

## **Compassionate Release of Chronically and Terminally Ill Inmates and its Implications for Nigerian Criminal Justice Administration**

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### **Abstract**

*This study examines the policy and practice of compassionate release of terminally ill prisoners and its implications for Nigerian criminal justice administration. Qualitative methodology using structured interview was adopted to elicit data from key informants and content analysis was used in data analysis. The study revealed that the health status of inmates and health care delivery in prison is poor. This situation is exacerbated by poor condition of detention, poor provision of drugs and personnel, and inadequate funding. The study revealed that compassionate release for terminally sick inmate is not common in Nigeria but other forms of release programs exist; such as pardon, prerogative of mercy and custody release for inmates awaiting trials. The study found that compassionate release of terminally sick inmates was justified on humanitarian concern; Nigeria prisons not capable to provide palliative care for end of life eventualities and further incarceration of terminally sick inmates defeats the goal of imprisonment as such prisoners pose no threat to the society and are incapable to function effectively in prison rehabilitation and reformation programs. Furthermore, the study found that compassionate release is relevant for Nigeria Criminal Justice System in two contexts, it saves cost and resources and addresses overcrowding of the prison. This study concludes that compassionate release of terminally sick inmates is relevant to Nigeria Criminal Justice System because if effectively managed, compassionate release program would result in cost savings for the Prison, as well as assist the Prison in managing its continually growing inmate population and the resulting capacity challenges it is facing. Furthermore, such a program would likely have a relatively low rate of recidivism.*

**Key words:** Compassionate release; terminally ill; Prison; Criminal justice administration; Nigeria; Imprisonment; Incarceration.

### **1. Introduction**

The Nigerian Criminal Justice as presently organized and managed is beset with numerous problems and can easily be predictable as not being able to meet the parameters of the 21st century (Agbakoba, 2003). There is delay in justice administration, the trend of delay in the system runs through pre-trial, trial and post trial stages of the Criminal Justice Administration (Olong, 2012). Daudu (2009) identified some challenges besetting the Criminal Justice System as; lack of effective coordination amongst agencies of the criminal justice reform; the police, prison, prosecutors and the courts; absence of clear and consistent sentencing guidelines and limited alternatives to imprisonment. Nigeria imprisonment culture is widely adjudged to be dehumanizing and substandard, with inadequate sanitization and improper reformation, rehabilitation and correctional processes for attitude change by inmates (Adetula et al., 2010). This is because severe overcrowding and a lack of funds have created a deplorable situation in Nigeria's prisons as a result, condition of detention is saddening. The capacity of Nigeria prisons has remained virtually the same for the past two decades notwithstanding the alarming increase in prison population. The prisons are grossly congested. Records have it that they are overcrowded to a capacity of as much as 250%. Commentators have increasingly questioned the size of the prison population and the continued move toward mass incarceration, suggesting that such widespread imprisonment is counterproductive in the fight against crime (William and Berry, 2009; Amari, 2010 and Awopetu, 2014). The size of the prison population and its continuing increase, however, only tells a part of the broader story (William and Berry, 2009).

Studies revealed that because of overcrowding of prisons in Nigeria, the authorities experience difficulty in the control of inmates; inmates are hardly fed; detained in inhumane conditions and have limited access to medical facilities. Prisons overcrowding have also contributed to the growth of communicable disease among prisoners. Consequently, diseases are prevalent and the death toll of inmates is high (Enuku, 2001; Winslow, 2001; Amnesty International, 2008; Amari, 2010; Orakwe, 2011; Ugwuonye, 2011). Although, prisoners' health and welfare are enshrined in the Nigeria prison regulations but in most situation inmates are scripted of these rights. Despite the fact that prisoners when compared to other members of the society are worse off as they often bring a range of health problems to prison; they are also at risk from a number of health problems while in prison (Watson et. al., 2004). More so, those imprisoned according to Coyle (2002) retain their fundamental right to enjoy good health, both physical and mental, and they retain their entitlement to a standard of medical care which is at least the equivalent of that provided in the wider community. Presently, Nigeria prisons cannot ensure that conditions in all their facilities are adequate for the health and well-being of the prisoners due to overcrowding and inadequate funding. Consequently, the health situation is precarious (Ayuk et. al., 2013). According to Civil Liberties Organization (1995), most Nigerian prisons have small clinics or sick bays but lack medicines, and in many prisons inmates have to pay for their own medicines.

Tanimu (2010) indicated that some prison lack transportation facility and inmates have to trek to hospital. Due to the closed nature of prisons, the health of prisoners is an issue that rarely comes to the attention of the public at large. However, the health of prisoners is an issue of public health concern. A range of health problems common among prisoners are: mental health; substance abuse and communicable diseases (Watson, *et al.*, 2004 and WHO, 2007). Another critical communicable disease among prisoners is tuberculosis. Tuberculosis (TB) has been ranked 9th leading global health problem (United Nations Development Programme, 2006). A number of these health related problems have also been confirmed in some Nigerian prisons (Adesanya et al., 1997). The prison population is not been left out of the various sexually transmitted diseases such as HIV/AIDS as different studies have shown the presence and prevalence of these infections and other communicable diseases in Nigerian prisons (Melvin, 2013). Some studies have confirmed the vulnerability and plausibility of prisoners with mental health problems becoming problematic to correctional staff and other prisoners than prisoners without mental health problems (Hoptman et al., 1999; Hilton and Simmons, 2001). Also, today's inmates are older, sicker, and staying longer behind bars than ever before. Managing the special needs of elderly, chronically ill, and terminally ill inmates behind bars is indeed challenging, but it is a responsibility that all prison systems must face. Treating a terminally ill individual in prison is difficult at best. More so, prison health care systems were not originally designed to provide sophisticated and intensive care to large numbers of chronically ill and/or elderly inmates (United State Department of Justice, 2004).

Some legal systems provide for the early or medical or compassionate release of terminally or seriously ill prisoners, although uniform standards for such programs are not in place in every system. Compassionate release is a mechanism to allow some eligible, seriously ill prisoners to die outside of prison before sentence completion (William et al., 2011). In some countries such as New Zealand, Scotland, England, France and United States arrangements exist whereby those prisoners who are terminally ill may be released early from their sentences. Similarly, in Nigeria, Nigeria Prisons Act, 1972 makes provision for release of seriously ill prisoner. This practice is encouraged by the World Health Organization (WHO) Guidelines on HIV infection and AIDS in prisons Geneva 1993 which stated that; if compatible with considerations of security and judicial procedures, prisoners with advanced AIDS should be granted compassionate early release, as far as possible, in order to facilitate contact with their families and friends and to allow them to face death with dignity and in freedom (Coyle, 2002). In addition, due to an aging prison population, overcrowding, rising deaths in custody and soaring criminal justice medical cost, many policy experts are calling for broader use of compassionate release (Berry, 2009). Having appraised the state of health care delivery, health challenges of inmates in Nigeria prison and the various challenges confronting the prison, this study sets out to explore the relevance of compassionate release of terminally ill prisoners to Nigeria Criminal Justice System.

## **2. Data and Methods**

This study was conducted in Kaduna Convict Prison in Kaduna State in North West Nigeria. The Kaduna Convict Prison was established in the year 1915. It is one of the highest categories of prisons in Nigeria. The capacity of the prison was 547 as at 1915, but currently the prison accommodates up to 928 inmates. The prison accommodates all categories of prisoners regardless of their length of sentences.

Kaduna Convict Prison classifies prisoners according to their offences or crimes convicted of, ranging from short term convicts, long term convicts, awaiting trials, females, males, lifers and condemned prisoners. Kaduna Convict Prison is regarded as maximum security prison because of the presence of gallows for the execution of those convicted of death by hanging. The prison is located along Independence Way Kaduna City opposite Prison Training School Kaduna. The Prison has facilities such as Reference Hospital, Administrative Block, Female Prison Block, Condemned Prison Block, Block of Cells for Convicted inmates, Awaiting Trial cells block, Isolated block for Lunatics, Vocational workshops, Mosque, Chapel, Open University Centre with Computers, Secondary School and football field. The Prison has a staff strength of 198 headed by Deputy Controller of Prison (DCP) and assisted by Chief Superintendent of Prison (CSP) (Audu et al., 2013). Qualitative research method was employed in this research because the research is person-centered and the topic seemed to address the why and how of an agency, not just what, where, or when. Therefore, the knowledge obtained in using a qualitative interview approach is therefore situational and conditional (Rubin, 1995). It is more of discovering and describing the complexity of an idea and new perspectives in order to find meanings. The population of the study includes medical staff of Kaduna convict prison, commissioned prison officials and non commissioned prison officials. The researcher chose interview in carrying out the research because a well prepared interview brings out meaningful, valuable ideas and themes within a short period of time unlike questionnaires which consume time and may lead to very short answers. There might not be enough space and time to fill in the questionnaires.

In this research, the data were collected using structured interviews also known as standardized interviews. By structured interview, it means that the content of the interview was the same to all the interviewees without changing the order of the questions since it is a structured interview. With structured interview, control is given to the researcher over the topics and the format of the interview. All the respondents interviewed for this research were senior officials with a very busy schedule. This made securing simultaneous appointments with all the respondents impossible. Having sought for and obtained the permission of the respondents, interviews for this research were conducted at times that each of the respondents was available. The responses given on each item discussed in the interview guide were taken down in form of field note. Content analysis was used to analyze data in this research. It helps to easily deduct the different themes from the data. Content analysis is aimed at identifying clear and important ideas that are brought out in the message and to use suitable methods to see how they could be linked to each other and the themes. The researcher transcribed and wrote down all the various responses from the questions asked. The responses were compared and grouped accordingly. The ones that were not similar were written down separately. The data were presented in the form of narratives and verbatim quotation of interviewees views.

### **3. Results**

#### **3.1. Policy and Practice of Compassionate Release of Terminally Ill Prisoners in Nigeria**

Once a while, other forms of release such as pardon by way of prerogative of mercy is granted to convicts by the president and governors; where a convict has exhausted all his legal rights of appeal; has no intention of exercising such right; where he is wrongfully convicted and is afterwards pardoned upon the ground of his innocence. There is also the custody release Act administered by chief judges. A key informant observed as follows:

*Visit by chief judges to court pave way for the release of some prisoners that commit lesser offences such as prostitution, breach of peace, absence from court among others. Some in view of their poor health and the prolonged period spent awaiting trial which would have been spent serving prison terms if convicted.*

The practice of compassionate release of terminally ill inmates is not a common practice in Nigeria, although the prison Act makes provision for that. Key informants were quick to warn that such provisions can be easily manipulated and abused.

#### **3.2. Motivation and Rationale for compassionate release of terminally ill inmates**

Various justification and desire for compassionate release for terminally ill prisoners were offered by key informants. Three themes were extracted from interviews conducted with key informants. The themes are humanitarian concern, further incarceration of terminally sick inmates defeat the goal of imprisonment and prison is not prepared for end of life eventualities. However, key informants desired compassionate release for prisoners that have not committed heinous crimes. On humanitarian concern, key informants revealed that:

*To release terminally ill inmate to die with their family and loved ones is a measure of humanity, make positive statement about a culture and its value. This is a point which a primitive stance based on anger and retribution fails to comprehend.*

*The seriousness of the crime need to be taken into consideration if we permit the terminally ill to die outside the hostile confines of prison. When this is not taken into consideration it will create public outcry and in some cases revenge by victims or survivors.*

*The genesis of all compassionate release programs is a humanitarian concern for the dying, that, even with the strong public revulsion for criminals, most civilians can accept the notion that all inmates except the most incorrigible and their families should have some meaningful time together before those prisoners die.*

*The good reason to show unearned mercy is compassion for human suffering. The aged or other inflicted prisoner may not have reformed, rehabilitated or otherwise earned consideration for relief. His or her claim to consideration may reside solely in need and suffering.*

The views of key informants buttress the fact that the prisoner is seen beyond a criminal but also a human being. Compassionate release of terminally ill prisoners has nothing to do with the crime, victim of crime or their surviving acquaintances nor condones the crime. It has to do with showing compassion for the seriously sick inmate. Similarly, key informants justified compassionate release of terminally ill on the ground that further incarceration of terminally sick inmates defeats the goal of imprisonment as the terminally ill do not present a threat to the community, they are unaware and unresponsive to correctional measures and present a minimal risk of recidivism. The opinions of key informants are presented below:

*When a prisoner is terminally ill, the achievement of penal goals is less critical, the threat to the public is diminished or eliminated, and compassion becomes more important.*

*Advanced age or serious infirmity would justify early release if those conditions made incarceration much more onerous for such an offender, making continued custody disproportionate or even cruel.*

*In persistent vegetative state or with end stage organ disease, some of these patients may live for months to years, at great expenses to criminal justice and are incapable of posing harm to the society, participating in rehabilitation or experiencing punishment.*

Terminally sick inmates are unable to function and respond effectively to prison activities that serve goal of imprisonment. This situation justifies the release of this category of inmates. Another justification is that the prison is not an institution prepared to cater for the need of dying inmates. So, compassionate release of terminally sick inmates is justified.

*At present, access to palliative care in prisons in Nigeria is limited and hard to come by for prisoners. Releasing a subset of prisoners with life-limiting illnesses is necessary because warders and other inmates are not prepared for the death of inmates. Consequently, there is no proper arrangement for assisting prisoners in their final moment; dying in prison means experiencing a feeling of hopeless solitude.*

*All prison staff wherever possible transfer inmates to hospital in their final days. There arises the issue of escort officers, difficulty of calling on the services of police and attitude of some doctors who often send patients back to prison to later die. There is no dignity dying in prison. The psychological burden of knowledge of incurable fatal disease may be easier to bear in a family environment than in the prison.*

### **3.3. Compassionate Release and the Challenges of Nigeria Criminal Justice Administration**

The Criminal Justice Administration in Nigeria especially the prison is beset with various challenges that need to be addressed. These problems include overcrowding, inadequate funding and basic amenities, poor condition of detention, poor health care delivery amongst others. These challenges have often been cited to have affected prisons ability to effectively rehabilitate and reform convicted inmates.

Key informants were of the view that compassionate release of terminally ill inmates is relevant to Nigeria Criminal Justice Administration in order to address some of the challenges of the prison institution. From the interview data, the researcher came up with these two major themes on the relevance for Nigeria Criminal Justice Administration: saves cost and resources for prison administration and addresses overcrowding in prison, as follows:

*Nigeria is struggling with limited resources and insufficient financing of public institutions. Prison beds and other scarce correctional resources should be reserved for the most socially harmful offenses and offenders who are fit health wise to undergo the rudiments of prison life not those whose health condition in the course of incarceration is an obstacle to attaining the goal of imprisonment. Therefore, compassionate release for the terminally ill inmates make available for other prisoners' bed, space and other correction resources.*

*When terminally ill prisoners are released, there will be more space and facility for other inmates. This will address to some extent, overcrowded facilities.*

*The cost of medical care escalates for terminally ill inmates for instance, as the number of AIDS infections increases among prisoners, it create serious problems for prisons that are already financially overburdened. The terminally ill inmates have unique needs that place enormous strain on correctional institutions, and they comprise the most expensive cohort to incarcerate while they pose the least danger to public safety. Releasing this cohort of prisoners reduces the cost of incarceration and makes available more resources for prison administration.*

*In grappling with the ideological underpinnings of the criminal justice system, we are forced to ask ourselves: what is the intention behind incarceration? If the point of the criminal justice system is public safety and the point of incarceration is retribution, deterrence, rehabilitation, and incapacitation, we gain little by keeping the terminally ill inmates behind bars.*

In line with the interview data, the researcher came up with two themes regarding the state of prisoners' health care which are poor inmates' health and poor health care delivery. Majority of key informants were of the opinion that illnesses such as malaria, typhoid, dysentery, stomach ulcer and skin diseases are common among inmates. However, there are cases of serious illnesses. For instance,

*Conditions such as HIV/AIDS, diabetes, hypertension, advanced liver, heart and lung diseases are increasingly causes of death and disability prisons. While estimates vary, it is clear that a substantial percentage of inmates in the nation's prisons suffer from mental illnesses. Often, effective treatment is unavailable in prison and conditions of the institution may exacerbate the inmate's condition.*

Prior behaviors' such as alcohol and substance abuse and unhealthy lifestyles contribute to inmates' poor health. In addition, the poor health condition of inmates is majorly attributed to the condition of detention. All the key informants lamented the deplorable condition of detention as a challenge to healthy inmates.

*The living conditions in the prisons are appalling and are damaging to physical and mental wellbeing of the inmates, and most in cases constitute clear threats to their health. Inmates are forced to survive in the worst living conditions such as poor sanitation, lack of food, lack of medication, overcrowded facilities that are susceptible to disease.*

The Nigerian prisons have few things in common: congestion, dirt and inadequate medical facilities. As a result, many inmates fall sick and die before they are tried or during jail term. Concerning poor health care delivery as a challenge to prisoners' health care, key informants revealed that poor state of provision of drugs; medical personnel and facilities have negative implications on the quality of inmates' health.

*Like any other government hospital, prisons always run short of essential drugs. Under such cases, the inmates buy the prescribed drugs or they are referred to bigger government hospitals. Sometimes, staff buys the prescribed drugs with their own money as a means to assist some of the inmates.*

*There are some prisons that have clinics that only serve for consultation as there are no drugs. Medical personnel and facilities that will ensure proper diagnosis and care are lacking. If inmates are sick, they only give prescription. When such inmates have no money, it is a big problem. Sometimes when inmates are referred to hospitals, the ambulance is not in order or there is no fuel.*

*Inadequate funding by the government has exacerbated the problem of health care delivery in the prison institution. The prison is surviving on the humanitarian gesture of nongovernmental organizations and individuals.*

#### **4. Discussion of findings**

Concerning the state of prisoners' health care in Nigeria, the study revealed that inmates health and health care delivery was poor. Similar observation has been made by Ayuk, *et al.*, (2013). Prisoners in Nigeria face several health challenges that range from minor to serious debilitating health conditions.

The state of health care for the prisoners is far below what is obtained in the society. This reflects the fact that the society holds less view of her prisoners as such their right to quality health care is often denied. The poor health situation of inmates can be attributed to the poor quality of food, poor condition of detention and the grossly inadequate drug supplies in the prisons. These challenges cannot be devoid of inadequate financing of the prison institution by the government.

The release of terminally ill prisoners is not a common practice in Nigeria. There is a positive outlook for compassionate release of terminally ill prisoners especially those that have not committed heinous crimes. However, public sentiments to compassionate release will be an issue to deal with given the hard stance on crime, criminals and the retributive inclination of the public. The rationale and justification of compassionate release of terminally ill inmates identified in this study were humanitarian concern, continuous incarceration of terminally ill inmates defeats the aim of imprisonment as they pose no threat to society, incapable to function effectively in the prison and the prison has not been designed and capable for palliative care for end of life eventualities. This finding reflects the underpinning for compassionate release of terminally ill inmates as practiced in developed countries as captured by Curran (2000), Russell (1993) and William *et al.*, (2011).

The additional incarceration that an incurably sick or disabled offender would experience if he or she is not released would have some abstract punishment or retributive value. But this value, even in the case of the most serious offenders, will often be outweighed by the lack of risk to the public, and the benefits for the dignity and quality of the life of the offender and his or her family. Continuous incarceration of terminal sick prisoners in prison that are not capable for providing qualitative care results in unsustainable economic, ethical, and unnecessary human suffering. Among the goals of Criminal Justice System are deterring crimes, protecting the citizens against criminal activities, incapacitating the criminals and rehabilitation of offenders? By analyzing the terminally ill prisoners' dilemma through the traditional criminal justice framework, it becomes clear that keeping very sick, low-risk individuals incarcerated does not satisfies any of the aforementioned purposes. Compassionate release of terminally ill prisoner was considered relevant to Nigeria Criminal Justice System as it is believed to save cost and resources for prison administration and addresses overcrowding in prison. The finding is in line with the views of Tennen (2010), Murphy (2011) and William *et al.*, (2011). Increased prisoner population has not translated to increase in the budget allocated for food, health care and basic necessities in Nigeria prisons. A prisoner release program such as, compassionate release of terminally sick prisoners relieves the prison administration of its financial and resource constraints as well as create more space, resources and facilities for other inmates thus addressing the problem of prison overcrowding.

## **5. Conclusion**

Society is measured by the way it treats its prisoners. In Nigeria, prisoners' health and health care delivery are below UN standard of minimum treatment of prisoners. This situation poses grave challenge for the terminally ill prisoners. When the particular circumstances of the offender such as illness or advanced age makes the usual punishment undeservedly severe, retributive justice calls for clemency. Keeping terminally ill inmates behind bar even when they are minimally aware of their own condition, serves no rehabilitative or even punitive purpose as such it is illogical and unnecessarily costly. This study concludes that compassionate release of terminally sick inmates is relevant to Nigeria Criminal Justice Administration because if effectively managed, compassionate release program would result in cost savings for the Prison, as well as assist the Prison in managing its continually growing inmate population and the resulting capacity challenges it is facing. Furthermore, such a program would likely have a relatively low rate of recidivism.

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