

Female Inmates and Young Offenders: A Call for Implementation of the Nigerian Correctional Service Act 2019

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Abstract

On the 14th August 2019, the President of the Federal Republic of Nigeria, Muhammadu Buhari signed into law a bill that repels the Prisons Act CAP P 29, Laws of the Federation of Nigeria, 2004 and provides a change in nomenclature for the foremost correctional institution in Nigeria, Nigeria Prison Service (NPS) to Nigerian Correctional Service (NCoS) . Apart from the obvious change in name, the Act provides for quite a number of amendments geared towards a total overhaul of the activities of the service and a much expected radical change in the treatment of offenders in Nigeria, as well as an overall more-friendly environment for the inevitable erring and recalcitrant members of our society. This paper looks at the amendments as it relates to females and young offenders and discusses the implications of those amendments in line with International Best Practices and Requirements. It calls for urgent implementation of the novel provisions, for nothing would have been done if the amendments are not given practical realization.

Keywords: Correctional Service, females and young offenders, amendments, implementation

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1. Introduction

Rights of individuals may be validly derogated from in certain circumstances that the Constitution provides for. Of interest, where persons that are incarcerated are concerned are the derogations from the rights to life and liberty.

Section 33(1) Constitution of The Federal Republic of Nigeria, 2009 As Amended provides that:

Every person has a right to life, and no one shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria.

Similarly, Section 35(1)(a-f)(2-7) provide for the right to personal liberty and its derogations. Generally, the denial of the right to life leads to denial of the right to liberty, and where right to liberty is validly derogated from, no other right may be derogated from, except those rights which are consequent upon same.

It is important however to note that there is no situation or circumstance under which the law provides for derogation from the right to dignity of the human person.

Section 34 provides that:

Every individual is entitled to respect for the dignity of his person, and accordingly, no person shall be subjected to torture or to inhuman or degrading treatment; no person shall be held in slavery or servitude; and no person shall be required to perform forced or compulsory labour.

All persons, incarcerated or otherwise shall be accorded respect for the dignity of their human person, and shall not be discriminated against on any basis, not even their legal status, i.e. imprisonment. While this requirement rings in most relevant International Human Right instruments, suffice it to say that this respect cannot be observed exactly the same way to all persons; as persons vary in peculiarities and make up, so do their requirements for dignity vary and may be peculiar to the class of person.

By the status of incarceration, all inmates are vulnerable. In spite of this general status of vulnerability, certain classes of inmates are categorized as vulnerable for the reason that they are usually subjected to violation of rights within the custodial center. Persons' need for respect of their right to dignity are to be realized based on their peculiar needs. This is not to undermine the detrimental effect of imprisonment on all categories of persons. In almost all facets of life, including personal, physic, mental, social and economic matters; imprisonment has a detrimental effect on every person that goes into it, and prisoners are all vulnerable at varying degrees. All inmates are to be accorded respect of their personal dignity, with emphasis on the special needs of special groups. Failure in this regard amounts to violation.

The foremost declarative human right document captured the specifications restated in the Constitutional provision above and reiterates the significance of respect for the dignity of the human person. Its preamble states in part that:

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world...(Emphasis mine)

This paper examines the special requirements for dignity of females and young offenders as vulnerable groups in correctional facilities in Nigeria. Suffice it to say that vulnerability in this context is not merely gender

based. Members of this group may very well belong to other groups as well. A female inmate may equally be under-aged, and a female may be on death row. A woman with a child may be awaiting trial, or be aged on life sentence and so on.

In spite of this, there are certain factors directly attributable to the vulnerability of females and young offenders under imprisonment that make them worthy of mention. Chief among this is their population. Like in most prisons the world over, female inmates and juveniles in Nigerian custodial facilities are in the minority. While females represent 1.9% of the population, juveniles are just 1.7%. The implication of this is that the structure, facility and administration of prisons are geared primarily towards meeting the needs of the larger group. This leads to greater burdens on the minority group in serving their sentence. Correctional facilities are usually geared towards meeting the needs of male inmates because of the population. Prisons and prison systems tend to be organized on the basis of the needs and requirements of the male prisoners. This applies to architecture, security, and all other facilities. Any special provision for women prisoners is usually something which is added on to the normal male provision. This can result in significant discrimination against women prisoners. Addressing this, and the increasing population of women in prisons, irrespective of the overall ratio, call for more urgent and specific standards applicable to the treatment of women in prisons.

2. The Vulnerability of Female Inmates within Correctional Facilities

Women prisoners represent one of the vulnerable groups with specific needs and requirements. Pregnancy and motherhood is perhaps a specific situation of vulnerability shared by most women inmates the world over. This brings for special attention the female who is pregnant or with a child within the criminal justice system. The physiological makeup of the members of the female gender places special burdens on them. She is biologically built to experience the monthly cycle with its attendant sanitary and psychological requirements. She will have to carry babies in her womb and thereby require special medical attention. Pregnancy usually links with a variety of other health issues. Her baby feeds directly from her body and she may not be able to detach the baby for a certain period. This places special requirements on the facility where she must stay, for her and her baby. In Nigeria, the Correctional Service law and regulations provide for the adequate care of female inmates along the lines of her special needs and requirements. Order 563 mandates the Superintendent of the facility to 'provide all necessary facilities to address the special needs such as medical, nutritional needs and sanitary provisions for female inmates'. Specifically, for example, Female inmates shall be given sufficient supply of sanitary towels when required, with adequate provisions for its hygienic disposal.

Another requirement is protection against sexual molestation and abuse. Females are usually taken advantage of sexually in their usual and natural environments. It is a requirement to ensure that females in the criminal justice system are not further exposed to this in addition to the pains and trauma of going through the system. Generally, the Nigerian Correctional Service Standing Orders Custodial (Revised Edition), 2020 make provisions for handling and taking care of female inmates, pregnant inmates and the child.

At the point of admission into the custodial facility, there is provision for testing the female inmate for pregnancy. Such test must be conducted immediately upon admission into the facility, and not later than fourteen days after.

Order 11 states that:

All female inmates shall undergo pregnancy test on the first day of admission or as soon as possible but not exceeding 14 days from the date of admission; and where the test is positive, the inmate shall be provided with the necessary medical care and support.

Where a female inmate is found to be pregnant, the committing court and next of kin shall be duly informed. Where unlawful contacts with female inmates occur, and such do not lead to pregnancy, normal correctional facility procedures of discipline shall apply. Generally, contacts between males and females within the custodial centers are restricted and cannot be outside the view of a female officer. For example, searching, a regular routine in correctional facilities, when done on a female inmate must be done by a female officer only. With the contemplation of the Act for separate male and female facilities, contact between male and females are to be drastically reduced.

Measures are in place to handle cases of sexual harassment of female inmates by either male officers or other inmate. Where a female inmate is found to be pregnant while in custody, the law provides for the conduct of scientific investigation to ascertain the culprit, and such will be brought to book. Order 565 states that:

Where the female inmate is found to be pregnant while in custody, an investigation including DNA analysis shall be conducted to ascertain who is responsible, and the perpetrator shall be prosecuted.

This is a giant leap in the right direction. It tackles the problem of complicity within the system, though this is only limited to where such act results into pregnancy. The NCSA 2019 and the Standing Orders does not make express provisions for cases of sexual molestation, except where such acts lead to pregnancy. This is probably because the Act no longer envisages uncontrolled male contacts with female inmates with the creation of exclusive female correctional centers. Another thing the Act did not envisage is the possibility of same sex

sexual molestation and harassment within a same sex correctional facility. At best, such act will be treated under provisions made for maintaining discipline within the facility.

It is also important to consider instances where the female within the criminal justice system, rather than being the victim of sexual abuse or harassment is the violator. It is not impossible to have females harassing males or other females for the purpose of satisfying their sexual urges.

3. Young Offenders within the Criminal Justice System

Young offenders constitute a group requiring special protection within the criminal justice system. They are young people who are in contact with the justice system as a result of committing a crime, either alone, with other young offenders or adults. Young offenders fall under the category of a child; that is persons younger than the age of 18. A child requires all the special protection that the adult and society can offer. Where a child offends, failure of an adult or society at large can easily be identified. A child is more amenable to change and has a unique capacity to be rehabilitated. Research has consistently shown that most young people grow out of crime; thus rehabilitation efforts should be so directed. In which ever circumstance a child is, a child is still a child and should be thus treated, bearing in mind his peculiar characteristics. Reasons for juvenile offending range from unstable family situations, lack of parental supervision, harassment, peer rejection, involvement in street gangs or troublesome youth groups. A child cannot be subjected to similar criminal processes as an adult even where allegations of crime are established. It is from this perspective that his supposed criminality should be viewed with the aim of treating him and returning him safe to the society as law abiding. In correcting a child, efforts should be geared more at removing contact for bad or negative influence, and increasing opportunities for positive education. This requires protecting the child's right and re-establishing the environment needed for proper development. When compared with adult offending, juvenile crime is typically less serious and costly in economic terms, but requires more intensive and costlier interventions. This requires effective categorization to the effect that young persons within the criminal justice system are never kept together with adults, under whatever circumstance. The primary purpose of dealing with young offenders within the criminal justice system is beyond punishment, but to change their behavior in a structured framework so that they can get a stable, worthy and blooming life within society and without the need of an external support.

4. Need for Exclusive Females and Young Offenders' Correctional Facilities

The need for correctional facilities exclusively for females and young offenders all over the federation is aimed at providing facilities to meet these highlighted needs. Women are usually saddled with 'caretaking responsibilities' and as much as possible imprisonment should not deprive them of this. Young offenders too are more likely to outgrow their criminal tendencies, and should not be lost out in the correctional process. Persons are not expected to stay long at police stations, thus emphasis for structural provisions for females and young persons' welfare within the system is directed at the correctional facilities. This however does not remove their vulnerability requirements while at the police stations. Paucity of funds is an important factor responsible for lack of adequate recognition of the vulnerability of this group in Nigerian correctional facilities. Ordinarily, young offenders are not to be kept in adult facilities, irrespective of the fact that they are charged along with adult offenders. The aim of incarcerating young offenders, where inevitable is purely for reformation, and not for punishment, as they are more amenable to correctional efforts. Thus, they are subjected to a variety of individualized and personalized activities aimed solely at their correction in designated facilities, and not lumped together with adults. More often than not, offences committed by young offenders are not free from adult influence, and while undergoing rehabilitation, they should be removed as much as possible from adult interferences, especially those from adult prisoners.

The Position of International Law on the Treatment of Female Inmates and Young Offenders

The position of International Law on the treatment of these categories of persons within the criminal justice system is very clear: there shall be no further derogation from, or denial of rights save as what the facts of arrest and incarceration requires, and in no circumstance shall there be any form of derogation from respect for the dignity of the human person.

The Universal Declaration of Human Rights Article 6 provides that:

Everyone has the right to recognition everywhere as a person before the law. (Emphasis mine)

Irrespective of where the person may be per time, everyone shall be recognized and treated as a person, and the special requirement of gender shall be accorded. The legal status of imprisonment or incarceration shall not be held as justification for deviation or derogation from this requirement.

Article 7 further states that:

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination. (Emphasis mine)

There shall not be any form of discrimination based on gender against any of the provisions of this

declaration.

Furthermore, the Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules) clearly states how female prisoners should be treated.

Rule 1 states that:

All prisoners shall be treated with the respect due to their inherent dignity and value as human beings. No prisoner shall be subjected to, and all prisoners shall be protected from, torture and other cruel, inhuman or degrading treatment or punishment, for which no circumstances whatsoever may be invoked as a justification. The safety and security of prisoners, staff, service providers and visitors shall be ensured at all times. (Emphasis mine)

Rule 2

1. The present rules shall be applied impartially. There shall be no discrimination on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or any other status. The religious beliefs and moral precepts of prisoners shall be respected.
2. In order for the principle of non-discrimination to be put into practice, prison administrations shall take account of the individual needs of prisoners, in particular the most vulnerable categories in prison settings. Measures to protect and promote the rights of prisoners with special needs are required and shall not be regarded as discriminatory. (Emphasis mine)

Female inmates are not to be kept together with males, and facilities should be put in place to cater for the special needs of pregnant women and nursing mothers. The Mandela Rules do not envisage the presence of young offenders within adult facilities, though basically the same rules shall apply. The only circumstance where a child could be found in an adult facility is where such is with the mother or is absolutely in the best interest of the child. Where a child is born by a mother during incarceration, efforts shall be made to ensure that the child is not born within the facility. Where inevitable, the fact shall not be stated in the birth certificate of the child. In dealing with a child, his best interest possible shall be the foremost consideration. Importantly, a person in a correctional facility shall be accorded as individualized a treatment as possible, to the end that human rights are not violated or derogated from. Persons in correctional facilities are first and foremost persons and individuals whose humanity should be respected at all times, irrespective of the extent and perceived severity of crime (allegedly) committed. Deviation from observance of humanity of persons will not necessarily make persons better members of the society, rather, its observance will.

Giving special attention to the special and distinctive needs of women prisoners in order to achieve substantial gender equality shall not be regarded as discriminatory. Where a woman is with a child, efforts shall be made to protect the child as much as possible, and make it possible for the mother to continue her care giving responsibility. Strict confidentiality is required when dealing with a child in custody, especially as it relates to the child's identity.

Nigerian Correctional Service Act, 2019 (NCoSA 2019) in Compliance with International Standards and Requirements

The Nigerian Correctional Service Act, 2019 is designed to comply with international standards and requirements. Section 2(1) (a) specifically states this.

The objectives of the act are to:

- (a) ensure compliance with international human rights standards and good correctional practices;

It is in this spirit that Nigerian Correctional Service Act, 2019 prohibits the admittance of young offenders in adult facilities and provides for designated young persons' centers. It states that young offenders shall not be kept in adult custodial facilities and that The Correctional Service shall establish separate male and female Borstal Training Institutions for juvenile offenders in all the States of the Federation and their treatment, including rehabilitation, shall be the underlying principle for custody. At the moment, there are only three Borstal Institutions in Nigeria, located in Ogun, Kwara and Kaduna States respectively. In fulfilment of this provision, there is urgent need for the Federal Government to establish juvenile custodial facilities in 33 states of the Federation and the Federal Capital Territory.

Where a child is found to have committed a capital offence, the child cannot be sentenced to death mandatorily, but shall rather be sentenced to life imprisonment. The age that shall be considered shall be the age at the time of committing the offence, and not at the time of passing the sentence.

Where a female inmate is with a child, such child shall not be kept in the facility beyond the age of 18 months, after which such child shall be handed over to the families of the inmate where appropriate or a welfare center. This is to ensure that a child is not unnecessarily exposed to life within a custodial facility, and that the best interest of the child is paramount at all times.

Specifically, a child born to a female inmate shall not have such fact recorded in the certificate of birth; rather, only the name of the street where the facility is located shall be cited as the address in the certificate.

Order 569 states that:

Care shall be taken that the word custodial or correctional centre does not appear on the birth record of the

child. The name of the street or road and plot number of where the correctional center is located shall be given as the address of the place of birth. A child born to an inmate shall be vaccinated accordingly.

Effective categorization of offenders is the starting point of the correction process. The NCoSA2019 similarly provides for strict classification of inmates on gender lines, and both genders shall not be kept in the same facility.

Section 34(1) states that:

There shall be a provision for separate facilities for female inmates in all States of the Federation. (Emphasis mine)

The law proposes effective classification of inmates along gender lines. Male and Female inmates shall not be put together under whatever circumstance. At present, there are just a handful separate facilities for female inmates in Nigeria, i.e. Female Correctional Facilities in Lagos and Ondo states. The regular occurrence is to have a female wing or section within a male facility. It can be deduced that the intendment of this provision is to have separate female facilities that are designed with females in mind to take care of female specific needs and peculiarities.

Section 34(2-3) states that:

The Correctional Service shall provide all necessary facilities to address the special needs such as medical and nutritional needs of female inmates including pregnant women, nursing mothers and babies in custody.

(2) shall include the provision of a creche in every female custodial centre for the wellbeing of babies in custody with their mothers, as well as prenatal, antenatal health care and sanitary provisions for female inmates.

Furthermore, the Standing Orders make explicit provisions on the care of pregnant women and the baby. This is in line with international requirements, Rule 5, Bangkok Rules provide that:

The accommodation of women prisoners shall have facilities and materials required to meet women specific hygiene needs, including sanitary towels provided free of charge and a regular supply of water to be made available for the personal care of children and women, in particular women involved in cooking and those who are pregnant, breastfeeding or menstruating.

5. Conclusion and Recommendations

With effective implementation of the NCSA 2019, correctional facilities in Nigeria will be tailored towards providing specifically for the needs of females and young offenders. Arrangements will not be made merely to adapt facilities to meet the needs of this special group, but facilities will be specifically designed with their needs in mind. This expectedly calls for huge budgetary allocations. The willingness of the government to embark on this, *viv-a-vis* other equally important national needs will be made obvious in the next several years. The start point of observing the special needs of females and young offenders in Nigeria in line with international human rights requirements is a complete overhaul of infrastructural facilities. This will pave way for effective categorization and individualized treatment of these vulnerable groups. Without infrastructural intervention, the provisions for females and young offenders in the new Act would have just been a mere legislative intervention devoid of any interpretation for the common man on the street.

The most important requirement after a law is made is implementation. No matter how elegantly drafted a piece of legislation is, poor implementation destroys the spirit of the legislation. Nigerian Correctional Service Act 2019 makes quite a number of amendments in the interest of females and young offenders in Nigerian Correctional facilities. Most of these provisions however cannot see the light of day without budgetary allocations to carry out the infrastructural interventions required. There is therefore an urgent need for the government to direct its attention in this regard.

Also, while correctional issues in Nigeria remain within the exclusive legislative list in the Constitution, it goes without saying that most offenders within the Nigerian Criminal Justice space commit state offences. In other words, the offenders are mostly indigenes or residents of the states where the offences are committed. Thus, it is no longer sustainable that state governments continue to act like they have no business with what happens in the correctional facilities in their various states because the law provides that it is within the purview of the Federal Government. Concern, support and collaboration is required in the interest of the citizens, security of the states and curbing the surge of criminality. State Governments should show a concern similar to that given to the police and other legs of the criminal justice system to the commands of correction in their respective states. While it is commendable that most states are actively involved in the implementation of non-custodial correctional measures in their states, more focus is required for the treatment of persons within custodial facilities.

In a similar vein, while the Federal Government is committed to building separate facilities for women and young offenders all over the federation, we cannot overlook the possible hardship this might cause when the facilities are put in place. Where the Federal Government provides one separate facility in each state, the likely hood is that the issue of distance and accessibility by families of incarcerated persons will arise. This will likely lead to gradual reduction of visits, which direct consequence will be difficult reintegration and weakening of

family ties. This may be reduced with the intervention of state governments. Under state ministry of youth and women affairs or any other relevant ministry, infrastructural provisions in the interest of its females and young offenders can be made.

There is an urgent need for the law in Nigeria to provide for exercise of conjugal rights within the criminal justice space; especially in correctional facilities. This is not strange in other jurisdictions the world over. Apart from reducing sexual violations within the system, conjugal visits have the potential to make facilities more manageable when sexual and psychological needs of inmates are well taken care of. It also fosters reintegration efforts when family ties are kept intact. Reintegration of offenders is easier when family ties are maintained throughout the period of incarceration.

Training and retraining of officers of the Nigerian Correctional Service is also imperative. They need to be made fully aware of the new legislation, its requirements and their expected efforts to achieve effective implementation.

More support and collaboration is required from Non-Governmental Organizations, Religious organizations, Professional bodies etc in making implementation of this new law a reality. Quite a number of NGOs have been actively and commendably collaborating with Nigerian Correctional Service, but the field remains yet uncovered.

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