

Challenges of Imprisonment in the Nigerian Penal System: The Way Forward

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This paper traces the customary methods of dealing with offenders prior to colonial rule in Nigeria to the current state of facilities and operations in Nigerian prisons. It critically analyses the condition of the incarcerated offender, the measures put in place for their rehabilitation vis *a vis* the united nations standard minimum rules for the treatment of offenders. It finds that the prisons are overcrowded, conditions are deplorable with inadequate rehabilitation and aftercare provisions. This paper recommends greater use of fines by courts; restitution, mediation, probation and community service as non-custodial measures for minor and non-violent offenders. Several measures are recommended for rehabilitation and aftercare of convicts.

Key Words: offenders, awaiting trial persons, imprisonment, fines, community service, probation, after-care

Introduction

The Nigerian criminal trial system is accusatorial in nature. Once the Police conclude investigation and a case is deemed established, the justice process gets underway. Section 36(5) of the 1999 Constitution confers a presumption of innocence on an accused person until proven guilty. The burden of proof in criminal trials rest on the prosecution and it is to prove all the elements of the offence charged as defined by law. Once convicted, imprisonment appears to be the preferred mode of punishment in the Nigerian penal system. However, in the face of worsening conditions of prison inmates, it is clear that the time is ripe to consider alternatives to incarceration for treatment of offenders in the Nigerian penal system.

Literature Review

There is no society without a prison system and prisons have existed in different civilizations in ancient times. It included short-term detention facilities for the confinement of persons awaiting trial, sentencing, execution, deportation (transportation to other countries as punishment) whipping or some other form of corporal punishment. (Reid, 2012) However, placing offenders in an institution for the purposes of punishment is a relatively modern development. Prisons have been described as the narrow funnel of criminal justice system to which sentencers continually pour new offenders into (Bamgbose, 2003). It is perceived to be the darkest region of the apparatus of the justice system in Nigeria (Dambazu, 2007). (The question of why prisons exist and what they are meant to achieve is often asked.

The popular answer would be that imprisonment punishes, it deters the imprisoned from offending again, it deters others from offending and thus sharing the prisoners fate. (McClellan & Wood, 1969).

Prison is also used to keep offenders from further “infecting and inflecting” other members of the society (Alabi & Alabi, 2011). Critics and advocates of prisons agree that the prisons are an ineffective and inefficient means of treating and rehabilitating offenders (Alemika & Alemika, 2002). Although prison should be a humane, efficient conveyor belt, (Bamgbose, 2010) the appalling condition of inmates in the Nigerian prison inmates have led to increasing public outcry for reform. The issue of non-custodial measures deserve proper consideration. This has necessitated this paper and recommendations have made herein for greater use of fines, restitution, mediation and the adoption of probation and community service as alternatives to incarceration for the Nigerian criminal justice system.

Imprisonment in Pre-colonial Nigeria society

Imprisonment was a part of pre-colonial Nigerian societies before the advent of the British colonial rule. Among the Nassarawa in north-central Nigeria, it was usual to expose a thief kept in stocks by the compound of the victim until he was redeemed by his relations, discharged or disposed of. (Gunn, 1960) Stocks were used as a form of shame and humiliation and the social status of a person exposed in stocks was likely to be reduced. Among the Hausa tribe in northern Nigeria, an offender was also put in stocks in a conspicuous place by the victim’s compound where passers-by could jeer at him (Hassan & Naibi, 1962).

Among the Igbo tribe of the south-east, relatives would use chains to hold a murderer while inquiries were made by a diviner to ascertain what had induced him to commit such an abominable crime. (Meek, 1970) The Yoruba of the south-west held debtors in a place called *tubu*, a word synonymous with prison. It was such a widespread practice that every chief had his *tubu* for criminals. The offences for which an offender could be so held ranged from drunkenness, disobedience etc. (Ajisafe, 1924) The *ogboni* society (a secret society) in Yorubaland, also held offenders in their prisons for offences such as ritual murder, witchcraft, notorious burglary. (Ogunleye, 2007).

The *ewedo* was also a place among the Edo tribe of midwestern region for detaining offenders until they were sold into slavery or released to their relatives. (Bradbury, 1957) Among the Tiv tribe of the middle belt region, an offender had to agree to a sentence of imprisonment as an admission of his guilt. (Bohannon, 1957) Thus, for the Nigerian tribal societies, prisons where they existed at all, were simply places for holding suspects pending investigation and trial. They were not used as places of punishment under a sentence like modern day prisons (Ogunleye, 2007).

Prison in Northern Islamic Tribes

In Islamic law, the term imprisonment is called "AlHabs" (Quran, 12, v42). AlHabs was used during the time of Prophet Muhammad and in the period of the rightly guided caliphs.

Imprisonment was not confinement of a person in a small narrow dark place but in the house or a mosque (Abubakar, 2008). During the early period of Islamic administration of justice in Arabia, treatment of detained persons by the detainer and the Prophet's instruction for feeding of detainees by the detainer upheld the ideals of human dignity, unlike what obtains in the nations prisons today (Shabbir, 2002).

In pre-colonial times among the Muslim emirates in northern Nigeria, imprisonment was a discretionary punishment (*ta'zir*) under Islamic law. It was used for penal purposes and as a tool for political oppression following the Fulani conquest of the 19th century (Ogunleye, 2007). An ancient prison existed in Sokoto where criminals were kept in a building "crowded to overflowing" with prisoners and in the center of it was a dungeon in which the worst criminals were kept. (Meek, 1925) Lord Lugard also recorded that he met prisons in Kano when he captured the city in 1900. (Colonial Report, 1902).

Prison System under Colonial Rule

The organized prison system was introduced to Nigeria through the Lagos colony in 1861 and the Northern Protectorate in 1900. It was based on the then prevailing English penal practice. The first prison located at Faji, in Lagos island was described as a "common gaol" - a temporary building of mud and thatch without drainage, baths, lavatories or urinals. (Lagos Blue Book, 1862) Imprisonment was first mainly custodial and not punitive. The prisoners were comparatively well fed (which cannot be said of the prisoners today). They were not harshly treated and thus escapees were low.

Prisoners were engaged on road repairs, conservancy, reclamation of the lagoon land, burying of dead paupers etc. The living conditions were not harsh as they slept on mats in wards. Their hours of work were from 6am to 4pm with one hour break in between. (Ogunleye, 2007) These conditions were much better than present day prison conditions. The system functioned without a formal legal instrument and there was no discernible penal objective in the first fifteen years of British prison administration system. By 1914, the prisons in the Northern and Southern territories were merged to form the Nigerian Prison Service.

The Nigeria Prisons Service (NPS)

The Nigeria Prison Service (NPS) has had a long and chequered history. It has grown from a decentralized and untidy system into the uniform administration it is today. (Awe, 1968) Convicted prisoners are legally in the custody of the Nigerian Prisons Service (Cap P29 LFN) which has powers to-

- i. Take into custody all those legally interned;
- ii. Produce them before the courts as and when due if they are on remand;
- iii. Identify the causes of their anti-social conduct;
- iv. Set in motion mechanism for their re-training and reformation preparatory to returning them back to society as normal, law abiding citizens; and
- v. Generating revenue for the state through the use of prison farms and industries.

As of 2011, the Nigerian Prison system had a total of two hundred and twenty seven prisons made up of 83 satellite prisons, 1 open prison camp, 3 borstal institutions and 40 convict prisons of both medium and maximum security hue (Ogundipe, 2011).

The prisons are on the exclusive legislative list of the 1999 Constitution, thus no state, local government council or private organization can build or operate a prison in Nigeria. (Second Schedule, Part 1) However, state governments, non-governmental agencies and private individuals do make donations in cash and kind to prisons all over the federation (Vanguard, 2013).

The prison service is under the control and superintendence of the Controller-General of Prisons. At the various states, the Assistant Controller – Generals who are federally appointed run the prisons. This situation stifles private and state initiatives in proffering policies or partnerships in effective offender treatment regimes. The maximum security prisons take custody of condemned prisoners and have high level of security (Nigerian Prison Service) The medium security ones are occupied by both remand inmates and convicts

serving short - term sentences. Both categories are termed convict prisons.

There are two exclusively female prisons located in Lagos and Ondo states. Although Dayil *et al* noted that juveniles are remanded in Abeokuta, Ilorin and Kaduna remand homes and borstals, an Amnesty Report of 2007 found that children as young as 11-12 years were being held in maximum prisons (Amnesty, 2007). As of 2013, eight hundred and eleven (811) juveniles are in its borstal training institutions across the country (Punch, 2013).

Table 1. Breakdown of Nigerian Prison Population As of June 2013

	Male	Female	Total
Awaiting Trial Persons (ATPs)	36,153	830	36,983
Convicted Persons (CPs)	16,616	242	16,858
Inmate Population	52,769	1,072	53,841

Source: Nigerian Prison Service <http://www.prison.gov.ng>

Awaiting Trial Persons (ATPs)

Now, as it can be seen from Table 1, ATPs constitute (68.6%) of the total Nigerian prison population, an alarming proportion indeed. Available data on the rate of ATPs to prison populations for different countries confirm that the Nigerian figure is extremely high. Malawi has a rate of 12.3%, Ghana-22.6%; South Africa-20.2%; Egypt-41.4%; United Kingdom 12.9%; France-25.3%; USA-21.5%; Japan-11.3%; Cameroon-60.7%; Malaysia-21.6%. (ICPS).

Also worrisome is the length of stay of the awaiting detainees in Nigerian prisons. On the average, an awaiting trial detainee is held for between two and fifteen years. (Aduba & Alemika, 1996) This is due to a variety of factors:

- a. Difficult bail conditions which detainees are unable to fulfill (Okagbue, 1996). While it can be argued that the pre-trial detainee is not being punished formally, the effects of detention is indistinguishable from post - conviction imprisonment. While in detention, the defendant may lose his job or business thus affecting his ability to provide for his family; have difficulty preparing his defense and may also suffer from loss of self-esteem and public regard. The degrading prison conditions they suffer is a contravention of the right to dignity of the detainees (section 34, 1999 Constitution) and

Article 5 of the Universal Declaration of Human Right. (Shajobi-Ibikunle, 2012) The African Charter on Human and Peoples Right also provides a general framework for the protection of fundamental rights of Awaiting Trial Persons.

- b. incessant transfer of investigating police officers in middle of trials, poor investigative skills of crime by police in pre-trial investigations and tardy prosecution by police (Olateru-Olagbegi, 2009).
- c. Inadequate number of judges, inadequate facilities in the courts, manual working conditions such that judges still write in longhand in a courtroom environment that is hot and humid. This takes a toll not only on their health but manifests in a slow and tortuous trial in the courts. (Borokini, 2008).

The ATPs also constitute another problem for prison inmates. Due to their high number, they overwhelm the facilities meant for the rehabilitation of convicts. (Orakwe, 2013) The prison service argue their statutory function is the treatment of convicts not detainees. And they are unable to fully concentrate on this function due to the overwhelming number of ATPs. Therefore, this author submits that Nigerian authorities should consider the establishment of separate detention facilities for ATPs. This will also have the added benefit of disallowing contamination of detainees by hardened criminals.

Table 2: Convicted Inmates Population in Nigerian Prisons (1996-2005)

	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
Theft	8944	N/A	N/A	9500	7337	8960	5573	49725	5186	5150
Robbery	120	N/A	N/A	120	80	85	73	102	70	60
Armed Robbery	240	N/A	169	286	150	105	230	203	238	194
	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
Forgery/Fraud	807	N/A	182	750	880	540	687	1540	950	1040
Homicide	255	N/A	N/A	245	205	125	172	200	234	219
Rape	1040	N/A	226	1500	990	N/A	1285	1593	949	1204
Fire Arms	670	N/A	N/A	761	780	575	819	1006	1320	1250
Drugs	1750	N/A	N/A	2050	1600	1050	2150	2220	1697	1300
Obtaining Under False Pretence	704	N/A	N/A	580	670	375	393	1005	1556	1175

Source: Dambazu, (2007)

N/A-Not Available

A survey of Table 2 indicates that the three highest offences for which convictions are obtained are Theft, Drugs and Rape over the ten year period under review. The lowest are for Robbery, Armed robbery and Homicide. This is a cause for concern. The enabling Law mandated the Prison Service to inquire as to the causes of anti-social conduct of convicts. Such reports are not in the public sphere so it is not certain if the research was done but such research would be invaluable in determining the causes of the three highest offences.

Based on the foregoing, the offences for which adult convicts would ordinarily benefit from non-custodial offences would be offences such as Theft, Robbery, Obtaining under false pretences. Other offences could be traffic offences, etc.

Overcrowding

It is argued that the Nigerian prisons are not really overcrowded in the sense that the total installed capacity can conveniently handle the total inmate population. In fact, it is argued that it can take twice the number of its capacity (Ogundipe, 2011). A review of Table 1 data indicates that the total capacity of the prisons in Nigeria is 47,284 while the total inmate population is 53,841. Therefore, there is an over population of 6,557. It is my considered opinion that the claim that the prisons can accommodate twice the number of its installed capacity is rather fanciful. Fayemi & Olonisakin had noted that the nation's prisons faced many challenges, notably limited resources, overcrowding, insufficient sanitary conditions and corruption (Fayemi & Olonisakin, 2008).

Whether the congestion is due to ATPs or convicts, the fact is that the prisons are harboring far more than their installed capacity. Therein lies the danger and this has no doubt contributed to increasing cases of jail break in the past. As of 2002, Kirikiri prisons, Lagos had over 2600 inmates crammed into a space meant for 956

inmates.(Ifeanyi,2002) No wonder prison riots and breaks have been on the increase.

In 1987, there were riots in Benin prison, in 1988 riots broke out in Suleja prison and in 1989, Yola prisons. (Tijjani,2009) In June 2008, 280 inmates escaped in a prison break that occurred in Onitsha prison, Anambra State and only 195 were caught.(Allafrica.com June 2008). In the prison break of Agodi prison, Ibadan eight inmates were shot dead and 18 others wounded when over a thousand prisoners tried to break out of the prison by smashing holes in the walls after they overpowered the guards. (Bamgbose, 2010)On 20th June, 2012, 175 inmates escaped in a daring jail break from Olokuta Prison, Akure when unknown gunmen had invaded the prison at midnight.(dailypost.com.ng). It must be stated that most prisons worldwide are crowded and jail breaks also occur, so this is not just a Nigerian problem. What is a problem in the Nigerian penal system is that policy makers in the criminal justice system have not tackled the issues seriously in such a way as to address the root causes. Also, most prisons were constructed during the Colonial government and facilities are now grossly dilapidated.

Condition of Convicts

Concern has been expressed by visiting chief Judges and other functionaries to the prisons about the poor state of available facilities and the resultant inadequacies.(Onadeko,1998)The conditions of inmates in Nigeria's prisons are pitiable. The living conditions are appalling and damaging to the physical and mental wellbeing of the inmates. Inmates live with poor sanitation, lack of food; lack of medication; over-crowding; poor clothing and sleep 2 or 3 on the bed/bare cold floor (Alabi & Alabi, 2011). Some prisons lack running water and toilets, if available, are pit toilets or soaked with human waste.

The prisons have also been described as “human cages” with no facilities for correction, reformation and vocational training (Alemika, 1983). Most prisons lack toilets, consequently the inmates defecate in buckets located in the cells. The windows are small and there is no ventilation (Adelaja, 2009). There has also been cases of death arising from communicable diseases due to difficulty in adequate feeding and health care (Prison Annual Report, 1989).

A study of prisons in Plateau State, revealed that debtors accounted for 0.12% of the prison population (Aduba, 1995). This raises a serious question on the use of imprisonment as penal measure for fine defaulters by the courts. It makes no economic sense in these hard times to spend so much in terms of feeding, clothing and housing a debtor who may be owing far less than the costs of maintaining him in prison.

Prison Staff

Nigerian prison staff are highly underpaid, understaffed and undertrained. There are no reasonable staff benefits and prison staff also undergo stress of long working hours (Dambazau, 2007). Corruption involving prison officials in their relationship with prisoners is also a major problem. This includes receipt of bribes from rich in-mates, stealing from the ration of in-mates food, trading in illegal substances etc.

Facilities for Rehabilitation

Warren Burger, former Chief Justice of the United States stated succinctly that to put people behind walls and bars and do little or nothing to change them is to win a battle but lose a war. He went further to assert that it was not only wrong but expensive and stupid (*Smith v U.S. 1995*) Therefore, a penal system that incarcerates offenders without commensurate facilities to reform them is self-defeatist. Prison is omnidisciplinary in nature in that it purports to transform the individual criminal into a normal, law abiding citizen by transforming the individual's attitude to work, his physical training, moral attitude, state of mind and moral conduct among other factors (Dambazu, 2007). In the light of the foregoing, it is necessary to scrutinize the facilities available for prison inmates in the prisons.

The Nigerian Prison Service has several programs aimed at rehabilitation of convicts. These include the Prisons Adult Remedial Educational Program (AREP) which enables illiterates access adult education; woodwork, cabinet, metal, tailoring, electrical and electronic workshops; and farm centers-12 mechanized centers, one hundred and twenty three agricultural projects all over the nation which help train prisoners in husbandry,

servicing and maintaining of agro machines; and cottage industries such as soap making industries and Aluminium Industry in the northern part (Orakwe, 2013).

Over one thousand (1000) inmates are on vocational skills acquisition programs and two hundred and forty five (245) passed various trade tests in different vocations (Punch, October 2013).

Clearly, the prison service is making concerted efforts to deliver on its mandate. Nevertheless, critics argue that these measures are not fully effective in the prisons: that the workshops have welding machines that do not work, computers that do not function, and tie and dye workshops that are not in use. Further, it is alleged that the NPS often fails to ensure prisoners registered for School Certificate Exams and Universities Tertiary & Matriculation Exams (UTME) sit for these examinations (Punch, 2011).

Prison Work

Nigerian prisoners work in prison factories but the issue of wages payable and other entitlements are shrouded in secrecy. In England, the Prison Rules states that the purpose of the training and treatment of convicted prisoners shall be to encourage and assist them to lead a good and useful life.(Prison Rules, 1964) Furthermore, convicted prisoners are required to do useful work for ten hours a day, and arrangements are to be made to allow prisoners to work, where possible, outside the cells and in association with one another. Prison training should develop a sense of personal responsibility and prisoners working inside the prisons should have normal rates of pay and conditions of work (McClellan & Wood, 1969). Out of these earnings, after deductions for cost of food and lodging, a prisoner could even send money to his family and save for his release.

Ogunleye argues that this is an ideal that is impracticable to implement in Nigeria because of the general low level of productivity and efficiency of Nigerian prison industries. He argued that it will be difficult and impracticable to view prison labor as valuable as free labor and pay for it as such. Doing so, he submits will be a financial burden on government. This argument is not tenable, bearing in mind the high level of unemployment in the country and inadequate after care assistance for released convicts.

Thus, it is actually in the interest of government to as much as possible alleviate re-settlement problems for ex-convicts. Prisoners should be paid for prison labor and a form of compulsory savings scheme that would benefit inmates should be instituted. When he is due for release, a matching grant for any amount saved by a prisoner from his earnings should be paid to him. Prison authorities should identify non-violent convicts who have

needed skills for small and medium scale industries in areas prisons are located. A form of work scheme can be worked out for establishment of such enterprises to train convicts. It will ensure their skills remain relevant and would be useful for employment purposes after release.

There are no half way houses for ex-convicts for assistance in accommodation challenges for ex-convicts. The public sector as a matter of policy does not employ ex-convicts neither

does the private sector. An ex-convict newly released from prison is faced with accommodation, employment and lack of funds. It will be easy for such an individual to fall back on criminal ways and his peers and find his way back again to the path of infamy and crime. This explains the high level of recidivism in the nation as shown in Table 3 below. Therefore, there is need for transparency and more accountability on the issue of prison labor and earnings in Nigerian prisons.

Table 3: Recidivism Rate in Nigeria (1986-1990).

No. of Convictions	1986	1987	1988	1989	1990
First Offender	14918	11010	17642	10417	6283
Convicted Once	9170	4300	7882	5696	2598
Convicted Twice	3092	2689	3325	2610	1252
Convicted Thrice	1749	1522	1531	1367	645
Convicted Four Times	1188	892	1145	977	1017
Convicted Five Times	887	401	529	550	758
Convicted Six or More Times	1046	621	463	783	482

Source: Annual Abstract of Statistics (1995).

Aftercare for Prisoners

Aftercare exists for discharged offenders at the prisons. In 2009, two hundred and forty four (244) inmates received assistance and the number rose to six hundred and forty (640) in 2010 (Orakwe, 2013). By 2013, seven hundred and ninety-one (791) inmates were released with tools of vocational trade to restart their lives. (Punch, October 2013) Therefore, there is a slight improvement in the number of inmates assisted. Nevertheless, when the number so assisted is viewed against the total number in need of assistance, there is much room for improvement.

Idleness in Prison

The prisoners in Nigeria suffer from enforced idleness and spend a greater part of their time in prison in idleness. Further, facilities capable of exposing the inmates to acquisition of skills which are likely to keep them out of prisons are not in existence (Aduba, 2007). It is said that an idle mind is the devil's workshop. Prisoners left unoccupied with positive and constructive activities are likely to engage in vices, such as sale and abuse of drugs. They are also likely to perfect their criminal activities by learning from one another new tricks involved in various crimes. Therefore, the state of idleness of the prisons falls short of international standards. It must be stated that incarceration by itself is already a punishment without further

worsening the mental state of the convict. This is expressed clearly thus;

“Imprisonment and other measures which result in cutting off an offender from the outside world are afflictive by the very fact of taking from the person the right of self – determination by depriving him of his liberty. The purpose and justification of a sentence of imprisonment or a similar measure of deprivation of liberty is ultimately to protect society against crime. This can only be achieved if the period of imprisonment is used to ensure, so far as possible, that upon his return to society the offender is not only willing but able to lead a law abiding and self supporting life. To this end, the institution should utilize all the remedial, educational, moral, spiritual and other forces and forms of assistance which are appropriate and available, and should apply them according to the individual treatment needs of the prisoners” (Rule 57-59).

The Standard Minimum Rules for Treatment of Offenders also states that every prisoner who is not employed in outdoor work shall have at least one hour of suitable exercise in the open air daily if the weather permits. (Rule 21) This is not observed. Prison labor is not to be afflictive by nature and all prisoners under sentence are required to do sufficient work of a useful nature (Rule 71). Vocational training in useful trades should be provided for prisoners able to profit thereby (Rule 71(6)).

The Nigerian Prisons Service Act is silent on the rights of prisoners. It has been advocated that the

Act establishing the prisons be amended to include these rights *inter alia*:

- a. Right to food that is quantitatively and qualitatively adequate for the maintenance of all vital organs of the body while incarcerated (Rule 20 (1)).
- b. Right to hygienic and healthy environment. A situation where toilet facilities, water and disinfectants are grossly inadequate is unacceptable (Rule 15).
- c. Right to sleep on a mattress
- d. Right to medical services (Rule 22).

Penal Policy

There is no clearly identifiable penal policy for Nigerian prisons either in the enabling statute nor is there any philosophy for treatment of offenders placed in prison custody. A penal policy is no doubt a *sine qua non* in achieving the ends of justice in a society. It is a mechanism adopted by political authority against conduct identified to be antisocial and it cannot exist *in vacuo* (Ndifon, 2010). Alemika submits that the goals of treatment and rehabilitation including the provision of vocational and educational training for incarcerated convicts are now articulated by the prison authorities though largely as rhetorics. (Alemika & Alemika, 1994) This is one of the major defects of the Nigerian prison system and it shares this defect with the criminal justice sector.

Different penal enactments apply to the northern and southern sections of the country. The Criminal Code Act (Cap C38) Laws of the Federation (LFN) 2004 and the Criminal Procedure Act (CPA) are applicable in the south.

The Criminal Procedure Laws apply in the southern states except for Lagos State which has enacted the Criminal Justice Administration (CJA) Law of Lagos state. These statutes are largely based on the English penal statutes. The Penal Code, (Cap P3, LFN) 2004 and the Criminal Procedure Code (Cap 491, LFN) are applicable in the northern section as well as the Federal Capital Territory, Abuja. The two statutes are largely modeled on the Sudanese penal codes.

One of the main defects today of the Nigerian criminal sector is the incoherent, and incredibly intricate variety of sentences legally pronounced by different courts exercising same jurisdiction in respect of the same or similar offences. Thus, it has been said that “the different approaches to sentencing becomes a problem when it presents the criminal justice system as irrational, inconsistent and unjust” (Fatayi-Williams, 1970 p 152) The principal reason for this state of affairs is the absence of a sentencing policy (Alemika & Alemika, 1994) Anyebe however, posits that a critical examination of the penal statutes would suggest that the dominant philosophy for sentencing in Nigeria is retribution. (Anyebe, 2011) This not only affects

public perception of justice but I daresay also negatively affects the psyche of the convict who cannot understand the basis for this. Regrettably, neither the Judiciary nor the National Assembly has given sufficient thought to the dire need for a sentencing policy for the nation.

Fundamentally, the criminal justice sector has not functioned as a system *strict senso*. It is more like a group of uncoordinated players in the same sector. The agencies that are critical to justice delivery for an offender have different supervisory bodies and this fact has led to a systemic crack. Constitutionally, the Nigerian Police Force that is vested with powers to investigate, apprehend and prosecute criminals (section 4, Police Act, Cap P19, LFN) is supervised by two agencies: The Police Service Commission which exercises powers of dismissal and disciplinary control by virtue of section 29, Third Schedule while the organization and administration of the force is under the Nigeria Police Council under section 27, Third Schedule of the Constitution. The 1999 Constitution vests prosecutions for federal offences mainly in the Office of the Attorney- General of the Federation (section 150) and by direction of State Attorneys-General in the states (section 195).

The state courts are supervised by the State Judicial Service Commission (Third Schedule, Part 11) while the Federal Judicial Service Commission (Third Schedule, Part 1) supervises federal courts as per the constitution. The Nigeria Prison Service that takes custody of the products of the judiciary is supervised by the Federal Ministry of Internal Affairs. There is little or no symmetry between these agencies and this may be responsible for the difficulty in formulating a coherent penal policy for the justice sector. Without a philosophy to guide the treatment of offenders from initial contact with police up until incarceration, there is no driving force, no “spirit” to measure the care provided for inmates, and the inmates are the worse for it.

Furthermore, the interplay between prison and courts needs to be entrenched in the Nigerian criminal justice system. Chief Judges should not be seen to only visit prisons for release of pre-trial detainees at the start of the legal year alone. Regular and reliable information on capacity of prisons should be forwarded to the courts regularly as a matter of duty. This may very well assist judges reconsider the frequent recourse to imprisonment as their preferred mode of punishment, even for minor offences.

It is important therefore that all players in the justice sector urgently consider alternatives to custodial treatment of offenders for non-violent convicts and convicts of minor offences. Incarceration is not a magical cure for offenders by itself and most certainly the present state of affairs in the prisons makes this a highly unlikely deliverable.

Alternatives to Incarceration

Some non-custodial sanctions exist in the nation's penal statutes which would be suitable for the classes of offenders stated above. These include:

- i. *Fines*: Where a court has authority under any written law to impose imprisonment for any offence but has no specific authority to impose a fine for that offence, it may in its discretion, impose a fine in lieu of imprisonment (section 382(1) CPC). A fine is illusory if the convict has no hope of paying it (Onadeko, 1998) and even so the courts have held that fines should not be excessive (*Goke & Ors v Police, 1957*) The concept of fines goes to the essence of African traditional justice, where if possible and practicable, the offender was expected to reimburse the victim for the injuries-emotional, psychological and financial trauma or loss suffered. In criminal matters, fines could be imposed as compensation to the family of the person killed according to the justice and circumstances of the case (Oyewo & Olaoba, 1999). In today's contemporary society, a fine has the advantage of allowing the offender avoid the stigma of imprisonment. The term *elewon* is the Yoruba word for an ex-convict and is regarded as degrading when used. It will also enable the convicted offender discharge his responsibility to his family (Ladan, 2010)
- ii) *Recognizance*. This order is meant to enhance the peace and security of the community. The exercise of the power is not dependent on a conviction but it may be used in respect of an acquitted defendant or the appellant whose conviction has been quashed; witnesses before the court or the complainant. (section 300 CPA & section 25 CPC) Recognizance is the third most frequently used sentencing measure by Nigerian courts, trailing behind fine and imprisonment. (Ladan, 2010) It is a good disposition method which will not cost society any financial burden and it is recommended that sentencing officials increase its use.
- vi) *Conditional Discharge*. A convicted offender may be discharged conditionally or have the charge against him dismissed having regard to his character, antecedents, age, health, mental condition, trivial nature of the offence or extenuating circumstances under which the offence was committed. Under section 435(2) of the Criminal Procedure Act, he may further be ordered to pay damages for injury, or compensation for loss and also the costs of the proceedings. The Criminal Procedure Code has no provision for conditional discharge.
- iv) *Forfeiture*. In the penal statutes, forfeiture of assets to the state is more of an ancillary order after conviction than a substantive mode of punishment. Section 19 of the Criminal Code

provides for forfeiture of assets in addition to or in lieu of any penalty for conviction of offences under sections 98, 99, 112, 114, 115, 116, 117, 126, 128 & 494. The Penal Code prescribes forfeiture for certain offences and the Economic & Financial Crimes Commission (EFCC) (Cap E1, Laws of the Federation of Nigeria, 2004) prescribes forfeiture after conviction in certain cases (sections 17, 19 & 20)

v) *Probation*. Under section 436 of the Criminal Procedure Act (CPA), the court is empowered to grant probation orders. This is to be with respect of any recognizance ordered to be entered into under Part 47 of the CPA. However, since the promulgation of the CPA in 1945, probation officers were never employed in the public service. Therefore, the proviso has never been implemented in Nigeria. Probation services have been established in Kenya, Uganda and Tanzania (Penal Reform International).

The Presidential Commission on Reform of the Administration of Justice (PCRAJ) was set up by former President Olusegun Obasanjo on March 6th, 2006. Their mandate included the audit of the prison system and their report was submitted in November, 2006. (Ladan, 2010) The report identified the unfortunate overuse of imprisonment by judicial officers as having contributed to overcrowding of prisons. The PCRAJ also identified four main areas of priority intervention for the nations prisons, namely- legal, institutional, Human Resource, funding and special initiatives. It recommended probation as one of the non-custodial sentences suitable for treatment of offenders (Ladan, 2010).

It also noted that probation, if used effectively would protect society and strengthen a probationer's resources making him a more responsible person. Unlike custodial treatment, which removes the offender from his family and community and thereby suspends his social and economic obligation to them, probation exacts from him a contribution, within the limits of his capacity to their well being. The offender is conditionally entrusted with freedom so that he may learn the social duties it involves. Unlike imprisonment, it also leaves no stigma on the offender and therefore has no adverse effect on his future life.

Section 342 of the Criminal Justice Administration (CJA) Law of Lagos State has established probation services but it is applicable only to Lagos State.

This is a bold initiative by the government of Lagos State and is worthy of emulation by other states in the Federation. Even so, it would appear that probation services is targeted at juvenile offenders. This is because its provisos are listed under the section dealing with juveniles i.e. (PART 25) titled "JUVENILE OFFENDERS".

iii.) *Community Services*. As a sanction, community service is non-existent in the penal statute of the

nation except for the CJA Law of Lagos State. The Law defines what constitutes community services as environmental sanitation; assisting in the care of children and the elderly in Government approved homes; or any other service which in the opinion of the court would have a beneficial and salutary effect on the character of the offender (section 350(1) CJA).

It also provides for establishment of community service officers (sub-section 2). A community service officer is to be appointed in each magisterial district. (Sub-section 347(3) No doubt this is another landmark initiative for the Lagos State criminal justice sector. However, this cadre of staff would need to be established, trained and integrated into the criminal justice system for this to work.

Also, it is my considered opinion that the CJA Law of Lagos State should not have conferred on the court discretion to determine what would constitute beneficial community service. The Nigerian judiciary has not proven its readiness to keep pace with alternatives in offender treatment regimes. The Community officers are better placed to advise the court as to what works best in a particular community as obtains in Uganda.

The community officer in Uganda is in constant dialogue with the community leaders/associations to develop what it regards as most relevant form of punishment in its local area.

It should be reiterated that if the correction is not sufficiently deemed a sanction or culturally appropriate, it will not serve as a deterrent or engender confidence of the local community that justice is served (Kintu, 2013). This is a fundamental point in a multi-ethnic and multi-religious society in Nigeria. Some states have distinct tribes by language, culture and customs co-existing.

Also the CJA Law should not have spelt out what constitutes community services for in so doing it may restrict the flexibility that may be required to so delineate the corrections that are acceptable to a community. This should be left to administrative guidelines or as is the case in Uganda, the district community service committee. The committee is responsible for generating a list of placements for areas of work such as construction and environmental work, work in schools and health facilities, planting of trees, desilting of drain etc (Kintu, 2013).

Non-custodial sanctions which do not exist in the nations' penal statutes but have been found useful in other jurisdictions are parole, intensive supervision, house arrest, Day Reporting centers, and Boot camps. However, these are not recommended for now. This is because alternatives sanctions should be introduced in a phased manner and in a way that does not overwhelm the lean resources and manpower of criminal agencies. Restitution and restorative justice should be seriously pursued as alternatives to incarceration. If

a convicted offender cannot retribute by money, such a person may be able to perform hours of work commensurate to the amount of payment that should have been made. (Tijjani, 2009) I hasten to add that such work should be acceptable to the victim and be done directly to him. This is in accordance with customary notions of punishment and should be distinguished from community service which is state supervised work.

Mediation is also advocated for petty offences as better suited to traditional notions of justice than the imported English system of justice and made an entrenched part of the Nigerian criminal justice system. This is pertinent particularly in relation to minor offences of stealing, obtaining by false pretences, cheating, and receiving stolen property (Anyebe, 2011).

Mediation can be done by family heads, traditional rulers (Abubakar, 2010). It is my considered opinion that such individuals must be trained in the required skills and have assistance of counsel from the local government council in addition to minor judicial oversight.

Incarceration by itself does not rehabilitate convicts neither will the present state of the nations' prisons. Expanding available capacity of prison is commendable but it is merely scratching the surface of the problem as recurrent costs have to be provided for also and this is a sore point in an era of dwindling allocation to agencies. Therefore, serious efforts should be made to tackle the appalling conditions in the prisons as well as instituting an aggressive promotion of non-custodial sanction.

Recommendations

1. As a matter of national urgency, the Judiciary should encourage judges to make greater use of available non-custodial sanctions in the penal statutes for offenders convicted of non-violent and minor crimes.
2. A penal policy that wholistically addresses the treatment of offenders at each stage of the journey through the justice hallway should be spelt out.
3. Nigerian authorities should consider establishment of separate detention facilities for Awaiting Trial Persons.
4. Half way houses for ex-convicts should be established for assistance in re-settlement challenges for ex-convicts.
5. Pay for work done by convicts on prison farms and industries should be adequately compensated.
6. Government should consider a form of compulsory savings scheme for convicts involved in prison work. A matching grant or a percentage of the amount saved should be given to a prisoner when due for release. This will assist in resettlement of the convict.
7. Prison authorities should identify non-violent convicts who have needed skills for small and

medium scale industries in areas prisons are located. A form of work scheme can be worked out for training or use of convicts by such enterprises. It will ensure their skills remain relevant and would be useful for employment purposes after release.

8. The Supreme Court should set forth clear Sentencing guidelines for the lower courts for proper delivery of justice.
9. The Federal Ministry of Justice should put greater effort to pressurize the National Assembly to pass into law the draft Bills pending for reform of the justice sector. These include Draft Bills for Community service, Reform of Administration of Justice etc
10. Government should pay greater attention to deployment of technology in the establishment of a criminal justice data base for convicts.
11. There is need to galvanise the community, media, civil society and institutions not traditionally associated with the criminal justice system in the benefits of non-custodial alternatives. (Ladan, 2010)
12. Government should identify community associations, tribal unions, vocational associations who are willing to partner with it for monitoring of probation and community service. Nigerians place great value on ethnic associations, especially in the southern part of the country. Also, non-governmental agencies that are willing should be brought on board. Government should partner with such agencies so that they develop a sense of ownership of the project.
13. In conclusion, the setting up of a National Criminal Justice System Committee composed of players in the entire Nigerian criminal justice system is an imperative. This will afford a wholistic view to drive whatever reforms are necessary to improve the overall health of the criminal justice system.

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