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NIGERIA’S AWAITING TRIAL PRISONERS

The criminal justice system is designed to maintain law and order by processing persons alleged to have violated law and order through the system with a view to establishing their guilt or otherwise. Persons found guilty by the system could either be committed to prison terms or subjected to non-custodial punishment. Persons committed to prison terms are thus taken to the prison to serve their terms.

The Nigerian Prisons Service (NPS), headed by the Comptroller-General, is given the statutory mandate to take general charge and superintend over the prisons system in Nigeria. Beyond incarceration, the prison system is also meant to reform, rehabilitate and re-integrate prison inmates into society.

Remand or awaiting trial persons (ATPs) are individuals confined in prison custody while criminal proceedings initiated against them is ongoing in the law courts. While Section 35 of the 1999 Constitution of the Federal Republic of Nigeria provides for the right to personal liberty, it also sets the grounds on which the right may be deprived.

Perhaps mindful of the need to balance the deprivation of personal liberty with ensuring that persons are not arbitrarily held in prison custody, the section again provides in its proviso that no person who is detained upon being charged with an offence should be held for a period which exceeds the maximum period prescribed as punishment for the offence. In Nigeria, this proviso has been observed more in breach, given the crisis of ATPs and the distortions it has brought to the criminal justice system and prison governance in particular.

HISTORY OF PRISONS IN NIGERIA

Modern prisons service in Nigeria dates back to 1861 when Western-type prison was first established, coinciding with the declaration of Lagos as a colony which also marked the beginning formal governance machinery in the country. The establishment of a police force the same year and four courts in 1863 to try sundry offences made the existence of prisons inevitable. This led to the setting up of the Broad Street prison (now rechristened “Freedom Park”) in 1872 with an initial inmate capacity of 300. Indeed, legend has it that there was a court in Bonny, arising from the special courts backed by the British Navy to resolve disputes between the merchants and the
indigenous people. However, by 1910, due largely to explosion in commercial activities, there already were prisons in Degema, Calabar, Onitsha, Benin, Ibadan, Sapele, Jebba and Lokoja.

It was however not until the appointment of R. H. Dolan, a trained prison officer, as the Director of Prisons (1946-1955) that there was a major shift towards prison reform. He reintroduced the failed vocational training programme in 1949 as a cardinal part of penal treatment in Nigeria, made classification of prisoners mandatory, and introduced visitations by relations to inmates. Aside from progressive earning schemes for long-term first offenders, Dolan also introduced moral and adult education classes, recreation and relaxation schemes, formation of an association for the care and rehabilitation of discharged prisoners, and construction and expansion of convict prisons to enhance classification and accommodation of prisoners.

**BIRTH OF NIGERIAN PRISONS SERVICE**

The abolition of Native Authority prisons in 1968 and subsequent unification of the prisons service in Nigeria marked the birth of the Nigerian Prisons Service as a composite entity. The 1971 release of the government white paper on Gobir Report on the re-organization of prisons and promulgation of Decree No. 9 of 1972 on the Nigerian Prisons Service cemented this reality.

The mission of the NPS is “To promote public protection by providing assistance for offenders in their reformation and rehabilitation under safe, secure and humane conditions in accordance with universally accepted standard and to facilitate their social reintegration into society.” Its statutory functions are as follows: To i. take into lawful custody all those certified to be so kept by courts of competent jurisdiction; ii. produce suspects in courts as and when due; iii. identify the causes of their anti-social dispositions; iv. set in motion mechanisms for their treatment and training for eventual reintegration into society as normal law abiding citizens on discharge; and v. administer Prisons Farms and industries for this purpose and in the process generate revenue for the government.
The Nigerian Prisons Service now has a command structure comprising 8 zonal commands, 36 state commands, 1 Federal Capital Territory (FCT) command, 144 prisons including farm centres and 83 satellite prisons. It also has four training schools, one staff college and 2 borstal institutions. It is stated that in the last 10 years, no fewer than 12 new satellite prisons and 3 prison hospitals have been built.

LEGAL FRAMEWORK FOR PRISONS
A multiplicity of conventions, instruments and laws underpin the governance of prisons and treatment of prison inmates worldwide. The prisons in Nigeria are run solely by the federal government. This means that Nigerian prisons are governed by federal laws.

The Prison Regulation was first published in 1917 to prescribe admission, custody, treatment and classification procedures as well as staffing, dieting and clothing regimes for the prisons. It also brought classification into the prison system, distinguishing between “awaiting trial” and convicted inmates and stipulating the convict category to be found in each type of prison.

The Controller-General of Prisons, pursuant to the powers conferred on him by Section 16 (1) (a) and (b) of the Prison Act, Cap. P29, Laws of the Federation of Nigeria 2004 issued the Nigerian Prisons Standing Order. This was followed by the

Nigerian Prisons Service Standing Orders (Revised Edition), 2011 which deals with laws, rules and regulations governing the Nigerian Prisons Service in Nigeria.

Aside from Article 55 of the United Nations Charter (1945) which sought “universal respect for and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion,” Article 5 of the Universal Declaration of Human Rights (1948) provides that “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”

RIGHTS OF ACCUSED PERSONS
A robust legal framework exists for the protection of the rights of detainees and prisoners, not least Sections 34, 35, 36 of the 1999 Constitution of the Federal Republic of Nigeria. In particular, Section 35 of the Constitution demands that an accused person must be brought before a competent court within a reasonable time or be released from custody two to three months from the date of arrest.

The scope of rights covered by this framework includes freedom from arbitrary arrest or detention; right to be informed of the fact and grounds of his/her arrest or detention; presumption of innocence; right to remain silent; and right to be brought to court within a reasonable time.

Others are right of a detainee to access a lawyer; right to fair trial; right to be provided promptly with written
information about the regulations which apply to his treatment and his rights and obligations; access to outside world; the families, legal representatives and, if appropriate, diplomatic missions of detainees/prisoners are to receive full information about the fact of their detention and where they are held; a prisoner shall be offered a proper medical examination and treatment as soon as possible after admission; right not to be compelled to testify against self; right to adequate accommodation, standard of living and safe keeping of detainee's property. It remains to be seen the extent to which these rights are guaranteed Nigerian prison inmates, especially the awaiting trial inmates who form the bulk of the prison population.

**NIGERIA PRISONS TODAY: MENACE OF PRISON CONGESTION**

While the prisons are fundamentally designed for convicted persons, Nigeria has the unusual situation where majority of prison inmates (about 72%) are “awaiting trial persons (ATPs).” In fact, the scenario becomes more worrisome when it is realized that a few of these individuals stay for as long as 15 or more years in prison custody as ATPs.

ATPs are usually remanded in prison custody because the offences they are charged with do not provide for bail or they have been unable to perfect bail as granted by the courts. ATPs are often referred to as “transient prisoners” because their stay in prison ought to be transitory and short-lived as against the fate of convicted prisoners. Consistent with constitutional safeguards, ATPs are presumed innocent until proven guilty by a court of competent jurisdiction after a trial which guarantees fair hearing to the accused. Regrettably, Nigeria’s prisons are scarcely transitory facilities for many suspects.

There are instances where ATIs over stay the period they would have been sentenced to prison had the trial progressed as expected. This invariably occasions injustice against the awaiting trial inmate. It is also unclear the correlation between long periods of incarceration and pressures on the part of the accused to plead guilty so as to bring clarity to his plight vis-a-vis his discharge from prison.

The current population of prisoners in Nigeria is put at 68, 110. This comprises 66774 males and 1336 females. However, only a negligible 21,354 made up of 21, 009 males and 345 females are convicted prisoners. Conversely, 46, 756 comprising 45, 765 males and 991 females are awaiting trial prisoners. It is note-worthy that the dominance of ATPs in the prison population, while a fairly recent phenomenon, has now assumed a permanent feature of Nigeria’s criminal justice system.

For example, in 1985 the total prison population was 53,786 out of which 21,515 or 40% were awaiting trial persons. However, by 1990 the figure had climbed to 55,331 out of which 27,665 or 50% were awaiting trial persons. In 2000, it again climbed down to 43,312 out of which 31,625 or 73% were ATPs. Though the figure declined briefly in 2007 to 39,691, it again shot up in 2010 to 46,586 out of which 31,768 or 69% were ATPs. By 2015, the figure was 55,173 out of which 38,024 or 69% were ATPs. The upward trend continued in 2016 with 65,871 prison population, out of which 47,000 or 71% were ATPs.

The progressive rise in the number of ATPs was matched by only marginal increases in the number of convicted prisoners. Thus, while there were 32,271 convicts in 1985, the figure declined to 27,666 in 1990. It however witnessed a sharp drop in 2000 to 11,687 when the ATP menace became very pronounced. In the following years, the number of convicted prisoners only grew marginally to 12,575 in 2007; 14,718 in 2010, 17,147 in 2015 and 18,817 in 2016. When the negligible convict population figure is juxtaposed against the country's estimated 180 million population vis-a-vis the prisoner-population ratio, the crisis in the criminal justice system becomes evident.
HAZARDS OF PRISON CONGESTION

Agomoh (1996) captures the multi-faceted problems wrought by prison decongestion when she states: “It is important to mention that having a high proportion of remand prisoners leads to several administrative and practical problems for both the prison establishment, the police, the judiciary, (the ministry of justice), the prisoners, and their families and the society in general. For the prison establishment, these include overcrowding, high cost of maintenance, increased staff stress and workload, non-qualitative prison regime, poor management and discipline. For the judiciary (ministry of justice) and the police, it raises a lot of philosophical and credibility questions. For instance, remand in prison have been linked to poor outcome of trial. Evidence suggests that the probability of conviction is higher among those remanded in custody than those remanded on bail.

“Also, among those convicted, the probability of a custodial sentence is higher for those remanded in custody than those granted bail. Various reasons have been attributed to these which include viz: the lower rate of pleading not guilty by defendants who have been remanded in custody, their disadvantages in preparing their cases for trial and their higher likelihood of receiving custodial sentence. Furthermore, the problems faced by the remand prisoners and their families are numerous. In fact, they have been found to suffer the worst conditions in prisons than any other category of prisoners. Such problems relate to physical, psychological, medical and economic conditions.”

WHY PRISONS ARE CONGESTED

A plethora of factors contribute to prison congestion. According to Agomoh et al, the problems include high remand/awaiting trial population, congestion and lack of speedy trial; overuse of imprisonment by the courts; abuse of arrest powers and bail conditions by the police; inadequate legal aid facilities; logistics problem relating to transportation of defendants to court; inadequacy in prison structures; inadequate utilization of non-custodial disposition measure; and corruption.

GAINS OF PRISON DECONGESTION

Several benefits attach to prison decongestion and the maintenance of an optimal prison population, not least being the enhancement of the capacity of prisons to deliver on the mandates to reform, rehabilitate and reintegrate deviants into the society.

WAY FORWARD

Perhaps the time to declare a national emergency on the crises confronting the prisons is now. Accordingly, prison decongestion must be seen as a national priority. Aside from the largely failed efforts at prison decongestion, the current model pioneered by Prisoners’ Rehabilitation and Welfare Action (PRAWA) in partnership with the Nigerian Prison Service (NPS) and the UK Foreign and Commonwealth Office (FCO) which aims to situate the decongestion programme within the Legal Aid Council of Nigeria (LACon) seems to offer great promise especially on sustainability. This derives from the fact that LACon has the statutory mandate to among others offer indigent accused persons free legal services.

Writing on different ways to reduce prison numbers, OEC DAC Handbook on Security System Reform states: “There are several ways of reducing prison numbers. One is to accept only those persons into detention for whom there is a legal warrant authorizing imprisonment. Speeding up the trial process so that detainees spend less time in pre-trial detention can be effective.
Criminal procedure codes can be adapted, so that judges rather than prosecutors make the decision about pre-trial detention. Judges or Magistrates can visit prisons and release those held long or unlawfully.”

On her part, Agomoh canvasses the reform of the police, ministry of justice, the judiciary and sundry stakeholder agencies as well as intra-, inter- and multi-agency coordination and cooperation as “key to actualizing and sustaining the proposed reforms.” Broader linkages between the justice sector and other sectors are also crucial in this drive, she asserts.

While global best practices in prison governance is key, it is hoped that effective implementation of the Administration of Criminal Justice Act 2015 as well as the passage of the Nigerian Prisons and Correctional Services Bill, 2016 by the National Assembly will go a long way in ensuring that the prisons achieve the goals for which they were established, namely to reform, rehabilitate and re-integrate prisoners.

THE STORY OF AN EX-CONVICT

There was a young man from Nsukka in Enugu state who was once arrested for armed robbery and detained in the prison awaiting trial before he was finally convicted. According to him, he was a junior secondary school student when he was arrested and charged for armed robbery with a group of eight other adults he has never met before in his life.

After 8 years of detention, the case finally started and five years later, they were finally convicted and sentenced to death for an offence he did not commit. He pointed out that his family members visited him at the beginning of his trials but after a while they stopped coming believing he had been killed. Nobody, he said linked him in any way with the crime in question, not one witness, but since none of his co accused was able to speak out in his favour, he was finally sentenced to death with them after 13 years awaiting trial.

He stayed another ten years on the condemned convicts cell or Death Row before his case was finally resolved in his favour and he was released. Having come into the prison as a teenager 23 years earlier, he was happy to go home in order to catch up with his life again. But he was disappointed to discover that his village had gone on without him. Apart from the fact that many people who knew him and even members of his family had passed on in his absence, he discovered to his shock that he was now a stranger in the same village from where he was relocated to prisons.

Unable to take the treatment meted to him, and having tried to get himself integrated into his former community without success, he decided to join the friends he made in the prisons. At least, he was accepted among them but this process led to the creation of another new criminal,...
REFERENCES

1. See Sections 453 to 467 of the Administration of Criminal Justice Act, 2015. In addition to the Federal Capital Territory, Three States have replicated this statute at the level and we are still counting. The states are Anambra, Ekiti and Lagos.


3. See generally Section 36 of the 1999 Constitution of the Federal Republic of Nigeria


STATUTES CONVENTIONS ETC.

- International Covenant on Civil and Political Rights (ICCPR) (1978). Article 7 prohibits torture and cruel, inhuman, or degrading treatment or punishment.

- Article 10(1) provides that "(a) all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person."

- African Charter on Human and People’s Rights (1986). Article 5 states that "(a) all forms of exploitation and degrading of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.

- Convention Against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment (Convention Against Torture) - Articles 1, 2, 16.

- Standard Minimum Rules for Treatment of Prisoners (1955) - set forth the minimum acceptable conditions for all categories of prisoners, criminal or civil, untried or convicted, including prisoners subject to 'security measures' or corrective measures ordered by the judge.

- Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment (1988) - developed to protect, not only prisoners, but also all persons "deprived of personal liberty by actions of state authority.

SEE GENERALLY:

Art. 3 and 9 of the UDHR, Art. 9(1) ICCPR; Art. 6 of the African Charter; Principle 9 of the Principles on Detention; Sec. 35 (1) of the CFRN 1999;
Art. 9(2) of the ICCPR; Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment (Principles 10, 12, 13); Sec. 35 (1) of the CFRN 1999;
Art. 11(1) UDHR; Art. 14(2) ICCPR;
Sec. 35(2) CFRN
Sec. 35(4) CFRN
Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment - Principles 18 and 33
Art. 10 of the UDHR, Principle 30(2) of the Body of Principles for the Protection of All Persons Under Any Form of Detention of Imprisonment and Art. 14 of the ICCPR
Rule 35 UNSMIR
Principle 15 of the Principle on Detention, and rules 44 and 92 UNSMIR.
Principle 13, 16 and 18 of the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment.
Principle 21 of the Principles on Detention.
Rule 9, 10, 11, 20, 26, 43 UNSMIR; Art. 11 ICESCR;