

The Rights of Prisoners in Nigeria and the Role of Prisons and Modern Penology

DR. YAHAYA ABUBAKAR MUHAMMAD

Associate Professor, Department of Public Law University of Maiduguri Borno State Nigeria

DR. MARYAM ISHAKU GWANGNDI

Associate Professor, Department of Public Law University of Maiduguri Borno State Nigeria

DR. A. S. HASSAN

Senior Lecturer, Department of Private Law University of Maiduguri Borno State Nigeria

Abstract

Prison system in Nigeria and elsewhere not only disables its inmates from their criminal pursuit but equally serves as an institution for their reform and rehabilitation into the society after their release. The system of imprisonment represents a curious combination of different objectives of punishment. The attitude of society towards prisoners may vary according to the objects of imprisonment and social reaction to the crime. Whereas rigorous imprisonment and imposition of severe restriction on the prisoner signifies retribution or deterrence, a lesser restriction and control over him in the form of simple imprisonment means that he is considered to be only a deviant. The modern progressive view, however regards crime as a social disease and favours treatment of offenders through non-penal methods such as probation, parole, open jail etc. Whatever be the reaction of society to the crime, the lodging of criminals in prisons gives rise to several problems of correction, rehabilitation and reformation. It may equally constitute serious violation of prisoners' rights as they are also human-not devoid of their rights.

INTRODUCTION

The adoption of democracy in Nigeria and human rights under a written Constitution did not make concomitant changes in the attitudes and practices of criminal justice agencies, particularly of the police and prison officials. At the same time the political class found tremendous power coming into their hands by letting the system continue in the colonial way. The result has been large scale abuses of police powers with connivance of political masters all of which could not be prevented through judicial interventions.

Through out the history of the Nigerian Constitutions and especially during the post-independence period, human rights are enshrined and guaranteed. But the violation of constitutionally guaranteed fundamental rights by the police, prison and all other law enforcement agencies are of daily occurrence as reported on the pages of the daily newspapers.¹ The response to the present violation of the human rights of the accused and prisoners, whether in police custody or in prison has occupied the minds of human rights activists, defence of civil rights and human rights organizations. The large number of awaiting trial inmates for years in prisons and accused persons without trial or bail has become part of the characteristics of our criminal justice system. After all, prisoners are equally human being-not devoid of their human rights. They are human beings and they have to enjoy their fundamental human rights. The inmates awaiting trials in our prisons are punished without being tried. It is a common knowledge that the rights of the awaiting trial inmates, accused and convicts have been violated in our criminal justice system.

People who are detained or imprisoned do not cease to be human beings, no matter how serious the crime of which they have been accused of or convicted for. The court of law or other judicial agency that dealt with their case decreed that they should be deprived of their liberty, not that they should forfeit their humanity.² The prison staff should always bear in mind that prisoners are human beings and they should resist the temptation to regard the prisoner merely as a number rather than as a whole person. The prison staff do not have any right to inflict additional punishment on prisoners by treating them as lesser human beings who have forfeited the right to be respected because of what they have done or are accused of. Ill-treatment of prisoners is forbidden by law. Persons who are detained or imprisoned retain all their rights as human beings with the exception of those rights that have been lost as a specific consequence of deprivation of liberty.

The Nigerian Police Act and the Nigerian Prisons Act both have overstayed their usefulness. This is because both Acts have not addressed adequately the issue of human rights especially the human rights of

¹. Adenekan, A. "Human Rights and National Development" M. A. Ajomo, et al (ed), Individual Rights under the 1989 Constitution Lagos, Nigerian Institute of Advanced Legal Studies University of Lagos Campus 1993 at p. 17.

². A. A Coyle, Human Right Approach to Prison Management Handbook for Prison Staff (London, United Kingdom International Centre for Prison Studies 2002) at p. 31.

convicted prisoners and those under trial.

In this article we will endeavour to highlight the rights of both male and female prisoners. The prison discipline and the role of prisons and modern penology will also be examined. A conclusion and recommendation towards law reform will be proffered.

THE RIGHTS OF PRISONERS IN NIGERIA

Until recently the view prevailed that a prisoner has 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 to him. He is for the time being the slave of the State.¹ This view is not the law now, and may never have been wholly correct. Prisoners are first and foremost human beings. They are neither spirits nor ghosts.² They are (or were) members of the civil society. By virtue of their humanity not only are they entitled to certain rights but they are equally entitled to seek protection and enforcement of those rights within the limits permitted by the law. In the case of *Peter Nemi V. The Attorney-General of Lagos State*³ where it was held that prisoners have all the rights and must enjoy such rights as other free citizens except where such rights are properly denied them under the law.

The 1999 Constitution of the Federal Republic of Nigeria (As Amended) under Chapter IV has recognized the rights of prisoners. The rights of prisoners are also protected by the international instruments which can be summarized as follows:

The International Covenant on Civil and Political Rights, Article 10 provides:

“All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human persons.”

Principle 1 of the Basic Principles for the Treatment of Prisoners provides:

*“All prisoners shall be treated with the respect due to their inherent dignity and value as human beings”.*⁴

Principle 1 of the body of Principles for the Protection of all Persons under any form of detention or imprisonment provides:

*“All persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person.”*⁵

Article 5 of the African Charter on Human and Peoples’ Rights provides:

“Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status”.

Article 5(2) of the American Convention on Human Rights provides:

“All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.”

The United Nations Standard Minimum Rules for the Treatment of Prisoners as adopted in Geneva in 1955 by the United Nations First Congress on the Prevention and the Treatment of Offenders include other definite efforts to ensure that prisoners have equal access to justice as any other person.

From the above we understand that in democratic societies the law underpins and protects the fundamental values of the society. The most important of these is the respect for the inherent dignity of all human beings. This dignity and respect should also be extended to those who have broken or are accused of having broken the law of the society. It is true that prisoners have shown disrespect for the dignity and respect of others by violating their rights but still the law has accorded them dignity and respect by protecting their rights. The fundamental rights do not flee the person as he enters the prison although they may suffer shrinkage necessitated by incarceration.⁶ Convicts are not by mere reason of their conviction, denuded of all the fundamental rights which they otherwise possess.⁷ The prisoners by virtue of this status belong to special class of citizens within the society. The prisoner is a citizen who by the due process of law is being deprived of his fundamental rights to personal liberty, private life, freedom of expression, right to peaceful assembly and

¹. www.findlaw.com: U.S.: Fourteenth Amendment: Annotations visited 3/5/2008.

². Dele, P. “*Prisoners’ Rights in Nigeria and the Work of the legal Research and Resource Development Centre*” being a paper presented at the Osiwa Roundtable on prisoners’ Rights in Nigeria organized by Osiwa and held at the Osiwa Conference Room, Ontario Crescent Abuja on the 10th of August, 2001.

³. (1996)6 NWLR (pt. 452) at p. 42.

⁴. A. A. Coyle, Op Cit at p. 33.

⁵. Ibid.

⁶. Justice Krishna Iyer, V. R. “*The Human Rights Flag Atop Prison Towers: A Radical Judicial-Medical Conspiracy to Rescue Man from His Cage*”. K. D. Gaur, (ed), Criminal Law, Criminology and Criminal Administration (New Delhi Deep and Deep Publication 1992) at p. 217.

⁷. Ibid at p. 221.

association and his freedom of movement.¹ Nonetheless, despite belonging to what is called or termed special class of citizens, the Nigerian prisoner is a Nigerian citizen and he is entitled to his rights permitted by the law and the protection of the rights.

The human rights of prisoners should be safeguarded at all times because the prisoners are human beings. Prisoners and other people deprived of their freedom are recognized as particularly vulnerable and therefore in need of special protection.² Deprivation of freedom is one of the most severe infringements on a person's rights and therefore needs to be strictly regulated. Because prisoners and detainees are usually locked away from public scrutiny and are dependent on the prison administration for their everyday needs, as well as for their own protection, they are vulnerable to abuse and maltreatment. Therefore their permitted rights as human beings must be protected. These include the right not to be subjected to torture, cruel, inhuman or degrading treatment or punishment; the right not to be subjected to arbitrary arrest, detention or exile; and the right to be subjected to due process of law.³ These are rights which can never be restricted or limited in anyway. Therefore it is incumbent on states to ensure that human rights are extended to their citizens in all respects. Also prisoners should retain all rights which are not expressly taken away by the fact of their detention.

Human rights are regarded as fundamental to human existence and cannot be taken away by legal justification.⁴ The debate over the years has centred around the question of whether prisoners forfeit all their civil rights except those granted by the prison establishment as privileges, or whether they retain all their civil rights except those expressly forfeited as a result of their imprisonment. An interpretation of the human rights instruments and modern law leads us to believe that the latter view is the correct one.

Prisons, as a threat and reality, have for the last two centuries been used as a method of disposal to seclude offenders in order to ensure that each member of society conforms to its norms. A writer opined that although, in theory law and custom, as well as prison regimes are intended to guarantee justice and safeguard the individuals' rights, in practice they have often been used to commit very heinous crimes like torture, arbitrary killing and cruel and degrading treatment and punishment, on several occasions also in order to maintain the power of the ruling elite, particularly in the developing countries.⁵ Since prisons have always been one of the low-visibility areas of the law, offenders were deemed to have forfeited virtually all rights upon conviction to imprisonment.⁶ One criminologist once wrote that the degree of civilization in a society can be judged by entering its prison.⁷ The famous former prisoner and ex-president of South Africa Nelson Mandela said:

*"It is said that no one truly knows a nation until one has been inside the jails.
A nation should not be judged by how it treats its highest citizens, but its
lowest ones."*⁸

The issue of prisoners rights is steadily gaining support all over the world. Prisoners are human beings and they should retain all rights which citizens in general have, except such as must be limited or forfeited to make it possible to administer a correctional institution.

On many occasions the infringement of prisoners' rights occurs largely because the capability of the criminal justice system and its personnel are insufficient to solve the problems in accordance with the principle of humane treatment and due process and, consequently, resort is had to unjustifiable restrictions and repression.⁹ In many poor countries including Nigeria the inhumane treatment of prisoners is due to lack of funds or improper allocation of financial resources.¹⁰ The prisoners' rights can well be protected by providing adequate funding to the criminal justice system to perform its functions in accordance with the rule of law. Also the prisoners' rights can be properly protected when strict observance of the relevant laws, regulations and standing orders are amended to be in compliance with the basic tenets of democracy and the rule of law. The role of the National Human Rights Commission (NHRC) and non-governmental organizations will be well articulated in supervision of human rights violation in prisons and police custody. There must be proper means of access to justice for the prisoners to protect their rights by lodging complaints concerning the legality of detention and conditions of their confinement to independent organizations. In consonance with the principle of checks and balances, we believe that nobody, irrespective of his or her status should ever be subjected to

¹. See Sections 35, 37, 39 40, 41 of the 1999 Constitution of the Federal Republic of Nigeria (As Amended).

². Dissel, A. "Commentary on the Kampala Declaration" Prison Conditions in Africa: Report of APan-African Seminar Kampala, Uganda 19-21 September 1996 at p. 99.

³. Ibid.

⁴. Ibid.

⁵. Katureabe, B. "Prisons are for everybody" published in prison conditions in Africa: A Report of Apan-African Seminar Kampala, Uganda 19-21 September 1996 at p. 17.

⁶. Ibid.

⁷. Ibid.

⁸. A. A. Coyle, op. cit at p. 15.

⁹. Katureabe, B. Supra at p. 19.

¹⁰. Ibid.

complete and unsupervised administrative discretion of any branch of government.

The role of the courts should not end with the pronouncement of judgement of imprisonment only but access to the courts is essential for the supervision of penal institutions to ensure the implementation of the relevant laws, although a special independent body may also have to play a significant role in this respect. There could be an office for the appointment of “a *chief inspector of prisons*” or “*inspectors of prisons*” completely outside the purview of government to supervise and monitor human rights violations similar to that of the visiting justices. Also a board of visitors or human rights units can be established in all prisons to monitor conditions of prisons and resolving prisoners’ grievances and report appropriately to government. In this respect, the parallel development of non-judicial remedies, particularly in the introduction of an appropriate machinery for resolving prisoners’ grievances is of great significance for the improvement of the legal status of prisoners. It is important for the credibility of the appointment of these inspectors or board of visitors that they be appointed by, and responsible to, a competent authority, preferably not belonging to the Nigeria Prison Service or at least distinct from the authority directly in charge of the institution concerned. These proposed bodies also should have powers to communicate freely with the prisoners not in presence of third parties from the prisons concerned. If this method is guaranteed the protection of prisoners’ rights will also be guaranteed.

In Nigeria up till today the conditions of our prisons are deplorable, inhuman and fall far below the standard set by the United Nations, especially in the Standard Minimum Rules for Treatment of Prisoners and related instruments. The right to “*respect of the dignity inherent in a human being and freedom from*” “*inhuman or degrading punishment and treatment*” which both the 1999 Constitution as we stated earlier and the African Charter seek to protect apply to “*every individual*”. Prisoners and detainees are not excluded. Yet prison conditions in Nigeria have had the most dehumanizing and degrading effect on inmates.¹ Human rights observance in respect of prison inmates up to date is the clearest sphere in which Nigerian Criminal Justice System scores lowest.² However, serious efforts at improvement are being undertaken since 1999 and especially by the present democratic administration which has anchored the pillar of the rule of law. But we are yet to see in practical terms the implementation of the different reports on reforms submitted to the Federal Government in respect of the criminal justice sector and in particular on prisons. Although the decongestion process initiated by the Federal Ministry of Justice is going on, but it is very slow and our prisons are still overcrowded by awaiting trial inmates. It is a fact of common knowledge that the majority of the population in our prisons are the awaiting trial inmates. This is an important group of prisoners. As they have not been found guilty, they are presumed innocent until the law finds them guilty. But in Nigeria this group of innocents awaiting trial are compelled to defecate and urinate in bowls kept in their cells which often overflow with faeces, flies and maggots.³ Many innocent souls have passed away due to overcrowding, unhealthy conditions and lack of medications. Overcrowding makes impossible the use of beds and makes difficult the provision of clothing in the adequate quantity and quality. The main cause of breakdown of facilities in prisons is due to overcrowding as a major cause and in part to the age and dilapidation of most prisons. The overcrowding of our prisons has violated the rights of prisoners as inherent human beings. They sleep in shifts on the floor not as human beings but as animals. This is contrary to the constitutional guarantees and the Prisons Act which has given the prisoners the following rights:

- (a) the right to life and integrity of the person;
- (b) the right to be free from torture or other ill treatment;
- (c) the right to health;
- (d) the right to respect for human dignity;
- (e) the right to due process of law;
- (f) the right to freedom from discrimination of any kind;
- (g) the right to freedom from slavery;
- (h) the right to freedom of conscience and of thought;
- (i) the right to freedom of religion;
- (j) the right to respect for family life;
- (k) the right to self-development;

The awaiting trial prisoners should be accorded all the rights and protection till they are proved to be guilty. The Nigerian prisoner is treated as if he has no rights, usually on grounds of prison security or of the sheer fact of his imprisonment. In prison disciplinary proceedings, prisoners usually have no effective right to fair hearing while fair hearing is a right guaranteed by the 1999 Constitution for everybody.⁴ In most cases, the

¹. Okonkwo, C. O. “*The Nigerian Penal System in the light of the African Charter of Human and Peoples’ Rights*” Awa Kalu, U. and Osinbajo, Y. (eds), Perspective on Human Rights Federal Ministry of Justice Law Review Series 1992 Vol. 12 at p. 100.

². Ibid.

³. S. Bako, Nigeria Human Rights Report Published by Constitutional Rights Project, CRP September 1998 at p. 42.

⁴. Summary Report of a conference titled: Towards a Humane Prisons System in Nigeria held at Nicon Noga Hilton Abuja

formal process is even put aside and prisoners are judged guilty by informal means.¹ In such cases, affected prisoners are punished by individual warders or by the government of the cell to which he belongs.² The treatment of prisoners both in such informal disciplinary procedures and in formal ones amounts to cruel, degrading, and inhuman treatment. Such treatment ranges from corporal punishment, isolation, to denial of visiting rights. Punishments like whipping and solitary confinement are contrary to Rule 31 of the United Nation Standard Minimum Rules for the Treatment of prisoners.³ Rule 31 provides as follows:

“Corporal punishment, punishment by placing in a dark cell, and all cruel, inhuman and degrading punishments shall be completely prohibited as punishment for disciplinary offences”.

Regardless of the above rule inmates in Nigerian prisons are frequently placed in solitary confinement in cells with little or no illumination, and ventilation.⁴ This inhuman and degrading punishment is contrary to the 1999 Constitution yet it is justified by the Prison Act.⁵ The practice of chaining inmates in their cells is still practiced in our prisons. This practice is used punitively and without punitive intent when a prisoner is taken outside the prison premises or on trip to court or to the hospital.⁶ Article 33 of United Nation Standard Minimum Rules for the Treatment of Prisoners provides as follows:

“Instruments of restraint, such as handcuffs, chains, irons and strait-jackets, shall never be applied as a punishment. Furthermore, chains or irons shall not be used as restraints.

Other instruments of restraint shall not be used except in the following circumstances:

- (a) as a precaution against escape during a transfer, provided that they shall be removed when the prisoner appears before a judicial or administrative authority;
- (b) on medical grounds by direction of the medical officer;
- (c) by order of the director, if other methods of control fail, in order to prevent a prisoner from injuring himself or others or from damaging property; in such instances the director shall at once consult the medical officer and report to the higher administrative authority”.

Regardless of the above mentioned rule section 345 of the Prisons Standing Orders 1961 justifies the use of mechanical restraints on prisoners in our prisons. The section provides as follows:

“The Superintendent shall, on placing a prisoner in mechanical restraint, make a note of such occurrence in his journal and shall, should the period of restraint be required to be extended beyond twenty-four hours, obtain from the medical officer a certificate to the effect that such further restraint is necessary and the extent to which it is to be employed.”

Here we observe that the formal disciplinary mechanism in prisons should be reformed to meet standards set in the United Nation Standard Minimum Rules for Treatment of prisoners and other United Nation relevant instruments. The Prisons Act and the Prisons Standing Orders need to be amended and reformed to meet the demands of the democratic society. Prisons authorities should also undertake to monitor the informal structures amongst prisoners and ensure that their operators do not violate the rights of any prisoner. They should also note that imprisonment does not deprive the offender of his citizenship or humanity and therefore should not deprive him of his civic or human rights. As such only such limitation as are absolutely necessary or unavoidable as a result of imprisonment ought to be allowed in relation to the rights of the prisoner.

The prisoners' rights in Nigeria over the years have been violated; despite the fact that international standards are set to ensure that municipal laws do not fall below basic humanistic level. Prisons and detention conditions in Nigeria remained harsh and life threatening.⁷ Most prisons were built 70 to 80 years ago and lack

on Wednesday 8 September, 1999 at p. 3; Article 10 of United Nation Declaration of Human Rights provides: *“Everyone is entitled in full equality to a fair and public hearing by an independent tribunal, in the determination of his rights and obligations and of any criminal charge against him.”*

¹ Ibid at p. 3.

² Ibid.

³ Both section 49(1)(i)(iv) of the Prisons Act cap. 29 The Laws of the Federation of Nigeria 2004 vol. 14 and Section 342 of the Prisons Standing Orders 1961 version justifies solitary punishment and whipping with a cane.

⁴ O. L. Ehonwa, Behind the Wall: A Report on Prison Conditions in Nigeria and the Nigerian Prison System, Lagos, Nigeria Civil Liberties Organization 1996 at p. 62.

⁵ See Section 49(1)(i) of the Prisons Act cap. 29 The Laws of the Federation of Nigeria 2004 vol. 14.

⁶ O. L. Ehonwa, op. cit at p. 62.

⁷ See also the U.S Department of State Country Reports on Human Rights Practices Nigeria 1990 – 2000 Whitney Young Jr. Information Resource Centre Public Affairs Section Consulate General of the United States of America Lagos Nigeria January 2001.

functioning basic facilities.¹ Lack of potable water, inadequate sewage facilities, and severe overcrowding resulted in unhealthy and dangerous sanitary conditions. Disease was pervasive in the cramped poorly ventilated facilities and chronic shortages of medical supplies were reported.² Prison inmates were allowed outside their cells for recreation or exercise only irregularly and many inmates had to provide their own food.³ Only those with money or whose relatives brought food regularly had sufficient food; petty corruption among prison officials made it difficult for money provided for food to reach prisoners.⁴ Poor inmates often relied on handouts from others to survive. Beds or mattresses were not provided to many inmates, forcing them to sleep on concrete floors, often without a blanket.⁵ Prison officials, police, and security forces often denied inmates food and medical treatment as a form of punishment or to extort money from them.⁶ Harsh conditions and denial of proper medical treatment contributed to the deaths in detention of numerous prisoners.⁷ The prisoners like any other citizen have right to life guaranteed under section 33 of the 1999 Constitution of the Federal Republic of Nigeria. The prisoner's right to life was protected even though he was sentenced to death (i.e. in the death row) but pending appeal because appeal acts as stay of execution.⁸ The right to life and right to medical care are interrelated rights and interwoven which cannot be separated. The prisoner's right to medical care is also a fundamental right. Because we believe that the right of the prisoner to medical care is an extension of his right to life and therefore, a fundamental right. Both the 1999 Constitution and Prisons Act guaranteed the right to medical care.⁹ Regardless of the protection of the right to life and other rights of prisoners by our courts, it is a common knowledge that violation of prisoners' rights are going on in our prisons and police detentions. Inside some of the prisons, vices such as homosexuality, lesbianism and rape are part of everyday life. Investigations carried out in 1995, revealed that warders both male and female often find their ways into the cells to have sexual intercourse with prisoners.¹⁰ This incident reminds us of the recent abuses of the prisoners' rights in the prison of Abu Ghraib in Iraq by the American soldiers. It was reported that innocent men, women and children were stripped and were forced to walk naked in front of men.¹¹ Not only that but the American soldiers were sodomizing young boys screaming in pain and others photographing them.¹²

THE RIGHTS OF FEMALE PRISONERS

The rights of a person under the 1999 Constitution of the Federal Republic of Nigeria are not gender biased but of general application to both sex. Due to physiological differences however certain rights are peculiar to women. A woman's biological make-up requires that additional efforts be made by the Nigerian Prisons Service in case of female prisoners as far as their health is concerned. Every study on prison conditions in Nigeria has emphasized that Nigerian prisons were built with only men on the minds of the authorities.¹³ The reason given for doing so was that women were not expected to go to prison. Presently, though, women are known to commit crimes for which they go to prison like men but the situations have not changed because it is said that the population of women in prisons is insignificant to call for any change.¹⁴ Today in Nigeria we have only one independent female prison i.e. Kirikiri Women's Prison in Lagos. But all other female prisons are carved out of male prisons. Today in Nigeria women prisoners are confined in one form of a make-shift, inadequate accommodation without observing the issue of classification. Experience has shown that about 95 percent of Nigerian female prisoners come within the child-bearing age bracket.¹⁵ Nature subjects these female prisoners to monthly menstruation. The stories narrated by these prisoners on how they managed their menstrual period is very pathetic. Some said that they used old rags in between their legs to check the blood flow. Others said they used pieces of paper in the same way as rags while others said that they would sit on the floor with their scanty

¹. Ibid.

². Ibid.

³. Ibid.

⁴. Ibid.

⁵. Ibid.

⁶. Ibid.

⁷. Ibid.

⁸. See Bello V. Attorney General of Oyo State (1986) 12 S. C. I; (1986) 5 NWLR. 828.

⁹. See Sections 7,8,12,15 and 16 of the Prisons Act Cap. p. 29 The Laws of the Federation of Nigeria vol. 14, 2004 which deal directly or indirectly with the health of a prisoner. These sections are concerned with matters like insanity of prisoners, removal of sick prisoners to hospital and prison medical officers.

¹⁰. B. Olugboji, Human Rights Practices in Nigeria 1996 Constitutional Rights Project, CRP Lagos Nigeria at p. 54.

¹¹. www.com: The Rights of Prisoners and International Law visited 3/10/2008.

¹². Ibid.

¹³. Akpala, S. "Addressing the needs of female prisoners in Nigeria's penal institutions" being a paper presented at the British-Nigeria law week, organized by the British Council, Nigeria at Sheraton Hotels and Towers, Abuja from 23 to 27 April, 2001.

¹⁴. Ibid.

¹⁵. Ibid.

dresses allowing the blood to be absorbed between the floor and the dress.¹ This same problem applies to pregnant female inmates who are brought back to the prison soon after having their babies in hospitals outside the prison. The insignificant number of the female prisoners, particularly young girls, who said they used toilet tissues to manage the period said that the toilet tissues often provided by their visitors were never enough to last for two days of the expected four to five days period. This issue of exposure of the female prisoners to various types of infectious diseases during their menstrual period cannot be over-emphasized, and indeed some had been infected.² Apart from their physical health, the situation also affects their mental health. In this respect female prisoners were dehumanized in a situation where they would be compelled to walk about with blood stains or sit on a bare floor in order to control the blood flowing down between their legs. It is the duty of the Nigerian Prisons Service to provide female prisoners with the necessary articles to keep themselves clean. Rule 15 of the Standard Minimum Rules for the Treatment of Prisoners provides:

“Prisoners shall be required to keep their persons clean, and to this end they shall be provided with water and with such toilet articles as are necessary for health and cleanliness.”

The Nigerian Prisons Act Regulation 31 provides:

“Prisoners shall be required to keep themselves clean and decent in their persons. Every prisoner not exempted by the medical officer shall bath daily.”³

We observe that the law has provided theoretically rules or sections for health care and cleanliness in prisons in Nigeria. But the theory is not followed by the actual practice by providing all the necessary articles for prisoners to implement what the law says about health and cleanliness. Another area where the rights of female inmates are violated is the area of skill training. This is because almost all the penal institutions visited have workshops for the training of male prisoners on carpentry, wood-carving, iron fabrication pottery ...etc. Unfortunately, there are neither such skill training workshops nor education programmes for female prisoners in our prisons. The reasons often advanced by the prison administration is that female prisoners are too insignificant to call for any investment on them and that female sections of the prison are always too small to accommodate a good workshop.⁴

The Nigerian Prison Service should address this problem of denying women access to skill training. Nigeria is bound by the provisions of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which the country is already a signatory to it. Therefore, any act, which encourages discrimination against women should be avoided. Another area where the prison service should pay more attention to is the group of female prisoners with babies whether awaiting trial or serving terms of imprisonment detained along with their children. These women as all mothers in the society have the special need of taking proper care of their children while in prison. Nursing babies inside penal institutions is a difficult job for the nursing mothers because of the harsh living conditions in prisons. This is because in our prisons there are no special provisions made for the special care of babies. This is contrary to the spirit of the Standard Minimum Rules for the Treatment of Prisoners. Rules 23(2) of the Standard Minimum Rules for the Treatment of Prisoners provide that:

“Where nursing infants are allowed to remain in the institution with their mothers, provision shall be made for a nursery staffed by qualified persons, where the infants shall be placed when they are not in the care of their mothers.”

The Nigerian Prisons Act instead of talking of the welfare of nursing female prisoners, it only talks about the age of the child of a female prisoner on admission into the prison. Regulation 2 of the Prisons Act provides:

“Provided always that the child of a female prisoner may be admitted into a prison with its mother if it is at the breast and less than eighteen months old.”⁵

The United Nations Convention on the right of the child also protects every child including those in prisons. It provides as follows:

“Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age.”⁶

Here we observe that in all the above mentioned provisions there was nothing said about the feeding,

¹. Ibid.

². Ibid.

³. The Prisons Act cap. p 29 The Laws of the Federation of Nigeria 2004 vol. 14 the Prisons Regulation section 31.

⁴. Akpala, S. Supra.

⁵. Regulation 2 of the Prisons Act Supra.

⁶. Article 27(1); see also Article 30 of the OAU Charter on the Right and Welfare of the child.

bedding or clothing of the nursing female prisoners or their babies. There is a need that a nursing female prisoner should not be treated like another ordinary prisoner in terms of feeding, bedding and clothing. Special diets should be provided for them because the babies at birth are usually made to live on the breast milk of their mothers. The Nigerian Prisons Service budget should always include special allocation for such vulnerable groups in order to satisfy their needs and without violation of their inherent rights. Reforms should also take into account this special need of a female prisoner detained with her child to be provided with the necessary care for herself and her child. The Nigerian Prisons Service should develop by helping the prisoners of the strategy of reconciliation of prisoners with their families to avoid future risks and frustration.

PRISON DISCIPLINE

The problem of prison discipline has occupied the minds of penologists throughout the world.¹ The main object of prisonisation is to generate a feeling of dislike for prison life among the members of society and dissuade them from doing acts which may lead them into prison.² A writer commented that the prison administration and prisons are deliberately planned to provide unpleasant compulsory isolation from the general society.³ A prison according to him, characterizes rigid discipline, provision of bare necessities, strict security arrangements and monotonous routine life.⁴ The prisons personnel are not usually trained and are therefore without any specialized knowledge in their field.⁵ Although with the modern facilities available to inmates in civilized parts of the world, the rigours of prison life are considerably mitigated nevertheless they are likely to become restive if not kept under proper discipline.⁶ There is a need for strict discipline in prison because one might be imprisoned either for the purpose of custody, control and discipline or from being prevented to escape or being sent to a correctional institution for treatment. Whatever the object, it is certain that the life inside prison necessarily pre-supposes certain restrictions on the liberty of inmates against their free will. During this period of subjecting the inmates to the compulsive forces of the state through the agency of prison often lead to scuffle between prison officials and inmates. The custodians of prisoners should always ensure their safety and security and the minimization of the chances of conflict with prison administrators.⁷

The other problem which is so often faced by the prison authorities is to guard against the possibility of prison riot which is essentially an outcome of the combined effort of inmates. In early times when prisoners were lodged in separate cells, this possibility was completely ruled out as they had no chance of communicating with each other in modern sense. In today's prisons the interaction among the prisoners is more freer than in the past. It invariably leads to greater contacts and exchange of ideas. Any kind of maltreatment of inmates whether genuine or perceived may lead to a united response which may in some cases be hostile and violent and lead to riots and jailbreaks.

The general causes of such riots and disturbances are political instigations, crude disciplinary actions, monotonous routine of prison life, separation from family members, differences with the prison staff and maltreatment of wardens and guards towards certain inmates. In Nigeria, the methods of dealing with prison discipline constitutes another area, which creates great hardship for the inmates.⁸ Prisoners are not informed of what amounts to breach of prison discipline due to the unavailability of the Prison Rules and Regulations.⁹ More so the procedures adopted by the prison officials leave room for abuse.¹⁰ The mode of punishment for breach of prison discipline subject the inmates to a great deal of abuse. Modes of punishment such as canning, solitary confinement, to be kept upon reduced diet, to forfeit remission of sentence and chaining are employed to discipline the erring inmates.¹¹ These modes of punishment are in direct violations of the prisoner's constitutionally guaranteed rights against torture, inhuman and degrading treatment. Section 34(1) of the 1999

¹. N. V. Paranjape, *Criminology and Penology* (India, Central Law Publications 2003) 11th Edition at p. 285.

². Ibid.

³. Ibid.

⁴. Ibid.

⁵. Ibid.

⁶. Ibid.

⁷. Ogundipe, O. A. "Prospects for the Reform of Prisons in Democratic Nigeria" *The Reformer A Bulletin of The Nigeria Prisons Service* vol. 2 no. 2 June-August, 2006 at p. 28.

⁸. Ifaturo, T. O. "The challenges of Nigerian Prisoners in the Light of the Human Rights Campaigns" *A Journal of Contemporary Legal problems Nigeria*, The Federal Ministry of Justice in Collaboration with the Ministries of Justice of all States of Federation of Nigeria October-December 1992 vol. 3 Numbers 8 & 9 at p. 123.

⁹. Ibid.

¹⁰. Ibid.

¹¹. See Regulations 48 and 49 of the Prisons Act the Laws of the Federation of Nigeria cap. p.29 Vol. 14, 2004. Section 48 is authorizing a Superintendent or Assistant Superintendent in charge of a prison or the Director of Prisons or Deputy Director shall have power to hear and decide in cases of discipline against prisoners. While Section 49 provides the types of punishment like solitary confinement, reduction of diet, forfeit remission of sentence, whipping ... etc.

Constitution of the Federal Republic of Nigeria (As amended) provides: every individual is entitled to respect for the dignity of his person, and accordingly:

- (a) no person shall be subjected to torture or to inhuman or degrading treatment;
- (b) no person shall be held in slavery or servitude; and
- (c) no person shall be required to perform forced or compulsory labour.

Here we may observe that the Nigerian Prisons Service needs to re-examine its modes of punishment in disciplining inmates for breaches of prison regulations in accordance with the Nigerian Constitution and in accordance with the United Nations Standard Minimum Rules for the Treatment of Prisoners. Section 31 of the United Nations Standard Minimum Rules for the Treatment of Prisoners provides as follows: "Corporal punishment, punishment by placing in a dark cell, and all cruel, inhuman or degrading punishments shall be completely prohibited as punishments for disciplinary offences." Also Section 32(1) provides: "punishment by close confinement or reduction of diet shall never be inflicted unless the medical officer has examined the prisoner and certified in writing that he is fit to sustain it".

THE ROLE OF PRISONS AND MODERN PENOLOGY

The utility of prison as an institution for rehabilitation of offenders and preparing them for normal life has always been a controversial issue. Stressing on the need for retaining the institution of prison one writer has observed that "*a prison symbolizes evil and therefore, evil doers find themselves in perfect harmony inside the house of evils*".¹ This assertion however, seems to be an over simplification of facts as this does not hold good for all categories of criminals.² In our view, it holds good for habitual criminals or recidivists. There are quite a large number of offenders who are otherwise well behaved and are persons of respectable class of society but they fall prey to criminality on account of momentary impulsiveness, provocation or due to situational circumstances. There is yet another class of prisoners who are otherwise innocents but have to bear the rigours of prison life due to miscarriage of justice. Such class of persons finds it difficult to adjust themselves to the prison environment and find life inside the prison painful and disgusting.

The philosophy of the Nigerian Prison Service is that treatment and rehabilitation of offender can be achieved through carefully designed and well articulated administrative, reformatory, and rehabilitative programmes aimed at inculcating discipline, respect for law and order, and regard for the dignity of honest labour.³ A writer opined that these lofty objectives of the Nigerian Prisons Service can theoretically be achieved but the current "overcrowding" in our prisons today make it difficult if not impossible.⁴

Penology deals with an important aspect of the criminal justice process, that is, punishment, correction, prevention and control of crime.⁵ The modern concept of penology considers the causes of crime, the criminal in his physical and mental aspects as a product of such causes, and punishment as a means to an end.⁶

The aim of sending criminals to prison is to transform them into good, honest and law abiding citizens by inculcating in them a distaste for crime and criminality. But in actual practice, the prison authorities try to bring out reformation of inmates by use of force and compulsive methods. Consequently, the change in inmates is temporary and lasts only till the period they are in prison and as soon as they are released, they quite often return to the criminal world. It is for this reason that modern trend is to lay greater emphasis on psychiatric conditions of the prisoners so that they can be rehabilitated to normal life in the community.⁷ This objective can be successfully achieved through the techniques of probation and parole. The sincerity, devotion and tactfulness of the prison officials also helps considerably in the process of offender's rehabilitation.

CONCLUSION AND RECOMMENDATION TOWARDS LAW REFORM

In a constitutional democracy, the emphasis must be placed on a human rights approach to prisons and prison management. In Nigeria, we have a large prison population and the majority of them are awaiting trial inmates. There is over-use of prison sentences by our courts and therefore overcrowding of prisons. These are the first warning signs of possible rights violations. The convicts are not, by mere reason of the conviction, denuded of all the fundamental rights which they otherwise possess. But the 1999 Constitution of the Federal Republic of Nigeria (As amended) guarantees the rights of the accused and prisoners as well. With the expansion of democracy and human freedom that the world is experiencing for years, there are fundamental rights and freedoms to which every human is entitled no matter where he or she resides or a prisoner in custody awaiting trial or a convicted one. In conclusion we recommend the following:

¹. N. V. Paranjape, op. cit p. 284.

². Ibid.

³. Aduba, J. N. "overcrowding" in Nigerian Prisons: A Critical Appraisal" U.S.A. Journal of Criminal Justice 1993 at p. 185.

⁴. Ibid.

⁵. A. B. Dambazau, Criminology and Criminal Justice (Kaduna, Nigeria Nigerian Defence Academy Press 1999) at p. 132.

⁶. Ibid.

⁷. N. V. Paranjape, op. cit. at p. 285.

- (a) Nigerian prisons should meet the criteria of the United Nations Minimum Standard for the Treatment of prisoners;
- (b) Human rights monitoring units should be established in all prisons;
- (c) For quick dispensation of justice it would be relevant if the Nigerian Prisons Service will be moved to the Federal Ministry of Justice for logistics and administrative convenience;
- (d) The rights of the prisoners to communicate and meet friends, relatives and legal advisers should be extended to include meetings in exclusion of jail guards as it will be consistent with their basic human rights;
- (e) The Prisons Act, Prisons Regulations and Prisons Standing Orders should be amended to scrap corporal punishment, solitary confinement, reduction of diet and chaining of prisoners, as these are violation of prisoners' human rights;