

AN APPRAISAL OF MAJOR INNOVATIONS UNDER THE CORRECTIONAL SERVICE ACT 2019: KEYS TO EFFICIENT CRIMINAL JUSTICE ADMINISTRATION IN NIGERIA*

Abstract

The Nigeria correctional Service Act of 2019 was a recent legislation introduced to put in place measures and mechanism for effective reform of our Criminal Justice system. The aim is to meet up with the needs of the ever changing society and to deal with the congested nature of the facility. The above challenges heralded the passage of the Correctional Service Act 2019 which repealed the Prison Act Cap P29, LFN, 2004. This work attempts to review the extent of respect or disregard of the rights of persons in detention in order to identify and appreciate the innovative provisions in the new Act. It is shown in this work that an inmate who while observing the order of detention or sentence of court does not lose his rights as a human being and must therefore enjoy some basic rights despite being incarcerated. We also concluded by stating that the lofty innovations under the new Act are intended to meet up with the reformation and re-integration of inmates for efficient criminal justice administration.

Introduction

On 14th August, 2019, the Correctional Service Bill was signed into law by President Muhammadu Buhari. Prior to the enactments, many States were desirous of affecting reforms under their Administration of Criminal Justice Laws but were frustrated because regulation of prison is under the Exclusive Legislative List. However, prison in the Exclusive list has been moved to the Concurrent List with the word "prison" being deleted and Correctional Center has been inserted in place of it. As a result of this constitutional amendment of the 1999 Constitution of the Federal Republic of Nigeria it is expected that a lasting solution to the issue of inadequate funding which is prominent on the list of challenges bedeviling the Nigerian Correctional Center have been found¹. The new Act² seeks to do away with some pejorative terms like 'prison' and 'prisoner' but rather in place introduced the word 'correctional' and 'inmates' respectively. The change of the term prison to correctional center is to reflect the modern concept of criminal justice administration which is reformatory and restorative in nature as against retributive justice system that emphasizes the use of punishment against offenders. The word "prison" is defined "as a confinement in which a wrongdoer is locked up against his will in order to exclude him from society."³ The above definition does not reflect the spirit of modern criminal justice administration. It is our opinion that even though the law allows inmates some basic rights, there is no doubt that they are being denied some rights because they are seen as criminals who do not deserve better treatment. This opinion was expressed by the Supreme Court of US in *Ruffin v Commonwealth*⁴ where his Lordship opined that "if the courts were to entertain actions by disgruntled prisoners, the discipline of prisoners would be undermined."

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¹ A Bill to move Correctional Centers or Prison from Exclusive to Concurrent List, 2023.

² Correctional Service Act, 2019.

³ Oxford Advanced Dictionary New Oxford Dictionary of English, Oxford University Press, 2011.

⁴ 21 Gratt 790 (1871).

His Lordships, maintained that prison rules are mere regulatory and directives which could not give rise to a cause of action when violated. The above dictum from an eminent jurist must have caused a lot of havoc in the quest to protect the rights of inmates. However, in Nigeria, the court has held that an inmate is not denied protection of his rights when in custody. Uwaifo JSC in *Peter Nemi v AG Lagos State*⁵ observed as follows " Does it mean that the condemn prisoners can be lawfully starved to death by the prison authorities?" The above dictum was made by his Lordship in response to the argument of the prosecuting counsel that a prisoner has no fundamental right after conviction and sentence which opinion was attacked as being misguided by the court.

The same judicial opinion was made in *Johnson v. AG Federation*⁶. In *Bello v. AG; Oyo State*⁷ the court held that it is a clear violation of the fundamental right to life of a prisoner who had been condemned and was executed on the order of the State Military Governor, while the appeal against his conviction was pending in an appellate court.

Consequently it is clear from the above judicial pronouncements that an inmate has right protected by law. The rights inmates enjoys during the period of incarceration is intended to facilitate reformation and correction of the inmates so as to be able to live a law abiding and self supporting life. Various challenges had overtime bedeviled the Nigerian "prison" system including but not limited to congestion of prisons with a daily influx of suspects awaiting trial, dehumanizing and deplorable conditions of prisoners. The need to protect minor offenders from being influenced by hard criminals all contributed to influence the introduction and enactment of the Correctional Service Act which divided the Act into two parts - custodial and non custodial⁸. The above premise heralded the passage of the Nigerian Correctional Service Act,⁹ which repealed the Prison Act¹⁰ to address new issues that are not covered under the repealed Act and provide clear rules setting out obligations of the Nigeria Correctional Service and the rights of inmates in line with The United Nations Standard Minimum Rules for the Treatment of Offenders.¹¹ The provisions of Correctional Service Act 2019 is consistent with the Standard Minimum Rules which purpose is to provide in details a model system of penal institution based on the general consensus of contemporary thought on the essential elements of a modern system and outlined what is generally accepted as being good principle and practice in the treatment of prisoners and the management of penal and correctional institutions. The General Assembly of United Nations in addition to its recommendation to member states to effectively implement the above rules, also enjoined the States to consider incorporating the rule in their national legislation or municipal law. Again, the principles in part 11 of the Minimum Standard Rules are all incorporated as part of the innovations introduced into the new Act. Though not legally binding, the Standard minimum Rules provides guidelines for international and domestic law as regards persons held in prison and other forms of custody. The rules provides for global best practices in administration of penal institution and treatment of prisoners for efficient and effective criminal justice administration for member States.

⁵ 1996 6 NWLR (Pt. 452).

⁶ 2002 8 NWLR (Pt. 768).

⁷ 1986 5 NWLR (Pt. 763).

⁸ See Part I and II of the correctional service Act, 2019. See also Sec. 37 to 44 of the same Act.

⁹ 2019.

¹⁰ Cap. P.27 LFN 2004.

¹¹ United Nations Minimum Rules for Treatment of Prisoners 1955 adopted in 1977.

Notable Innovations introduced under the Act

Overcrowding

One of the major innovations set out to address is the issue of overcrowding¹². The Act seeks to check mate and rectify overcrowding. It further grants power to relevant authorities to reject inmates where the Correctional Center in question is found to be filled to capacity¹³. It provides a statutory procedure for rejecting inmates on account of lack of space." Where the custodial centre has exceeded its capacity, the State controller shall within a period not exceeding one week notify the, (a) Chief Judge of the State (b) Attorney General of the State(c) Prerogative of mercy Committee (d) State Criminal Justice Committee (e) any other relevant body." It is further provided that upon receipt of the above notice, that the body shall within a period not exceeding 3 months take steps to decongest the Correctional Center. The officer in charge of the Correctional Centre is empowered to reject inmates if the capacity of the Correctional Center has been exceeded.

Reformation and Rehabilitation

The Act makes provision to enhance the reformation and utmost rehabilitation of the inmates concerned by creating avenues and opportunities ranging from education, vocational training , training in modern farming technologies for the inmates. It is clear that the Act¹⁴ empowers the creation and establishment of well equipped industrial centers for the enhancement of vocational skill for the training of inmates in the designated custodial centers. If this provision is put into use it will facilitate the ultimate aim of reformation of inmates and as part of the obligation to uphold its International law treaty.¹⁵

The Act clearly makes provisions to protect the right of the inmates by stating that inmates shall not in any form be held in slavery or servitude. This shows that the right of dignity of human person is still being protected right there in custody. The inmates shall not be engaged in any labour capable of causing grievous physical or mental pain or distress and no such labour will be carried out for personal benefit of any Correctional officer.

Medical Excuse for Labour

The Act¹⁶ provides for the intervention of a medical officer in special circumstances to certify that an inmate be excused from labour or be made to perform light labour. Nevertheless, such medical officer must be guided to provide right information on the issue of certification as proffering bogus fact of certification would cause the medical officer to meet his waterloo and face the law.

Separate Custodial Centre and Special Treatment of Female Inmates

The Act¹⁷ made a new provision which is lacking substance in the repealed Prison Act on the provision of separate facilities for female inmates in the various states of federation. This also includes the provision of necessary and adequate facilities to address the special needs of female inmates, pregnant women, nursing mothers and babies. Also included is the provision for crèches in every female custodial center for the wellbeing of babies in custody of their mothers.

¹² Section 12 of the Correctional Service Act, 2019.

¹³ *Ibid*; Section 13 (8).

¹⁴ Section 14 (1) (2) of the Correctional Service Act , 2019.

¹⁵ Section 12 of Article 5(6) of the International Covenant on Civil and Political Rights of 1966, and the Second Optional Protocol of 1989.

¹⁶ Section 15 of the Correctional Service Act, 2019.

¹⁷ Section 34 of the Correctional Service Act, 2019.

Prohibition on Admission of Juvenile Offenders

The Act¹⁸ makes a laudable step capable of ensuring the effective administration of justice system. The section prohibits mixing young offenders categorized as "juvenile offender" or child offenders with adult offenders. Young offenders ought to be kept in a separate custodial facility away from the adult. The said provision creates the establishment of training institutions for these juvenile offenders in all states of the federation. The Act also empowers the Correctional Service to reject a severely bodily injured inmate and mentally unstable person.

Provision for Non Custodial Punishment

The Nigeria Correctional Service Act is indicative of a commendable and laudable effort made towards making provisions for a more humane and rehabilitation form of sanctions. Part 11 of the Act¹⁹ deal with non custodial service functions. Flowing from this, the Act seeks to rebrand the functions of the Nigerian Correctional Service for non custodial service directed towards the administration of non custodial measures like community service, probation, parole, restorative justice measures and also any other non custodial measure assigned to the correctional service by a court of competent jurisdiction. The innovative provision of non custodial measures is an alternative to sentencing options for minor offences. Modern legislation creating offences stipulates that on conviction the defendant shall be given a non custodial punishment. This is a welcome development to ensure that hardened criminals don't mix up with persons who did not commit serious offences. Again, it is another measure that will help to decongest prison. This move has also been complimented by a Practice Direction.²⁰

Duties of Correctional Officers

It is important to mention that the new Act²¹ states the functions of the custodial service to include:

1. Taking custody of all persons legally interned.
2. Provide safe and humane custody for inmates.
3. Conveying remand persons to and from court in motorized formation.
4. Discovering anti social behaviour of inmates.
5. Developing risk and needs assessment aimed at developing appropriate correctional treatment aimed at reformation, rehabilitation and reintegration.
6. Identifying their medical, psychological, spiritual needs and offering counseling services.
7. Empowering through the development of educational and vocational skill training programmes.
8. Administering borstal and related institution.
9. Providing support to facilitate the speedy disposal of Cases of persons awaiting trial and any other function to enhance the goal of the service.

Commutation of Death Sentence

Previously, inmates on death row were kept in perpetual mental torture of death which the appropriate authority never signed. No fewer than 3, 298 inmates across the custodial centers in Nigeria are on death row without execution²². Despite repeated calls by the Federal

¹⁸ Sec 13(3) of the Correctional Service Act 2019.

¹⁹ Sec 37 and 44 of Correctional Service Act 2019.

²⁰ Anambra State Courts sentencing guideline 2019.

²¹ Sec 10 of the Correctional Service Act 2019.

²² <https://dailypost.ng>, Accessed on 26th April, 2023 .

government for State governors to exercise their constitutional responsibility of signing death warrants of criminals sentenced to death by courts of competent jurisdiction, no death row inmate has been executed in the last 12 years. The new Act has introduced some reliefs to those on death row. It provides that where a person is on a death row and has exhausted his appeals that after a period of ten years without execution that such a convict shall be committed to a life imprisonment by the chief judge²³

Ending Stigmatization of Convicts

The issue of stigmatization has been a problem associated with any person after custodial sentence. There is presently a provision²⁴ created to end stigmatization of ex-convict whereby an offender who demonstrated high level of penitence can now be issued with a certificate by the Chairman of the Board on recommendation of the Controller General of Correction. The said certificate is enough evidence to help the convict overcome the social stigma and can compete favourably with any normal person for any position. Such a person cannot be discriminated against on account of his sentence. The certificate can only be issued as a result of excellent conduct aimed at reintegration of the suspect.

Official visits to Correctional Centre

The Act²⁵ has statutorily provided and expanded official visitors of Correctional Centers to include chairman and other council members of the National Human Rights Commission. The Director of Legal Aid council of Nigeria, The president and other Executive members of the Nigeria Bar Association and Legislative oversight visitors and even members of relevant committee of the National Assembly and State House of Assembly Magistrates and district judges are also included.

Staff Welfare and Discipline

The Act²⁶ has also created provision to motivate staff. Those engaged in high risk assignments are targeted beneficiaries. A payment of 50% basic salary to any staff who suffers bodily injury and 100% in case of death and in addition to assisting their children who are in school for one year. This provision is very important in order to increase the morale of the officers on duty. The same section frowns at conducts that are detrimental to security of the Correctional Centre.

Treatment of Mentally Challenged

The Act²⁷ also prohibits and abhors the use of Correctional facilities for indiscriminate dumping of persons without due regard to their state of health or age. The act prohibits the admission of a person with severe bodily injury, a mentally unstable person or a person in an unconscious state of mind and an underage person.

Prohibition on Intoxication

The Act²⁸ prohibits and criminalities the act of bringing in or throwing in or introduction into a correctional center or who gives to an inmate any alcoholic beverage or takes from an inmate, any such alcoholic, tobacco, intoxicating or poisoning drug or prohibited drug or who communicates or attempts to communicate with an inmate without permission of the

²³ Sec 12 (2) of the Correctional Service Act, 2019.

²⁴ Sec 14 (6) of the Correctional Service Act, 2019.

²⁵ Section 21(1) of the Correctional Service Act 2019.

²⁶ Section 26 (3) of the Correctional Service Act 2019 see also Sec 29 of the same Act.

²⁷ Section 13 of the Correctional Service Act, 2019.

²⁸ Section 29 of the Sec 13 of the Correctional Service Act, 2019.

superintendent. It is interesting to observe that the new Act²⁹ has dealt with an issue being neglected by the repealed Prison Act. It clearly provides that there shall be for the Correctional Service Funds appropriated for inmates feeding. The cost of feeding shall be reviewed for a period not exceeding every 5 years from the date of last review.

Transportation of inmates upon discharge

The Act³⁰ mandated the correctional service to produce funds for transportation of discharged inmates to their place of abode as to render any other support as may be deemed appropriate by the correctional service and an inmate who is under medical treatment when one sentence expires shall not be discharged except the written request of an inmate or if the medical officer certifies that such discharge shall not cause any danger to the health of the inmate.

Legal Autonomy

It is indeed a welcome development that the Act confers legal autonomy to legal officers employed by the Correctional Service to give legal advice to the Correctional Center.³¹ The power granted under the Act is subject to the power of the Attorney General under the constitution.

Recommendation and Conclusion

The recent introduction of the Correctional Center to the Concurrent List is a step in the right direction. It will help the state to extend its helping hands to the management and funding of the Correctional Center which is being inhabited by offenders who committed state offences. This will also help to avert the occurrence of the problem envisaged in sec 13(8) of the Correctional Service Act, 2019. The way forward is for more Correctional Centers to be built by state. This recent amendment will also help the government not only to build more Correctional Centers across the states but also to help various states to introduce and establish children remand home or borstal homes for child offenders across the states. Making the state to share the burden of managing Correctional Centers is indeed a sure way to bring sanity to the institution which has suffered serious neglect over the years.

It was found that there is a major shift not only in renaming of the institution but also an improvement of its original function and services. It is also important to note that an over view of all the major innovations introduced in the new Act is to meet the global best practices in criminal justice administration. However, a look at the entire provisions of the Correctional Service Act shows that there is no provision on right to vote of a person in custody. The right to vote should be given to inmates and machinery put in place to ensure that inmates are given an opportunity to participate in the voting process because the principles of democracy dictates that their participation is crucial in electing political leaders. This I consider a great omission in the Act. The trend today is to ensure rehabilitation and reintegration of offenders and not to become recidivist. If that is the purpose of criminal justice administration then their right to vote must be restored even while in custody. The new Act is rich in terms of modern requirement in criminal justice administration. There must be concerted effort by all stakeholders in criminal justice administration to actualize the expectations and full implementations the lofty provisions in the Act.

²⁹ Section 30 of the Correctional Service Act, 2019.

³⁰ Section 19 (1) of the Correctional Service Act, 2019.

³¹ Section 36 of the Correctional Service Act, 2019.