

LEGISLATIVE SAFEGUARDS: PROTECTING PRISONERS' RIGHTS IN NIGERIAN CORRECTIONAL FACILITIES

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Abstract: *Regardless of the offense committed or the duration of their imprisonment, individuals in custody, whether convicted or awaiting trial, retain their human rights and dignity. This paper delves into the legislative framework governing prisoners' rights in Nigeria. It emphasizes the importance of humane treatment and respect for the fundamental dignity of all prisoners.*

Keywords: *prisoners' rights, human rights, legislative framework, Nigeria, humane treatment*

1.0 Introduction

Irrespective of the severity of an offence that has been committed, or the length of term of imprisonment imposed on a convicted person, they do not cease to be human beings; the same applies to persons awaiting trial. The loss of liberty suffered by these individuals does not mean that they have lost their touch with humanity; neither does it mean that the humanity in them has

been stripped. These individuals continue to be human beings, and irrespective of the fact that they are in conflict with the law, they deserve humane treatment that acknowledges and reaffirms, in the first place, their dignity and worth. As used in this paper, individuals who have lost their liberty by keeping them in safe custody while awaiting trial, convicted for a crime and sanctioned by imposition of a term of imprisonment or death sentence would be referred to as prisoners. The distinction between persons whose trials have been concluded and are serving a term of imprisonment or awaiting execution of death sentence and those whose trials are still pending or in progress is of very little importance in this paper as it explores broadly the legislative framework of prisoners' rights in Nigeria.

The basic premises of the discussion here are that, first; all human beings possess fundamental human rights – a position that is expressly provided for by international human rights law as well as national legislation in Nigeria¹. Secondly, given the nature and effect of incarceration on these individuals, they are highly vulnerable to all forms of human rights abuse. As such, this heightens the need to give effect to the national and international instruments in force in order to ensure that the rights of prisoners are respected, promoted and protected.

There is a rich legislative mechanism in place to ensure that prisoners' rights are respected, promoted and protected in Nigeria. Unfortunately, the mechanism has not been performing to expectations because of notable challenges confronting criminal justice system in Nigeria: a legal conundrum that has not only gone unresolved over the years but has adversely impacted the quality of life lived by prisoners in Nigeria's prisons.

¹ Suffice it at this point to mention a few of the numerous and relevant international human rights instruments such as the

Universal Declaration of Human Rights (hereafter the UDHR) adopted by the UNGA on 10 December 1948; the

International Covenant on Civil and Political Rights (hereafter the ICCPR); the African Charter on Human and Peoples' Rights (hereafter the Banjul Charter). See also Andrew A Coyle, *Human Right Approach to Prison Management Handbook for Prison Staff* (United Kingdom International Centre for Prison Studies 2002) 31.

The challenges are numerous and daunting – a complex reality that must be acknowledged even though it is not addressed in this paper as the focus herein is limited to the relevant international instruments that address the rights of prisoners broadly, and the national legislative framework enacted in Nigeria towards similar ends.

2.0 Gauging the Figures of Prisoners in Nigeria

In the foregoing discussion, we defined condemned prisoners as individuals who have been tried, convicted and imposed a sentence upon for the crime(s) for which they were found guilty. This sentence could be a term of imprisonment or capital punishment (that is, death). Such individuals are referred to as convicts. In order to present a picture of the state of convicts in Nigeria, data were sourced from the National Bureau of Statistics (NBS) at Abuja Nigeria to serve as verifiable and reliable quantitative information and empirical evidence to gauge the figures of prisoners in Nigeria with a particular focus on detained and condemned prisoners. Table 1 contains data on the prison admission by type of imprisonment in Nigeria between 2005 and 2016. It shows the population of inmates in Nigeria's prisons for a period of twelve years between 2005 and 2016. The statistics showcased the number of individuals who were remanded in custody while awaiting trial; those serving short-term and long-term imprisonments; those condemned to death; detainees (related to „political crimes“) and others. Even though data were not available for certain categories in a given year, the broader story that can be told here is the number of people within the different categories of prisoners in Nigeria's prisons. From the statistics, some stunning observations could be made: first, there are many condemned prisoners in Nigeria's prisons and this number has been on the rise since 2005. For example, there were 36 condemned prisoners in 2005, a number that had risen to 904 by the end of 2016. To me, this number is on a high side considering some inadequacies in Nigeria's criminal justice system. Secondly, the numbers documented for those awaiting trial almost triple those convicted and serving a prison term, whether long or short. The plausible argument for this is that through the trial process, charges may be dropped and the accused is released; or at the conclusion of the trial, the accused is not found guilty and is therefore acquitted. If these reasons are tenable, then, the need to speed up and conclude criminal trials is not only urgent but needs to be made a national priority: on the average, about 50,000 individuals would have lost their liberty for some time for charges that were ultimately dropped or could not be proved beyond reasonable doubt by the prosecution. This to me amounts to abuse of the rights of those categories of prisoners.

One major challenge facing the Nigeria's prisons within the entire criminal justice sector is overcrowding. This problem is not unconnected with the rising numbers of condemned and detained prisoners that add a great deal to prison population thus bringing about numbers of inmates rising above the capacity for which the prisons are meant to accommodate. This is evident in Table 2 as the statistics reveals that prison overcrowding in terms of prison population minus prison capacity rose from 2,195 inmates in year 2011 to 15,066 inmates in year 2015 and as high as 17,833 inmates in year 2016. In addition, the growth rate in prison capacity is not commensurate with that of prison population in Nigeria. This is shown in Table 3 whereby the prison capacity that increased by only 0.28-5.17% between years 2011 and 2016 had 1.61% to 16.01% prison population growth rate within the same period.

The challenge of overcrowding is partly attributable to a court system that is somehow dysfunctional and the police that are largely incompetent, corrupt and lackadaisical in performing their tasks. The socio-economic realities experienced by prisoners are chronically challenging, which adversely impact the affordability and quality of legal representation they get. As such, individuals are kept in awaiting trial for protracted periods of time, at times up to eight years before being released upon conclusion of the trial. In my opinion, the dysfunctional criminal justice system is in complete disregard of the rights

of prisoners: it perpetuates a continued form of abuse of the rights of prisoners, which, in my opinion, is largely attributable to the persistent disregard for the relevant Legal Instruments in force. In view of this, I have identified and discussed the instruments, arguing that the challenge is not so much the legislative framework; it is rather the implementation that is lacking. It is a challenge that is purely both systemic and human as it is shaped by the thinking and perception that prisoners are secondclass human beings with no rights; and that the prison is meant for them to be punished while they serve their sentences rather than being recognized and reformed as human beings.

Table 1: Prison admission by type of imprisonment in Nigeria, 2005-2016

Terms of imprisonment /Year	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Remand and awaiting trial	84,051	73,538	86,525	82,125	80,664	88,696	66,920	-	93,849	84,259	78,791	89,404
Short terms	26,171	26,929	38,817	20,992	37,072	36,703	22,564	-	40,215	31,650	28,141	32,126
Long terms	27,104	22,926	29,000	25,826	24,578	44,887	35,123	-	24,352	22,816	16,762	17,616
Condemned	36	127	16	92	54	56	72	-	100	48	642	904
Lifers	-	-	-	-	-	-	-	-	-	-	449	119
Detainees	6,035	517	-	-	440	471	2,181	-	361	60	-	1,409
Others	6,035	3,014	4,784	1,435	13,543	1,068	4,672	-	19	9	-	1,270
Total	149,432	127,051	159,418	130,784	156,351	171,881	131,532	-	158,896	138,842	124,785	142,848

- Represents unavailable data. Source: National Bureau of Statistics, Abuja Nigeria

Table 2: Prison overcrowding in Nigeria: Prison capacity versus prison population, 2011-2016

Year	2011	2012	2013	2014	2015	2016
Prison capacity	47,286	47,286	47,646	49,825	49,965	50,803
Prison population	49,481	52,136	55,173	56,059	65,033	68,686
Prison overcrowding (population-capacity)	2,195	4,850	7,527	6,234	15,068	17,883

Source: National Bureau of Statistics, Abuja Nigeria

Table 3: Yearly growth rate in prison capacity versus prison population in Nigeria, 2011-2016

Year	2011	2012	2013	2014	2015	2016
Prison capacity (%)	-	-	0.76	4.57	0.28	1.68
Prison population (%)		5.37	5.83	1.61	16.01	5.62
Prison overcrowding (population-capacity)	2,195	4,850	7,527	6,234	15,068	17,883

Source: National Bureau of Statistics, Abuja Nigeria

3.0 The Rights of Prisoners (Both Convicted and Awaiting Trial Inmates) In Nigeria's Prisons

Put simply, a human right is a legal entitlement that accrues to an individual by virtue of the fact that he/she is a human being. Loaded with plenty of philosophical underpinnings, from a legal standpoint, human rights are legal entitlements that are possessed by every human being irrespective of social status, whether inherited or acquired. The Supreme Court of Nigeria delineated the nature of human rights in the case of *Dominic Peter Ekanem v Assistant Inspector-General of Police*³ as follows:

Every human being is entitled to fundamental right only when he is not subject to any constitutional disability.... Human rights are universal – they belong to all in every human society. As Louis Henkin said „To call these rights “human” implies that all human beings have them equally and in equal measure by virtue of their humanity regardless of sex, race, age and regardless of social class, national origin, ethnic or tribal affiliation, regardless of wealth or poverty, occupation, talent, merit, religion, ideology location or other commitment“.

The substantive content of international human rights is expressed in the numerous international human rights instruments that exist at the United Nations (UN) human rights system. In addition to these, instruments have been developed and adopted at regional and sub-regional levels. National legislative pieces have also been enacted to give recognition and effects to these rights. As discussed below, the instruments cover specific classes of rights: civil; political, economic, social and cultural. Some of them focus on vulnerable individuals or groups of individuals such as women; children; migrants; the elderly; and the incarcerated, just to name a few.

Irrespective of these classifications, the jurisprudence of international human rights bodies as well as the writings of scholars hold that these rights are not only universal in their applicability; they are inter-related, interdependent and inter-connected. In essence, the realization of one right is dependent on, and connected to another right.

Nigeria is a sovereign state with domestic legal and political institutions that define the ways laws have to be enacted and enforced across the national territory. The applicable laws in Nigeria come from different sources, amongst which is international law. International human rights are expressed in multilateral treaties even though they go by different names (Conventions; Charters; Covenants; Declarations, etc.). The Nigerian Legal System has prescribed the modalities to be followed for international law to be received and applied in Nigeria. As per the relevant provisions of the Nigerian Constitution, ratification or accession of a treaty is not sufficient: the contents of these international instruments must be incorporated into a national piece of legislation and then enacted for it to be legally binding.

The reception of international law into Nigeria's legal system is governed by Section 12 of the Constitution which provides as follows:

No treaty between the Federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly. Based on the above, and the fact that Nigeria is a Dualist State, the application of any international instrument in Nigeria is not automatic after ratification; the National Assembly must enact it as a domestic piece of legislation.

Nigeria has ratified several international human rights instruments. Irrespective of whether the instrument is part of the UN human rights arrangement, regional or sub-regional; the common features are that, first, they stipulate the rights recognized therein; and secondly, they mention the obligations of the State Party towards their compliance. Even though there could be a few variations, the typology of the obligations owed by State Parties is to ensure the respect, promotion and protection of these rights. These apply to the case of prisoners who, in addition to the rights of a universal character, are afforded additional protection due to the fact that they are recognized as vulnerable individuals.

Within the UN human rights system, there are quite a number of instruments that grant recognition to the rights of prisoners. At regional and sub-regional levels, not so many instruments are in force. At

national level, there are some pieces of legislations that relate to the rights of prisoners. These constitute the core of this paper.

3.1 Prisoners' Rights within the United Nations Human Rights System

There is a need to assess relevant international, regional as well as national instruments with the aim of protecting and promoting prisoners' rights. Meanwhile, it is important to re-emphasise that for any international instrument to have a binding effect, such must be domesticated municipally in the Nigerian legislations. The United Nations' Human Rights System in the United Nations Human Rights System, many instruments exist for the purpose of protecting the rights of prisoners and decongest the prison as discussed below.

3.1.1 The Universal Declaration of Human Rights (UDHR)

It was adopted by the United General Assembly Resolution in 1948. The UDHR remains the first document of the whole United Nations human right instruments and greatly agreed to be the foundation of the international human right law as it sets out the ideal principles on the way state parties must treat their people. It is appropriate to mention that Nigeria is a state party to this instrument. In addition, Nigeria joined the United Nations in 1960 without reservation to the UDHR. To this effect, the UDHR is expressed in very clear terms, and the rights contained therein are universal. This is evident by the use of some phrases such as „no one“, „every one“, „every individual“ and „all persons“. The use of all these words denotes that the right as contained in the instrument is available to everyone at everywhere. This simply means that the right must be respected and protected everywhere, in which case, prison is inclusive.

Therefore, the state parties have a duty to uphold and make these universal rights a living reality for Everyone, everywhere. This reveals the whole essence of UDHR which states as follows: 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. From the foregoing, it is crystal clear that prisoners are entitled to all the rights set out in the instrument without discrimination.

3.1.2 International Covenant on Civil and Political Rights (ICCPR)

The adoption of the instrument was done by the General Assembly Resolution in 1966. The ICCPR is the main international instrument that enunciates the basis for fundamental civil and political rights. It seeks, among other things, to protect every human being from any form of discrimination. It was ratified by Nigeria in 1993. The covenants in the ICCPR are binding on all the member states. The content of ICCPR is similar in nature to that of UDHR. The notion of universality could be seen in the way the right is being spelt out in the instrument. For instance, this can be seen in the use of some words as contained in the ICCPR such as: „No one shall be...“ and „Everyone has a right to...“ These universal terms used in the ICCPR show that every form of discrimination is prohibited. This is evidently the significance of Article 2(1) where it is specified as follows:

Each state party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

An interpretation of the Article 2(1) of the ICCPR as stated above denotes that discrimination against human beings in any form is prohibited. Although, the non-discriminatory clause in the ICCPR does not categorize prisoners, the Article makes it illegal to subject any person to any form of discrimination centered on any of the grounds listed therein. The standard of non-discrimination and equal protection under the law as well as equality before the law devoid of distinction is vital to the effective protection of human rights. „Therefore, every human being has the inherent right to life, and this right shall be protected by law. No one shall be arbitrarily deprived of his life.“ Also, in countries which death penalty has not being abolished, sentence to death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the

Crime of Genocide. This penalty can only be carried out in pursuant to a final judgement rendered by a competent court. For instance, in the famous case of *Aliu Bello v A- General, Oyo State* where one Nosiru Bello who had been convicted of armed robbery by the High Court of Oyo State and was sentenced to death had filed an appeal against his conviction. Surprisingly, while his appeal was still pending before the Court of Appeal, the Anthony General of Oyo State recommended his execution. He was promptly executed.

The execution was declared illegal by the trial court and this was upheld by the Court of Appeal and the Supreme Court. The apex court also held that the premature execution constituted a blatant infringement of the deceased's fundamental right to life.

Thus, a person condemned to death is still entitled to his fundamental rights to life pending his execution. This is an indication that death row inmates do have some certain rights. The fact is that death sentence is against their first fundamental human right which is right to life. Therefore, it is an obligation as well as the basic duty of the prison officials to protect the right of the accused or convicted offender.

3.1.3 International Covenant on Economic, Social and Cultural Rights (ICESCR)

The International Covenant on Economic, Social and Cultural Rights was adopted in 1966 by the General Assembly Resolution and consequently ratified by Nigeria in 1993. It is a multidimensional and multilateral treaty. To this effect, this instrument listed an array of rights which are available to everyone on social and cultural rights, economic rights of natural persons such as right to education, adequate standard of living, health and wellbeing, housing and social security. Even though it makes no specific reference to prisoners, nevertheless, just as the ICCPR prohibits every form of discrimination, the ICESCR imposes an obligation on member states to make sure that the rights contained in the ICSECR are available and enjoyed by everyone. For instance, state parties to this covenant are to recognize the right of everyone to an adequate standard of living. The word „everyone“ includes prisoners. Equally, such rights include right to adequate food, clothing and housing as well as to continuous improvement of living conditions. Additionally, Article 12 recognizes the essence of giving everyone the highest attainable standard of physical and mental health which includes environmental hygiene.

3.1.4 Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel,

Inhuman or Degrading Treatment or Punishment

The Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was adopted in 1975 by the General Assembly Resolution. It seeks to protect all persons from all forms of torture, cruel, inhuman, degrading treatment or and punishment. What constitutes torture can be seen in the Declaration as stated thus:

Torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purposes as obtaining from him or a third person information or confession. Punishing him for an act he has committed or is suspected of having committed or intimidating him or other persons. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions to the extent consistent with the Standard Minimum Rules for the treatment of prisoners.¹

Torture constitutes an aggravated and deliberate form of cruel, inhuman or degrading treatment or punishment.² Article 2 of this Declaration makes it an offence to subject anyone to an act of torture or other cruel, inhuman or degrading treatment or punishment.²³ In addition, the Declaration places an

¹ Article 1 (1) Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, United Nation General Assembly Resolution 3452 (XXX) U.N. Doc. GAOR, 3452nd Session, 2433rd meeting, U.N. Doc. A/RES/3452 (XXX) (1975), Article 12 (1).

² *ibid* Article 1 (2); Nigel Rodley and Matt Pollard, *The Treatment of Prisoners under International Law* (Oxford University Press 2009) 8.

²³ *ibid* Article 2.

obligation on member states not to permit or tolerate such forms of treatment or punishment.³ According to Article 4 of the Declaration, it requires states to take necessary measures to prevent torture or other cruel, inhuman or degrading treatment or punishment within its jurisdiction.⁴

It is worthy of note that the protection of all persons from such is not limited to the above-mentioned instrument alone. Article 7 of ICCPR also prohibits such act.⁵ Recognizing the importance of adhering to internationally recognized standard of human right, legislation was made at the national level. This can be seen in the Constitution of the Federal Republic of Nigeria, which provides as follows:

No person shall be subject to torture or to inhuman or degrading treatment.⁶ Meaning that torture or other cruel, inhuman or degrading treatment cannot be justified in any circumstances, it is completely prohibited.

3.1.5 Principle of Medical Ethics Relevant to the Role of Health Personnel, Particularly, Physicians, in the Protection of Prisoners and Detainees against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

The adoption of this instrument was done by the General Assembly Resolution in 1982 and subsequently ratified in Nigeria on July 23, 2001. The purpose of this Charter is stated in the principle 1 of this United Nations' Instrument. It clearly defines the duty of health personnel, principally physicians, charged with the medical care of prisoners and detainees to provide them with adequate protection of their physical and mental health and treatment of disease of the same standard and quality as afforded those who are not imprisoned. Additionally, principle 3 makes it unlawful for medical personnel to engage in any professional connection with prisoners, which are not for the purpose to improve or protect their physical or mental health. Besides that, it is a gross misconduct for health personnel to participate actively or passively in an act which constitutes torture or to inhuman or degrading treatment of prisoners.

3.1.6 United Nations Safeguards Guaranteeing Protection of the Rights of those Facing Death Penalty

This instrument was adopted by the Economic and Social Council Resolution in 1984. This Convention allows death penalty particularly in a country where death penalty has not been abolished, though, only allowed on grievous offences. This instrument provides that: Even though it is allowed, capital punishment such as death penalty shall not be carried out pending any appeal.⁷ Therefore, anyone sentenced to death shall have the right to appeal to a court of higher jurisdiction, and steps should be taken to ensure such appeal shall be mandatory.

3.1.7 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)

CAT was adopted by the General Assembly Resolution in 1984. Considering the provision of Article 5 of the Universal Declaration on Human Rights as well as Article 7 of the International Covenant on Civil and Political Rights, the two sections contain similar provision that „no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment“. This provision is also made by the Convention which was adopted by the General Assembly in 1975.

It is apposite to mention that this Convention came into existence to give credence to and complement the provisions of the Declarations on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment earlier discussed. It is equally important to say that Nigeria is a party to this Convention and has been ratified by Nigeria. Based on the fact that this Convention was established to support the Declaration on Torture of 1975, hence, the state parties

³ ibid Article 3.

⁴ ibid Article 4.

⁵ No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. See ICCPR (n 11) Article 7; UDHR (n 7) Article 5.

⁶ The Constitution of the Federal Republic of Nigeria (n 6) Section 34 (1) (a).

⁷ ibid Article 8.

are encouraged to take effective measures to prevent torture in their respective jurisdictions. The Convention also places an obligation on state parties to criminalize all act of torture. In addition, Article 6 of Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment adopted by the General Assembly Resolution in 1988 also prohibits any act of torture.

3.1.8 Declaration on Basic Principle of Justice for Victims of Crime and Abuse of Power

This instrument was adopted in 1985 by the General Assembly Resolution. It was formed considering the fact that people throughout the world suffered harm as a result of crime as well as victims of abuse of powers. The rights of these categories of people had not been adequately catered for, and this necessitated the meeting that led to the adoption of this Convention for the purpose of protecting victims of crime as well as victims of abuse of powers who are frequently and unjustly subjected to loss, damage and injury.

Under this instrument, governments are encouraged to review their laws to embrace restitution as a feasible sentencing option in criminal matters. It also comprises some provisions that will make offenders to make restitution to victims, their relatives and dependants. For instance, return of property or payment of expenses incurred as a result of the crime.⁴²

Articles 4-6 of the instrument provide for access to justice and fair hearing to victims of crime and those involved in criminal matters. This is meant to strengthen judicial and administrative mechanisms that will enable the victims to obtain redress through formal procedure that are fair, expeditious, inexpensive and accessible. In addition, the responsiveness of judicial and administrative process to the needs of victims should be facilitated. Under Articles 12 and 13 of the instrument, provisions are made for compensation to victims of crime. State parties are encouraged to award financial compensation to victims who have sustained significant bodily injury or physical or mental health impairment as a result of serious crimes. From the points raised above, the instrument makes provisions for compensation to victims of crime, access to justice and speedy trial as well as restitution as an alternative to imprisonment which, in my own opinion, will eventually decongest the prisons if used accordingly. It is interesting to note that Nigeria has provided for restitution and compensation as non-custodial sentences in her statute, the Administration of Criminal Justice Act 2015.

3.1.9 United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules)

This instrument was put in place by the United Nations General Assembly Resolution in 1985. Basically, this instrument conceives juvenile as an integral part of the society which requires great attention by the member states. It contains a set of rules to be applied to juvenile offenders. The age of a juvenile varies from one legal system to the other but range from 7 to 18 years. Additionally, „in any case that involves juvenile, well-being of the child shall be the guiding factor and capital punishment shall not be imposed on a juvenile“.

3.1.10 Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment

This instrument was adopted in 1988 by the General Assembly Resolution. The purpose of this instrument is to protect all persons under any form of detention or imprisonment. Article 1 of the instrument provides that:

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.

The instrument encompasses right to fair hearing, speedy trial, assistance of legal counsel and right to medical treatment among other things. Therefore, the sole purpose of this instrument is to ensure that prisoners are treated in humane manners. In addition, the instrument also empowers the judicial or other suitable authorities to review depending on the facts and the circumstances of each case, the continued detention of imprisoned persons, provided the review is done thoroughly to assist decongest the prisons.

3.1.11 United Nations Standard Minimum Rules for Non-Custodial Measures (the Tokyo Rules)

This instrument was put in place by the General Assembly Resolution in 1990. The main purpose of this instrument is to promote the use of non-custodial measure as an alternative to imprisonment. The instrument intends to promote community involvement in the management of criminal justice system particularly in the treatment of offenders, and also to promote a sense of responsibility on the part of the offenders towards the society. State parties are equally encouraged to develop a non-custodial measure in their respective national laws to provide other options that will reduce the use of imprisonment which will eventually be an effective measure to decongest the prison. It is suffice to say here that Nigeria has provided for community service, compensation to victims of crimes and restitution as non-custodial sentences in her national law (Administration of Criminal Justice Act 2015).

3.1.12 Optional Protocol to the Convention against Torture and other Cruel, Inhuman nor Degrading Treatment or Punishment (OPCAT)

This is an instrument put in place by the General Assembly Resolution in 2002. It was made majorly to strengthen the purpose of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. It is also meant to strengthen the protection of persons deprived of their liberty. The main objective of this instrument can be seen in Article 1 which states as follows:

The objective of the present Protocol is to establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.⁵⁷

The interpretation of the forgoing is that the instrument intends to establish a preventive system of regular visits to places of detention such as prisons and other detention homes, so as to protect the detainees from torture and other cruel, inhuman or degrading treatment or punishment. State parties are also encouraged to set up committees at the national level designated to serve as visiting bodies to places of detention for the prevention of torture and other inhuman or degrading treatment or punishment. It is imperative to mention that this instrument is specifically made on the prevention of torture and other inhuman or degrading treatment or punishment in places of detention. This reveals how international communities care about how member states treat people in detention in their respective states.

3.1.13 United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (the Bangkok Rules)

It was adopted by the General Assembly Resolution in 2010 considering the fact that the Standard Minimum Rules for the Treatment of Prisoners apply to all prisoners without discrimination. This instrument was adopted more than 50 years ago but did not draw specific attention to women peculiar needs. Having considered the increasing number of women prisoners globally, the importance and urgency of the need to bring to light the real kind of consideration that should apply to women prisoners led to the adoption of the Bangkok Rules which provides distinct considerations to women prisoners. State parties were called on to respond by taking appropriate steps to promote and respect the right of women prisoners.⁶⁰ It is important to mention that this Bangkok Rules did not replace the Standard Minimum Rules for the Treatment of Prisoners or the Tokyo Rules but came to complement and supplement the provisions contained in those set of rules and only shed more light on the treatment of women prisoners.

Personal hygiene of women in prison is very important, as such, rule 5 of this instrument provides as follows: The accommodation of women prisoners shall have facilities and materials required to meet women's 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, and in particular, women involved in cooking and those who are pregnant, breastfeeding or menstruating.

The instrument provides that imprisonment of women should only be considered in extreme cases, that

is, as last option, and their children should be put into consideration. If all the principles are adhered to strictly, it will help to decongest the prison. Nigeria as a member state is directed to consider incorporating these rules into her national laws and always consider them as reference points. It is an attempt of intensification of efforts to eliminate all forms of violence against women. The instrument makes provision for alternative measure rather than imprisonment for women.

3.1.14 United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)

It is an instrument adopted by the United Nations General Assembly Resolution in 2015. It is known as:

The Nelson Mandela Rules, to honour the heirloom of late President of South Africa, Mr Nelson Rolihlahla Mandela, who spent 27 years in prison in the course of his struggle for global human rights, equality, democracy and promotion of a culture of peace. The way a country treats its prisoner's matters a lot as expressed by Nelson Mandela thus:

No one truly knows a nation until one has been inside its jail. A nation should not be judged by how it treats its highest citizens, but its lowest ones.

Even though not legally binding, the Nelson Mandela Rules provides guiding principles for national law for people held in prisons and other forms of detention. According to the United Nations Standard Minimum Rules for the Treatment of Prisoners, the living conditions are one of the major factors which determine a prisoner's state of mind, self-esteem and dignity. The conditions of how and where an individual eats, sleeps and uses the toilet have a huge effect on mental and physical well-being of that individual. The same applies to inmates, most especially because they do have limited choices as a result of their confinement. The poor conditions of the prison do not only violate the rights to dignity, but also amounts to cruel, inhuman or degrading treatment. The Standard Minimum Rules provides detail guidelines on the standards of accommodation, hygiene and nutrition as follows:

All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation.

The convention also encourages member states to accord humane treatment to their prisoners, and states as follows:

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.

3.2 Regional Instruments

Many regional instruments are available to protect the right of prisoners. Such instruments to which Nigeria subscribe are discussed below.

3.2.1 African Charter on Human and Peoples' Rights (Banjul Charter)

Banjul Charter was made in Banjul in January, 1981 and was adopted by the Organization of African Unity (OAU) Assembly of Heads of State and Government. All the 53 OAU Member States are party to the African Charter. It was subsequently ratified in Nigeria in 1983.

As a result of this ratification, Nigeria enacted African Charter on Human and People's Rights (Ratification and Enforcement) Act to support and uphold the substantial element of the Banjul Charter. It is an Act that enables effect to be given in the Federal Republic of Nigeria to African Charter on Human and People's Rights. The Banjul Charter is a regional instrument aimed at promoting and developing a framework for the protection of people's rights both at regional and national level. The purpose of ratification and enforcement of the Act can be seen by the way it is couched in the preamble as follows:

Whereas a Charter entitled the African Charter on Human and People's Rights has been duly adopted by divers States in Africa and Nigeria is desirous of adhering to the said Charter;

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And whereas it is necessary and expedient to make legislative provision for the enforcement in Nigeria of the said Charter by way of an Act of the National Assembly; and As from the commencement of this Act, the provisions of the African Charter on Human and People's Rights which are set out in the Schedule to this Act shall, subject as thereunder provided, have force of law in Nigeria and shall be given full recognition and effect and be applied by all authorities and persons exercising legislative, executive or judicial powers in Nigeria.

Equally, African Charter on Human and People's Rights, though, a regional instrument, also prohibits any form of torture. Article 4 of the African Charter of Human and Peoples Rights provides as follows: Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of his Life.

Similarly, this regional instrument also corroborate this for example, Article 7(1) (d) of the African Charter further guarantees the right to liberty of a suspect.

3.3 National Instruments

The national instrument available for protection of human right in Nigeria is the the 1999 Constitution of The Federal Republic of Nigeria as amended in 2011. This is discussed below.

3.3.1 The Nigerian Constitution

The Constitution is the major national instrument that spells out fundamental rights of individuals including prisoners. The following fundamental human rights have been identified by the Constitution as inalienable to everyone, regardless of having being imprisoned:

Right to life, Right to dignity of person, Right to freedom of thought, conscience and religion,⁸¹ Right of freedom of expression, Right to remain silent, Right to be presumed innocent until proved guilty, Right to adequate time and facilities to prepare for his defense, Right to defend himself or be represented by counsel during trial, Right to be brought before a court within a reasonable time and Compensation clause.

Section 33 (1) of the 1999 Constitution provides that every person has a right to life, and no one shall be deprived intentionally of his life, except in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria.

To this end, any person who is positioned to be in charge of a prisoner has no right to deprive such prisoner of his life through any means; it must be saved in the execution of the order of the courts of law. Also, in the case of *Peter Nemi & Ors v Attorney General of Lagos State*, the appellant had been on death row for eight years. He argued that his fundamental human rights of freedom from inhuman and degrading treatment had been breached. The prosecution counsel asserted that as a condemned prisoner, he had no fundamental human rights after conviction and sentence. In rejecting this argument, Justice Uwaifo queried:

Does it mean that a condemned prisoner can be lawfully starved to death by the prison authorities? Can he be lawfully punished by slow and systematic elimination of his limbs one after another until he is dead? Would any of these amounts to inhuman treatment or torture? Is a condemned prisoner not a person or an individual?

For to end the life of a condemned person, it must be done according to the due process of law and it is said that the due process of law does not end with the pronouncement of sentence. Therefore, a condemned person is also a human being as well and should be treated as such. This is because all other rights rest upon this right to life; immediately the life is taken, all other rights become useless. Life is given by God and it is only the giver of life that has the right to take it. Therefore, the legality of the death penalty should not be confused with the illegality exhibited in the case. The law is clear. Some offences like armed robbery, murder, witchcraft and adultery attract death penalty and this position of law remains unchanged.

In Nigeria, most of the information used during death sentence is based on confession obtained by duress. Therefore, the use of torture by the police in order to extract a confessional statement should always be questioned in court. If a suspect made a statement under pressure, threat or torture, it must not be used as evidence in court. The prosecutor has a responsibility to prove that the statement was

made voluntarily. Section 28 of the Evidence Act, Laws of the Federal Republic of Nigeria, is explicit on the prohibition of using information extracted from the suspect by means of threats, promises or force: „A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the court to have been caused by any inducement, threat or promise“. Also, some International instruments make provision for the protection of the rights of prisoners against such treatment.

There is no gainsaying of the fact that ill treatment and blatant erosion of pre-trial detainees' fundamental human right in the Nigerian Prisons remains unquestionably legally and morally wrong. The conditions of the prisons and the attitude of prison staff abruptly undermine the entitlement of pre-trial detainees as awaiting trials to the local and internationally provided fundamental rights. There are vast arrays of human rights provided by the Constitution for convicted offenders as well as pre-trial detainees on access to fair treatments while in custody. It should be noted that prisoners generally are entitled to their fundamental human rights.

Apart from the Constitution of Nigeria, another national instrument that also protects the right of everyone including prisoners is the African Charter on Human and Peoples Right (Ratification and Enforcement). This instrument was put in place by the National Assembly in 1983 to make legislative provisions for the enforcement of the provisions of African Charter on Human and People's Rights in Nigeria.⁸ The following provision was made to further safeguard the interest of prisoners in Nigeria:

Every individual shall be entitled to the enjoyment of the rights and freedom recognized and guaranteed in the present Charter without distinction 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.⁹² 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.

All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.⁹³

4.0 Conclusion and recommendations

In the foregoing discussion, it is obvious that legal instruments are available for the detained and the condemned criminals under the international, regional and national instruments that guarantee the rights of an individual irrespective of his/her location; whether in prison or not. Unfortunately, Nigeria has failed in its obligations to comply with the provisions of these instruments despite being a state party simply because they are not domesticated. It is my humble submission that all hands must be on deck for domestication of the international instruments as well as enforcement of, and compliance with, the laws that are meant to decongest the prison and guarantee the rights of the detained and condemned prisoners in Nigeria. This is *sine qua non* in achieving a functional and efficient prison administration in Nigeria. There is the need to move beyond the ratification to domestication of these instruments through the National Assembly. Non-legislative measures are needed to tackle the continued disrespect of the rights of prisoners: first, policies on how to run the prisons with prisoners mainstreamed therein; awareness within prisons; complaint mechanisms through victim empowerment associations; an ombudsman; effective administrative and judicial proceedings against those who violate the rights of prisoners.

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origin, property, birth or other status. See International Covenant on Economic, Social and Cultural Rights, United Nations General Assembly Resolutions 2200A (XXI), U.N. Doc. GAOR, 2200th Session, 1496th meeting, U.N. Doc. A/RES/2200(XXI) (1966), Article (2) 2; The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health See International Covenant on Economic,

Social and Cultural Rights, United Nations General Assembly Resolutions 2200A (XXI), U.N. Doc. GAOR, 2200th Session, 1496th meeting, U.N. Doc. A/RES/2200(XXI) (1966), Article 12 (1).

ICCPR (n 11) Article 11.

ibid Article 12.

Article 1 (1) Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, United Nation General Assembly Resolution 3452 (XXX) U.N. Doc. GAOR, 3452nd Session, 2433rd meeting, U.N. Doc. A/RES/3452 (XXX) (1975), Article 12 (1).

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ibid Article 3.

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No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. See ICCPR (n 11) Article 7; UDHR (n 7) Article 5.

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No person under any form of detention or imprisonment shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. No circumstance whatever may be invoked as a justification for torture or other cruel, inhuman or degrading treatment or punishment. The term „cruel, inhuman or degrading treatment or punishment" should be interpreted so as to extend the widest possible protection against abuses, whether physical or mental, including the holding of a detained or imprisoned person in conditions which deprive him, temporarily or permanently, of the use of any of his natural senses, such as sight or hearing, or of his awareness of place and the passing of time. See Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, United Nation General Assembly Resolution 43/173 U.N. Doc.

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*Declaration of Basic Principle of Justice for Victims of Crime and Abuse of Power, United Nation General Assembly Resolution 40/34, U.N. Doc. GAOR, 40th Session, 96th meeting, U.N. Doc.A/RES/40/34 (1985). See the preamble. ⁴² *ibid* Article 8 and 9.*

ibid Article 5.

*According to this Instruments victims „Victims" means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that do not yet constitute violations of national criminal laws but of internationally recognized norms relating to human rights. *ibid* Article 6 (a) and Article 18.*

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