

EXAMINING THE CONDITIONS OF WOMEN'S RIGHTS UNDER THE NIGERIAN CRIMINAL JUSTICE SYSTEM*

Abstract

This paper looked at the treatment and the conditions of women's rights under the criminal justice system in Nigeria and the issues arising within the context. In criminal justice administration, it is an established legal standard that the principles of rule law, due process, legal equality and equity must be adhered to by all the institutions and machineries involved. However, as exposed in this paper, the treatment and conditions of women under the criminal justice system in Nigeria and the world at large show that women are been discriminated under the criminal justice system as a result of gender bias and gender inequality of our culture that is rooted in patriarchy. These discriminations come in the form abuses, deprivations and rights violations. Findings showed that the women's rights violations under the administration of criminal justice system in Nigeria have often been occasioned by the existence of the systemic legal, economic, political, social, cultural disparities and gender inequalities. In the face of the heightened gender disparities against women under the criminal justice system administration in Nigeria, this paper generally recommended for a proactive gender-balanced reforms to eradicate the disclosed disparities and inequalities affecting women's rights in the administration of Criminal Justice in Nigeria.

Keywords: Women's Rights, Criminal Justice System, Nigeria, Condition

1. Introduction

In the administration of the criminal justice system, it is an ideal legal standard that the principles of rule law, due process, legal equality and equity must be adhered to by all the institutions and machineries involved. The institutions and machineries involved in the administration of justice in Nigeria are expected to be impartial and gender-responsive. An x-ray of the treatment and conditions of women under the criminal justice system in Nigeria shows that notwithstanding that the Constitution of the Federal Republic of Nigeria and international human rights instruments prohibit discrimination against women on any reason¹, there still abound gender disparity and discriminations against women under the Criminal Justice System Administration in Nigeria. The Director of programmes at CLEEN Foundation in 2024 noted that there are systemic flaws perpetuating gender-based discrimination in the Nigeria criminal justice system.² These systemic flaws he highlighted to include discriminatory laws, inadequate female representation in law enforcement, proxy arrests, poor detentions with substandard facilities and healthcare and cultural barriers hindering abuse reporting.³ Due to the inherent problem of gender disparity and discrimination against women under the criminal justice system administration in Nigeria, this paper seeks to investigate and determine the fate, treatment and conditions of women's rights under the criminal justice system in Nigeria, expose the areas of concern necessitating the gender disparity and discrimination against women under the criminal justice system administration in Nigeria and offer recommendations for a redress.

2. Meaning of Criminal Justice System

Criminal justice system can be generally described as the system of law enforcement directly involved in the apprehension, trial, defending and punishing persons for criminal offences. The Criminal Justice is the sum total of society's activities to defend itself against the actions it describes as criminal.⁴ The Criminal Justice system has also been described as an apparatus the society uses to enforce the standards of conduct necessary to protect individuals and the community.⁵ It also refers to that integral fusion of machineries of government that aim to enforce law and redress crime. It has also been described as the system in a society by which people who are accused of crimes are judged in court.⁶ Criminal justice system has also been described as an institution and practices of Government whose main focus is to mitigate and deter crime, uphold social control and sanction individuals who violate the set laws of a specific state with rehabilitation and criminal penalties.⁷ The criminal justice system in Nigeria therefore would comprise the whole gamut of criminal laws (substantive and adjectival) and the enforcement institutions/machineries. The enforcement machineries would include the Police, Prosecutors, judiciary and the prison services. The gamut of criminal laws and the enforcement machineries constitute the components of the criminal justice system in Nigeria. The enforcement institutions and machineries which include the

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¹See CEDAW, Article 1 & Universal Declaration of Human Rights (UDHR) article 1, which uphold the issue of impartiality before the law and nondiscrimination for all humans. CEDAW in particular is against any distinction, restriction or exclusion on basis of sex capable of impairing the enjoyment of women's rights. Both also encourage the social, economic, cultural and governmental rights and liberties of women. See also section 42 of the Nigerian constitution which prohibits all forms of discrimination against persons either based on community of descent, ethnic group, place of origin, sex, religion or political opinion.

²M Ileyemi, 'Foundation Highlights Plight of Women in Nigeria's Justice System' *Premium Times online*, December 14, 2024 <<https://www.premiumtimesng.com/news/top-news/761223-foundation-highlights-plight-of-women-in-nigerias-justice-system.html>> accesses on 16th July 2025.

³ *Ibid.*

⁴F Adler, GOW Mueller & WS Laufer, *Criminal Justice: An Introduction* (2nd Ed, McGraw Hill Higher Education, 2000) p.7 7.

⁵The President's Commission on Law Enforcement and Administration of Justice, *The Challenge of Crime in a Free Society* (United States Government Printing Office, Washington D. C., February, 1967), p. 7

⁶Cambridge English Dictionary online< <https://dictionary.cambridge.org/dictionary/english/criminal-justice-system> > accessed 16th July, 2025.

⁷AM Adebayo, *Administration of Criminal Justices System in Nigeria*, (Lagos: Princeton Publishing Co, 2012), p.2.

Nigeria Police Force, the Attorney-General and Minister/Commissioner for Justice including prosecuting law officers, the Judiciary and the Nigeria Prison Service are required to work hand in hand to address crime.

Nigeria uses a tripartite system of criminal law and justice: the Criminal Code (based on English Common Law and legal practice); the Penal Code (based on Maliki Law and a Muslim system of law and justice); and Customary Law (based on the customs and traditions of the people).⁸ In accordance with the above system of law and provisions of Administration of the Criminal Justice Act, 2015, the administration of criminal justice involves three main stages namely ; arrest stage, trial stage and correction station.⁹

3. Objectives the Criminal Justice System

The criminal justice system in Nigeria is based on the general principle that an accused is presumed innocent until proven guilty.¹⁰ In the United Kingdom, the objective of the criminal justice system is stated to be; *to deliver justice for all, by convicting and punishing the guilty and helping them to stop offending, while protecting the innocent*.¹¹ In Nigeria, the objective of the criminal justice system is expressed as the purpose of the Administration of the Criminal Justice Act, 2015 thus: 'To ensure that the system of administration of criminal justice in Nigeria promotes efficient management of criminal justice institutions, speedy dispensation of justice, protection of the society from crime and protection of the rights and interest of the suspect, the defendant and the victim.'¹² From the foregoing, it could be deduced that the objectives of criminal justice system involves taking steps to protect the society from crime, to punish the guilty and protecting the innocents.

4. Women and Crime: Nature of Female Offenders in Nigeria

Crime in the sense of criminal offence is an act or omission penalized by law.¹³ The word 'offence' has been used in both Nigerian Criminal Code and Penal Code¹⁴ and was defined as an act or omission which renders the person doing the act or making the omission liable to punishment under the Code or under any Act or Law.¹⁵ Though it is true that no particular gender is immune to crime, gender has been pointed out as one of the most important predictors of criminal behavior. There is a body of literature affirming that women tend to engage in some types of crime or criminal behaviour as against the types committed by their male counterparts due to several motivational reasons.¹⁶ Offences committed by women are closely linked to poverty and often a means of survival to support their family and children. Put simply, a poor woman would commit crime in order to put food on the table for her children.¹⁷ Some contemporary scholars have also pointed out that quite number of socio-cultural variables including but not limited to cultural norms and values, gender discrimination, social network, poverty, limited access to education and employment opportunities are linked to the issue of female criminality.¹⁸ The Chief Justice of Nigeria in one of her paper presentations in 2024 noted that the involvement of women in crime can be attributed to a number of factors such as unemployment, low wages, divorce, separation, economic and psychological abuse from a spouse, dysfunctional family units, poor living conditions and being the breadwinner of the home, to name just a few. That though not every woman facing any of these challenges will resort to crime, it cannot be denied that lack of a support system and coping mechanisms are the culprits for some.¹⁹ In contrast to male prison populations, women mainly commit petty crimes, theft and fraud and studies have demonstrated that prior emotional, physical, and/or sexual abuse contributes to women's criminal behaviour.²⁰ Presently, statistics have shown that women constitute about 2% of Nigerian prison population; with male inmates accounting for 97.8% while female offenders account

⁸CD Ebeniro, 'The Problems of Administration of Justice on Female Offenders in Nigeria' (2011) Volume 4, No. 2 *African Journal of Criminology & Justice Studies*, p.28.

⁹ G Ozuru & O Ogunwande, 'Women and the Nigerian Criminal Justice System: A Human Right Perspective' (2020) 2 (3) *IJOCLLEP*, 158-166 <<https://nigerianjournalonline.com/index.php/IJOCLLEP/article/download/996/980>> accessed on 15th July, 2025.

¹⁰ Constitution of the Federal Republic of Nigeria, 1999 (as amended), Section 36 (5).

¹¹The National Archives of the UK Government, 'Working Together for Justice' <http://webarchive.nationalarchives.gov.uk/20100806152150/http://www.cjsonline.gov.uk/aims_and_objectives> assessed 12th July, 2025.

¹²Administration of the Criminal Justice Act, 2015, Section 1 (1).

¹³ F Stephen, *History of the Criminal Law of England* (1883) Vol. 2, p.76.

¹⁴ Cap. 89 Laws of Northern Nigeria, 1963 (as applicable and amended).

¹⁵ Criminal Code Act, Cap C38 Laws of the Federation of Nigeria, 2004, Section 2.

¹⁶ HA Otakey *et al*, 'An analysis of the cause pattern and trend of female criminality and attendant effects in Minna Niger State' (2021) Volume 4 Issue 2 *Gusau Journal of Sociology*, 316-335.

¹⁷ S Walklate, *Gender Crime and Criminal Justice*, (U.S.A., Willian Publishing, Portland, 2004).

¹⁸ MC Nwadike-Fasugb, PC Ezeah, CE Ikezue, 'Determinants and Consequences of Female Criminality in Nigeria' (2025) Vol 2 No. 1, *Multidisciplinary Journal of Management and Social Siences (MJMSS)*, 91-98 at p.94; C Braus, 'Women, crime, and the Criminal Justice System' (2017) Vol. 43 *Annual Review of Sociology*, 263-281. R Briend & D Fassin, 'Female Criminality in Different Contexts and Social Milieus: a Theoretical and Empirical Analysis' (2020) Vol 11(1), *International Review of Social Research*, 86- 118.

¹⁹ KM Kekere-Ekun, 'Empathy and Action: Women and Girls Incarcerated' A paper presented to the International Association of Women Judges (and its affiliate Associations) as well as members of the National Association of Women Judges, Nigeria (NAWJN) on th is 3rd occasion of the celebration of the International Day of Women Judges on 8th March, 2024 <<https://www.iawj.org/idwj-2024-nigeria-association-of-women-judges>> accessed on 17th July 2025.

²⁰For example, studies in the U. S. have demonstrated that "one of the most significant risk factors is prior victimization (Women Offenders: Programming Needs and Promising Approaches, National Institute of Justice, 1998). According to the 2002 Survey of Inmates in Local Jails, a national survey of jail inmates conducted every 5 to 6 years, 36% of female inmates reported they had been sexually abused in the past (Profile of Jail Inmates, 2002, Bureau of Justice Statistics, 2004).

for approximately 2.2%.²¹ This means that females still constitute minority of offenders' population in incarceration, suggesting that women commit less crime compared to men in Nigeria.

5. An X-Ray of the Treatment and Conditions of Women's Rights Under the Criminal Justice System in Nigeria

The section will x-ray the Nigerian criminal justice system through its stages from arrest to prosecution, adjudication, sentencing and correction as it concerns female offenders, women's rights and their experiences under the justice system. Undeniably, women suffer a lot of discriminations and deprivations under the Nigerian Criminal Justice administration. Women's rights are been violated under our traditional and informal justice system, at the time of arrests, pre-trial and detention times, trial stage, post-trial stage (prison stay) and post-prison stage. The problems associated with treatment and condition of women's rights under the criminal justice system in Nigeria will be discussed based on the issues arising in the context as follows:

- (a) Women under the informal/traditional criminal justice system.
- (b) Gender-specific / discriminatory status offences.
- (c) Discrimination and rights abuses during arrest, search and detention.
- (d) Discrimination and rights abuses during trial stage.
- (e) Discrimination and rights abuses during post-trial stage (Imprisonment / Detention).

Women under the Informal/Traditional Criminal Justice System

It is not debatable that women in Nigeria are at one point or another are made to face the informal/traditional justice systems of different communities, which the community may perceive as more legitimate than formal courts and in tune with local customs. Regrettably, it is usually very difficult to apply human rights standards to informal justice systems and they rarely guarantee women's right to equality before the law. Most informal/traditional justice systems are dominated by male elders or community leaders and tend to perpetuate discrimination against women, largely excluding women from decision making and preserving patriarchal notions of how men and women should behave.²²

Gender-Specific / Discriminatory Status Offences

Notwithstanding that Section 42(1) of the Constitution of the Federal Republic of Nigeria, 1999 prohibits discrimination on account of gender, there abound discriminatory gender specific/status offences under the Nigerian criminal law regime. The term 'status offences' refers to laws prohibiting certain actions towards persons based on their sex, race, nationality, religion, age etc. In many countries where criminal sanctions are used to curb sexual or religious 'immorality', offences such as adultery, sexual misconduct, violations of dress codes or prostitution penalise women exclusively or disproportionately.²³ Some studies also suggest that females charged on moral or status offences are treated more harshly than males. Under section 55 1 (d) of the Penal Code, assault against married women is permitted as women as men are allowed to chastise their wives. The Sharia Penal Codes make provisions that a man or woman caught in adultery shall be stoned to death.²⁴ However, the Sharia Penal Codes in disparity against women placed a condition that the punishment for adultery would not be enforced against a man unless there is a confession of the person or four male eye witnesses who each saw simultaneously, the private organ of the man inside the vulva of the woman.²⁵

Discrimination and Rights Abuses During Arrest, Search and Detention

During arrest, search and detention, female offenders come to face with the police. The Nigerian Police have statutory powers to investigate crimes, to apprehend offenders, to interrogate and prosecute suspects, to grant bail to suspects pending completion of investigation or prior to court arraignment, to serve summons, and to regulate or disperse processions and assemblies. They are also empowered to search and seize properties suspected to be stolen or associated with crime, and 'to take and record for purposes of identification, the measurements, photographs and fingerprint impressions of all persons...', in their custody.²⁶ The Nigeria police personnel in carrying out the above functions have always been accused of human rights violations against women, for example, a woman arrested and detained due to a minor offence, may be held in Police custody indefinitely till she can pay for her bail either by 'cash or in kind'.²⁷ Research indicates that female detainees are subjected to higher levels of sexual harassment, demands for bribes and extortion from police officers.²⁸ Findings also indicate that female detainees were subjected to a variety of physical, emotional, and sexual violence, including torture,

²¹ Nigerian Correctional Service (2024) Quarterly Report on Inmates' Population, Nigerian Correctional Service Press, Abuja. <<https://corrections.gov.ng>> accessed on 5th July 2025.

²² Inter-Parliamentary Union, *Briefing on Discrimination against Women in Criminal Justice Systems* (London: Penal Reform International Publication, June 2012) p.3.

²³ *Ibid.*

²⁴ For Example, ss 125 and 127 of the Sharia Penal Code of Zamfara State.

²⁵ F A Anyogu, *Access to Justice: A Gender Perspective*, 2nd Edition, Enugu Ebenezer Productions, 2013.

²⁶ See Sections 19-26 of Police Act.

²⁷ CD Ebeniro, 'The Problems of Administration of Justice on Female Offenders in Nigeria' (2011) Volume 4, No. 2 *African Journal of Criminology & Justice Studies (AJCJS)* 27-36 at p32.

²⁸ RA Aborisade & SF Oni, 'Female Offenders as Victims of Gendered Violence by Officers of the Nigeria Police' (2021) Issue 8, *International Journal of Evidence-based Research, Policy, and Practice*, 1182-1204. <<https://www.tandfonline.com/doi/full/10.1080/15564886.2021.1871991#:~:text=The%20aim%20of%20this%20paper,viole>> accessed on 10th July, 2025.

sexual assault and intimidation, denials of essential needs, and unwarranted punishments by the Nigerian police officers during arrest, search and detention.²⁹

Discrimination and Rights Abuses During Trial Stage

The trial stage begins with the arraignment of a female offender in Court the courts. There are many Constitutional rights that women are entitled to while facing trial, which are violated by the courts. In Nigeria, once a woman is brought before a court, she is already found guilty of the offence before the trial begins, because culturally women are not expected to be involved in anything that would bring shame to womanhood. Women have constantly been refused standing as sureties for bail of an accused or defendant by the courts contrary to the dictates of the law.³⁰ At the prosecution stage, majority of women offenders find it difficult to secure adequate legal representation because of limited means and resources are usually left at mercy of public defenders³¹ with high case loads and the inherent challenges associated with the implicit *pro bono*/free service stand.

Under the Sharia Penal Code, women brought before Courts that operate the Sharia Penal Code, are often given harsh sentences for minor crimes committed. A well known case affirming the above finding is the case of *COP v Amina Lawal*³² where the Defendant, a woman accused of adultery for given birth to a child outside wedlock was sentenced to death by stoning to death by trial court in 2003.³³ Another incident involves an unmarried girl (Bariya Ibrahim Magazu) who became pregnant, was sentenced to 180 lashes (80 lashes for pre-marital sex and 100 lashes for making unproven claims against the men she alleged that raped her).³⁴ Moreover, the standard of proof for sexual related offences like rape, incest and adultery as stipulated under the Penal Code presents a high degree of gender-discrimination and invasion of women's rights and dignity. For examples, proof of adultery for male under the penal code is confession or confirmation by four male eyewitnesses who actually caught the man in the act, while for a woman prove of adultery includes pregnancy outside marriage. To prove rape, a woman must produce four male eyewitnesses or eight female witnesses to prove that it was rape and not adultery.³⁵ All these are many more are the gender distinction and discriminations that exist against women during prosecution for criminal offences in Nigeria.

Discrimination and Rights Abuses During Post-Trial Stage (Imprisonment /Detention)

Women (and girls) comprise the minority of prisoners around the world, constituting an estimated 2 to 9% of national prison populations and due to their small number amongst the prison population, the specific needs and characteristics of women and girls as subjects of the criminal justice system have tended to remain unacknowledged and unaddressed.³⁶ Prison systems and prison regimes are almost invariably designed for the majority male prison population – from the architecture of prisons, to security procedures, to facilities for healthcare, family contact, work and training. Women prisoners are usually being housed in annexes to male prisons, often inadequately separated from the male population and subject to an increased risk of rights abuses.

In order to address the above anomaly and bridge the gap, the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules)³⁷ were adopted in December 2010 to rectify the lack of standards, however, nations of the world still lack awareness and commitment to implementation of the Rules. In the case of *Inga Abramavo v Belarus*,³⁸ it was ruled that treatment and condition of detention of women must be gender-sensitive and that the failure of detention facilities to adopt a gender-sensitive approach to specific needs of women prisoners constitute discrimination within the meaning of article 1 of CEDAW. Studies done on the Nigerian prisons show that there are several cases of right abuses against female offenders in the form of deprivations and victimization while in prison custody by way of sexual abuse, physical abuse and denial of basic needs of life. A study carried out in 2025 which analysed gender discrimination against female inmates in the Abakaliki custodial centre in Nigeria postulated the following findings:

Findings uncovered how the prison reproduces a sexist ideology and shapes the realities of these women within the system. There was an apparent disparity in prison rules and management with women disadvantaged. They experienced restrictions in movement, strict surveillance, limited educational, vocational and recreational training, and exclusion from paid and unpaid employment opportunities.

²⁹ *Ibid.*

³⁰ Section 167(3) of the Administration of the Criminal Justice Act recognizes the rights of women to stand as surety for a defendant in bail proceedings.

³¹ Public defenders in Nigeria include FIDA, Legal aid Council and other Human Rights groups.

³² Case No: US/FT/CRA/1/002

³³ The sentence was globally condemned, though the sentence was later quashed on Appeal in *Amina Lawal v State*.

³⁴ World Organisation Against Torture, 'Nigeria: Whipping of a Teenager' <<https://www.omct.org/en/resources/urgent-interventions/nigeria-whipping-of-a-teenager>> accessed on 10th June 2025.

³⁵ G Ozuru & O Ogunwande, 'Women and the Nigerian Criminal Justice System: A Human Right Perspective' (2020) 2 (3) *IJOCLLEP*, 158-166 at p. 163-164 <<https://nigerianjournalsonline.com/index.php/IJOCLLEP/article/download/996/980>> accessed on 15th July, 2025.

³⁶ Inter-Parliamentary Union, *Briefing on Discrimination against Women in Criminal Justice Systems* (London: Penal Reform International Publication, June 2012) p.2.

³⁷ In 1980 the 6th UN Congress on the Prevention of Crime and Treatment of Offenders recognised that women often do not receive the same attention and consideration as male offenders. However, it took until 2009 for the Crime Commission to task an expert group with the development of standards to explicitly address this gap.

³⁸ Communication No 23/2009, UN Doc. CEDAW/49/D/20/2008 (2011).

Other lived experiences shared were lack of access to recreational and sports activities that could improve their physical and mental health, stereotypes, and extended patriarchal dominance.³⁹

Authors on the Discrimination and Rights Abuses During Post-Trial Stage (Imprisonment /Detention) against women have also posited that:

Women in the prisons are not spared the human rights violations, which all Nigerian prisoners are subject. They are not treated differently from the male prisoners. The prison is congested, dirty, dilapidated, unhygienic and generally unfit for human habitation. Female inmates are visible to infections expected to have long-term consequences on their reproductive health during and after incarceration. Prisoners are faced with hunger. Even the pregnant and nurturing mothers are starved and medically neglected. The children of female inmates are exposed to these perilous conditions of the prison yard.⁴⁰

Women prisoners have greater primary healthcare needs in comparison to men. For example, there are no provisions under the laws for the care of pregnant women and nursing mothers. The Prison Regulation (2) allows the child of a female prisoner to be admitted into a prison with the mother if such baby is at the breast and less than eighteen months old. Apart from allowing the mother to be with the baby while in Prison, no other care is given for the welfare and maintenance of the female offender and her child. To this anomaly, the chief justice of Nigeria in 2024 remarked that, the incarceration of children alongside their mothers in often unsanitary and restricted conditions, with limited health, recreational and educational facilities is a matter for concern'.⁴¹

Moreover, women who are admitted to prison are more likely than men to suffer from mental health problems⁸ According to research women prisoners are at higher risk of harming themselves or attempting suicide in comparison to men in prison, due to the higher level of mental illness and substance addiction and the harmful impact of isolation from the community on the mental well-being of women.⁴² On the other hand, Girls or young female prisoners are likely to lack access to suitable education. Pregnant girls in prisons also comprise one of the most vulnerable groups in prisons due to stigmatization, inexperience on dealing with pregnancy and the lack of adequate facilities. Furthermore, on the women's vulnerability to sexual abuse and girls in prison female offenders in Nigerian prisons or Correctional are at heightened risk of sexual abuses like rape, sexual assault, sexual exploitation, humiliation and other ill-treatments like invasive body searches, being stripped naked and all forms of improper touching by prison officials.⁴³ There are cases of women in prison custody conceiving babies while in incarceration and most of the babies born were products of rapes and victimization.⁴⁴

6. New Reforms on the Treatment of Women under Nigeria Criminal Justice System and the Challenges

Some newly enacted laws in Nigeria have introduced some gender-responsive legislation aimed at safeguarding the rights of women under the criminal justice system in Nigeria. Though these legislative reforms and innovations are commendable, not much has changed as there abound systemic challenges bringing the fate and treatment of women's right in the administration of criminal justice system in Nigeria below international best practices. Some of the legislative reforms and innovations with their attendant challenges are presented below: Section 34 of the Nigerian Correctional Service Act (NSCA), 2019 made provision for separate facilities for female inmates and makes provision to address the special needs of female inmates, including pregnant women and nursing mothers as well babies in custody. The Act provides in that there shall be separate facilities for females in all states of the federation.⁴⁵ The Act further provides that the Correction Service shall provide all necessary facilities to address their special needs such as medical and nutritional needs, including pregnant women, nursing mothers and babies; the provisions of a crèche in every female custodial centre for the well-being of babies in custody with their mothers; prenatal and antenatal health care and sanitary provisions; necessary medical care and support where a female inmate tests positive for pregnancy within 14 days from the date of admission to the correctional centre.⁴⁶ It is also provided that babies shall not remain in custodial facilities beyond 18 months.⁴⁷ Section 36 of the Act provides that young offenders shall not be kept in adult custodial facilities but rather should be sent to separate male and female borstal training institutions for juvenile offenders.⁴⁸ Regrettably, question that remains unanswered is to what extent has

³⁹ MU Nnam *et al*, 'Nowhere is safe for us': An Analysis of Gender Discrimination against Female Inmates in a Male Correctional Institution' (2025) Vol. 81 *International Journal of Law, Crime and Justice*

<<https://www.sciencedirect.com/science/article/abs/pii/S1756061625000217>> accessed on 17th July, 2025.

⁴⁰ G Ozuru & O Ogunwande, 'Women and the Nigerian Criminal Justice System: A Human Right Perspective' (2020) 2 (3) *IJOCLLEP*, 158-166 at p.164. <<https://nigerianjournalonline.com/index.php/IJOCLLEP/article/download/996/980>> accessed on 15th July, 2025

⁴¹ KM Kekere-Ekun, 'Empathy and Action: Women and Girls Incarcerated' A paper presented to the International Association of Women Judges (and its affiliate Associations) as well as members of the National Association of Women Judges, Nigeria (NAWJN) on this 3rd occasion of the celebration of the International Day of Women Judges on 8th March, 2024 <<https://www.iawj.org/idwj-2024-nigeria-association-of-women-judges>> accessed on 17th July 2025.

⁴² Inter-Parliamentary Union, *Briefing on Discrimination against Women in Criminal Justice Systems* (London: Penal Reform International Publication, June 2012) p.6.

⁴³ United States Department of Justice, as reported by Buehler in 2021, noted that women experience sexual violence and victimisation while serving time, as well as suffer other institutional gender-based maltreatment.

⁴⁴ C D Ebeniro, 'The Problems of Administration of Justice on Female Offenders in Nigeria' (2011) Volume 4, No. 2 *African Journal of Criminology & Justice Studies*, p.33.

⁴⁵ Nigerian Correctional Service Act (NSCA), 2019, section 34(1).

⁴⁶ *Ibid*, section 34 (2-5).

⁴⁷ *Ibid*, section 34(6).

⁴⁸ *Ibid*, section 34(1-5).

the provisions of sections 34, 35 and 36 of the Correctional Service Act (NSCA) 2019 been implemented considering the dilapidated and moribund state of the correctional service facilities in Nigeria? The answer to the above question is that aside the three female custodial centres across Nigeria dedicated exclusively for women, and the three borstal training institutions as at 2022, there are no further reports till date of establishment any of such separate correctional facilities in Nigeria.

Section 167(3) of Administration of the Criminal Justice Act, 2015 recognised the right of women to stand as surety for defendants in bail proceedings. Sections 189(g) and 191 of Administration of the Criminal Justice Act, 2015 recognised the rights of married women to not only hold property in her name, but also to obtain redress or remedies (by way of criminal proceedings) for the protection and security of her person and her own separate property. Also, Section 404 of the Administration of Criminal Justice Act (ACJA) 2015 (applicable in the Federal Capital Territory) provides that where a pregnant woman is found guilty of a capital offence, the sentence of death shall be passed on her but its execution suspended until the baby is delivered and weaned. The ACJA has been domesticated by the various states of the Federation with various modifications. Section 327 of Administration of Criminal Justice Law, ACJL of Anambra State 2022 modified the provision to read that where a woman found guilty of a capital offence is found in accordance with the provisions of section 342 to be pregnant, the sentence of death shall not be passed on her but in lieu thereof she shall be sentenced to imprisonment for life.⁴⁹

Section 221 (2) & (3) of the Child Rights Act 2003 (which has been domesticated in 34 out of the 36 States in Nigeria) provides that no expectant mother or nursing mother shall be subjected to the death penalty or have the death penalty recorded against her. A court shall on sentencing an expectant or a nursing mother, consider the imposition of a non-institutional sentence as an alternative measure to imprisonment. This is to ensure that the life and the best interest of the innocent child are preserved. Violence against Persons (Prohibition) Act, 2015 also prohibits and criminalizes female genital mutilation, harmful widowhood practices, harmful traditional practices and all forms of violence against persons in both private and public life. The Act also provides that where there is conflict between any provision of the Act and any other provision on similar offences in the Criminal Code Act, Penal Code Act and Criminal Procedures Code,⁵⁰ the provision of the Act shall supersede.⁵¹ However, the two major shortcomings of this Act is on its provision that only the High Court of the Federal Capital territory Abuja empowered by an Act of parliament has the jurisdiction to hear and grant any application brought under the Act⁵² and on its provision that the Act only applies to the Federal Capital Territory, Abuja.⁵³

Finally, despite the introduced legislative reforms and innovations, the implementation leaves more to be desired as not much has changed at the police stations, the courts and the correctional service institutions with respect to better treatment of women offenders in the criminal justice administration in Nigeria. The old practices of women been subjected to arbitrary arrests, human rights exploitations and gender-based discrimination under the various stages of criminal justice administration in Nigeria still persists. This does not reflect the international best practices on treatment of female offenders.

7. Conclusion and Recommendations

Discussions above have shown that notwithstanding that the Constitution of the Federal Republic of Nigeria prohibits discrimination against women on any account, despite the introduced legislative reforms and innovations; there still exist gender disparity against women under the Criminal Justice System Administration in Nigeria. The areas of concerns range from the patriarchal informal/traditional criminal justice system which discriminate against women, discriminatory gender-specific or status offences under our laws, disadvantages during penal proceedings, vulnerability to sexual offences and the social, political, religious, cultural and economic inequality generally affecting women's rights. Not only do the enforcement machineries abuse the criminal justice administration procedures in Nigeria, human rights of women offenders are also abused. For the way forward, the following recommendations are proffered:

1. Government and enforcement institutions should ensure gender parity in the administration of Criminal Justice in Nigeria. Law enforcement agency officers or personnel should be retrained to be gender sensitive in treatment of female offenders. Nigeria government should live up to her expectations in seeing that gender-responsive provisions legislative reforms and innovations are the implementation to the later.
2. Development and use of non-custodial measures for women convicted of less serious offences under the Nigerian legal system. Gender-appropriate treatment or correctional programmes would address most women offenders' needs much more effectively than the harsh prison environment. The call here is for restorative justice. A practical demonstration of gender-appropriate treatment was made in the South African case of *S. v. M⁶⁴* where the female prisoner was the sole carer of her four children, the Constitutional Court of South Africa ordered to suspend for four years M's imprisonment (of 45 months) on condition that she would not be convicted of an offence committed during the period of suspension, of which dishonesty was an element, and further on condition that she complied fully with the order's provisions.
3. Rehabilitation programmes should be designed and made available to women prisoners, taking into account their gender-specific needs aiming at addressing the root causes of made them commit the offence and to properly reinstate them in the society on discharge.

⁴⁹ Administration of Criminal Justice Law, ACJL of Lagos State, section 302 (2) contains a similar provision.

⁵⁰ Cap C42 Laws of the Federation of Nigeria, 2004.

⁵¹ Violence Against Persons (Prohibition) Act 2015, section 45 (2).

⁵² *Ibid*, section 27.

⁵³ *Ibid*, section 47.

⁵⁴ 26 September 2007, Ref. no. [2008] (3) SA 232 (CC) 261).