

## **An Overview of the Legal Framework for the Protection of Human Rights of Custodial Inmates: The Case of Nigeria.**

**Emmanuel Anekwe Nwakeze\***

### **Abstract**

A number of historical and constitutional milestones have inspired the evolution and growth of human rights globally. They include; The Magna Carta of England (1215), The United States Declaration of Independence (1776), The French Declaration of the Rights of man and citizen (1789), The American Bill of Rights of 1791 and the United Nations Declaration of Human Rights (1948). Taken together, these instruments underscore the universal imperative of human rights. The concept of universality posits that human rights are general and of equal application to all human beings everywhere regardless of their culture and level of political development. It also posits that human rights are not dependent on the fact that "states or groups of states may behave differently from each other as far as their political, economic policy and culture are concerned". The notion of entitlement to human rights by humankind derives from the inherent dignity of the human persons. It therefore behoves on the government of all nations to ensure that all persons deprived of their liberty shall be treated at all times with dignity, humanity and respect, notwithstanding the location and circumstances in which they are found.

**Keywords:** Human rights, Custodial inmates, Prisoner rights, Correctional facilities, Principles, Declarations.

### **1. Introduction**

Human Rights are the basic entitlements of all human beings in any society<sup>1</sup>. They pertain to humans by virtue of their humanity. They are the irreducible minimum requirement for civilized human existence in any society. The logical implication of this is that the inmates of the various custodial centres whether in Nigeria or elsewhere are also entitled to the enjoyment of human

---

\* **Emmanuel Anekwe Nwakeze\*** B.Sc, M.Sc, LL.B, BL, Assistant Controller-General of Corrections (Operations) Abuja. E-mail: anaekwezeoba@gmail.com

<sup>1</sup>Abdullahi Ahmed An-naim Universal Rights Local Remedies (Interights, Afronet, GT2, 1997) p7

rights by virtue of their humanity. As this paper does not intend to delve into the usual academic debate as to the differences between human rights and fundamental rights, we shall employ both terms interchangeably. In this regard, fundamental right is a right which stands above the ordinary laws of the land and which in fact is antecedent to the political society itself. It is a primary condition to a civilized existence...<sup>2</sup>. A distinguished and eminent scholar, Professor M.A Ojomo has stated that: “simply put human rights are inherent in man, they arise from the very nature of man as a social animal. They are those rights which all human beings enjoy by virtue of their humanity whether black, white, yellow, Malay or red, the deprivation of which would constitute a great affront to one’s natural sense of justice”<sup>3</sup>. Human rights exist irrespective of whether or not they are recognized by a given society or legal system. Indeed, it is trite that human rights existed prior to any human society or legal system. Thus every human society or legal system which fails to recognize them is patently unjust and unsustainable<sup>4</sup>

## **2. Legal Framework for the Protection of Human Rights of Custodial Inmates**

As the world advances into the third millennium, there is now more than ever before an appreciable increase in the world’s awareness and recognition of the subject of human rights. This awareness and understanding has been made possible by the exponential development in technology, particularly ICT, which has ensured the building of a wealth of information, ideas, events and interpretations. About seventy-six years ago, on December 10<sup>th</sup> 1948, the United Nations General Assembly (UNGA) set the ball rolling by adopting a document called the Universal Declaration of Human Rights (UDHR). This was the first fully international document recognizing “the inherent dignity” of each person. The preamble to the UDHR asserts the protection of equal and inalienable right of all members of the human family

---

<sup>2</sup>Ransome Kuti & Ors, V. Attorney-General of the Federation (1985) 5NWLR (pt. 10) 211 at-229-230

<sup>3</sup> M.A Ojomo, The Development of Individual Rights and Owasanoye, Eds, Individual Rights under the 1989 Constitution (Nigeria Institute of Advanced Legal Studies (1993) P.1

<sup>4</sup> The Popular revolts that have led to the collapse of some countries and governments around the world are traceable to the failure of those States to protect and respect the fundamental rights of citizens.

as the foundation of freedom, justice and peace in the world<sup>5</sup>. As a domestic and international regime, the human rights ideal sets the minimum common standard of achievements for all peoples and nations.

This idea has been adopted by several international treaties and conventions. Also, all democratic and progressive nations in the world have followed the UN example by extending the provisions of the UDHR in their various national constitutions and other laws.

Every person no matter his station or condition in life is vested with certain inalienable and inviolable rights. Every person is, therefore, entitled within the permitted limits of the law, to the full enjoyment of his or her human rights. An inmate (a prisoner) being a human being is also entitled to human rights. Granted that the circumstances of his or her being in custody necessarily restricts some of these rights, yet the retained rights must be protected and respected at all times<sup>6</sup>.

### **3 International Provisions for Prisoners' Rights**

The legal structure of prisons transcends the bounds of municipal law. The first major attempt at internationalizing the treatment of offenders began with an international congress held in London in 1872 which resulted in the formation of the International Prison Commission (IPC). The First World War, however, interrupted the activities of the commission. At the end of the world war, the League of Nations was formed. Also, the International Penal and Penitentiary Commission (IPPC) was formed in 1934. The League of Nations approved and adopted a resolution endorsing a set of rules as guidelines for the administration of Prisons. World War II opened new vistas in international protection for prisoners. The first and most basic post second war document on this is the Universal Declaration of Human Rights UDHR adopted by the UN in December 1948. In 1955, the IPPC prepared draft rules of minimum standards for prisoners. These draft rules were adopted by the first UN congress on prevention of crime and treatment of offenders held

---

<sup>5</sup>Agomoh U. & Ogun B. Manual for Training of Prisons Officers-Trainers on United Nations Standard Minimum Rules, PRAWA (2000) p.18-20

<sup>6</sup>Nwadiobi Chiemeka et al Towards Good Standards (A Manual for Prisons Officers PRAWA (2001) p.13

in Geneva later in the same year and approved by the Economic and Social Council (ECOSOC) of the UN by its Resolution 663 (XXIV) of July 31, 1957 and 20761 (LXII) of May 13, 1957. These became the Standard Minimum Rules for the treatment of prisoners (SMR) now called the 'Mandela Rules'

The SMR is a compendium of 95 Rules made by the UN in 1955 though approved in July 1957. The UN has been concerned about the humane treatment of all human beings, including those who are imprisoned. The Rights protected include the following:

- i. The right to life and integrity of the person
- ii. The right to be free from torture or other ill treatment
- iii. The right to health
- iv. The right to good accommodation
- v. The right to due process of law
- vi. The right to freedom from discrimination of any kind
- vii. The right to freedom from slavery
- viii. The right to freedom of conscience and thought
- ix. The right to freedom of religion
- x. The right to respect for family life
- xi. The right to self-development<sup>7</sup>

#### **4. Principles, Minimum Rules and Declarations**

With respect to the treatment of inmates in Correctional facilities, some of the important principles and minimum rules (Mandela Rules) for the treatment of prisoners include;

- i. UN Standard Minimum Rules (Mandela Rules) for the treatment of prisoners
- ii. Body of principles for the protection of all persons under any form of detention or imprisonment

---

<sup>7</sup>Emmanuel A. Nwakeze, "Prisoners' Rights and the Nigerian Penal System: An Appraisal, LLB Project, University of Nigeria, Enugu-Campus (2005) p.15

- iii. Basic principles for the treatment of prisoners
- iv. UN Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines)
- v. UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules)
- vi. UN Rules for the Protection of Juvenile Deprived of their liberty
- vii. Declaration on the Elimination of Violence against Women
- viii. UN Standard Minimum Rule for non-custodial measures (Tokyo Rules)
- ix. Principles on the Effective Investigation and Documentation of Torture and other civil, inhuman and degrading Treatment or Punishment
- x. Safeguards Guaranteeing Protection of the Rights of those facing the Death Penalty
- xi. Code of Conduct for Law Enforcement Officials
- xii. Basic principles on the use of force and firearms by law Enforcement officials
- xiii. Basic principles on the Role of Lawyers

There also exist the Principles 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.

## **5. Instruments Specific to the African Union and Africa**

As a member of the African Union and its predecessor, the Organization of African Unity (OAU) Nigeria has signed and ratified a number of other relevant treaties, conventions, protocols and charters. These include:

- i. African Charter on Human and Peoples Rights
- ii. African Charter on the Right and Welfare of the Child 1990 (Right of the African Child)
- iii. Protocol to the African Charter on Human and Peoples Rights on the Right of Women in African (The Maputo Protocol).

- iv. Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (Robben Island Guidelines)
- v. Kampala Declaration, Prison Conditions
- vi. Kadoma Declaration on Alternatives to Service Orders in Africa, 1997 (Kadoma Declaration)
- vii. Abuja Declaration on Alternatives to Imprisonment (Abuja Declaration)
- viii. Ouagadougou Declaration and Plan of Action on Accelerating Prisons and Penal Reforms in Africa 2002 (Ouagadougou Declaration)
- ix. Lilongwe Declaration on Accessing Legal Aid in Criminal Justice System in Africa 2004 (Lilongwe Declaration)

#### **6. Instruments Specific to Nigeria**

- i. 1999 Constitution of the Federal Republic of Nigeria (as amended)
- ii. Administration of Criminal Justice Act (ACJA) 2015
- iii. Administration of Criminal Justice Laws of the various States in Nigeria
- iv. Nigerian Correctional Service Act 2019
- v. The Child Right Act 2003
- vi. Anti-Torture Act 2017
- vii. Violence Against Persons Prohibition Act
- viii. Nigerian Correctional Service Standing Orders (Custodial and Non-Custodial) 2021
- ix. Nigerian Correctional Service Human Rights Training Manual pp 3-4

#### **7. Conclusion**

All human beings are entitled to human rights derived from the inherent dignity of the human persons. It, therefore, behoves on the government of all the nations to ensure that all persons deprived of their liberty shall be treated at all times with humanity and respect. Nigeria cannot afford to lag behind or

abdicate its responsibility to its custodial inmates as doing so will constitute a sad commentary to its status as a civilized country.