

HUMAN RIGHTS: EXPLORING MOTHERS IN NIGERIAN CORRECTIONAL INSTITUTIONS

PROMISE AARON¹

Abstract

Despite international human rights laws and Nigerian constitutional provisions, the rights of female prisoners, particularly mothers, have been neglected. This paper examines the challenges faced by incarcerated mothers in accessing basic maternal and child health services, and the inadequate legal frameworks that exacerbate these challenges.

Furthermore, this paper addresses the long-term impacts of depriving incarcerated mothers of their human rights on the physical and psychological well-being of both mothers and their children. Drawing on doctrinal research approach, this paper highlights the need for urgent reforms to improve the human rights of incarcerated mothers in Nigeria.

These reforms include improving prison conditions, providing basic maternal and child health services and legal aid, and implementing gender-sensitive policies in prison management.

Hence, this paper provides a critical analysis of the human rights of incarcerated mothers in Nigeria and offers recommendations for improving their conditions.

Key words: Human Rights, Mothers, Children, Correctional Institutions, Incarceration, Nigeria

1.0 Introduction

Imprisonment is an exception to the right to freedom of movement.² The motive for the establishment of prisons is for the protection of the offender from the public by the incapacitation of the offender³ or the reformation, rehabilitation and reintegration of the offender into the society after severing the term of imprisonment.⁴ Also, since the prison is the last stage of the criminal justice system it for retribution and deterrence. Prison connotes detention, incarceration, and punishment for an alleged offender.⁵ This suggest that the prisons is an

¹ Lecturer II, School of Law and Security Studies, Babcock University, Ilisan Remo, Ogun State

² Section 42 of the Constitution of the Federal Republic of Nigeria (as amended) 1990.

³ Ado Sale 'Prison overcrowding in Nigeria: The Nature of the Problem, its causes, and consequences' (DPhil thesis, Bangor University 2014)

⁴ Section 10 (f) of the Nigerian Correctional Service Act, 2019

⁵ Obioma H. Onyi-Ogelle and Collins Nwobodo 'A comparative disclosure of the collective Rights of Prisoners in Nigeria, South Africa, India and New Zealand' (2020) 4 (1) AJLHR <<https://journals.ezenwaohaetorc.org/index.php/AJLHR/article/view/1001/1004>> accessed 5 February 2023

institution of the state where the state get back at the alleged offender by inflicting punishment of the offender. These punishments might take various form even to the extent of abusing the human right of the alleged offender.

Imprisonment is a deterrent to offenders and the general public. The fear of losing the right to liberty is foremost on the mind of every citizen, no matter how momentary, so imprisonment frightens the majority of people and makes them lean towards being law-abiding citizens. This is referred to as “general deterrence.” There is also specific deterrence, which brings punishment to the convict personally, and with the hard and unnatural life in prison, he will learn a lesson by experience and avoid clashing with the law.

It is trite to assert that prisoners are, first and foremost, humans, and the fact that they are incarcerated does not deprive them of other fundamental human rights that they are entitled to by virtue of their humanity. Abiru⁶ posited that:

“The human person possesses rights because of the very fact that it is a person, whole, master of itself and his acts ... Fundamental rights are rights which are owned to a man because of the very fact that he is a man. Human rights are frequently held to be universal in the sense that all people have and should enjoy them, and to be independent in the sense that they exist and are available as standards of justification and criticism whether or not they are recognized and implemented by the legal system or officials of a country. The moral doctrine of human rights aims at identifying the fundamental prerequisites for each human being leading a minimally good life.”

Inmates of correctional institution are not to be dehumanized on the basis or the gravity of the alleged offence committed. Thus, correctional institutions ensure that the inmates of the institutions, as the case may be, place a premium on their dignity and value their humanity.⁷ In the first instance, inmates of correctional institutions are human beings endowed with rights based on their humanity, regardless of the gravity of the offenses committed. The authorities of the correctional institutions do not have the competence to ill-treat the inmates on the basis of

⁶ Statmak v. C.O.P (2020) 9 NWLR

⁷ Section 1 of the United Nations General Assembly Resolution 45/111 of 14 December 1990

their incarceration or deprive them of their liberty. The court is the competent authority endowed with such powers during sentencing.

In Nigeria, there is a general notion that inmates of correctional institution are not to enjoy any human rights as provided by the constitution. Inmates of correctional institution are seen as less human, equal to an animal being led to slaughter. The Court of Appeal refuted the notion that inmates of correctional institutions in Nigeria are not to enjoy any human right. The Court of Appeal Court, per Uwaifo⁸, held that the human right of the inmates of correctional institutional remained intact, unless deprived by the court of law. The court further held that prisoners have enforceable rights as citizens; even the convicted inmates of correctional institutional awaiting execution has an enforceable right to protection from violation their right and humane treatment.

Notwithstanding the above assertion by the Court of Appeal, it is pertinent to assert that the correctional institutions' personnel and administrators violate the human rights of inmates and particularly of mothers in the correctional institutions. This situation was observed by the National Human Rights Commission. The Commission noted that:

The prison environment continues to pose serious threats to the physical and mental well-being of inmates and prison officers alike. Conditions such as overcrowding, lack of medical/health facilities, poor toilet facilities and beddings, and denial of access to justice continues to persist in clear contrast to the requirement of the UN standards for the treatment of persons in Custody. This state of affairs is attributable to action and/or inactions of all players in the administration of justice sector in Nigeria. Key amongst these players are the Police, the Judiciary, the prisons, the executive through proliferation of task forces and other bodies clothed with arresting powers.⁹

The situation observed by the Nigerian Human Rights Commission above was prominent in the 2018 report. There were no improvements in the 2018 report. The correctional institutions environment still posed a threat to the physical and mental well-being of inmates. The medical, water, toilet, and bedding facilities were insufficient for humans. Some of these correctional centers having female detainees have no medical/clinic facilities for pregnant female detainees.

⁸ (1999) 6 NWLR (Pt. 452), 42

⁹ National Human Right Commission Nigeria Report of Prison Audited Report, 2009

These medical/clinics has no pre or post-natal facilities for the female detainees. These facilities were below the standard required by the United Nations and International Conventions.

The Nigerian Correctional Service under the new legal regime take custody of male and female inmate. The fulcrum of this paper is on the human rights mothers in the Nigerian Correctional Services.

2.0 Legal regime for the protection of Human Rights of Mothers in the Nigerian Correctional Centers

2.0.1 Domestic Legal Regime for the protection of Human Rights of Mothers in the Nigerian Correctional Centers

2.0.1.1 The Constitution of the Federal Republic of Nigeria 1999 (As Amended)

The Constitution is the ground norm from which every other laws derive its validity. The Constitution guarantees what are called Fundamental Human Rights in its Chapter IV and the rights it enshrines are largely the traditional civil and political (libertarian) rights and freedoms. The mothers in Nigerian correctional centers enjoys under the Constitution right to life,¹⁰ right to dignity of human person,¹¹ right to fair hearing,¹² right to private and family life,¹³ right to freedom of thought, conscience and religion,¹⁴ right to freedom of expression and the press,¹⁵ right to peaceful assembly and association,¹⁶ right to freedom of movement¹⁷ and right to freedom from discrimination.¹⁸

2.0.1.2 The African Charter on Human and Peoples' Rights (Enforcement and Rectifications) Act

¹⁰ Section 33 of the Constitution of the Federal Republic of Nigeria 1999(as amended)

¹¹ Ibid. 34

¹² Ibid. 36

¹³ Ibid. 37

¹⁴ Section 38 of the Constitution of the Federal Republic of Nigeria 1999(as amended)

¹⁵ Ibid. S. 39

¹⁶ Ibid. S. 40

¹⁷ Ibid. S. 41

¹⁸ Ibid. S. 42

The African Charter on Human and Peoples' Rights, known also as the Banjul Charter, is an international instrument on the protection of human rights in Africa. Upon rectification and adoption by the Nigerian government, the Banjul Charter was enacted, subject to the provisions of Section 4 of the 1999 Constitution of the Federal Republic of Nigeria, as one of the bodies of laws for the protection of human rights. The African Charter on Human and Peoples' Rights, having been enacted into law in Nigeria as the African Charter on Human and Peoples' Rights (Enforcement and Rectifications) Act, is on equal footing guaranteeing the protection of human rights for mothers in Nigerian correctional centers. The Banjul Charter guaranteed the enjoyment of the rights and freedom without discrimination of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.¹⁹ The following rights are enjoyed by mothers in correctional centers in Nigeria: equality before the law,²⁰ respect for life and integrity of person,²¹ respect of the dignity inherent in a human being,²² right to liberty and to the security of person,²³ right to be heard,²⁴ freedom of conscience, the profession and free practice of religion,²⁵ right to receive information,²⁶ right to free association,²⁷ right to freely assemble,²⁸ right to freedom of movement,²⁹ right to enjoy the best attainable state of physical and mental health³⁰ and right to education.³¹

The rights enshrined in the African Charter on Human and Peoples' Rights (Enforcement and Rectifications) Act are unique. The government or its agencies may not enact any other municipal laws that will obviate the court's jurisdiction when properly called upon to do so in

¹⁹ Article 2 of the African Charter on Human and Peoples' Rights (Enforcement and Rectifications) Act, Cap. 10 Laws of the Federation of Nigeria 1990

²⁰ Ibid. Article 3

²¹ Ibid. Article 4

²² Ibid. Article 5

²³ Ibid. Article 6

²⁴ Ibid. Article 7

²⁵ Ibid. Article 8

²⁶ Ibid. Article 9

²⁷ Ibid. Article 10

²⁸ Ibid. Article 11

²⁹ Article 12 of the African Charter on Human and Peoples' Rights (Enforcement and Rectifications) Act, Cap. 10 Laws of the Federation of Nigeria 1990.

³⁰ Ibid. Article 16

³¹ Ibid. Article 17

relation to human rights issues under the African Charter. They are legally protected under international law, and the government cannot legislate itself out of its obligations.³²

2.0.1.3 Nigerian Correctional Service Act, 2019

The Nigerian Correctional Service Act, 2019 repealed the defunct Nigerian Prisons Service Act, 1972,³³ which had become outdated and did not meet the current realities of reformation and rehabilitation of inmates, but was anchored on the primordial philosophy of retribution and deterrence as opposed to the modern philosophy of the criminal justice system. The Prisons Act of 1972 was enacted primarily for the management of correctional facilities established for individuals who violated the laws of the States and the Federation.³⁴ The outdated philosophy on which the old Prisons Act was anchored necessitated the congestion of the prisons, the hardship and inhumane treatment of inmates, and nonexistence of materials,³⁵ leaving the Prisons Service unable to fulfill its mandate of reformation and rehabilitation of inmates. In the long run, the prisons became a breeding ground for the grooming of embittered inmates who are not been prepared for the world outside the walls of the prisons facilities, necessitating criminal recidivism.

The Nigerian Correctional Service Act, 2019 is a clear departure from the old order of the Prisons Act, 1972. The Nigerian Correctional Service Act is divided into two sections: custodial service (section 1-36) and non-custodial service (section 36-47). The Act pointedly captured the motive of the government in its objectives, which inter alia are centered on reformation, rehabilitation and reintegration of the inmate back to the society.³⁶ The repealed Prisons Act falls short of this core objectives of the correctional service. Scholars have correctly argued that the

³² *Abacha v. Fawehinmi S.C.* 45/1997

³³ Cap P29 Laws of the Federation of Nigeria 2010

³⁴ Chidubem Ezeilo and Princewell Akinseye-George, 'A Review of the Nigerian Correctional Service Act 2012 (2020) UNILAG Law Review Vol. 4, No. 1

³⁵ Vearumun V. Tarhule, 'Synoptic Appraisal of the Nigerian Correctional Service Act, 2019 (2020) Benue State University Law Journal

³⁶ Section 2(1) of the Nigerian Correctional Service Act, 2019

“lack of objectivity in the Nigerian Prisons Act, 1972, has resulted in the prisons as an arm of the criminal justice delivery almost working at a cross purposes to the detriment of the inmates.”³⁷

Section 10 of the Nigerian Correctional Service Act further emphasizes the objective of the Nigerian Correctional Service as reformation, rehabilitation and reintegration. As part of its functions, the correctional service is to provide safe, secure, and humane custody for inmates; identify the existence and causes of anti-social behaviors of inmates; conduct risk and needs assessments aimed at developing appropriate correctional treatment methods for reformation, rehabilitation and reintegration; implement reformation and rehabilitation programs to enhance the reintegration of inmates back to the society; empower inmates through the development of educational and vocational skills training programs, and facilitating incentives and income generation through Custodial Centers, farms and industries.³⁸

Prior to the Nigerian Correctional Service Act, 2019, there are no provisions in the repealed Prisons Act, 1972, providing a separate facility for female inmates of the correctional centers. Female inmates have separate holding areas in the same facility as male inmates. The Nigerian Correctional Service Act created a departure from the Prisons Act of 1972 by providing for the first time a separate facilities for female inmates in all the States of the Federation with all necessary facilities to address the special needs of female inmates, including pregnant women, nursing mothers, and babies in custody, such as medical and nutritional needs.³⁹ Pregnant female inmates are required to be provided with sanitary, prenatal and antenatal health care.⁴⁰

2.0.1.4 Nigerian Prisons Service Standing Orders (Revised Edition), 2011

The Nigerian Prisons Service Standing Orders are subsidiary legislation made by the Controller-General of Prisons. The powers to make regulations and orders were delegated to the Controller-General of Prisons by Sections 16 (1) (a) and (b) of the Nigerian Prisons Act, 2004. The

³⁷ Vearumun Tarhule, *Corrections Under Nigerian Law* (Innovative Communications, 2014) cited in Vearumun V. Tarhule, ‘Synoptic Appraisal of the Nigerian Correctional Service Act, 2019 (2020) *Benue State University Law Journal*

³⁸ Section 10 (b), (d), (e), (f), (h) of the Nigerian Correctional Service Act, 2019

³⁹ Section 34 (1) & (2) of the Nigerian Correctional Service Act, 2019

⁴⁰ *Ibid*, section 34 (3)

regulations and standing orders are inter alia for the good order, discipline, and welfare of prisons with respect to the organization and administration of prisons.⁴¹ The orders make a general welfare provision for pregnant inmates of the correctional service and babies brought into the correctional service or born at the correctional center.

The Nigerian Prisons Service Standing Orders, 2011 provisions ensure that mothers held up in the correctional service enjoy the maximum standard of care while in custody. These maximum standards are accorded to all female inmates of the correctional service. When a female is sentenced to a correctional facility, she will be subjected to medical screening to determine her status.⁴² Where a female inmate is pregnant or suspected to be pregnant, she is referred to the medical officer. Following the medical officer's screening and confirmation that the female inmate is pregnant, a report shall be made to the Superintendent-in-Charge, who shall ensure that the inmate is treated as recommended by the screening medical officer.⁴³

After a female inmate becomes pregnant, she is not isolated as a result of her pregnancy; rather, she is in contact with her fellow inmates by day and night, regardless of the stage of the pregnancy.⁴⁴ She is required to sleep in the same room with at least two other female inmates who could render help in an emergency situation.⁴⁵ The Medical Officer, with the approval of the Superintendent-in-Charge, shall remove the pregnant prisoner to the labor ward in the prison hospital, clinic, or outside government approved hospital at the appropriate time.⁴⁶

The authorities of the correctional service are responsible for ensuring the provision of adequate necessities for the infant before and after delivery. The birth record of the infant born in the correctional center does not carry any information about the fact that such an infant was born in the correctional center. The name of the street or road and the plot number of the correctional center are given as the address of the place of birth of the infant.⁴⁷ The infant will be given a cot

⁴¹ Section 16 (1) (a) and (b) of the Nigerian Prisons Act, 2004

⁴² Orders 468 Nigerian Prisons Service Standing Orders (Revised Edition), 2011

⁴³ Ibid, orders 469

⁴⁴ Ibid, orders 470

⁴⁵ Ibid, orders 471

⁴⁶ Orders 473 Nigerian Prisons Service Standing Orders (Revised Edition), 2011

⁴⁷ Ibid, orders 477

or cradle, which the mother will use until the baby is warned. The mother shall be encouraged to breastfeed the baby or follow any recommended diet.⁴⁸ The medical officer is responsible for the vaccination of the infant immediately after birth.⁴⁹

**2.0.1.5 Nigerian Correctional Services Standing Orders Non-Custodial (Revised Edition)
2020**

The non-custodial orders are subsidiary legislation made by the Controller-General of Corrections for the regulations of the non-custodial service undertaken by the Nigerian Correctional Service. The Controller-General of Corrections derived the powers to make such regulations and standing orders in pursuant to Section 33 (1) (a) and (b) of the Nigerian Correctional Service Act, 2019. The regulations and standing orders inter alia are for the organization and administration of correctional facilities and also for the good order, discipline and welfare of staff and inmates of the correctional facilities.

The Nigerian Non-Custodial Service is responsible for the administration of non-custodial measures which include: community service; probation; parole; restorative justice measure and any other non-custodial measures to be appointed by the President and constitutes by the National Assembly.⁵⁰ The purpose of the non-custodial service provided by the Nigerian Correctional Service is to decongest the Nigerian Correctional Centers. Since the non-custodial service is an undertaking by the Nigerian Correctional Service, it will be right to submit that the non-custodial service officers are required by law and training to respect the human rights of mothers under their care.

Due to the very special nature of women, it is standard practice that female inmates in the correctional center undertaking the non-custodial service are supervised by female non-custodial officers in the community where the non-custodial service is taking place.⁵¹ Female non-custodial officers are to be aware of female offenders' caregiving roles, particularly nursing

⁴⁸ Ibid, orders 476

⁴⁹ Ibid, orders 478

⁵⁰ Section 37 (1) and (2) of the Nigerian Correctional Service Act, 2019

⁵¹ Order 242 of the Nigerian Correctional Services Standing Orders Non-Custodial (Revised Edition) 2020

mothers who have their babies with them at the site of community service and are required to breastfeed the babies at agreed-upon time intervals.⁵²

Non-custodial female officers must consider the best interests of the child or children of female offenders with dependent children, and pregnant offenders' health should be taken into account during the court's supervised non-custodial sentence.⁵³ Thus, the women offenders with dependent children or pregnant offenders are not to be subjected to inhumane or cruel treatment during their non-custodial service. They are required to enjoy certain human rights, not minding the fact that they are undertaking a non-custodial sentence. The non-custodial sentence did not remove the fact that they are human beings with limited rights.

2.0.2 International Legal Regime for the protection of Human Rights of Mothers in the Nigerian Correctional Centers

2.0.2.1 United Nations Charter

The commencement of any jurisprudential discussion on human rights flows from the United Nations Charter. The charter promulgated standards of human rights to be observed by parties to the charter. The United Nations “reaffirms faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small...”⁵⁴ The charter also resolved that the United Nations purpose “to achieve international cooperation in promoting and encouraging respect for human rights and for fundamental freedom for without distinction as to race, sex, language or religion.”⁵⁵

Going by the above stipulations of the United Nations charter, they are not to be seen as abstract statements of principles. The charter, on the other hand, is a legally binding treaty to which all member states are parties.

2.0.2.2 Universal Declaration Human Rights

⁵² Orders 243 and 244 of the Nigerian Correctional Services Standing Orders Non-Custodial (Revised Edition) 2020

⁵³ Ibid, Order 245

⁵⁴ 2nd Paragraph of the preamble to the United Nations Charter

⁵⁵ Article 1 para. 3 to the United Nations Charter

The Universal Declaration of Human Rights was a quantum leap taken by the international community in 1948 in the history of human rights. It is the moral compass for the attainment of universal human rights for all people and nations. The principles enshrined in the UDHR have inspired the draft of over 140 additional human rights instruments, which together form international human rights benchmark.⁵⁶

The Universal Declaration of Human Rights reaffirms faith in fundamental human rights and recognizes the inherent dignity of all members of the human family as the foundation of global freedom, justice, and peace.⁵⁷ All humans are entitled to all the rights and freedom set out in the declaration without distinction as to race, color, sex, language, religion, political or other opinion, national or social opinion, property, birth or other status.⁵⁸

Although the Universal Declaration of Human Rights is not a binding instrument. However certain provisions have assumed the character of international customary law. Certain rights are enjoyed by mothers in correctional center on the basis of their humanity and not as a product of the international legislation. The mothers in Nigerian correctional centers enjoys right to life, liberty and security of their person,⁵⁹ right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment,⁶⁰ right to freedom of thought, conscience and religion,⁶¹ right to freedom of opinion and expression,⁶² right to freedom of assemble and association⁶³ and right to a standard of living adequate for health and well-being including food, clothing, housing and medical care with mother and child entitled to special care and assistance.⁶⁴

2.0.2.3 International Covenant on Civil and Political Rights

⁵⁶ Mohammed A. Kutigi, Human Rights Abuses in the Nigerian Prison system: A case study of Niger State Prison (LL.M Dissertation Faculty of Law Ahmadu Bello University Zaria 2017)

⁵⁷ 1st paragraph of the preamble to the Universal Declaration of Human Rights

⁵⁸ Article 2 to the Universal Declaration of Human Rights

⁵⁹ Ibid, Article 3

⁶⁰ Ibid, Article 5

⁶¹ Ibid, Article 18

⁶² Ibid, Article 19

⁶³ Ibid, Article 20

⁶⁴ Ibid, Article 25 (1) & (2)

The International Covenant on Civil and Political Rights (1976) of the United Nations seeks to guarantee the protection of civil and political rights of every human based on their humanity. The International Covenant on Civil and Political Rights, the International Covenant on Economic, Social, and Cultural Rights, and the Universal Declaration of Human Rights, as well as the ICCPR's two Optional Protocols, are referred to as the Bill of Rights.

The ICCPR outlined the protection of the human rights of mothers as inmates of correctional facilities. Mothers have an inherent right to life as inmates in a correctional facility, according to the law. The State is required to deny this right only when a sentence of death penalty is imposed by a court of competent jurisdiction for a serious offense in accordance with the law.⁶⁵ The convention prohibit the use of torture or cruelty, inhumane or degrading treatment or punishment on any human.⁶⁶ Although mothers serving term in correctional facilities in Nigeria are deprived of their liberty, they are to be treated with respect for the inherent dignity of the human person.⁶⁷

2.0.2.4 International Covenant on Economic, Social and Cultural Rights

The International Covenant on Economic, Social, and Cultural Rights, 1976, guaranteed the protection of mothers in correctional facilities notwithstanding their race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.⁶⁸ The Covenant mandate that Parties not derogate from any fundamental human rights recognized by the laws of that country.⁶⁹ The right of every human to an adequate standard of living, even in detention, is recognized. The fundamental right of everyone to be free from hunger.⁷⁰

2.0.2.5 Convention on the Elimination of All Forms of Discrimination against Women, 1981

The 1981 Convention on the Elimination of All Forms of Discrimination Against Women has been described as an international bill of rights for women. The international legal instrument

⁶⁵ Article 6 of the International Covenant on Civil and Political Rights, 1976

⁶⁶ Ibid, Article 7

⁶⁷ Ibid, Article 10

⁶⁸ Ibid, Article 2 (2) of the International Covenant on Economic, Social and Cultural Rights, 1976

⁶⁹ Article 5 (2) of the International Covenant on Economic, Social and Cultural Rights, 1976

⁷⁰ Ibid, Article 11

guarantees the elimination of discrimination against women. The convention reaffirms the principles expressed in the Charter of the United Nations “in fundamental human rights, in the dignity and worth of the human person, and in the equal rights of men and women,”⁷¹ and the proclamation that “all human beings are born free and equal in dignity and rights, and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, including distinction based on sex.”⁷²

The convention stipulates that state parties are to take all appropriate measures to eliminate discrimination against women in the field of health care. Women are to be provided with health care services during pregnancy, especially prenatal and postnatal care and adequate nutrition during pregnancy and lactation.⁷³

2.0.2.6 United Nations Standard Minimum Rules for the Treatment of Prisoners

Although the Universal Declaration of Human Rights did not specifically refer to inmates of correctional facilities, it laid out several rights that can be conjured up as being applicable to inmates of correctional facilities. These rights include but are not limited to the prohibition against torture, the right to a fair trial, the right to privacy, and the right to free expression. Seven years after the adoption of the Universal Declaration of Human Rights, specifically in 1955, under the auspices of the United Nations Congress on the Prevention of Crime and the Treatment of Offenders, the Standard Minimum Rules for the Treatment of Prisoners were adopted. However, in 2015, the United Nations General Assembly adopted the expanded Standard Rules for the Treatment of Prisoners, known as the "Nelson Mandela Rules," in honor of Nelson Mandela, the twentieth century's most celebrated prison inmate.⁷⁴

The Mandela Rules are based on the obligation to treat all correctional facility inmates with respect because of their inherent dignity and value as human beings and prohibit torture and

⁷¹ Paragraph 1 of the preamble to the Convention on the Elimination of All Forms of Discrimination against Women, 1981

⁷² Ibid, paragraph 2

⁷³ Ibid, Article 12

⁷⁴ <https://www.unodc.org/documents/nigeria/Nelson_Mandela_Rules.pdf> accessed March 1, 2023

cruel, inhuman, or degrading treatment or punishment.⁷⁵ The Rules are to apply to every inmate of a correctional facility without discrimination on the grounds of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, or any other status.⁷⁶

The Mandela Rules provided for separate accommodation for inmates of various categories of correctional facilities based on their sex, age, criminal record and the legal reason for their detention.⁷⁷ The Rule stipulate that there should separate accommodation for female and male inmates of correctional facilities.

The Rules make the health care of inmates of correctional facilities the responsibility of the State, and the standard of health care to be enjoyed by the inmates of correctional facilities is that which is available in the community where the correctional facility is situated.⁷⁸ Pregnant female inmates are to be provided with special accommodations for all necessary prenatal and postnatal care and treatment. Pregnant female inmates of correctional facilities are, where practicable, to be provided with a hospital outside the correctional facilities for children to be born, and the fact that the child is born in a correctional facility should not be mentioned in the birth certificate.⁷⁹ The children born in the correctional facilities are not to be treated as inmates of the correctional facilities. They are to undergo child-specific health care, which should be provided by the state. The decision to allow the continuous stay of the child with the mother in the correctional facility is to be based on the best interest of the child in question.⁸⁰

2.0.2.7 The United Nations Standard Minimum Rules for the Treatment of Female Offenders (The Bangkok Rules)

⁷⁵ Rules 1 United Nations Standard Minimum Rules for the Treatment of Prisoners

⁷⁶ Ibid, Rules 2

⁷⁷ Rules 11 and 12 United Nations Standard Minimum Rules for the Treatment of Prisoners

⁷⁸ Ibid, Rules 24 (1)

⁷⁹ Ibid, Rules 28

⁸⁰ Ibid, Rules 29

The Bangkok Rules are the first gender-specific international instrument adopted by the United Nations General Assembly on December 21, 2010.⁸¹ The Bangkok Rules detained guidelines on the response to the need of women in the criminal justice system as well as their children. The Rules were complementary to all existing Rules on the treatment of inmates of correctional institutions.

The Bangkok Rules provides that where a woman requested to be examined by physician or nurse, a female physician or nurse shall be provided except where the medical situation requires an urgent medical intervention by a male physician contrary to the wishes of the woman. This medical examination conducted by the male physician shall be conducted in the presence of a female staff of the correctional institution.⁸²

The authority of the correctional institution, through a qualified health practitioner, is required to give health advice to pregnant and breastfeeding women in their custody on a health and diet program drawn up and monitored. Adequate and timely food, a healthy environment, and regular exercise opportunities are to be provided for the pregnant and breastfeeding mothers.⁸³

3.0 Mothers in correctional institutions: Any Human Rights to enjoy?

The rights accrued to a Nigerian under the 1999 Constitution (as amended) are gender-neutral and applicable to all sexes. Due to their physiology, female prisoners require special care. The Nigerian correctional institutions were built without factoring in women. It is discovered that the design of the Nigerian correctional institutions was built only for male prisoners on the presumption that women, due to their fragile nature, could not possibly be detained in the prisons. It is trite to assert that, according to the correctional institution authorities' understanding, which is based on the re-colonial understanding, women are not suited to the

⁸¹ United Nations Office on Drugs and Crime <https://www.unodc.org/documents/justice-and-prison-reform/Bangkok_Rules_ENG_22032015.pdf> accessed on March 5, 2023

⁸² Rule 10 of the United Nations Standard Minimum Rules for the Treatment of Female Offenders (The Bangkok Rules)

⁸³ Ibid, 48

correctional institution by nature. This is obvious in the design and construction of the correctional institution, with the inmate in focus.

The Nigerian Correctional Institutions presently can only boast of one Women Correctional Center. Some of the women correctional institutions in existence today in Nigeria are more of make-shift holding area for animals not human. Women have special needs; talk less of the fact that they are being detained in correctional institutions. Regardless of their diverse and complex needs, women detained in correctional institutions receive the same treatment as their male counterparts. Mothers with infants in the correctional facilities have, by international standards, a very special need.

Some of the correctional institutions do not have care facilities for pregnant inmates. The authorities of the correctional institutions provide hospital appointments for the pregnant inmate outside the institutions for prenatal and postnatal care.⁸⁴ These special classes of inmates are subjected to inhumane and degrading treatment in the process of giving birth to their babies. The correctional institution authority binds these women in birth labor the hospital bed with chains.⁸⁵ This is in total contravention of the United Nations Standard Minimum Rule for the Treatment of Prisoners. Rule 47 of the United Nations Standard Minimum Rule for the Treatment of Prisoners provide that “the use of chains, iron, or other instrument of restraint which are inherently degrading or painful shall be prohibited,” subject to some exceptions. However, instruments of restraint shall never be used on women during labor, during childbirth and immediately after childbirth.⁸⁶

From the above, it is seen that a special case is made out for women in correctional institutions, preventing the use of restraint during labor, childbirth, and after childbirth. Notwithstanding of the provisions of the United Nations Standard Minimum Rule for the Treatment of Prisoners, it appears that Nigerian Prisons Service Standing Orders are in direct compliance of the United

⁸⁴ Bolanle Olabimtan, ‘Maltreated and neglected: The plight of pregnant women in Nigerian prisons’ The Cable (Lagos, 4 December 2021) < <https://www.thecable.ng/maltreated-and-neglected-the-plight-of-pregnant-women-in-nigerian-prisons>> accessed 7 December 2023

⁸⁵ Ibid.

⁸⁶ Rule 48 (2) of the United Nations Standard Minimum Rule for the Treatment of Prisoners

Nations Standard Minimum Rule for the Treatment of Prisoners. Section 362 of the Nigerian Prisons Service Standing Order provides that “instruments of restraint, such as handcuffs, chains, irons, and straitjackets, shall not be applied as a punishment”. Furthermore, chains or irons shall be used in certain situations. However, “where there is need to place a prisoner in a mechanical restraint arises in the absence of the Superintendent-in-Change, his Deputy shall give such order and shall inform the Superintendent-in-Change, accordingly.”⁸⁷

It would appear that the court is of the opinion that it is not necessary for the detaining authority to provide sleeping material for the detained person. The court finds that the right of a detained person to request sleeping material is not justiciable because he suffers from a constitutional disability. The Court further opined, per Omage, that though it is practicable to expect a detained person to sleep, where he lies before he sleeps is another matter.⁸⁸

4.0 Compliance with international standards, Measures of protection and enforcement of Rights of Mothers in Correctional Institutions in Nigeria

The domestic and international legislation have stipulated standards expected from the authorities of correctional institutions. The Nigerian Correctional Service Act, 2019, by its provisions, is in adherence to these international standards as a measure of protecting the human rights of mothers in the correctional institutions. The Nigerian Correctional Service Act ensures that the authorities of the correctional institutions keep mothers and children in the institutions and provide them with physical and mental health services. The children brought into or born in the correctional institutions are not discriminated against based on the incarceration of their mothers. The Act protects and prohibits any form of torture, punishment, inhumane, degrading, or other cruel treatment.

Human rights for mothers in correctional institutions in Nigeria are legal stipulations. They are found in bodies of legislation. Hence, there is always redress provided by the law. Some measures have been set in motion by the Nigeria Correctional Service Act to prevent abuse of

⁸⁷ Section 363 of the Nigerian Prisons Service Standing Orders (Revised Edition), 2011

human rights of mothers in the custody of the Nigerian Correctional Service authorities. The Act set four categories of monitoring officials for inspection of the correctional institution to ensure that they maintain the highest international standard. These monitoring bodies consist of ex-officio members appointed by the President, legislative oversight visitors, the Custodial Center Visiting Committee set up by the Minister in consultation with State Authorities, and voluntary visitors appointed by the Controller-General.⁸⁹ The functions of the Custodial Centre include but not limited to visit the Custodial Centre and inspect the wards, cells, yards and the journals, registers and books of the Custodial Centre and condition of treatment of the inmates.⁹⁰

Although institutions like the National Human Rights Commission and the Legal Aid Council are already member of the official visitors to the Custodial Centre, there impact towards the protection of inmates of correctional institutions cannot be over-emphasized. The National Human Rights Commissions is empowered by the Act to receive and investigate the violations of human rights and make appropriate determination.⁹¹ In furtherance of its function, the NHRC upon an application to the court make a binding award or recommendation.⁹² On the other hand, the Legal Aid Council is empowered to conduct the inspection from time to time of correctional centre, police cells and other places where suspected are held in order to assess the circumstance under which such person or persons are detained.⁹³

According to Section 46 of the 1999 Constitution, any person who alleges that any of the human rights provisions have been, are being, or are likely to be violated in any state in relation to him may seek redress from a high court in that state. The High Court may make such orders, issue such writs, and issue such directions as it deems appropriate for the purpose of enforcing or securing the applicant's rights.

⁸⁹ Section 21 of the Nigerian Correctional Service Act, 2019

⁹⁰ Ibid. section 22

⁹¹ Section 5 (j) of the National Human Rights Commission (Amendment) Act 2010

⁹² Ibid, section 22 (1)

⁹³ Section 19 (1) of Legal Aid Council Act, 2011,

5.0 Conclusion

Mothers serving terms in correctional institutions in Nigeria are like many other Nigerians who enjoy human rights, although they are confined within the walls of these institutions. There are numerous laws prohibiting the breach or abuse of human rights by mothers in correctional institutions. There is no denying that human rights breaches and abuses happened. This is due to the prevalent notion that inmates of correctional institutions do not have the right to enjoy human rights due to their incarceration.

In order to ensure the protection and enforcement of human rights enjoyed by mothers in correctional institutions, various monitoring institutions established by laws creating them should perform their oversight functions, ensuring that the minimum standards established by international and domestic legislation are upheld.