

An Appraisal of the Legal Framework on Parole in Nigeria

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Abstract

Parole is a new correctional measure in the Nigerian penal system. Before 2015 inmates could be released before the expiration of their terms of imprisonment only if they were granted pardons by the governor of a state or by the president. However, this has changed with the coming into force of the *Administration of Criminal Justice Act of 2015 (ACJA)*. The ACJA empowers courts, upon the recommendation of the comptroller-general of the Nigerian Correctional Service, to release inmates on parole. The ACJA also states the two conditions that the comptroller-general must consider before he recommends inmates for parole. The first condition is that the inmates must be of good behaviour, and the second is that the inmates must have served their non-parole periods. While there is no ambiguity on the first condition, the scope of the second condition is not well stated in the ACJA. The ACJA states that inmates that are sentenced to at least fifteen years or life imprisonment must have served at least one-third of their sentence before they can be recommended for parole. However, the ACJA does not state the minimum period that inmates who are sentenced to less than fifteen years of imprisonment must have served before they can be recommended for parole by the comptroller-general. Second, life imprisonment in Nigeria theoretically means imprisonment for the remaining period of the natural life of the inmates upon whom such a sentence has been imposed. In this light it is not clear how the comptroller-general would calculate one-third of an indeterminate sentence for the purpose of determining when to recommend such inmates for parole. Another notable omission in the ACJA is that it does not state the conditions that courts may attach to the release of inmates on parole. Also, ACJA does not make provision for medical parole. To make parole an effective correctional measure in Nigeria, this article suggests that the ACJA should be amended to address all these weaknesses.

Keywords

Custodial sentence; imprisonment; inmates; parole; parolee; parole proceedings; rehabilitation.

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1 Introduction

Parole was not recognised in the Nigerian criminal justice system until recently,¹ although the early release of inmates before the expiration of their terms of imprisonment is not a new phenomenon in Nigeria. Before the introduction of parole, inmates could be released from correctional centres before the expiration of their terms of imprisonment only if they were granted pardons by the president or the governors of states in Nigeria.² There are no statutory provisions on the requirements that the president or governors must consider before inmates may be granted pardons; pardons depend largely on the discretion of these officials. However, while good behaviour and sometimes poor medical condition are often cited as the reasons for granting pardons to inmates, the action is often based on political considerations.

Nevertheless, with the coming into force of the *Administration of Criminal Justice Act* of 2015 (the ACJA), the main law that regulates criminal procedure in Nigeria, this has changed. Inmates can now be released from custodial correctional centres before the expiration of their terms of imprisonment under certain conditions.³ The ACJA also states the factors that the court must consider before it can release inmates on parole. It is important to point out that although the ACJA is an Act of the National Assembly (a federal law), its provisions, including those on parole, are the same as those of the *Administration of Criminal Justice Laws* of most of the states in Nigeria, except for a few states, such as Kaduna. The main

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¹ Igbinovia 1984 *Int J Offender Ther Comp Criminol* 25. Although s 6(f) of the repealed *Prison Act* of 1960 empowered the head of state to make regulations on parole, none was made. Also, under the repealed *Prison Ordinance* of 1923, the governor was empowered to grant a licence for the release of inmates for a specific period subject to any conditions that he thought fit. See Milner *Nigerian Penal System* 216.

² Sections 175 and 212 of the *Constitution of the Federal Republic of Nigeria* of 1999 (the *Constitution*). Similar release from prisons by the chief judges of states in Nigeria and that of the federal capital territory, Abuja is limited to pre-trial detainees. See Udofa 2018 *Beijing Law Review* 118.

³ The *Administration of Criminal Justice Act* of 2015 (the ACJA) uses the term "prisoners" and "prisons", but the *Nigerian Correctional Service Act* of 2019 changed these terms to "inmates" and "custodial correctional centres". In line with the *Nigerian Correctional Service Act*, this article uses the terms inmates and custodial correctional centres. See s 46 of the *Nigerian Correctional Service Act* of 2019.

difference is that in Kaduna state the controller⁴ of prisons makes a recommendation to the state Committee on Prerogative of Mercy,⁵ and not a court, unlike in the other states.⁶ Except for this, any analysis of the provisions of the ACJA on parole is applicable to most of the states in Nigeria.

This article examines the provisions of the ACJA on parole and its administration in Nigeria. It is divided into four parts. The first part examines the historical development, meaning and objectives of parole. The second part briefly explains the difference between parole, pardon and probation. The third part of this article analyses the legal provisions on parole in Nigeria; it identifies the gaps in these provisions. Also, it examines parole proceedings *viz-a-viz* the roles of the prosecutor and the inmate that is being considered for parole. And the last part concludes this article and offers some suggestions on how parole could be made effective in achieving the objectives of penology.

2 A brief history on the development and evolution of parole

"Parole" is derived from the French words *parole d'honneur*, and it means "word of honour".⁷ Historically, it refers to the undertakings or promises made by enemy soldiers captured by the French army not to take up arms against France after being set free. This practice has developed and evolved over the years. It is no longer about the release of prisoners of war; it has been extended to all inmates except those sentenced to death. The early development of parole is generally accredited to Captain Alexander Maconochie, Commandant of Norfolk Island in 1840, and Sir Walter Crofton, a former chairman of the Board of Directors, Irish Convicts Prison.⁸ Maconochie introduced a "mark system" in the administration of inmates on Norfolk Island.⁹ Under this system, inmates were given marks for conducting themselves well and for being diligent in carrying out the tasks

⁴ The overall head of the Nigerian Correctional Service is the comptroller-general, while the person who heads the Nigerian Correctional Centre in a state is called the controller of prisons.

⁵ Section 565(1)(b) of the *Administration of Criminal Justice Law of Kaduna State of 2017*.

⁶ Section 456(1)(b) of the *Administration of Criminal Justice Law of Oyo State of 2016*.

⁷ See Online Etymology Dictionary date unknown <https://www.etymonline.com/word/parole>; also see Lidovho 2003 *CILSA* 376.

⁸ Dooley 1981 *New Eng J Prison L* 72; McNally 2019 *Irish Probation Journal* 46; Doherty 2013 *NYU L Rev* 964.

⁹ Doherty 2013 *NYU L Rev* 968.

allotted to them.¹⁰ The marks earned by inmates contributed towards their early release from Correctional Centres.¹¹ Sir Crofton, who was influenced by Maconochie's reform in Norfolk Island,¹² introduced an "intermediate system" into the administration of Irish Correctional Centres.¹³ In this system, marks were allotted to inmates who carried out public works and behaved well.¹⁴ Also, the system prepared inmates for proper reintegration into society upon their release,¹⁵ and inmates who successfully passed through the intermediate system were given a ticket-of-leave.¹⁶ This ticket made inmates eligible to be provisionally released from the correctional centres subject to some conditions,¹⁷ but they could be re-arrested, prosecuted and imprisoned if they violated those conditions.¹⁸

2.1 Meaning and objectives of parole

The ACJA does not define parole. Generally, parole is a discretionary early release of inmates from custodial correctional centres by a parole board or the court, with or without conditions, with a possibility of re-incarceration if the conditions are violated.¹⁹ Parole makes it possible for inmates to leave custodial correctional centres before the end of their terms of imprisonment, and it is an essential component of prison law and correction mechanisms for inmates.²⁰ Parole is not a reduction in the term of imprisonment imposed on inmates by the court; it only allows inmates to serve the rest of their terms of imprisonment outside custodial correctional centres.²¹ Inmates are released on parole for several reasons. First, parole can motivate inmates to conduct themselves well during their incarceration since good behaviour increases their chance of being considered for parole.²²

Second, a well-administered parole system can promote the rehabilitation and reformation of inmates,²³ and this can make inmates to be better

¹⁰ Dooley 1981 *New Eng J Prison L* 72.

¹¹ Taylor and Rynne 2016 *ANZJ Crim* 515; Morgan 1992 *UWA L Rev* 96.

¹² Doherty 2013 *NYU L Rev* 971; Dooley 1981 *New Eng J Prison L* 78.

¹³ McNally 2019 *Irish Probation Journal* 48.

¹⁴ Dooley 1981 *New Eng J Prison L* 78; McNally 2019 *Irish Probation Journal* 48.

¹⁵ Doherty 2013 *NYU L Rev* 975, 976.

¹⁶ Dooley 1981 *New Eng J Prison L* 78; Doherty 2013 *NYU L Rev* 972.

¹⁷ McNally 2019 *Irish Probation Journal* 49; Doherty 2013 *NYU L Rev* 971, 974.

¹⁸ Dooley 1981 *New Eng J Prison L* 84.

¹⁹ Bottomley 1990 *Crime and Justice* 321.

²⁰ Watney 2017 *TSAR* 705; Best, Wodahi and Holmes 2014 *Int J Offender Ther Comp Criminol* 320; Mujuzi 2011 *PELJ* 211.

²¹ Louw and Luyt 2009 *Acta Criminologica* 5-7; Moore *Pardons* 6.

²² Watney 2017 *TSAR* 705.

²³ Moses *Parole in South Africa* 10; Lidovho 2003 *CILSA* 376; Caplan 2012 *Victims and Offenders* 55.

prepared for reintegration into society²⁴ and may also reduce recidivism.²⁵ In addition, parole can help to reduce the number of inmates in overpopulated custodial correctional centres.²⁶ One major problem bedevilling the Nigerian Correctional Service is the overpopulation of its custodial correctional centres.²⁷ Although they have the capacity to accommodate 50,153 inmates, over 70,000 inmates are currently being kept there.²⁸ So, the release of some inmates on parole could play a vital role in addressing overpopulation in Nigeria's custodial correctional centres.

3 Conceptual clarification

There are certain terms that are similar to parole because they also relate to the early release of inmates from correctional centres before the full expiration of their terms of imprisonment. These terms include "pardon" and "probation", but they are not the same as "parole". The similarity between these terms and parole appears to be the reason some people use them synonymously with parole.²⁹ Hence, this article briefly examines the differences between parole, pardon and probation.

3.1 Difference between pardon and parole

A pardon is "an act or an instance of officially nullifying punishment or other consequences of a crime",³⁰ while parole is a conditional release of inmates from incarceration. Second, a pardon is granted by a governor of a state or the president, while parole is granted by the court,³¹ and in some countries, by the parole board.³² Third, the president and governor's power to grant a pardon to a convict is derived from and regulated by the *Constitution*,³³ while the power of the court to grant parole to an inmate is derived from and regulated by the ACJA and similar laws at the state level.³⁴ Fourth, the power of the president to grant a pardon to a convict is limited to offences created by Acts of the National Assembly; likewise, the power of a state

²⁴ Louw and Luyt 2009 *Acta Criminologica* 3; Moffa, Stratton and Ruyters 2019 *CICJ* 3; Cheliotis 2009 *Int J Offender Ther Comp Criminol* 420, 421.

²⁵ Mujuzi 2011 *PELJ* 206; Shute 20042 *Ohio St J Crim L* 316.

²⁶ Louw and Luyt 2009 *Acta Criminologica* 1.

²⁷ Ibrahim 2019 *AHRLJ* 780.

²⁸ World Prison Brief date unknown <https://www.prisonstudies.org/country/nigeria>.

²⁹ Kahsay 2017 *HUJL* 29; Moore *Pardons* 6.

³⁰ Garner *Black's Law Dictionary* 1221.

³¹ Sections 175 and 212 of the *Constitution*.

³² Sections 99(1) and 107(1) of the Canadian *Correctional and Conditional Release Act* (SC 1992, c 20) (the CCRA).

³³ Sections 175 and 212 of the *Constitution*.

³⁴ Section 460 of the ACJA.

governor to grant a pardon to a convict is limited to offences created by laws of the House of Assembly of a state.³⁵ There is no such limitation with respect to parole. Once the necessary conditions have been met and the stipulated procedures have been followed, a court can release an inmate on parole, irrespective of whether he was convicted of an offence created by a federal or state law. Also, a pardon wipes out all the legal disabilities that are incidental to convictions.³⁶ This does not apply to parole. An inmate released on parole is still bound by all the limitations and consequences that flow from his conviction.

Furthermore, a pardon extinguishes the remaining part of the term of imprisonment that an inmate is yet to serve;³⁷ parole does not reduce the original sentence imposed on a parolee by the court. Rather, it converts it from a custodial to a non-custodial sentence.³⁸ Another difference between a pardon and parole is that the president is required to consult with the Council of State,³⁹ while a governor must consult with the state advisory committee on the prerogative of mercy before granting pardon to any person.⁴⁰ However, there is no such requirement before the court can release an inmate on parole. Also, a pardon may be granted to a convicted person who has not been imprisoned. It may also be granted to a convict who is serving or has served his term of imprisonment and has been released.⁴¹ It could even be granted posthumously.⁴² In contrast, parole can be granted only to a convict who is alive and imprisoned but has not completed his or her term of imprisonment.

³⁵ Sections 175(1)(a) and 212(1)(a) of the *Constitution*.

³⁶ *Falae v Obasanjo (No 2)* 1999 4 NWLR (Part 599), where the Nigerian Court of Appeal on the effect of pardon on a convict held *inter alia* "that pardon acquits him of all corporal penalties and forfeitures annexed to the offence pardoned"; Oamen 2020 *CLB* 9.

³⁷ Osamor *Criminal Procedure Law and Litigation Practices* 322.

³⁸ Moore *Pardons* 6.

³⁹ The Council of State is one of the executive bodies established by the *Constitution*. It comprises the president, the vice-president, all former presidents and heads of states in Nigeria, all former chief justices of Nigeria, the president of the Senate, the speaker of the House of Representatives, all the governors of states in Nigeria and the attorney-general of the Federation. It is mainly an advisory body. See s 153 and the third Schedule, Part I, B, paras 5 and 6 of the *Constitution*.

⁴⁰ In respect of a military offence, the president can act only on the advice of the Council of State. See s 175(3) of the *Constitution*; Udofa 2018 *Beijing Law Review* 119.

⁴¹ See generally *Federal Republic of Nigeria v Achida* 2018 *LPELR* 46065 (CA) 45, 46. For example, a presidential pardon was granted to a former governor of Bayelsa State in Nigeria after he had served his prison term. See BBC 2013 <https://www.bbc.com/news/world-africa-21769047>.

⁴² Oamen 2020 *CLB* 9.

3.2 Parole and probation

Another term that people sometimes confuse with parole is probation.⁴³ These terms are similar because they are both non-custodial sentences that courts can impose on convicted persons. However, they are not the same. First, parole is granted to a convicted person who has served part of his term of imprisonment, but probation may be granted before the court convicts a person and where the court has convicted him before the court imposes any sentence on him.⁴⁴ Second, a court may dismiss the charges against an accused where it releases him on probation without convicting him;⁴⁵ the release of an inmate on parole does not affect the validity of the charges. Third, a court can unilaterally exercise its discretion to release an accused or convict on probation.⁴⁶ However, a court cannot do this in relation to parole; the court can act only on the recommendation of the comptroller-general of the Nigerian Correctional Service.

4 Parole in Nigeria

The legal framework on the administration and regulation of parole in Nigeria is contained in section 468(1) of the *Administration of Criminal Justice Act*. It provides that:

Where the Comptroller-General of Prisons makes a report to the court recommending that a prisoner:

- (a) sentenced and serving his sentence in prison is of good behaviour; and
- (b) has served at least one third of his prison term, if he is sentenced to imprisonment for a term of at least fifteen years or where he is sentenced to life imprisonment, the court may, after hearing the prosecution and the prisoner or his legal representative, order that the remaining term of his imprisonment be suspended, with or without conditions, as the court considers fit, and the prisoner shall be released from prison on the order.

From these provisions, one can deduce that certain conditions must be met before an inmate can be considered for parole in Nigeria. First, the inmate must be of good behaviour.⁴⁷ Second, he must have served the minimum years of his imprisonment as stipulated in the ACJA.⁴⁸ The report of the

⁴³ Kabsay 2017 *HUJL* 29.

⁴⁴ Section 454(1)(c) of the ACJA.

⁴⁵ Section 454(2) of the ACJA.

⁴⁶ Section 454 of the ACJA.

⁴⁷ Section 468(a) of the ACJA.

⁴⁸ Section 468(b) of the ACJA.

comptroller-general recommending an inmate for parole must contain these conditions. It is based on this report that the court can consider whether to release an inmate on parole.⁴⁹ It is only the comptroller-general of the Nigerian Correctional Service that can recommend an inmate for parole. An inmate or his representative cannot bring an application before a court that he should be released on parole. Neither can he bring an application for a court to compel the comptroller-general of the Nigerian Correctional Service to consider or recommend him for parole.⁵⁰

A corollary to this is that an inmate does not have the right to be considered for parole. The comptroller-general of the Nigerian Correctional Service does not have an obligation to consider or recommend an inmate for parole. It is strictly within his discretion to recommend an inmate for parole, provided all the conditions are met. Also, the fact that an inmate is of good behaviour and has served the minimum years of imprisonment as specified by the ACJA and has been recommended by the comptroller-general does not mean that the court would automatically release him on parole. The power to release an inmate on parole is discretionary,⁵¹ although the court is expected to exercise its discretion judiciously and judicially. If after due consideration of the application of the comptroller-general recommending an inmate for parole the court releases the inmate on parole, its decision cannot be questioned, except on the basis that a parolee has not served his non-parole period as stipulated by the ACJA. The fact that the release of an inmate on parole depends on the recommendation of the comptroller-general of the Nigerian Correctional Service and the decision of a court means that parole is not a right; it is a privilege.

Unlike in a criminal trial where the character of an accused may not be relevant,⁵² in parole proceedings the character of an inmate is a principal factor that the court will consider in deciding whether to release the inmate on parole or not.⁵³ It is the post-conviction character of an inmate that the

⁴⁹ Under the *Administration of Criminal Justice Law of Kaduna State*, such a recommendation must be made to the Committee on Prerogative of Mercy. This implies that it is only the governor that can grant parole to a convict, acting on the recommendation of the Committee on Prerogative of Mercy. In my opinion, the drafters of this provision appear to have confused the constitutional power of the governor to grant pardon and respite to convicts with the power to release inmates on parole. See s465 of the *Administration of Criminal Justice Law of Kaduna State* of 2017.

⁵⁰ Section 468 of the ACJA.

⁵¹ Section 468 of the ACJA.

⁵² Section 82 of the *Evidence Act* of 2011.

⁵³ Section 468(1)(b) of the ACJA.

court will consider, not necessarily his character before conviction. Having been convicted, an inmate already has an impugned character. It would, however, not be out of order if the court considers the criminal record of the inmate. Where an inmate that is being considered for parole has been convicted and imprisoned several times, such a criminal record may be evidence that the inmate is a recidivist and may negate the recommendation of the comptroller-general that he is of good behaviour. Also, the court may consider the nature of the offence that the inmate committed, the extent of his involvement where more than one person committed the offence, and the extent of the loss or injury suffered by the victim, in deciding whether an inmate should be released on parole. Nonetheless, the decision whether an inmate, based on his conduct in the custodial correctional centre, is of good behaviour is to a large extent subjective. To establish this the court would have to rely on the report of the comptroller-general of correctional services.

In addition, only inmates sentenced to imprisonment, no matter the terms, may be recommended for parole;⁵⁴ inmates sentenced to death cannot be considered for parole. While it is clear from the provision of the ACJA that inmates sentenced to death are ineligible for parole, some cases could pose challenges. For example, can a person sentenced to death but whose sentence was commuted to life imprisonment or any other type of imprisonment be considered for and released on parole? The Nigerian Constitution empowers the president and governors of states in Nigeria to substitute the sentence imposed on a convict by the court with a less severe one where they deem it fit.⁵⁵ One of the basic requirements for an inmate to be considered for parole is that he must have been sentenced to imprisonment by a court.⁵⁶ The relevant question is whether an inmate whose sentence has been commuted from death to imprisonment can be said to have been sentenced to imprisonment by the court.⁵⁷ In my opinion, the answer is no. Such a convict or an inmate would not be eligible to be considered for parole.⁵⁸

⁵⁴ Section 468 of the ACJA.

⁵⁵ Sections 175(1)(c) and 212(1)(c) of the *Constitution*; see also ss 411(1) and (2) of the ACJA.

⁵⁶ Section 468(b) of the ACJA.

⁵⁷ Section 175(1)(c) of the ACJA.

⁵⁸ Rogan 2017 *DULJ* 217. The case of *State v Abdullahi Mohammad* (unreported), case number JDU/204/96, though a bit different from parole, may be used to illustrate this point. Abdullahi was convicted and sentenced to death by a court in Jigawa State in Nigeria for homicide in 2000. Because of his good behaviour, the death sentence was later commuted into life imprisonment by the government. During the visit of the National Human Rights Commission to the custodial correctional centre where he is

Another condition that must be met before a court can release an inmate on parole is that the inmate must have served not less than one third of his term, where he is sentenced to a minimum of fifteen years' imprisonment or where he is sentenced to life imprisonment. This mandatory period of imprisonment is called a non-parole period: a minimum period for which an inmate must have been imprisoned before he could be recommended for parole.⁵⁹ The fact that the ACJA provides that an inmate cannot be released on parole unless he has served one third of his prison term is commendable, as this will prevent the process from being abused. In addition, it will ensure that parole is not used as a channel to circumvent the sentences that courts impose on convicts. However, the ACJA appears to be silent on the minimum period that inmates who are imprisoned for less than fifteen years must have served before they can be eligible to be considered for parole by the comptroller-general. Does this imply that such inmates could be recommended for parole if they have not served up to one-third of their terms? To prevent this provision from being abused, there is a need to stipulate the minimum terms of imprisonment that inmates sentenced to terms of imprisonment that are less than 15 years must have served before they can be eligible for parole. Alternatively, the requirement that inmates must have served at least one-third of their terms of imprisonment, as is applicable to inmates sentenced to a minimum of 15 years' imprisonment, could be extended to this category of inmates.

Also, with respect to inmates serving a life sentence, the non-parole period is not clearly stated. Although the ACJA states that inmates sentenced to life imprisonment must serve at least one third of their prison terms before they could be recommended and released on parole, it does not state the meaning of life imprisonment.⁶⁰ Some scholars submit that life imprisonment is equivalent to 20 years imprisonment.⁶¹ The only law that contains a provision that is close to this is the *Penal Code Act*, the main criminal law in Abuja and in some states in the Northern part of Nigeria. Apart from the *Penal Code Act* there is no authority in support of this position

being held, the correctional officer in charge of the centre made a plea that Abdullahi should be pardoned because he has shown "good behaviour and remorse of time". In my view, while Abdullahi may be granted pardon by the government, the correctional officer cannot recommend him for parole. This is because convicts that are sentenced to death are not eligible to be considered for parole. See Ojukwu and Agu *Prison Report* 22.

⁵⁹ Mujuzi 2011 *PELJ* 217.

⁶⁰ CRIN date unknown <https://archive.crin.org/en/home/campaigns/inhuman-sentencing/problem/life-imprisonment/life-imprisonment-children-africa.html>.

⁶¹ Osamor *Criminal Procedure Laws and Litigation Practices* 485.

in any criminal statute or case law in Nigeria.⁶² The *Penal Code Act* provides that "in calculating fractions of terms of punishment, imprisonment for life shall be reckoned as equivalent to imprisonment for twenty years."⁶³ In my view, this provision does not mean that life imprisonment is equivalent to twenty years' imprisonment. Rather, the sentence of "life imprisonment is only deemed to be equivalent to twenty years' imprisonment when one is calculating fractions of terms of punishment" for inmates who are convicted under the *Penal Code Act*. Therefore, if an inmate is sentenced to life imprisonment under the *Penal Code Act*, for the purpose of calculating the non-parole period, the life sentence shall be deemed to be equivalent to twenty years' imprisonment.

In my view the provision of the *Penal Code Act* that equates a life sentence to twenty years' imprisonment for the purpose of calculating the fraction of the punishment appears to be lenient, especially in relation to parole. One third of twenty years is approximately seven years. This means that an inmate that is sentenced to life imprisonment under the *Penal Code Act* may be released on parole if he has been imprisoned for seven years. It takes an average of four to six years to conclude a criminal trial in Nigeria,⁶⁴ and after a court has imposed a custodial sentence on a convict, the years of imprisonment are counted from the date of arrest of the convict.⁶⁵ This means that an inmate who has been sentenced to life imprisonment under the *Penal Code Act* may be recommended for and released on parole not long after the conclusion of his trial, especially if he was not granted bail during his trial. Offences in relation to which a court may impose a life sentence are serious offences. The release of an inmate on whom a court has imposed a life sentence after seven years' imprisonment may undermine the deterrent effect and the symbolic nature of a life sentence.

In states where the *Penal Code Act* does not apply, life imprisonment is not deemed to be twenty years for the purpose of "calculating fractions of

⁶² Most scholars who make this claim rely on the decision of the court in *Ozuloke v State* 1965 NMLR 125. In this case the court stated that trial courts should impose a term of imprisonment that is more than twenty years only in exceptional circumstances. The court's reasoning was that: "For the purpose of remission, a sentence of imprisonment for life is treated as if it were a sentence of imprisonment for twenty years." Unfortunately, some people have interpreted this statement to mean that the maximum number of years a person sent to life imprisonment must spend in a custodial correctional centre is twenty years. See Milner *Nigerian Penal System* 211.

⁶³ Section 70 of the *Penal Code Act* of 1960.

⁶⁴ Aileru 2016 <https://punchng.com/preventing-delay-tactics-in-criminal-trials-in-nigeria/>.

⁶⁵ See s416(2)(e) of the ACJA.

punishment". For example, the *Kaduna State Penal Code Law* of 2017 provides that life imprisonment "means imprisonment for the rest of the life of a convict."⁶⁶ Similarly, in states where the *Penal Code Act* applies but where an inmate is sentenced to life imprisonment under another law, life imprisonment is not deemed to be twenty years for the purpose of "calculating fractions of punishment". An example would be where an inmate is sentenced to life imprisonment under the *Violence Against Persons Act* of 2015⁶⁷ or the *Terrorism (Prohibition and Prevention) Act* of 2022.⁶⁸ In all the above instances, an inmate who is sentenced to life imprisonment, unless he is pardoned or granted a reprieve,⁶⁹ would spend the rest of his life in a custodial correctional centre.⁷⁰ If life imprisonment means indefinite years of imprisonment, save the exception that has been discussed above,⁷¹ the relevant question is, what is the minimum number of years that an inmate sentenced to life imprisonment must have served before he can be considered for parole? Or what is one-third of an indeterminate term of imprisonment?

Another weakness in the provision of the ACJA on parole is that it does not include medical parole. Although an inmate's poor state of health should ordinarily not be a ground for his earlier release from a custodial correctional centre, some severe health conditions may make this necessary. In other countries an inmate may be released on parole on medical grounds. For example, in Canada, apart from the general grounds on which an inmate may be released on parole, an inmate could also be released on parole at any time in certain exceptional circumstances.⁷² Two of these circumstances relate to the health of the inmate. An inmate could be released on parole if he is terminally ill⁷³ or if there is a likelihood that his physical or mental health would suffer severe damage if he is not released from confinement.⁷⁴ In South Africa an inmate may be released on medical parole if these three conditions are satisfied.⁷⁵ First, the parole board

⁶⁶ Section 3 of the *Kaduna State Penal Code Law* of 2017.

⁶⁷ Section 21(1) of the *Violence Against Persons Act* of 2015.

⁶⁸ Section 14 of the *Terrorism (Prohibition and Prevention) Act* of 2022.

⁶⁹ Sections 175 and 212 of the *Constitution*.

⁷⁰ Milner *Nigerian Penal System* 211.

⁷¹ However, the fact that a person sentenced to life imprisonment under the *Penal Code Act* may be released on parole after seven years' imprisonment while inmates sentenced to life imprisonment under other laws may spend a longer time in custodial correctional facilities centres is discriminatory.

⁷² Section 121(1) of the CCRA.

⁷³ Section 121(1)(a) of the CCRA.

⁷⁴ Section 121(1)(a) of the CCRA.

⁷⁵ Section 79(1) of the *Correctional Service Act* 111 of 1998 as amended (hereafter the CSA).

(hereafter, the Board) must establish that the inmate is suffering from a terminal disease, or he has been physically incapacitated by injury, sickness or disease such that he can no longer take care of himself.⁷⁶ Second, the Board must be satisfied that the inmate is not likely to commit another offence,⁷⁷ and thirdly, the Board must be satisfied that a proper arrangement has been made to take care of the inmate once he is released from incarceration.⁷⁸

Generally, medical parole is designed to allow inmates suffering from serious ailments to be released earlier than the time when they ought to be considered for parole.⁷⁹ Thus, the requirement that an inmate must have spent a minimum number of years in custodial correctional centres before being considered for parole is usually waived in respect of medical parole, especially where the sick inmate's life expectancy is less than the non-parole period.⁸⁰ There are many inmates in Nigeria's Custodial Correctional Centres that are either critically ill or have terminal diseases⁸¹ that can best be managed or treated outside custodial correctional centres.⁸² The continuous incarceration of such inmates may endanger the general health conditions of the correctional centres, as it may expose correctional officials and other inmates to health hazards. Therefore, the provisions of the ACJA on parole should be amended to make critical medical conditions a ground for the release of inmates on parole. Also, the ACJA should state the process that the court must follow in establishing that an inmate is genuinely suffering from a severe medical condition so that unscrupulous persons do not abuse medical parole.

4.1 Parole proceedings

Parole proceedings refer to proceedings in which a court decides whether an inmate should be released on parole, following the report of the comptroller-general that the inmate is of good behaviour and that he has served the minimum stipulated period of imprisonment. In Nigeria a parole

⁷⁶ Section 79(1)(a) of the CSA.

⁷⁷ Section 79(1)(b) of the CSA.

⁷⁸ Section 79(1)(c) of the CSA.

⁷⁹ Hamin, Othman and Hassan 2018 *Howard Journal of Crime and Justice* 77.

⁸⁰ Mujuzi 2009 *SAJBL* 59; Hamin, Othman and Hassan 2018 *Howard Journal of Crime and Justice* 77.

⁸¹ In the 36 correctional centres that were audited by the National Human Rights Commission in its prison report for 2018, 182 inmates had mental health challenges and 22 had life-threatening ailments. See Ojukwu and Agu *Prison Report* 9, 10.

⁸² Nnado 2019 <https://www.independent.ng/tag/blind-inmates/>.

proceeding is conducted by the court and not by a parole board.⁸³ It involves the court, the prosecutor and the inmate that is being considered for parole or his representative.⁸⁴ This proceeding aims to establish whether an inmate that is being considered for parole is really of good behaviour and that there is no risk that he might commit another offence upon his release on parole. During a parole proceeding the court is required to hear the prosecution's opinion and that of the inmate or his representative before it makes any decision on whether the inmate should be released on parole.⁸⁵ The requirement that the court should hear from the prosecutor is necessary because the prosecutor is well acquainted with the facts of the case, the nature of the charges, and the evidence against the inmate during the trial.⁸⁶ Also, the prosecutor would have interacted with the inmate when he was being prosecuted. Moreover, where any restorative justice measures were explored, he must have seen and observed the disposition of the inmate towards the victims and towards reconciliation.⁸⁷ Therefore, the prosecutor's opinion could further reinforce the report of the comptroller-general that the inmate regrets his actions, is now a "reformed person", and is not likely to re-offend again.⁸⁸

Moreover, the prosecutor's submission might also be important where the inmate or his relations or associates have directly or indirectly threatened the prosecutor or the witnesses that testified during the trial of the inmate in court.⁸⁹ In this instance, the early release of such an inmate may endanger the lives of the victims, prosecutors or witnesses, and correctional officials may not be privy to this. More so, it is possible for an inmate to temporarily be of good conduct or feign remorsefulness with a view to being considered and recommended to the court for parole.⁹⁰ Such a pretence is not likely to be successful if the court does not rely solely on the report of the comptroller-general but also hears and considers the prosecutor's submission. However, the prosecutor should not oppose the inmate's release on parole unless there are cogent reasons to do so. These reasons must relate to the likelihood that the inmate would commit another offence if he is released on parole and the safety of the public at large.⁹¹ This is

⁸³ Section 468(1)(b) of the ACJA.

⁸⁴ Section 468(1) of the ACJA.

⁸⁵ Section 468(1)(b) of the ACJA.

⁸⁶ Cassidy 2019 *Ohio St J Crim L* 298.

⁸⁷ Bronnimann 2020 *Mo L Rev* 323, 345.

⁸⁸ Cassidy 2019 *Ohio St J Crim L* 299; Bronnimann 2020 *Mo L Rev* 328, 343.

⁸⁹ Cassidy 2019 *Ohio St J Crim L* 300.

⁹⁰ Bronnimann 2020 *Mo L Rev* 330, 347.

⁹¹ Cassidy 2019 *Ohio St J Crim L* 302; Dana and Crawford 2019 *NYL Sch L Rev* 65.

because parole is not a "re-sentencing"⁹² but an "inquisitorial" proceeding, even though our criminal justice system is adversarial.⁹³ Moreover, the primary objective of this proceeding is to establish whether it is safe to allow an inmate to go back into society. Therefore, the role of the prosecutor in parole proceedings is not the same as his role during the sentencing of the convict.

Also, the court is required to hear from the inmate or his representative.⁹⁴ This implies that an inmate who has been recommended for parole by the comptroller-general of the Nigeria Correctional Service may engage the services of a legal practitioner to represent him in court during the parole proceedings. The participation of the convict or his representative in parole proceedings would allow him to adduce further evidence on why the court should release him on parole. In addition, the court may ask the inmate questions to ascertain the veracity of the report recommending him for parole. Although the ACJA does not expressly state that an inmate that is being considered for parole must be present in court during parole proceedings,⁹⁵ it is expected that the inmate would be present in court, especially if he is not being represented by a legal practitioner. The only exception could be where the inmate is indisposed because of illness or other similar cogent reasons. The presence of the inmate in court would enable the court to assess and determine from his demeanour whether he has indeed turned over a new leaf. Importantly, the participation of both the prosecutor and the inmate that is being considered for parole in the parole proceedings is in line with the principle of fair hearing.⁹⁶ If the prosecutor opposes the granting of parole to an inmate, the inmate or his representative has an opportunity to counter the prosecutor's submission and corroborate the report of the comptroller-general asserting that the convict is of good behaviour. After hearing the prosecution and the inmate or his representative, the court must decide whether it should release the inmate on parole. If the court decides to release the inmate on parole, it must state whether it is with or without conditions.

Another notable omission in the ACJA is that it does not state the conditions that the court may attach to the earlier release of an inmate before he serves

⁹² Young 2016 *Conn L Rev* 438. However, Reitz and Rhine hold the view that the "parole - release decision should be viewed as a sentencing decision"; see Reitz and Rhine 2020 *Annual Review of Criminology* 286.

⁹³ Cassidy 2019 *Ohio St J Crim L* 302; Young 2016 *Conn L Rev* 438.

⁹⁴ Section 468(1)(b) of the ACJA.

⁹⁵ See s468(1) of the ACJA.

⁹⁶ See generally s36 of the *Constitution* as amended.

his full term of imprisonment. Leaving it absolutely to the discretion of the court to determine the conditions to attach to the release of an inmate on parole may lead to abuse. Even if it would not be exhaustive, there is a need to include in the ACJA some of the conditions that may attach to the release of an inmate on parole. Some of the conditions that may be so attached may be applicable to all parolees; others may be specific.⁹⁷ This is because for parole to be effective, the conditions that the court attaches to the release of an inmate should relate to the crime that the parolee was convicted of and the objective of reducing his propensity to commit such a crime.⁹⁸

The conditions that are typically attached to the release of an inmate on parole in other jurisdictions include the following: compulsory participation of the parolee in a rehabilitation programme, an undertaking by the parolee not to commit any offence during the period of the parole, and an obligation on the parolee to report to the court or an official designated by the court on a specific day.⁹⁹ Other conditions are a prohibition on the possession of firearms, and abstinence from hard drugs and alcohol.¹⁰⁰ The parolee may also be required to undergo drug and alcohol tests at specific intervals and submit the result to a specified official.¹⁰¹ In addition, the court may give an order restraining the movement of the parolee to a certain area of the court or jurisdiction of the court during the period of the parole.¹⁰² This order can be given to make it easy for the court or any designated official to monitor and supervise the parolee during the parole period, especially if the condition for the parole includes an undertaking to report to the court or designated official from time to time. In some instances, a parolee may be restrained from visiting the victim or his relative or areas where they live during the parole period.¹⁰³ Such restraint could be necessary to prevent the victim or his relation from being subjected to fear and emotional trauma; it may also prevent reprisal. However, an exception to this is where such a visit relates to the reconciliation of the parolee with the victim.

Where parole is granted subject to certain conditions, a breach of any of these conditions may lead to a revocation of the parole by the court.¹⁰⁴ However, the court may not know if any of the conditions upon which the parole was granted has been violated if parolees are not monitored and

⁹⁷ Travis and Stacey 2010 *JCJ* 605.

⁹⁸ Travis and Stacey 2010 *JCJ* 605.

⁹⁹ Travis and Stacey 2010 *JCJ* 604.

¹⁰⁰ Terblanche *Guide to Sentencing* 336, 337.

¹⁰¹ Steen *et al* 2012 *Criminal Justice Review* 38.

¹⁰² See s52(1)(i) of the CSA.

¹⁰³ See ss52(1)(m) and (n) of the CSA; Travis and Stacey 2010 *JCJ* 606.

¹⁰⁴ Travis and Stacey 2010 *JCJ* 604.

supervised.¹⁰⁵ Hence the need for the supervision and monitoring of parolees during the period of the parole. Although the ACJA is silent on the supervision of parolees, this lacuna has been filled by the *Nigerian Correctional Service Act* of 2019, which empowers the comptroller-general of the Nigerian Correctional Service to supervise parolees.¹⁰⁶ Based on this, it is the duty of the Nigerian Correctional Service to supervise parolees. The proper supervision and monitoring of parolees are critical to achieving the goals of parole;¹⁰⁷ otherwise, not long after their release most parolees would be back in custodial correctional centres for committing more heinous crimes.¹⁰⁸ Also the ACJA does not state the procedure for revoking parole, where the conditions upon which it is granted are violated. This procedure needs to be stated in the ACJA, as uncertainty about who can bring an application for the revocation of parole and the type of evidence that must be presented before the court to support the application can undermine the effectiveness of parole as a non-custodial sentence. Generally, parolees would be obliged to comply with the conditions attached to their release if there is a high probability that their parole will be revoked if they violate the conditions.

4.2 Victims' participation in parole proceedings

Unlike in other jurisdictions where victims can speak either in favour or against granting parole to inmates who committed crimes against them,¹⁰⁹ victims do not have a right to participate in parole proceedings in Nigeria. This is a major weakness in the legal framework on parole in Nigeria. In this context the term "victims" refers to the persons who suffered direct harms as a result of the crimes committed by the defendants, and if they are deceased, their relatives.¹¹⁰ Victims or their representatives do not have any input in the decision of the comptroller-general to recommend inmates for parole; neither do they have a right of audience in court during parole proceedings.¹¹¹ The exclusion of the victims of crime from parole proceedings is a reflection of the position of the law on the role of victims in

¹⁰⁵ Travis and Stacey 2010 *JCJ* 604.

¹⁰⁶ Section 40(1)(b) of the *Nigerian Correctional Service Act* of 2019.

¹⁰⁷ Wan, Poynton and Weatherburn 2016 *ANZJ Crim* 507; Vito, Higgins and Tewksbury 2017 *CJPR* 629.

¹⁰⁸ Ostermann 2015 *Crime and Delinquency* 182.

¹⁰⁹ For example, in South Africa, s299A of the CSA deals with victims' participation in parole proceedings. See generally, Mujuzi 2019 *SAPL* 4; Robert 2009 *Crime and Justice* 387.

¹¹⁰ See s46 of the *Violence Against Persons Act* of 2015; Louw 2021 *BJCJ* 44; Mhlongo and Dube 2020 *PELJ* 4.

¹¹¹ Mujuzi 2019 *SAPL* 4.

the administration of criminal justice in Nigeria.¹¹² Besides being witnesses, victims generally do not play any other role in the criminal trial in Nigeria as they are not parties to it.

Some scholars submit that the participation of victims in parole proceedings is not necessary.¹¹³ Their view is premised on the fact that the main factor that the court considers in granting parole is whether inmates have turned over a new leaf. Their good behaviour may not be within the knowledge of the victims or their representatives.¹¹⁴ It is a matter that is strictly within the purview of the correctional officers in the correctional centre where the inmates are being held. Also, they argue that the participation of the victims or their representatives in parole proceedings may prejudice the inmates.¹¹⁵ The victims or their representatives may oppose the release of the inmates on parole even if the inmates are now of good behaviour and no longer pose a risk to the larger society.¹¹⁶

However, in my opinion the voice of the victims should be heard in parole proceedings, even if the court will not be under an obligation to accept their submission.¹¹⁷ The participation of victims in parole proceedings is an integral part of victims' rights in the administration of criminal justice. Besides, any measure that aims to promote restorative justice should involve all relevant persons affected by the offence, especially victims and offenders.¹¹⁸ The participation of victims in parole proceedings will promote restorative justice, as it could encourage reconciliation between victims and offenders.¹¹⁹ More so, the earlier release of inmates who have done very little or nothing to assuage the pain of the victims may further aggravate the pain of the victims. Moreover, whether such inmates can be said to be of good conduct is questionable.

The participation of victims in parole proceedings is usually in the form of the presentation of victim impact statements to the court or the parole board,

¹¹² Olatubosun 2002 *JILI* 207.

¹¹³ Robert 2009 *Crime and Justice* 352, 387; Young 2016 *Conn L Rev* 485.

¹¹⁴ Reitz and Rhine 2020 *Annual Review of Criminology* 293; Caplan 2012 *Victims and Offenders* 53; Young 2016 *Conn L Rev* 438.

¹¹⁵ Moffa, Stratton and Ruyters 2019 *CICJ* 2; Caplan 2012 *Victims and Offenders* 54; Hail-Jares 2019 *Justice Quarterly* 4.

¹¹⁶ Caplan 2012 *Victims and Offenders* 62, 63.

¹¹⁷ Robert 2009 *Crime and Justice* 350; Reitz and Rhine 2020 *Annual Review of Criminology* 293.

¹¹⁸ Bronnimann 2020 *Mo L Rev* 331; Dana and Crawford 2019 *NYL Sch L Rev* 58.

¹¹⁹ Hargovan 2015 *SACQ* 61; Robert 2009 *Crime and Justice* 384; Reitz and Rhine 2020 *Annual Review of Criminology* 286.

and in some jurisdictions they are allowed to make oral submissions.¹²⁰ Through their victim impact statements the victims state the effects the offences committed by the inmates have had on their lives. Furthermore, the victims may state whether the release of the inmates on parole could pose any danger to their safety¹²¹ or the safety of members of the public.¹²² In addition, they may make submissions on the conditions upon which parole may be granted to the inmates.¹²³ The participation of the prosecutor, the inmate, the victim and, to a limited extent, the comptroller-general of the Nigerian Correctional Service in parole proceedings would assist the court to make a decision that takes into consideration not just the interest of the inmates but also those of the victims and of society at large. A victim impact statement is not at present recognised in Nigeria's criminal justice system. However, since the ACJA allows the court to hear the prosecution,¹²⁴ the prosecution may consult with the victims before it supports or opposes the application for parole or makes any other submission to the court in this regard. Therefore, the victims' views on whether the court should grant parole to inmates could be expressed by the prosecution. However, the prosecution is not under any obligation to do this.

4.3 Mandatory rehabilitation of parolees

Where inmates are released on parole, the ACJA makes it mandatory for them to go through a rehabilitation programme in a government facility or any other appropriate facility.¹²⁵ The goal of such rehabilitation is to enable the parolees to reintegrate into society properly.¹²⁶ This rehabilitative programme is independent of whether the release of inmates on parole is with or without conditions. The mandatory requirement that all parolees must undergo rehabilitation does not preclude the court from making rehabilitation part of the condition of parole if the peculiarity of a parolee so demands. The early release of inmates from custodial correctional centres without rehabilitation or effective supervision during the period of parole will make parole a temporary break from the custodial correctional centres for parolees.

For any rehabilitation programme to be effective, it should be general and specific. It should address the general needs of parolees with respect to

¹²⁰ Young 2016 *Conn L Rev* 439.

¹²¹ Oliver 2019 *Acta Criminologica* 34; Robert 2009 *Crime and Justice* 387.

¹²² Moffa, Stratton and Ruyters 2019 *CICJ* 4.

¹²³ Robert 2009 *Crime and Justice* 388; Young 2016 *Conn L Rev* 438.

¹²⁴ Section 468(1)(b) of the ACJA.

¹²⁵ Section 486(2) of the ACJA.

¹²⁶ Hamin, Othman and Hassan 2018 *Howard Journal of Crime and Justice* 77.

reintegration into society, and it should also address the peculiar challenges of each parolee.¹²⁷ It should focus on the factors that pre-dispose each parolee to crime. For example, the rehabilitation programme for a sex offender should be different from that of a drug or alcohol addict. Also, the rehabilitation programme should include skills acquisition and economic empowerment, as¹²⁸ parolees may find it difficult to stay away from crime if they do not have means of obtaining a livelihood.¹²⁹

5 Conclusion and recommendations

This article has examined the relevant provisions of the ACJA on parole. It establishes that it is now possible for a court to release inmates on parole in Nigeria, provided the conditions stipulated in the ACJA are met. The analysis of the provisions of the ACJA on parole shows that parole is not a right in Nigeria; neither do inmates have a right to be appraised and considered for parole. To be eligible to be considered for parole, inmates must be of good behaviour and must have served specified minimum terms of imprisonment. The release of inmates on parole is essentially a judicial exercise, although the court can decide whether it should release an inmate only when the comptroller-general makes such a recommendation. The correctional service recommends inmates, while the final decision rests with the court. If a court refuses to release an inmate on parole following the application of the comptroller-general, it appears that the court's decision cannot be challenged. As stated before, parole is not a right, it is a privilege, and an inmate does not have a *locus standi* to appeal against the decision of a court not to grant him parole.

The article also identified some weaknesses in the provisions of the ACJA on parole and offers the following suggestions. First, the minimum terms of imprisonment that inmates sentenced to less than 15 years and life imprisonment must serve before they could be eligible to be recommended for parole should be stated. Second, medical grounds, especially for terminally ill inmates, should be included as among the grounds for granting parole. Third, an independent procedure for establishing that an inmate indeed has a serious medical condition that could be a ground for release on parole should be clearly stated in the ACJA. In addition, the conditions that a court may attach to the release of an inmate on parole and the procedure for the revocation of parole when the conditions are violated

¹²⁷ Kahsay 2017 *HUJL* 24.

¹²⁸ Hamin, Othman and Hassan 2018 *Howard Journal of Crime and Justice* 81.

¹²⁹ Peled-Laskov, Shoham and Lutzy 2019 *Int J Offender Ther Comp Criminol* 2266.

should be stated in the ACJA. Furthermore, adequate measures should be put in place to ensure that there is effective rehabilitation and supervision of parolees; otherwise, the objectives of parole may be defeated. Finally, there is a need to amend the ACJA to allow victims or their representatives to make submissions during parole proceedings.

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List of Abbreviations

ACJA	Administration of Criminal Justice Act
AHRLJ	African Human Rights Law Journal
ANZJ Crim	Australian and New Zealand Journal of Criminology
BJCJ	British Journal of Community Justice
BBC	British Broadcasting Corporation

CICJ	Current Issues in Criminal Justice
CILSA	Comparative and International Law Journal of Southern Africa
CLB	Commonwealth Law Bulletin
Conn L Rev	Connecticut Law Review
CCRA	Correctional and Conditional Release Act
CJPR	Criminal Justice Policy Review
CRIN	Child Rights International Network
CSA	Correctional Service Act 111 of 1998
DULJ	Dublin University Law Journal
HUJL	Hawassa University Journal of Law
Int J Offender Ther Comp Criminol	International Journal of Offenders Therapy and Comparative Criminology
JCJ	Journal of Criminal Justice
JILI	Journal of the Indian Law Institute
Mo L Rev	Missouri Law Review
New Eng J Prison L	New England Journal on Prison Law
NYL Sch L Rev	New York Law School Law Review
NYU L Rev	New York University Law Review
Ohio St J Crim L	Ohio State Journal of Criminal Law
PELJ	Potchefstroom Electronic Law Journal
SACQ	South African Crime Quarterly
SAJBL	South African Journal of Bioethics and Law
SAPL	Southern African Public Law
TSAR	Tydskrif vir die Suid-Afrikaanse Reg / Journal of South African Law
UWA L Rev	University of Western Australia Law Review