ANALYSIS OF THE TRANSFORMATION FROM THE NIGERIA PRISONS SERVICE TO THE NIGERIAN CORRECTIONAL SERVICE*

Abstract

The Nigerian government recently enacted the Correctional Service Act, 2019 (Act) which repealed the hitherto existing Prisons Act, 2004. The repealed law had become outdated and no longer capable of driving forward the criminal justice sector hence the need to repeal it. Nigerian Correctional facilities fall short of the approved standard for the rehabilitation and reformation of inmates. The Standard Minimum rules for the Treatment of Prisoners as adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955 sets out rules that preserve the rights of prisoners. According to the Controller-General, the facility built in 1955 to shelter 800 inmates now holds about 3,113 inmates as at December 3, 2019. The newly signed Nigerian Correctional Service Act may foster the desired change in the system if it takes effect in practice. This article examined the new Nigeria Correctional Service Act 2019 and attempt to highlight areas of difference with the Nigerian Prisons Service Act 2004. The study amongst other things, recommended that constitutional huddles that exist in the Constitution of the Federal Republic of Nigeria 1999 (as amended) that stands to limit the actualization of the implementation of the NCSA 2019 should be reviewed also at the earliest attempt at amendment, parole, probation, community service, restorative Justice should be defined in the Act with clarity so that no one is left in doubt as to their meaning and purpose.

Keywords: Prison, Act, Nigeria Correctional Service, parole and probation.

1. Introduction

On August 14, 2019, President Muhammadu Buhari signed the Nigerian Correctional Service Bill into law. Many circumstances necessitated and led to the signing of the bill; such as the dilapidated and congested nature of the facilities. For instance, as at August 2018, the Port Harcourt prison built in 1918 and designed to shelter 800 inmates now accommodates 5,000, while Kirikiri Maximum Prison in Lagos built to hold 956 inmates has become home to 2,600 inmates.[1] Poor feeding of inmates, lack of adequate medical care for inmates due to lack of requisite facilities and the lack of recreational and vocational training for inmates are also contributing factors[2]. Prior to the Nigerian Correctional Service Act 2019 (NCSA), the Nigerian Correctional Service was regulated by the Prisons Act of 1972.[3] Because the regulation on the law of prisons is an item under the Exclusive Legislative List,[4] states that desired to make changes to the administration of their correctional facilities were constitutionally barred from doing so. The main aim of the Prisons Act 1972 was to provide a body of rules for the comprehensive administration of prisons in Nigeria and the careful management of the correctional facilities created for individuals who violated the laws of the States and the Federation.[5] Besides, cascading congestion in the ageing Nigerian prisons, inhuman treatment of convicts, poor and inadequate human and material resources (qualitatively and quantitatively), left the service battered with an unfulfilled obfuscated mandate. In these circumstances, the prisons were primarily concerned with containment that dehumanized and embittered inmates rather than productively engaging them. There was also the issue of lack of symbiotic synergy between the arms of the criminal justice system that needed to be addressed for the system to work cohesively.[6] The ideal prison system seeks to deter those who would otherwise commit crimes and reduce the probability that those who serve a prison sentence will reoffend after their release.[7] The extent to which the Prisons Act of 1972 executed its projected mandate was a subject of controversy.[8] A casual observation of the population that goes in and out of the prisons in Nigeria presupposes that there are some problems in the system. Hence, the prisons system has not been able to live up to its expected role in Nigeria in terms of impacting positively on the lives and vocations of inmates.[9] This has raised several questions which have not been addressed. It is against this background that the Act was enacted with a mindset to address some of these noticeable loopholes. The extant law seeks to modernize the prisons now called correctional centers by segmenting the service into custodial and non-custodial arms, and

*By **Henry LONGPOE, LLB (Hons), LLM, BL,** Lecturer, Centre for Conflict Management and Peace Studies, University of Jos, Plateau State. Email: henrylongpoe@gmail.com; and

*By **William LONGPOE**, Reader, Department of Private Law, Faculty of Law, University of Jos, Jos , Plateau State..

[1]Agede O and Agiobu-Kemmer S, 'Reforming Nigerian Prisons beyond Name Change', available at https://guardian.ng/saturday-magazine/cover/reforming-nigeria-prisons-beyond-name-change/ (accessed 27 December 2019).

[2] Ibid.

[3] Prisons Act 1972, Cap. P29, Laws of the Federation of Nigeria, 2004.

[4] Item 48 of the Exclusive list as contained in the Second Schedule to the 1999 Constitution

[5] Ibid.

[6]Alemika E E, and Alemika E I, 'Penal Policy, Prison Conditions and Prisoners' Rights in Nigeria' in B Angwe and CJ Dakas (ed) *Readings in Human Rights* (Innovative Communications 2005) p. 108

[7] 'Corrections shall be the Primary Goal of the Correctional Service': Nigerian Correctional Service Act (NCSA) 2019, s. 10.

[8] Ibid.

[9]Obioha E.E., 'Challenges and Reforms in the Nigerian Prisons System' *Journal of Social Sciences,* Vol. (27) No. (2) (2011) pp. 95 – 109.

generally introducing humane conditions in the handling of offenders in custody and providing a synergy between the prisons and the other arms of the criminal justice system.

This article sets out, in the main, to examine the Nigerian Correctional Service Act. In doing this, the article is divided into six parts which are: analysis of the provisions of correctional service act, 2019,establishment and structure of the correctional service custodial correctional service, establishment of correctional centres, power to reject inmates by the Controller of A Correctional Centre, Nigeria Correctional Service Act 2019 And Correctional Detention in Nigeria, the Nigeria Correctional Service Act and international best practices and conclusion and recommendations.

2. Analysis of the Provisions of Correctional Service Act 2019

The Act is divided into two parts; part one entitled 'Custodial Service' begins from sections 9 – 36, and Part two encapsulate 'Nigerian Non-Custodial Service' is covered by sections 37 – 47.There are two Schedules to the Act; the First Schedule distinctively sets out the classification of Custodial Centres created by the Act while the Second Schedule deals with Savings and Transitional provisions. An examination of the Act reveals that it has more sections and more Schedules written in simple diction for comprehension than the repealed law which had only 19 sections and one schedule written in complicated phraseology and without being sub-divided into parts. To this extent therefore, the extant law is preferable. Given the structural arrangements of the Act, this article shall appraise it as arranged.

3. Objective of the Correctional Service

The repealed Prisons Act, and all prisons enactments before it,[10] had no objectives for the service. This led to a lot of arguments as to what exactly the service was set out to achieve with several writers[11] propounding several theories whilst the prisons itself professed to rehabilitation as its avowed objective. Elsewhere, it has been opined that:

> …this lack of objectivity in the Nigerian Prisons Act has resulted to several theories being propounded as to the philosophical basis of imprisonment with the component arms of the criminal justice delivery system almost operating at cross purposes to the detriment of the inmates…[12]

The Act has now put this to rest. Section 2 gives the objectives of the service as to:

a. ensure compliance with international human rights standards and good correctional practices;
b. provide enabling platform for implementation of non-custodial measures;
c. enhance the focus on corrections and promotion of reformation, rehabilitation and reintegration of offenders and
d. establish institutional, systematic and sustainable mechanisms to address the high number of persons awaiting trial.

Evidently, the primary focus of the service now is reformation, rehabilitation and reintegration. This avowed objective runs throughout the entire enactment. For example, the powers of the Controller-General are to ensure inmates' safety and humane custody,[13]'reformation, rehabilitation and reintegration of offenders',[14] and 'supervise Non-Custodial Institutions and Centres'.[15] To accentuate its importance, the phrases 'reformation, rehabilitation and re-integration' and 'humane treatment' each appears five times in the Act. These apart, any building now declared to be Correctional Centre must have 'sleeping accommodation that meet all requirements of health with consideration given, among other things, to adequate floor space, water and sanitation amenities, lightening and ventilation',[16] inmates are now to be paid for work done while in the Correctional Centre,[17] and provisions for adequate feeding of inmates[18] and their care.[19] All these are indicators that the changes envisaged by the Act are not cosmetic but deep enough to ensure complete transformation of inmates anchored on the philosophy of rehabilitation and reformation. It is left to be seen how these would be implemented.

[10] Prisons Act Cap 366 Laws of the Federation of Nigeria, 1990, and the Prions Ordinance 1916
[11]Ehonwa OL, *Behind the Wall* (Civil Liberties Organization 1996) p. 12
[12]Ibid
[13]NCSA Section 4 (2) (a) of the Act
[14]NCSA section 4 (2) (b)
[15]NCSA section 4(2) c)
[16]NCSA proviso to section 8 (1) (b)
[17]NCSA section 14 (4) (a)
[18]NCSA section 30
[19]NCSA section 32

4. Establishment and Structure of the Correctional Service

Section 1 of the Act establishes the Nigerian Correctional Service and gives it the broad mandate to provide custodial and noncustodial services, and establishes the offices of the Controller General, a minimum of eight Deputy Controllers-General and such other subordinate staff to the Controller General as may be necessary for the administration of the Service. One of the Deputies Controller General is to be specifically assigned the portfolio to oversee noncustodial correctional services[20]. The power to appoint the Controller General is vested in the President who is to act on the recommendation of the 'Board'[21] subject to confirmation by the Senate,[22] provided that the recommendation must be from the pool of serving Assistant Controllers-General who have vast experience and evidence of quality leadership.[23] The Controller General is infused with powers to generally superintend the Correctional Service and to implement the Act and is to do this in accordance with the ACJA together with other relevant legislation and policies relating to non-custodial measures, and additionally create a platform for interfacing with the other arms of the criminal justice institutions.[24] The tenure of the Controller General is for a single term of five years and he shall not be remove during the subsistence of his term except on grounds of gross misconduct or ill-health or incapacity to perform his functions, and a recommendation is made by the Board to the President in that behalf and he accepts it.[25] Also established for the Correctional Service is a vertical hierarchy with the Headquarters in Abuja, Zonal offices, State Commands, Custodial and Non-Custodial Centres and Training Institutes. The Act further creates the offices of Deputy Controllers General[26] who are to oversee the various Directorates of the Services listed as:

(i) Finance and Accounts,
(ii) Inmates Training and Productivity,
(iii) Human Resources,
(iv) Works and Logistics,
(v) Health and Welfare,
(vi) Training and Staff Development,
(vii) Operations, and
(viii) Non-Custodial Services.[27]

It is submitted that the provisions of the Act, as far as structure is concerned, are an improvement on the old legal regime which had provided nebulously for the office of the Comptroller-General and such other subordinate staff as is necessary to run the service[28].Besides, several issues which had hitherto been left to the discretion of the Comptroller-General are now clearly spelt out. It is now clear how the Custodial Services are subdivided, and the Directorates which hitherto were the creation of the Comptroller-General are now the creation of statute with functions, appointing and removal process. These were issues that were left to conjecture in the repealed law. Importantly, the Act plainly directed the Controller-General to implement the Administration of Criminal Justice Act 2015 (ACJA) and should create a platform of interfacing with other arms of the criminal justice system. This collaboration is necessary for the criminal justice arms to work harmoniously. This is a step in the right direction. However, the provision that the Controller-General be nominated and appointed from the pool of Assistant Controllers General requires revisiting as it negates the command structure set out by the Act which created the offices of eight Deputy Controllers-General and ranked them immediately under the Controller General. Ideally, it is from these Deputy Controllers-General that a successor to the Controller-General ought to emerge. To side-line Deputies and move to the Assistants which is the third category is likely to create rift in the not too distant future, except, it is the intention of the legislature (which is doubtful) that the Deputies be compulsorily retired.

5. Custodial Correctional Service

Elaborate provisions have been made in the Act for custodial services which used to be traditionally the functions of the Prisons. To underscore the importance of custodial service, a total of 28sections are dedicated to it (that is 8 sections more than the repealed Act). For brevity, the major provisions would be discussed under the following sub heads:

[20]NCSA, section 1 (3) (b)
[21]Strangely this Board is not defined in section 46 (interpretation Section) or any other place in the Act. However, Since Prison share a common Board with all the parastatals in the interior Ministry, it is assumed to be the Customs, Immigration, and Prisons Board (CIP) that is being referred to. It would have been better and neater if this 'Board' was not left to speculation and assumptions.
[22]NCSA Section 2 (1)
[23]NCSA Section 2 (2)
[24]NCSA Section 4.
[25]Ibid
[26] To be appointed by the President acting on the recommendation of the Board.
[27]NCSA section 8
[28] Section 1 of the Prisons Act Cap P29 updated to 2010

Establishment of Correctional Centres

The Act empowers the Minister[29] to declare any Public building with adequate facilities in an appropriate location within Nigeria to be a Custodial Centre, and specify the area of land mass for which the Custodial Centre is established.[30] Sub-section 2 of the section goes further to provide that a building declared as a Custodial Centre under the section includes the grounds and building within its enclosure, and the Detention Centre for temporary detention which when declared by the Minister by order in the Federal Gazette to be part of the Custodial Centre. The categories of Custodial Centre established under the Act are as listed in the First Schedule.[31] The Minister is further given wide powers to, by a Separate Order in the federal Government Gazette, declare every Custodial Centre as a Custodial Centre of a particular category.[32]This provision contrasts sharply with that under the repealed Prisons Act in a number of ways. There is more guidance to the Minister under the extant law in exercising his powers of declaring a building a Custodial Centre, in that the place to be declared a Custodial Centre must:

(i) be a public building,[33]

(ii) have requisite facilities circumscribed by the provision to sleeping accommodation and shall meet all requirements of health with consideration given to adequate floor space, water and sanitation amenities, lightening and ventilation, and

(iii) define the land mass for which the Custodial Centre is to cover.

There are additional security concern issues like restricting the erecting of any other structure 100 metres to the Custodial Centre.[34] The second condition of the premises having met the requirements of floor space and lighting, was not part of the repealed law.

Another significant departure is the listing of Correctional Centres and clearly describing their security levels. To this end, the Maximum Security Custodial Centre which, as the name implies, is the most secure Centre in Nigeria, has enhanced level of security including the usage of Close Circuit Television, Electric Fencing, Electronic Scanners, High Level Technology reserved for high risk inmates of all classes; the Medium Security Custodial Centre is to have reasonable level of security reserved for inmates of all classes; Open Custodial Centres for the treatment of long term first offenders; Farm Centres for convicts with good conduct who have six months or less to serve; Satellite Custodial Facilities reserved for convicts serving three months imprisonment or less; Awaiting Trial Persons charged for minor offences who are required to be presented in courts in locations without major custodial facilities; Borstal Institutions for the detention of juvenile offenders, and Female Custodial Facilities for all classes of female inmates.[35] By this provision and the First Schedule, the perpendicular pyramid of the Custodial Centres with their security levels and who shouldbe held therein becomes easily implementable. These were issues that were completely absent in the repealed law leaving the then Prisons Service to do as they deemed fit.[36]

Significantly, the Act has now for the first time in the history of Nigeria established by statute specific Custodial Centres for women. To complement the provision under review, Section 34(1) of the Act decrees Correctional Service to provide separate facilities for female inmates in all the States with necessary facilities addressing the special needs of women such as medical and nutritional needs including pregnant women, nursing mother and babies in custody. In other jurisdictions, Custodial Centres for Women (given their peculiar needs), were separate from those of male convicts. The United States for example, as far back as 1873 established the Indiana Women's Prison as well as Framingham 1877, to mention but two.[37] Canada had a single correctional facility for women at Kingston, Ontario from 1934 -1990 with five others built in 1990.[38] Nigeria has now joined these jurisdictions which have correctional facilities separately for women. Even though the repealed law was silent on this, there was at least one prison in Lagos that was reserved solely for women. Most other prisons had a section reserved for women. It is hoped that this provision would trigger the emergence of more facilities designed and built for female inmates to take care of their peculiar needs.

[29] Interpreted as the Minister Charged with the responsibility for the Nigerian Correctional Service (section 46 of the Act). It is curious why the Minister was not named specifically. Presently, the Correctional Service is under the Ministry of Interior whom it is presumed has the responsibility to execute this section. It would have been neater if the Minister was specifically so named.

[30]NCSA Section 9 (1) (a) & (b).

[31]NCSA section 8 (5).

[32]NCSA section 8 (6)

[33] Contrast this with the provision of section 3 (1) of the repealed Act which gave the Minister powers to declare any building or place in Nigeria as a Prison.

[34]NCSA Section 9 (3)

[35] First Schedule to the Act NCSA

[36] Ibid. n35

[37] Titus R, Criminal Justice *Today*, Ed 41 8th Sept 2020

[38] Government of Canada, 'Correctional Service Canada'<https://www.cscscc.gc.ca/women/002002 accessed 24th April, 2021

Power to Reject Inmates by the Controller of a Correctional Centre

The Act gives the Controller of a Correctional Centre powers to reject inmates sent to the Centre in two broad ways; when the Centre has exceeded its inbuilt capacity and, when the proposed inmate has severe bodily injury, or is mentally unstable or is unconscious or is underage.[39] The reasonableness and attractiveness of these shall now be scrutinized. Section 12 (8) of the Act infuses the State Controller of a Correctional Centre with power to refuse to admit inmates if the facility has exceeded its built capacity and he had notified the Chief Judge, the State Attorney General, the Prerogative of Mercy Committee and the State Criminal Justice Monitoring Committee in line with section 12 (4) of the Act and nothing has been done to decongest the Centre.[40] This is a novel and strange provision that will in the long run, do more harm than good for three reasons:

(a) it would lead to Chief Judges taking panicky measures to decongest the Prions thereby leading to recycling of offenders;
(b) it may result to inmates being taken back to the Police detention facilities that are worse off than Correctional Centres; and
(c) a close scrutiny of Correctional legislation in several countries did not reveal any jurisdiction where the Service is given such powers.[41]

Given the additional powers of the Controller-General to effect inter-prison transfers contained in section 16 of the Act, section 12 (8) becomes unnecessary, a contradiction or at best, provides an alternative course of action. For purpose of clarity, section 16 is hereby set out in extenso:

16 (1) The Controller-General may, for security or administrative reasons, order in writing the transfer of any inmate, convicted or un-convicted, to a suitable Correctional Centre whether or not the Correctional Centre is named in the warrant or order of detention and such order by the officer shall be sufficient authority for such transfer.

(2) The Correctional Centre shall ensure that any un-convicted inmate transferred in accordance with sub section (1) is produced in Court when required.

(3) Where it appears to the Controller-General that:

(a) the number of inmates is greater that the official Capacity of the Correctional Centre and that it is more convenient to transfer the excess number of inmates to another Correctional Centre, or

(b) by reason of the outbreak of a disease within the Correctional Centre or any other reason, it is desirable to provide for the temporary shelter and safe custody of any inmate, the Controller-General may, by order, direct that as many inmates as maybe stated in the order, be kept and detained in a building or place which is outside the Correctional Centre specified in the order and the building or place is deemed to form part of the Correctional Centre for the purpose of this Act until the revocation of the order.

Section 16 has resolved the problem by providing an alternative course of action. Studies have found that even though the Correctional Centres in the big cities are congested, those outside are not.[42] The problem, therefore, is how to proactively and optimally manage the available facilities and not the rejection of inmates. At any rate, going by the rules of construction of statutes, section 16 of the Act coming after section 12 (8) of the same Act has impliedly repealed the earlier provision (that is Section 12 (8).[43]

Turning to the provision of sub section (10) of section 12, the reasons for rejection appear well founded. For too long the Correctional Centres have become the dumping ground for lunatics, even without court orders. Furthermore, most times after ruinously injuring suspects, the police would then arraign them in courts and these would be shepherded into the Correctional Centres. The provision empowering the Correctional Centres to reject such cannot be faulted and is in sync with the Anti- Torture Act 2017.[44] Finally, the power to reject underage inmates is equally on solid foundation. To give more bite to this provision, section 35 of the Act mandates the Correctional Service to establish separate male and female Borstal Training Institutions for juvenile offenders in all the states of the Federation for their treatment, including rehabilitation. When this is added to section 248 of the Child Rights Act, 2003 that established a panoply of Children's Centres which can properly take care of child

[39] Section 12 (10) of the NCSA

[40] Section 18 of the NCSA has a similar provision. The reason for the duplication isnot very clear.

[41] Ibid

[42] Ogundipe OA,'Decongestion of Courts and Prisons: The Way Forward' Paper presented at the Induction Course of Nigerian Judges and Khadis held at the National Judicial Institute Abuja, 2019

[43] Every CRS Report, 'Statutory Interpretation: General Principles'<https://www.everycrsreport. com/report/97-589html> accessed 24th April, 2021.

[44] Vearumun Tarhule and Yangien Ornguga, 'Curbing Incidences of Torture Through Legislation: Focus on the Nigerian Anti Torture Act, 2017' Vol. 8 No.1 Benue State University Law Journal 2017/2018, 30 available on line at<https://www.bsum.edu.ng/w3/lawJournalTOC .php.>accessed 24th April, 2021.

truancy and deviancy, there is no reason why any child should be held in an adult facility to be contaminated. A community reading of all these enactments validates the provision of the Act and further orchestrates the collaboration now fast becoming part of the criminal justice sector.

6. Nigeria Correctional Service Act 2019 and Correctional Detention in Nigeria

The intent of the NCSA 2019 is made clear in its name as the Act sets out that the Nigerian Prison administration will now be known as the Nigerian Correctional Service as opposed to its previous name the 'Nigerian Prisons Service'. Additionally, section 2(1)(a) of the Act[45] sets out that its objective(s) is for the Nigerian Correctional Service to fully comply with international Human Rights Standards. The flavor of the Act and its avant-garde approach will not be surprising to contemporary Nigerian Scholars and the proponents of the Act. This is because the provisions of the Act take a considerable leap forward from the 1972 Prisons Act by making applicable nationwide significant Correctional Service innovations first outlined in the Administration of Criminal Justice Act 2015. Part II of the Act makes provision for a Nigerian Non-Custodial Service system; an internationally recognized form of Reformative Justice defined in the Act as 'an aspect of Nigerian Correctional Service that serves as an alternative to going to a custodial Centre'.[46] Section 37(1) of the Act states that: The Nigerian Non-Custodial Service shall be responsible for the administration of non-custodial measures including: a. Community Service; b. Probation; c. Parole; d. Restorative Justice Measures; and e. Any other Non-Custodial Measures assigned to the Correctional Service by a Court of competent jurisdiction.[47] Section 42 of the Act bolsters section 37 by putting into perspective the procedure for managing Community Service Sentences.[48] It provides for the appointment of Supervisors to monitor those sentenced to Community Service, the submission of reports by the appointed Supervisors to the Comptroller-General and also makes provision for the conversion of sentences of eligible offenders serving punishment of imprisonment imposed on them within the last six months of the coming into force of this Act, to Community Service, upon formal application. The provisions of the above section 37 and 42 align with the position of the already in force Administration of Criminal Justice Act 2015.[49] Section 460 (2) and (4) of the Administration of Criminal Justice Act 2015 provides thus: The Court may, with or without conditions, sentence the convict to perform specified service in his community or such community or place as the court may direct.[50]

(4) The Court, in exercising its power under subsection (1) or (2) of this section 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.

The inclusion of provisions which provide for the establishment of a Community Service Program in both the Administration of Criminal Justice Act 2015 and the Nigeria Correctional Service Act 2019 makes plain the progressive intent of the Nigerian Legislation on issues pertaining to Restorative Justice. In the same vein, section 43 of the NCSA departs from the conservative nature of the preceding Prisons Act 1972, in providing for restorative justice measures such as Victim-Offender Mediation.[51] The inclusion of provisions which are designed to address the needs of crime victims while ensuring that offenders are held accountable for their offences such as Victim-Offender Mediation had originally been recommended to the members of the United Nations by the United Nation's Office on Drugs and Crime in its 2006 Handbook.[52] The Handbook set out three basic requirements that must be met before Victim-Offender Mediation can be used; the offender must accept or not deny responsibility for the crime; both the Victim and the Offender must be willing to participate; both the victim and the offender must consider it safe to be involved in the process.[53] Comparatively, section 43 of the Act states:

(1) The Controller-General shall provide the platform for Restorative Justice Measures including:
   (a) Victim-Offender Mediation;
   (b) Family Group Conferencing;
   (c) Community Mediation; and
   (d) Any other Mediation activity involving Victims, Offender and, where applicable Community Representatives.

[45] NCSA 2019, Section. 2(1)a.
[46] NCSA 2019, Section 46.
[47] NCSA 2019, Section. 37(1).
[48] NCSA 2019, Section. 42.
[49] The Administration of Criminal Justice Act (ACA) 2015 is by default enforceable in the Federal Capital Territory only and becomes applicable in states upon ratification.
[50] ACA 2015, Section. 460 (2) and (4).
[51] NCSA 2019, Section. 43.
[52]United Nations Office on Drugs and Crime, 'Handbook on Restorative Justice Programmes', available at https://www.un.org/ruleoflaw/files/Handbook%20on%20Restorative%20Justice%20Programmes.pdf accessed 24th April, 2021.
[53]Ibid, at Ch. 1, S. 2.3, P. 18.

The strength of these provisions is increased by section 43(2) of the Act which provides that the Correctional Service measures set out in section 43 of the Act may be applied at any stage in the criminal proceedings even after imprisonment.

In its forward-looking nature, the Act in section 40 provides for the administration of a Parole process to be overseen by the Comptroller-General. Of importance is subsection (c) of section 40, which sets out that, included in the administration process of parole is the rehabilitation and reformation of Parolees. This is a landmark innovation in Nigeria as there is now a provision for the temporary or permanent release of a prisoner before the expiry of a sentence, on the promise of good behaviour. This is a much-needed development that would help control the well-known congestion challenges faced by the Nigerian Correctional Service.[54] Although the Act does not set out provisions guiding the day to day administration of its innovative reformative justice sentencing, resort can be made to a host of guidelines and handbooks provided by the United Nations and other Common Law Nations which already have these reformative justice sentencing procedures in place.[55]

7. The Nigeria Correctional Service Act and International Best Practices

Section 2(1)(a) of the Act set out that the objective of the Nigerian Correctional service is to inter-alia 'be in compliance with international Human Rights standards'.[56] The International community, through the United Nations, has made it clear to member States of the United Nations that the humane treatment of every person is essential. Prisoners whether they are convicted of violent crimes or not are included in this Agenda and are entitled to basic human rights. Member States of the United Nations, including Nigeria, have signed and ratified International Treaties, Conventions, Covenants and Rules confirming these rights. Among the most important are the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the United Nations Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment. The main thrust of all such Conventions as they relate to Prisons is simple; they state the following:

> Regardless of circumstances, all human beings have fundamental human rights. They cannot be taken away without legal justification. People held in lawful Detention or in Prison forfeit for a time the right to liberty. If they are in unlawful detention or imprisonment, they retain all rights, including the right to liberty.[57]

In order to examine the compliance of the Act with this mandate, it is necessary to review the exact provisions of this Act that brings Nigeria closer to achieving International compliance and lays the foundation for a Correctional Service free of human rights contraventions. Apart from the forms of Non-Custodial Sentencing and Sentencing Review Programs laid out above, the provisions of the Act which immediately come to mind are sections 12 and 14. Section 12 (1) (c) of the Act 2019 states: '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 Imprisonment'.[58] This section of the Act was laid down to solve the problem of State Governors in Nigeria failing to sign the Warrant of Execution. Amnesty International on the issue stated that 'there were no fewer than 2,285 death row inmates languishing in different prisons across the country, noting that in 2017 alone, a total of 621 persons were sentenced to death by the Courts with no Governor willing to sign their Death Warrants.[59] Worse off is the fact that the inmates are kept in dehumanizing conditions as they are 'awaiting execution'. An advocacy group HURILAWS (Human Rights Law Service) reported that most death row cells are seven by eight feet, shared by three to five people; the cells are dark and are with hardly any ventilation; Prisoners use buckets as toilets and sleep on the bare floor.[60] This ongoing maltreatment of inmates awaiting the execution of their Death Sentence is now mitigated by section 12(1)(c) of the Act 2019. Inmates who have been awaiting execution of their death sentence for up to 10 years and have exhausted all legal procedures for appeal can now hope that the Chief Judge of the State is disposed to commuting their Sentence of Death to Life Imprisonment. This is a welcome development; however, the requirements of '10 years' awaiting execution and exhausting all appeal procedures could still be further mitigated.[61]

---

[54]Aduba J N, 'Overcrowding' in Nigerian Prisons: Critical Appraisal, *Journal of Criminal Justice* Vol. (21) No. (2) (1993)pp. 185-191

[55]Penal Reform International, 'Making Standards Work: An International Handbook on Good Prison Practice', available at https://www.penalreform.org/resource/making-standards-work-international-handbook-good-prison-practice/ accessed 24th April, 2021.

[56] NCSA 2019, Section. 2(1).

[57]Ibid n. 11

[58] NCSA 2019, Section. 12(1)(c).

[59] Ramon O, 'No more justification for death sentence in Nigeria', available at <accessed 24th April, 2021.

[60]Okeke C. 'HURILAWS Statement on World Day against the Death Penalty 2019', available at https://hurilaws.org/hurilaws-statement-on-world-day-against-the-death-penalty/ (accessed 25 September 2019).

[61] Ibid.

Section 12(8) of the Act deals with the problem of prison congestion, which has plagued the Nigerian Correctional Service administration for decades.[62] Most prisoners are kept in old and sometimes damaged structures. Over the past decade, there has been a steady rise in the Nigerian prison population; by July 1990, the average monthly inmate population was 54,000 while the total prison capacity was only 31,000, resulting in an overcrowding figure of 74.2 per cent.[63] To tackle this problem which previous legislations failed to tackle, section 12(8) of the Act provides that: 'The State Comptroller of Correctional Service in conjunction with the Correctional Centre Superintendent shall have the power to reject more intakes of inmates where it is apparent that the Correctional Centre in question is filled to capacity'.[64] Section 12(11) of the Act in support of section 12(8) states that a State Comptroller of Correctional Service shall be sanctioned if he, within one week of discovery fails to notify, inter alia, both the Chief Judge and Attorney General of the State when the Custodial Center approaches full capacity. Section 14 of the Act, unlike section 12 attempts to solve existing problems in Correctional Service administration, provides for the Reformation and Rehabilitation of Inmates. Section 14(1) of the Act states that 'the Correctional Service shall provide opportunities for Education, Vocational Training, as well as training in Modern Farming Techniques and Animal Husbandry for inmates'.[65] Similarly, Subsection (5) of section 14 states that

> The Correctional Service may recommend for 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 reintegration into society.[66]

8. Conclusion and Recommendations

The Correctional Service Act 2019 will protect and preserve the rights of Inmates in line with International Standards in ways that no Nigerian Legislation has been able to. For instance, section 25 of the Act makes provision for an unforeseen case where an Inmate diagnosed of a particular illness which cannot be taken care of within the Center, is taken to a Hospital on the instruction of the Superintendent. The Act is indeed a lighthouse for bold, groundbreaking and problem-solving legislation which seek to ensure adherence to International Best Practices. The efforts of Victor Ndoma-Egba of the Sixth Assembly who first presented the bill to the senate in 2008 (11 years ago) are laudable and must not be forgotten. At the earliest attempt at amendment, Parole, Probation, Community Service, Restorative Justice should be defined in the Act with clarity so that no one is left in doubt as to their meaning and import. Furthermore, Suspended Sentence should be expressly added to the list of Non-Custodial facsimiles in section37 of the Act. In the same vein, 'Board' and 'Minister' frequently used in the Act should be defined. The Administration of Criminal Justice Act 2015 should be amended in line with the provision of the Act for a seamless operation of the non-custodial services. The Judiciary should concern itself with sentencing while the Correctional Service focuses on the execution of the sentence of courts. Nigeria should toe the line of the majority of countries that abolish Death Sentence, instead of creating unnecessary constitutional predicaments as done by the Act which has provided that Chief Judges (who did not enact the Criminal Statutes) should alter same by commuting death row inmates to life imprisonment. This, if done, would amount to judicial rascality or at best judicial legislation authorized by a body that has no powers covering the subject matter. Enough funds should be appropriated for the Correctional Service to implement the lofty provisions of the Act.[67] Astonishingly, sections 1 – 8 dealing with Establishment of the Service, Objectives, Appointment and Removal of Controller General and Structure of Correctional Service is not under any Part but left dithering. Structurally, this is not good drafting and at the earliest opportunity, this should be revisited and those sections should come under Part 1 to be entitled, Establishment and Structure of Correctional Service. Consequently, the present Parts one and two should be renumbered Parts Two and Three respectively. This would be more intelligible to comprehend.

[62]NCSA 2019, Section. 12(8).
[63]Grace A.R, 'An Assessment of Prison Overcrowding in Nigeria: Implications for Rehabilitation, Reformation and Reintegration of Inmates' *Journal Of Humanities And Social Science*. Vol. (19) No. (3)(2014) p. 23
[64]Ibid n. 22
[65] NCSA 2019, Section. 14(1).
[66] NCSA 2019, s. 14(5).
[67] Ibid. 35