

Examination of Institutional frameworks for Settlement of Air Carriers' Liability

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Abstract

The focus of this paper is to examine the institutional frameworks for settlement of Air Carriers' liabilities arising from a diversity of events ranging from negligence, criminal liability, and tort. The outbreak of COVID-19 pandemics across several countries exposes countries to unexpected liabilities on a scale shocking, calling to question the need to appraise the functionalities of institutional frameworks in place before the outbreak of the pandemic. The paper adopted a doctrinal legal research methodology using both the primary and secondary sources of information gathering. The primary sources include international conventions such as Warsaw – system convention (W.C.), Montreal Convention (MC), Civil Aviation Act (CAA). The secondary sources include books, articles, journals, and judicial pronouncements. The paper found that the institutional frameworks never contemplated an emergency and made no special provisions for such, therefore justifying the need to review Air Carriers' present legal regimes for liability. The study discovered relatively low awareness of the regulations governing air carriers' activities, availability of rules, and compensations payments. The paper, therefore, calls for legislative and policy amendment, found a need to amend existing legal regimes to widen liability coverage for more classes of victims and newer discoveries opened up to prevent conflicting and unending judicial intervention by the courts in most developing countries directly affected by COVID-19.

Keywords: Aviation, Carriers, Conventions, COVID-19, Institutional Frameworks



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1. Introduction

One of the worst-hit sectors in the aftermath of the ravaging COVID-19 is the Aviation sector.³⁶⁶ The aviation sector is known for its tendencies to incur liability at will and without notice. The effect is catastrophic for the entire human race. Businesses were closed, economies were in a depression, and governments were in debt; international trade and investment were at their lowest ebb. The movement of goods and services through the airports was almost non-existent, while several start-up businesses lost income because of the emergency created. The effect of the pandemics has led to job cuts and unprecedented inflation that some developing countries may not recover from in years. Injury or death arising from an aircraft incident, accident, or loss of goods, delayed or denied boarding, or from the interaction of both onboard and off the board.³⁶⁷ Where liabilities occur, the issue of compensation will arise, leading to settlement cases with the parties involved or litigating the dispute where an amicable resolution of the disagreement fails. Where there are needs for compensation for loss or damages in air transportation, the Compensation system usually follows internationally accepted principles codified under various conventions.

The outbreak of COVID-19 brought about new rules in international travels with restrictions on passengers' rights to the responsibilities of airlines/air carriers. The various regulations guiding aircraft and global flight operations tinkered, leading to rights violations. In some instances, liability arose from domestic and international flights related to the carriage of persons, baggage, or cargoes, for reward on scheduled flights in line with the Convention for the Unification of Certain Rules for International Carriage by Air at Warsaw and Montreal in 1929 and 1999, respectively.³⁶⁸ Liability of air carriers³⁶⁹ to passengers and third parties arising from delayed

³⁶⁶ COVID-19 with its several variant have been adjudged as one of the most devastating pandemics after the World Wars. British Airways to reportedly suspend 36,000 of its employees. <https://www.cnn.com/2020/04/02/british-airways-to-reportedly-suspend-36000-of-its-employees.html> Accessed 29th September, 2021

³⁶⁷ Consumer Protection In The Aviation Industry: Liability of... <https://www.mondaq.com/nigeria/aviation/1039932/consumer-protection-in-the-aviation-industry-liability-of-airline-carriers-over-lost-baggage> Accessed 28th September, 2021

³⁶⁸ *Article I, Convention for the Unification of Certain Rules for International Carriage by Air, opened for signature May 28, 1999, T.I.A.S. 13038, 2242 U.N.T.S. 350 [hereinafter Montreal Convention].*

³⁶⁹ *See Nigeria Civil Aviation Regulations (2015), pt. 19.1.2.1(2) ("Air carrier means an enterprise that engages in provision of transportation services by aircraft for remuneration or hire....*

flights denied flights, rescheduled flights, and canceled flights became more pronounced during this time leading to Airline operating below profitability level and customers unsatisfied.³⁷⁰

This paper relies solely on primary and secondary sources of information by reviewing existing literature such as statutes, conventions, textbooks of learned authors, Articles published in National and International Journals, decisions of Courts of Records are to be analyzed to understand the various liabilities facing the Air Carriers. For the restrictions provided by COVID-19, fieldwork could not be conducted, such as the administration of questionnaires and interviews. However, challenges, prospects, and ways for viable options in some areas of deficiencies in the Civil Aviation Act 2006 and significance in its attempt at appraising the liability regimes available to the victims of a disservice by the various Air Carrier under the extant law, and reviewed the different liability cap as contained in the Montreal Convention and the Civil Aviation Act 2006.³⁷¹

The paper asserts a claim for prompt payment of the compensation within the time frame of the laws or within a reasonable time as may be allowed by extant law. Compensation payment to victims of air disasters or incidents poses unusual problems, such as inadequate or low compensation; this often is attributable to a multiplicity of factors, which are not limited to internal squabbles, submission of incomplete documentation, or unwillingness of the Air Carrier to pay full or any compensation.

2. Conceptualization Clarification

Aviation has remained one of man's most significant and unique inventions in solving man's quest for transportation to date. It is natural and expected for men to interact with one another and exchange goods and services from surplus to area of lack. Such movement is bedeviled by some inconceivable events referred to here as a liability. It's not only an incontrovertible fact that air transportation is an extensive and continually evolving subject that has quietly and effectively overshadowed rail and shipping services activities as a means of transportation of both goods and workforce globally, but aircraft have been adjudged to be one of the fastest and safest means of

³⁷⁰ Current Regulation of Air Carriers' Liability and
<https://scholar.smu.edu/cgi/viewcontent.cgi?article=1007&context=jalc> assessed 28th September, 2021

³⁷¹ Nigeria Civil Aviation Act, 2006

transportation when compared to other means of transportation, Aviation is said to be the science or practice of flying through the air in heavier than air machines, (Aircrafts).³⁷²

Aviation has served to foster trade and commerce among various world people. Air Law connotes the existence of regulations to aviation in the international realms. The branch of law concerns flight, air travel, and associated legal and business concerns. In some instances, it is considered a matter of international law due to the nature of air travel.³⁷³ Air law refers to the combination of public and private international law. Its purpose is to provide international civil aviation regulations and eliminate conflicts or inconsistencies in various local laws and systems, which abound around the country, as one of the most veritable means of transportation of goods.

The Chicago Convention did not define an aircraft. However, Annexes described it to the convention as any machine that can derive support in the atmosphere from the reaction of air, other than reactions of air against the earth's surface.³⁷⁴ The term Air carrier refers to an enterprise that engages in providing transportation services by aircraft for remuneration or hire.³⁷⁵

Liability connotes a state of being under an obligation, which further presupposes a form of legal or moral duty.³⁷⁶ Air Carrier liability arises as a result of the injury sustained onboard an aircraft, death arising from accidents in the course of a journey, damage to or loss of goods consigned, passenger delayed or denied boarding, or from other interaction in the method of preparing for or the actual conduct of flight operations. Where such liabilities are proved, compensation will arise³⁷⁷, leading to settlement cases with the parties involved or litigating the dispute where an amicable resolution fails. Reward usually follows internationally accepted principles codified under various Conventions and domesticated where possible.

³⁷² Rolt L.T.C. (1966) *The Aeronauts: A History of Ballooning 1783 -1903*, Longmans Green and Co. Ltd 48 Governor Street, W.P. 40 cited in Uwakwe Op cit p 144.

³⁷³ A. O. Adediran, (2016) "Current Regulation of Air Carriers' Liability and Compensation Issues in Domestic Air Carriage in Nigeria", 81 *J. Air L. & Com.* 3 <http://scholar.smu.edu/jalc/vol81/iss1/2> assessed 12/09/2021

³⁷⁴ Annex 7, Chicago Convention 1944

³⁷⁵ See NCAR (2015), Pt. 19.1.2.1(2)

³⁷⁶ Article 2 Warsaw; Article 2 Montreal

³⁷⁷ *Donoghue v. Stevenson* [1932] UKHL 100

The need for and availability of an all-embracing legal framework for the treatment of liability incurred by air carriers globally is desirable in light of challenges faced by Air operators with a myriad of liability claims arising from multiple claims. It is evident that where a respective abode an aircraft suffers personal injuries to his person or relations due to an air carrier-related incidents, such person(s) should be allowed to enjoy the fruit of the legal principle that "No wrong goes without remedy."³⁷⁸

3. Private International Air Law Conventions

The framework of air carrier liability in international passenger, cargo, and baggage transportation is provided in the following private international air law conventions, whereby it, as aforementioned, could be segmented into two 'systems'³⁷⁹The first system, known as the "Warsaw System," comprised of either the original Warsaw Convention of 1929 (the Warsaw Convention or WC29),³⁸⁰, as amended by the Hague Protocol of 1955 (the Hague Protocol or HP55)³⁸¹ as supplemented by the Guadalajara Convention of 1961 (the Guadalajara Convention or GC61)³⁸² the Guatemala City Protocol of 1971³⁸³, and as amended by the four Montreal Protocols of 1975.³⁸⁴ The second system is encapsulated in a single instrument, the Montreal

³⁷⁸ *Cameroun Airlines vs. Mr. Mike E. Otutuizu (2011) All FLR P 1260 at 1267.*

³⁷⁹ Dempsey & Milde, "International Air Carrier Liability," supra.

³⁸⁰ Warsaw Convention, supra .

³⁸¹ Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air signed at Warsaw on 12 October 1929, 28 September 1955, 478 UNTS 371, ICAO Doc 7632 (entered into force 1 August 1963) [Hague Protocol].

³⁸² Convention Supplementary to the Warsaw Convention, for the Unification of Certain Rules Relating to International Carriage by Air Performed by a Person Other than the Contracting Carrier, 18 September 1961, 500 UNTS 31, ICAO Doc 8181 (entered into force 1 May 1964) [Guadalajara Convention].

³⁸³ Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air, signed at Warsaw on 12 October 1929, as Amended by the Protocol done at the Hague on 28 September 1955, 8 March 1971, 10 ILM 613 (1971) (not in force).

³⁸⁴ Additional Protocol No. 1 to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air, signed at Warsaw on 12 October 1929, 25 September 1975, 2097 UNTS 28, ICAO Doc 9145 (entered into force 15 February 1996); Additional Protocol No. 2 to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air, signed at Warsaw on 12 October 1929, as Amended by the Protocol done at the Hague on 28 September 1955, 25 September 1975, 2097 UNTS 69 (entered into force 15 February 1996); Additional Protocol No. 3 to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air, signed at Warsaw on 12 October 1929, as Amended by the Protocol done at the Hague on 28 September 1955 and at Guatemala City on 8 March 1971, 25 September 1975, ICAO Doc 9147 (not in force).; Montréal Protocol No. 4 to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air, signed at Warsaw on 12 October 1929, as Amended by the Protocol done at the Hague on 28 September 1955, 25 September 1975, 2145 UNTS 36, ICAO Doc 9148 (entered into force 14 June 1998)

Convention of 1999. (the Montreal Convention or MC99).³⁸⁵ The Warsaw System, in its various configurations, and the Montreal Convention are still in force today; the adoption of the MC99 did not repeal the original Warsaw Convention or its amending and supplementing instruments. The Montreal Convention supersedes the Warsaw System for 'one-way' flights between two MC99 State Parties and 'round trips' departing from an MC99 State Party with a stopover in a third country³⁸⁶.

The Warsaw Convention is still the most widely adopted treaty on international air carrier liability. As of mid-2019, 152 States, or almost 80 percent of all ICAO Member States,³⁸⁷ are parties to the original Warsaw Convention of 1929.³⁸⁸ However, despite the Montreal Convention's entry into force in 2003, "the 'Warsaw System' survives among a few."³⁸⁹ The Hague Protocol 1955, modifying the Warsaw Convention, has 137 parties,³⁹⁰ whereas the Guadalajara Convention 1961 has 86 ratifying State parties.³⁹¹ The 1975 Montreal Protocols Number 1, 2, and 3 have 51, 52, and 60 parties.³⁹² Two instruments of the Warsaw System, the 1971 Guatemala City Protocol and the 1975 Montreal Protocol No.3 received insufficient ratifications to enter into force. Despite ICAO's frequently repeated plea to the Member States to

³⁸⁵ Montreal Convention, *supra*.

³⁸⁶ Montreal Convention, *supra* note 9, art 55; Schmid, Ronald & Elmar Giemulla, eds. *Montreal Convention* (Alphen aan den Rijn, the Netherlands: Kluwer Law International, 2006), at 12.

³⁸⁷ As of August 2016, ICAO has 191 Contracting States. See ICAO, "Member States", online: ICAO

³⁸⁸ ICAO, "Contracting Parties to the Convention for the Unification of Certain Rules Relating to International Carriage by Air Signed at Warsaw On 12 October 1929 and the Protocol Modifying the Said Convention Signed at The Hague On 28 September 1955", online: ICAO .

³⁸⁹ Dempsey & Milde, "International Air Carrier Liability", *supra* note 2, at viii. Dempsey and Milde write in the preface to their seminal treatise on international air carrier liability under the Montreal Convention 1999, published in 2005, that

³⁹⁰ *Ibid.* 17

³⁹¹ ICAO, "Convention, Supplementary to the Warsaw Convention, for the Unification of Certain Rules Relating to International Carriage by Air Performed by A Person Other Than the Contracting Carrier Signed at Guadalajara on 18 September 1961", online: ICAO

³⁹² ICAO, "Additional Protocol No. 1 to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air, Signed at Warsaw on 12 October 1929 Signed at Montreal on 25 September 1975", online: ; ICAO, "Additional Protocol No. 2 to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air, Signed at Warsaw on 12 October 1929 as Amended by the Protocol Done at the Hague on 28 September 1955 Signed at Montreal on 25 September 1975", online: ; ICAO, "Additional Protocol No. 3 to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air Signed at Warsaw on 12 October 1929 as Amended by The Protocols Done at the Hague on 28 September 1955 and at Guatemala City on 8 March 1971 Signed at Montreal on 25 September 1975", online: .

ratify the Montreal Convention,³⁹³ as of August 2021, the treaty has 137 parties,³⁹⁴ or, stated differently, ratifications from merely 62 percent of ICAO membership.³⁹⁵

Whereas the Montreal Convention's scope to most major aviation markets, some key aviation countries have yet to ratify the MC99, including Bangladesh, Indonesia, the Russian Federation, Sri Lanka, Thailand, and Vietnam.³⁹⁶ More than one-third of ICAO Member States continue to use some form of the old Warsaw system. Several countries, most notably Thailand, have not ratified any international treaties.³⁹⁷ Disparities in adherence to international conventions on air carrier liability create a "fractured, contentious, and costly environment,"³⁹⁸ A 91-year-old set of rules may govern air travel in 2022 and liability limits agreed and adopted in 1929. Much has changed in the intervening years, both in airline operations and available technology. especially in the post-COVID-19 era.

The provisions of the various conventions³⁹⁹ created a series of vacuums that airlines and passengers utilize as defenses⁴⁰⁰. Nevertheless, It is more desirous to examine the effectiveness

³⁹³ An example of ICAO urging States to adopt MC99 can be found in Resolution A38-14, Appendix A, Section 1 and Resolution A38-20, the latter of which is devoted in its entirety to the 'promotion of the Montreal Convention 1999', ICAO, Promotion of the Montreal Convention 1999, ICAO Assembly Res A38-20, 38th Sess, ICAO Doc 10022, V-7, online: ICAO

³⁹⁴ Montreal Convention parties include 136 States and one Regional Economic Integration Organisation, i.e. the European Union, pursuant to Article 53(2) of the Montreal Convention, which allows ratification of the treaty by Regional Economic Integration Organisations

³⁹⁵ ICAO, "Convention for the Unification of Certain Rules for International Carriage by Air Done at Montreal On 28 May 1999", online: ICAO ; IATA forecasts 6 more countries will ratify Montreal Convention in 2016, namely Ghana, Indonesia, Russia, Sri Lanka, Thailand, and Vietnam. See IATA, Annual Review 2016, 72nd Annual General Meeting (June, 2021), online: IATA .

³⁹⁶ IATA, "A Universal Liability Regime for International Carriage by Air – Montreal Convention 1999 (MC99)", online: .

³⁹⁷ As of November 2021, the following countries that have not ratified any of the conventions on liability in international carriage of persons, baggage and cargo by aircraft: Andorra, Antigua and Barbuda, Bhutan, Burundi, Central African Republic, Djibouti, Eritrea, Guinea-Bissau, Haiti, Kiribati, Marshall Islands, Micronesia (Federated States of), Nicaragua, Palau, Saint Kitts and Nevis, Saint Lucia, San Marino, Sao Tome and Principe, Somalia, South Sudan, Tajikistan, Thailand, Timor-Leste. 31 Asociación Latinoamericana de Derecho Aeronáutico y Espacial (ALADA), Promotion of the Convention for the Unification of Certain Rules for International Carriage by Air (Montreal Convention Of 1999), Worldwide Air Transport Conference (ATCONF), Sixth Meeting, Agenda Item 1, 1.1, 2 & 2.3, Working Paper No 68, Doc ATConf/6-WP/102, online: ICAO

³⁹⁸ 31 Asociación Latinoamericana de Derecho Aeronáutico y Espacial (ALADA), Promotion of the Convention for the Unification of Certain Rules for International Carriage by Air (Montreal Convention Of 1999), Worldwide Air Transport Conference (ATCONF), Sixth Meeting, Agenda Item 1, 1.1, 2 & 2.3, Working Paper No 68, Doc ATConf/6-WP/102, online: ICAO

³⁹⁹ Article 17 of the Warsaw Convention "The carrier is liable for damage sustained in the event of the death or wounding of a passenger or any other bodily injury suffered by a passenger, if the accident which caused the

of the different legal and institutional frameworks in settlement of liabilities arising from Air Carrier's faults in Nigeria with a specific focus on the adequacy or otherwise of the Civil Aviation Act, 2006 and other internationally accepted conventions. The frameworks on the liability settlement shall be appraised to provide more pragmatic and flexible legal and institutional regimes that encompass all categories of victims and ease of processing liabilities claims in line with global practice.⁴⁰¹

4. Air Carrier's Liability

In analyzing numerous legal regimes on the extent of airlines' liability to their passengers and pointed out how the Warsaw Convention can be said to be advantageous to both passengers and carriers in the context that the passengers were relieved of the burden of proving that the Carrier was at fault and the carriers, knowing the enormity of the risk in operation, ensured that their operation was adequately insured against such risk.⁴⁰² After critically examining the case of Canadian Pacific Airlines Ltd. vs. Montreal Trust Co., the court concluded that passengers can seek damages in either contract or tort and that a Nigerian court could be persuaded to award more significant damages than what Nigerian airlines typically offer to passengers or their relatives. In an attempt to appraised and analyze the legal framework of the air transport service Agreement in Nigeria and the globe⁴⁰³, the Warsaw Convention 1929 and the Chicago Convention of 1944, which was used as the standard format for the Bilateral Air Service Agreement, namely: Chicago type, British type and Barmuda type of Agreements. They also analyzed the Multilateral Air services Agreements, open skies Agreement. It was inferred that an injured passenger in an aircraft accident might sue either in breach of contract or tort of

damage so sustained took place on board the aircraft or in the course of any of the operations of embarking or disembarking”.

⁴⁰⁰ . Such as Nigerian Airspace Management Act, Nigerian Metrological Agency Act, and Sections 147 and 148 of the 1999 Constitutions

⁴⁰¹ . Joseph Ibidapo v. Lufthansa Airlines (1994) NWLR Part 498

⁴⁰² Salu, A.O Salu, (1998: Rights to compensation by the Relative of Accident victim. Modern Practice Journal of Finance and Investment Law, Vol.2 No.1 1998.

⁴⁰³ J.O Agada, AR, Amana and P Yer, etel (2009) “Legal framework for International Air Services Agreement: A critical analysis” Journal of Contemporary Legal Issues, (Publication of Nigerian Bar Association, Idah Branch, Kogi State). JCLI Vol. 1, No. 1, Page 140 – 146.

negligence against the air transport carrier, which may have dire consequences of failures of adherence to an air contract agreement on the part of the victims.

Following the provisions of the 1999 Montreal Convention,⁴⁰⁴ Air Carriers are strictly liable to their passengers in the event of accidents for the first 100,000 Drawing Right of proven damages in accordance with section 48(3) of the Civil Aviation Act 2006, which required the Air Carriers to make an advance payment of 30,000 US Dollars, within thirty (30) days of the accident to the natural person or such other persons who are entitled to claim compensation on behalf of a deceased passenger. Accordingly, the Carrier's liability is considered a strict liability to the extent of the amount so provided by the Act.⁴⁰⁵

The various conventions on the air transportations vis-à-vis the two and five freedom Agreements, the Bermuda type, and open skies Agreements concluded that each state is at liberty to negotiate multilateral air service agreements. Agada et al. acknowledged the discretion of every state to enter into multilateral air service agreements; they did not expatiate on the extent of such contracts and whether such arrangements could be reached in contrast to the provisions of the Montreal Convention and the 2006 Civil Aviation Act.⁴⁰⁶

However, Annex 13 of the Chicago Convention⁴⁰⁷ clearly stated that the objective of Accident Investigation is the prevention of incidents and not to apportion blame or responsibility; hence, chapter one of annex 13 of the Chicago Convention⁴⁰⁸ is, therefore, not sure whether surviving pilots in an aircraft accident are competent and compellable witnesses under Section 175(1) of the Evidence Act, and whether witnesses Summons can be issued to compelled them to attend court to testify on an accident.

⁴⁰⁴ Shaw (2005), International Law Cambridge University Press P 472.

⁴⁰⁵ Ibid

⁴⁰⁶ Agada J.A.O, Amaba A. R & Peter Yeh *Legal framework for the international Air Services agreements: Aircraft analysis* Journal of Contemporary Legal Issues, 2011.

⁴⁰⁷ See Section 29(11) (e) (12) of the 2006 Acts which domesticated the provision of Annex 13 of the convention on International Civil Aviation in 2006

⁴⁰⁸ International Standard Recommendation practices which described accident as an occurrence which takes place between the times any person boarded the aircraft and the time such a person disembarked

The extent of the corporate liability of the various corporate entities to the victims of aircraft accidents pointed out that corporate liability in the air transport operation is inevitable.⁴⁰⁹ This work, though, agreed with the writer over this assertion but worried about the culpability of the individual staff of the corporate entity who is directly responsible for the civil wrong that brought about the liability. About compensation,⁴¹⁰ appraised the business of air carriage with particular emphasis on the accident perspective and observed that the level of compensation of victims of aircraft accidents in Nigeria is inadequate compared to the standard set by the ICAO of which Nigeria is a party. The writer opined the settlement of all victims of air incidents and the amendment of the relevant provisions of the Civil Aviation Act and the amendment of the applicable provisions of the Montreal Convention 1999, which is the bedrock legislation through which the Act emanated.

5. Appraisals of Air Carriers' International and National Institutional Frameworks

a. International Civil Aviation Organisation (ICAO)

The International Civil Aviation Organisation (ICAO) is an essential institutional framework, signed initially by fifty states in 1944 and came into being on 4th April 1947 upon the Convention on International Civil Aviation Organisation (Chicago Convention).

The Organisation aims and objectives, as stated in Article 44, is

"to develop the principles and techniques of international air navigation and foster planning and development of international air transport."⁴¹¹

The unpredictability of international relations convinced many international air carriers that stability could be secured by fostering cooperation among States; therefore, Part II, Chapter VII of the Convention on International Civil Aviation of 1944 establishes the International Civil

⁴⁰⁹ Ososanya B (2012 “*Corporate Aviation Liability - No hiding place*” Vol. 4, The Annual Aviation Law & Business Digest”

⁴¹⁰ A. Mustapha (2011 “*Compensation for victims of Aircraft accident under the Nigerian Laws: A call for a paradigm shift*” BUJPL Vol. 3, No. 1. June 2011

⁴¹¹https://www.researchgate.net/publication/280981821_A_Short_Note_on_the_Origins_of_the_International_Civil_Aviation_Organisation_on_its_65th_Anniversary#:~:text=Full%2Dtext%20available-,A%20Short%20Note%20on%20the%20Origins%20of%20the%20International%20Civil,Izabela%20Kra%C5%9Bnicka,-Research%20Interest Accessed 15th September, 2021

Aviation Organisation (ICAO).⁴¹² Its establishment superseded an International Commission for Aerial Navigation (ICAN, or CINA) established under the 1919 Paris Convention. The Permanent American Aeronautical Commission (CAPA) was established under an Inter-American Technical Aviation Conference, held in 1937.⁴¹³ The convention sets airspace rules, aircraft registration, and safety and details the rights of the signatories to air travel.⁴¹⁴

b. The International Air Transport Association (IATA)

The IATA, a non-governmental, private Organisation of airlines was designed to promote safe, regular, and economical air transportation. The objective of IATA includes fostering air commerce. It was initially established in 1919 as International Air Traffic Association by five European Airlines and re-established in 1945 as the International Air Transport Association (IATA).

The focus of IATA had been health, safety, sustainability, and development of the Air industry. It mainly was eroded as a result of COVID-19. The IATA plays a more frontals role after the outbreak of COVID-19, encouraging most air travelers to be fully vaccinated before embarking on air travels. The role and cooperation offered by the association have led to sustaining the industry after being badly hit by the unanticipated pandemics.⁴¹⁵

The passenger airline business continued to be adversely affected by the COVID-19 crisis into 2021. Although global economic activity rebounded on the back of booming manufacturing production, travel restrictions kept air passenger numbers low, especially for international travel. Second-quarter 2021 numbers improved compared with those for the first quarter because of the reopening of some domestic and regional markets. But industry-wide revenue passenger

⁴¹² <http://www.britannica.com/EBchecked/topic/10733/air-law>, last visited on 18.07.17

⁴¹³ http://en.wikipedia.org/wiki/Convention_on_International_Civil_Aviation, last visited on 20.07.2021

⁴¹⁴ [https://www.researchgate.net/publication/329311257_International_Civil_Aviation_Organisation_ICAO#:~:text=File%20available-,International%20Civil%20Aviation%20Organisation%20\(ICAO\),Faisal%20Alalawi,-Research%20Interest](https://www.researchgate.net/publication/329311257_International_Civil_Aviation_Organisation_ICAO#:~:text=File%20available-,International%20Civil%20Aviation%20Organisation%20(ICAO),Faisal%20Alalawi,-Research%20Interest) accessed 15th August,2021.

⁴¹⁵ <https://www.iata.org/contentassets/c81222d96c9a4e0bb4ff6ced0126f0bb/iata-annual-review-2021.pdf> accessed 15th August, 2021

kilometers (RPKs) remained down a significant 64.5% between January 2021 and July 2021 versus the same period in pre-crisis 2019.⁴¹⁶

c. Airspace Management Agency

Airspace Management Agencies are Air Navigation Services Provider (ANSP) in most countries.

The Airspace Management Agency performs, among others, the following roles:

- a) Provision of air traffic services, including air control, visual and non-visual aids, aeronautical telecommunication services, and electricity supplies relating to it;
- b) Provision of navigation service necessary for the operation of aircraft taking – off and landing;
- c) Minimize or prevent interference with use or effectiveness of all apparatus used in connection with air navigation and for prohibiting or regulating benefits of all such device and the display of signs and lights liable to endanger aircraft and the use of the airspace;
- d) Procure, install and maintain adequate communication, navigation and surveillance, and air traffic management facilities at all airports in Nigeria;
- e) Coordinate the implementation of search and rescue services.

The various Airspace Management Agency has not been responsive timeously to emergencies situation in most developing countries. In Nigeria, the Nigeria Airspace Management Agency established by Decree 48 of 1999 has performed below optimum. There are several Air accidents or ineffective services traceable to the non-availability of necessary equipment useful for the discharge of NAMA functions in line with ICAO regulations.

Meteorological Agency

The supply of meteorological information to ensure the safety of air navigation is very important in Air transportation.⁴¹⁷ By the various meteorological agencies ' instrumentality in multiple airports, Airports are equipped with low-level shear alert system, a significant requirement in the ICAO audit, critical to aircraft safety during take-off and landing. In Nigeria, a Nigeria Meteorological Agency (NIMET) is established under NIMET Act 2003. There have also been installations of Doppler Weather Radar (DWR) at airports, enabling NIMET to track hazardous

⁴¹⁶ ibid

⁴¹⁷ Uwakwe. Op cit

weather around Airports, greatly enhancing its ability to provide early warning systems for the aviation section. NIMET has also helped procure and install lightning and thunderstorm detectors in Airport.⁴¹⁸

d. Civil Aviation Authority (CAA)

The Civil Aviation Authority (CAA) is the regulatory body of the aviation industry. In Nigeria, the Nigerian Airports Authority which commenced operations in 1978, In line with the National Policy on Civil Aviation recommendations in 1989, the Federal Civil Aviation Authority (FCAA) was established by Decree 8 of 1990 to take over the regulatory functions and provide air traffic and aeronautical telecommunication services. The Nigerian Civil Aviation Authority is a body corporate with perpetual succession created by section 2 of the Civil Aviation Act 2006,⁴¹⁹ with the power to sue and be sued.⁴²⁰

In the discharge of its duty, the Civil Aviation Authority has the power to issue, amend, vary, cancel, refuse and suspend any certificate. It can validate and prescribe in such certificate terms, conditions, and limitations as required in the interest of safety. It can also develop an issue and amend airworthiness directives, bulletins, orders, terms, and conditions to bring such directions into conformity with the prevailing airworthiness requirements. Most importantly, the civil aviation Authority has power to monitor and supervise the conditions under which an aircraft may carry passengers, mail, and cargo or under which aircraft may be used for other purposes and can prohibit a plane from the carriage of such classes of goods as the authority may prescribe occasionally⁴²¹.

The powers above of the Civil Aviation constitute statutory duties imposed on the authority, failure of which, if resulting in injury to any person, may engender a civil cause of action of the

⁴¹⁸ Ibid

⁴¹⁹ See Section 24 (1) & (2) Civil Aviation Act 2006.

⁴²⁰ Section 174 of the 1999 Constitution still retained and remained the overriding Section empowering the Attorney General to institute and prosecute criminal cases on behalf of the state. However, individuals can only charge with an express fiat of the Attorney General. If, however, the assumption is correct in holding the view that a right of action is created and established by the Act against the Civil Aviation Authority, its management, and employee in civil cases, the pertinent question then is what constitutes the cause of action to make the intendment of Section 24 so relevant and enforceable.

⁴²¹ Ibid

tort of negligence against the authority. The statutory duty inherently imposed on the Aviation Authority can be equated to the statutory duty of care needed to ground or establish a case of negligence against the carriers.

6. Loss from Delay, Denied Boarding and Cancellation by Air Carriers

The Courts⁴²² have made a plethora of pronouncements on Air Carrier's liability, and among these are; the Court of Appeal (C.A.), where the court held that Article 17 of the Warsaw Convention. Therefore, it is worth mentioning that despite several delays of flights, loss of baggage, and the likes, court pronouncements on passengers' rights therein are not frequently tested in courts. In most cases, passengers rue their losses, and in some instances, judicial pronouncements in Courts are protracted and cumbersome. Nevertheless, attitudes of Courts are to do substantial justice and follow the laws as laid down in the Conventions such as *Harka Air Services Ltd vs. Keasor*⁴²³; *Cameroon Airlines vs. Abdulkareem*⁴²⁴ on when damages may be awarded for loss arising from carriage by air and *Joseph Ibidapo vs. Lufthansa Airlines*⁴²⁵ on the applicability of Warsaw Convention.

However, it is very tasking, if not impossible, to successfully prosecute air carriers when one considers problems of getting sound and valuable information sufficient for passengers to charge the carriers. It needs to be pointed out that air carriers and the perception of their vulnerability to prosecution in criminal Courts after involvement in accidents and other incidents are factors that may affect their future cooperation in an accident and other incidents investigation and inquiries. It is important to note that the continued availability of safety information is important for

⁴²² Cameroun airlines. Jummai Abdulkareem 2003 Volume 11 NWLR part 830 P 1, Sudan Airways Company Ltd vs. Abdullahi (1999)1, NWLR Part 532, P 156, Ali vs. CBN (1997)4, NWLR Part 498, P 192, Kabo Air Ltd vs. Oladipo (1999)10, NWLR Part 623, P 517 and Dr Oladipo Maja vs. Salawu Oke (2013)2-3, MJSC (Part)P 31 at 41; *Harka Air Service (Nig) Ltd. vs. Emeka Kearzor Esq. Ibid*, at P 190, *Cameroon Airlines vs. Mr. Mike E. Otutuizu (Supra)*, The Supreme Court was of the opinion that once a breach of contract of aviation is established damages follows as consequence.

⁴²³ (2006) NWLR Part 960, page 160

⁴²⁴ (2003) 11, NWLR, Part 830 at Page 1

⁴²⁵ (1994) NWLR, Part 498 at Page 355

preventing future accidents. The likelihood of criminal prosecution makes pilots reconsider their earlier cooperation to provide possible information about an Accident and other incidents.⁴²⁶

7. Conclusion

Invariably, an increased number of cancelled flights and denied boarding has led to an increase in call for a review of the international convention governing air carrier's liability in situations not captured by the existing frameworks⁴²⁷ because this is capable of leading to uncertainty of the extent of air carrier liability,⁴²⁸ The lack of uniformity among different countries or parties,⁴²⁹ and application of domestic laws, which may not be equipped to assist the passenger in making a claim.⁴³⁰ It would be ill-advised to regulate issues related to cancellation and denied boarding through an international framework; both require detailed provisions that are better addressed at the regional or national level, so that they can be adapted to the social, political, economic as well as geographical characteristics of a particular region or State. In fact, the ICAO Principles expressly refer to national and regional regimes, recognizing the current trend in regulatory approaches to air passenger protection.⁴³¹ The document provides in relevant part that "government authorities should have the flexibility to develop consumer protection regimes (...) which take into account States' different social, political, and economic characteristics".⁴³²

It seems that despite the underlying purpose of the private international air law conventions to establish a uniform system of rules governing air carrier liability in international transportation, due to differences in ratification, interpretation, and application of the Conventions, the international framework has achieved only a certain degree of harmonization. Moreover, there is a risk that a new Convention either amending or supplementing the Montreal Convention of 1999 will lead to even further fragmentation of the existing rules, akin to the Warsaw System of conventions.

⁴²⁶ See Section 55(1) 7(2) Nigeria Civil Aviation Act 2006

⁴²⁷ Adediran, Adejoke O. "The Need for an International Legal Regime for Flight Cancellation and Denied Boarding" (2015) 50 Ann Air & Sp L 863

⁴²⁸ Ibid at 865.

⁴²⁹ Ibid

⁴³⁰ Ibid at 874.

⁴³¹ ICAO, "Core Principles", supra note 9

⁴³² Ibid at 2

The likelihood of ICAO regulating air passenger rights, either through a set of binding international standards or a multilateral convention, is not feasible⁴³³, even when the 1999 Montreal Convention is projected to prevail as the “common law” of international carriage by air” in the 21st century⁴³⁴.

The overall regulatory liberalization of air transportation has had the opposite effect concerning passenger rights, which gained importance over the past few years. Due to the proliferation of regional and national regimes on air passenger rights, ICAO has become more involved in the issues of consumer protection effectiveness and passenger satisfaction.⁴³⁵

ICAO Assembly directed the ICAO Council to adopt a set of high-level, non-binding, non-prescriptive principles on consumer protection. While the impact of Principles on the development of national and regional passenger regimes is yet to be tested, they provide a common baseline for both the regulators and the industry concerning consumer protection. The issues of air carrier obligations and corresponding air passenger rights in cases of delay, cancellation, and denied boarding, especially concerning appropriate care and assistance, should be addressed on national and regional levels rather than through an international convention. That way, States may adopt a regulatory approach that better suits their social, political, economic, and geographic circumstances.⁴³⁶

However, when promulgating specific rules, they should consider systems in other jurisdictions that may also apply and endeavour to avoid duplication of efforts and prevent potential overlaps that may impose different or conflicting obligations on air carriers.

Air transportation is inherently international and cross-border in nature. It must be subject to uniform rules in areas of safety, security or environment, and the unification and harmonization of regulations governing air carrier liability was the principal objective and driving force behind

⁴³³ Brian Havel & John Q Mulligan “Extraterritorial Application: Exporting Consumer Protection Standards” in Michal Bobek & Jeremias Prassl, eds, *Air Passenger Rights: Ten Years On* (Oxford and Portland, Oregon: Hart Publishing, 2016) 239, at 254-255

⁴³⁴ Paul Stephen, Dempsey & Michael Milde. *International Air Carrier Liability: The Montreal Convention of 1999* (Montréal, QC: McGill University Centre for Research in Air & Space Law, 2005), at 43

⁴³⁵ ICAO Secretariat, *Effectiveness of Consumer Protection Regulations*, Worldwide Air Transport Conference (ATCONF), Sixth Meeting, Agenda Item 2 & 2.3, Information Paper No 1, Doc ATConf/6-IP/1, online: ICAO . Accessed 15th November, 2021

⁴³⁶ *Ibid*, 38th Assembly ICAO

the adoption of first the Warsaw System instruments and recently also the Montreal Convention. Although flight delays, cancellations, or denied boarding are not precisely “global problem[s] that require a solution that involves the entire international community.”⁴³⁷ Instead of proposing a new multilateral convention on air passenger rights, and consumer protection in general, the ICAO Council in co-operation with the Member States has recognized the value in addressing those issues on regional and national levels. In this area, the fragmentation of applicable rules operates to strengthen the international framework on air carrier liability in the transportation of passengers. It allows States to provide immediate relief for passengers who might be subject to flight irregularities and denial of boarding while ensuring controlled oversight of the airline industry. Despite certain flexibility afforded to national courts in interpreting the provisions of international Conventions, neither the Warsaw System nor the Montreal Convention was designed to address specific issues related to delays, cancellation, or denial of boarding, such as the provision of care and assistance, or rerouting.

The cost of regulatory compliance and insurance is ultimately passed on to passengers⁴³⁸, and airlines simply include it in their fares. Moreover, regional and national systems must observe the exclusivity of the remedies under international conventions for damage occasioned by delay. Perhaps the EU will recognize the error of its ways in interpreting the exclusion provisions of the Montreal Convention and correct it in the upcoming revision of Regulation 261. States must find ways to regulate air carrier liability and ensure the protection of air passenger rights in the international carriage by air, based on an equitable balance of interests, in keeping with the spirit of the Montreal Convention, as expressed in its preamble. Instead of achieving coherence at any cost, including an overall unworkability of a perfect system of uniform norms,⁴³⁹ the

⁴³⁷ Brian Havel & John Q Mulligan “Extraterritorial Application: Exporting Consumer Protection Standards” in Michal Bobek & Jeremias Prassl, eds, *Air Passenger Rights: Ten Years On* (Oxford and Portland, Oregon: Hart Publishing, 2016) 239, at 256

⁴³⁸ International Air Transport Association (IATA), *A Proposal for a Set of High-level, Non-prescriptive Core Principles on Consumer Protection*, ICAO Assembly, 38th Sess, Agenda Item 40, Working Paper No 73, Doc A38-WP/73, Revision No 2 (3 September 2013), online: ICAO ; Hermida, J. "The New Montreal Convention: the International Passenger's Perspective." *Air and Space Law*. 26 (2001): 150, at 155: ‘The increased cost of insurances ultimately passed on to the passengers’

⁴³⁹ International Law Commission, *Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law*, Report of the Study Group of the International Law Commission, UNGA, 2006, UN Doc A/CN.4/L.682

international community of States should build a pluralist legal system focused on “the celebration of difference that remains committed to the existence of universal standards”.⁴⁴⁰

Undoubtedly, the outbreak of COVID-19 has worked difficult for some of the Air Carriers, especially where there are specific caps provided on all liabilities. It is vital to give Air Carriers greater certainty about what compensation they may be obliged to provide in certain circumstances. Furthermore, the various institutions should be empowered to react timely to liability created by accidental causes in the scale offered by COVID-19. Moreover, the Legal regime of liability for third parties on the ground should be expanded. The legal authority should also prescribe the limitation of liability for injury, death, and property damage.

There is a need for stand-alone legislation addressing the liability of air carriers to passengers for death, bodily injury, delay, denied boarding, and cancellation. This liability should also extend to third parties. This legislation should also be extended to cover aviation insurance. Other jurisdictions, where the laws are based on aviation liability, contain provisions directed toward the subject matter, and Nigeria should also work. It will end in victims making claims under tort and contract legislation or even common law. Insurance companies should play a significant role in compensating families and victims where the need arises. The usual bureaucracy and bottleneck in the settlement of liabilities and disputes associated with claims should be avoided.

⁴⁴⁰ K. Anthony Appiah, “Citizens of the world” in Matthew J. Gibney, ed. *Globalizing Rights: The Oxford Amnesty Lectures 1999* (Oxford, United Kingdom: Oxford University Press, 2003) at 189 at 202; see also William W. Burke-White. “International Legal Pluralism” (2004) 25:4 *Mich J Intl L* 963 at 977.



Conditions of Custodial Centre's in Nigeria and Its Impact on Recidivism

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Abstract

The Nigerian Criminal Justice System is currently faced with an enormous increase in ex-convicts relapsing into crime. This development has challenged the effectiveness of rehabilitation programs in Nigeria's Custodial Centers. This paper examines the conditions of custodial centers in Nigeria and their impact on recidivism. It also examines the aims of imprisonment and establishes that the Federal government and staff of custodial centers have a unique role to play on behalf of the rest of the society to ensure that inmates within its care come out reformed to prevent recidivism. This study was carried out using the doctrinal methodology of research, which involved analysis of relevant literature, including statutes, books, articles, and reports by various national and international institutions. The study considers relevant domestic and international legal frameworks on the rights and treatment of inmates. It notes that although Nigeria has ratified and domesticated several laws, including the recent enactment of the Nigerian Correctional Service Act 2019, the Custodial Centers conditions are still appalling. The paper identifies challenges of the Custodial Centers and makes recommendations for the prevention and control of recidivism in the Nigerian Criminal Justice System.



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Keywords: Nigerian Correctional Service, Nigeria Correctional Services Act, Nigerian Custodial Centres, Prison Conditions, Recidivism, Rehabilitation

1.0 Introduction

Custodial Centers play a significant role in preventing and controlling criminal recidivism. It is a closed and controlled institution where convicted and sentenced people are physically confined for rehabilitation to make them law-abiding and acceptable human beings in society upon release.⁴⁴¹ It is also a place where crime suspects awaiting trial are detained until the determination of their cases.⁴⁴² The aim of a prison sentence is a means of punishment for the convicted. Still, it is also a means to reduce recidivism when ex-convicts are eventually released into society.⁴⁴³

Recidivism is a relapse into a previous condition or mode of behavior, most frequently used in conjunction with substance abuse and criminal behavior.⁴⁴⁴ It is when an ex-convict goes back to a life of crime upon release. Recidivism is a serious challenge facing the Nigerian Correctional Service and even the world. One of the ideal functions of prison institutions worldwide is to reduce the rate of recidivism as much as possible. Still, when the opposite is the case where released inmates go back to a life of crime, then the purpose of imprisonment has been defeated.⁴⁴⁵ According to Chukwudi, prisons have become a training ground for criminals in Nigeria, far from what is expected of the Nigerian Correctional Service.⁴⁴⁶ It is expected that the service should positively impact the lives of inmates through rehabilitation programs, but the reverse is now the case due to the startling increase in recidivism.⁴⁴⁷ Therefore, this paper examines the conditions of the Custodial Centers in Nigeria and their impact on recidivism.

⁴⁴¹ Edeko, M.O. 'Prison Conditions in Nigeria in Relation to International Human Rights Standards: Assessment of Selected Issues' (2013) *Journal of Contemporary Legal and Allied Issues Vol. 14 No. 1*, 277

⁴⁴² Otu, M.S. 'Analysis of the Causes and Effects of Recidivism in the Nigerian Prison System' *International Journal of Development and Management Review (INJODEMAR) Vol.10 June, 2015*, 136

⁴⁴³ Qadri, S. M. 'Criminology: Problems and Perspectives'. (2005). *Delhi: Eastern Book Company (5th ed.)*

⁴⁴⁴ Recidivism, available at: < <https://www.newworldencyclopedia.org/entry/Recidivism>> last accessed on 7th January, 2022

⁴⁴⁵ Abrifor, C. A., Atere, A. A. & Muoghalu, C. O. 'Gender Differences, Trend and Pattern OF Recidivism Among Inmates in Selected Nigerian Prisons'. (2012). *European Scientific Journal, Vol. 8 (24): 25–44*

⁴⁴⁶ Chukwudi, F. 'Challenges of Reforms in The Nigerian Prison System: Lessons from The USA And South Africa'. (2012). *Journal of Social Science and Public Policy, Vol. 4 (9): 35–46*

⁴⁴⁷ Ibid

2.0 Definition of Custodial Centre

A Custodial Centre (hereinafter referred to as CC) is any public building with requisite facilities in an appropriate location in Nigeria, declared by the Minister, by order in a Federal Government Gazette to be a Custodial Centre provided that; the sleeping accommodation in the buildings declared shall meet all health requirements including consideration of adequate floor space, water, sanitation amenities, lightning, and ventilation.⁴⁴⁸ It is also a place where crime suspects awaiting trial are detained until the determination of their cases.⁴⁴⁹ And as earlier stated, the CC serves as a veritable agent of socialization and a place of reformation and rehabilitation for convicts.

3.0 History of the Nigerian Correctional Service

African societies had their unique conception of law and justice before the colonial notions of justice and incarceration. The enforcement of the law (largely unwritten customary law) varied from locality to locality but was usually carried out communally. The object of pre-colonial adjudication was therefore imposition of common sanctions such as reconciliation, compensation and restitution.⁴⁵⁰ It was in the 19th and 20th centuries that incarceration replaced corporal punishment, execution and banishment as the major means of punishing serious offenders.⁴⁵¹

The pronouncement of punishment on offenders is a sacred duty vested on the entire community or clan presided over by culturally recognized leaders such as: an elder, Eze, Oba or Baale, depending on the magnitude of the offense.⁴⁵² The use of incarceration was common.⁴⁵³ The “Ogboni House” among Yoruba’s served as a prison; the “Ewedas” were used by the Edo, apart from it being a place for keeping those who were to be sold, it was used to house offenders who

⁴⁴⁸ The Nigerian Correctional Service Act (NCSA), 2019 s.9(1)(2)

⁴⁴⁹ Egu, M.A. ‘History of the Nigerian Prison Service: An Insider’s Account’. (2009). *Garkida Press, Abuja*, 67

⁴⁵⁰ Qadri, S. M. ‘Criminology: Problems and Perspectives’. (2005). *Delhi: Eastern Book Company (5th ed.)*

⁴⁵¹ Edeko, M.O. ‘Prison Conditions in Nigeria in Relation to International Human Rights Standards: Assessment of Selected Issues’ (2013) *Journal of Contemporary Legal and Allied Issues Vol. 14 No. 1*, 279

⁴⁵² Ibid

⁴⁵³ Ibid

had to be put away. ⁴⁵⁴The Fulani's reserved some buildings for incarcerating offenders and those who were sentenced to death. ⁴⁵⁵

The concept of CC (also referred to as Prison) was transferred to Nigeria by the colonial masters. ⁴⁵⁶ The European system of punishing criminals dictates that criminals are incarcerated and discharged back into society after a few months. The purpose of this was for them to quickly integrate into society, although it was discovered that this did not stop them from committing another crime. ⁴⁵⁷ In their earliest forms, the prisons were called "Workhouse." ⁴⁵⁸ The functions of this workhouse include confining vagrants, paupers, and idlers. ⁴⁵⁹ On the other hand, the African ideology is that of punishing offenders by preventing the criminal from making further mischief and safeguarding the community. ⁴⁶⁰ This is an effective deterrence because of the communal lifestyle of Africans. ⁴⁶¹

The establishment of the Nigerian Correctional Service (NCS) (also known as Nigerian Prison Service) by the colonial administration began with establishing the consulate for the Bights of Benin and Biafra on the Island of Fernando Po with John Beecroft as Consul. ⁴⁶² In 1861, Lagos was declared a British Colony when the gunboats of the British Preventive Naval Squadron closed in on Lagos and forced its king Dosumu to sign an already drafted treaty. ⁴⁶³ McCaskey was appointed as acting Governor then, and he formed a police force that included twenty-five constables, ⁴⁶⁴ after which four courts were established in Lagos. ⁴⁶⁵ They had a police court that resolved petty disputes; a criminal court that tried more serious cases; a slave court that tried matters arising from abolishing the slave trade; and a commercial court that resolved disputes among merchants and traders ⁴⁶⁶. The prison was built alongside these courts as a necessary

⁴⁵⁴ Qadri, S. M. 'Criminology: Problems and Perspectives'. (2005). *Delhi: Eastern Book Company (5th ed.)*

⁴⁵⁵ Egu, M.A. 'History of the Nigerian Prison Service: An Insider's Account'. (2009). *Garkida Press, Abuja*, 67

⁴⁵⁶ Obioha, E.E. 'Prison in Nigeria'(2002) *Malthouse Press Limited Lagos*,367-379

⁴⁵⁷ Ibid

⁴⁵⁸ Howard, E.L. 'The English Prisons: Their Past and their Future'. (1960) *London: Butler and Tarmar Ltd*, 27

⁴⁵⁹ Ibid

⁴⁶⁰ Egu, M.A. 'History of the Nigerian Prison Service: An Insider's Account'. (2009). *Garkida Press, Abuja*, 67

⁴⁶¹ Ibid

⁴⁶² Edeko, M.O. 'Prison Conditions in Nigeria in Relation to International Human Rights Standards: Assessment of Selected Issues' (2013) *Journal of Contemporary Legal and Allied Issues Vol. 14 No. 1*, 280

⁴⁶³ ibid

⁴⁶⁴ Egu, M.A. 'History of the Nigerian Prison Service: An Insider's Account'. (2009). *Garkida Press, Abuja*, 67

⁴⁶⁵ Ibid

⁴⁶⁶ Obioha, E.E. 'Prison in Nigeria' (2002) *Malthouse Press Limited Lagos*, 367-379

complement to the colonial machinery for law enforcement.⁴⁶⁷ The first Nigerian prison established at Broad Street, Lagos in 1872 accommodated 300 Prisoners.⁴⁶⁸ In 1890, other prisons were established in old Calabar, Onitsha, Benin City, Sapele, and Degema.⁴⁶⁹ By 1899, a prison manned by a jailer was built at Ibadan while the police also performed escort duties.⁴⁷⁰

Edeko observed that the colonial administration paid little attention to the orderly evolution and development of prisons.⁴⁷¹ This attitude laid the foundation for the perpetual neglect of the welfare of both staff and inmates of the prison.⁴⁷² In 1916, the prisons Ordinance was passed, and it empowered the Director of Prisons to make Standing Orders for the Organisation, discipline, and clothing of staff and inmates of Prisons.⁴⁷³ With this development, criminals or offenders were sent to prison for incarceration or on remand when convicted, as against the traditional ways of dealing with offenders either by banishment or payment of fines.⁴⁷⁴

However, a law that regulates the CC in Nigeria has since been established: the Prison Act 1972. The most recent being The Nigerian Correctional Service Act (NCSA) 2019, which received presidential assent on the 14th of August 2019 and immediately repealed the Prisons Act, 1972.

4.0 Aims of Imprisonment

Based on the facts discussed above, imprisonment was based on punishing those who wronged society by inflicting the punishment of the body. From the current practices, it could be deduced that imprisonment is no longer intended as an acute form of retribution but a method by which society treats and rehabilitates an inmate's mind and body. The aim of imprisonment of the NCS is provided for in the NCSA 2019. It emphasized providing safe, secure, and humane custody for inmates.⁴⁷⁵ Other duties and obligations on the NCS include; identifying the existence and causes

⁴⁶⁷ Ibid

⁴⁶⁸ Egu, M.A. 'History of the Nigerian Prison Service: An Insider's Account'. (2009). *Garkida Press, Abuja*, 67

⁴⁶⁹ Ibid

⁴⁷⁰ Olawale, W.' Revisional Digest for Prison Workers'. (2005) *Alphabet Nigerian Publishers Owerri*. 12

⁴⁷¹ Edeko, M.O. 'Prison Conditions in Nigeria in Relation to International Human Rights Standards: Assessment of Selected Issues' (2013) *Journal of Contemporary Legal and Allied Issues Vol. 14 No. 1*, 280

⁴⁷² Edeko, M.O, *op..cit.*

⁴⁷³ Olawale, W.' Revisional Digest for Prison Workers'. (2005) *Alphabet Nigerian Publishers Owerri*. 12

⁴⁷⁴ *ibid*

⁴⁷⁵ NCSA 2019, s. 10(b)

of antisocial behavior in inmates;⁴⁷⁶ initiating behavior modification in inmates through the provision of medical, psychological, spiritual, and counseling services for all offenders, including violent extremists;⁴⁷⁷ training inmates through the use of educational and vocational training programs, and generating income through Custodial Centre's, farms and industries.⁴⁷⁸

The NCS is also expected to conduct risk and needs assessment aimed at developing appropriate correctional treatment methods for reformation, rehabilitation, and reintegration⁴⁷⁹. It is expected to implement this by instilling discipline, dignity in Labour, and respect for law and order in the inmates.⁴⁸⁰

In reality, the aim of imprisonment in Nigeria has been defeated. Sometimes, discharged inmates come out of incarceration worse than they went in, owing to the inhuman state of prisons.⁴⁸¹ Consequently, discharged inmates come out hardened and unreformed, frustrated and humiliated, and walk straight back to crime as a way to further oust their fury on the public.

5.0 Conditions of Custodial Centers in Nigeria.

Even though there are a series of laws regulating CC's conditions in Nigeria,⁴⁸² it is disheartening to note that most detainees and inmates do not have access to the enjoyment of these rights.⁴⁸³ The World Prison Brief reported that in Nigeria, there are 73.5% of pre-

⁴⁷⁶ Ibid, s.10(d)

⁴⁷⁷ Ibid, s. 10(g)

⁴⁷⁸ Ibid, s10(h)

⁴⁷⁹ Ibid, s.10(e)

⁴⁸⁰ Ibid, s.10(f)

⁴⁸¹ Ozuru, G. 'Prisoners Right: Setting a Global Standard for Nigerian Inmates' (2019) *Nnamdi Azikiwe University Journal of International Law and Jurisprudence vol 10(2)* 104

⁴⁸² International Covenant on Civil and Political Rights (1966) (hereinafter ICCPR), article 25 (b); African Charter on Human and Peoples' Rights ("Banjul Charter"), 1981 (entered into force on 21st October 1986) (ACHPR), article 13, which is applicable in Nigeria as the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, 1983, cap A9, Laws of the Federation of Nigeria, 2011, article 13 (1); Universal Declaration of Human Right. 1948, article 21 (1), Constitution of the Federal Republic of Nigeria, 1999 (as amended) (hereinafter referred to as CFRN), s. 77 (2) and Nigerian Correctional Service Act 2019

⁴⁸³ Ozuru, G. 'Prisoners Right: Setting a Global Standard for Nigerian Inmates' (2019) *Nnamdi Azikiwe University Journal of International Law and Jurisprudence vol 10(2)* 104

trial/remand prisoners in custody among the whole prison population.⁴⁸⁴ The Nigerian Correctional Service (NCS), in its data on the Summary of Inmate Population by Convict and Persons Awaiting Trial, recorded that as of October 4th, 2021, the prison facilities hold 37% more inmates than it is designed to.⁴⁸⁵

The NCS data shows that Nigeria's correctional centers can hold 50,083 inmates, but they currently hold 70,056 inmates, which is more than expected.⁴⁸⁶ The data also revealed that of the 70,056 inmates at the facility, 50,822 are awaiting trial.⁴⁸⁷

The Federal Government observed the deplorable conditions of prisons in the country and promised to make Nigeria prisons more reformatory.⁴⁸⁸ The Government said the current conditions of the prisons, most of which were built during the colonial era, were unfortunate and very alarming and in dire need of national attention.⁴⁸⁹

Abubakar Malami (SAN), the Minister of Justice in Nigeria, is of the view that the current state of NCS is alarming and it is very obvious that the facilities are overcrowded with inmates and the environment are mostly not conducive which thereby defeats the primary purpose of the CS as primarily for reformation centres.⁴⁹⁰ He further stated that the NCS directly touches on the fundamental human rights of the inmates and constitutes a violation of their rights.⁴⁹¹

The class of prisoners awaiting trial faces great hardship under the NCS due to administrative issues such as onerous and stringent bail conditions, delay in issuing legal advice, unnecessary

⁴⁸⁴ World Prison Brief Data, available at: < <https://www.prisonstudies.org/country/nigeria>> last accessed on 29th October, 2021

⁴⁸⁵ Nigerian Correctional Service, available at: <<https://www.corrections.gov.ng/statistics>> last accessed on 29th October, 2021

⁴⁸⁶ ⁴⁸⁶ Nigerian Correctional Service, available at: <<https://www.corrections.gov.ng/statistics>> last accessed on 29th October, 2021

⁴⁸⁷ Ibid

⁴⁸⁸ Ejike-Abuja, S. 'FG Decries Deplorable Prison Conditions, Sets Up Decongestion Committee' Nigerian Tribune 31st October 2017, available at: <<https://tribuneonlineng.com/fg-decries-deplorable-prison-conditions-sets-decongestion-committee/>> last accessed on 29th October 2021

⁴⁸⁹ Ejike-Abuja, S. 'FG Decries Deplorable Prison Conditions, Sets Up Decongestion Committee' Nigerian Tribune 31st October 2017, available at: <<https://tribuneonlineng.com/fg-decries-deplorable-prison-conditions-sets-decongestion-committee/>> last accessed on 29th October 2021

⁴⁹⁰ Ibid

⁴⁹¹ Ibid

adjournment and delay by counsels, incessant industrial action by judiciary staff, bail denial, logistic problems, missing case files, incomplete investigation, lack of legal counsels by detainees who cannot afford their services, amongst other things.⁴⁹² Many of these detainees remain in CC for a prolonged period of time without trials. This, therefore, results in the indefinite detention of the inmates under harsh and inhumane conditions, whereas some of the inmates have not been tried or convicted. This goes against their pre-trial rights. According to the law, an accused is to be presumed innocent until proved guilty,⁴⁹³ and prisoners awaiting trial are presumed to be innocent and shall be treated as such.⁴⁹⁴ The right to a fair hearing is constitutionally guaranteed in Section 36 of the Nigerian Constitution.⁴⁹⁵ Therefore, pretrial detainees are presumed innocent and should not be subject to the same rules and regulations as convicted inmates.

In some CC, inmates sleep a ratio of two to a single bed or on the floor in unkept cells.⁴⁹⁶ Toilets are blocked and overflowing or simply non-existent, and sometimes, there is no access to running water.⁴⁹⁷ As a result, diseases are widespread, and most of the CC's have small clinics or sick bays which lack medicines, and many inmates have to pay for their treatment.⁴⁹⁸

Edeko⁴⁹⁹ summarized that poor living conditions in the CC's could sometimes affect inmates' physical and mental well-being. In some cases, it can constitute threats to the inmates' health conditions. Examples of poor conditions include; overcrowding, poor sanitation, lack of food and medicines, bedding clothing, and sometimes denial of contact with families and friends, which

⁴⁹² Nwosuji E.P. 'An Overview of the Challenges and Rehabilitation of Prisoners in Nigeria'. (2015). *International Journal of Social Sciences and Humanities Review*.

⁴⁹³ Article 11 of The Universal Declaration of Human Rights (UDHR), Article 9 of the International Covenant on Civil and Political Rights and Article 7 of the African Charter on Human Rights

⁴⁹⁴ Rule 84(2) UDHR

⁴⁹⁵ In *Onugha v. Ezeigwe*, (2011), 13 NELR (pt. 1263) 184 C.A., it was held that the principle of our law is that no person shall be guilty without being given an opportunity to defend himself. Every person against whom an allegation is made must be confronted with that allegation so as to offer defense.

⁴⁹⁶ Edeko, M.O. 'Prison Conditions in Nigeria in Relation to International Human Rights Standards: Assessment of Selected Issues' (2013) *Journal of Contemporary Legal and Allied Issues Vol. 14 No. 1*, 289

⁴⁹⁷ Ibid

⁴⁹⁸ Nwosuji E.P. 'An Overview of the Challenges and Rehabilitation of Prisoners in Nigeria'. (2015). *International Journal of Social Sciences and Humanities Review*

⁴⁹⁹ Ibid

falls short of the United Nations Standards for treating inmates.⁵⁰⁰ Specific basic physical requirements must be met if the state is to comply with its obligation to respect the prisoner's human dignity and fulfill its duty of care. These include adequate provisions of accommodation, food, drink, and exercise.⁵⁰¹ When an accused is sentenced, the international standards are clear that the punishment imposed should solely deprive liberty. Imprisonment must not include the risk of physical or emotional abuse by staff or other prisoners. It must not involve the risk of severe illness or even death because of the material conditions or the lack of proper care.⁵⁰²

6.0 Challenges of the Nigerian Custodial Centers (NCC)

The challenges opposing the smooth running of the NCC started almost from its inception, ranging from poor funding, overcrowding, lack of correctional and rehabilitative infrastructure, archaic structures due to the absence of maintenance culture, corruption, and fewer prison structure in a country with a hefty population.⁵⁰³ The low-ranking prison staff are not motivated to discharge their duties owing to a lack of inspiration and incentive.⁵⁰⁴ They witness the money allocated being usurped by the top officers, with none coming to low-ranked prison staff.⁵⁰⁵ This has a demoralizing effect on the team as they seek their way to engage in corrupt practices by extorting money from inmates through their visiting relatives and friends. Some of the challenges are discussed further below.

- a) **Overcrowding:** Overcrowding has many causes, which include: the growth of prison populations,⁵⁰⁶ insufficient prison infrastructure,⁵⁰⁷ high imprisonment rates, harsh

⁵⁰⁰ Nigerian Human Rights: 'Prison Monitoring Committee starts work in Nigeria', Afro News, 15th June, 2013 available at: <http://www.afrol.com/articles/13361> last accessed on 29th October, 2021

⁵⁰¹ Rules 9-12 of the United Nations Standard Minimum Rules for the Treatment of Offenders 1955 as amended in 1984, herein after referred to as UNSMR

⁵⁰² Article 10 and 11(a) UNSMR, Rule 15 UNSMR.

⁵⁰³ Nwosuji E.P. 'An Overview of the Challenges and Rehabilitation of Prisoners in Nigeria'. (2015). *International Journal of Social Sciences and Humanities Review*

⁵⁰⁴ Ozuru, G. 'Prisoners Right: Setting a Global Standard for Nigerian Inmates' (2019) *Nnamdi Azikiwe University Journal of International Law and Jurisprudence vol 10(2)* 104

⁵⁰⁵ Ibid

⁵⁰⁶ United Nations Office for Project Services (UNOPS) Copenhagen: Technical and operational considerations based on the Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) (2016) p. 26

⁵⁰⁷ Ibid

sentencing guidelines,⁵⁰⁸ excessive pre-trial detention,⁵⁰⁹ lack of non-custodial measures and sanctions, and various social, economic, and political factors all contribute to the problem.⁵¹⁰ The structures are not expanding to accommodate the swarming multitude of detainees being remanded in custody.⁵¹¹ The justice system is clogged with delays in the dispensation of justice by the Nigerian courts.⁵¹² Judicial officers seem to overuse imprisonment as a punishment tool, significantly when the detainees can easily be fined or summarily tried.⁵¹³ As a result of these, prisons are overcrowded, which sometimes can be detrimental to the health of inmates in the condition of a virus outbreak like the Covid-19 situation we witnessed in the year 2021.

b) Lack of Funding: Many prison systems have so few resources that they struggle to meet basic needs such as food, healthcare, clothing, and even shelter in a safe, hygienic environment.⁵¹⁴ Funding largely has prohibited the upgrading of Nigerian prisons to the most international excellent standard.⁵¹⁵ Staff and infrastructure appear to be the direct costs for prisons. Better management will encourage an enabling working system for better treatment of inmates, which, in turn, will meet the United Nations standards.⁵¹⁶ While this standard includes more than just food costs, it does provide a basis for comparison to indicate how alarmingly low the food expenditure in some prisons can be. As a result, in many countries, authorities rely on families, charities, or religious Organisations to provide food, healthcare services, and other essentials for people in prison.⁵¹⁷

⁵⁰⁸ Ibid

⁵⁰⁹ Ibid

⁵¹⁰ Ibid

⁵¹¹ Ozuru, G. 'Prisoners Right: Setting a Global Standard for Nigerian Inmates' (2019) *Nnamdi Azikiwe University Journal of International Law and Jurisprudence vol 10(2)* 104

⁵¹² ibid

⁵¹³ Nwosuji E.P. 'An Overview of the Challenges and Rehabilitation of Prisoners in Nigeria'. (2015). *International Journal of Social Sciences and Humanities Review*

⁵¹⁴ Jeanne, H. "Imprisonment is expensive' – breaking down the costs and impacts globally" (2020). Available at: <<https://www.penalreform.org/blog/imprisonment-is-expensive-breaking-down-the-costs-and/>> last accessed 16th January, 2022

⁵¹⁵ Ozuru, G. 'Prisoners Right: Setting a Global Standard for Nigerian Inmates' (2019) *Nnamdi Azikiwe University Journal of International Law and Jurisprudence vol 10(2)* 104

⁵¹⁶ Fasammi, A. 'In the Shadow of being forgotten: Women Incarcerated in Nigerian prisons and the health implications. (2015) *Agenda* 29:67-78

⁵¹⁷ Jeanne, H. "Imprisonment is expensive' – breaking down the costs and impacts globally" (2020). Available at: <<https://www.penalreform.org/blog/imprisonment-is-expensive-breaking-down-the-costs-and/>> last accessed 16th January, 2022

- c) **Poor Infrastructures:** The numeral of inmates is increasing daily without an equivalent increase in funding and upgrading of the physical structures and facilities.⁵¹⁸ The only prison that has been renovated is the Lagos Prisons.⁵¹⁹ The systems from the colonial era have continued to be significant superior facilities.⁵²⁰ Some of the prison lands where further development would have been carried out now serve as farmlands⁵²¹ for prison staff who engage the prisoners to work on their farms without any form of remuneration.
- d) **Poor Health Conditions:** The sanitary and health conditions of the prisons are another serious concern. Araromi,⁵²² opined that in situations where 100 persons occupy a room meant for four, oxygen would be in short supply and more carbon dioxide in the air. Microbes thrive better in warm, clammy conditions, which is a likely cause of diseases. Inmates have to sleep on damaged cemented floors owing to a lack of beddings. Hygiene is lacking, as there are no detergents, soaps, disinfectants, toilet papers, etc., even for female inmates. The unhealthy conditions of the prison endanger both staff and inmates.

7.0 The Impact of the Conditions of Custodial Centers on Recidivism

Recidivism is the relapse into crime by an ex-convict who was once convicted and punished for the crime.⁵²³ It refers to a person's relapse into criminal behavior, often after receiving sanctions or undergoing intervention for a previous crime.⁵²⁴ According to the author of this study, an individual recidivates when they commit a crime at any time during or after the intervention or sanctioning process. A recidivist is a repeat offender; career criminal, or habitual offender⁵²⁵

Recidivism has been increasing in Nigeria and has become a major social concern to society, government at all levels, and the world.⁵²⁶ Discharged prisoners find it extremely difficult to re-

⁵¹⁸McCann, P. 'Challenges Associated with Prisoner intervention Programmes in Ghana: Case Studies of the Nsawam Female Prison' (2014) Doctoral *dissertation*, University of Ghana.

⁵¹⁹Nwosuji E.P. 'An Overview of the Challenges and Rehabilitation of Prisoners in Nigeria'. (2015). *International Journal of Social Sciences and Humanities Review*.

⁵²⁰ Ibid

⁵²¹Oakpu, U. 'Inter-Party Politics Relations in Nigeria 1979-1983' (1985). *Africa Spectrum* 20:191-209.

⁵²²Alemika, E.E. 'Trends and Conditions of Imprisonment in Nigeria.' (1993) *International Journal of Offender Therapy and Comparative Criminology* 37:147-162.

⁵²³ *Blantine's Law Dictionary*, 3rdEdn., (New York, USA: The Lawyers Cooperative Publishing Co., 1969), p. 1065.

⁵²⁴ Abrifor, A.C. "Gender Difference Trends and Pattern Recidivism Among Inmates in Selected Nigerian Prisons" (2011) 8 (24) *European Scientific Journal*, p. 25-44.

⁵²⁵ *Black's Law Dictionary* (n. 22), p. 1276

⁵²⁶ Abrifor, A.C. "Gender Difference Trends and Pattern Recidivism Among Inmates in Selected Nigerian Prisons" (2011) 8 (24) *European Scientific Journal*, p. 25-44.

integrate into the society because of social and cultural factors.⁵²⁷ Even after the release of a prisoner, society still perceives him as a social misfit who should be avoided, thereby making re-integration difficult. The social stigma “ex-convict” attached to a released prisoner seems to have contributed to the problem of resettling in society.⁵²⁸ It looks like a released prisoner automatically becomes an outcast and ostracized once he is discovered to have been in and out of prison.

Another effect on the post-release crime rate is placing a minor offender amongst hardened offenders. Often, the minor offenders get corrupted and tutored by the hardened ones and by the time they are out of prison, they engage in more serious offenses.⁵²⁹ Research shows that exposing inmates with higher propensities to crime may increase criminal behavior or reinforce antisocial attitudes.⁵³⁰ In a study conducted across five selected prisons in Nigeria between 2007 and 2010, it was discovered that there was a rise in recidivism rate from 35% to 44% in 2007 and 52.4% in 2010.⁵³¹

There are arguments that a prison is a school of crime and breeding ground for criminal socialization.⁵³² Some of the societal and prison factors that make specific individuals go back to a life of crime include: situational, personal, interpersonal, familial, structural, cultural, and economical⁵³³.

Factors identified as being responsible for the high rate of recidivism from the prison aspect in Nigeria include lack of funding to procure materials and equipment for training⁵³⁴, reformation,

⁵²⁷Osayi, K.K. “Socio-Cultural Factors Affecting Reintegration of Discharged Prisoners in Anambra State, South-East, Nigeria” (2013) 4 (10) *Mediterranean Journal of Social Sciences*, p. 775

⁵²⁸ Ibid

⁵²⁹ Ibid p. 776

⁵³⁰ Abrifor, A.C. “Gender Difference Trends and Pattern Recidivism Among Inmates in Selected Nigerian Prisons” (2011) 8 (24) *European Scientific Journal*, p. 25-44.

⁵³¹ Abrifor, A.C. “Gender Difference Trends and Pattern Recidivism Among Inmates in Selected Nigerian Prisons” (2011) 8 (24) *European Scientific Journal*, p. 25-44.

⁵³² Chukwudi, F.’ Challenges of reforms in the Nigerian prison system: lessons from the USA and South Africa’. (2012) *Journal of Social Science and Public Policy*, Vol. 4 (9): 35– 46.

⁵³³ Ibid.

⁵³⁴ Ogwezy. M.C. “From Reformation to Deformation: An Approach Towards Sustainable Development of the Defective Prison System in Nigeria” (2011) 12 (7) *Journal of Sustainable Development in Africa*, p. 276; Awopetu, R.G. “An Assessment of Prison Overcrowding in Nigeria: Implications for Rehabilitation, Reformation and Reintegration of Inmates” (2014) 19 (3) *IOSR Journal of Humanities and Social Science*, p. 25.

and rehabilitation of prisoners,⁵³⁵ failure to replace worn-out training equipment and machines at prison facilities,⁵³⁶ lack of qualified personnel to operate the available equipment and engage the prisoners meaningfully,⁵³⁷ little or no provision by government and private Organisations for gainful employment opportunities for discharged prisoners,⁵³⁸ lack of empowerment for discharged prisoners,⁵³⁹ highly restrictive nature of the prison facilities which creates an unhealthy gap between prisoners and their family and friends, the very people they are going home to after discharge.⁵⁴⁰ These problems stem from the CC's challenges, which in turn encourage recidivism.

From the foregoing, it can be deduced that the Nigerian prison system lacks resources to procure and establish state-of-the-art correctional programs such as vocational skills and a qualitative formal education system for both male and female inmates. Even the few available facilities for training, such as industrial or agricultural plants, trade, and vocational trade, are moribund or so obsolete that they are incapable of motivating, reforming, mobilizing, and empowering released inmates to live a crime-free life. The author argues that the nature or manner of programs created for checking up on ex-convicts post-release in Nigeria, if any, that are carried out within and outside the prison system determines whether an inmate will return to crime and criminal activities after release. The nature of inmates' rehabilitation or reformation programs has a significant impact on them post-release. Still, when released, inmates are not gainfully employed in the free world, resulting from a lack of vocational tools and skill acquisition, it's quick access to recidivism. Factors that aggravate recidivism includes unstable employment and low earnings, poor prison education and skills acquisition programs, post-release deviant neighborhoods, a dearth of post-release job training and educational programs, and social stigmatization in mainstream society.

⁵³⁵Osayi, K.K. "Socio-Cultural Factors Affecting Reintegration of Discharged Prisoners in Anambra State, South-East, Nigeria" (2013) 4 (10) *Mediterranean Journal of Social Sciences*, p. 776

⁵³⁶Ogwezzy, M.C. "From Reformation to Deformation: An Approach Towards Sustainable Development of the Defective Prison System in Nigeria" (2011) 12 (7) *Journal of Sustainable Development in Africa*, p. 276

⁵³⁷ Ibid

⁵³⁸ Ibid

⁵³⁹ Ibid

⁵⁴⁰ Ibid

Release economically, psychologically, physically and socially demoralized inmates without proper follow-up programmes to enable them become self-reliant or secure meaningful employment in government establishments or private sector portends a great danger. The chances of such persons relapsing into crime and criminality are exceedingly high. It is believed that poor engagement in educational and employment pursuits, which generally are prosocial activities, are risk factors for criminal recidivism.⁵⁴¹ There are indications that the study of recidivism is a common way of measuring the effectiveness of various criminal justice programs.⁵⁴²

Scholars have, however, observed that punishment could not stop re-offending.⁵⁴³ They have further postulated that besides punishment, there should be other opportunities to compensate and empower victims of crime while gaining a better understanding of what happened for parties to move on with their lives and the offender to note the impact of his actions or behaviors on the victims.⁵⁴⁴ This will consequently help the offender avoid committing further offenses in the future.

Rehabilitation of inmates can sometimes become baseless when offenders return to the same communities where they can easily become involved in criminal activities. Studies have shown that recidivism was more constant among inmates who returned to their former neighborhoods than inmates who relocated to new communities.⁵⁴⁵ Neighborhoods, where there are high crime rates, can enable released inmates who reside there to become recidivists.

These conditions should not be seen as inevitably causing rehabilitation efforts to fail. Still, the incidence of recidivism can affect public safety and escalates expenditure on law enforcement

⁵⁴¹ Skeem, J. & Peterson, J. P. ‘Major Risk Factors for Recidivism Among Offenders with Mental Illness.’ (2010). Available at: <<http://www.riskreduction.soceco.vci.edu/wp-content/uploads/2010/12/CrimNeedsCSG-Revised-Clean.pdf>> last accessed 29th October, 2021

⁵⁴² Cunneen, C. & Luke, G. ‘Recidivism and The Effectiveness of Criminal Justice Interventions: Juvenile Offenders and Post-Release Support.’. (2007) *Current Issues in Criminal Justice*, Vol. 19 (2): 198–210

⁵⁴³ Ogwezzy, M.C ‘Restorative Justice and Non-Custodial Measures: Panacea to Recidivism and Prison Congestion In Nigeria’ (2016) *Nnamdi Azikwe University Journal of International Law and Jurisprudence* p.73

⁵⁴⁴ Ogwezzy, M.C ‘Restorative Justice and Non-Custodial Measures: Panacea to Recidivism and Prison Congestion In Nigeria’ (2016) *Nnamdi Azikwe University Journal of International Law and Jurisprudence* p.73

⁵⁴⁵ Vozzella, L. ‘Study Finds Jobs After Prison Don’t Cut Recidivism.’(2004) *The Baltimore Sun*, P. 10B.

and criminal justice.⁵⁴⁶

8.0 Prevention and Control of Recidivism in the NCS System.

The purpose of the NCS is to house convicted offenders until their date of release and also to treat them through various rehabilitation and reformation programs that can contribute meaningfully in transforming them into law-abiding citizens and enable the inmates to have an easy reintegration process into the society, which in turn will help reduce the rate of recidivism. For example, programs that can successfully minimize recidivism, including treatment for substance abuse or mental illness, can help remove barriers that prevent employment and integration; education provides the skills necessary for inmates to obtain the type of jobs that lead to more successful outcomes, and meaningful employment provides released inmates an income and supports reintegration by increasing stability and self-confidence.⁵⁴⁷ Therefore, a careful appraisal of prison programs is necessary to identify those laudable for widespread adoption.

Prisoners are confronted by a range of social, economic, and personal challenges that tend to complicate their social reintegration significantly.⁵⁴⁸ The author believes that some of these challenges result from the offenders' circumstances and experiences. Other challenges are the direct consequences of incarceration and the community's attitude and disposition towards released offenders.⁵⁴⁹ Incarceration can sometimes have several damaging effects on the offender.⁵⁵⁰ For example, they may have lost their livelihood,⁵⁵¹ personal belongings, and ability to maintain housing for themselves and their family.⁵⁵² They may have contracted a

⁵⁴⁶ Ibid

⁵⁴⁷ McKean, L. & Ransford, C. 'Current Strategies for Reducing Recidivism'. (2004). Available at: <<http://www.targetarea.org/research.doc/>>recidivism fullreport.pdf last accessed 29th October, 2021

⁵⁴⁸ 'United Nations Office on Drugs and Crime: Introductory Handbook on The Prevention of Recidivism and the Social Reintegration of Offenders.' (2018). Available at: < https://www.unodc.org/documents/justice-and-prison-reform/18-02303_ebook.pdf> last accessed 16th January 2022.

⁵⁴⁹ Ibid

⁵⁵⁰ Borzycki, M. and T. Makkai. "Prisoner reintegration post-release". (2007). Canberra: Australian Institute of Criminology, P.10

⁵⁵¹ 'United Nations Office on Drugs and Crime: Introductory Handbook on The Prevention of Recidivism and the Social Reintegration of Offenders.' (2018). Available at: < https://www.unodc.org/documents/justice-and-prison-reform/18-02303_ebook.pdf> last accessed 16th January 2022

⁵⁵² Ibid

severe disease while in custody;⁵⁵³ incarceration may have damaged their social networks, and they may have lost important personal relationships.⁵⁵⁴ They may have experienced mental health difficulties or acquired self-defeating habits and attitudes.⁵⁵⁵ Finally, the conditions of imprisonment and the prison regime contribute to the institutionalization of offenders and other personal problems that make their reintegration more difficult.⁵⁵⁶

Without effective programs to help offenders face these multiple challenges, the likelihood of their successful social reintegration will be poor.⁵⁵⁷ Prison-based rehabilitation programs are most effective when they are based on a complete diagnostic and individual assessment of the offender and their situation.⁵⁵⁸ Such an assessment needs to occur soon after the offender's admission to the CC and, if possible, serve as the basis for a comprehensive and individualized intervention plan.⁵⁵⁹ That way, programs can focus on the dynamic risk factors and other challenges offenders face to prepare them for their release and successful social reintegration.⁵⁶⁰ All programs must be designed in a culturally sensitive manner and address, as applicable, the gender-specific needs of women prisoners and the special needs of certain other categories of prisoners.⁵⁶¹

When considering what works to reduce recidivism, one must begin by assessing the risks and needs of the inmate.⁵⁶² First, there must be the determination of which inmates are at the highest

⁵⁵³ Ibid

⁵⁵⁴ 'United Nations Office on Drugs and Crime: Introductory Handbook on The Prevention of Recidivism and the Social Reintegration of Offenders.' (2018). Available at: < https://www.unodc.org/documents/justice-and-prison-reform/18-02303_ebook.pdf> last accessed 16th January 2022

⁵⁵⁵ Dandurand, Y et al. 'Conditional Release Violations, Suspensions and Revocations - A Comparative Analysis' International Centre for Criminal Law Reform (2008) p.9

⁵⁵⁶ 'United Nations Office on Drugs and Crime: Introductory Handbook on The Prevention of Recidivism and the Social Reintegration of Offenders.' (2018). Available at: < https://www.unodc.org/documents/justice-and-prison-reform/18-02303_ebook.pdf> last accessed 16th January 2022.

⁵⁵⁷ Borzycki, M. and T. Makkai. "Prisoner reintegration post-release". (2007). Canberra: Australian Institute of Criminology, P.10

⁵⁵⁸ United States, Department of Justice, "Roadmap to reentry: reducing recidivism through reentry reforms at the Federal Bureau of Prisons" (Washington, D.C., April 2016).

⁵⁵⁹ Ibid

⁵⁶⁰ Ibid

⁵⁶¹ ibid

⁵⁶² 'Trend Wyoming: 4 Proven Ways to Reduce Recidivism' Available at: <<https://www.trendwyoming.org/articles/proven-ways-to-reduce-recidivism/>> last accessed 16th January 2022

risk of re-offending.⁵⁶³ This can be done via an objective risk assessment,⁵⁶⁴ which means identifying high-risk situations and determining the preventive and mitigating measures to reduce the risk to an acceptable level.⁵⁶⁵ Furthermore, inmates that are identified as being at risk of re-offending should undergo a criminogenic needs assessment,⁵⁶⁶ in which factors are identified that could have contributed to their criminal behavior.⁵⁶⁷ These might include Prior illegal activity; Alcohol or drug dependency; Mental health issues; Belonging to an anti-social peer group.⁵⁶⁸ By determining who is at risk and developing a unique needs assessment profile, staff members at the CC can more effectively develop a rehabilitation program that helps prepare each inmate for release.⁵⁶⁹

To guard against recidivism in the Nigerian CC's, educational and vocational programs should be accessible to inmates.⁵⁷⁰ Incorporating education into incarceration is also a good means of reducing recidivism in the CC's.⁵⁷¹ Basic education, like adult literacy and essential skills, by allowing inmates to finish their high school diplomas, learn the trade and technical skills, and pursue post-secondary educational opportunities while incarcerated can significantly reduce recidivism as well.⁵⁷² The implication of education and vocational programs would improve inmates' chances of getting job opportunities after release.⁵⁷³ A study discovered that legitimate employment might reduce the economic incentive to commit crimes and connect ex-detainees

⁵⁶³ 'Trend Wyoming: 4 Proven Ways to Reduce Recidivism' Available at: <<https://www.trendwyoming.org/articles/proven-ways-to-reduce-recidivism/>> last accessed 16th January 2022

⁵⁶⁴ Ibid

⁵⁶⁵ 'What is the objective of Risk Assessment'. Available at: <https://marinegyaan.com/what-is-objective-of-risk-assessment/> > last accessed 16th January 2022

⁵⁶⁶ Trend Wyoming: 4 Proven Ways to Reduce Recidivism' Available at: <<https://www.trendwyoming.org/articles/proven-ways-to-reduce-recidivism/>> last accessed 16th January 2022

⁵⁶⁷ Ibid

⁵⁶⁸ Ibid

⁵⁶⁹ Ibid

⁵⁷⁰ Chukwudi, F.' Challenges of reforms in the Nigerian prison system: lessons from the USA and South Africa'. (2012) *Journal of Social Science and Public Policy*, Vol. 4 (9): 35– 46.

⁵⁷¹ Fhooblall, H., Chittoo, H. B. & Bholoa, A. 'Trends in Incarceration and Recidivism in Mauritius: Raising the Alarm.' (2011). *Global Journal of Human Social Science*, Vol. 11 (7): 53–64

⁵⁷² Trend Wyoming: 4 Proven Ways to Reduce Recidivism' Available at: <<https://www.trendwyoming.org/articles/proven-ways-to-reduce-recidivism/>> last accessed 16th January 2022

⁵⁷³ Solomon, A. L., Waul, M., Ness, S. V. & Travis, J. 'Outside the Walls: A National Snapshot of Community-Based Prisoner Re-Entry Programmes'. (2004). Available at: <<http://www.urban.org/UploadedPDF/410911-OTWResourceGuide.Pdf>> last accessed on 29th October 2021

to more positive social networks and daily routines.⁵⁷⁴ While reducing recidivism through education is a popular and practical approach, so is improving substance abuse treatment for inmates.⁵⁷⁵ Substance abuse treatment programs are among the most effective in reducing recidivism.⁵⁷⁶ Drug abusers who use crime to raise money to afford that lifestyle can easily go back to a life of crime after release due to addiction.⁵⁷⁷ Still, the author of this work believes that when they are treated adequately while in prison, they can easily overcome the urge to recidivate.

While evaluating what works to reduce recidivism, the best approaches are to intervene early and provide substantive support while incarcerated. For the best results, that support should continue for the parolee after they are reintroduced to society.⁵⁷⁸

The general nature and conditions of the Nigerian prison system call for a total overhauling: adaptation and reintegration upon release are often confronted with a number of problems and challenges, such as finding a place to live and a job, reuniting with family members, and rebuilding one life. The successful reduction of recidivism can improve public safety and reintegration of ex-convicts into society.⁵⁷⁹

The Nigerian prisons system has gone through different reform processes that are geared towards reducing recidivism and general reformation and rehabilitation of offenders. It was asserted that the intention to reform the Nigerian prison system in recent time can be traced to June 2001, when the government proposed to review prison laws and prison reform, train personnel, rehabilitate inmates and revitalize the prison system with the prison reform

⁵⁷⁴ Fhooblall, H., Chitto, H. B. & Bholoa, A. 'Trends in Incarceration and Recidivism in Mauritius: Raising the Alarm.' (2011). *Global Journal of Human Social Science, Vol. 11 (7):* 53–64.

⁵⁷⁵ Ibid

⁵⁷⁶ Ibid

⁵⁷⁷ Solomon, A. L., Waul, M., Ness, S. V. & Travis, J. 'Outside the Walls: A National Snapshot of Community-Based Prisoner Re-Entry Programmes'. (2004). Available at: <<http://www.urban.org/UploadedPDF/410911-OTWResourceGuide.Pdf>> last accessed on 29th October 2021

⁵⁷⁸ 'Trend Wyoming: 4 Proven Ways to Reduce Recidivism' Available at: <<https://www.trendwyoming.org/articles/proven-ways-to-reduce-recidivism/>> last accessed 16th January 2022

⁵⁷⁹ Solomon, A. L., Waul, M., Ness, S. V. & Travis, J. 'Outside the Walls: A National Snapshot of Community-Based Prisoner Re-Entry Programmes'. (2004). Available at: <<http://www.urban.org/UploadedPDF/410911-OTWResourceGuide.Pdf>> last accessed on 29th October 2021

programs (to prevent and control recidivism).⁵⁸⁰ Efforts have been made to actualize the mission to reform all the prisons in Nigeria

9.0 Conclusion

This paper concludes that many factors are responsible for recidivism, as there is the interplay of prison conditions or factors that encourage recidivism. These factors include hostile public or societal reactions and attitudes towards released inmates, poor correctional facilities, lack of rehabilitation programs, and substance abuse. The paper revealed that recidivism stems from the general conditions and challenges faced by the CC and how inmates are treated before their release. The recidivism rate is the standard measure for the success of programs in Correctional facilities. The author believes that a careful appraisal of prison programs is necessary to identify those that are laudable for widespread adoption. Also, implementing the non-custodial measures in the NCSA 2019 can help decongest the custodial centers.

10.0 Recommendations

Drastic reduction of recidivism will only come into effect once the conditions of the CC are improved. For the prisons to be decongested, there is a dire need to educate the police, magistrates and other judicial officers about employing non-custodial measures for minor offenses. The Nigerian Police Force and other related agencies should always conduct a thorough investigation of cases before charging them to court. Police investigation should be carried out within a reasonable time to forestall delay in the administration of justice. There should be penalties for inconclusive or incomplete research within a specified period. To further decongest the prisons, legal practitioners should be seriously encouraged to offer pro bono services to awaiting trial inmates in dire need of their services.

The NCSA 2019 should not only be effective on paper but through the implementation of the non-custodial measures to reduce overcrowding. Facilities should also be constructed to meet with international standard practices. For this to manifest, the Federal Government will have to do more in providing revenues for the correctional service. There should also be a system in

⁵⁸⁰ Chukwudi, F.' Challenges of reforms in the Nigerian prison system: lessons from the USA and South Africa'. (2012) *Journal of Social Science and Public Policy*, Vol. 4 (9): 35– 46.

hiring prison personnel who can enhance the Correctional system with rehabilitative measures and reformative programs for inmates to aid their re-entry into society.