

A REVIEW OF THE NIGERIAN CORRECTIONAL SERVICE ACT 2019

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ABSTRACT

Nigerian Correctional facilities fall short of the approved standard for the rehabilitation and reformation of inmates. The Standard Minimum rules for the treatment of Prisoners as adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955¹ sets out rules that preserve the rights of prisoners. According to the Controller-General, the facility built in 1955 to shelter 800 inmates now holds about 3,113 inmates as at December 3, 2019.² The newly signed Nigerian Correctional Service Act may foster the desired change in the system if it takes effect in practice.

1.0. INTRODUCTION

On August 14, 2019, President Muhammadu Buhari signed the Nigerian Correctional Service Bill into law. Many circumstances necessitated and led to the signing of the bill; such as the dilapidated and congested nature of the facilities. For instance, as at August 2018, the Port Harcourt prison built in 1918 and designed to shelter 800 inmates now accommodates 5,000, while Kirikiri Maximum Prison in Lagos built to hold 956 inmates has become home to 2,600 inmates.³ Poor feeding of inmates, lack of adequate medical care for inmates due to lack of requisite facilities and the lack of recreational and vocational training for inmates are also contributing factors.

* This Article was written by Chidubem Ezeilo and Princewell Akinseye-George; Associates at Kenna Partners. They can be reached via cezeilo@kennapartners.com and pakinseye-george@kennapartners.com respectively.

¹ Approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 197.

² O. Ramon, "PRAI Sues FG Over Electrocuting of Ikoyi Inmates", available at <https://punchng.com/prai-sues-fg-over-electrocution-of-ikoyi-inmates/> (accessed 15 June 2020).

³ O. Agede and S. Agiobu-Kemmer, "Reforming Nigerian Prisons beyond Name Change", available at <https://guardian.ng/saturday-magazine/cover/reforming-nigeria-prisons-beyond-name-change/> (accessed 27 December 2019).

Prior to the Nigerian Correctional Service Act 2019 (NCSA), the Nigerian Correctional Service was regulated by the Prisons Act of 1972.⁴ Because the regulation on the law of prisons is an item under the Exclusive Legislative List,⁵ states that desired to make changes to the administration of their correctional facilities were constitutionally barred from doing so. The main aim of the Prisons Act 1972 was to provide a body of rules for the comprehensive administration of prisons in Nigeria and the careful management of the correctional facilities created for individuals who violated the laws of the States and the Federation.

The ideal prison system seeks to deter those who would otherwise commit crimes and reduce the probability that those who serve a prison sentence will reoffend⁶ after their release. The extent to which the Prisons Act of 1972 executed its projected mandate was a subject of controversy. A casual observation of the population that goes in and out of the prisons in Nigeria presupposes that there are some problems in the system. Hence, the prisons system has not been able to live up to its expected role in Nigeria⁷ in terms of impacting positively on the lives and vocations of inmates. This has raised several questions which have not been addressed.

Thus, the pertinent questions are:

1. Has the wording of the NCSA 2019 improved correctional detention in Nigeria by providing for a system capable of delivering retribution, deterrence, incapacitation and rehabilitation?
2. Do the provisions of the NCSA 2019 lay the foundation for a correctional service system that meets international best practices?

⁴ Prisons Act 1972, Cap. P29, Laws of the Federation of Nigeria, 2004.

⁵ Item 48 of the Exclusive list as contained in the Second Schedule to the 1999 Constitution.

⁶ “Corrections shall be the Primary Goal of the Correctional Service”: Nigerian Correctional Service Act (NCSA) 2019, s. 10.

⁷ E.E. Obioha, “Challenges and Reforms in the Nigerian Prisons System” (2011) 27(2) *Journal of Social Sciences*, pp. 95 – 109.

2.0. HAS THE WORDING OF THE NCSA 2019 IMPROVED CORRECTIONAL DETENTION IN NIGERIA BY PROVIDING FOR A SYSTEM CAPABLE OF DELIVERING RETRIBUTION, DETERRENCE, INCAPACITATION AND REHABILITATION?

The intent of the NCSA 2019 is made clear in its name as the Act sets out that the Nigerian Prison administration will now be known as the Nigerian Correctional Service as opposed to its previous name the “Nigerian Prisons Service”. Additionally, section 2(1)(a) of the Act⁸ sets out that its objective(s) is for the Nigerian Correctional Service to fully comply with international Human Rights standards.

The flavour of the Act and its avant-garde approach will not be surprising to contemporary Nigerian Scholars and the proponents of the Act. This is because the provisions of the Act take a considerable leap forward from the 1972 Prisons Act by making applicable nationwide significant correctional service innovations first outlined in the Administration of Criminal Justice Act 2015.

Part II of the Act makes provision for a Nigerian Non-Custodial Service system; an internationally recognised form of reformatory justice defined in the Act as “an aspect of Nigerian Correctional service that serves as an alternative to going to a custodial Centre”.⁹ Section 37(1) of the Act¹⁰ states that:

The Nigerian Non- Custodial Service shall be responsible for the administration of non-custodial measures including:

- a. Community Service;
- b. Probation;
- c. Parole;
- d. Restorative Justice Measures; and
- e. Any other Non-Custodial Measures assigned to the Correctional Service by a Court of competent jurisdiction.

⁸ NCSA 2019, s. 2(1)a.

⁹ NCSA 2019, s. 46.

¹⁰ NCSA 2019, s. 37(1).

Section 42 of the Act¹¹ bolsters section 37 by putting into perspective the procedure for managing community service sentences. It provides for the appointment of supervisors to monitor those sentenced to community service, the submission of reports by the appointed supervisors to the Comptroller-General and also makes provision for the conversion of sentences of eligible offenders serving punishment of imprisonment imposed on them within the last six months of the coming into force of this Act, to community service, upon formal application.

The provisions of the above section 37 and 42 align with the position of the already in force Administration of Criminal Justice Act 2015.¹² Section 460 (2) and (4) of the Administration of Criminal Justice Act 2015¹³ provides thus:

The Court may, with or without conditions, sentence the convict to perform specified service in his community or such community or place as the court may direct.

- (4) The Court, in exercising its power under subsection (1) or (2) of this section shall have regard to the need to:
- a. Reduce congestion in prisons;
 - b. Rehabilitate prisoners by making them to undertake productive work; and
 - c. Prevent convicts who commit simple offences from mixing with hardened criminals.

The inclusion of provisions which provide for the establishment of a community service program in both the Administration of Criminal Justice Act 2015 and the Nigeria Correctional Service Act 2019 makes plain the progressive intent of the Nigerian Legislation on issues pertaining to Restorative Justice. In the same vein, section 43 of the NCSA¹⁴ departs from the conservative nature of the preceding

¹¹ NCSA 2019, s. 42.

¹² The Administration of Criminal Justice Act (ACA) 2015 is by default enforceable in the Federal Capital Territory only and becomes applicable in states upon ratification.

¹³ ACA 2015, s. 460 (2) and (4).

¹⁴ NCSA 2019, s. 43.

Prisons Act 1972, in providing for restorative justice measures such as victim-offender mediation. The inclusion of provisions which are designed to address the needs of crime victims while ensuring that offenders are held accountable for their offences such as victim-offender mediation had originally been recommended to the members of the United Nations by the United Nation's Office on Drugs and Crime in its 2006 Handbook.¹⁵

The Handbook set out three basic requirements that must be met before victim-offender mediation can be used; the offender must accept or not deny responsibility for the crime; both the victim and the offender must be willing to participate; both the victim and the offender must consider it safe to be involved in the process.¹⁶ Comparatively, section 43 of the Act states:

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

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

In its forward-looking nature, the Act in section 40 provides for the administration of a parole process to be overseen by the Comptroller-General. Of importance is subsection (c) of section 40, which sets out that, included in the administration process of parole is the rehabilitation and reformation of parolees. This is a landmark innovation in Nigeria as there is now a provision for the temporary or

¹⁵ United Nations Office on Drugs and Crime, "Handbook on Restorative Justice Programmes", available at <https://www.un.org/ruleoflaw/files/Handbook%20on%20Restorative%20Justice%20Programmes.pdf> (accessed 27 December 2019).

¹⁶ *Ibid*, at Ch. 1, S. 2.3, P. 18.

permanent release of a prisoner before the expiry of a sentence, on the promise of good behaviour. This is a much-needed development that would help control the well-known congestion challenges faced by the Nigerian Correctional Service. Although the Act does not set out provisions guiding the day to day administration of its innovative reformatory justice sentencing, resort can be made to a host of guidelines and handbooks provided by the United Nations and other Common Law Nations which already have these reformatory justice sentencing procedures in place.¹⁷

3.0. DO THE PROVISIONS OF THE NIGERIAN CORRECTIONAL SERVICE ACT 2019 LAY THE FOUNDATION FOR A CORRECTIONAL SERVICE SYSTEM THAT MEETS INTERNATIONAL BEST PRACTICES?

Section 2(1)(a) of the Act set out that the objective of the Nigerian Correctional service is to inter-alia “be in compliance with international Human Rights standards”.¹⁸ The International community, through the United Nations, has made it clear to member States of the United Nations that the humane treatment of every person is essential. Prisoners, whether they are convicted of violent crimes or not, are included in this Agenda and are entitled to basic Human Rights. Member States of the United Nations, including Nigeria, have signed and ratified international treaties, conventions, covenants and rules confirming these rights. Among the most important are the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the United Nations Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment. The main thrust of all such conventions as they relate to prisons is simple; they state the following:

¹⁷ Penal Reform International, “Making Standards Work: An International Handbook on Good Prison Practice”, available at <https://www.penalreform.org/resource/making-standards-work-international-handbook-good-prison-practice/> accessed (24 December 2019).

¹⁸ NCSA 2019, s. 2(1).

Regardless of circumstances, all human beings have fundamental human rights. They cannot be taken away without legal justification. People held in lawful detention or in prison forfeit for a time the right to liberty. If they are in unlawful detention or imprisonment, they retain all rights, including the right to liberty.¹⁹

In order to examine the compliance of the Act with this mandate, it is necessary to review the exact provisions of this Act that brings Nigeria closer to achieving international compliance and lays the foundation for a Correctional service free of human rights contraventions. Apart from the forms of non-custodial sentencing and sentencing review programs laid out above, the provisions of the Act which immediately come to mind are sections 12 and 14.

Section 12 (1) (c) of the Act 2019 states:

Where an inmate sentenced to death has exhausted all legal procedures for appeal and a period of 10 years has elapsed without the execution of the sentence; the Chief Judge may commute the sentence of death to life imprisonment.²⁰

This section of the Act was laid down to solve the problem of State Governors in Nigeria failing to sign the warrant of execution. Amnesty International on the issue stated that “there were no fewer than 2,285 death row inmates languishing in different prisons across the country, noting that in 2017 alone, a total of 621 persons were sentenced to death by the Courts with no governor willing to sign their death warrants.²¹ Worse off is the fact that the inmates are kept in dehumanising conditions as they are “awaiting execution”. An advocacy group HURILAWS (Human Rights Law Service) reported that most death row cells are seven by eight feet, shared by three to five people; the cells are dark and are with hardly any ventilation;

¹⁹ *Supra* n 11.

²⁰ NCSA 2019, s. 12(1)(c).

²¹ O. Ramon, “No more justification for death sentence in Nigeria”, available at <https://punchng.com/no-more-justification-for-death-sentence-in-nigeria-group> (accessed 20 September 2019).

Prisoners use buckets as toilets and sleep on the bare floor.²² This ongoing maltreatment of inmates awaiting the execution of their death sentence is now mitigated by section 12(1)(c) of the Act 2019. Inmates who have been awaiting execution of their death sentence for up to 10 years and have exhausted all legal procedures for appeal can now hope that the Chief Judge of the state is disposed to commuting their sentence of death to life imprisonment. This is a welcome development; however, the requirements of “10 years” awaiting execution and exhausting all appeal procedures could still be further mitigated.

Section 12(8) of the Act deals with the problem of prison congestion,²³ which has plagued the Nigerian Correctional Service administration for decades. Most prisoners are kept in old and sometimes damaged structures. Over the past decade, there has been a steady rise in the Nigerian prison population; by July 1990, the average monthly inmate population was 54,000 while the total prison capacity was only 31,000, resulting in an overcrowding figure of 74.2 per cent.²⁴ To tackle this problem which previous legislations failed to tackle, section 12(8) of the Act provides that:

The state Comptroller of Correctional Service in conjunction with the Correctional Centre Superintendent shall have the power to reject more intakes of inmates where it is apparent that the Correctional Centre in question is filled to capacity.²⁵

Section 12(11) of the Act in support of section 12(8) states that a state Comptroller of correctional service shall be sanctioned if he, within one week of discovery fails to notify, inter alia, both the Chief Judge and Attorney General of the State when the custodial center approaches full capacity.

²² C. Okeke “HURILAWS Statement on World Day against the Death Penalty 2019”, available at <https://hurilaws.org/hurilaws-statement-on-world-day-against-the-death-penalty/> (accessed 25 September 2019).

²³ NCSA 2019, s. 12(8).

²⁴ A.R. Grace (PhD), “An Assessment of Prison Overcrowding in Nigeria: Implications for Rehabilitation, Reformation and Reintegration of Inmates” (2014) 19(3) *Journal Of Humanities And Social Science*.

²⁵ *Supra* n 22.

Section 14 of the Act, unlike section 12 attempts to solve existing problems in correctional service administration, provides for the reformation and rehabilitation of inmates. Section 14(1) of the Act states that “the Correctional service shall provide opportunities for education, vocational training, as well as training in modern farming techniques and animal husbandry for inmates”.²⁶

Similarly, Subsection (5) of section 14 states that

The Correctional Service may recommend for issuance of certificates of good behaviour upon discharge to an inmate who had demonstrated good conduct, including those who have acquired training through formal and informal education aimed at facilitating their reintegration into society.²⁷

4.0. CONCLUSION

The Correctional Service Act 2019 will protect and preserve the rights of inmates in line with international standards in ways that no Nigerian legislation has been able to. For instance, section 25 of the Act makes provision for an unforeseen case where an inmate diagnosed of a particular illness which cannot be taken care of within the center, is taken to a hospital on the instruction of the Superintendent. Whilst officials of the Nigerian Correctional Service are advised to fully comply with the basic protective measures against the novel coronavirus to ensure the safety of inmates, it is laudable that there may be no need to further make legislations to cover the subject of the prevailing pandemic as it affects the Nigerian Correctional Service owing to the detailed nature of the Correctional Service Act 2019. The need for social distancing as a measure to curb the transmission of the deadly Coronavirus as advised by the World Health Organisation makes it even more necessary for the relevant institutions in Nigeria to consciously see to the decongestion of prisons in line with the spirit of section 12 of the Correctional Service Act. The said section stipulates the measures and procedures for decongestion of prisons.

²⁶ NCSA 2019, s. 14(1).

²⁷ Supra note 25, s. 14(5).

The Act is indeed a lighthouse for bold, groundbreaking and problem-solving legislation which seek to ensure adherence to international best practices. The efforts of Victor Ndoma-Egba of the sixth assembly who first presented the bill to the senate in 2008 (11 years ago) are laudable and must not be forgotten.