

## ‘From Manual to Digital Criminality’; Historicizing Nigeria’s Remand/Penal Institutions And Criminal Justice System

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### Abstract

*The strategic importance of Prisons, remand centres and correctionary facilities in the development and sustainability of any nation is not in doubt. Moreover, a well balanced and structured criminal justice system ensures not only an ordered society, but remains as part of an all important fait accompli that steers sovereignties to greatness. In as much as there is no perfect human society, it is not the wish of any nation that most of its citizens would be criminals. Ills, misdemeanors, criminal tendencies and negative actions remain part of a continuum which expose the frailty in the human person. Here came the need for remand centres, though with time, rehabilitation proved a more portent tool than retributive incarceration, hence preventing recidivism on a significant number of the citizenry. The Nigerian Criminal Justice System with heavy colonial tinge, is not a child of circumstance,*

*but a diligent accomplice that has evolved along the nation’s checkered history, transforming though slowly into a valuable asset in nation-building and development. Amongst the trio in the conveyer belt of criminal justice system, the Police, Courts and Prisons; as an institution with modern attribute, the Prisons imbued with human rehabilitation and reformation is of special focus in this study. Towards being realistic with research findings, the qualitative approach was adopted in historical analysis.*

**KEYWORDS:** *Criminality, Rehabilitation, Reformation, Police, Judiciary, Prisons.*

## INTRODUCTION

The final products of the triangular relationship in the criminal justice system in Nigeria is bequeathed to the prisons. The prison as an institution of confinement, is designated for the custody of non-convicted and convicted individuals on a short or long term basis, according to the dictates of either the court or in consonance with the degree of crime committed. Arrested, charged and arraigned in the court based on legally backed reasons or evidence, the police has set in motion a relatively long and convoluted process of judicial processes largely bereft of equity, urgency and thoroughness. Keeping custody of people under special facilities and under professionals, requires the services of wardens and prisons. In maintaining the tradition of tactful and reasonable confinement which dates to long years back in human societies, modern prisons while engaging in timely checks and systematic passes for movements, equally erect high walls or chain link fences, including armed squads in order to prevent inmates escape. It is disheartening to observe that in Nigeria, imprisonment is most appropriately conceived as a justified

system of inflicting pain on convicted individuals as obtained in most traditional criminal justice system<sup>1</sup>.

While imprisonment is a prescription, prisonisation is the process of living within a confinement (prison), which is a physical structure in a geographical location, which harbour a number of people under highly specialized conditions, utilizing the resources and adjusting to the alternatives presented to them by a unique kind of social environment that is a far cry from the larger society in so many ways<sup>2</sup>. Beginning from the conveyor belt of arrest, interrogation, investigation and incipient 'illegal' detention under the police, a first-time offender is obviously faced with a turbulent encounter and experience. By mere fact of colonial domination by Britain, the Nigerian legal system is the Aglo-saxon model, hence accusatorial and not inquisitorial like that of the French. An accused is presumed innocent until his guilt is proven as encapsulated in section 36 of the 1999 Constitution of the Federal Republic of Nigeria.

Under terrible experiences and inhuman circumstances and attention,

the police- ‘suspect’ now becomes the ‘accused’, hence exposed to an institutionalized legal system that thrives in culturing more ‘awaiting trails’ into jailbirds. Hopelessly detained as part of the teeming ‘unconnected’ lower echelon of the Nigerian populace, he is instantly exposed to the realities of the prison socio-cultural life system, which epitomizes a complete design capable of changing the attitude of individual members for good or bad, depending on the personal experience and social network action. The prison dynamic value reorientation and internalizations, leaves in its trails, a forensic nightmare of negativity in the life of the inmates, except for a few whose means and ways of adjustment process appear immune and stubborn to external influences.

This study is not centred on the history of the Nigerian Police, Judiciary and the Prisons, rather a

moment of constructive evaluation of their sustained activities and inputs *vis a vis* the Nigerian polity. The penal and remand centres remain the end-stage habitat of what may look like a vicious cycle, in that in Nigeria today, the endemic corrupt political culture appear to have rather accorded certain respectable and preferred status and testimonial to ex-convicts, hence plunging the nation’s value system into coma; or else howbeit that Ibori, a former governor and an ex-convict, who was reputed to have pathologically not only laundered massive state funds in Nigeria, but even had the effrontery of grievously bribing his way through security agents in London, would be accorded series of open ‘state sponsored’ welcome ceremonies, beginning from London to his village in Delta State. Prisons harbor, form, transform and ‘throw back’ people into the society. Moreover, factual accounts have shown and proved that apart from the

wrong and deliberate applications of the law, sometimes some corrupt legal pundits could maneuver and rather have an innocent person convicted for a crime he should have been laid bare from.

Research into the Nigerian Prisons System entails detailed engagement and attention, considering its broadness and complexities. The objective of Prisons anywhere and in any country remains the same, but one may not deny the fact that certain uniqueness and demands, creates and present variations in Prisons sited in different countries, states, cities, towns and localities. A prison is seen as a total institution or a place of residence and work, which ensures that a large number of accused or convicted individuals are cut off from the wider society for an appreciable period of time<sup>3</sup>. Here they together lead and enforce formally regimented life style.

Imprisonment as a form of punishment of offenders (Punitive) was not known to many pre-colonial communities in Africa, though available information refer to the existence of same sort of custodial or remand facilities. However, according to Alemika the transition from corporal punishment to Prison as punishment took place in the 18<sup>th</sup> century<sup>4</sup>. It maybe recalled that by establishing the first prison in 1861 in Faji, Lagos Island, the British colonialists transited from applying mere corporal punishments. By 1890, when more prisons have been established in Calabar, Onitsha, Jebba, Ibadan, Benin, Lokoja and Degema, the objective of reform was simply not considered, rather prisoners were used mainly for public works and other odd jobs in sustenance of the colonial imperialistic appetite. By 1914, the prisons in the Northern and Southern

protectorates were merged to form the Nigeria Prisons Service.

It must be stressed that remand conditions during the colonial and post-colonial periods took different forms and categories. Under the British, the system functioned under the auspices of a formal legal instrument-ensuring law and order to aid massive economic exploitation of the Nigerian colony.

A temporary building of mud and thatch without drainage, baths, lavatories and urinals; the inmates were comparatively well fed, quite against today's inmates; not harshly treated and thus escapes were low. In the wards, they slept on mats and their hours of work were from 6am – 4pm, with one hour break between<sup>5</sup>. Research through the pages of Nigerians Prisons historical annals appear to conclude that there was factually no discernible penal

objective in the first fifteen years of British Administrative System.

Today, the physical appearance of Prison is that of tall wall supplanted with barbwires, iron gates, and antiquated buildings separating and demarcating the Prison with its larger community, both inside and outside<sup>6</sup>. These isolated structures are meant to accomplish the confinement aspect, while confinement is meant to detach the prisoner from his previous 'infectious' groups and equally minimize the society's possible exposure to danger. This new environment is expected to provide the inmate with particular opportunities of rethinking, stock taking, remorsefulness and repentance from his negative old ways.

Over the years, Nigeria has struggled to catch up with the developed world on almost every aspect concerning acceptable normal standards in governance, development, rights and

etiquette. In this regard, already aware of the many prison reforms exercises and numerous many new rules continuously being churned out by designated government authorities, one maybe irked to look beyond the surface, if a veritable account is taken on the alarming rate of prison-breaks, coupled with the glaring influence of numerous ex-convicts on Nigeria's youth population. On the other hand, the extent to which the Nigerian Prisons service fulfills its designated constituted roles may be doubtful in view of the nature of the treatment of the offenders, and the resources available in the role of rehabilitating inmates.

This study is poised to qualitatively examine the intricate and delicate interphase which transpires in the life of an average crime-suspect in Nigeria, beginning from his ordeals in the hands of the police, all through the convoluted and tactile judicial process

and then into the prison facility, whereby he is released after jail term-remorseful, changed positively and socio-economically relevant to the society, or much more degenerated, hazardous and avengeful to the society. Today, the Nigerian Prisons Service is operating under the Nigerian Prisons Act, 1972, Cap 366 laws of the Nigerian Federation 1990. Placed under the Exclusive list, the Nigerian Federal Government is exclusively in control of it. By this Act, it is empowered to take into lawful custody all those certified to be so kept by courts of competent jurisdiction, produce as at when due, identify anti-social behavior they manifest, set in motion mechanisms for their treatment and eventual reintegration into society as normal law abiding citizens on discharge.

## CONCEPTUAL ANALYSIS



The concept of prisons has continued to receive vast and variegated perspectives from various scholars in the Social Sciences. Just as some would prefer to view it from the structural dimension, others, based on several reasons, resort to the functional. A prison could be seen as a physical structure in a geographical location, with a number of people living under highly specialized condition, adjust to the alternatives presented to them by the unique kind of social environment<sup>7</sup>. Similarly, a Prison could be seen as a place where people are highly secluded from the rest of the world, with entirely new order of control<sup>8</sup>. The above definitions have geographically and spatially created an idea about the subject matter, whereas from a functional perspective, a prison is a place where offenders are punished, where criminals who are removed from the society are dumped, to protect the society from further

criminal activities of the offenders; a place to rehabilitate and teach offenders to be law-abiding and productive after their release<sup>9</sup>.

Prisons are equally perceived as institutions or communities that house those who are socially rejected, insane or mentally retarded. On the other hand, it appears to be conceptualized as a total institution where there is a basic split between large classes of individuals, who are restricted contact with the outside world, hence placed on stereotypical behavioral pattern, hence their social mobility is restricted<sup>10</sup>. Yet from the labeling point of view, the Prison is a place for vagrants, who may pose actual danger to social life in the larger society, which pre-supposes that every person in the prison is a vagrant and irresponsible<sup>11</sup>.

From all intents and purposes, imprisonment serves several universal functions, including the protection of

the society, the prevention of crime, retribution (revenge) against criminals and the rehabilitation of inmates.

Nevertheless, in Nigerian context, the essence of sending offenders to prisons are not yet met, because they are more likely to be more hardened than they were before imprisonment<sup>12</sup>. The functional purpose of the prisons, according to Merton, appears to be facing multiple challenges, thus contributing negatively in maintaining the whole structure of the prisons system<sup>13</sup>.

Challenged by the continued global upsurge and sophistication in crime and criminality quite against the application and deployment of certain state of the art technology and up-to-date techniques, many social scientists have not only felt utterly challenged in their trade, but have continued to brainstorm on prescriptive viable solutions. They were even bewildered

to notice that most times, the culprits have been proven to be ex-convicts.

## REFLECTIONS

Prisons began all over the world not as ultimate institution for punishments and correction, but initially as institutions for the custody of persons caught up in the criminal justice systems, awaiting trial or the execution of their punishment such as whipping, banishment and death. However, in the mid-nineteenth century, the function of the Prison as a short-term custodial facility, changed in Europe and North-America to institutions for ensuring punishment, penitence and correction of the offender<sup>14</sup>. By the time the first prison was built in Nigeria in 1872, Prison has assumed this new role on the international stage.

On the other hand, history has it that the establishment and growth of



prisons in Nigeria is backed by various statutes from the colonial period to the present-Prisons Ordinance of 1916, Laws of Nigeria 1948 and 1958 and the Prison Act No. 9 of 1972. Going by October 31<sup>st</sup> 2014 statistics, Nigeria has 240 prisons, with a carrying capacity of 50, 153 inmates; while 17,544 were convicted prisoners, 39,577 were awaiting trials.

In Nigeria, there is a general belief that convicting criminals temporarily incapacitates them, hence making them to regret their acts, and so be deterred from engaging in criminality due to the fear of punishment. On the same pedestal, though with a differing stroke lies the reference made to prisons as penitentiaries, because of the belief that through exposure to solitary religious instructions, while under confinement, prisoners would become penitent (remorseful) and reform their behavior.

The whole issue of Nigeria's remand/penal institutions *vis avis* the Criminal Justice System appear a high sounding nothing if available trajectories is exposed to sequential examination. Hovering on the tripod combination and complementary synergy of the Police, Courts and the Prisons, the effectiveness of the Criminal Justice System is measured by its ability to meet the goals of deterrence, incapacitation, retribution, rehabilitation and reintegration. The realization of such goals depends on the level of coordination among the various arms of law enforcement. At the early stage of crime, when the Police effects an arrest, the arrestee becomes a 'suspect', and when eventually arraigned in court, his title changes to 'accused', though he remains innocent until the court proves otherwise, hence as he is sentenced, he automatically becomes a convict, or else he is discharged and acquitted. On the other hand, this

sentence may involve fines, probation (supervised release), or incarceration (confinement). At this, the prison takes him on her in as an inmate, thus legally restricting, limiting or confining the person subsequently, though as a widely used criminal justice disposal method in Nigeria, imprisonment is undertaken in a prison.

It is simply disheartening to observe that starting from the Police who occupy the first rung in the criminal justice ladder, the Nigerian experience is not only bizarre, but fraught with incomprehensible behavior. Be it 'stop and search', arrest, detention in the Police station, recording of statement, interrogation and investigation as the case maybe, dissolution of case through application of mutual settlement (conflict resolution), or rather progressing with and forwarding the matter to the court, the language,

body language and seemingly uncivilized attitude of the Investigating Police Officer (IPO), even queries not only what he represents as the 'law and order', but equally challenges the very law he is protecting or citing. The book, *The Nigerian Police Act*, which is an active testament applied in the training and formation of all police personnels remains a mere paper work while on duty, and some 'dangerous' information which the citizenry must not be allowed to know the stipulations of. Another name for the police in Nigeria is 'extortion' and extra-judicial killings, hence he is either 'fast of the trigger' or 'fast on the money'. The structure is so corrupt that just like in the bank, daily money lodgments and distributions are made engaging the constable with the senior officers in an intricate mess. Infact, Nigeria has more than its fair share of the 'dirty cops' phenomenon, whose overt and covert

engagements have cascaded the nation's corrupt tendencies beyond textbook analysis. Unlawful arrests and prolonged detentions in Nigeria has remained a sad sequel. In the light of this, regardless of the fact that the Nigerian Constitution in all ramifications does not allow the Police to detain any arrested person for more than 48 hours without due prosecution, the Human Rights Act of 1998 equally stipulate that all arrested persons should be humanely treated, and allowed audience to a judicial officer not later than 48 hours<sup>15</sup>.

Rather than remain the sentinel and the defender of the common man and woman, Nigeria's judiciary, operating through the Criminal Justice System is reputed with denial of fair hearing, unmindful and intentional delay in proceedings, including abating with the executive arm of government in staging secret trials. All these negate the fundamental rights of man, and in

the words of Ozekhome, a reputed Nigerian constitutional and human right lawyer, 'Nigeria's Criminal Justice System is complicated and long overdue for reforms'<sup>16</sup>. Apart from section 36 of the 1999 Nigerian Constitution stipulating that all trials, especially criminal cases should be carried out in the glaring view of everybody, secret trial is simply an antithesis, and not existent in the book of fair trial, for it comforts a witness who is making allegations against an accused person to hide and tell lies. Moreover, the British model-accusatorial judicial process, rather than the French inquisitorial formula, tends to even condemn or weight down the accused in the court of law. Even cases and judgments which could easily have had recourse to an option of fine on the side of the judicial officers, always end up attracting prison sentences, leading to congestion of remand centres and exposing first offenders to worsening

influences in the hands of diehard convicts.

On the side of the Prisons authorities, it is simply doubtful whether they are performing the role of rehabilitation as a set objective, considering the tremendous upsurge in the number of criminal activities such as – armed robbery, burglary, economic sabotage, drug-oriented crimes, kidnapping among other misdemeanors which threatens the social fabric of the nation. Over the years, neither the Nigerian government nor the prison authorities have taken the issue of rehabilitation in the prisons seriously. There is a growing concern among the Nigerian public that prisons are fast losing its value, since studies have even gone a long way to buttress that existing conditions in such prisons remain unfavourable, hence negate the full realization of reformatory and rehabilitative roles. The deeply regimented system in a typical

Nigerian Prison presupposes that the primary motive for incarceration is punitive. It is simply capable of taking criminals off the streets temporarily, but cannot cumulatively deter crime on the long run. The administration of welfarist services within the Prisons, is anything but standard, hence unfavourable for the realization of the purposes for which prisons are established and sustained in the 21<sup>st</sup> century human society. Imprisonment in Nigeria is devoid of humane treatment (overcrowding, poor medical attention/feeding, violence) and recreational activities, and when such subsists, the paucity of reformed and rehabilitated ex-offenders that would promote and sustain national security and development would continue.

When democracy is operated under the auspices of ‘we’ versus ‘they’ mentality, the police and the soldiers would conveniently maul down

innocent citizens who are protesting and clamoring for self determination under the aegis of Indigenous Peoples of Biafra (IPOB) (which right is granted by the United Nations Declaration on Human Rights), lots of torture, murders and street trials are going on in the country. A situation whereby the Economic Financial Crimes Commission (EFCC) and the Department of State Security (DSS) force their way into people's houses either at night or when the occupants are not there, breakdown fences and doors, cart away money and documents, places the country either in George Orwell's Animal farm sequence or the Hobbessian 'State of nature' where life is brutish, nasty and short.

When the government indulges in selective arrest and prosecution based on crimes actually committed, the country's developmental strides countries to plunge downwards,

because the society is weighed down by crimes, but more eyebrows are raised when there are actually no criminals to prosecute<sup>17</sup>. How can one explain the prodigy behind the fact that no known past government public fund looter has been convicted in any Nigerian Court since all the skirmishes about anti-corruption campaign has spawned the various Nigerian government regimes. It all goes back to the mere fact that the body language of the Federal government emboldens the police and the Prison officials to be lackadaisical in their tasks. Rational thinking and judgment should at least guide the prison wardens not to aid and abate in hideously allowing convicted criminals the use of mobile phones. This not only negates the idea of mandatory confinement, compromising prison security, but dangerously punctuates expected course period of disengagement with the outside world, sober reflection and

expected turnaround. The slow pace of court cases and processes has not only led to the progressive increase in prison inmates population, but has instituted and sustained an existing tradition whereby those awaiting trial (remands), stay more than the normal prison terms legally allotted to the nature of their offence. The worst scenario is that presented by the issue of juvenile delinquents. From detention in the police stations and all through the jail term, if convicted, by their exposure and ordeals, their avengeful bestiality is unleashed on the society, on their release. They are often known to comeback in prison with higher crimes<sup>18</sup>.

## RECOMMENDATIONS

Nigeria's remand, Penal and Criminal Justice System doesn't have the enabling impetus to purge itself, so long as the country continues to be

piloted by unpurposeful leaders who rather prefer to remain unperturbed and unscathed even as the citizens are frustrated.

Much attention should be geared into reappraising the primary national objective behind or guiding the continued existence of prisons in Nigeria. It is only when its importance is buttressed by tangible vision and mission that the Federal Government would even realistically underscore the need to urge and allow state governments to help in decongesting the existing facilities, through the establishment of state detention centres for all Awaiting Trial Persons, as alternatives to Federal Prisons, just as the removal of the Nigerian Prisons Service from the Exclusive to the Concurrent list is considered urgently.

The Federal Ministry of Justice should as a matter of urgent national need, rapport with the National Assembly, the National Judicial



Council and the various state judiciary establishments for the proposes of over hauling Nigeria's Judicial System and practices for dynamic development. This exercise would among other issues target the separate re-constitution of special Constitutional, Electoral and Anti-corruption courts; such would enable quick dispensation of cases. Moreover, a different hierarchical structure should be maintained for states Courts of Appeal and Supreme Courts as obtained in the United States of America (excluding them from matters relating to national security and fundamental human rights which could be handled by the Abuja Supreme Courts alone), by so doing, equitable justice and accessibility would be achieved<sup>19</sup>. On the other hand, banning retired judges from practicing on retirement on after voluntary resignation is not encouraging, since the Magistrate Act stipulates and puts this discretion in

the hands of the retiree. The remuneration, salary scale, working tools and conditions of service of the government's serving bench should receive a holistic structural appraisal for efficient output. Fully motivated and informed, the judiciary should encourage judges and magistrates to rather make more use of non-custodial sanctions and punishments enshrined in the Penal Statutes (option of fine, community service among others), for offenders convicted of non-violent and minor crimes<sup>20</sup>.

The Nigerian Judicial Council in its status as a regulatory and exemplary body occupied with the judicial ethics, norms and actions of the higher bench, should standup to its duties of intermittent winnowing out of bad eggs and unsound minds from this elevated position. On the other hand, a penal policy which addresses the treatment of offenders though the criminal justice hallway should be

spelt out, hence the deployment of data bank both for convicts and awaiting trial persons is strongly advocated. Nigeria could adopt the technique of releasing convicts on parole, and plea bargain, considering the challenging issues of congestion of prisons, and that of yet-to be heard cases, since the ratio of available judges in the country *vis a vis* the country's population is wide apart. More judges are needed at the Supreme Court. At present, with only 17 judges at the Supreme Court, which is less than the maximum 21 required by the Constitution in sections 230 and 231, hence there should be five panels, as against the two or three presently being operated, to ensure matters are dispensed with speedily. Today, many 2003 and 2004 matters are still awaiting hearing, and they must follow designated queue, apart from electoral matters that have its time limit. On the other hand, the place and importance of juvenile

courts in a populous and developing country like Nigeria cannot be questioned, more so when statistics have proved that most of the convicted criminals are youths who remain easily liable to crime in the face of severe hardship, poverty and unemployment.

Allowing the prison authorities alone to be engaged on all issues concerning caring for those awaiting trials and convicted prisoners, without directly involving the Nongovernmental organizations and foreign based groups, may not aid synergy, advocacy, better monitoring and smooth ex-convict community reintegration<sup>21</sup>. When prison wardens engage convicts in viable compulsory saving scheme, which proceeds would come from certain works done while serving, such bulk savings could help re-start the ex-convict into engaging in a lucrative venture, apart from the skills acquired within the prison

facilities. For a country of over 180 million people to have only 3 borstal institutions and 1 open prison doesn't really show clear intent at containing the recourse of the nation's youth population to criminality and perdition. The present situation and challenge demand not just dominant establishments but not less than 36 Youth Secure Estates distributed all through the 36 states of the federation; manned by trained wardens, psychologists, substance misuse workers, resettlement staff, education providers and healthcare professionals.

All in all, the 1999 Nigerian constitution appears to have overlived its relevance; as a legal compass, it not only aids judicial recklessness, but remains a viable and veritable escapade for elite criminality, and a portent tool for the abuse of human rights. The many important agreements and amendments which

the 2014 National Conference adopted towards moving the Nigerian Criminal Justice System forward as contained therein, appears to have been thrown away with the bad water. The issue is that the Nigerian Criminal Justice System lacks empathy, compassion, assistance, professional orderly conduct and protection.

All laws sustaining the Nigerian Criminal Justice System relating to the arrest and trial, prosecution, conviction and spending of the remand term, - should be backed by the primary motive of protecting the suspect or convict. This is of utmost importance and remarkable since its been consistently proved that prisons are criminogenic<sup>22</sup>.

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