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### Illegal Killing in Prisons

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**FEMI FALANA (GUEST COLUMNIST)**

On January 18 this year, Mr. Hamani Tidjani, a prison inmate died at the Kirikiri Maximum Security prison in Lagos. The deceased, who suffered from partial stroke, was not given any medical attention by the prison authorities. He was a citizen of Niger Republic arrested in Cotonou, Benin Republic and brought to Nigeria in September 2003 for investigation and trial for some trans-border armed robberies and allied criminal offences. After a prolonged trial, he was convicted by an Ijebu Ode High Court in 2011 for receiving stolen goods and sentenced to a 10-year jail term. Although the deceased completed the sentence, he was not released from prison custody as he stood trial for similar offences in the Lagos High Court.

In the last one-year or thereabouts, four other convicted prisoners of Nigerian nationality namely Messrs Ganiyu Adeniyi, Danda Akanbi, Thomas Odafe and Ariyo Osisanya had died in the same prison on account of medical neglect. From the information at our disposal, the killing of prison inmates through medical neglect is not uncommon in all other prisons in the country. For instance, one Mr. Toyese Kehinde, who had served a month jail term for his inability to pay a fine of N5,000.00 (five thousand naira) for an environmental offence, died at the Benin prison on September 20, 2013. The said Mr. Kehinde was illegally detained after the completion of his sentence. A week later, a 21-year-old undergraduate of the University of Benin, Ibrahim Momodu, also died in the Benin Prison. Another inmate, James Oglesby, had died last year after two other prisoners inside the prison's recreation yard beat him.

In a similar vein, Mr. Sunday Akinyemi, who was standing trial for conspiracy and stealing of funds belonging to his own company, also died in December 2012. In that case, Justice E.A Adebajo (now retired) of the Lagos High Court had refused to allow the applicant who was standing trial before him to travel abroad at his own expense to treat cancer of the colon which was diagnosed by the military hospital, Ikoyi and confirmed by the Lagos University Teaching Hospital (LUTH) while he was undergoing trial before the judge. When the health condition of the defendant became critical, our law firm requested the Ikoyi prison management to either treat him or release him for treatment.

As the request was turned down, we applied to the Federal High Court for the enforcement of the fundamental right of the detainee to life. In granting the prayer of the detainee to travel abroad for medical treatment at his own expense, Idris J rightly held that: "There is no doubt that life is ultimate measure of all things and for that reason, the right to life is unarguably the most fundamental of all liberties. Without the right to life, no other right can be enjoyed, and it is for that reason that it is guaranteed under section 33 of the Constitution, and Article 4 of the African Charter on Human and Peoples Rights."

It is our submission that prisoners are entitled to all the fundamental rights guaranteed to other citizens save the right to personal liberty and freedom of movement. In *Peter Nemi v. The State* (1996) 6 NWLR (PT 452), the Court of Appeal held that the life of a convict on death row could not be terminated without due process of law. In *Nasiru Bello v The State* (198) 2 N.S.C.C. 1257, the Supreme Court awarded reparation to the family of the deceased who was executed by the Oyo State government while his appeal was pending at the Court of Appeal.

In condemning the hasty execution of the death sentence, Chukwudifu Oputa JSC (as he then was) held: "The premature killing of Nasiru Bello in the surrounding circumstances of this case was both unlawful and illegal. It was also wrongful in the sense that it was injurious to the rights primarily of Bello to life and secondarily of his dependents who by his death lost their bread-winner; it was headless in the sense that it was premature and unconstitutional; it was unjust in the sense that he (Nasiru Bello) was not allowed a just determination of his appeal by the Federal Court of Appeal; it was reckless in the sense that it was done in complete disregard of all the constitutional rights of the deceased, Nasiru Bello"

In *International Pen & Others (on behalf of Ken Saro-Wiwa) v. Nigeria* (2000) AHRLR 212, the complainants alleged before the African Commission on Human and Peoples Rights that the respondent had denied Ken Saro-Wiwa access to his doctors while awaiting trial in a military custody in Port Harcourt, Rivers State. Upon confirming the allegation, the African Commission held that: "The responsibility of the government is heightened in cases where an individual is in its custody and therefore someone whose integrity and well-being is completely dependent on the actions of the authorities. The state has a responsibility in this case. Despite requests for hospital treatment made by a qualified prison doctor, these were denied to Ken Saro-Wiwa, causing his health to suffer to the point where his life was endangered. The government has health to suffer to the point where his life was endangered. The government has not denied this allegation in anyway. This is a violation of Article 16."

From the foregoing, it is indisputable that the state owes it a duty to ensure that the right to life of every prison inmate in its custody is respected. In *Odafe & Ors. v. Attorney-General of the Federation and Others* (2004) AHRLR 205, the Federal High Court directed the Federal Government of Nigeria to transfer the

applicants who were convicted prisoners from the Port Harcourt prison to a specialist hospital where they could have adequate medical attention as they had been confirmed to be HIV positive. It was the view of the learned trial judge that Article 16 of the African Charter on Human and People Rights Act places a duty on the state to take necessary measures to protect the health of their people and to ensure that they receive medical treatment when they are sick.

In the last three years, several prisoners have been brutally killed by terrorists and other armed gangs who stormed a number of prisons to free there detained members. Since the prisons are not well secured, the federal government is vicariously liable for the premature death of such prison inmates. More worrisome is the fact that several prison inmates who are terminally ill may soon die due to lack of medical attention by the prison authorities. It is hoped that all measures are being put in place to keep the highly infectious Ebola virus away from the prisons!

In view of the duty imposed on the state to provide adequate medical treatment for citizens when they are sick, we urge the federal government to save the lives of scores of prisoners who are terminally ill in our prisons. Since the authorities have failed to provide adequate health facilities in all the prisons, we demand that those who are in critical health situation be released to their family members or friends for urgent medical treatment. This request is anchored on Regulation 12 (a) made pursuant to the Prison Act (CAP P29) Laws of the Federation of Nigeria, 2004 which provides as follows:

“So soon as the medical officer informs the superintendent of the prison, in writing, that a prisoner’s life is endangered by further confinement or that a prisoner’s illness is likely to terminate fatally within a brief period and before the expiration of his sentence or is of such a nature as to endanger the health of other prison inmates, the superintendent shall at once make inquiries as to the ability and willingness of the prisoner’s friends and relatives to take charge of him. If satisfied that the prisoner’s friends and relatives will take charge and care of the sick prisoner the superintendent and medical officer shall fill in a warrant of release in form in schedule and forward the same through the Director of Prison to Minister for his decision.”

As the Minister of Interior, Mr. Abba Moro, has failed to ensure the provision of adequate medical facilities in the prisons, we request the National Human Rights Commission (NHRC) to investigate the illegal killing of convicts and awaiting trial inmates in prison custody in Nigeria. The commission may wish to recommend the payment of exemplary damages to the families of prison inmates who had lost their lives on account of medical neglect and the trial of all public officers whose negligence has contributed to the killing of prison inmates.

\*Mr. Falana, SAN, is a member of the THISDAY Editorial Board

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