

OBODO & AIGBOKHAN: Prisoners' Right To Vote In Nigeria: A Review Of Victor Emenuwe And Ors V Independent National Electoral Commission (INEC) And Comptroller General Of Nigeria Prisons

PRISONERS' RIGHT TO VOTE IN NIGERIA: A REVIEW OF VICTOR EMENUWE AND ORS V INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC) AND COMPTROLLER GENERAL OF NIGERIA PRISONS*

Abstract

In 2014, the Federal High Court pronounced on the right of prisoners in Nigeria to vote in the case of Victor Emenuwe and Ors v Independent National Electoral Commission (INEC) and Comptroller General of Nigeria Prisons. Dissatisfied with part of this judgment, Victor Emenuwe and Ors appealed to the Court of Appeal sitting at Benin, Edo State, Nigeria. On December 7, 2018, the Court of Appeal gave its judgment, but this decision was in the apron string of the lower court on the voting procedure for prison inmates. This case note looks at the legal context of these court decisions on prisoners' right to vote by examining the arguments placed before the Federal High Court and the Court of Appeal. It provides insights into the legal and administrative implications of the court decisions and how this decision can be enforced. Further, this case note contended that the Court of Appeal decision satisfies Nigeria's legislation on voting rights, although inadequate on the procedure on how to ensure this right is enjoyed by prisoners.

Keynotes: Prisoners, Right to vote, Victor Emenuwe and Ors v Independent National Electoral Commission (INEC) and Comptroller General of Nigeria Prisons, Nigeria

1. Summary of Facts of the Case

Victor Emenuwe Case at the Federal High Court

The plaintiffs, Victor Emenuwe, OnomeInaye, Kabiru Abu, Osagie Iyekepolor and Modugu Odion (for and on behalf of inmates in Nigeria Prisons) instituted a suit at the Federal High Court (FHC) sitting in Benin against Independent National Electoral Commission (INEC) and Comptroller General of Nigeria Prisons¹ by an originating motion dated 18th day of February 2014. This case was brought in a representative capacity by five prison inmates and sought the following- the court to determine whether, having regards to the provisions of section 25 of the 1999 Constitution of Nigeria, as amended in 2011, and section 12 (1) of the Electoral Act 2010, the plaintiffs are entitled to be registered as voters by the electoral body. The plaintiffs also prayed the court to determine, whether having regard to the provisions of section 77 (2) of the 1999 Constitution and section 12 (1) of the Electoral Act 2010, the plaintiffs are not entitled to cast their votes at any election in the country. Also, the plaintiffs further prayed the court to determine whether the failure of electoral body to make registration and voting provisions for the inmates in Nigerian Prisons constitutes an infringement on their rights as citizens of Nigeria as enshrined in section 14 (1) (2) (a) (b), section 17 (2) (a), section 24 (b) (c), section 39 of the 1999 Constitution and article 13 (1) and article 20 of the African Charter on Human and Peoples Rights (African Charter).²

It was the plaintiffs' argument that inmates in Nigerian Prisons be allowed to vote because it is a right recognised under the African Charter and the 1999 Constitution, as amended. In the determination of the pleadings before it, the FHC in its findings held *inter alia* that the inmates could vote in Nigeria and narrowed its decision on voting rights to the named plaintiffs and not all inmates in Nigeria Prison, as sought by the plaintiffs. Highlighting its reason for this ruling, the FHC ruled that representative action under the Federal High Court Civil Procedure Rules 2009 requires a leave of Court. Hence, the FHC ruling denied ordering mandatory injunction directing the electoral body to update and include in its national voters' register names of citizens in the custody of the second defendant. Further, the FHC ruled that the prison authority is not bound to specifically set up registration centres and voting unit within the prison yards for inmates. The FHC stated that since there are other alternative arrangements that can be made for inmates to exercise their voting right, it need not specify or make it mandatory for the respondents to establish registration and polling centres within prison walls. Instead, the court ruled that qualified inmates' can be taken to the closest voting centres established by INEC to exercise this right.

*By **Chimere Arinze OBODO, PhD**, Lecturer, Faculty of Law, Imo State University, P. M. B. 2000, Owerri, Imo State. Email- chimereobodo@yahoo.co.uk. Phone: 08109480167

* **President AIGBOKHAN, LLM**, Executive Director of Freedom of Information Counsel and Co-founder of Wig for All. Email- kpresident@yahoo.com

¹Suit No. FHC/BC/CS/12/14, delivered on 16 December 2014.

²*Ibid.*

Clearly, the presiding judge, Mohammed Lima, ordered the respondents to ensure that the applicants were not disenfranchised in general elections. The judge stressed that ‘act by INEC to deny the plaintiffs the right to vote is unconstitutional, illegal, irregular, unlawful, null and void and of no effect whatsoever. The learned justice adumbrated that voting right in Nigeria applies to a person who has attained the age of 18 years and is residing in Nigeria at the time of registration of voters for purposes of election and must not be under any legal incapacity to vote under any law or regulation in force in Nigeria. The court further acknowledged that ‘being an inmate is not an incapacity that impedes their registration and voting right under section 24 of 2010 Electoral Act of Nigeria; and that the exclusion of the plaintiffs in elections conducted in Nigeria is illegal and ultra vires’.³ Consequently, the outcome of the litigation at the FHC evidences that the plaintiffs’ fundamental rights are violated by denying them the right to participate in selecting their representatives in government. However, dissatisfied with part of this ruling, the plaintiffs lodged an appeal at the Court of Appeal sitting in Benin City, Edo State, Nigeria.

Victor Emenuwe Case at the Court of Appeal

On 7 December 2018, the Court of Appeal pronounced on the appeal in the case of *Emenuwe and Ors v INEC and Comptroller General of Nigeria Prisons*.⁴ On appeal against the ruling of the FHC, the appellant’s grounds of appeal were determined after restating the arguments and grounds of appeal as follows: firstly, ‘whether the learned trial judge was right in holding that the appellants’ action cannot be representative of other inmates in Nigeria Prisons because of lack of commonality of interest and cannot also be a class action for the same reason’. To support the appellant’s argument, references were made to several instruments⁵ as well as decisions⁶ that elaborate the normative content of the position of the law. Thus, the appellants argued that representative action means that the named, as well as the unnamed plaintiffs represented, are parties, irrespective of the fact that the unnamed plaintiffs do not take an active part in the litigation.⁷ Secondly, ‘whether having agreed that the appellants were entitled to vote, the learned trial judge was right in stating that since there are other alternative arrangements that can be made for inmates to exercise their franchise, then the Court need not specify or make it mandatory for the prisons to establish registration and polling centres within its walls’. Concerning this restated ground of appeal, the argument submitted is that it is against public policy, public safety, common sense and national security for inmates to be moved around to a polling unit outside prison yards. The appellant argued that allowing prisoners to go outside the prison yards to register and vote is an invitation to anarchy, terrorism and disaster.⁸ Hence, the appellant submission for an order to the respondents to establish voting centres within the prison walls.

In analysing the issues of the legality of disenfranchisement of represented inmates in Nigeria Prisons, the Court of Appeal referred and interpreted section 12 of the Electoral Act 2010 provision.⁹ The Court of Appeal affirmed that under section 12 requirement, the respondents must show that apart from being in prison custody, the appellants suffer any legal incapacity. The Court of Appeal then proceeded to hold that in the absence of other legal incapacities such as being of unsound mind, the respondents are obliged by law to make every effort to actualise the constitutional rights of the appellants to vote under article 77 (2) of the 1999 Constitution.¹⁰ Thus, the Court of Appeal ruled against the decision of the FHC regarding the representative action by ruling that appellants’ right to vote cannot be limited to only named parties in the suit before it. Convincingly, this ruling re-established the fact that inmates in Nigeria can register and vote irrespective of the level of sanctions hanging on their neck.

³*Ibid.*

⁴*Emenuwe and Ors v INEC and anor.*(2018) LPELR-46104, Suit no. CA/B/293/2018 (CA), available at ><http://lawpavilionpersonal.com/ipad/books/46104.pdf>< accessed 01 July 2019. The appellants are Victor Emenuwe, OnomeInaye, Kabiru Abu, OsagieIyekepolor and Modugu Odion (for and on behalf of inmates of Nigeria prisons).

⁵Federal High Court Civil Procedure Rules 2009; 1999 Constitution of the Federal Republic of Nigeria, as amended; and, 2010 Electoral Act of Nigeria.

⁶*SPDC v Edamkue*, (2009) 14 Nigeria Weekly Law Report, Pt. 1160, pg. 29-30; *State v Salawu*, (2011) 18 Nigeria Weekly Law Report, Pt. 1279, pg. 580 at 615; *Bamisile v Ossuyi*, (2007) 9 Nigeria Weekly Law Report, Pt. 1041, pg. 225 at 274; *Durbar Hotel Plc v Ityough* (2011) 9 Nigeria Weekly Law Report, Pt. 1251, pg. 41 at 55-56; *Ejezie v Anuwu*, (2008) 12 Nigeria Weekly Law Report, Pt. 1101, pg. 446 at 470; *Ukatta v Ndinaeze*, (1997) 4 Nigeria Weekly Law Report, Pt. 449, pg. 251 at 275; *Tanko v State*, (2009) 4 Nigeria Weekly Law Report, Pt. 1131, pg. 430 at 470.

⁷ The appellants further cited *Re: Egbo 11* (2007) 10 Nigeria Weekly Law Report, 774.

⁸*Victor Emenuwe and Ors v INEC and anor.* (n 4 above) pg. 36.

⁹This section covers the legal qualification for voters, which include that a person must be an adult above the age of 18 and must not have any legal incapacity to vote under any law in force in Nigeria.

¹⁰*Victor Emenuwe and Ors v INEC and anor.*(n 4 above) pg. 38.

OBODO & AIGBOKHAN: *Prisoners' Right To Vote In Nigeria: A Review Of Victor Emenuwe And Ors V Independent National Electoral Commission (INEC) And Comptroller General Of Nigeria Prisons*

However, the Court of Appeal upheld the decision of the FHC that the electoral body is not bound to set up registration centres and voting units within the prison yards and advised that qualified inmates could be taken to the closest voting centres to vote. According to the Court of Appeal, the right to vote is a choice, not a duty, which can be exercised at the instance of the citizen, at his own volition.¹¹ According to the Court of Appeal, a prison inmate asserts this right when he/she signifies to the prison authority of the desire either to register or to vote, creating a duty for prison authority to ensure that the prisoner exercises this right by notifying INEC. It is at this point that it becomes a statutory duty on INEC to take necessary steps to ensure the prisoners' register and vote, and failure to take such necessary steps would amount to an illegal violation of the prisoner's voting right. In this circumstance, the Court of Appeal declined to order INEC to either create a registration centre within the prison yards nationwide or order a mandatory injunction directing INEC to update and include in its national register of voters' names of citizens in the custody of Nigeria Prisons.

2. Critique

Voting as a cornerstone to democracy is a civic responsibility as well as an international¹² and domestic human right recognised in the 1999 Constitution of Nigeria.¹³ The right to vote gives citizens a vital role in the choice of the leaders or representatives; thus, a crucial medium for citizen participation in the public affairs of their country.¹⁴ It amounts to a violation of human rights if this right is deliberately denied a person who is not under any legal incapacity.¹⁵ In this regard, events preceding Victor Emenuwe case can best be described as the disenfranchisement of prisoners' right to vote. The Court of Appeal decision in Victor Emenuwe case has been applauded by lawyers, non-governmental organisations and human rights activists as a historic and landmark decision on the argument that imprisonment should not take away the right of persons to vote for their representatives in government.¹⁶ The Court of Appeal victory is a victory for all prison inmates in Nigeria, the protection of human rights, and most importantly, the Nigeria criminal justice system. Arguably, over 60% of inmates in Nigeria Prisons are serving time without being sentenced or are on awaiting trial.¹⁷ Thus, in a country where persons in detention spend several years before trial is concluded, applying a blanket denial to participate in the selection of representatives in government seems unfair.

The judgment of the Court of Appeal is not without criticism. For instance, failure of the Court of Appeal to invoke its injunction powers to compel the respondents to enforce the right to vote by inmates remains illusionary. The Court of Appeal by so doing divested itself of its constitutional powers¹⁸ when it ruled that the discretion to set up voting centres is that of the electoral body and the court cannot compel it in this circumstance. This reasoning may not be entirely correct because discretion is the power usually given by statute to make a choice among competitive consideration.¹⁹ Discretion is the power of a statute donated to a judge to makes orders in competitive considerations and the interest of justice.²⁰ In this case, the discretionary powers of INEC cannot override the Court of Appeal's

¹¹ *Ibid.*

¹² Article 21 of Universal Declaration of Human Rights, article 25 International Covenant on Civil and Political Rights, and article 13 of the African Charter.

¹³ To qualify for registration under section 12 of 2010 Electoral Act, a person must be a Nigerian citizen, above the age of 18, is ordinary resident within the registration centre, presents himself to the registration officer, is not subject to any legal incapacity to vote under the law in force in Nigeria. Therefore, one can argue that inmates meet all other requirement save for not being able to register thereby, not having a voters' card. This section does not include prison incarceration as a condition for exclusion for voters' registration.

¹⁴ Manfred Nowak, *U.N. Covenant on Civil and Political Rights: CCPR Commentary* (N. P. Engel, 2005) 547.

¹⁵ This is the underlying idea in both the decision at the Federal high Court and the Court of Appeal in the case under review.

¹⁶ Punch Newspaper, 'Lawyers Back Calls for Prisoners' Right to Vote' (31 December 2018) available at ><https://punchng.com/lawyers-back-calls-for-prisoners-right-to-vote/>< accessed 02 July 2019.

¹⁷ According to data between 2011 and 2015 from Nigeria National Bureau of Statistics, Nigeria Prisons hold more innocents than criminals. See, >[https://nigerianstat.gov.ng/elibrary?queries\[search\]=prisons](https://nigerianstat.gov.ng/elibrary?queries[search]=prisons)< accessed 04 July 2019.

¹⁸ S.24 of the 1999 Constitution of Nigeria.

¹⁹ Kwadwo Menshah, 'Legal Control of Discretionary Powers in Ghana: Lessons from English Administrative Law Theory' (1998) 14 (2) *Afrika Focus*, 119; Kent Greenawalt, 'Discretion and Judicial Decision: The Elusive Quest for the Fetters that Binds Judges' (1975) 75 (2) *Columbia Law Review*, 359.

²⁰ For instance, section 16 of the Court of Appeal Act 1990 empowers the Court of Appeal, from time to time, to make any order necessary for determining the real question in controversy in the appeal, and may grant an injunction which the court below is authorised to make or grant. Also, see, *Secretary of State for Education and Science v Tameside Metropolitan Borough Council* (1976) 3 All English Report, 665, per Lord Diplock.

inherent power to compel statutory bodies to perform their duties. Perhaps, if INEC fails to discharge statutory duties by refusing to exercise its discretion when facts calling for its exercise exist, the court should compel it to do so.

The Court of Appeal decision seems extremely limited for leaving a fundamental step in achieving prisoners' right to vote at the administrative determination and discretion of INEC. This approach wrongly mix policy and constitutional right, and by declining to make specific orders to the respondents, both the ruling of the FHC and the Court of Appeal somewhat suggested that decision on venue for registration and voters is a question of policy rather than law. In legal context, where a right to vote is affirmed, there is no room for discretion on enforceability other than setting up centres and registering the inmates.²¹ Thus, the Court of Appeal has a duty to protect the constitutional right of prisoners' and should not tolerate the delegation of unchecked power to such an extent as to enable it to discriminate. To this end, this case questions the validity of law conferring discretion on the electoral body to restrict voting pattern and venue.

Turning to the relevant instruments, the 1999 Constitution of Nigeria and the 2010 Electoral Act shows that delineating voting centres and implanting voters' register is a matter of law. This underpins the judgment at the FHC and the Court of Appeal. However, since both courts have validated the voting right of prison inmates, there is no gainsaying that they have an overwhelming power to grant reliefs that aid the compliance of the order issued. Indeed, the Court of Appeal order on the respondents to use their discretion to ensure the enjoyment of a fundamental right ridicules its judicial power to enforce human rights in Nigeria.²² Suggesting that inmates be allowed to vote outside the prison yards or as the electoral body may decide is an exercise of discretion not assisted by any statutes or guidelines, and should be disregarded for being a threat to national security and peace.²³ This suggestion lacks real and practical procedure for exercising this right.

However, by way of example to other criminal justice systems, the courts used the ambivalent opportunity in this case to assert that the loss of liberty does not suggest a loss of capacity to reason. This was effectively and eloquently elaborated through its interpretation of the 1999 Constitution, Electoral Act 2010 and relevant international instruments on the voting right of every adult Nigerian citizen within the country. Nevertheless, both the FHC and the Court of Appeal maintained this stance without full consideration of the liberties that prisoners are entitled to forfeit. Nigeria court position in this issue leads to a common question which is 'what rights do inmates forfeit legally when in prison'? In the case under review, this question seems not to have been considered. However, it can be argued that if prisons are primarily set up for reform purposes,²⁴ it may also be correct to allow inmates participate in deciding who represents them because of the impact it will have on them when they are integrated back into the society. That way, disenfranchisement punishes those who are yet to be sentenced or convicted, all of which leads to injustice and unfairness.²⁵

Meanwhile, issues unfolded in these judgments signposts the confirmation that Nigeria citizens in incarceration are as a matter of law, eligible to vote.²⁶ It suggests that the courts in Nigeria are prepared to protect the human rights of all citizens and persons in Nigeria. In reality, however, this decision is crucial for domestically putting to rest controversial issues in the criminal justice system of many developed countries.²⁷ Expectedly, this decision may open various legal fireworks on the welfare and poor conditions of Nigeria prisons and discussions on other liberties of prisoners, such as the right to protest poor prison conditions. It illustrates that citizenship is not a right that expires upon a prison sentence. These judgments indicate that prisoners remain citizens while incarcerated, and should be

²¹ *Iwuji v. Commissioner for Establishment* (1985) 1 Nigeria Weekly Law Review (Pt.3) SC 497.

²² Section 46 of the 1999 Constitution of Nigeria empowers the court to grant relief when human rights are violated.

²³ Section 9 (1) and 10 (1) of the Electoral Act 2010. These sections mandates INEC to compile voters' register for all eligible voters in Nigeria.

²⁴ Article 10 (3) of ICCPR.

²⁵ Susan Easton, Tim Black, and Mandeep Dhami, 'Should Prisoners be allowed to Vote?' (2012) 90 (1) *Criminal Justice Matters*, 43.

²⁶ It is therefore a legal duty for electoral body to ensure that inmates are registered, and arrangement made for the to vote by providing polling stations either within the prison yard in all the 240 prisons across Nigeria or transport inmates to a nearby polling station.

²⁷ For instance, in many American states and a few European countries, including the United Kingdom, prisoners are expressly forbidden from partaking in elections.

OBODO & AIGBOKHAN: Prisoners' Right To Vote In Nigeria: A Review Of Victor Emenuwe And Ors V Independent National Electoral Commission (INEC) And Comptroller General Of Nigeria Prisons

~~allowed to make their inclusion in society through their voting right. Arguably, participation in the democratic process promotes civic responsibilities as well as encourages prisoners to see themselves as citizens with duties. Voting rights provides the opportunity for interface with politicians during election campaigns and to debate specific concerns.~~

3. The Reality of Implementation

Justice has been done in *Victor Emenuwe case*. The decision of both FHC and Court of Appeal establishes a legal right that has long been ignored in Nigeria. However, this decision was not implemented before and during the 2019 general election in Nigeria. Arguably, compliance with this decision requires more than mere registration and voting. Realistically, it will involve some level of electoral education and arrangement for political campaigns, which implies planning and adequate assessment of the security of all stakeholders involved, including the safety of INEC agents, politicians and prisoners.

The first substantive issue concerning the implementation of this case is that the Court of Appeal judgement came less than 85 days to the 2019 general election. Expressly, section 9 of 2010 Electoral Act mandates INEC to compile, maintain and update, on a continuous basis, a national register of voters, which shall include the names of all the persons entitled to vote in any Federal, State or Local Government or Area Council elections.²⁸ Section 9 (5) of this Act stipulates that registration of voters shall stop not less than 60 days before any election covered by this Act. Although the implication of section 9 (5) is to ensure that INEC has time to prepare a valid and updated voters' register for upcoming elections, the reasonableness of this judgment poses a question on whether 25 days was enough to plan and strategies with Nigeria Prison Service to ensure qualified prisoners' throughout are adequately registered to vote? Arguably, INEC can be excused concerning the non-implementation of this judgment during the 2019 general elections held in February. Without doubt, INEC has a duty to ensure qualified persons freely access voting centres and materials.²⁹ As evident in general elections since 1999 return to democracy, leaving such discretion on INEC breaches a constitutional obligation on qualified prisoners in exercising this right. It, therefore, becomes controversial for the voting rights of prisoners' to be subject to extreme discretion.³⁰ While a good option remains to create a registration and voting centre in prison yards to ensure that the Court of Appeal judgment is enforced and to guarantee the security and safety of the general public, suggesting that prisoners' can go out of prison yards to vote run counter to public safety and national security. There is no law against voting points/units being created within the prison yards to enable more inmates to cast their votes, and there is none prohibiting the electoral body from creating same. What has not been prohibited is allowed.³¹ In this regard, affirming prisoners' right to vote validates the idea of establishing accessible registration and voting centres. Failure to establish one vitiates the other.

The right to register to vote and voting centre cannot be separated in the electioneering process. Election connotes a process constituting of accreditation, registration, voting and collation.³² Without registration and accessible voting centres, there cannot be voting in an election.³³ Except provided by law or shown that the public right or public safety and security will be compromised, individuals are obliged to choose convenient venues to exercise their right to vote.³⁴ However, this does not apply to prisoners due to their legal incarceration. Nonetheless, once a right to vote is constitutional, the court has the duty to protect it against the threat of insecurity.³⁵ Therefore, where a right is conferred on the citizen as indicated in the instance case, the court has the duty to ensure that the right is not lost or denied the citizen. In this regard, the established practice under the Nigeria constitution is where a right of a citizen is threatened or violated, it is for the court to be creative in its decision in order to ensure that it preserves the right by providing remedy for the citizen.³⁶ Hence, no sentiments, however worded, can displace the intention of the legislature because a conferred right by statute must be exercised on the considerations mentioned therein.³⁷

²⁸Section 9 (1) of 2010 Electoral Act of Nigeria.

²⁹Part III and Part IV of 2010 Electoral Act of Nigeria.

³⁰*Attorney General Ekiti v Daramola* (2003) 10 Nigeria Weekly Law Review (Pt. 827) 104 SC.

³¹*Attorney General Ondo State v Attorney General Ekiti* (2001) 17 Nigeria Weekly Law Review (Pt.743) 706 at 770 para A.

³²*INEC v Oyimbah and Anor.* (2004) Nigeria Weekly Law Review (Pt. 892) CA 92.

³³Afe Babalola, *Election Law and Practice* (Afe Babalola University Press, 2003) 164.

³⁴ See, section 77 (2) and 14 (2) (C) of 1999 Constitution of Nigeria.

³⁵*INEC v Nyako* (2011) 12 Nigeria Weekly Law Review (Pt. 1262) 439.

³⁶*PDP v INEC* (1999) 11 NWLR (pt. 626) p. 200 at 241, D-G.

³⁷*Madu v Mbakwe and Anor.* (2008) 10 Nigeria Weekly Law Review (Pt. 1095) 293, at 320-321, H-A; *Ibrahim v Barde* (1996) 9 Nigeria Weekly Law Review (Pt. 474) 513 at 577, B-C; *Amaechi v INEC* (2008) 5 Nigeria Weekly Law Review (Pt. 1080) 227, at

4. Conclusion

The decision in *Victor Emenuwe case* by the Court of Appeal is clearly a landmark decision and appropriate. Both the subsisting democracy and relevant legislation led to this conclusion. This case is a victory for Nigeria's democracy, particularly to inmates in Nigeria Prisons. It signals Nigeria's commitment to justice and fairness and as well as attests to Nigeria's inclusive and democratic character. However, the Court of Appeal judgment on the process of achieving this right is less clear. On account of the enforcement of this judgment, it is just perhaps possible to conclude that moving prisoners out of prison yards for the purpose of exercising this right is a threat to public safety, peace and security- the best that can be done is to establish such units within prison yards. This is because of security challenges the country may be exposed to if inmates go outside for registration and voting. On a light mood, this approach will provide the opportunity for the political class to have first-hand knowledge of Nigeria prison conditions. To this end, it is correct to say that justice was done by the Court of Appeal, albeit imperfectly.

Victor Emenuwe case is salutary in exposing the impact of discretion on statutory institutions and the inefficiencies and difficulties associated with court non-interference. Of course, the expectation from INEC and Nigeria Prison is a collaboration to commence processes that will ensure enforcement of this decision. The delay in enforcing part of this judgment eleven months since the Court of Appeal pronouncement in December 2018 exposes the ineptitude of the respondents. Inmates in Nigeria prisons are already receiving a just punishment by imprisonment; a further loss of the right to vote is disproportionate. Until any subsequent amendment to the Electoral Act on the meaning of legal incapacity, which may include punishment or imprisonment for certain crimes, the judgment is clear that the electoral body has a duty to actualise and give effect to prisoners' right to vote. However, the legal battle on prisoners' right to vote in Nigeria has shifted to the Nigeria Supreme Court seeking an order of mandatory injunction directing INEC to update and include in its national voters' register the names of adult citizens in prison custody.