

**A REVIEW OF THE NIGERIAN CORRECTIONAL SERVICE ACT 2019
AND ITS RELEVANCE TO EFFECTIVE CRIMINAL JUSTICE ADMINISTRATION***

Abstract

This paper discusses the relevance of the Nigerian Correctional Service Act 2019 to criminal justice administration in Nigeria. Specifically, the role of correctional institutions in Nigeria is considered and the extent of respect (or disregard) of the rights of persons in detention under the repealed Act is analyzed in order to identify and appreciate the innovative provisions in the new Act. In writing this paper, primary and secondary sources of data were gathered, and some subjected to content and contextual analysis. Specifically, statistical records and official documents from the relevant institutions were sourced and their contents reviewed and analysed.

Keywords: Correctional Service Act 2019, Prison, Criminal Justice Administration, Nigeria

1. Introduction

Respect for human rights and rule of law is one of the most important steps towards achieving the desired goals and aspirations of every democratic state. Therefore, anyone that encounters the criminal justice system – whether as a victim of crime, a witness in a court case or an accused person charged with an offence, has the right to be treated fairly. The prison system is thus an integral part of the criminal justice system in every country, and when used appropriately it plays a crucial role in upholding the rule of law by ensuring that alleged offenders are brought to justice by providing a sanction for serious wrongdoing. In the same vein, it is imperative that the prison system should be such that would protect the dignity of the human person. The term prison is derived from the Latin word *'prendere'* which means to seize or to confiscate. According to Oxford's Advanced Dictionary¹, a prison acts as a confinement in which a wrongdoer is locked up against his will in order to exclude him from society. Right from olden days, the prison has always been a form of punishment and history reveals the evolution of the types of prisons across the globe, and this is largely based on the concept that a criminal is a dangerous and a misfit person, who is excluded from society and sent to prison for incarceration as a punishment. The purpose of imprisonment is essentially to make a person responsible for the violations he committed without his dignity as an individual being violated. However, whether such a view is held by a State depends on the theory that is used to justify imprisoning criminals². There are various theories as to why prisons are a suitable form of punishment. Under the reformatory theory, a criminal should be confined in a place where they are able to reform their characters in order not to repeat the same kind of offences in the future. Under the retributive theory, a criminal should be confined in a prison in order to punish the criminal for his wrongdoings, and hence, such punishment acts to balance the moral order previously upset by the criminal's crime. The prison system thus serves as a custodial as well as a correctional institution. It also serves as a fundamental instrument for the protection, scrutiny, maintenance of the rule of law and social order. Historically the prison environment has always been depicted as deplorable and inhumane; and even in modern times, prison environments vary widely around the world and the wide range of prison conditions reflects how each country treats its criminals.

2. Do Prisoners Have Rights?

The role of prisons in administration of justice cannot be properly discussed without delving into the nagging issue of prisoner's rights. There is no unanimity in the definition of human rights, and various definitions have been proffered by legal writers, as well as various schools of thoughts and judicial decisions. For instance, the Natural Law School of thought regards human rights as rights conferred by God or discernible by human reason. The Positivist on the other hand, regards human rights as rights which have become part of a positive legal system and derive either from the will of state or the command of the sovereign. Human rights have also been defined as those rights which the International Community recognizes as belonging to all individuals by the very fact of humanity. Judicially, according to Kayode Eso (JSC), in *Beko Ransome Kuti v Attorney General of Nig*³, a human right is a right which stands above the ordinary laws of the land and which in fact is antecedent to political society itself.⁴ From the foregone definitions, human rights encompasses those inalienable rights of man, some of which are contained in and enforceable by the extant laws and others though desirable are unenforceable either because they have not found expression in an objective law or because they are hindered by circumstances which make their enforcement impracticable.

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¹ Oxford, 2011, *The New Oxford Dictionary of English*, Oxford University Press.

² Cavadino, M & Dignan, J. (1997) *The Penal System: An Introduction* (2nd ed.), p. 39. London: Sage.

³ (1985) 2 NWLR 211.

⁴ Uchenna Chiedum, 'Human Right and its Impact on the Rule of Law in emerging Democracies': Nigeria's Example' Panorama online, 4th October, 2006. P.9.

The question of rights of prisoners has quite been elusive. This is because, many people are of the view that prisoners have no rights at all. This misleading thought has judicial backing as far back as 1891 in the English case of *Ruffin v. Commonwealth*⁵ where the Supreme Court of Virginia stated: ‘The prisoner as a consequence of his crime not only forfeited his liberty but all his personal rights except those which the law in its humanity accords him. He is for the time being, the slave of the state’. This position clearly has no place whatsoever in today’s world, although a person convicted just like an arrested person gives up certain rights by reasons of the alleged crime (in the case of awaiting trial criminal) and established guilt (convicted criminals). Some of the rights given up are those of personal liberty, freedom of association and expression. However, the existence of an established guilt does not deprive a prisoner of all his constitutional and naturally endowed rights. This is because, such a prisoner whether convicted or remanded still possess certain rights. Justice Uwaifo’s dictum in *Peter Nemi v. A.G of Lagos State*⁶ is apt: ‘Does it mean that the condemned prisoners can be lawfully starved to death by the prison authorities? Is a condemned prisoner not a person or individual?’ The learned justice said this in response to the argument of the prosecution lawyer that the prisoner has no fundamental right after conviction and sentence which is totally a misguided statement. Similarly, in *Johnson v. A.G Federation*,⁷ the court held that a detainee has rights; and in *Bello v. A. G Oyo State*⁸ where a prisoner who had been condemned was executed on the order of the state military government, while his appeal against his conviction was pending in an appellat court. The Supreme Court held that the execution was unconstitutional and affirmed the holding of the lower court that such execution was a violation of the prisoner’s right to life. Flowing from the above, it is not in doubt that a prisoner has recognized rights which are constitutionally protected. These rights are summarized as follows: The right to dignity of human person⁹; right to life¹⁰; right to bail¹¹; right of appeal; right to reduction of prisoner's term (remission)¹²; right to food¹³; right to clothing¹⁴; right to health and cleanliness¹⁵; right not to be engaged in hard labor on Sunday or on Christmas day, or on Good Friday or on two successive Sundays¹⁶; right to receive a visit from friends in the presence of a prison officer, and right to write and receive a letters.¹⁷

3. Basic Problems with the Nigerian Prison System

A criminal justice system is a set of legal and social institutions for enforcing the criminal law in accordance with a defined set of procedural rules and limitations.¹⁸ It is a system of practices and institutions of government directed at upholding social control, deterring and litigating crime or sanctioning those who violate laws with criminal penalties and rehabilitation efforts. The criminal justice system has three basic components which operate together both under the rule of law and as the principal means of maintaining the rule of law within the society. These components are: the law enforcement, the courts and the prison (which is the final component of the criminal justice system). Offenders are turned over to the prison authorities from the court system after the accused has been found guilty. A prison is a facility of confinement for convicted offenders. It is also termed ‘penal institution’ because it is connected with or used for punishment. It is trite that the most evident form of punishment is through the prison.¹⁹ A prisoner is a person who is serving time in prison. He is 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.²⁰ By virtue of Section 19(1) of Prison Act, a prisoner is any person lawfully committed to custody.²¹ The Nigerian prison system was introduced during colonial rule, with the colonial authorities using native prisons to compel obedience from the communities. There are four types of inmates in Nigeria. They are; a) those awaiting

⁵ (21 Gratt.) 790, 796 (1871).

⁶ (1996) 6 NWLR (Pt. 452) 42.

⁷ (2002)8 NWLR (pt. 768) at 192.

⁸ (1986)5 NWLR 828.

⁹ S. 34 (1) 1999 CFRN; Art 10(1) of the ICCPR.

¹⁰ Section 33(1) of the 1999 CFRN; See also *Bello v. AG Oyo State, Supra; Onuwka v. The State* (1988)1 NWLR 539

¹¹ *State v. Orepekan and Ors* (1987)1 Q.L.R.N 62.

¹² This right is one guaranteed by the Prison Act by virtue of the provision of Regulation 54 made pursuant to Section 15 of the Prisons Act.

¹³ S. 22 Prison Act.

¹⁴ *Ibid* S. 25.

¹⁵ *Ibid* S.28 -32.

¹⁶ *Ibid* S. 35.

¹⁷ *Ibid* S. 42.

¹⁸ Richard Fraser, ‘Criminal Justice System-Structural and Theoretical Components of Criminal Justice Systems, the Systems in Operation, The importance of Viewing Criminal Justice System as a System.’ <<http://lawgrank.org/page/858/criminal-justicesystem.html>. >accessed 16/6/20.

¹⁹ *Black’s Law Dictionary* p. 1232.

²⁰ *Ibid* p. 1233.

²¹ Cap 366 LFN,2004.

trials; b) persons convicted of a crime; c) persons condemned of a crime; and d) asylum patients²². The Nigerian Prison Service derives its operational powers from CAP 366 Laws of the Federation of Nigeria 1990 to perform the following functions: (i) Take into lawful custody all those certified to be so kept by courts of competent jurisdiction; (ii) Produce suspects in courts as and when due; (iii) Identify the causes of their anti-social dispositions; (iv) Set in motion mechanisms for their treatment and training for eventual reintegration into society as normal law-abiding citizens on discharge; and (v) Administer Prison Farms and Industries for this purpose and, in the process, generate revenue for the government.

According to the Prison's Act No. 9 of 1972, the Nigerian prison system makes use of the reformatory theory. It states that the prisons are not designed in order to punish inmates, but rather seeks to identify the causes of their anti-social behaviors, and further to set in motion the machineries to correct their behaviors so as to allow the inmates to return to society as useful and law-abiding citizens. Thus, we have established that as fellow humans, even the most hardened criminals in the world are considered to have been bestowed with inherent rights which must be protected under both national law and international law. The Constitution of the Federal Republic of Nigeria, 1999 (as amended) and the UN Standard Minimum Rules on the Treatment of Prisoners set the benchmark for the treatment of prisoners and the prison condition. Additionally, the International Covenant on Civil and Political Rights provides that all persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person. However, in spite of these norms, Nigerian prisons are among the most problematic prisons in the world where human rights of prisoners are consistently violated. The experience of many prisoners continues to routinely involve gross violations of basic human rights. It is pertinent to mention some stark facts. According to Amnesty International, at least 65% of prisoners in Nigeria are still awaiting trial, and hence have not been convicted for the charges brought against them²³. This has resulted in a situation of prolonged detention as well as overcrowding, which the government of Nigeria itself has acknowledged. For instance, in Ikoyi Lagos Prison, a cell which is supposed to contain only 500 inmates have been used in order to cater for 2000 inmates²⁴. Furthermore, Most of Nigeria Prison structures are old and dilapidated. Some were built as far back as the 18th century, during native rules, with poor sanitary conditions, recreational, vocational facilities or infrastructures²⁵. In an audit conducted by the National Human Rights Commission, it was discovered that the country has 173 prisons with total capacity of 46,024 inmates, however, the average number of inmates detained in these facilities at a time always exceeds the capacity, with awaiting trial detainees far outnumbering the convicted prisoners, leading to congestion. The bedding facilities were also reported to be inadequate, with some of the inmates having to sleep on the bare floor in poorly ventilated cell rooms. For instance, in Bauchi prison, the lockup was 820 as against a capacity of 500; Onitsha prison has a capacity of 326 but the lock up was 755, Enugu Prison had 1,625 lockups as against 638 capacity and Owerri prison had 1,745 lockups, compared to a capacity of 548. Ikoyi prison in Lagos State with a capacity of 1,700 had 2,439 lockups, while Abeokuta New and Akure prisons with a capacity of 510 and 160 had 733 and 707 lockups respectively at the time of the audit exercise. So also, Port Harcourt with a capacity of 804 but had a lockup of 2,902, while MSP Oko in Edo State with a capacity of 608 had a lockup of 1,089. Similarly, the MSP Keffi, Nassarawa State, has a capacity of 160 but the lockup was 571²⁶. Across the prisons the number of Awaiting Trial detainees was far above that of convicts. In the 173 prisons audited, out of 50,645 lockups, the number of convicts was 13,901 compared to awaiting trial detainees of 35,889²⁷. Amnesty International reasons that the fact that more than half of the inmates in Nigeria have never

²² The African Prisons Project <<http://www.africanprisons.org/partners/prison-services>> accessed 17/6/20.

²³ Amnesty International, 2008. *Nigeria: Criminal Justice System Utterly Failing Nigerian People: Majority of Inmates Not Convicted of Any Crime*, 26 February, 2008.

²⁴ *Ibid.*

²⁵ Warri prison was built in 1805; Azare in 1816, Degema in 1855, while the newest, Zing was built in 2011. Majority of these prisons were built with mud bricks and in a small compound. For instance, Azare prison was built in 1816, with mud bricks and so are Suleja, Koton Karfe and Dekina prisons. In Suleja and Koton Karfe Prisons built in 1914 and 1934 respectively, the mud bricks were collapsing, they are now in the midst of economic activities as well as residential buildings.

²⁶ The audit report also noted that despite the congestion of some of the prisons, some of them are sparsely populated. Some examples of such sparsely populated prisons are Baissa prison which has a capacity of 100 had 12 lockups; MSP Maiduguri had 408 lockups as against 1,600 capacities; Bama prison with 320 capacity but had 31 lockups.

²⁷ Besides the awaiting trial detainees, Ikom prison in Cross River State had 5 lodgers, Ahoada Prison in Rivers State and Benin prison in Edo State, had 2 and 1 lodgers respectively; (lodgers are persons kept in prison without an order of court detaining them. There are no records of such detainees in the prison records). In Ikoyi prison, there were 221 convicts as against 1574 ATDs, while Abeokuta New and Akure had 63 convicts each compared to 425 and 644 ATDs respectively. Also, Goron Dutse prison in Kano State had 877 ATDs and 350 convicts, while MSP Gusua in Zamfara State had 154 convicts and 515 ATDs. The situation is not different in Enugu prison which had 1,453 ATDs as against 172 convicts and Owerri had 1,602 ATDs and 143 convicts. Port Harcourt prison had 121 convicts and 2,607 ATDs while Calabar with 93 convicts had 600

been convicted for any crime raises doubts over the competence of the prison administration in Nigeria to successfully ensure that justice is appropriately served to the inmates. It is even more disturbing that the average detainees will have to wait for years before their case would even be visited by the Nigerian courts, and hence, most persons charged by the State would inevitably be forced to go to prison even if no crime has been committed²⁸.

Notably, there are several statutory protections afforded to inmates. For instance, under Section 36 of the Constitution, any person arrested or detained must be informed in writing the facts and the grounds surrounding his arrest or detention within a period of 24 hours. Likewise, under the Prisons Act²⁹, various rights are also established, such as the right to trial, the right to life, accommodation and medical care for the inmates. However, the reality does not adhere to the standards prescribed by these statutes. An awaiting trial inmate interviewed by Amnesty International in July, 2007 said: 'The cell was like a warehouse. It had 120 inmates. I had a bed later on, but at first I slept on the flour. It looks like a classroom or a stall where bags of rice and other things were stored. There is no ventilation ... no fan, no windows, no light'.³⁰ While in principle, all prisoners are entitled to the right to food, however, prisoners in Nigeria are offered food of the poorest quality, which does not provide them with a balanced diet. The dirty cells further make the consumption of food unhealthy and unsafe. In recent times, a lot of complaints have been heard on the feeding conditions in the prisons. The complaints range not only from the poor quality of food but also the inadequacy of the quantity.³¹ Even prison officials interviewed on food condition in the prison admit that there were problems. A critical aspect of the deprivation of basic needs in Nigerian prison is the access to good health and medical care. Prisoners are also entitled to medication by statutory law. However, in Nigerian prisons, inmates are often left untreated, resulting in certain viruses being passed on to other fellow inmates. One of the reasons for the high mortality rate in Nigerian prison system is due to the spread of diseases amongst the prisoners. Conditions such as overcrowding, the denial of access to facilities for personal hygiene, inadequate food and feeding all contribute to a questionable health status for inmates. An example provided in the report of Ajomo and Okagbue is the case of Ikoyi Prisons where statistics obtained from the prisons show a total number of 3 medical staff (1 doctor and 2 nurses) catering for the needs of almost 2,500 inmates.³² Women also reported that they had been tortured but were reluctant to provide detailed testimonies. One woman explained that her pregnancy saved her from torture.³³

From the forgoing discussion, it is clear that prisoners (whether awaiting trial or convicted) are entitled to certain constitutional and legal rights, but what obtains is that most of these rights are often violated with impunity. Thus, in Nigeria, people in prison custody are being treated without respect for their constitutionally and internationally guaranteed rights. Notably, the prison community provides a complete scheme capable of changing the attitudes of the offenders for good or bad depending on the personal experience of the prisoners and the social network action.³⁴ Research has however shown that the prison system in Nigeria makes individuals to become more hardened criminals when unleashed to the society due to their experience through the prison.³⁵ In the past few years, there have been cases of prisoner's revolt and escape from prisons. It suffices to point out that one of the causes of such revolt is the inhuman and degrading environment of prisons. The failings of the prison system can be summarized as reflecting chronic problems such as: poor governance, inadequate funding, lack of political will, faulty criminal justice system, prison brutality, overcrowding, infrastructural decay, lack of recreational facilities, poor feeding, poor healthcare services, limited access to justice, etc, which have greatly impacted on the role of the institution. In order to address the challenges identified above, reforms were made to introduce best practices model to support prison systems³⁶ in line with standards set by the United Nations as prescribed in the

ATDs. Similarly, Ugwashi-Uku prison in Delta State had 64 convicts and 511 ATDs. Furthermore, in Jalingo prison, there were 320 ATDs compared to 95 convicts; 647 ATDs as against 173 convicts in Bauchi prison and 322 ATDs as against 186 convicts in Yola prison.

²⁸ *Ibid*; see also Alemika. E. E.O, The Smoke Screen, Rhetorics and Reality of Penal Incarceration in Nigeria. International Journal of Comparative and Applied Criminal Justice Volume 7 Issue1 Dated (Spring 1983) 137-149.

²⁹ Prison's Act No. 9 of 1972 (Cap. P29 Laws of the Federation of Nigeria, 2004).

³⁰ Amnesty International Report, N.23 above.

³¹ *Ibid* at 201-202.

³² *Ibid* at 202-203.

³³ *Ibid*.

³⁴ F, Chukwudi, 'Challenges of Reforms in the Nigerian Prison Systems: Lessons from USA and South Africa (2012) Vol. 4 Journal of Social Sciences and Public Policy, 36.

³⁵ Adetula, G.A. & Fatusin, A.F., the Prison Subsystem Culture: Its Attitudinal Effects on Operatives Convicts and Free Society, (2010 Vol. 18 No. 1 IJN 232).

³⁶ Ahire, P.T. (1990). The Nigeria Prison System: A Social History. (Paper presented at the National Seminar on Prison Reform in Nigeria, Abuja FCT).

Universal Declaration of Human Rights 1948, which tilts towards restorative justice, community participation in justice process as well as the enthronement of societal needs. These reform efforts ultimately led to the repeal of Prisons Act Cap. P29 Laws of the Federation of Nigeria, 2004⁴ and the birth of the Nigerian Correctional Service Act, 2019.

4. Historical Antecedent and Emergence of the Nigerian Correctional Service Act 2019

As required by law, a Bill for an Act to repeal the hitherto Prisons Act Cap. P29 Laws of the Federation of Nigeria, 2004 was proposed³⁷. This was done pursuant to enact a new Law called the Nigerian Correctional Service Act, designed to make provisions for the administration of Prisons for the administration of Prisons and non-Custodial measures in Nigeria and other related matters⁵. The Bill was subsequently passed by the Senate on Wednesday, 30th December, 2018 and assented to by President Muhammadu Buhari in July, 2019. The Nigerian Prison Service (NPS), derived its legal authority from the repealed Prisons Act of 1972³⁸. The main problem with the Act is that it prescribed safe custody as the primary mandate of the service and did not actually speak to the behavioral re-orientation required to prepare offenders for subsequent re-integration back to the society. Thus, despite the numerous achievements of the erstwhile Nigerian Prisons Service especially in her contributions to internal security and access to justice in Nigeria, the threshold of the Act consistently remained narrow and grossly inadequate to cope with the contemporary global challenges/orientation in penal management and treatment of offenders³⁹. Based on this, the idea of a new Act to repeal the old one was conceived not only to change the name of the service from Nigerian Prisons Service to Nigerian Correctional Service but rather to ensure a paradigm shift in the operation and general management of the Service/offenders from punitive to correctional in line with global best practices. With the current world-view of the Service, two broad responsibilities are expected of the drivers (Correctional officers) of the Law but under the general superintendence of the Controller General of Corrections. The two broad divisions or parts are, the Custodial Service and the Non-Custodial Service.

Primary Purpose of the Act

In consideration of the enormous contribution of the service to National Security, justice process and avoidance of the phenomenon of recidivism (beyond lock and key), the primary purpose of the Act includes:

- (a) to repeal the Prisons Act Cap P29 Law of the Federation of Nigeria 2004 which hitherto could not enable optimal and excellent penal management in tandem with global best practices.
- (b) to ensure paradigm shift from punitive regimes applied in the treatment of offenders to corrections entailing psycho-social and behavioural re-orientation.
- (c) to align treatment of offenders with the provisions of the Administration of Criminal Justice Act, 2015.
- (d) to erase the stern face of the word 'PRISONS' and replace it with a more humane posture that reflects 'CORRECTIONS' so that offenders will readily accept deliberate correctional regimes based on individually identified cause(s) of their anti-social behaviours and;
- (f) to ignite and prosper the spirit of the constitution through strict compliance with its relevant provisions in the day by day management of the legally interned.

As part of the efforts to bring the fore-going purpose to fruition, the Act further classifies the Custodial Centres and inmates into the following: Maximum Security Custodial Centres, Medium Security Custodial Centres, Open Custodial Centres, Farm Centres, Satellite Custodial Facilities, Borstal institutions and Female Custodial Facilities.

Notable Provisions of the Nigerian Correctional Services Act 2019

The NCS Act addresses issues that were not covered in the repealed Act and seeks to improve on prison administration. Notable provisions in the Act are discussed hereunder.

³⁷ Prisons Act (Repeal and Enactment) Bill, 2018.

³⁸ Cap. P29 Laws of the Federation (LFN), 2004.

³⁹ Kinane Suanu Dumnaawae, 'The Nigerian Correctional Act and The Administration of Criminal Justice in Nigeria: Cross River State Perspective', (being a paper presented during the activities marking the official retirement of His Lordship, The Honourable Chief Judge of Cross River State) On Monday, 25th November, 2019.

Appointment of the Controller-General of Corrections and Functions of the Custodial Service

Unlike the abrogated Prisons Act LFN 2004, the NCS Act 2019⁴⁰, clearly describes the criteria for appointing the Controller General of Corrections (CGC) including the expected qualifications, spells out the functions of the CGC⁴¹, and the process of removal⁴².

It is important to mention that the old law only prescribed custody of the legally interned persons without any reformation and rehabilitation procedure. Under the new law however, Section 10 states the functions of the Custodial Service to include:

- (a) taking custody of all persons legally interned;
- (b) providing safe, secure and humane custody for inmates;
- (c) conveying remand persons to and from courts in motorized formations;
- (d) identifying the existence and causes of anti-social behaviors of inmates; and identifying the existence and causes of anti-social behaviors of inmates;
- (e) conducting risk and needs assessment aimed at developing appropriate correctional treatment methods for reformation, rehabilitation and reintegration;
- (f) implementing reformation and rehabilitation programmes to enhance the reintegration of inmates back into the society.
- (g) initiating behaviour modification in inmates through the provision of medical, psychological, spiritual and counselling services for all offenders including violent extremists;
- (h) empowering through the development of educational and vocational skills training programmes and facilitating incentives and income generation through Custodial Centres, farms and industries;
- (i) administering Borstal and related institutions;
- (j) providing support to facilitate the speedy disposal of cases of persons awaiting trial; and
- (k) performing other functions as may be required to further the general goals of the service.

In another breadth, the new Act has oversight functions to monitor and superintend places of worship, NGOs and traditional rehabilitation centers and juvenile homes.

Checking overcrowding

We have noted that one of the major challenges with custodial centres in Nigeria has always been overcrowding. The new Act now provides a statutory procedure for rejecting inmates on account of lack of space. Section 12 (4) states; 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) The Attorney General of the State;
- (c) Prerogative of Mercy Committee;
- (d) State Criminal Justice Committee; and
- (e) Any other relevant body.

Sub-section (7) states; upon receipt of the notification referred to in subsection (4), the notified body shall, within a period not exceeding three months, take necessary steps to decongest the facility if it must accept more inmates. Furthermore, subsection (8), specifically empowers the State Controller of Correctional Service in conjunction with the officer in-charge of the facility, to reject more intake of inmates where it is apparent that the Correctional Centre in question is filled to capacity. Notably, a Presidential Committee, chaired by the Chief Judge of the High Court of the FCT, Justice Ishaq Bello, was constituted by the Attorney General of the Federation to initiate strategies for sustainable decongestion of the Correctional Centres in the country. The Committee was expected to, among other functions, come up with a roadmap for the prison de-congestion program, while providing a comprehensive user-friendly approach for management. It was also expected to provide an insight into the past and present efforts of the Federal Ministry of Justice and other stakeholders, towards repositioning Nigeria's prisons system via a strategy deployment of technology and the implementation of the Virtual Automated Case Management System, for the decongestion of prisons in Nigeria. To this end, the Committee visited 39 prisons in 18 States and succeeded in releasing a total number of 7,813 prisoners. Out of this figure, 3,789 inmates were released during the outbreak of Covid-19 pandemic⁴³.

⁴⁰ NCS Act 2019 Section (3) subsection (1) & (2).

⁴¹ *Ibid*, Section (4).

⁴² *Ibid*, Section (6) subsection (1).

⁴³ *Thisday*, July 14 2020, Presidential Committee on Correctional Service Reform Submits Report <thisdaylive.com> accessed 19/07/2020.

Commutation of death sentence

Previously, inmates on death row lived under the suspense and mental torture of death which the appropriate authorities would neither sign nor easily commute to life imprisonment. However, the new Act has brought some relief to this category of inmates. NCS Act now provides that where an inmate sentenced to death has exhausted all legal procedures for appeal and a period of 10 years has elapsed without the execution of the sentence, the Chief Judge may commute the sentence of death to life imprisonment⁴⁴.

Treatment of mentally challenged and under age inmates

To protect the right and dignity of human person and entrench humane treatment of offenders, the NCS Act, 2019 now abhors and prohibits the use of correctional facilities for indiscriminate dumping of persons without due regard to their state of health or age. Thus, the act states that ‘officials of correctional facilities shall refuse to admit persons brought in with severe bodily injury; a mentally unstable person or a person in an unconscious state of mind; and someone who is underage’⁴⁵.

Reformation and rehabilitation of Inmates

Section 14 subsections (1) & (2) of the Act provides for the reformation and rehabilitation process of convicted persons in custody. This is to bring about a comprehensive re-orientation and character transformation of inmates before reintegrating them into the society. Note that before now, the reformatory programmes and skill development in sundry vocations including educational opportunities to tertiary levels, being given to inmates were not statutory mandates rather they were mere creation of the different Controllers General.

Ending Stigmatization

The age long challenge of stigmatization of ex-convicts has been addressed as trained offenders who demonstrate high level of penitence can now be issued with a certificate by the Chairman of the Board on the recommendation of the CGC. This enables him to engage and compete for social recognition without the toga of ‘ex-convict’. It states: (1) ‘The Correctional Service shall provide opportunities for education, training in vocations as well as training in modern farming techniques and animal husbandry for inmates’. Thus, the Controller General may recommend to the Board for the issuance of certificates of good behaviour upon discharge to an inmate who had demonstrated good conduct, including those who have acquired training through formal and informal education aimed at facilitating their reintegration⁴⁶. Furthermore, a person who is issued with the certificate of good behaviour shall not be discriminated against on ground of his custodial sentence⁴⁷.

Official Visitors to Custodial Centres

To entrench inclusiveness, and foster wide range collaboration, Section 21 subsection (1) (a) (iv) – (VI) and (b) has expanded official visitors of Custodial Centres to include: The Chairperson 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 Nigerian Bar Association and Legislative oversight visitors who shall be Presiding Officers and Members of the relevant committees of the National Assembly and State Houses of Assembly.

Staff Welfare and Discipline

The issue of staff motivation, particularly those engaged in high-risk assignments has equally been addressed. Specifically; Section 26 (3) provides, in course of duty, for payment of 50% of basic salary to staff who suffer bodily injury and in case of death, 100% in addition assisting their children who are in school for one year. This will no doubt increase the morale of staff to face their tasks no matter how daunting. Similarly, discipline of staff is addressed in the new Act. While provisions are made for rewarding hard work and dedication to duty, it should be noted that the new Act frowns at conducts that are detrimental to security of Custodial Centres. Of particular concern is trafficking. Section (29) now clearly defines appropriate punishment for any officer found guilty of such misconduct.

Inmates Ration

On provision for inmates feeding and its adequacy, which has always been a subject of concern, section 30 subsections (1) & (2) state categorically that; (i) There shall be for the Correctional Service funds appropriated for inmates’ feeding as provided by the Government. (ii) Subject to section (1), the cost of feeding reviewed at a period not exceeding five years from the date of last review or as the national economic circumstances permits.

⁴⁴ *Ibid*, Section 12 subsection 2 (c).

⁴⁵ *Ibid*, Section 13 subsection (3) l.

⁴⁶ *Ibid*, Subsection (5).

⁴⁷ *Ibid*.

Special Treatment of Female inmates and Juvenile Offenders

The NCS Act also accommodates the peculiarities of women by providing for a separate facility for them in every state as against the old practice of having a wing carved out for women within a general facility. Here, the medical and nutritional needs of expectant/nursing mothers are given special attention, including the provision of a crèche. Section 34 (1) – (3) states;

- (i) There shall be a separate facility for female inmates in all states of the Federation.
- (ii) The Correctional Service shall provide all necessary facilities to address the special needs such as medical and nutritional needs of female, including pregnant women, nursing mothers and babies in custody.
- (i) Subsection (2) includes the provision of a crèche in every female custodial centre for the wellbeing of babies in custody with their mothers, and prenatal, antenatal health care and sanitary provisions for female inmates.

Related to this is section 35 (2) that provides for the establishment of female Borstal Institutions to cater for juvenile female offenders in need of custodial treatment. This is a significant relief to the Correction Service as young female offenders will now have a separate facility suitable for their reformation and rehabilitation.

Legal Autonomy

It is a welcome development as the Act had finally made provision which confers legal autonomy on legal officers employed by the Correctional Service. This was made possible through the provision of section 36(3) which indeed terminates the general fiat usually sought and obtained from the office of the Attorney General, though without prejudice to his powers. The section provides that: ‘Without prejudice to the powers of the Attorney-General of the Federation, the Legal officers employed by the Correctional Service shall provide legal representation and advice to the Correctional Service on all matters including those applicable to subsections (1) and (2), as may be required’.

Provision for Non-Custodial Service

Part 11 of the Act treats items found under sections 37-44, which deal with Non-Custodial Service functions. The items captured under these provisions seek to rebrand the functions of the Nigerian Correctional Service (NCS), re-positioning it to engage meaningfully, treatment of offenders outside the of walls which will engender the rectification of a hitherto deprived and depraved mind. It beckons the beginning of a new era in the treatment of offenders and therefore calls for concerted efforts of all stakeholders in the Criminal Justice family to actualize them.

The Act specifically provides for non-custodial measures as sentencing option to address minor-uncomplicated cases which should not necessarily attract terms of imprisonment. Accordingly, the Nigerian Non-Custodial Service is responsible for the administration of non-custodial measures, which are;

- (a) Community service
- (b) Probation
- (c) Parole
- (d) Restorative justice measures; and
- (e) Any other non-custodial measure assigned to the correctional service by a court of competent jurisdiction.

Although these provisions may seem novel, it is observed that they are not entirely new as they have been part of our law of criminal procedure under both the CPA and the CPC. For instance, the Criminal Procedure Act (CPA)⁹ provides for certain measures as alternatives to imprisonment such as fines, bail, probation, binding over-recognizance to maintain the peace and avoidance of re-offending etc. Appreciating the prime position occupied by non-custodial measures in sentencing disposition by our courts, it is pertinent to mention some of the utilitarian values to include de-congestion of Custodial Centres, avoidance of the toga of stigmatization and conveyance of humanized justice delivery. It will also guide the courts towards giving sentences that are in line with the current spirit of punishment that comes with rehabilitation. Notably, preparations have been made for the adoption of a uniform Sentencing Guidelines incorporating noncustodial measures throughout the country starting from the FCT to put in place an elaborate system of non- custodial measures that will ensure the reduction of the use of the Correctional Centres, and by implication, lead to the decongestion of Correction Centres⁴⁸.

⁴⁸ *Thisday*, n. 43.

5. Conclusion

This paper gave an overview of the Nigerian Correctional Service Act 2019, which was passed to modernize the Nigerian prison system and make it responsive to the needs of society in line with global best practice in the administration of criminal justice process. Some innovative provisions of the Act were assessed in comparison to the repealed Prisons Act No. 9 of 1972. It was found that there is a marked shift not only in renaming of the institution but also an improvement of its functions, services, and management of inmates. Also, respect for the rights of inmates to dignity and humane treatment is paramount in order to ensure that they are rehabilitated and not forced to become recidivist. It is concluded that the Nigerian Correctional Service Act is rich in its content and form, and responsive to the needs of society. What now remains is the political will on the part of government by way of adequate funding; and concerted efforts of all stakeholders to ensure its implementation.