oyo State*[367], the Supreme Court stated that the premature execution of the deceased while his appeal was pending was an infringement of his Constitutional right to life and right to prosecute his appeal.

In practice, courts normally inform the prisoners of their right to appeal against their conviction and sentence once the judgment is delivered. In prison, forms are given to the convict to state whether he wishes to appeal or not.

It is submitted that the barrier to the exercise of the right of appeal in Nigeria is often the cost of prosecuting appeals. Not only that the cost of prosecuting the appeal is high, ignorance on the part of some prisoners also leads to the infrequent exercise of this right. Even when convicts are informed of this right by both the court and the prison authorities, the

[365] [2014] 8 NWLR (Pt. 1410) 539 at 546 ratio 8
[366] *Nemi v Attorney-General of Lagos State, Supra.*
[367] *Supra*

poor ones still do not utilise it because of lack of resource. Despite poverty among some prisoners, the delay in the process of appeal in Nigeria discourages the exercise of this right.

It is further submitted that where a prisoner cannot afford the cost of prosecuting his appeal, he should be allowed to apply to court to waive the cost either wholly or in part depending on the circumstance. Prisoners who cannot afford to engage the services of legal practitioners should be provided with one by the government to enable them prosecute their appeals. More Divisions of the Court of Appeal should be created to make them nearer to the states so that the distance covered by the prisoners in prosecuting their appeal outside the state of their confinement will be minimised.

In prison, discipline is enforced among the prisoners. A breach of any of the offences against prison discipline attracts disciplinary action. Regulation 48 of the Prisons Regulations empowers either the superintendent of prison, or his assistance in charge of a prison; the director of prisons or his deputy; or the visitors of prison to try any prisoner on any charge for the breach of any offence against prison discipline. If a prisoner is found guilty of the charge, a punishment may be imposed on him. A close look at the provisions of the Prisons Regulations shows that there is no provision for the right of appeal against the decision of any of the aforementioned officers.

Even though, the Constitution of the Federal Republic of Nigeria, 1999 (as amended) does not make provision for an appeal to lie from decisions of the prison authorities to any court in Nigeria. However, where an administrative officer exceeds the limits of his power or has acted without adherence to the principles of natural justice, the court cannot close its eyes and watch the victim suffer from the excesses of such an administrative officer simply because there is no law that expressly confer jurisdiction on it. The court will always intervene by way of judicial review of the powers of the administrative agents. In the English

case of *Regina v. Board of Visitors of Hull Prison, Ex parte St Germain and Ors*[368], following a riot in prison, the board of visitors heard charges against a number of prisoners that where *inter alia* involved in concerted acts of indiscipline during the riot contrary to rule 47 of the Prison Rules, 1964 (as amended). The board found the prisoners guilty and made disciplinary awards including loss of remission. The prisoners applied to the Divisional Court of the Queen's Bench Division for orders of *certiorari* to quash the decisions of the board of visitors. The Divisional Court of the Queen's Bench upheld the submission that the board of visitors was acting in a judicial capacity when adjudicating on disciplinary charges against prisoners. But however dismissed the applications for *certiorari* on the ground that *certiorari* was not available to supervise those proceedings. Aggrieved by the ruling of the court, the prisoners appealed to the Court of Appeal. At the Court of Appeal, there was also another application for *certiorari* by a prisoner in another prison who had suffered loss of remission on being found guilty of assault. The Court of Appeal consolidated the two appeals due to their similar facts.

In order to ensure that the issues raised in the appeal were properly addressed, the English Court of Appeal formulated the following questions for determination:

1. Whether the Court of Appeal had jurisdiction to hear the appeals or whether the appeals concerned a 'criminal cause or matter' in respect of which appeal lay only to the House of Lords.

2. Whether *certiorari* would lie against the board of visitors of prisons.

On the issue number one, the Court held that:

> The offences against the Prison Rules were offences against discipline in a code of private law which applied to a limited class of persons and were not offences against public law tried before a criminal tribunal at which an

[368] [1979] 1 QB pp.425-426.

> offender was liable to be convicted of a criminal offence and punished for such an offence, accordingly judgment appealed from was not judgment in a criminal cause or matter and the appeals were competent and justifiable by the Court of Appeal.

On the issue number two, the Court held that:

> Although a board of visitors had many administrative functions and duties in relation to the prison and prisoners therein, when adjudicating on charges of offences against discipline in the exercise of their disciplinary power under the Prison Act 1952 and the Rules made there under, they were performing a judicial act which was a separate and independent function; and that in performing that act the board had a duty to act judicially and the decisions they made were in principle subject to judicial review by way of *certiorari*.

It is submitted that this is the correct position of law. Even though appeal does not lie from the decision of prison authorities, the court can still intervene by way of judicial review in order to get the wrong redress.

4.3.2 Rights of Prisoners under the Prisons Act

It is important to stress that apart from the limited rights of prisoners under the Constitution, the law regulating the establishment and management of prisons provides for other specific rights which prisoners are entitled to while in prison. For this purpose, the Prisons Act[369] provides for specific rights of prisoners to *wit*: the right to receiving visitors and communication; the right to clothing, feeding and accommodation; the right to learn a trade or develop a skill and the right to engage in sporting activities; the right to environmental hygiene and Health care; the right to reform among others.

[369] Cap P 29, Laws of the Federation of Nigeria, 2004.

4.3.2.1 Rights to receiving Visitors and Communication

Contact with the outside world through visits, communication and correspondence are important aspect of prison life. There are two categories of prison visitors. They are the government officials[370] and ordinary visitors. Government officials are the kinds of visitors that can receive complaints from the prisoners. They are also empowered to hear and decide a charge against any prisoner and impose punishment in respect of a breach of any of the offences against prison discipline.[371] Other categories of prison visitors are: the inmates' relations, friends, lawyers, NGOs, well wishers, researchers, among others. These groups are referred to as ordinary visitors of prisons.

The prisoners' rights to correspondence, communication and to receive ordinary visitors are regulated by the Prison Regulations.[372] Regulation 42 of the Prisons Regulations[373] provides that 'convicted prisoners shall be allowed to receive a visit from friends in the presence of a prison officer, and to write and receive a letter at the discretion of the superintendent.' In the same vein, pre-trial prisoners are also allowed to receive visits and communicate with their families, friends or legal adviser. For this purpose, Regulation 45 of the Prisons Regulations provides that 'All Prisoners, other than prisoners under sentence, shall be allowed all reasonable opportunities daily to communicating with their friends or legal adviser, and they may write and receive letters.' The provisions of the above rules are to some extent in line with the Revised United Nations Standard Minimum Rules for the

[370] The government officials are grouped into: The *ex-officio* which include:: the Chief Justice of Nigeria and other Justices of the Supreme Court; and in relation to prisons in their areas of jurisdiction the President (however styled) and the other Justices of the Court of Appeal; the Chief Judge and other Judges of the Federal High Court; the Chief Judge and other Justices of the High Court of each state; the Grand kadi, the Acting Grand Kadi and other Judges of the Sharia Court of Appeal exercising jurisdiction in a state; Magistrates, District Judges, Alkali and Presidents of Area Court; and Justices of Peace. In other categories, the Minister, after consultation with the State Authority, may in respect of any prison appoint such person as he thinks fit to be visitors or members of a visiting committee; the Comptroller-General may authorise such persons as he thinks fit to be voluntary visitors in respect of any prison or prisons. Appointments or authorisations need not, be notified in the Federal *Gazette* of the appropriate state. Visitors, visiting committees and voluntary visitors shall exercise in respect of the prisons to which their appointments or authorisations relate, such functions as may be prescribed. The Prisons Act, section 2 (1) (2) (3).

[371] See the Prisons Regulations, Cap P29 of Laws of the Federation of Nigeria, 2004, Regulation 47.

[372] Prison Regulations 44.

[373] Prisons Regulations, Regulation 62.

Treatment of Prisoners (Mandela Rules), 2015. For this purpose Rule 58 of the Mandela Rules provides that:

> 1. Prisoners shall be allowed under necessary supervision, to communicate with their family and friends at regular intervals:
>
> (a) By corresponding in writing and using, where available, telecommunication, electronic, digital and other means; and
>
> (b) By receiving visits.
>
> 2. Where conjugal visits are allowed, this right shall be apply without discrimination, and women prisoners shall be able to exercise this right on an equal basis with men. Procedures shall be in place and premises shall be made available to ensure fair and equal access with due regard to safety and dignity.

The right to receive visits and communication ensure that prisoners are given the opportunity to maintain and develop links with their families and the outside world.[374]

In practice, there is always a restriction on the number of letters a prisoner can either send or receive within a period of time and mail received by or sent to prisoners is always censored. But mails or communication between a prisoner and his legal adviser are protected from interference even though the prison authorities may check the correspondence to know if it is *bona fide* legal correspondence.[375] In American case of *Procunier v Martinez,*[376] some prisoners challenged the constitutionality of state regulations which banned letters containing inmates' criticism of prison conditions. The United States Supreme Court held that censorship of an inmate's mail is justified to the extent if the letter jeopardises security, order or regulation. Another justification for censorship of prisoners' mail ranges from the need to detect instruments of escape and to protecting the public from unlawful schemes or

[374] Kampala Declaration on Prison Conditions in Africa, 1996, recommendation number 6.
[375] The Prisons Regulations, Regulation 44., *R v. Board of Visitors of Hull Prisons Ex parte St. Germain* [1979] I QB, P. 425.
[376] 416 U.S. 396 [1974].

threatening letters by prisoners.[377] For this purpose, a prison officer is always appointed as a censor.

However, it appears that the use of censorship has been arbitrary and discriminatory in Nigeria. This results in situations whereby majority of prisoners find it difficult to communicate with their family, legal advisers and friends. The plight of persons awaiting trial is even more disheartening as they are treated in the same way as convicted prisoners. In Nigeria, prisoners are not generally allowed to contact the media. Application for permission must be sought and obtained before a prisoner could be allowed to contact the media. Even when the application to contact the media is allowed, restriction is placed on the disclosure of information relating to identification of members of the prison staff, information about prisoners' past record or information sent in return for payment.[378] In the same vein, Regulation 41 of the Prisons Regulations restrains prisoners from receiving books or printed papers without the permission of the superintendent.

On this note, it is submitted with due respect that the media personnel should be allowed to have contact with prisoners with minimal supervision. This will go along the way to making the activities in the prison open to the public and ensure to public education against stigmatisation of prisoners. In fact, it is suggested that News Reporters be appointed for each prison to always report the activities in the prisons through electronic media, newspapers and jingles. Once this is done, it will bring transparency in the actions of the prison officials and government. This will pave the way for accountability on the abuses of prisoners' rights. It is also submitted that prisoners should be allowed to have access to print media such as newspapers, magazines and other publications. They should also have access to electronic

[377] TO Ifaturoti, *The Challenges of Nigerian Prisoners in the light of Human Rights Campaigns, op.cit* p.119.
[378] FE Nlerum, 'Rights of Prisoners, in O Okpara (ed), *Human Rights Law & Practice in Nigeria vol. II* (unpublished).

media such as radios and televisions. There should be a common library in each prison.[379] This will keep the prisoners in constant touch with the activities in the wider society and in the same vein aid their rehabilitation and reform. In South Africa, section 35(2) (e) of the Constitution,[380] section 18 of the Correctional Services Act[381] and regulation 13 of the Correctional Services Regulations[382] permit the prisoners to have access to reading materials which are described to include any publication, video, audio material, film or computer programme and access to library. Nigeria has to improve on her prison law in this regard.

On the question of visitation, it is submitted that there is the need to allow prisoners to receive visits from their families, friends and legal advisers. Prisoners should also be given the privilege of having conjugal visits at interval. This will ensure to the preservation of the family unit. It will also give the prisoners the opportunity to maintain and develop links with their families and outside world.[383] Conjugal visits are allowed in countries like Australia, Brazil, Canada, Demark, Germany, India, Israel, Mexico, Russia, Saudi Arabia and Spain.[384] In the United States of America, states like California, New York, Connecticut and Washington allow conjugal visits in their prisons while Federal prisons do not give their inmates the privilege of conjugal visits.[385]

In countries where conjugal visits are allowed in prisons, arrangements are always made to ensure that private rooms, condoms and bathing facilities are available for the inmates and their loved ones. The visiting spouses are always required to undergo HIV and all sexual transmitted diseases screening, provide evidence of legal marriage and proof of no

[379] Mandela Rules provides that 'Every prison shall have a library for the use of all categories of prisoners, adequately stocked with both recreational and instructional books, and prisoners shall be encourage to make full use of it.
[380] Constitution of the Republic of South Africa in 1996.
[381] South Africa Correctional Services Amendment Act (25 of 2008).
[382] *Supra*.
[383] Rule 4(1) of the United Kingdom Prison Rules provides that 'special attention shall be paid to the maintenance of such relationship between a prisoner and his family as are desirable in the best interest of both'.
[384] D Philip, 'What Countries allow Conjugal Visits in Prisons?' <https://www,quora.com> accessed on Thursday, 6th October, 2016.
[385] D Philip, 'What U S States allow Prison Conjugal Visits?' <www.yoexpert.co> accessed on Thursday, 6th October, 2016.

criminal record. In addition, such spouses must undergo body search before they could be allowed into the prison.[386] Other immediate family members are allowed into the prison with the proof of immediate relationship.

Prison visitations should not only be tolerated but should be encouraged by prison authorities. Nigeria should borrow a leave from the counties mentioned above by giving the inmates of the Nigerian prisons the privilege of having conjugal visits from their loved ones. It is submitted that this privilege will be made available to prisoners who have shown evidence of good behaviour while in prison.

A close look at the activities in prisons in the course of this research reveals that threats and intimidations were used by the prison officials to keep the prisoners away from talking to outsiders about their experience. This experience made us to agree with Tajudeen that 'threats and intimidations has resulted in a dearth of information about the prisons in some cases because once forewarned not to open their rotten mouth to whatever visitor they might have heard visiting'.[387] The presence of a prison official in the midst of a discussion between a prisoner and the visitor intimidates the prisoner from stating the facts as they were because of the fear of punishment that might follow after the visitor has gone. From the responses to our questionnaires, prisoners agreed that right to communicate and receive correspondence from the outside world is available to Nigerian prisoners but it is not adequately protected.

4.3.2.2 Rights to Clothing, Feeding and Accommodation

It is beyond argument that the basic necessities of man are clothing, feeding and accommodation. What makes man different from other animals is his ability to wear clothes. Out of what God Almighty created, it is a man that is able to know when he is naked that is

[386] *Ibid*.
[387] IO Tajudeen, 'Behind The Prison Wall: Rights Or No Rights', *op cit*., p.790,

why the Bible recorded in the Book of Genesis chapter 3 verse 7[388] that, when the eyes of man opened after eating the forbidden fruit, he realised that he was naked. He quickly gathered leaves together and made cloth and covered himself up. Clothing in most cases is not luxury but necessity.

Prisoners are entitled to clothing. Regulation 24 of the Prisons Regulations provides that pre-trial prisoners may be allowed to wear their own clothes. However, where a pre-trial prisoner does not have his own cloth to wear, the law enjoins the prison authorities to provide him with one. According to rule 19 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules), 2015,

> 1. Every prisoner who is not allowed to wear his or her own clothing shall be provided with an outfit of clothing suitable for the climate and adequate to keep him or her in good health. Such clothing shall in no manner be degrading or humiliating.
>
> 2. All clothing shall be clean and kept in proper condition. Underclothing shall be changed and washed as often as necessary for the maintenance of hygiene.

Where prisoners are allowed to wear their own clothes, arrangements shall be made on their admission to the prison to ensure that the clothes are kept clean and fit for use.[389] For convicts, it is compulsory that government provides them with clothes upon their admission into prison. For this purpose, Regulation 25 of the Prisons Regulations provides thus:

> Every convicted criminal prisoner shall be provided with a complete prison dress, and shall be required to wear it at all times during the day. The clothing shall be issuable as follows:
>
> (a) a male prisoner on conviction shall be issued with two jumpers, two pairs of shorts, linsey grey flannel under vest and two caps; at the end of each six

[388] *Holy Bible King James Version* (Nashville, Tennesse: Holman Bible Publishers, 1979) p.2.
[389] The Mandela Rules, Rule 20.

months of his sentence with one each of the above articles, at any other time upon the recommendations of the medical officer;

(b) a female prisoner on conviction shall be issued with two gowns and one wrapper, and, when necessary, with a further one gowns and one wrapper:

Provided that the superintendent of prisons may authorise after due consultation with the medical officer, the issue of the following alternative clothing –

(i) for male prisoners -

Two coats, two pairs of trousers, two flannel shirts, two pairs socks, one sun helmet and, when necessary, with a further one each of the above articles,

(ii) for female prisoners –

Two white drill frocks, short sleeves and belt, three woven cotton vests, three woven cotton panties, three pairs white stocks, one pair sandals, one straw hat, two cotton night-gowns, two brassieres, one pair corsets –if recommended by the medical officer.

The above provisions of the Prisons Regulations appear to be in substantial compliance with the international practices on clothing of prisoners. However in practice, the prisoners' right of clothing is greatly challenged in Nigeria. According to Matto: 'the statutory requirement of two pairs of uniform for each prisoner is almost a luxury at a time like this when it is with great difficulty that one pair is provided for each prisoner'.[390] It is not uncommon sight to see prisoners whose single pair of uniform is torn, cover themselves with blankets. Some of the convicted prisoners who cannot get uniforms remain confined in their own clothing.

According to the Civil Liberty Organisation Report in 1993:

[390] BA Matto, 'The Nigerian Prison System, the need for Reform' being a paper presented at the 1989 Law Week Celebration of the Kaduna State Branch of NBA.

> The inmate population is the tattered bottom of Nigeria from our observation and from account given by warders and inmate. It appears that less than 10 percent of the inmates of any prison are in clean and strong clothes. Close to 89 percent are either always half naked or clothed in torn or tattered clothes. The remaining one percent is naked but for the blankets they wrap round themselves. The prisoners' right of clothing is greatly abuse in Nigeria.[391]

From the responses to the questionnaires administered in the three prisons of Abakaliki, Enugu and Abuja, we agree with the submission of Matto and Civil Liberty Organisation that the inmates' right to clothing is greatly challenged in Nigeria. According to the result of the data collected in the above three Nigerian prisons, 77.4% of the respondents are in agreement that Nigerian prisons lack adequate uniforms for the prisoners.

Another important right of prisoners is the right to feeding. Regulation 20 of the Prisons Regulations provides that 'A debtor or other non-criminal prisoner may procure or receive at proper hours moderate quantities of food, wine, malt, liquor…. or other necessaries subject to the examination'. It appears from the wordings of this regulation that non-criminal prisoners may either bear the responsibilities of providing for themselves foods or alternatively depend on their relations for their feeding. It is also the requirement of the above regulation that food received from outside by non-criminal prisoners shall be examined by the prison authorities. In practice, a visitor who brings in food for his relation or friend in prison is often required to taste the same before he can give it to the prisoner. This is to ensure that the food is free from any foreign substance that can harm the prisoner concerned.

[391] AC Odinaku, 'Report of on the Conditions of Female Prisoners', *Prisoners in the Shadow* (Lagos: A Publication of CLO, 1993) p. 120.

In the same vein, a pre-trial criminal prisoner may also provide himself with food where he can afford the expense of doing so. However, where he cannot provide himself with food, he shall be entitled to receive the regular prison food allowance.[392]

It appears that while the option of providing for themselves moderate quantities of food of their own choice by both non-criminal prisoners and pre-trial criminal prisoners is allowed, convicted prisoners are not allowed to procure foods for themselves. They are strictly to be fed by the prison authorities. This is the spirit behind the provisions of Regulations 22 and 27 of the Prisons Regulations. For this purpose, Regulation 22 provides that 'Every prisoner shall be given a sufficient quantity of plain and wholesome food, regard being had to the nature of the labour to be performed by him...' while Regulation 27 provides that 'convicted prisoners shall not receive any food, cloth, bedding, or any other article, except the prison allowance, unless by the order of the medical officer'.

By the provision of Regulation 27 above, a convicted prisoner can only be fed outside the normal food allowance if his health condition requires special type of food. This must be based on the advice of a medical officer. After the medical officer has certified that the prisoner concerned should be fed with a specific type of food, the prison authority must make arrangement to ensure that the type of food required by the prisoner in question is made available to such a prisoner. Under the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules), 2015, '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'.[393] It is not only that the food must be of nutritional value but it must be well prepared and served. In addition to the provision of food of good nutritional value, a prisoner must be provided with good drinking

[392] Prisons Regulations, Regulation 21, *op.cit*.
[393]Mandela Rules, Rule 22(1).

water by the prison administration whenever he needs it.[394] By the provision of Regulation 22 of the Prisons Regulations, the daily diet of the prisoners is to be issued in three portions to *wit*; breakfast by 5:30 am, lunch 11am and dinner by 5pm.

It is disheartened to note that despite the above provisions, feeding has also remained one of the major challenges to some of the Nigerian prisons. Ibekwe noted that the scarcity of food in the Nigerian prisons is caused by variety of factors to *wit*: (a) inability on the part of the government to provide for the prisoners because of the fluctuation in their number. (b) greed of food contractors who maximise their gain to the detriment of prisoners and theft of food in prisons.[395] According to the learned author,

> It need not be stated that prisoners need food fit for human consumption. Evidence are abounds that the food given to prisoners is merely fit for the homebred type of dogs (not for dogs of the Alsatian bred). This is not an exaggeration. Bad food is not only debilitating but may cause sickness and death. Many prisoners cook cadaver because of insufficient food.[396]

Adeyemi on his own part lamented that even when some food are available in prisons, they are neither sufficient nor wholesome. According to the learned author:

> In fact it is still a great wonder how the Prison Service has been able to even provide what it has been able to provide for prisoners, bearing in mind that it is presently allowed only ₦5.00[397] for providing food for a prisoner per day.[398]

In the same vein, the *News Watch Magazine* of 1989 acknowledged that:

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[394]Mandela Rules, Rule 22(2).
[395] GC Ibekwe, 'Observance of Norms of Human Rights in Nigerian Prisons, Real or Otherwise' (1994-1997) 6 *The Nigerian Juridical Review*, 187.
[396] GC Ibekwe, *ibid*, 188.
[397] The 2016 Budget puts the daily feeding allowance of each prisoner at N222: 30k. U Nafada, 'Budget Defence: Interior Ministry takes Turn' *Core TV News*, <www.cortvnews.com_budget_defence> accessed on Tuesday, 2nd February, 2016.
[398] A Adeyemi cited by GC Ibekwe, *op cit*,188.

> Food is a major problem in prison. The quality of food served especially to those awaiting trial is so nauseating that to talk about quality would be to do extreme damage to language. You couldn't call it food really'.[399]

Despite the above problem, Nigerian government has continued to fail in her responsibility of providing food of nutritional value to the prisoners. A close look at the 2016 Budget reveals that the said Budget puts the daily feeding allowance of each prisoner in Nigerian prisons at N222: 30k.[400] This is ridiculous if it is juxtaposed with the present hike in the cost of living in Nigeria. One wonders the kind of food that will be procured three times daily with only N222: 30k. According to the Chairman, Senate Committee on Interior, Senator Usman Nafada, 'inmates are actually fed with N130:00k daily when Value Added Tax, contractors' profits and other corporate services are removed from the N222: 30k'.[401] With the above scenario, we agree with the respondents to our questionnaires that feeding is a big challenge to Nigerian prisons.

The last limb of the prisoners' right to necessaries is the right of accommodation. Prisoners are entitled to be provided with suitable accommodation during the day and night. Regulation 17 of the Prisons Regulations provides that 'prisoners for whom separate cells are not provided shall be associated in rooms, with not less than three prisoners in each room'. In contrast, rules 12 and 13 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules), 2015, provide that:

> Where sleeping accommodation is in individual cells or rooms, each prisoner shall occupy by a night a cell or room by himself or herself. If for special reasons, such as temporary overcrowding, it becomes necessary for the central

[399]'Nigerian Prisons-Living in Hell' Cover story, *Newswatch Magazine*,Vol.9, No.25, 25th June 1989 as cited by MA Agomo & I Okagbue, *Human Rights and the Administration of Criminal Justice in Nigeria, op cit.*, pp. 201-202.
[400]U Nafada 'Budget Defence: Interior Ministry takes Turn' *Core TV News*, <www.cortvnews.com_budget_defence> accessed on Tuesday, 2nd February, 2016.
[401] *Ibid.*

prison administration to make an exception to this rule, it is not desirable to have more than two prisoners in a cell or room.

Where dormitories are used, they shall be occupied by prisoners carefully selected as being suitable to associate with another in those conditions. There shall be regular supervision by night, in keeping with the nature of the prison.[402]

All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation.[403]

The right to accommodation gives birth to the right to: bedding, ventilation and lighting. On this note, Regulation 26 of the Prisons Regulations provides that: 'Every prisoner shall be provided with suitable bedding'. On the other hand, the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules), 2015, provides that: 'Every prisoner shall in accordance with local or national standards, be provided with bed, and with separate and sufficient bedding which shall be clean when issued, kept in good order and changed often enough to ensure its cleanliness'.[404]

It is saddened to point out that none of the laws regulating prison in Nigeria made provisions for the right to light, ventilation and sanitary facilities in Nigerian prisons. This is one of the areas where the Nigerian prison laws fall short of the requirements of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules), 2015. For this purpose, rule 14 of the Mandela Rules provides that:

In all places where prisoners are required to live or work, (a) the Windows shall be large enough to enable the prisoners to read or work by natural light,

[402] Mandela Rules, Rule 12(1) (2).
[403] Mandela Rules, Rule 13.
[404] Mandela Rules, Rule21.

and shall be so constructed that they can allow the entrance of fresh air whether or not there is artificial ventilation;

(b) Artificial light shall be provided sufficient for the prisoners to read or work without injury to eyesight.

In South Africa, Regulation 3(2) of the South African Prison Regulations[405] provides for proper ventilation, lighting in cell and ablution facilities in correction centres. For this purpose, lighting in a cell (natural and artificial) must be of such nature that persons inside are able to read and write. Ablution facilities (showers and toilets) must be enough for persons who are to use them and they must be accessible at all times.

A close look at the provisions of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules), 2015 and the South African Prison Regulations suggests that the Nigerian prison laws need to be amended to provide for proper ventilation, lighting in cell and sanitary facilities in Nigerian prisons. Again a close look at the provision of Regulation 17 of the Nigerian Prisons Regulations will disclose that the said regulation provides for the minimum of three prisoners in a cell but however fails to provide for the maximum number of prisoners in the same cell. This *lacuna* in Regulation 17 of the Prisons Regulations is the basis of overcrowding in Nigeria prisons. Reliance on this regulation will be a defence to overcrowding in the Nigerian prisons.

4.3.2.3 Right to Acquire Skill

The Nigerian Prison Service is charged with the responsibility of ensuring the safe custody of the prisoners, their reformation and rehabilitation. The reformatory and rehabilitatory aims of imprisonment can only be achieved if at the end of the day, prisoners are taught on how to lead law-abiding and self-supporting lives after their release from prisons. To this end, prison

[405] The Regulations were made pursuant to South African Correctional Services (Amendment) Act No 25 of 2008.

authorities are under obligation to provide prisoners with means of acquiring skills while in prison.

Regulation 36 of the Prisons Regulations provides that 'prisoners who are not ordered to be kept under a hard labour shall be employed in some manner as may be best adapted to their skill, ability and strength ….' Rule 98 (1) (2) and (3) of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules), 2015 also makes provisions for the vocational training of prisoners in useful trades. For this purpose, the rule provides:

> (1) So far as possible the work provided shall be such as will maintain or increase the prisoners' ability to earn an honest living after release.
>
> (2) Vocational training in useful trades shall be provided for prisoners to enable them profit thereby and especially for young prisoners.
>
> (3) Within the limits compatible with proper vocational selection and with the requirements of institutional administration and discipline, prisoners shall be able to choose the type of work they wish to perform.

In practice, trades like carpentry, cabinet making, carving, metal work, bricklaying, blacksmithing, weaving, shoe making, tailoring, electrical works, sketching, painting, among others are taught to prisoners, by full time staff of the prison who are employed for that purpose. At the end of the apprenticeship, examinations are conducted for the prisoners with respect to the area of their apprenticeship and certificates issued to them accordingly.

The opportunity to acquire a skill is given to prisoners as part of their reformatory exercise. The right to acquire skill is only available to convicted prisoners. Awaiting trial inmates are allowed to benefit from training programmes on voluntary basis since they are presumed innocent. The responses to our questionnaires administered shows that prisoners in Nigeria have access to vocational activities.

4.3.2.4 Right to Environmental Hygiene and Health Care

There is the popular adage that says: 'cleanliness is next to godliness 'and a clean 'environment is a healthy environment.' In line with this adage, Regulation 28 of the Prisons Regulations provides that: 'The prison and every room and part thereof, and furniture therein, shall be kept clean, and shall, as often as necessary, be washed or white washed with lime'. In the same vein, Regulation 31 of the said Prisons Regulations enjoins prisoners to keep themselves clean and decent in their persons. According to rule 18 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules), 2015:

> 1. Prisoners shall be required to keep their prisons clean, and to this end they shall be provided with water and with such toilet articles as are necessary for health and cleanliness.
>
> 2. In order that prisoners may maintain a good appearance compatible with their self-respect, facilities shall be provided for the proper care of the hair and beard, and men shall be able to shave regularly.

The Nigerian prison laws lack provisions on sanitary installations especially bathrooms and toilets in prisons.

In Nigeria, it is not uncommon to see cracked buckets being used as latrine in prisons like in Enugu prison. Most of these latrines expose stinking excreta. In most cases, the buckets used for latrine are place side by side with containers for storing drinking water for the use of prisoners at night. According to Amnesty International report on the sanitary condition of Suleja prison:

> The sanitary facilities in all prisons are in urgent need of renovation because few cells have running water and toilets are broken and usually blocked. In some cells up to 100 inmates share a single toilet, which is often little more than a hole in the ground. In other cells buckets are used as toilets. The

> overcrowding of the cells combined with the inadequate sanitary facilities makes it virtually impossible to keep the cells clean or to enable the prisoners to maintain their dignity. An inmate said: 'Everywhere, all these places, they smell. The toilet is full. For water, we used to get one cup. We can't get water all the time. Even at times you see the water is very dirty'.[406]

The deplorable state of sanitary facilities in some of the Nigerian prisons is the reason why health care in some of these institutions is rated very low. As a result of appalling sanitary conditions in the cells of some Nigerian prisons, it is very easy for inmates to infect each other. Diseases are widespread in some prisons. Inmates suffer from skin infections such as scabies and fungal infections, fever, malaria and respiratory tract infections. It is difficult for the inmates to maintain hygiene because of overcrowding and lack of basic amenities in some of the Nigerian prisons. As a result of the above, prison authorities cannot guarantee cleanliness inside the cells of some of the Nigerian prisons.

The above conditions of some of the Nigerian prisons fall below the requirements of the international standard on health and well being of individuals. For instance, article 25 (1) of the Universal Declaration of Human Rights provides:

> Everyone has the right to a standard of living adequate for the health and wellbeing of himself and of his family including food, clothing, housing and medical care and necessary social services, and the right to security in event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

Article 16(1) of the African Charter on Human and Peoples' Rights[407] provides that: 'Every individual shall have the right to enjoy the best attainable state of physical and mental health'.

[406] Amnesty International February, 2008 1 AI Index: AFR 44/01/2008.
[407] The African Charter on Human and Peoples' Rights was adopted by Organisation of African Unity (now African Union) on May, 23 1963.

In *Ubani v Director of SSS*[408] the Court of Appeal held that African Charter is applicable in Nigeria by virtue of its domestication. We therefore submit that if our prison laws lack adequate provisions with respect to clean and healthy environment, the provisions of African Charter on Human and Peoples' Rights could be invoked by the court to ensure that the right to environmental hygiene in our prisons is protected. Again, rule 24 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules), 2015 provides that it is the responsibility of the state to provide healthcare for the prisoners and this must be in line with the healthcare available in the community. The above provision of the Mandela Rules appears to be substantially complied with, by Regulation 30 of the Prisons Regulations. To this end, Regulation 30 of the Prisons Regulations provides that:

> An infirmary or proper room or place of reception of sick prisoners shall be set apart in the prison; and a register of all the prisoners admitted to the infirmary shall be kept by the superintendent, with the date of admission and of discharge.

Despite the above provision, health care in the Nigerian prisons fall below minimum standards. For instance, Ajomo and Okagbue reported in their study on the conditions of prisons in Nigeria that in Ikoyi Prison one doctor and two nurses cater for the medical needs of 2,500 inmates and about 236 staff. In Aba Prison, a doctor and four auxiliary staff are to cater for about 1000 inmates and 200 staff.[409] Nigerian prisons lack adequate medical personnel and facilities to take care of the health of the prisoners. Drugs are always out of stock in the prison clinics. Some prisons in Nigeria such as Abakaliki prison was faced with dearth of drugs at the time of this research. In the other prisons, drugs were not enough to meet up with the needs of the inmates and staff.

[408] [1999] 11 NWLR (Pt. 129), p.45

[409] MA Ajomo & S Okagbue, *Human Rights and the Administration of Criminal Justice in Nigeria* (Lagos: Nigerian Institute of Advanced Legal Studies, 1991) p. 203.

It is suggested that Nigerian prison system should emphasis more on preventive medicine. Preventive medicine is generally cost effective. To this end we advocate for:

(a) the provision of adequate quantity and good quality of food for the prisoners;

(b) the promotion of hygiene and cleanliness of the prison institution and the prisoners;

(c) provision of adequate sanitary facilities, temperature, lighting and ventilation of the prisoners;

(d) the suitability and cleanliness of the prisoners' clothing and bedding; and

(e) observance of the rules concerning physical education and sports.

If good health care practices are maintained in Nigerian prisons it will lead to significant improvement on the health of prison inmates.

On a general note, it appears from the responses to our questionnaires that environmental hygiene of the Nigerian prisons is gradually improving.

4.3.2.5 Right to Recreation and Leisure

Physical activities are good for a healthy living. It promotes both physical and mental well being of the individual. People participate in exercise programmes to decrease risk factors for cardiovascular disease and to improve their health and well-being. Prisoners are to be allowed to participate in physical exercise daily.

Regulation 29 of the Prisons Regulations provides that: 'All prisoners not employed in the open air shall have the means of taking such exercise in the open air as the medical officer shall deem necessary for their health'. In the same vein, rule 23 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules), 2015 provides that:

> (1) Every prisoner who is not employed in out-door work shall have at least one hour of suitable exercise in the open air daily if the weather permits.

(2) Young prisoners, and others of suitable age and physique, shall receive physical and recreational training during the period of exercise.

Rule 105 of the said Mandela Rules emphasises that: 'Recreational and cultural activities shall be provided in all prisons for the benefit of the mental and physical health of prisoners'. To this end, space, installations and equipment should be provided for recreational exercises during leisure. Outdoor games such as football, table tennis, volleyball, handball and athletics are to be allowed in prisons. Indoor games such as *ludo*, *ayo,* among others should also be allowed.

The right to recreation and leisure is to be enjoyed by all prisoners without distinction on the basis of age, class or any other factors. Unfortunately, pre-trial prisoners suffer more deprivation of these rights than convicted prisoners. Even though convicted prisoners have greater access to leisure and recreation, the question remains, how often do they enjoy the said rights? This is because Regulation 29 of the Prisons Regulations which makes provision for exercise in the open air does not provide for the number of hours or days which the prisoners are entitled to have the exercises. The *lacuna* in this regulation gives an open cheque to the prison authorities or whosoever that is in charge of physical exercises in the prison. Prison authorities may decide to allow a prisoner to have exercised daily, twice in a week, once in a month or even once in three months. The discretion of the prison authorities in allowing inmates to have exercises when they permit undercuts the right of inmates to engage in games and exercises.

4.3.2.6 Right to Reformation

The primary aim of imprisonment is to protect society against crime. However, a society which wishes to protect herself against crime will not achieve that aim if people who are sent to prison come back to the same society more hardened by the experience of prison life. The aim should be that upon the return of men and women who were incarcerated into society

they will live law-abiding and self-supporting lives. Greater effort should be made to make positive use of the period of imprisonment to develop the potential of prisoners and to empower them to lead a crime-free life in future. This can be achieved through rehabilitative and reformatory programmes focusing on the reintegration of offenders and contributing to their individual and social development.

According to the rule 4 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules), 2015:

> The purposes of a sentence of imprisonment or a similar measure deprivative of a person's liberty are primarily to protect the society against crime and to reduce recidivism. Those purposes can be achieved only if the period of imprisonment is used to ensure, so far as possible, the reintegration of such persons into the society upon release so that they can lead a law-abiding and self-supporting life.

Upon the admission of a convicted prisoner into the prison, consideration should be given to his future after release. Prisoners should be encouraged and assisted to establish relations with persons or agencies outside the prison so as to promote their chances of getting employment after release. For this purpose, the United Kingdom Prison Rules 1999 provides that 'From the beginning of a prisoner's sentence, consideration shall be given, in consultation with the appropriate after-care organisation, to the prisoner's future and the assistance to be given him on and after his release'. The responses to our questionnaires reveal that Nigerian prisons have facilities for vocational training of the inmates aimed at their reform. However, the problems associated with prisons reform in Nigeria will be discussed later in this work.

CHAPTER FIVE

PRISONERS' RIGHTS IN NIGERIA: CHALLENGES AND REMEDIES

5.1 Challenges to the Protection of Prisoners' Rights in Nigeria

For a long time, Nigerian prisons have been centres of human rights abuses because of a lot of challenges facing the protection of prisoners' rights in Nigeria. In the course of this research, the following challenges have been identified as factors militating against the protection of prisoners' rights in Nigeria. They include: *lacunae* in prison laws, poverty, illiteracy, attitude of government and public, attitude of prison staff, delays in determination of cases in courts, overcrowding, among others.

5.1.1 *Lacunae* in Prison Laws

One of the challenges to the protection of prisoners' rights in Nigeria is *lacunae* in the Prisons Act[410] and its Regulations. For instance:

(1) Regulation 17 of the Prisons Regulations provides that: 'Prisoners for whom separate cells are not provided shall be associated in rooms with not less than three prisoners in each room'. This regulation provides for the minimum of not less than three prisoners in a prison cell but however failed to provide for the maximum number of prisoners that should be kept in the same cell. The implication of the above is that the prison authorities have been given an open cheque to deciding the maximum number of prisoners that should be kept in a prison cell at a given time. It can be drawn from the foregoing that this regulation is the basis of overcrowding in the Nigerian prisons today. For instance, Abakaliki prison that was built with the official capacity of 387 inmates housed 894 inmates at the time we visited the said prison. At Enugu prison, 1,800 inmates were housed therein as against the official capacity of 638 inmates. This made the prison authorities in the said prison to keep under-aged inmates

[410] Prisons Act Cap P29, Laws of the Federation of Nigeria, 2004.

with much older and hardened criminals together.[411] At Kuje prison Abuja 852 inmates were held in the said prison as against the official capacity of 560 inmates. These overcrowdings witnessed in the above prisons were as a result *lacuna* created by Regulation 17 of the Prisons Regulations above. With the existence of this regulation in the Prisons Regulations, a prisoner will not successfully institute a legal action against the prison authorities on the basis of overcrowding in Nigerian prisons.

(2) Regulation 61 of the Prisons Regulations provides that:

> A prisoner charged with a capital offence may be placed under restraint by shackles or handcuffs at the discretion of the superintendent, and shall be confined in a solitary cell if a solitary cell is available. If a solitary cell is not available, he shall be confined in some safe place within the prison and if possible apart from all other prisoners.

The above provision of Regulation 61 of the Prisons Regulations is a clear violation of the right not to be subjected to torture or inhuman or degrading treatment and the right to be presumed innocent until proved guilty. The fact that a person is charged with a capital offence is not a ground for placing him under the instrument of restraint and/or keeping him in isolated cell. An allegation of a capital offence shall not be a ground to punish a prisoner by means of instrument of restraint and solitary confinement. This Regulation is in conflict with the provisions of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules 2015). For this purpose, rule 47 of the Mandela Rules provides that a prisoner may not be placed under instrument of restraint such as handcuffs, chains, irons and strait-jackets except where there is a danger of escaped during a transfer or on the advice of a medical officer. By the above provision of the Mandela Rules, the United Nations Standard Minimum Rules for the Treatment of Prisoners permits the use of instrument of

[411] On 1st July, 2016, inmates of Enugu prison staged protest against poor treatment and in the process; many of them were left with severe injuries. The Channel Television, 'Enugu Inmates Protest: Several Prisoners Injured <www.reachannel65.com.ng/....> accessed on Monday 25th July, 2016.

restraint only in exceptional cases such as where there is a danger of escape during a transfer or on the advice of a medical practitioner. On this note, we submit that Regulation 61 of the Prisons Regulations that permits the placing of a prisoner charged with a capital offence under the instrument of restraint and/or detaining him in a solitary cell is outdated and should be amended.

(3) In another development, it has been observed that the failure of Nigerian Prisons Act to make provision for ventilation and lighting of the prison rooms is another setback suffered by the said Act. This also makes the Nigerian Prisons Act to fall short of the requirements of the international minimum standard for the treatment of the prisoners.[412] For this purpose, rule 14 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules), 2015 provides that:

> In all places where prisoners are required to live or work, (a) the windows shall be large enough to enable the prisoners to read or work by natural light, and shall be so constructed that they can allow the entrance of fresh air whether or not there is artificial ventilation;
>
> (a) Artificial light shall be provided sufficient for the prisoners to read or work without injury to eyesight.

On the strength of the above we call for the amendment of the Nigerian Prison laws to reflect the provisions of the Mandela Rules.

(4) Again, Regulation 31 of the Prisons Regulations provides that: 'Prisoners shall be required to keep themselves clean and decent in their persons'. The said regulation does not make provision for sanitary installations especially bathrooms and toilets. This *lacuna* in this regulation encourages the prison authorities to provide any kind of toilet and bathroom of their choice to prisoners. It is not uncommon to see the existence of buckets as toilets in some

[412] The Mandela Rules, Rule 14.

Nigerian prisons today. Even in this present day, bucket toilet system can still be seen in Enugu prison as identified by the respondents to our questionnaires. This has added to the deplorable condition of some of the Nigerian prisons which some NGOs have described as 'hash and self-threatening'.[413]

(5) In another development, Regulation 29 of the said Prisons Regulations that makes provision for prisoners to have physical exercises fails to provide for the number of times that such exercises may be taken in a week. This is also left at the discretion of the prison authorities and in most cases; prisoners are not allowed to have their physical exercises at all.

(6) Again, it was also identified that the Prisons Act and the Regulations thereunder fail to provide for any of the aims of imprisonment as discussed in this work. This paves way for the prison administrators to decide what goal the prison should pursue at a given time. This inconsistence at times weighs against the prisoners.

(7) Another *lacuna* identified under the Prisons Act is in the provision of Regulation 42 of the Prisons Regulations. For this purpose, the said Regulation provides that 'convicted prisoners shall be allowed to receive a visit from friends in the presence of a prison officer'. In practice the presence of a prison office in the midst of the prisoner's communication with friends and legal advisers makes nonsense of the whole exercise. Prisoners are not always free to communicate their feelings and problems to their friends and legal advisers in the presence of a prison officer because of the fear of the punishment they may receive when the visitor is gone.

By way of summary on this point, we submit that all the respondents to our questionnaires in the three prisons of Abakaliki, Enugu and Abuja are in agreement that one of the factors that militate against the protection of prisoners rights in Nigeria is the *lacunae*

[413] Amnesty International, 'UK/Nigeria signed a Prisoner Transfer Agreement', <https://www.gov.uk.com/.../uk_nigeria_signedprisonerstransferagreement> accessed on Friday, 8th January, 2016.

in the prison laws. On this note, we submit that a new legal regime is urgently needed for prisoners in Nigeria.

5.1.2 Remand Proceedings/Holding Charge

Remand proceedings are often used interchangeably with holding charge. The concept of remand proceeding may be described as the process of sending the accused person to prison for the purpose of giving the police or the prosecution the opportunity to take further action on his case. Holding charge on the other hand may be described as a judicial cover or blanket issued in favour of the police to protect them from violating the rights of the suspect particularly if the police are unable to conclude investigation and prosecute crimes within the time allowed by law. It could also be described as the method adopted by the police to carefully abuse the rights of a suspect who refuse to pay bribes to them.[414] According to the *Black's Law Dictionary*, holding charge 'is a criminal charge of some minor offence filed to keep the accused in custody while the prosecutors take time to build a bigger case and prepare more serious charges'.[415] It is a process whereby the police take a person suspected to have committed an offence to a court that does not have the jurisdiction to trial his offence for the purpose of securing the order of the said court to remand the suspect in prison custody. The different between remand proceeding and holding charge is that in remand proceeding, the prosecutor is required to make an *ex parte* application accompanied by a verifying affidavit stating the reasons for requesting for the remand order. Where the remand order is granted, the magistrate is required to adjourn the case for a return date. While in holding charge, the prosecution only takes the suspect with a charge sheet to the magistrate for the purpose of securing an order to commit the suspect to prison custody. In holding charge proceeding, the magistrate usually adjourns the case *sine die* after making the order for the remand of the accused person in prison custody.

[414] E Ojukwu *et al*, *Handbook on Prison Pre-Trial Detainee Law Clinic* (Abuja: Network of University Legal Aid Institutions, 2012) p.54.
[415] *Black's Law Dictionary* (9th edn, USA: Thomson West Business, 2009) p. 800.

According to Niki Tobi JSC as (he then was) in *Onagoruwa v The State:*[416]

> In good number of cases the police in this country rush to the court on what is generally referred to as a 'holding charge' ever before they conduct investigation, where investigation does not successes in assembling the relevant evidence to prosecute the accused to secure conviction, the best discretion is to abandon the matter and throw in the towel.

In several cases of holding charge, the accused person remains in the prison custody for number of years because of either the failure of the police to transmit the case file to the Ministry of Justice for legal opinion or the failure of the Director of Public Prosecution to file information at the high court. The question in this regard is where lies the constitutional right of the presumption of innocent of allegations against an accused until proven guilty? The practice of holding charge can be likened to the system of the presumption of guilty of an accused person until he proves his innocent. In *Bola Kale v The State*[417]the Court of Appeal held that holding charge is an aberration and abuse of judicial process. According to the Court:

> It is an aberration and abuse of judicial process for an accused person to be arraigned for an offence before a Magistrate over which it has no jurisdiction only for the accused person to be remanded in prison custody and not tried or properly charged before a competent court for trial. It will be an infraction on the rights to fair hearing and liberty of the accused person.

For the purpose of remand proceedings, section 293 Administration of Criminal Justice Act[418] provide as follows:

[416] [1993] 7 NWLR (Pt.303) 49 at107
[417] [2006] 1 NWLR (Pt. 962) 507 at p.765.
[418] The Act was signed into law by Former President Goodluck Jonathan on 13th day of May 2015.

(1) A suspect arrested for an offence which a magistrate court has no jurisdiction to try shall, within a reasonable time of arrest, be brought before a magistrate court for remand.

(2) An application for remand under this section shall be made *ex parte* and shall:

(a) be made in prescribed "Report for Remand Form" as contained in Form 8, in the First Schedule to this Act; and

(b) be verified on oath and contain reasons for the remand request.[419]

Section 294 of the said Act provides that:

(1) where the Court, after examining the reason for the arrest and for the request for remand in accordance with the provisions of section 293 of this Act, is satisfied that there is probable cause to remand the suspect pending the receipt of a copy of the legal advice from the Attorney-General of the Federation and arraignment of the suspect before the appropriate court, as the case may be, may remand the suspect in custody.

(2) In considering whether "probable cause" has been established for the remand of a suspect pursuant to subsection (1) of this section, the court may take into consideration the following:

(a) the nature and seriousness of the alleged offence;

(b) reasonable grounds to suspect that the suspect has been involved in the commission of the alleged offence;

(c) reasonable grounds for believing that the suspect may abscond or commit further offence where he is not committed to custody; and

(d) any other circumstance of the case that justified the request for remand.

[419] Similar provision is in section 132 of the Administration of Criminal Justice Law, Anambra State, 2010.

Section 295 of the Act[420] provides that:

> The court may, in considering an application for remand brought under section 193 of this Act, grant bail to the suspect brought before it, taking into consideration the provisions of sections 158 to 188 of this Act relating to bail.

Section 296 of the Act[421] empowers the magistrate court in making a remand order to adjourn the matter for a period not exceeding 14 days in the first instance[422] and subsequently to another 14 days[423] if good cause is shown why there should an extension of remand period. Where the suspect is still in custody at the expiration of the period provided in subsection (1) or (2) above, the court may on the application of the suspect grant him bail[424] or issue a hearing notice on the relevant authority concerned to show cause within 14 days why the suspect should not be unconditionally released.[425] Once the relevant authority concerned[426] shows good cause why the remand of the suspect will be extended, the court may extend it for a final period of 14 days.[427]

The above provisions of section 296 of the Administration of Criminal Justice Act, 2015 is in contrast with the provision of section134 of the Administration of Criminal Justice Law of Anambra State, 2010. For this purpose, section 132 of the Administration of Criminal Justice Law of Anambra State, 2010 provides that where an order of remand is made, the case shall be returnable within 60 days in the first instance.[428] However, where the prosecution makes an application which discloses good cause why there should an extension of remand period, the court may further remand the suspect for a period not exceeding 30 days.[429]

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[420] *Ibid*.
[421] *Ibid*.
[422] *Ibid*, Section 296(1).
[423] *Ibid*, Section 296(2).
[424] *Ibid*, Section 296 (3).
[425] *Ibid*, Section 296 (4).
[426]The concerned relevant authority according to the Act include: the Inspector-General of Police, Commissioner of Police or the Attorney-General of the Federation.
[427] *Op cit*, Section 296 (5).
[428] The Administration of Criminal Justice Law Anambra State, 2010, Section 134 (1).
[429] The Administration of Criminal Justice Law Anambra State, 2010, Section 134 (2).

Where the person is still in custody at the expiration of the period provided for under subsections (1) or (2) above, the court may on the application if satisfied that there is no probable cause for continued detention grant the suspect bail.[430] According to section 134 (4) of the said Administration of Criminal Justice Law of Anambra State, 2010,

> In considering whether "probable cause" has not been established pursuant to subsection (3) of this Section, the court may take into consideration the following:-
>
> (a) the nature and seriousness of the alleged offence;
>
> (b) reasonable grounds to suspect that the person has been involved in the commission of the alleged offence;
>
> (c) reasonable grounds for believing that the person may abscond or commit further offence if he is not committed to custody;
>
> (d) any other circumstance of the case that justified the request for remand.[431]

Section 134 (5) of the said Administration of Criminal Justice Law of Anambra State, 2010 provides that at the expiration of the remand order made pursuant to subsection (1) or (2) of this Section, if the person is still remanded without the trial having commenced or information filed at the appropriate court or bail still not been granted, the magistrate shall issue a hearing notice to the Commissioner of Police and/or the Director of Public Prosecutions, and adjourn the matter within a period not exceeding 30 days to inquire as to the position of the case and for the Commissioner of Police and/or the Director of Public Prosecutions to show cause why the person remanded should not be released. However, if Commissioner of Police and/or the Director of Public Prosecutions show good cause pursuant to subsection (4) of this Section and make a request to that effect, the court may extend the

[430] *Ibid*, Section 134 (3).
[431] The provision of this subsection is similar to section 294(2) of the Administration of Criminal Justice Act, 2015.

order for remand for the final period not exceeding 30 days.[432] But where no good cause is shown for the continued remand of the suspect pursuant to subsection (4) of this Section or where the suspect is still in custody after the expiration of the extended period under subsection (5), the magistrate shall grant bail to the suspect irrespective of whether or not an application to that effect is made to him.[433]

The court may exercise the above powers whether a suspect is brought to court or not.[434] The cumulative effect of the above is that under the Administration of Criminal Justice Act, 2015, the magistrate has the power to order for the remand of a suspect for about a period of eight weeks (two months) while under the Administration of Criminal Justice Law, Anambra State, 2010, a magistrate is empowered to remand a suspect for a period of about 4 months (120 days). Under the Administration of Criminal Justice Law, Anambra State, 2010, the power to sit in remand cases for the purpose of issuing remand order is exercisable by a magistrate not below the rank of a senior Magistrate.[435] Our concern about these laws is that if a suspect had been remanded at prison custody for about two months or four months as the case may and thereafter release due to the inability of the prosecution to proceed with the matter, then where lies the constitutional right of the accused person/suspect to be presumed innocent until proved guilty? Where lays the rule of law?

It must be settled at once that the National Assembly or a State House of Assembly is to make laws for the peace, order and good governance of this country and not to make law that curtails, abridges or whittle down the rights of citizens. It should have been better if the above Act/Law provides for the police to conclude their investigations and come up with the opinion whether to prosecute the suspect before making a request before the magistrate for

[432] The Administration of Criminal Justice Law, Anambra State, 2010, Section 134 (6).
[433] *Ibid*, Section 134 (7).
[434]The Administration of Criminal Justice Act, Section 297, The Administration of Criminal Justice Law, Anambra State, 2010, Section 134 (8).
[435] The Administration of Criminal Justice Law, Anambra State, 2010, Section 137. The doctrine of covering the field demands that where there is a conflict between federal law and the state law on the same subject, the federal law should prevail.

the purpose of securing a remand order. Even in practice, it is difficult to keep to the provisions of the above Act/Law because of some challenges associated with our justice system. Example: transfer of magistrate, Judicial Staff Union of Nigeria (JUSUN) strikes, absence of court on sitting days, corruption, interest of some stakeholders, among others.

We submit that Justice Idoko while examining the import of section 32(4)[436] of the Constitution of the Federal Republic of Nigeria, 1979 in *Onuobekpa v. CO P*[437] held that:

> As it appears that the spirit behind the provision of section 32 (4) of the 1979 Constitution is to keep an accused person out of incarceration until found guilty through the process of a court trial. It is a constitutional privilege, which he is entitled to under the constitution….

In another development, the Supreme Court had held in *Federal Republic of Nigeria v Osahon*[438] that police officers who are lawyers can initiate criminal proceeding in the high court. Why is it that the police in Nigeria always rush to magistrate court to secure remand order and dump the suspect in prison custody when they have legal department that can initiate criminal proceeding at the high court? Is it to justify their inability to timely investigate a case or to punish the suspect who refuses to pay bribes? Whichever way the pendulum swings, the conclusion is that remand proceedings/holding charge is a challenge to the protection of prisoners' rights in Nigeria. This conclusion is justified by the responses to the questionnaires we administered at the three prisons of Abakaliki, Enugu and Abuja. In the said questionnaires, all the respondents are in agreement that the practice of remand proceedings/holding charge is of the challenges to the protection of prisoners rights in Nigeria.

[436] Similar provision is in of the Constitution of the Federal Republic of Nigeria1999 (as amended), Section 35 (4).
[437] *Supra*.
[438] [2006] 5 NWLR (Pt.973).

5.1.3 Poverty

According to the *Black's Law Dictionary*, poverty is 'The condition of being indigent; the scarcity of the means of sustenance'.[439] S Rowntree argued that poverty is 'a state of household command over resources at a level which is insufficient to obtain a basket of goods and facilities judged to be minimum necessaries in the contemporary circumstances of the society under study'.[440] People are poor when their incomes are in inadequate for survival.

Dressler and Wills examined poverty in two ways: (1) Absolute poverty, which is a situation in which, an individual or household, is unable to provide even the basic necessaries of life. (2) Relative poverty, which is a situation in which individual or household is unable to maintain the standard of living considered normal in the society in question.[441] According to McConnel, a family lives in poverty when its basic needs exceed its available means of satisfying them.[442] Oputa described poverty as 'another modern form of slavery'.[443]

According to Obafemi Awolowo, poverty is a condition which exists when a person lacks the means of satisfying the necessaries of life.[444] He contended that the characteristics of poverty are well known. They include: under-nourishment or malnutrition, wretched and degrading shelter, shabby clothing, total lack of any kind of comfort and luxury. The learned author argued that:

> Because of his malnutrition and his physical and psychological degrading conditions of living, he is inefficient, his productivity is hopelessly low, he is

[439] *Black's Law Dictionary* (7th edn: USA, St Paul Minn, 1999) p.1189.
[440] S Rowntree cited by JN Aduba, 'Impact of Poverty on the Realisation of Fundamental Human Rights', *Journal of Human Rights Law and Practices Vol. 3 Numbers: 1,2 ,3* (Lagos: Civil Liberty Organisation, 1993) p. 36.
[441] D Dressler *et al, Sociology: the Study of Human interaction* (3rd edn, New York: McGraw Hill Inc., 1976) p.481.
[442] CR McConnel, *Economics: Principles, Problems and Policies* (4th edn, New York: McGraw Hill Inc., 1969) p.671.
[443] CA Oputa, 'Human Rights in the Political and Legal Culture of Nigeria', *2nd Idigbe Memorial Lectures* (Lagos: Nigerian Law Publications Ltd, 1989) p.94.
[444] O Awolowo, *Path to Nigerian Greatness* (Enugu: Fourth Dimension Publishers Co. Ltd, 1981) p.76.

> technically ignorant, he succumbs readily to disease, he has little zest for life, he has little or no enthusiasm for what he does and in consequence of all these, his poverty persists on an increasing scale.[445]

Awolowo went further to say that:

> Though there are no statistics on the point, anyone who has been to all parts of our country will readily agree that more 70 million of our estimated 80 million[446] people live in abjectly poor conditions and no less than 60 million of them are actually starving. They have for houses shelters unsuitable for modern poultry or piggery. The vast majority of our poor live in rural areas which are neglected and almost forgotten.[447]

Poverty is one of the challenges to the realisation of prisoners' rights in Nigeria. Although it is often said that court is the last hope of the common man, in practice going to court has some financial implications. The applicant has to pay filing fees, he has to engage the services of a lawyer and pay his bills among others. This makes the mission impossible to many Nigerians especially the poor and the incarcerated. According to Oputa,

> In search for justice and redress resulting in the effectuation of his rights, the ordinary citizen of Nigeria is caught in the mess of a rather vicious circle:
>
> 1. The court cannot adjudicate upon and effectuate his rights unless there is a suit complaining about the breach or threatened breach of these rights filed in court.

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[445] *Ibid*.

[446] By census figure 2006, Nigeria population stood at 140, 431, 790. National Population Commission, '2006 Census Figure' <www.coutrymeters,info/en/nigeria> accessed on Wednesday, 10th February, 2016. It is estimated at 186,987,563 in 2016,< www.woldometers.info/.../population-nigeria> accessed on Wednesday, 10th February, 2016.

[447] *Ibid*, p.77.

2. People especially the illiterate masses of our country do not even know what their human rights are. They may therefore not even know when those rights have been or are being infringed.
3. Even if the ordinary citizen knows of his rights and knows that they are being infringed, he may be too afraid to sue the powers that be. It does require considerable courage to drag the Chief Executive or functionaries of the Government to court. And very few of our people have that courage.
4. Where there is an awareness of the right and the knowledge or realisation of its breach or threatened breach and the courage to prosecute the claim, the luxury of a costly and prolonged litigation up to the Supreme Court could be a challenge.[448]

What disturbs our mind is that the Constitution of the Federal Republic of Nigeria, 1999 (as amended) provides in its preamble that the Constitution is for the purpose of, 'promoting the good government and the welfare of all persons in our country on the principles of Freedom, Equality and Justice'.[449] How do we promote the welfare of all persons including the prisoners in Nigeria on the principles of 'Freedom, Equality and Justice' when the poor cannot access the court because of the high cost of litigation coupled with delays in determination of cases occasioned by our laws? In practice, only the rich, the powerful and the dominant class seem to have all the rights in Nigeria while the poor, the weak, the down-trodden and the incarcerated are left to suffer in silence, to be patient, knell down and ask God to intervene in their circumstances. How can a poor prisoner gather evidence to commence application for enforcement of his right? Where does he get money to pay for his claim? What about lawyer's fees? In the above situations, the poor is left to wonder in his hopelessness.

[448] CA Oputa, 'Human Rights in the Political and Legal Culture of Nigeria', *op cit*, pp 65-66.
[449] The Constitution of the Federal Republic of Nigeia1999 (as amended), Paragraph 4 of the Preamble.

From the above, it is clear that the institutional framework through which a prisoner can realise his rights is working against him. Aguda stated as follows while commenting on the barriers to the realisation of the right to life in Nigeria that:

> This means much to me and those of you who have some measures as to how we can feed ourselves and other members of our family. But this is only an empty right from the point of view of those citizens of ours who do not know where or how they and other members of their families will get next meal….what does the right to life mean to a man when indeed he feels he will be happier if that very life is taken away from him.[450]

According to the learned author:

> What fair hearing can a poor person hope to have when he cannot even boast of a square meal a day? If he is cheated of his right, he would certainly prefer to leave the matter in the hands of God than risk death through starvation as a result of investing all that he and his family can boast of as the total of their worldly possession in trying to assert an illusory right to fair hearing of his grievance in courts.[451]

The question is does fair hearing mean anything to a prisoner who cannot pay for court summons let alone afford the services of a legal practitioner?

It is beyond argument that imprisonment breeds poverty. Nigerians believe that individuals determine their own economic success through hard work, ambition and other personal attributes. This belief is always cut short when one is imprisoned. Persons imprisoned cannot work or earn income while in prison. If the period of imprisonment is lengthy, prisoner's future earning is always threatened. Those prisoners who were self-

[450] TA Aguda, 'A New Perspective in Law and Justice in Nigeria', *Distinguished Lecture Series*, (Kuru: National Institute for Policy and Strategic Studies, 1985), p.8.
[451] *Ibid*.

employed are at risk of bankrupt, lost of their goods through theft, missing sowing and harvesting seasons, or foregoing their trading space in the market.

The study carried out by the Open Society Institute in Mexico shows that the amount of income lost as a result of imprisonment by the country's prisoners who were employed was estimated to 1.3 billion pesos (about 100 million US dollars).[452] Prisoners are not only at the risk of losing their jobs at the time of imprisonment, but also at the risk of long-term unemployment or underemployment after release. For every prisoner who loses his job as a result of imprisonment, the family and the society pay the price. In the case of his family, his spouse and children must find work to make up for the lost income. Not only that they have to work to make up for the lost income, the cost of supporting their imprisoned one with money, food, toiletries, medicines, clothes among others will be borne by them. The family may risk eviction from their apartments if they are tenants. The children may be forced out of school because of none payment of school fees. This may result in street trading, juvenile delinquencies, prostitution among the female ones, drug abuse among others. The overall result is endless crime and poverty.

From the result of the questionnaires we administered in the three prisons of Abakalkik, Enugu and Abuja, all the respondents to the said questionnaires are in agreement that poverty among some prisoners is a big challenge to the protection of prisoners' rights in Nigeria.

5.1.4 Attitudes of the Government and the Public

Prisons in Nigeria are filled with people whose human rights are systematically violated. That is why prisons in Nigeria have been described as centres for human rights abuses.[453] People are detained unlawfully for as long as the police want. Most detainees have no legal

[452] G Zepeda, *Costly Confinement: the Direct and Indirect Costs of Pretrial Detention in Mexico* (New York: Open Society Institute, 2009) p.6.
[453] CA Omaka, 'Assessing Justice: A Challenge of Nigerian Prison Detainees', *Daily Trust,* April 4,, 2008 p.4.

representation,[454] case processing is low, charge sheets frequently get lost, frequent adjournments of cases in courts and many cases lack the necessary evidence to prosecute them, thereby making a mockery of our justice system if an inmate awaits trial for many years only to be discharged at end of the day *via* jail delivery.[455] Diseases are wide spread in prisons, violent break up of prisons[456] and general public fear occurs thereby negating the essence of imprisonment which is to reform. The conditions of Nigerian prisoners are so appalling to the extent that Nigerians prefer to serve their prison terms in foreign countries instead of their fatherland. This is represented in reactions of Nigerians serving various prison terms in the United Kingdom when Nigeria signed a Prisoners' Transfer Agreement with the United Kingdom.[457] According to the Tafida,[458] 'some Nigerians serving various jail terms in the UK kicked against the recently signed Prisoners' Transfer Agreement between Nigeria and British governments citing poor prison facilities and stigma'.[459] Amnesty International said it is 'extremely concerned' about sending back criminals from Britain to Nigeria where prison conditions have been described as 'hash and self-threatening'.[460] According to a

[454] I Mbanefo, 'The Prison Decongestion Project in Nigeria: An Appraisal', <www.lawfirmsinnigeria.com.,> accessed on 4th November,2015.
[455]Anon, 'The Poor State of the Prisons', <www.learinternaitonal.org> accessed on 11th April, 2010.
[456] A Adepegba, 'Kuje Jailbreak', the *Vanguard* Tuesday June 8, 2016. It will be recalled that during the Moslem fasts in preparation for 2016 *Eid Ai-Fitr* festival, there was a jailbreak at Kuje Medium prison Abuja on the Friday night of 24th June, 2016. During the said jailbreak, Maxwell Ajukwu and Solomon Amodu who were stranding trial for murder escaped. Mr. Musa Tanko who was the Deputy Controller in charge of Kuje prison as at the time of jail break was suspended from work. On 2nd February 2015, inmates at Afokang Prrison Calabar South attempted a jailbreak while on 2nd of July 2016 inmates of Enugu prison protested for ill treatment. This left many of them with serious wound. On 29th July 2016 about 13 inmates escaped from Koton/Karfe Minimum Security prison Kogi state. the *Vanguard*, <www.vanguard.com> accessed on 03/7/2016. On 10th August 2016 about 15 inmates escaped from Nsukka Prison while on 18th August 2016 Abakaliki Prison Ebonyi state witnessed brutal killing of about six inmates in the attempt by the security agents to foil attempted jailbreak. O Agwu, 'Investigation on the Attempted Jailbreak Killings in Abakaliki Prison beginns', *Ebonyi Patriot*, November 14, 2016, p.1.
[457]Nigeria signed a Prisoners' Transfer Agreement with the United Kingdom on 10th January, 2014. The Agreement is yet to be domesticated by the National Assembly by virtue of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), section 12 (1). See D Cameron, 'Nigeria Britain Cement Prisoners' Transfer Agreement, <www.news_eye.info/nigeria_britain_cementprisoners'transferagreement> accessed on Friday, 8th January, 2016.
[458] Dr Dalhatu Tafida was a Nigerian High Commissioner to UK..
[459] D Tafida 'Nigerian Prisoners in Uk Kick Against Transfer Agreement' *Vanguard*, April 4, 2014, p.1.
[460]Amnesty International 'Nigerian Prisoners in Uk Kick Against Transfer Agreement' <https://www.gov.uk.com/.../uk_nigeria_signedprisonerstransferagreement> accessed on Friday, 8th January, 2016.

London based human rights group's deputy Africa director, Aster Van Kregten, the Nigerian conditions such as overcrowding, poor sanitation, lack of food and medicines and denial of contact with friends and family fall short of the United Nations Standard Minimum Rules for the Treatment of Offenders. The condition is appalling and damaging to the physical and mental well being of inmates.[461]

Many national and international organisations' have warned the Nigerian government about the human rights violations occurring in her criminal justice system.[462] In recent years, the Nigerian government has frequently expressed a willingness to improve prison conditions and access to justice for those on pre-trial detention. The establishment of a Presidential Taskforce on Prisons Reforms and Decongestion led to the release of about 8,000 prisoners in 1999.[463] However, no long term policy was adopted to address the problems in prisons and within a few years prisons became as congested as they had been before the release exercise.

In June, 2001, the then Minister of Interior, Sunday Afolabi said that the government would review prison laws and prisons reform, train personnel, rehabilitate inmates and revitalise the prison system with the prison reforms programme. He argued that the Nigerian government has so far spent N2.4 billion in this regard.[464] In July, 2002, the Former President of Nigeria, Olusegun Obasanjo described the situation of inmates awaiting trial as 'inhuman'.[465]

Several working groups and committees on prison reforms have been established. The National Working Group on Prison Reform and Decongestion inspected 144 prisons and reported in 2005 that the population of Nigerian prisons over the previous 10 years had been

[461] *Ibid.*
[462]The organisations that have warned the Nigerian government on human rights violations include: the National Human Rights Commission, Access to Justice, Civil Liberty Organisation, Human Rights Law service, Legal Defence and Assistance Project, Legal Resources Consortium, Prisoners Rehabilitation and Welfare Action, Amnesty International, Human Rights Watch, Penal reform International. < www.amnesty.org> accessed on Thursday, 11th February, 2016.
[463] Amnesty International Report, *Nigeria: Prisoners' Rights Systematically Flouted*, (London: Amnesty International Publications, 2008), p.3.
[464] S. Afolabi, 'Prisons Law Government Review', *The Guardian*, June 14, 2001, p.2.
[465] O. Obasanjo, 'Awaiting Trial Prisoners Inhuman', *Daily Trust*, Sunday, July 14, 2002, p.4.

between 40,000 and 45,000 inmates, most of them concentrated in the state capitals. Of all these population, 65 per cent are awaiting trial inmates.[466] As at 31st October 2015 the prison population rose to 65,000 out of which 72% (46,800) are awaiting trial inmates while 28% (18,200) are convicts.[467] In October 2016 the prison population had increased to 69,000 out of which 49,680 were awaiting trial inmates while 19320 were convicts.[468]

The Inter-Ministerial Summit on the State of Remand Inmates in Nigerian Prisons was established to review the report of the National Working Group on Prison Reform. It recommended that the Federal Government should respond to the problem of inmates awaiting trial, pay more attention to rehabilitation, and address the issue of the large number of inmates awaiting trial due to the shortage of defence counsel. In addition, it recommended the appointment of a Chief Inspector of Prisons and a Board of Visitors. Following these recommendations, the Former Minister of Justice, Bayo Ojo announced in October 2005 that the Federal Executive Council was considering the appointment of an Inspector of Prisons.[469]

In 2006, the Presidential Committee on Prison Reform and Rehabilitation was established. This Committee recommended the improvement on the condition of service of prison and police officials. It also addressed the issues of prison congestion and the large number of prisoners awaiting trial. When the then President, Olusegun Obasanjo received the Committee's report, he said that the Federal Government would implement its

[466] See. The Report of the National Working Group on Prison Reforms and Decongestion, February, 2005. The Working Group stated that the number of inmates awaiting trial was the main cause of overcrowding in Urban Prisons. The Prison Audit gives the following background on the inmates awaiting trial: 75 percent of Prisoners awaiting trial are in custody for indictable offences such as armed robbery or robbery; 26.4 percent of them have no legal representation; 3.7 percent remain in prison because their files have been lost; 7.8 percent are detained because there was no prosecution witness or because the Investigating Police Officer had been transferred; 17 percent are held because investigations into their cases have not been completed; 40 percent are held on holding charge <www.amnesty.org> accessed on Thursday, 11th February, 2016.

[467] E Ekpendu, 'Nigeria has 65,000 prisoners' *The Sun* Wednesday, November 18, 2015, <www.sunnewsonline,com/…/nigeria-has-65,000-prisoners-nps,> accessed on Wednesday, 18th November, 2015.

[468] Nigerian Prison Service, 'The Nigerian Prisons Statistics as at October 2016', <www.prisons.gov.ng/.../satistics-info.php> accessed on Thursday, 20th October, 2016.

[469] See 'The House of Representative Dialogue on the State of Awaiting Trial Person in Nigerian Prisons', 13th October 2005. The response of the Federal Ministry of Justice to 'the Problem of Awaiting Trial Person in Nigerian Prisons' published by Amnesty International *op cit*, p.3.

recommendations.[470] In the same 2006, the Presidential Commission on the Reform of the Administration of Justice was established to review the administration of justice in Nigeria and propose sustainable reforms. The Commission in its report expressed concern that imprisonment was being overused.[471] The President's response was to ask the Commission to carry out further research, this time a case by case audit of the categories of inmates. Following this request, the Commission published a categorised list of 552 inmates recommended for release.[472] In 2007, the Committee on the Harmonisation of Reports of Presidential Committees Working on Justice Sector Reform reiterated the recommendations of the Presidential Commission on the Reform of the Administration of Justice.[473] This was later implemented in 2015 *via* the enactment of the Administration of Criminal Justice Act 2015. In January 2008 the Minister of Interior stated that a Committee would be established to monitor the activities of inmates and prison officers in order to ensure that international standards are met.[474] This is yet to be done.

The Nigerian government has on several occasions, stated its intention to release inmates. On 4th January, 2006 the government announced that it was going to speed up the trials of and/or unconditionally release of up to 25,000 prisoners.[475] At the end of August

[470] O. Obasanjo, 'Prisons Reform: Panel's Recommendations will be Implemented', *New Nigerian,* Wednesday November 15, 2006.

[471] The Presidential Commission on Reform of the Administration of Justice in Nigeria, November, 2006.This Commission recommended legal reforms, as well as reforms in human resources, in institutional structures, and in funding. It also called for a case-by-case audit of several categories of inmates. Inmates awaiting trial; inmates who have spent over 10 years in prison or whose case files have been lost; inmates who are suffering from life threatening diseases; inmates aged 60 or over; and inmates who have been on death row for more than 10years. See Amnesty International February 2008 AI Index: AFR 44/001/2008.

[472] The Presidential Commission on Reform of the Administration of Justice in Nigeria, *Prison Audit*: The list of Prison inmates include: 110 awaiting trial who had spent over 10years in Prison, 102 awaiting trial whose case files had been lost and who have spent an unreasonable period of time in prison; 128 with life threatening diseases; 87 over the age of 60; 92 who had spent over 10years on death row; 33 who had been deported from Thailand. The audit recommended that 111 inmates on death row should be given life imprisonment. See Amnesty International, *op cit.*

[473] 'Harmonisation Committee, key Interventions in the Justice Sector in Nigeria', Amnesty International *ibid.*

[474] 'Interior Minister tasks Prison Officers on good conduct', *Leadership,* Tuesday, January 8, 2008.

[475] Those who were to be unconditionally released included: prisoners arrested for minor criminal offences; prisoners who had served longer term awaiting trial than they would have done had they been convicted of the crimes of which they were suspected; and detainees suffering from ill-health. Other inmates would be assigned legal representatives, paid for by the government, to speed up their trials. See Amnesty International, 'Nigeria: Release of up to 25,000 Detainees and Prisoners', 9th *January*, 2006, Al Index: AFR 44/002/2006.

2006, the Minister of Justice stated that 10,000 inmates would be released. According to him, 'we have embarked on a massive decongestion of prisons, and 10,000 prisoners have been cleared for release. Some are already out'.[476] The government did not make public whether any prisoner was in fact, released and the number of inmates awaiting trial has continued to increase on daily basis.

After all the recommendations made by various committees and commissions, on 17 May 2007, the Information Minister announced that Nigeria had granted an amnesty to all prisoners who are over 70 years of age and to those of 60 years or above who had been on death row for 10years or more. According to the Minister, they would be released before the inauguration of the new president.[477] The said amnesty order was never carried out till date.

Over the years, the government has allocated money for prison decongestion and rehabilitation of prisoners. We may be tempted to submit that these funds were used to settled political loyalist of the party in power and girlfriends of the politicians.

A draft prison bill which was presented to the National Assembly in 2004 was passed into law on 4th June, 2015, more than 11 years thereafter. Up till date, the said bill has not been signed into law by the President and it may not likely to signed by the President. Our concern here is that Nigeria has failed and/or is still failing in keeping with her International obligations. Nigeria became a member of the United Nations in 1960. She undertook to comply with the provisions of the United Nations Universal Declaration of Human Rights of 1948. Despite the above undertaking, Nigeria has failed to ratify several international legal instruments on human rights. Some of the important international legal instruments on human rights which Nigeria has refused to assent to include:

1. The First Optional Protocol to the International Covenant on Civil and Political Rights which State Parties agree to recognise the competence of the United Nations Human Rights

[476] 'Nigeria 10,000 inmates to be freed', *New York Times,* Friday August 25, 2006.
[477] 'Nigeria Frees Elderly Prisoners before Power Shift', *Reuters,* Thursday May 17, 2007.

Committee now Human Rights Council to consider individual complaint based on the violation of the rights recogised by the International Covenant on Civil and Political Rights. These complaints were to be lodged before the United Nations Human Rights Council after such an individual had exhausted domestic remedies.

2. The Second Optional to the International Covenant on Civil and Political Rights which aims at the abolition of the death penalty.[478]

3. The Second Optional Protocol to the International Covenant on Economic, Social and Cultural Rights which establishes complaint and inquiring mechanism for the violation of rights provided in International Covenant on Economic, Social and Cultural Rights.[479]

At the regional level, Nigeria has not made a Declaration to accept the jurisdiction of the African Court on Human and Peoples' Rights as required by article 34(6) of the Protocol to the African Charter.[480] The implication is that cases cannot be brought against Nigeria directly by individuals or NGOs before the African Court on Human and Peoples' Rights. A case can only be brought against Nigeria in the African Court by other African states since Nigeria has ratified the Protocol to the African Charter. According to Justice Eric Ikhilae,[481] 'right now, direct access to the court is only limited to the people bringing matter against states who have made the declaration'.[482] However at the ECOWAS level, Nigeria has consented to the jurisdiction of ECOWAS court.[483]

It appears that Nigeria assented to some of the international and regional legal human rights instruments for the purpose of protecting her image before the international community

[478]See 44th UNGA Resolution A/RES/44/128 of 15th December, 1989.
[479] 63rd UNGA Resolution A/RES/63/117 of 10th December, 2008 adopted the Optional Protocol to the ICESCR and it came into force on 5th May, 2013<www.ohchr.org/EN/protocol> accessed on Tuesday, 5th January, 2016.
[480]'Falana Sues Au over Denial of Access to African Human Rights Court', <www.saharareporters.com/.../falanasues-au-over-denial-of-access-court> accessed on Thursday, 21st January, 2016.
[481] Justice Eric Ikhilae was a Nigerian Judge to the African Court on Human and Peoples' Rights.
[482] E IKhilae,' Why Nigerians Can't Access African Court' the *Nation*, <www.thenationonlineng.net/why_nigerians_can't_access_african_court> accessed accessed on Thursday, 21st January, 2016.
[483] *Sambo Dasuki v the Federal Republic of Nigeria* ECW/CCJ/APP/01/16 where Col Sambo Dasuki dragged Nigeria to ECOWAS court for alleged unlawful detention.

since by provision of section 12 (1) of the Constitution of the Federal Republic of Nigeria1999 (as amended), these instruments cannot have the force of law in Nigeria until they are domesticated *via* the act of National Assembly.

At the national level, prisoners are still denied their right to vote despite a valid Federal High Court decision in *Victor Emenuwe & 4 Ors v INEC & Anor*[484] which declared the disenfranchisement of prisoners in Nigeria unconstitutional, null and void. Again, the provisions of Chapter two of the Constitution of the Federal Republic of Nigeria 1999 (as amended) are aspirations to be attained when the economy improves. Is it now that price of oil is going down at the international market and Nigeria is increasing pump price of Premium Motor Spirit (PMS) at the local markets that these aspirations will be attained?[485]

On the part of the public, stigmatisation of prisoners has also been a barrier to the realisation of prisoners' rights in Nigeria. Some people are of the view that what the prisoners should be interested in is how to regain their freedom and not to start asserting the protection of any nonsense rights because every person in prison custody is presumed to be a criminal. This is the kind comments seen on face books and other social media in 2014 when some prisoners sued the INEC and the Controller of Nigerian Prisons for the violation of their right to vote. No wonder all the respondents to our questionnaires agreed that attitudes of the government and public militate against the realistion of prisoners' rights in Nigeria.

The message to the public is that deprivation of one's liberty does not mean one forfeiting his human rights. Except for those limitations that are demonstrably necessitated by the fact of incarceration, prisoners are entitled to all human rights and fundamental freedoms set out in the United Nations human rights instruments, regional human rights instruments and the national human right instruments.

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[484] *Supra*.
[485] 'Fuel Subsidy: NLC on Strike' *Vanguard Online News*, <www.vanguardngr.com> accessed on Thursday, 19th May, 2016.

5.1.5 Delays in the Determination of Cases in Courts

Access to justice entails that people who are in need of their rights find effective solutions available from justice systems which are accessible, affordable, comprehensive to ordinary people, and which dispense justice fairly, speedily and without discrimination, fear or favour.[486] Where there is no effective access to justice, there will be no effective legal protection of human rights.

Preamble 3(d) to the Fundamental Rights (Enforcement Procedure) Rules, 2009 provides that, 'The court shall proactively pursue enhanced access to justice for all classes of litigants, especially the poor, the illiterate, the uninformed, the vulnerable, the incarcerated and the unrepresented'. The desire of the Fundamental Rights Rules, 2009 is for the court to speedily dispense with human right cases brought before it.

However, delays in the determination of cases, complex rules and procedures are some of the challenges to the realisation of prisoners' rights. These delays at one time emanate from court and at the other time from lawyers and the prison authorities. Most often the litigants and their lawyers may prepare and come to court to do their matters only to be informed that the court will not sit. According to Justice Winkler,

> There is nothing more effective in the court system than a day of reckoning: specific fixed trial date. The most constructive thing that our trial courts can provide to assist parties in resolving their disputes is to ensure that a Judge is available to try the case… and that a trial date is available within as short a

[486] MT Laden, 'Women Rights, Access to and Administration of Justice under the Sharia in Nigeria' ezilo *et al*, Sharia *Implementation in Nigeria: Issue and Challenges on Women's Rights and Access to Justice* (Enugu: Women's Aid Collection, 2003) p.19.

time as possible after the case is ready for trial. In short, a fair and just system of justice requires a courtroom, a Judge and a non-adjournment policy.[487]

Most of the courtrooms use in Nigeria today for trial of cases were inherited from the colonial government. Some of them were built in such a way that they do not give room for proper ventilation. This makes some of our courtrooms very stuffy once there is power failure from the public power supply. Some courts do not have generating sets to resort to once there is a power failure from the public power supply. Once power fails from the public power supply, it becomes difficult for some courts to sit because of over bearing heat and inadequate lightening in courtrooms which makes reading and writing very strenuous.

Apart from the above, most of the Nigerian courts lack adequate courtrooms to accommodate some Judges. This paves the way for the Judge to sit on rotational basis despite the volume of cases that Judges are to handle. Again, transfer of Judges, leads to cases starting *de novo* whenever a new Judge takes over. Despite the above, our courts lack working tools. In some jurisdictions, Judges still write in long hand and there is little or no computerisation of court processes.

On the other hand, some lawyers who fail to prepare their cases only come to court to seek for adjournment.

Delays in the determination of cases in courts escalate cost of litigation, create time wastage, increase cost of retaining the services of a lawyer and other related expenses. Litigation is made less useful by long delays and there is usually the possibility of the cost of litigation exceeding the value of the subject matter under litigation.[488]

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[487]Justice WK Winkler of Ontario, Canada at the Canadian Club of London, 30th April, 2008, cited by T Akaraiwe, Analysis of the Fundamental Rights (Enforcement Procedure) Rules, 2009 : Proactive Concept in Nigeria (Ibadan: St. Paul's Publishing House, 2010) p.11.

[488]J Amadi, 'Enhancing Access to Justice in Nigeria with Judicial Case Management: An Evolving Norm in Common Law Countries' <www.papers.asrn.com/sol3/paper.cfm?abstract_id=1366943_similar> accessed on Friday, 12th February, 2916.

Again, the complex rules and procedures may require prisoners to seek for service of an expert (a lawyer) in almost all cases. These complex rules and procedures create room for a lot of preliminary objections by lawyers. Replies to these objections and rulings by the court contribute to delays in the determination of cases.

The above obstacles have increased the growing lack of public confidence in our judicial system. This can be blamed on existing legal regime in Nigeria. The result of our questionnaires reveals that the respondents are in agreement that delays in trial of cases in Nigeria is a challenge to the protection of prisoners' rights.

5.1.6 Illiteracy and Lack of Awareness

Illiteracy may mean inability to read and write. It could mean inability to know and appreciate the existence of a particular fact. Whichever way the explanation goes, the fact remains that illiterate is one of the biggest challenges to the protection of prisoners' rights in Nigeria. According to Oputa, 'people especially the illiterate masses of our country do not even know what their human rights are. They may therefore not even know when those rights have been or are being infringed.'[489] Some prisoners in Nigeria are not aware that they have any right to protect.

Nigerian prisons are filled with people who either acquired little education or not educated at all. It is beyond argument that education has the ability of empowering the people to maximise the opportunity and resources available in their environment. An educated man will easily adapt to the realities of the situation and have the intellectual capacity to insist on the enforcement of his rights unlike an illiterate.[490]

Illiteracy is one of the major obstacles to the actualisation of prisoners' rights. Some prisoners in Nigeria belief that once one is in prison, his rights will be in abeyance until he

[489] CA Oputa, 'Human Rights in the Political and Legal Culture of Nigeria', *op cit*, pp 65-66.
[490] E Ojukwu *et al*, *Handbook on Prison Pre-Trial Detainee Law Clinic, op cit*, p. 127.

regains his freedom. Education appears to be the right of the rich in Nigeria because of its cost implications.

The respondents to our questionnaires also agreed that illiteracy among some prisoners is a challenge to the protection of their rights.

5.1.7 Lack of Adequate Legal Aid Scheme

Section 46 (4) (b) of the Constitution of the Federal Republic1999 (as amended) provides that:

> The National Assembly shall make provisions:
>
> (i) for the rendering of financial assistance to any indigent citizen of Nigeria where his right under this Chapter[491] has been infringed or with a view to enabling him to engage the service of a legal practitioner to prosecute his claim, and
>
> (ii) for ensuring that allegations of infringement of such rights are substantial redress and the requirement or need for financial or legal aid is real.

Based on the above provision, the National Assembly enacted the Legal Aid Act, 2011.[492] The explanatory memorandum to the Act provides that:

> This Act repeals the Legal Aid Act Cap L 9 Laws of the Federation of Nigeria, 2004, enact the Legal Aid Act, 2011 in line with international standards, provide for the establishment of legal aid and access to justice fund into which financial assistance would be made available to the Council[493] on behalf of the indigent citizens to prosecute their claims in accordance with the Constitution and further to empower the existing Legal Aid Council to be responsible for the operation of a scheme for the grant of legal aid and access to justice in

[491] This Chapter in the above context means Chapter 4 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).
[492] Legal Aid Act, 2011 was signed into law by the Former President Goodluck Jonathan on 2nd June, 2011.
[493] Council in this context means the Legal Aid Council.

certain matters or proceedings to persons with inadequate resource in accordance with the provision of this Act.

Section 8(2) of the Act provides that the Legal Aid Council shall render legal aid service to indigent citizens of Nigeria who are charged with the offences of murder, manslaughter, grievous bodily harm, assault occasioning actual bodily harm, common assault, affray, stealing, rape and armed robbery.[494] The implication of the above provision is that a person detained for offences bordering on arson, kidnapping, house breaking, burglary, unlawful possession of firearm, sedition, cultism, treason and treasonable felonies among others are not entitled to benefit from legal aid scheme in Nigeria even though the person may be indigent. We humbly submit that legal aid service in Nigeria should be made available to every pre-trial prisoner in Nigeria in respective of the offence the person is facing trial. Since the Constitution presumes every person who is charged with a criminal offence innocent until he is proved guilty, it is wrong for the Legal Aid Act to place discrimination on the nature of offence or offences that a person or persons must be charged with before he will be entitled to benefit from legal aid service in Nigeria.

The Act also makes provision for the assistance of indigent Nigerians in the in civil claims bordering on breach of their fundamental rights, claims arising from criminal activities against persons who are qualified for legal aid assistance under the Act.[495] To qualify to benefit from the Legal Aid Scheme in Nigeria, the person's income must not exceed the National Minimum Wage[496] except in the exceptional circumstance where the Board[497] may

[494] Legal Aid Act, 2011, Second Schedule.
[495] Legal Aid Act, Section 8(3).
[496] The National Minimum Wage Act, CAP N 61, Laws of the Federation of Nigeria, 2004 provides that ₦ 5,500:00 shall be the minimum wage per month for the employees in the government employment, Section 1.
[497] The Board in this context means the Legal Aid Board.

consider otherwise.[498] For the purpose of determining the income of the indigent, the Act provides that his income, his personal and real property are to be taken into account.[499]

The implication of the above is that before a person could be declared an indigent for the purpose of benefitting from the Legal Aid Scheme, his income, personal and real property must not exceed ₦5, 500:00 based on the National Minimum Wage Act, 2004. This is unfortunate.

According to Mcquoid-Mason, legal aid means the gratuitous provision of legal assistance to person or persons who cannot afford to pay for the services of a legal practitioner.[500] The philosophy behind legal aid service is to ensure that legal services are made available to all persons who are unable to afford the services of legal practitioners.

According to the International Commission of Jurist,

> Equal access to law for rich and poor alike is essential to the maintenance of the rule of law. It is therefore essential to provide adequate legal advice and representation to all those threatened as to their life, liberty, property or reputation, who are not able to pay for it.[501]

Apart from the *lacunae* existing in the Legal Aid Act, 2011, the Legal Aid Scheme is also faced with some challenges such as: fund, insufficient lawyers in employment of the Council, poor remuneration of staff , among others. These among others have hampered the effectiveness of Legal Aid Council in the discharge of its duty to the indigent prisoners in Nigeria. The respondents to our questionnaires also agreed that lack of adequate legal aid scheme in Nigeria is also a challenge to the protection of prisoners' rights.

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[498] Legal Aid Act, Section 10 (1) and (2).
[499] Legal Aid Act, Section 11 (1).
[500] DJ Mcquoid-Mason, *An Outline of Legal Aid in South Africa* (London: Butterworth Publication, 1982) p.1.
[501] International Commission of Jurist, 'Conference on Rule of Law in a Free Society' held in Delhi in 1959 cited by E Malemi, *The Nigerian Legal System: Text and Cases* (3rd edn, Lagos: Princeton Publishing Co, 2009) p.417.

5.1.8 Prisons' Congestion

As noted earlier, the *lacunae* created by the Prisons Act and its Regulations are the foundation of prisons' congestion[502] in Nigeria. For instance, Regulation 17 of the Prisons Regulations provides that, 'prisoners for whom separate cells are not provided shall be associated in room with not less than three prisoners in each room'. This regulation provides for the minimum number of prisoners that should be kept in a prison cell but fails to provide for the maximum number of prisoners that should be kept in the same prison cell. The implication is that prison authorities are left with the discretion to deciding the maximum number of prisoners to be kept in a particular cell at a given time. This always paves the way for the prison authorities to admit prisoners in the prison cells without considering the carrying capacities of those cells. For instance, Abakaliki prison that was built with the official capacity of 387 inmates housed 894 inmates at the time we visited the said prison. At Enugu prison, 1,800 inmates were housed therein as against the official capacity of 638 inmates. At Kuje prison Abuja 852 inmates were held in the said prison as against the official capacity of 560 inmates. This is very unfortunate if one considers this era of global warming and the fact that majority of prison cells were built in such a way that they do not give room for proper ventilation.

Apart from the *lacunae* identified in the Prisons Regulations, there are other factors that contributed to the surging increase in prison populations in Nigeria. Among these is increase in crime wave in the society. According to Ibekwe:

> The prison cells deemed adequate decades ago are now inadequate because more and more people especially the youth commit crimes with effrontery. This is partly because societal values seem to have changed. In the past it was a "good name is better than silver and gold", "knowledge is power",

[502] Prisons congestion and overcrowding are often used interchangeable and the two words will be used as such in this discussion.

> "hardwork pays", "respect to the elders attracts blessings" etc. These virtues are relegated. Money alone appears the only good. The pursuit of it leads so many to crimes….. The result is that when such crimes are committed, the perpetrators of the acts or omissions become ready inmates of prison cells as they await their trials, if they have not been tried and convicted.[503]

In the same vein, Ehigiator noted that:

> Prison congestion is caused by a combination of factors. Among these is the ever-increasing crime wave in the society. Even if our prisons are elastic materials (which they are not) it is practically impossible to make their expansion keep pace with our crime rate. Consequently, existing facilities are always overstretched.[504]

Available statistics reveal that there are 240 prisons in Nigeria[505], spread across the six geo-political zones of the country. The breakdown of the Nigerian prisons population as at 31st October, 2014 showed that there were 17,544 convicted prisoners and 39,577 inmates are on awaiting trial list. That gave the total of 57,121 prisoners in Nigeria as at 31st October, 2014.[506] In 2016, the figure rose to 65,000 out of which 72% (46,800) are awaiting trial inmates while 28% (18,200) are convicts.[507]

According to *Thisday* newspaper of Wednesday, 21st April, 2010, 'about 10 prisoners of the Kaduna Convict Prison were killed by security agents during an attempted jail break which was attributed to overcrowding in the Kaduna Convict Prison.'[508] The report stated that

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[503] GC Ibekwe, 'Observance of the Norms of Human Rights in Nigeria Prisons- Real or Otherwise'(1994-1997) 6 *The Nigerian Juridical Review*,183.
[504] HO Ehigiator, 'Prisons and Prisoners' in *Welfare: Social Justice Seminar* held at Hotel Presidential, Enugu 16- 17 November, 1989, p.2.
[505]Nigefrian Prison Service,'The Nigerian Prisons Statistics as at 31st October, 2014' published at the Official Website Of The Nigerian Prisons,< http://www.prisons.gov.ng/about/statistics-info.php> accessed on Friday, 19th February, 2016.
[506] *Ibid*.
[507]E Ekpendu, 'Nigeria has 65,000 prisoners' *The Sun*, Wednesday November 18, 2015, <sunnewsonline.com/…/Nigeria-has-65,000-prisoners-nps> accessed on Wednesday, 18th November, 2015.
[508] *Thisday*, Wednesday April 21, 2010, p.4.

Kaduna Convict Prison built with the capacity of 524 inmates housed about 797 inmates out of which 539 inmates were on awaiting trial list as at the time of the attempted jail break.[509] This is indeed a 'national embarrassment'.

According to the Report and Recommendation on the Classification of Prisoners and the Re-Grouping of Prisons and Lock-ups on Functional Basis, 1975:

> The gross inadequacy of accommodation for prisoners makes it very difficult for the department to discharge its primary functions, namely that of identifying the reason for the anti-social behaviour of offenders and teaching and training them to become useful citizens in a free society. We need not dwell on the appalling accommodation situation in our prisons today. It is enough to say that overcrowding in some prisons has assumed very high alarming proportions that it calls for expeditious action, otherwise the consequence may be grave.[510]

We agree with the above report that overcrowding in Nigerian prisons has assumed very alarming proportions that it calls for expeditious action otherwise the consequences may be grave. Overcrowding in Nigerian prisons has resulted in the loss of lives of some prisoners due to the attempted jail break at Kaduna Convict Prison in 2010.[511] On 28 March, 2007, two prisoners died in Kuje Prison as a result of riot attributed to shortage of food and water due to overcrowding.[512] On 24th June, 2016, Maxwell Ajukwu and Solomon Amodu who were stranding trial for murder escaped from Kuje prison as a result of jail break which may be attributed to overcrowding.[513] On 22nd February 2015, inmates at Afokang Calabar South

[509] *Ibid*.
[510] 'Report and Recommendations on the Classification of Prisoners and Re-Grouping of Prisons and Lock-up on Functional Basis, 1975' coted by TO Ifaturoti, "The Challenges of Nigeria Prisoners in the Light of the Human Rights Campaigns", (1992) 3 *JCLP*, P,118.
[511] *Thisday*, Wednesday, April 21, 2010, *op cit*.
[512] Amnesty International, 'Nigeria: Prisoners' Rights Systematically Flouted', *op cit.*
[513] A Adepegba, 'Kuje Jailbreak', the *Vanguard* Tuesday June 28, 2016

prison attempted a jailbreak while on 2nd of July 2016 inmates of Enugu prison protested for ill treatment as a result of overcrowding.[514]

Overcrowding results in the over-stretching of amenities in prisons, high mortality rate, lack of hygiene, poor feeding, and inadequate medical care. Diseases are widespread in prisons because of overcrowding. The situation is terrible to the extent that Nigerians serving various jail terms in the United Kingdom described the signing of the Prisoners' Transfer Agreement by Nigeria government and the United Kingdom as wickedness on part of Nigeria.

According to the Tafida,[515] 'some Nigerians serving various jail terms in the UK kicked against the recently signed Prisoners' Transfer Agreement between Nigeria and British governments citing poor prison facilities and stigma'.[516] Amnesty International said it is 'extremely concerned' about sending back criminals from Britain to Nigeria where prison conditions have been described as 'hash and self-threatening'.[517] According to a London based human rights group's deputy Africa director, Aster Van Kregten, the Nigerian conditions such as overcrowding, poor sanitation, lack of food and medicines and denial of contact with friends and family fall short of the United Nations Standard Minimum Rules for the Treatment of Offenders. The condition is appalling and damaging to the physical and mental well being of inmates.[518]

Overcrowding poses serious security threat to Nigerian prisons. A survey through our case laws has not disclosed any decision in which a prisoner has sought to enforce his rights

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[514] On 1st July, 2016, inmates of Enugu prison staged protest against poor treatment and in the process; many of them were left with severe injuries. 'Enugu Inmates Protest: Several Prisoners Injured', <www.reachannel65.com.ng/....,> accessed on Monday 25th July, 2016. In July 2016, 13 inmates escaped from Koton/Karfe prison in Kogi state, in August 2016, 15 inmates escaped from Nsukka prison in Enugu and attempted jailbreak was foiled at Abakaliki prison.

[515] Dr Dalhatu Tafida was a Nigerian High Commissioner to UK.

[516] D Tafida 'Nigerian Prisoners in Uk Kick Against Transfer Agreement' Vanguard, Tuesday, April 4, 2014, p.1.

[517] Amnesty International, 'UK/Nigeria signed a Prisoner Transfer Agreement', <https://www.gov.uk.com/.../uk_nigeria_signedprisonerstransferagreement> accessed on Friday, 8th January, 2016.

[518] *Ibid.*

based on inadequate space of confinement. On the other hand, our courts have continued to issue remand orders at the slightest opportunity while prosecutors grope in the dark to perfect charges against suspects even as they resist applications for bail. The problem stems from our laws. It is on this note that we humbly suggest that enforceable right to specific accommodation standards in Nigerian prisons be introduced so that prisoners can challenge the same in court if breached. This will be possible if there is a legal instrument enacted by the National Assembly to that effect. It is also our humble suggestion that a new legal regime be introduced to pave the way for the private participation in the establishment and running of prisons in Nigeria. Privatisation paves the way for competition and competition paves the way for better output.[519] If private institutions are allowed to run prisons, then more prisons will be established and in order to draw customers to their establishments, they must comply with the international best practices on prisons administration.[520]

While we admit that this may lead to abuse, it is our humble view that there should be a uniform standard in the administration of privately operated prisons in Nigeria.[521]

Other means of reducing overcrowding in Nigerian prisons is through the adoption of other sentencing options such as parole system[522], probation[523], community service order, fine, discharge after conviction, payment of compensations to the victim of crime, among

[519] For instance, the monopoly of NITEL was broken by the introduction of private telecommunication networks operators such as MTN Nigeria, GLO, AIRTEL, among others.
[520] In the modern time, the United Kingdom appears to be the first country in the Europe to provide for the establishment of private prisons. <http://www.hmpworlds.co.uk> accessed on Friday, 19th February, 2016.
[521] In the United Kingdom, private prisons are regularly monitored by the office of the Chief Inspector of Prisons to ensure compliance with the acceptable international standards.< http://www.hmpworlds.co.uk> accessed on Friday, 19th February, 2016.
[522]Parole system is the release of a prisoner from imprisonment before the full sentence has been served. It is usually granted for good behaviour on the condition that the parolee regularly report to a supervising officer for a specified period.
[523]Probation is a sentencing option open to court to release a convicted person to the community under the supervision of a Probation Officer.

others.[524] The Administration of Criminal Justice Act, 2015 (ACJA) attempted to introduce the above alternative sentence options in Nigeria. Section 454 of the ACJA provides that:

> Where an accused is charged before a court with an offence punishable by law and the court thinks that the charge is proved but is of the opinion that having regard to:
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> (a) the character, antecedents, age, health, or mental condition of the caucused,
>
> (b) the trivial nature of the offence, or
>
> (c) the extenuating circumstances under which the offence was committed, it is inexpedient to inflict a punishment or any order than a nominal punishment or that it is expedient to release the accused on probation, the court may, without proceeding to conviction, make an order:
>
> (a) dismissing the charge; or
>
> (b) discharging the accused conditionally on his entering into a recognizance, with or without sureties, to be of good behaviour and to appear at any time during such period not exceeding 3 years as may be specified in the order.[525]

In the same vein, Section 460 of the ACJA provides that the court may order for suspended sentence or community service in offence that does not involve the use of arms, offensive weapons, sexual offences or for the offence which punishment exceeds imprisonment for a term of three years. For the purpose of exercising the powers to order for a suspended sentence or community service, the court shall have regard to the need to: (a) reduce congestion in prisons; (b) rehabilitate prisoners by making them to undertake productive work; and (c) prevent convicts who commit simple offences from mixing with hardened criminals.

[524]Administration of Criminal Justice Act, 2015, sections 319-328 have introduced costs, compensation, damages and restitution to victim of crime in Nigeria even though the Act applies to the offence created by the Act of the National Assembly only.

[525] Similar provision is in the Administration of Criminal Law, Anambra State, 2010, Section 396.

By the provision of section 467 of the ACJA, a person convicted of an offence that attracts a summary trial may be ordered by the court to serve his sentence at a Rehabilitation and Correctional Centre established by the Federal Government in lieu of imprisonment. The court in making an order of confinement at a Rehabilitation and Correctional Centre shall have regard to the age of the convict; the fact that the convict is a first offender; and any other relevant circumstance necessitating an order of confinement at a Rehabilitation and Correctional Centre. For this purpose, a child standing criminal trial may be ordered to be remanded at the Rehabilitation and Correctional Centre.

In a similar development, section 468 of the ACJA provides for a parole system as one of the measures to addressing the problem of the overuse of imprisonment in Nigeria. For this purpose, the Controller-General of the Nigerian Prisons is empowered to make report to the court recommending that a prisoner:

(a) sentenced and serving his sentence in prison is of good behaviour and

(b) has served at least one-third of his prison term, where he is sentenced to imprisonment for a term of at least 15 years or where he is sentenced to life imprisonment, the court may, after hearing the prosecution and the prisoner or his legal representative order that the remaining term of his imprisonment be suspended with or without conditions.

To ensure that the provisions of the ACJA are implemented, section 496 of the ACJA provides for the establishment of a body to be known as the Administration of Criminal Justice Monitoring Committee. The members of the Committee are to be drawn from the major stakeholders of the criminal justice system.[526] The Committee is charged with the responsibility of ensuring that: (a) criminal matters are speedily dealt with; (b) congestion of

[526]These major stakeholders include: the Chief Judge of the FCT who shall serve as the Chairman, the Attorney General of the Federation, a Judge of the Federal High Court, the Inspector-General of Police, the Controller-General of the Nigerian Prisons, the Executive Secretary National Human Rights Commission, the Chairman of any of the local branch of NBA in the FCT, the Director-General of the Legal Aid Council of Nigeria and a representative of the Civil Society on working on human rights.

criminal cases in courts is drastically reduced; (c) congestion in prisons is reduced to the barest minimum; (d) persons awaiting trial are, as far as possible, not detained in prison custody; (e) the relationship between the organs charged with the responsibility for all aspects of the administration of justice is cordial and there exists maximum co-operation amongst the organs in the administration of justice in Nigeria; (f) collate, analyse and publish information in relation to the administration of criminal justice sector in Nigeria; and (g) submit report quarterly to the Chief Justice of Nigeria to keep the Chief Justice abreast of development towards improved criminal justice delivery and for necessary action; and (h) carry out such other activities as are necessary for the effective and efficient administration of criminal justice.[527]

In another development, the ACJA, 2015 provides for the award of costs, compensation, damages and restitution to the victim of crime. The above awards may be made against the convict in addition to or in lieu of the appropriate punishment prescribed by law.[528] Under the Administration Criminal Justice Law, Anambra State, 2010 (ACJL), cost may be awarded against the convict in favour of a private prosecutor or to the victim of the crime in addition to any penalty imposed on the convict.[529] In the same vein, cost may be awarded against a private prosecutor or complainant in favour of an accused person if the accusation against the accused person is false.[530]

The effectiveness of alternative sentencing options lays in the fact that those found guilty of minor offences are sentenced to non-custodial measures such as community service, probation, suspended sentence, parole among others rather than imprisonment. However, alternative sentencing options to community service, probation, suspended sentence and

[527]The Administration of Criminal Justice Committee for the Federation has been inaugurated by the Chief Justice of Nigeria on Wednesday, 13th April, 2016, *NTA network news* 4:00pm, Wednesday 13th April, 2016.
[528] The Administration of Criminal Justice Act, 2015, Sections 319 to 328. See also Section 454 (3) (4).
[529] The Administration of Criminal Justice Law, Anambra State 2010, Sections 385 and 397.
[530] The Administration of Criminal Justice Law, Anambra State 2010, Sections 386 and 390.

parole require oversight and some cost implications that may be difficult to meet up with when juxtaposed with the nations' economic reality of the time.

Apart from the challenge of fund to the implementation of alternative sentencing, several administrative hurdles, harmonisation of various interests among groups such as the media, political parties, victims of crime, relations to the victim of crime, among others may also pose threats to the success of the programme in Nigeria. On this, we submit that the sensitisation of the public on the benefits of alternative sentencing is important. People should be made to understand that imprisonment is not the only way of punishing offenders. There are other ways of handling them without causing harm to the public.

Further challenges to the implementation of alternative sentencing include the lack of transparent government and corruption bedeviling Nigerian judicial system. The success of any sentencing scheme lies amid the criminal justice system's transparency and integrity. Unfortunately, we found ourselves in a system where corruption is a norm rather than abnormal. It is suggested that if the above challenges could be surmounted, alternative sentencing to imprisonment will strive in Nigeria.

It is important to note that the Kampala Plan of Action[531] noted that prisons in Africa are overcrowded and inadequately resourced. The conditions for prisoners are inhuman; the conditions for the staff are intolerable. Over use of imprisonment as a means of crime control does not serve the interests of justice, nor does it actual protect the public against crime. It is a waste of human and economic resources. At time, people return from prisons and become lazier instead of being reformed to lead a law-abiding and self-supporting life. We therefore advocate that imprisonment should be use only in serious cases or when it in the interest of the public. We strongly believe that if prison farms are revitalised across the country, it will

[531] The Kampala Plan of Action was adopted as a follow up to the Kampala Declaration on Prison Conditions in Africa adopted by African Union at Kampala, Uganda in 1996.

serve as centres where persons sentenced to community service could carry out their programmmes.

5.1.9 Attitude of Prisons' Staff

In Australia, the court has established that in the exercise of their power, prison authorities owe prisoners the common law duty of care.[532] Such a duty may be violated if, for example, machinery in a prison workshop is unsafe and causes injury to a prisoner, or if officers allow assaults to be made on a prisoner without taking steps to protecting him. If the common law duty is breached, a prisoner is entitled to sue for damages.[533] This is the position of the Australian High Court in the case of *New South Wales v Bujdoso.*[534] In that case, the Australian High Court held that the prison authorities owe prisoners' duty of care due to their special and vulnerable status while in prison.

At times, the attitudes of prison officials towards prisoners negate this established common law principle. For example, inmate-on- inmate violence is often witnessed in our prisons. Inhuman and degrading punishment such as caning, chaining, solitary confinement, the use of leg irons, among others still persist in prisons despite the efforts of international and regional legal instruments aimed at discouraging the same.[535]

Corruption among the prison staff, deviation of foods and other items made for prisoners among others are serious challenge to the prison administration in Nigeria.

In all, it is humbly submitted that Nigeria needs a new legal regime that will adequately provide for and protect prisoners' rights.

[532] *Cekan v Haines*, [1990] 21 NSWLR 296.
[533] *L v Commonwealth* [1976]10 ALR 269.
[534] [2005] HCA 76.
[535] The Mandela Rules, Rules 36, 37, 38, 39, 40, 41, 42, 43, 44, 45 and 48 prohibit the use of chaining, solitary confinement, the use of leg irons, among others except on the advice of a medical practitioner.

5.2 Remedies for Breach of Prisoners' Right

Section 46 (1) of the 1999 Constitution provides that: 'Any person,[536] who alleges that any of the provisions this Chapter has been, is being or likely to be contravened in any State in relation to him may apply to a High Court in that State for redress'. In the same vein, article 8 of the Universal Declaration of Human Rights provides that: 'Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law'. The Preamble to the Fundamental Rights (Enforcement Procedure) Rules, 2009[537] provides in paragraph 3(b) that:

> For the purpose of advancing but never for the purpose of restricting the applicant's rights and freedoms, the court shall respect municipal, regional and international bills of rights cited to it or brought to its attention or of which the court is aware, whether these bills constitute instruments in themselves or form parts of larger documents like constitutions. Such bills include:
>
> (i) The African Charter on Human and Peoples' Rights and other instruments (including Protocols) in Africa regional human rights system.
>
> (ii) The Universal Declaration of Human Rights and other instruments (including Protocols) in the United Nations human rights system.

Paragraph 3(c) of the said Rules provides that: 'For the purpose of advancing but never for the purpose of restricting the applicant's rights and freedoms, the court may make consequential orders as may be just and expedients'.[538] In the same vein, the courts are enjoined to proactively pursue enhanced access to justice for all classes of litigants, especially

[536] In *Nemi v AG Lagos*, [1996] 6 N.W.L.R. (Pt 452) pp.42 -59, the court held that prisoners are entitled to enforce their rights because of the word, 'any person' used by section 46(1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

[537] The Fundamental Rights (Enforcement Procedure) Rules, 2009 was made by the Chief Justice of Nigeria pursuant to section 46 (3) of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

[538] The Fundamental Rights (Enforcement Procedure) Rules, 2009, Order XI provides that at the hearing of the application under the rules, the court may make such orders, issue such writs and give such directions as it may consider just or appropriate for the purpose of enforcing or securing the enforcement of any of the Fundamental Rights provided for in the Constitution or African Charter (Ratification and Enforcement) Act.

the poor, the illiterate, the uninformed, the vulnerable, the incarcerated and the unrepresented.[539]

In *Idris v. Agumga*[540], the Court of Appeal Abuja Division held that access to court implies approach or means of approach to court without constraint. In *Adesanya v President of the Federal Republic of Nigeria & Anor*[541]the Supreme Court held per Fatayi-Williams that:

> It is better to allow a party to go to court, and be heard than to refuse him access to our courts. Non-access, to my mind will stimulate the free for all in the media as which law is constitutional and which law is not. In any case, our courts have inherent powers to deal with vexatious litigations or frivolous claims.

The remedies for breach of prisoners' rights may come in form of judicial review, breach of common law duty of care and complaint to Public Complaint Commission.

5.2.1 Judicial Review

Judicial review is the power of a court to examine the acts of the other organs of government, lower courts, public or administrative authorities and uphold or invalidate them as the case may be.[542] In *Gyang v. COP*[543], the Supreme Court of Nigeria defined a judicial review as 'a judicial re-examination of the case in certain specified and prescribed circumstances'. In *Abdullahi v. Governor Kano Sate & 3Ors*,[544] the Court of Appeal Kano Division held that in judicial review, the court must not stray into the realms of appellate jurisdiction for that would involve the court in a wrongful usurpation of power. Judicial review is a supervisory

[539]The Fundamental Rights (Enforcement Procedure) Rules, 2009, Preamble 3(d).
[540] [2015] 13 NWLR (Pt.1417) 441 at 463.
[541] [1981]2 NCLR 358 at 385-386.
[542] E Maleni, *Administrative Law* (4th edn, Ikeja: Princeton Publishing Co, 2013) p.343.
[543] [2013]56 NSCOR 965 at 970.
[544] [2014] 16 NWLR (Pt. 1433) 213 at 220 ratio 5.

power of the higher court to reexamine the manner or procedure in which the lower court, organs of government, or public or administrative authorities followed in reaching a decision.

An aggrieved prisoner or prisoners may approach court for the purpose of the following remedies: declaration, order of mandamus, order of *certiorari*, order of prohibition, order of injunction, writ of habeas corpus, award of damages and offer of apology.

5.2.1.1 Declaration

Declaration of rights is the earliest and first method, procedure, relief or remedy devised by court to do justice.[545] Declaration is based on the premise that unless the rights of the parties are first determined and reconciled, the court cannot properly decide the matter in dispute. According to the *Black's Law Dictionary*, declaration means a formal statement, proclamation, or announcement, especially one embodied in an instrument.[546] Lord Denning argued that: 'The remedy of declaration… applies to administrative acts as well as judicial acts, when their validity is challenged because of denial of justice or for other good reasons'.[547]

An applicant who fails to secure a consequential relief or order may at least get a declaration of his rights. In the case of *Tukur v Government of Gongola State*[548] the Supreme Court per Nnaemeka-Agu held that:

> A pronouncement on a right, with or without sanction is enough, and is expected to be instantly obeyed; the underlying principle in all civilised societies is that, a coercive sanction against a government is unnecessary because it must obey any judgment of its own court.

In *Meadows & Anor v. Fabanwo*[549], Pemu JCA stated that, 'the grant of a declaratory relief is

[545] E Maleni, *Administrative Law*, *op cit.*, p.348.
[546] *Black's Law Dictionary* (9th edn, USA: Thomson Reuters, 2009) p.467.
[547] Lord Denning, *The Discipline of Law*, 1979, p.89, cited by E Maleni, *Administrative Law, ibid*, p.349.
[548] [1989] 4 NWLR (pt. 117) 592 at 609.
[549] [2014] 8 WRN 96 at 100 ratio 4.

discretionary. Therefore, where the court is of the view that the party seeking same would possess facts, credible enough to enable the court exercise its discretion in no other way but in his favour'.

An aggrieved prisoner is entitled to approach a court for a declaration of his rights. In *Nemi v. Attorney-General of Lagos State & Anor*[550], the appellant and four other persons were convicted of conspiracy to commit armed robbery and armed robbery. The appellant was sentenced to death on 28th February, 1986 after he had been in custody since he was arrested on 9th September, 1982. His appeal against his conviction was dismissed by the Court of Appeal on 29th March, 1990 and by the Supreme Court on 14th October, 1994. The appellant through his counsel commenced action at the Federal High Court sitting in Lagos on 17th January, 1995 by way of an *ex parte* application for and was granted leave to enforce his fundamental right based on the following relief among others:

> 1.A DECLARATION that the prison confinement of the Applicant under sentence of death since February 28, 1986, a period of 8 years, constitutes an infringement of Applicant's fundamental right against torture, inhuman and degrading treatment protected by section 31 (1) (a) of the Constitution of the Federal Republic of Nigeria, 1979.

On the return date for the hearing of the motion on notice, the respondent raised a preliminary objection on the ground that (a) the appellant had no legal capacity to institute the action; (b) that the court lacked the jurisdiction to entertain the matter and (c) that the application was wrong in law. Based on the said preliminary objection, the trial court dismissed the application. The appellant appealed to the Court of Appeal and the Court of Appeal held that:

[550] *Supra*.

> If a person condemned to death complains under the fundamental rights chapter of the Constitution that section 31 (1) (a) has been breached in regard to him, it is open to him to seek redress in a competent court which by section 42 is a High Court in the State where the breach took place. There is no doubt that the High Court has jurisdiction to hear and determine the suit.

The Supreme Court went ahead to declare that:

> There is nothing in sections 30(1) and 42 (1) & (2) of the 1979 Constitution to suggest that a condemned prisoner may be inflicted with any form of act that may amount to torture or to inhuman or degrading treatment….. To end the life of a condemned prisoner, it must be done according to the due process of law, and the due process of the law does not end with the pronouncement of sentence.[551]

In *Victor Emenuwe & 4 Ors v INEC & Anor*[552]the applicants who are prisoners filed a suit against the INEC and Controller of Nigeria Prisons for a declaration that the denial of their right to vote in public elections in Nigeria is unconstitutional. Justice Mohammed Lima of the Federal High Court Benin, Edo State in his ruling declared that, 'denial of inmates' right to vote is unconstitutional, illegal, irregular, unlawful, null and void and of no effect whatsoever'. According to the Court, INEC has no constitutional right to deny inmates their voting right. Being an inmate is not an offence that impedes their registration and voting right under section 24 of the Electoral Act, 2010 and that the exclusion of inmates in elections conducted in Nigeria is illegal. In *Bello v. Attorney General of Oyo State*[553]the Supreme Court declared that 'The premature execution of the deceased was an infringement of his constitutional right to life and right to prosecute his appeal.'

[551] *Supra*.
[552] Unreported suit number FHC/B/CS/12/14 delivered by Justice Mohammed Lima of the Federal High Court Benin on Tuesday, 16th December, 2014.
[553] [1986]5 NWLR (Pt. 45) 826-828.

Declaration is one of the effective tools which the prisoners can approach the court to use and invalidate the actions of the prison authorities or government against their rights.

5.2.1.2 Order of Certiorari

According to the *Black's Law Dictionary,*[554] *certiorari* in law of Latin means 'to be more fully informed'. It is an order directing a lower court, public or administrative authority to forward its record of proceeding to a higher court for that court to inquire into the legality of its decision and review it as may be necessary.[555] The order of *certiorari* is issued so that the court issuing the order may inspect the records and determine whether there has been any irregularity or injustice. The decision of the tribunal or an administrative body may be quash on the ground of *ultra vires*, lack of jurisdiction or excess of jurisdiction, error of law on the face of the record, breach of natural justice, bad faith among others. According to Kekere-Ekun JSC in *Onyekwuluje v. Benue State Government & 2Ors*:[556]

> Certiorari is one of the prerogative writs whose main function is to ensure that inferior courts or anybody entrusted with the performance of judicial or quash judicial functions keep within the limits of the jurisdiction conferred upon them by statutes which create them.

An order of *certiorari* may issue to quash a public or administrative act. It may also be issued to quash a judicial act once there is an issue affecting or capable of affecting the legal rights of the aggrieved party. In order words, an aggrieved prisoner can apply to a superior court to quash the decision of a prison authority or body charge with the responsibility of hearing and determining offence or offences against prisons discipline.

In the English case of *Regina v. Board of Visitors of Hull Prison, Ex parte St Germain and Ors*[557], following a riot in prison, the board of visitors heard charges against a number of

[554] *Black's Law Dictionary, op cit*, p.258.
[555] E Maleni, *Administrative Law, op cit*, p.358.
[556] [2016] 3 WRN 1 at 8 ratio 9
[557][1979] QB 425-426.

prisoners that where *inter alia* involved in concerted acts of indiscipline during the riot contrary to rule 47 of the Prison Rules, 1964 (as amended). The board found the prisoners guilty and made disciplinary awards including loss of remission. The prisoners applied to the Divisional Court of the Queen's Bench Division for orders of *certiorari* to quash the decisions of the board of visitors. The court held that the board of visitors was acting in a judicial capacity while adjudicating on disciplinary charges against a prisoner. However, the Court dismissed the applications on the ground that *certiorari* was not available to supervise those proceedings. Aggrieved by the ruling of the court, the prisoners appealed to the Court of Appeal. At the Court of Appeal, there was also another application for *certiorari* by a prisoner in another prison who had suffered loss of remission on being found guilty of assault. The Court of Appeal consolidated the two appeals and formulated two issues for determination.

1. Whether the Court of Appeal had jurisdiction to hear the appeals.

2. Whether the appeals concerned a 'criminal cause or matter' in respect of which appeal lay only to the House of Lords.

On the issue number one, the Court held that:

> The offences against the Prison Rules were offences against discipline in a code of private law which applied to a limited class of persons and were not offences against public law tried before a criminal tribunal at which an offender was liable to be convicted of a criminal offence and punished for such an offence, accordingly judgment appealed from was not judgment in a criminal cause or matter and the appeals were competent and justifiable by the Court of Appeal.

On the issue number two the Court held that:

> Although a board of visitors had many administrative functions and duties in relation to the prison and prisoners therein, when adjudicating on charges of offences against discipline in the exercise of their disciplinary power under the Prison Act 1952 and the Rules made there under, they were performing a judicial act which was a separate and independent function; and that in performing that act the board had a duty to act judicially and the decisions they made were in principle subject to judicial review by way of *certiorari*.

The modern concept is not to consider whether the administrative body acted judicially but to consider whether it has acted fairly in the case under review. In *Hart v Military Governor of Rivers State*[558] Fatayi-Williams JSC (as he was) held that:

> The earlier view of the law is that an administrative body, in ascertaining facts, may be under a duty to act judicially notwithstanding that its proceedings have none of the formalities of, and are not conducted in accordance with the practice of a court of law… The modern concept, which is however, commends itself to us, is that the duty placed on such a body is to act FAIRLY in all cases. No labels such as 'judicially' or 'quash-judicially' are necessary as they tend to confuse.

As a result of the above, public officer, authorities and bodies are now amendable to the order *certiorari* irrespective of whether the acts complained of were judicially, quash-judicially or not. The bottom line is that once the administrative authority takes a decision that will affect the right of a person; an order of *certiorari* will lie against it.

Order of *certiorari* is also available against the decisions of individual public officer so long as his decision affects the right of a person. *Certiorari* is another weapon which prisoners are encouraged to employ to check the excesses of prison authorities. Nigeria is

[558] [1976] FNLR 215 SC, *Nwaobash v Milad of Delta* [2003] 11 NWLR (Pt.831), p.305 at 31`8.

bereaved of judicial authorities on where a prisoner has utilised this remedy as a means of enforcing his right.

5.2.1.3 Order of Mandamus

A *mandamus* is an order of court directing a person or body to perform a public duty which the person or body is bound to perform. According to the Supreme Court of Nigeria in *Atungwu v. Ochekwu*[559]:

> It is apt to depict it here that mandamus is a writ issuing from court of competent jurisdiction, commanding an inferior tribunal, board, corporation or a person to perform a purely ministerial duty imposed by law, it is an extraordinary writ which lies to compel performance of a duty where there is a clear legal right in the plaintiff and a corresponding duty on the defendant.

In *Ngo v. Green*[560] the court held that mandamus is a high prerogative writ which lies to secure the performance of a public duty in the performance of which the applicant has a sufficient legal interest. It gives command that a duty or function of a public nature which normally though not necessarily is imposed by statute but is neglected or refused to be done after due demand.[561]

The principle of 'Demand and Refusal' is usually a prerequisite before an order of mandamus is made in favour of the applicant.[562] In *Fawehinmi v Akilu,*[563] the applicant, Gani Fawehinmi presented to the Director of Public Prosecution (DPP), Lagos State a document based on his own investigations on the murder of Dele Giwa and requested the DPP to exercise the power vested on him and prosecute Col. Akilu and Lt. Col Togun for the said murder or alternatively, to endorse a certificate to enable him bring private prosecution against the said Col. Akilu and Lt. Col. Togun. The DPP declined to come to decision with

[559] [2013]56 NSCQR 1072 at 1080 ratio 8.
[560] [2015] 7 NWLR (Pt. 1459) 599 at 606
[561] *Ngo v. Green, supra; Ikechukwu v. Nwoye* [2015] 3 NWLR (Pt. 1446) 367 at 373.
[562] *Atungwu v. Ochekwu, supra.*
[563] [1987] 4 NWLR (pt.67) 797.

respect to the Fawehinmi request stating that he had to received official report from the police in that regard before acting.

In response, Fawehinmi filed an application at the High Court of Lagos State for leave to apply for an order of *mandamus* to compel the DPP to decide whether or not he was going to bring criminal proceedings against Col. Akilu and Lt. Col. Togun and in the event that he is not prosecuting them, he should certify him to carry out a private prosecution against them. The High Court refused the application as well as the Court of Appeal. On further appeal to the Supreme Court, his appeal was allowed and leave was granted him to bring application for an order of *mandamus* against the DPP of Lagos State.

An order of mandamus is commonly issued against abuse of government or administrative power. In *Burma and Hauwa v Usman Sarki*[564]Justice Udo-Udoma held that:

> In the absence of a prescribed procedure for attacking the exercise of the power by a Minister, the normal civil process and the principles of general law, including the prerogative orders are of cause available to be invoked to advantage by an aggrieved person whose rights have been infringed.

It is our submission that undue delay in prosecution of a charge against a prisoner may attract an order of *mandamus* against the DPP. Just like refusal to take a prisoner to court to stand his trial without justifiable reason could also attract an order of *mandamus* against the prison authority. In the same vein, a prisoner who is denied access to food, water, medical treatment or other basic amenities can take up a writ of *mandamus* against the prison authority. In the Georgia case of *Darker v Humphrey*[565], Waseen Darker filed a petition for *writ* of *mandamus* to compel the prison warden to grant him access to library. The trial court refused his application. On appeal to the Georgia Supreme Court, the Court held that the trial court erred in refusing to allow the prisoner's petition for *mandamus* seeking access to library. According

[564] [1962] 2 All NLR 62.
[565] 294 Ga, 504, 755 S.E 2d 201 [2014]. See also *Bounds v Smith* 430 U.S 817 [1977], *Hicks v Gravett* 849 S.W 2d 946 [1993].

to the court, access to the court 'requires prison authorities to assist inmates in the preparation and filing of meaningful legal papers by providing the prisoner with adequate law libraries.

5.2.1.4 Order of Injunction

In *Jimoh v. Aleshinloye II*[566] the Court of Appeal defined injunction as 'an equitable order restraining the person to whom it is directed from doing the things specified in the order or requiring, in exceptional situations, the performance of a specified act'. A claim for injunction is a claim in equity. The order of injunction is available to restrain the defendant from the repetition or the continuous in the wrongful act complained of. It is available to perfect a legal right which is in existence. Injunction could be interlocutory or perpetual in nature. In the case of *Baa v. Adamawa Emirate Council*[567] the Court of Appeal Lagos Division stated that for an applicant to be entitled to an interlocutory injunction:

(a) he must show that there is serious question to be tried, that is, that the applicant has a real possibility, not probability of success at the trial notwithstanding the defendant's technical defence (if any),

(b) the applicant must show that the balance of convenience is on his side, that is, that more justice will result in granting the application than in refusing it;

(c) the applicant must show that damages cannot be adequate compensation for his damage or injury, if he succeeds at the end of the day;

(d) the applicant must show that his conduct is not reprehensible; for example he is guilty of the delay.

Interim or interlocutory injunction is made to last for a while why the issue in controversy is resolved by the court. On the other hand, perpetual injunction is based on the final determination of the rights of parties, and it is intended to prevent permanent

[566] [2014] 15 NWLR (Pt. 1430) 277 at 287 ratio 9
[567] [2014] 8 NWLR (Pt. 1410) 539 at 542 ratio 1.

infringement of those rights and obviate the necessity of bringing action after action in respect of the same subject matter- *F.C.D.A. v. Unique Future Leaders Int'l Ltd.*[568]

A prisoner may apply for an order of injunction to restrain a government official or visitor from hearing a charge against him with respect to offence or offences against prison discipline. The ground upon which he may base his application will be bias or likelihood or the breach of the rules of natural justice by the official.

In the same vein, an injunction could also be utilised by a prisoner to compel a prison authority or authorities to perform a specific act or refrain from taking a particular action.

5.2.1.5 Writ of Habeas Corpus

A *habeas corpus* is a writ for securing the liberty or immediate release of a person from unlawful custody or other unjustifiable detention. According to AT Oyewo, there exist different orders of *habeas corpus* in England. They are: *habeas corpus ad testificandum* which is issued to direct that a prisoner be produced for the purpose of giving evidence in court; *habeas corpus ad respondendum* which is issued to direct that a prisoner be produced for the purpose of answering a charge against him; *habeas corpus ad deliberandum* and *racias* which is issued to direct that a prisoner be removed from one prison to another for the purpose of keeping him closer to a place of his trial.[569]

The remedy of *habeas corpus* is basically for the pre-trial prisoners. A detention of a pre-trial prisoner becomes unlawful once it is done without justifiable cause.

5.2.1.6 Award of Damages

Damage is the injury or loss suffered by a person as a result of the violation of his right by the government or individual. An award of damages is the monetary compensation which the court may direct the party in default to be paid to the party whose right is violated. In

[568] [2014] 17 NWLR (Pt. 1410) 213 at 221 ratio 7.
[569] AT Oyewo, *Administrative Law in Nigeria* (Ibadan: Jator Publishing Company) p.219.

F.C.D.A. v. Unique Future Leaders Int'l Ltd[570], the Court of Appeal Abuja Division held that 'damages are awarded as a consequence of some breach suffered with the intention of restoring the offended party to a parity of sorts.' 'In order to justify an award of exemplary or aggravated damages, it is not sufficient to show simply that the defendant has committed the wrongful act complained of, his conduct must be high handed, outrageous, insolent, vindictive, oppressive or malicious and showing contempt of the plaintiff's right which actuates the conduct of civilised man'.[571] Section 35(6) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) provides that: 'Any person who is unlawfully arrested or detained shall be entitled to compensation and public apology from the appropriate authority or person; and in this subsection, the appropriate authority or person means an authority or person specified by law'.

A prisoner may seek damages in court against the prison authorities or government agent if he considers that his right has been, is being or likely to be breached by the said authorities. In *Victor Emenuwe & 4 Ors v INEC & Anor*[572] the Federal High Court sitting in Benin, Edo State awarded the sum of N100, 000:00 against the INEC and the Controller of Prisons in favour four prisoners who sued for themselves and on behalf of other inmates of Nigerian prisons for violation of their rights to vote.

Damages may also be either special or general. While special damages may result from the actual suffering or loss a prisoner might have incurred as a result of breach of his right, general damages may be presumed from the circumstances of the case. In *Amakiri v Iwowari*[573], the High Court of Port Harcourt held that: 'The courts are the watchdogs of these rights and the sanctuary of the oppressed and will spare no pains in tracking down the arbitrary use of power, where such cases are brought before the court'.

[570] *Supra*.
[571] *F.C.D.A. v. Unique Future Leaders Int'l Ltd, supra.*
[572] *Supra*.
[573] [1974] 1 RSLR 5.

In *Bade Local Government Council v Bulama Mai Ardo*[574], the plaintiff was wrongly convicted and sentenced to three months imprisonment by Bade Area Court. On appeal, the Court of Appeal set aside the conviction and sentence by the lower court and ordered that Bade Local Government Council pay N500.00 to the plaintiff as damages, and also make a public apology to the plaintiff.

Apart from the remedies listed above, the common law has established that in the exercise of their power, prison authorities owe prisoners a duty of care.[575] Such a duty may be violated if, for example, machinery in a prison workshop is unsafe and causes injury to a prisoner, or if officers allow assaults to be made on a prisoner without taking steps for his protection. If the common law duty of care is breached, the prisoner is entitled to sue for damages.[576] In the Australian case of *New South Wales v Bujdoso*[577] the Australian High Court held that prison authorities owe prisoners duty of care due to their special and vulnerable status while in prison. For a prison to establish a breach of common law duty of care, he must satisfy the court:

(a) that the prison authorities owe him a duty of care;

(b) that the prison authorities breached the said duty of care and

(c) that he has suffered injury or damage as a result of the breach of the duty of care by the prison authorities- *MTN (Nig) Communication Ltd v. Sadiku*.[578]

5.2.2 Public Complaints Commission (Ombudsman)

The establishment of the office of the Ombudsman is geared towards addressing cases of administrative injustices on citizens especially in the circumstances where they cannot go to court. According to ON Ogbu:

[574] [1982] 3 NCLR 804.
[575] *Cekan v Haines* [1990] 21 NSWLR 296.
[576] *L v Commonwealth* [1976] 10 ALR 269.
[577] [2005] HCA 76.
[578] [2014] 17 NWLR (Pt. 1410) 382 at 389 ratio 7; *Agi v. Access Bank PLC* (2015) 9 NWLR (Pt. 1411) 121 at 127 ratio 3.

> The rationale behind the establishment of this grievance redresses system stems from the background that various forms of redress provided by the legal system to check the excess of the administration are inadequate because they are fraught with a number of defects that make the realisation of full justice impossible in most cases.[579]

The defects that at times make the full realisation of justice impossible in most cases include: delay in the determination of cases in courts; cost of litigation especially on the poor and the special class of citizens like the prisoners; technical court rules; transfer of judges that results in a case starting *denovo*; judicial strike among others.

Section 5(2) of the Public Complaints Commission Act[580] empowers the Public Complaint Commissioner to investigate either on his own initiative or following complaints lodged before him by another person, any administrative action taken by: (a) Any Department or Ministry of the Federal or any State Government; (b) Any Department of any Local Government Authority (howsoever designated) set up in any State of the Federation; (c) Any Statutory Corporation or Public Institution set up by any Government in Nigeria, among others.

For the purpose of the above, the Commissioner shall have the power to access all information necessary including visit and inspection of the premises belonging to a person or body mentioned in subsection 2 of section 5 above for the purpose of the efficient discharge of his duties.[581] On this note, the Commissioner is to ensure that all the administrative actions by any person or body within his jurisdiction will not result into injustice against any citizen of Nigeria. He is to pay special attention on the investigation of cases of mistake of law,

[579] ON Ogbu, *Human Rights Law and Practice in Nigeria: An Introduction* (Enugu: CIDJAP Press, 1999) p.305.
[580] Cap.P37, Laws of the Federation of Nigeria, 2004.
[581] Public Complaints Commission Act, Section 5(3).

arbitrary in the ascertainment of fact, unreasonable, unfair, oppressive among others by the administrative authorities or individual.[582]

Even though the Commissioner does not have the power to make a binding decision, nevertheless, his recommendation will go a long way to addressing injustices of administrative decisions on prisoners in Nigeria. Prisoners are encouraged to utilise this grievance redresses system mechanism as a means of ensuring that their rights are protected in Nigeria.

[582] *Ibid*, Section 5(3) (d-e).

CHAPTER SIX

CONCLUSION AND RECOMMENDATIONS

6.1 Summary of Findings

What emerges from this research is that the challenges to the protection of prisoners' rights under the Nigerian law are mostly the products of the *lacunae* in the laws regulating Nigerian prisons. The provisions of these laws relating to ownership of prisons, accommodation, feeding, recreational activities and indeed the procedure of enforcing prison discipline are grossly inadequate.

Apart from the *lacunae* in the prison laws, there are other factors that also pose challenges to the protection of prisoners' rights in Nigeria. These factors include poor justice delivery system, poverty, illiteracy among some of the prisoners, insincerity on the part of the Federal Government when it comes to keeping to her international obligations and reform of prisons, disobedience to court orders by the Federal Government[583], over use of imprisonment in Nigeria, public apathy towards the need and welfare of prisoners, remand proceeding among others.

6.2 Recommendations

As a result of the above findings and conclusion, we make the following recommendations:

1. That the Nigerian Prisons Act be amended to bring it in line with the revised United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules), 2105. This Mandela Rules has been viewed in many quarters as representing a minimum bench mark upon which a nation is judged in terms of the treatment of her prisoners. According to the Executive Director of the United Nations Office on Drugs and Crime Prevention, Yury Fedotov, the Mandela Rules is an updated blueprint offering practical guidance on how

[583] It was also discovered that prisoners are still denied their right to vote in Nigeria despite a valid Federal High Court decision in the case of *Victor Emenuwe & 4 Ors v INEC & Anor* Unreported suit number FHC/B/CS/12/14 delivered by Justice Mohammed Lima of the Federal High Court Benin on Tuesday, 16th December, 2014. In that case the federal high court declared the denial of the prisoners' right to vote in the general election as unconstitutional.

prisoners should be managed safely, securely and humanly'.[584] It was based on the above observations that the said Yury Fedotov encouraged countries to reflect the Mandela Rules in their national legislation so that prison administrators can apply them in their daily work.[585] He acknowledged that the rules stress the overriding principle that all prisoners shall be treated with respect due to their inherent and value as human beings. The Rules represents one of the most significant human rights advances in the recent years.

In the same vein, the Secretary-General of the United Nations, Ban Ki-Moon, noted that the Mandela Rules is 'a great step forward'.[586] The United Nations General Assembly President, Mogens Lykketoft while recalling the spirit of Nelson Mandela said that, 'no one truly knows a nation until one has been inside jail'[587] and 'a nation should not be judged by how it treats its highest citizens but its lowest citizens'.[588] Lykketoft argued that 'the crucial challenge to member states will be to translate these rules into a reality and to increase co-operation both within and outside the UN system to improve the lives of prisoners throughout the world'.[589] Nigeria needs to truly lead in Africa by ensuring that a new legal regime is introduced for the prisoners.

2. It is also recommended that item 48 of the Second Schedule, Part 1 to the Constitution of the Federal Republic of Nigeria, 1999 (as amended) which exclusively reserves the ownership and management of prisons in Nigeria on the Federal Government be amended by putting the said item in the concurrent list of the Constitution. It is our submission that when this further amendment is effected on the 1999 Constitution, it will pave the way for the Federal and the State Government to make laws with respect to establishment and running of

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[584] Y Fedotov, 'Mandela Rules Passed Standard on the Treatment of Prisoners Enhanced for the 21st Century', <www.unodc.org> accessed on Sunday, 20th December, 2015.
[585] *Ibid.*
[586] Ban Ki-Moon, 'UN Launches Mandela Rules for Prisoners', <www.southafrica.info/mandela> accessed on Sunday, 20th December, 2015.
[587] M Lykketoft, 'UN Launches Mandela Rules for Prisoners', *ibid.*
[588] *Ibid.*
[589] *Ibid.*

the prisons in Nigeria. In this way, it is our respectful view that the rights of prisoners will be better protected. We submit further that the involvement of the States in the establishment and running of prisons is very germane especially as the majority of the inmates of Nigerian prisons are imprisoned by the State courts for violating or alleged violation of the State laws. In the same vein, in order to minimise the challenge of lack of legal representation faced by many inmates of the Nigerian prisons, there is the need for the further amendment of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and the Legal Aid Act, 2011 to provide a mandatory legal aid service to all the pretrial prisoners except where any of them object to the service. There is also a strong argument that involvement of States in the running of prisons would make them amendable to accepting reforms especially where such reforms are cost saving.[590]

3. That there is the need for every State of the Federation to enact the Administration of the Criminal Justice Law which will either reflect or improve on the Administration of Criminal Justice Act, 2015.[591] These laws will ensure to the establishment of the Administration of Justice Committee in each States with the mandate of ensuring that cases of pretrial inmates are speedily tried. These laws will also pave the way for the adoption of other sentencing options such as parole system[592], probation[593], community service order, fine, discharge after conviction, payment of compensations to the victim of crime, among others.

4. While the researcher commend the increment of the feeding allowance of the inmates of the Nigerian prisons to ₦222:30K per day in the 2016 budget,[594] it is recommended that

[590] CA Omaka, 'Decongesting Prisons in Nigeria: the EBSU Law Clinic Model', *op cit*, p.20.
[591] States like Lagos, Anambra, Oshun and Rivers have enacted their respective Administration of Criminal Justice Laws.
[592] Parole system is the release of a prisoner from imprisonment before the full sentence has been served. It is usually granted for good behaviour on the condition that the parolee regularly report to a supervising officer for a specified period.
[593] Probation is a sentencing option open to court to release a convicted person to the community under the supervision of a Probation Officer.
[594] 'Budget Defence: Interior Minister takes Turn', *Core TV News*, <www.cortvnews.com> accessed on Tuesday 2nd February 2016.

further increment of the said allowance be made in view of the present hike in the cost of living in Nigeria.

5. It was discovered that many children in conflict with the law are housed in most of the Nigerian prisons where adult offenders are kept. On this note, it is recommended that there is the need to ensure that juvenile custodial centres and borstal institutions are established in all the states of the federation.

6. It is also recommended that in order to meet up with the minimum international standards on the management of prisons, there is the urgent need to transfer all the mentally ill inmates from our prisons to psychiatric hospitals or institutions where they will be adequately taken care of.

7. Since it has been observed that relevant authorities in Nigeria either delay or often times lack the political will to sign execution warrant with respect to inmates on death row, it is recommended that death penalty should be abolished in Nigeria.[595]

8. It is also recommended that prisons in Nigeria be restructured to make them self sufficient through the introduction and effective management of prison farms and industries. On this note, block moulding industries, electrical and painting workshops should be strengthened. Tailoring workshops should be made more functional to cater for the uniform needs of both the inmates and staff. Industries like carpentry, bricklaying, plumbing, making of ties among others are important for the purpose of the reformation of the prisoners.

[595] In South Africa, death penalty has been abolished under the South African laws, *State v Makwanyane and others* [1995] 6 BCLR 665 (CC). In the United States of America about 32 states have abolished death penalty in their state laws. The States include: Alabama, Arizona, Arkansas, California, Colorado, Delaware, Florida, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington and Wyoming of the United States of America recognise death penalty. While States like Alaska, Connecticut, District of Colombia, Hawaii, Illinois, Lowe, Maine, Maryland, Massachusetts, Michigan, Minnesota, New Jersey, New Mexico, New York, North Dakota, Rhode, Island, Vermont, West Virginia and Wisconsin of the United States of America had abolished death penalty. See D Arioto, 'Connecticut becomes 17th State to Abolish Death Penalty',< www.cnn.com> accessed on Thursday, January 18, 2017.

9. It is recommended that private individuals be allowed to take part in establish and management of prisons in Nigeria under the uniform standard to be introduced by the Federal Government. This standard shall include regular inspection of the private owned prisons by the NGOs, National Human Rights Commission, among others. The introduction of private owned prisons will in the researcher's humbly view easy the pressure mounted on the federal prisons already.

10. To ensure that an effective prison decongestion is carried out in Nigeria, it is recommended that the Federal Government should review the files of all inmates awaiting trial in the Nigerian prisons and Detention Centres to ensure that their right to fair trial within a reasonable time is protected.

11. To ensure that a person discharged from prison leads a law-abiding and self-supporting life, it is recommended that conditions shall be created in prisons to enable prisoners undertake meaningful remunerated employment aimed at the facilitation of their reintegration into the country's labour market and to contribute to their own financial support and to that of their families.

12. It is also recommended that a standardised prisoners' file management system be maintained by the Nigerian Prison Service. This will ensure that detailed information about a prisoner is kept confidentially and can only be made available to those whose professional responsibilities require access to such records.

13. To ensure that majority of the prisoners are aware of their rights under the law, it is recommended that every prisoner should be provided with written information about the regulations governing the treatment of prisoners of his category, disciplinary requirements of prisons and the authorised methods of making complaint if his right is breached.

14. To ensure that the public take part in the protection of prisoners' rights, it is recommended that the sensitisation of public is important so as to educate the public on the

need to protecting the prisoners' rights. In this way, it is our humble view that public apathy on activities behind the wall will be reduced.

15. The researcher also recommend that interim measure be taken by the Federal Government of Nigeria to releasing inmates who have stayed longer awaiting trial than they would have done had they been convicted and sentenced. Such a step should not preclude full investigation of crimes and the bringing the perpetrators to justice.

16. The researcher also recommend for the creation of more courts, appointment of more judges and magistrates. This in researcher's humble view will go along the way to reducing the volume of works placed on the existing judges and magistrates in the country.

17. In order to ensure that delay in trial of inmates is reduced, there is the urgent need for the Bar and the Bench to address the problem of long and repeated adjournments of cases of awaiting trial inmates in our courts.

18. It is also recommended that lawyers should be encouraged to take up some cases involving indigent prisoners on *pro bono* basis.

19 To ensure that more attention is paid on the protection of prisoners' rights, NGOs and civic society groups are encouraged to pay regular visit to prisons so as to expose the activities of the prison authorities and cases of human right violations in prisons.

20. It is also recommend that more lawyers be engaged in the services of the Legal Aid Council by the government to enable the Council provide services for the teaming number of indigent prisoners who are on the awaiting trial list across the country.

21. In order to ensure sanity in Nigerian prisons, we recommend that corrupt prison officers be punished with dismissal.

22. In order to ensure that prison authorities move away from their traditional philosophy of punishing the prisoners at any slightest provocation, the researcher recommends for the

training and/or re-training of all prison officers so as to inculcate in them a change of attitudes toward accepting the rights of prisoners as a fact and not fiction.

23. In order to reduce the burden of feeding of prisoners on the federal government of Nigeria, it is recommended that those convicted for minor offences and those who are about to complete their sentences should be permitted to go out in the morning and work for the purpose of providing food for themselves while in prisons. This practice has already been adopted by some countries including Cameroun.

24 In order to ensure that prisoner s maintain their family tie, it is recommended that prisoners who are married should be given the privilege of having conjugal visits from their spouses. The above recommendations call for the introduction of a new law for the prisoners in Nigeria.

6.3 Conclusion

What we laboured to establish in this research is that the challenges to the protection of prisoners' rights under the Nigerian law were mostly the products of the *lacunae* in the laws on Nigerian prisons. The provisions of these laws with regard to ownership of prisons, accommodation, feeding, environmental hygiene, the procedure for enforcing prison discipline among others were grossly inadequate. That made it difficult for prisons administrators in Nigeria to comply with the international minimum standard for treatment of prisoners. The research recommended the amendment of the Prisons Act to bring it in line with the United Nations Standard Minimum Rules for the Treatment of Prisoners, (the Mandela Rules), 2015. It also recommended that the ownership and control of prisons in Nigeria be made to be in the concurrent list to the Constitution of Federal Republic of Nigeria, 1999 (as amended). This will pave the way for the Federal and State Government to own and control prisons in Nigeria. The time to act is now.

6.4 Contribution to Knowledge

We laboured in this work to call for the amendment of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and the Prison Act for the purpose of paving the way for Nigerian prisons to be ran on an international acceptable standard. Whether Nigeria likes it or not, this dissertation reveals that there are sufficient international and regional pressures being exerted in favour of adherence to international standards of decency in prisons. Monitoring mechanisms at the national level are getting stronger and forming alliances and collaborations with their regional and international counterparts. Courts in some African countries have started to assert their role and playing a meaningful part to ensuring that international standards on protection of prisoners are adhered to.[596] As things stand now, prisoners' rights are issues on the agenda and matters of concern to the international community. If that assessment is correct, actions taken and decisions made by Nigerian government with respect to prison administration must be guided by, determined and constrained through international and regional standards on prison best practices. This can only be achieved if a new legal regime is introduced to prisoners and prison administrations in Nigeria. The review of the Nigerian prison law became very necessary to avert a situation where Nigeria could be relegated to the group of countries that have no regard for the prisoners' rights.

[596] See the decision of Justice Gubbay in the case of *Woods v. Minister of Justice, Legal and Parliamentary Affairs and Others* (1995) 1SA 703 (ZS) at P.705 where he said that 'prisoners are entitled to all their personal rights and personal dignity not temporarily taken away by law, or necessarily inconsistent with the circumstances in which they have been placed ….'

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Appendix

Faculty of Law,
Nnamdi Azikiwe University,
Awka.

QUESTIONNAIRE

Dear Respondent,

I am Igwe, Onyebuchi Igwe, a PhD student of law at Nnamadi Azikiwe University, Awka. I am presently carrying out a research on *the Challenges to the Protection of Prisoners' Rights under the Existing Legal Regimes in Nigeria*. In furtherance of this, you have been chosen as one of the respondents for the purpose of completing this questionnaire.

It is my firmly view that your accurate information will assist me in proffering solutions to the subject matter. Please be assured that your responses will be treated with utmost confidentiality.

Thank you.

Igwe, Onyebuchi Igwe.

SECTION A: Demographic Information

1. Age (years) 18-30 ☐ 30-50 ☐ 51 and above ☐
2. Sex: Male ☐ Female ☐
3. Marital status: Single ☐ Married ☐
4. Religious Affliction: Christian ☐ Moslem ☐ others ☐
5. For prisoners only. Status of the Prisoner: Convict ☐ Awaiting trial ☐

SECTION B: Prison Facilities

6. Sources of water

i. Pipe borne water ☐ Borehole ☐ Well ☐

ii. Is the water good: Yes ☐ No ☐

7. Toilet and sanitary facilities

i. What is the nature of toilet facility: pit ☐ water closet system ☐ Bucket system ☐

ii. Is the toilet clean: Yes ☐ No ☐

iii. Do inmates have toiletries: Yes ☐ No ☐

iv. Do inmates use soap: Yes ☐ No ☐

8. Sources of light or power supply

i. EEDC (formerly known as NEPA) ☐ Generator ☐ Lantern or candle ☐

ii. Is the light regularly supplied: Yes ☐ No ☐

9. Nature of the cells: Single ☐ Dormitory ☐
10. How many inmates are kept in a cell: One ☐ Two ☐ Three and above ☐
11. What is the nature of beddings: Foam ☐ Mat ☐ Floor ☐
12. What is the carrying capacity of your prison:……
13. Are the inmates more than the prison carrying capacity: Yes ☐ No ☐ If yes state the difference…….
14. Are there enough uniforms for the inmates: Yes ☐ No ☐

SECTION C: Health Care and Recreational Facilities

15. The nature of health care facilities: Hospital ☐ Clinics ☐ None ☐
16. Nature of Health Care personnel: Doctors ☐ Nurse ☐ None ☐
17. Are there drugs for the inmates: Yes ☐ No ☐ Not enough ☐
18. Are the recreational facilities adequate: Yes ☐ No ☐ If yes list the facilities that are available……..

SECTION D: Vocational Skill Facilities

19. Are there vocational facilities available for the inmates: Yes ☐ No ☐ If yes list those available……

SECTION E: Feeding

20. Are inmates adequately feed? Yes ☐ No ☐ if no give reason(s) ……..

SECTION F: Right of Prisoners

21. The underlisted rights of prisoners are adequately protected in Nigeria:
    a. Right to Life: Yes ☐ No ☐
    b. Right to Dignity of Human Person: Yes ☐ No ☐
    c. Right to Privacy: Yes ☐ No ☐
    d. Right to Fair Hearing: Yes ☐ No ☐
    e. Right to Freedom of Thought, Conscience and Religion: Yes ☐ No ☐
    f. Right to Freedom from Discrimination: Yes ☐ No ☐
    g. Right to be admitted to bail: Yes ☐ No ☐
    h. Right to apply for Prerogative of Mercy: Yes ☐ No ☐
    i. Right of Appeal: Yes ☐ No ☐
    j. Right to vote in General Election: Yes ☐ No ☐
    k. Right to Acquire Skill: Yes ☐ No ☐
22. Are the above prisoners' rights adequately protected in Nigeria? Yes ☐ No ☐
23. Is it true that sentencing options in Nigeria contributed to overcrowding in Nigeria Prisons? Yes ☐ No ☐
24. The following factors affect the protection of prisoners rights in Nigeria:
    a. Lack of adequate provisions in prison laws: Yes ☐ No ☐
    b. Practice of Remand proceedings/holding charge: Yes ☐ No ☐
    c. Poverty among some prisoners: Yes ☐ No ☐
    d. Attitude of government/the public: Yes ☐ No ☐
    e. Delay in trial of cases in courts: Yes ☐ No ☐
    f. Illiteracy and lack of awareness on part of the prisoners: Yes ☐ No ☐
    g. Lack of adequate Legal Aid Scheme: Yes ☐ No ☐
    h. Overcrowding in prisons: Yes ☐ No ☐
25. Are Nigerian prisons run on the internationally accepted standard? Yes ☐ No ☐
26. Are remedies for breach of prisoners' rights? ☐ ☐