Direct RESEARCH JOURNALS
Vol.4 (3), pp. 31-36, December 2017
ISSN 2449-0806
DOI: https://doi.org/10.26765/DRJSSES.2017.DRJA.1518
Article Number: DRJA13551518

Direct Research Journal of Social Science and Educational Studies (DRJSSES)
directresearchpublisher.org/journal/drjsses/

Review

Alternatives to Imprisonment in Nigeria: A Sociological Reflection

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Received 30 September 2017; Accepted 20 October 2017

This article extended research on the need for the Nigerian Criminal Justice System to fully embrace alternatives to imprisonment and use prison as a last resort. It seeks implementation of strategies that will use imprisonment as last option and also highlights what actors must do to ensure its success. The focus of the article is on how over-reliance on imprisonment should be systematically reduced in the country so as to improve the delivery of justice and to integrate international human rights-based standards and norms into local policies and practices and at the same time reduce the prison population. To achieve the above, the article suggested the adoption of related and useful alternatives to imprisonment that may be considered when assessing the needs and demands of the country's criminal justice system. It recommends systematic implementation of alternatives at the stages of pre-trial, sentencing and also highlights the early release of sentenced prisoners.

Key words: Imprisonment, alternatives to imprisonment, prisoners, criminals, Nigeria, criminal justice system

INTRODUCTION

Crime, no doubt permeates every known society (Durkheim, 1897; Hamlin, 2011). It is evident in the literature that the act of violating societal rules of behaviour as interpreted and expressed by the criminal legal code of a society is not a recent phenomenon. From antiquity era until recent times, discourse on crime has always been on the front burner of public debate throughout the world. Crime, with its varying consequences on individual crime victims, family and friends, and even the society at large, has become a social phenomenon that attracts attention and energy of all and sundry (Prenzler, 2009). As evidently portrayed in both print and electronic media, the rate of crime is on the increase, hence, the high level of public concern expressed in many societies to this escalation in the 21st century (Clayton et al., 2010). Closely allied to the above, is the stance of recent research findings in criminological studies which suggest that, human beings are becoming more violent and that the rate of crime could even get worse.

Getting to grips with criminal activities has been the priority of individuals, groups, governments and many other stakeholders for centuries. Indeed, the age-long realisation that criminal activities do not only cause misery to the victims, but also put enormous pressure on the community, and the government has generated a broad spectrum of societal reactions to crime (Lewis, 2003). In spite of this, however, leaving victims of crime to the option of avenging or revenging crime has never been the preferred and rational option, particularly since the dawn of modernity. Conversely, the act of tackling and adjudicating on crime globally has been contractually and legally placed within the preserve of appropriate governments in all societies of the world. In effect, the burden of enhancing public safety and protection of people from harm has been largely placed on the govern-

ment. This, therefore, explains reasons for the multiplicity of crime-tackling approaches and related legal frameworks that characterized societies and governments in different historical epochs (Roth, 2015).

Precisely, the need to provide justice for victims of crime and also to deter potential future criminals within the ambient of law has necessitated the institutionalization of what is known as Criminal Justice System – a scheme that is one of the oldest institutions in the world. This institution has existed particularly to apprehend, punish and rehabilitate individuals who threaten peace and safety of other citizens and non-citizens alike in the society. The conventional wisdom has been inflicting punishment on people that break laws in other to uphold the common good and at the same time to teach criminals how to be more socially cooperative and law abiding.

From post social contract era till now, many societies worldwide have reacted to crime in the way of criminal justice. However, in ancient times, the common response was revenge: a situation where the victim or the victim's family would exact what they felt to be an appropriate response to the crime committed against them. For instance, before the dawn of 18th century, especially in Europe, punishing offenders was physical and took forms such as whipping, branding (maiming), payment of fines, public humiliation and death penalty. As a matter of fact, during the aforementioned era, sanction for criminal behaviour was made public and was designed to shame the offender and deter others. During these periods, imprisonment was not a popular choice (Roth, 2011, 2015).

Indeed, in the medieval period, there were in existence prisons, but these were used as places where erring individuals were kept before the commencement of their trial or while awaiting punishment. Prison then was not used for punishment on its own; rather, it was used as a place where men, women boys, girls, debtors and murderers were kept (Babington, 1971). Prisons then were badly maintained and were mostly under the control of negligent prison warders; hence several preventable deaths caused by unattended diseases such as gaol fever, dysentery, cholera were recorded. Since the mid-18th century, imprisonment had replaced capital punishment for most serious offences (though murder not inclusive in many societies). In many parts of Europe, ideas relating to penal reform became popular due to timely works of many reformers such as Beccaria and Voltaire etc. Many of the ideas of these reformers were precursors to modern era rehabilitation and reintegration of offenders. In short, reformation of offenders was seen as a better alternative to many punitive measures that held sway in the previous centuries (Pugh, 1983). However, the dawn of 19th century brought a great change to imprisonment and correctional systems in many parts of the world, especially in the United States. Capital punishment lost its former charm and preference and was regarded as an inappropriate sanction for many crimes.

Unlike events in prisons in the medieval period, when prisons and jails were used as places where people were indiscriminately kept while awaiting execution, torture or banishment; prisons in terms of purpose and functions from the beginning of the 19th century changed significantly. The idea of imprisonment assumed a new and different dimension; gone were the days when the word penal or punitive imprisonment was the watchword. Imprisonment, in modern times, is now structured and fashioned to protect members of society by incarcerating offenders who could pose a threat to lives and properties of law-abiding individuals in the society, but more importantly, as means to provide retribution, deterrence, reformation, rehabilitation and reintegration for the convicted lawbreakers (Priestly, 1985).

In Nigeria, imprisonment has a very important place in the country's criminal justice system and procedure. Indeed, the prison Act number 9 of 1972 underscores reformation, rehabilitation and reintegration of offenders (Adetula et al., 2010). In reality however, in spite of the claim for reformation and reintegration ideals as stipulated in the Prison Act, findings from empirical research have shown that the possibility of prisoners achieving rehabilitation and successful reintegration is remote, difficult and almost unachievable due to the present operational realities in Nigerian prisons (Ahire, 1990, Tanimu, 2006). Findings from works such as Ahire, (1990) and Tanimu, (2006) and many others have highlighted several inhibitive factors in the Nigerian criminal justice system as it affects rehabilitation and reintegration of prisoners. These studies among other factors have shown how prisoners in Nigerian prisons are subjected to different forms of inhuman, cruel and degrading treatments contrary to the provisions of the Prison Act. In reality, imprisonment still serves a punitive rather than reformative role in the country. It is conspicuously clear from accounts of Ahire, (1990) and Tanimu, (2006) that the punitive, depriving and dehumanizing state of Nigerian prisons is antithetical to the ideals reformation, rehabilitation and reintegration of offenders as stipulated in the prison act. The problem is exacerbated by the absence of facilities for reformation and reintegration of prisoners in many Nigerian prisons.

PROBLEMS ASSOCIATED WITH PRISON SYSTEM IN NIGERIA

The dimension which imprisonment has taken in the 21st century in Nigeria, in terms of burgeoning poor welfare services for prisoners, coupled with palpably gross inhuman treatments prisoners are subjected to, are chief among many other factors why human rights activists and scholars not only condemn imprisonment but also clamour for inclusion of alternatives to imprison-

ment in the country's criminal justice system. To corroborate this, social science literature is awash with myriad problems besetting imprisonment in Nigeria in modern times. One ubiquitous problem and which has further made the much-touted reformatory role of the prison system in the country grossly inadequate is lack of basic infrastructures within prison facilities in the country. The absence of required infrastructures for corrections and skill acquisition has turned many prisons in the country to centres where inmates are merely kept behind bars to waste away (Ahire, 1990). However, the few centres that can boast of infrastructures have very poor, obsolete and decaying facilities. Most prison facilities were built by Colonial Administrations and Native authorities in the pre-independence era (Alemika, 1983; NPA, 2008; Ayade, 2010). While the few built by the Federal Government in post-independence era are below world standard in terms of infrastructural facilities, others are totally in a condition of disrepair and little or no efforts have so far been made in renovating them (Ayade, 2010).

In the same vein, social amenities are clearly non-existent in most of the prisons in Nigeria (Tanimu, 2010). In effect, this has elicited various negatives descriptions of the state of infrastructural amenities in many prisons in the country. Scholars such as Soyinka (1972), Awolowo, (1985), Kangiwa, (1986) and Obioha, (1995) over the intervening years, referred to life in prisons in Nigeria as hell, unhopeful and dehumanizing. According to these writers, lack of social amenities is responsible for the incessant social violence that characterizes every Nigerian prison. Closely related to this is the derelict state of physical infrastructural amenities in most facilities. Prison facilities are overstretched violating the international standard for this. Often times, prisoners are locked up without making recourse to the separation of inmates according to classes, the degree of crime, sex, age. Also, those that are on awaiting trial are mixed with criminals due to lack of space and the inadequate number of prison personnel. In what seems to be the total disregard for international laws and regulations guiding handling and treatment of prisoners; inmates are not properly classified due to overcrowding; juveniles are put together with adults, while pregnant women, nursing mothers and children are in most cases lumped together without necessary cares. Ayade, (2010) also emphasized how different categories of prisoners were locked up for long hours with little or no time for recreation. He also provided a detailed description regarding how inmates with contagious diseases are often locked up together with the healthy ones. In the same vein, he equally highlighted the bad state of lighting and ventilation in many prisons in Nigeria.

Another dark side of prison facilities according to a social survey is the problem of overcrowding caused by rising number of offenders receiving imprisonment option. Also, the challenges of pre-trial detainees, inadequate accommodation and corresponding space shortages in all the prison facilities in Nigeria have resulted in deterioration in the mental and physical health of inmates in some cases. Overcrowding has caused problems such as rape, sodomy and other sexual exploitation, and other interpersonal confrontation with prison wardens which always result to jailbreak, riot, and prison escape (Omorotionwman, 2005; Ayade, 2010). Indeed, the level of treatment given to inmates in all the prisons has deteriorated to its lowest ebb. Findings from social research have shown that the act of denying inmates their privacy and cramping them in cells due to lack of space without basic necessities befitting and consistent to human dignity and decent are rife. Worse still, the choice of imprisonment over other alternatives in the country has made many prison inmates especially those in pre-trial detention, the majority of whom are low-level offenders to be subjected to prevailing degrading and inhuman treatment in many Nigerian prisons. These are individuals whose cases could have been dealt with using appropriate alternatives instead of being imprisoned.

In the same vein, several authors have provided related claims about deplorable conditions of environmental and personal sanitations in most prisons in the country. From their accounts, portable water supply is lacking while facilities necessary for their sanitary conveniences are either obsolete or in deplorable condition. As a result, inmates defecate and bathe in the presence of others without toiletries in the same room (Omorotionwman, 2005; Ayade, 2010). More importantly, the United Nations minimum standard rules for imprisonment are taken for granted due to lack of required facilities needed.

Another grey side of imprisonment as practised in Nigeria is that incarceration in form of imprisonment affects human rights; is expensive, overused and not totally effective as far as reformation, rehabilitation and reintegration of prisoners are concerned. Some studies have even found out that longer prison term or sentences have no significant effect on recidivism, but rather increased the risk of recidivism (Gottfredson et al., 1977; Gendreau et al., 1999; Donohue and Siegelman, 1998; Petersilia, 1989; Adetula et al., 2010). The work of Tanimu (2010) also indicates that most prisoners in Nigeria claimed that prison institutions in the country lack the required ingredients for correction and rehabilitation of prisoners. The respondents in this study explained that the fact that food, shelter and clothing are either inadequate or lacking was a pointer to the fact that achieving prison reformative and rehabilitative ideals in Nigeria is not realizable. They concluded further that vast majority of prisoners in Nigeria return to the community without the required skills necessary for reintegration into society as law-abiding citizens.

One other disgusting practice in criminal justice system in Nigeria according to social commentators is the unnecessarily high rate of pre-trial detention of suspects. In the words of a former Comptroller of Prisons in Nigeria,

Olusola Ogundipe, in This Day Newspaper of Oct. 2, 2010, more than 50 percent of inmates in Nigerian prisons were people on pre-trial detention. During a one-day quarterly roundtable on prison reform on July 31, 2010, he claimed that out of total prisoners' population of 47,628 in Nigeria, only 13,000 or 23 percent were convicted persons while the remaining 34,328 or 77 percent were in pre-trial detention or what is referred to "awaiting trial" in Nigeria. Ayade, (2010) also claimed that more than 65 percent of incarcerated individuals in Nigerian prisons are in pre-trial detention. This is against Principle 36(2) of the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment and Tokyo Rules (Rule 6.1), that state that, individuals should be given their personal liberty and should not be held in detention pending trial; and that pre-trial detention should be used as a means of last resort in criminal proceedings with due regard for the investigation of the alleged offence and for the protection of society and the victim. However, the growing trend in the world in recent times is the shift toward avoiding unnecessary use of imprisonment as a form of social control to the adoption of alternatives to imprisonment. Many countries, especially in the western part of the world, are systematically implementing alternatives to imprisonment at the level of pre-trial, sentencing and early release of sentenced prisoners. From these claim, imprisonment is seen as counterproductive for certain vulnerable populations, particularly those charged with minor crimes (UNODC, 2007). In line with the findings of some evidence-based studies carried out in certain parts of Europe, alternatives to imprisonment have been recommended by scholars to counteract many of the problems associated with imprisonment worldwide. Problems such as violation of fundamental human rights of prisoners, the expensive nature of imprisonment and the fact that imprisonment has been overused are some of the problems highlighted by many of these stakeholders. The reasons highlighted above have been underscored by scholars as for why attention should be shifted to alternatives to imprisonment-a process which research findings have shown as significant as far as reducing the number of people in prisons worldwide. In Nigeria, alternatives to imprisonment as acknowledged by most participants in the current prison debates are yet to be greeted with unequivocal enthusiasm from relevant stakeholders and agencies. Despite the attendant chains of successes recorded in countries where alternatives have actualized, the relevance of its praxis by concerned agencies in Nigeria continues to be questioned.

RECOMMENDED ALTERNATIVES TO SENTENCING OPTIONS FOR NIGERIAN CRIMINAL JUSTICE SYSTEM

In literature, several social objectives of imprisonment ranging from the secure keeping of suspects until a court determines their culpability, punishing convicted offenders, to the rehabilitation of offenders during their period of incarceration have all been listed. However, findings from social research have shown that most of these objectives can be met more effectively with the use of alternatives to imprisonment without infringing upon the rights of offenders as it is commonly practiced in the pre-trial detention of suspects in Nigeria. Also, as shown in findings of studies carried out on imprisonment and its effects; adoption of alternatives to imprisonment have been found to be effective in reducing significantly the phenomenal sum incurred as a result of the adoption of incarceration of criminals in many countries. Apart from these, studies have shown particularly in Nigeria that, the number of complaints received by the police and prosecutors is overloading the criminal justice system. This is mainly because efforts are always made to prosecute all these cases in courts despite the fact that the police, prosecutors, and courts have an array of options available to them to divert offenders from prosecution. As practiced in many parts of the world, there are three phases or levels of criminal justice system in Nigeria in which alternatives to imprisonment measures (whether custodial or non-custodial) could be implemented. These are the pre-trial, the sentencing phases and the level at which early released of sentenced prisoners may be considered.

At pre-trial stage, the main idea is to avoid unnecessary pre-trial detention; and the best option to ensure this is the adoption of alternatives to imprisonment. Unlike the common practice in Nigeria where many are incarcerated at the pre-trial stage, there are different measures under alternatives that can ensure that the accused person/s appears in court and ensure that he does not participate in any unwarranted activity that might undermine the judicial process. The most important thing at this level is that any alternative measure chosen must achieve the desired effect and must not in any way jeopardize the liberty of the suspect or accused person in any way since he has not been pronounced guilty. Available alternatives at pre-trial stage in consonance with the Tokyo Rule 6.2 are itemized below:

(a) Appearing in court on a given date as ordered by the court in future.
(b) To desist from interfering with the course of justice, engaging in particular conduct.
(c) Leaving or going to specified places or districts, or approaching or meeting specified persons.
(d) To remain at a specific address.
(e) To report on a daily or periodic basis to a court, the police, or other authority.
(f) To surrender passports or other identification papers.
(g) To accept supervision by an agency appointed by the court.
(i) To submit to electronic monitoring.

(j) To pledge financial or other forms of property as security to assure attendance at trial or conduct pending trial (UNODC, 2007).

At the sentencing level, however, the Rule 8.2 of The Tokyo provides a wide range of alternatives to imprisonment, which have an acceptable punitive element if clearly defined and implemented, and which can be imposed on offenders in place of imprisonment. These include: (a) Verbal sanctions, such as admonition, reprimand and warning; (b) Conditional discharge; (c) Status penalties; (d) Economic sanctions and monetary penalties, such as fines and day fines; (e) Confiscation or an expropriation order; (f) Restitution to the victim or a compensation order; (g) Suspended or deferred sentence; (h) Probation and judicial supervision; (i) A community service order; (j) Referral to an attendance centre; (k) House arrest; (l) Any other mode of non-institutional treatment; (m) Some combination of the measures listed above. Note: UN Standard Minimum Rules for Non-Custodial Measures, 1990, is also known as the Tokyo Rules.

Another important step is the diversion from prosecution which can be done by police, prosecutors and courts if they are well entrenched in the constitution or law of the country. Lastly, at the post-sentencing level, Tokyo Rule 9.2 lists several other options that can be offered in order to ensure alternatives for enforcing prison sentences fully as Furlough and halfway houses; work or education release, various forms of parole, remission and pardon and reintegration.

INFRASTRUCTURAL REQUIREMENTS FOR ALTERNATIVES TO IMPRISONMENT

Globally, several reasons have been advanced by scholars about overriding advantages of alternatives to imprisonment over the choice of adopting imprisonment. As evinced in recent literature, factors such as steady increase in prison population, the unassailable recognition that imprisonment has failed to achieve some of its most important objectives and the claim that the adoption of imprisonment has been discovered to be harmful to offenders, offender's families and the country in the long run, are some of the reasons for increase in the number of dissenting voices against the continuous use of imprisonment. No doubt, the call for adoption of alternatives to imprisonment in many societies in the world is becoming louder and is gaining more ground (UNODC, 2007).

But in the face of the many glowing attributes of alternatives to imprisonment as reflected in literature, there is the need to be wary of certain pitfalls associated with its introduction and adoption. As indicated by social researchers, embracing alternatives to imprisonment can only be effective and not counter-productive when certain needed infrastructural requirements are put in place. First and foremost in the list of factors necessary for workable and successful adoption of alternatives to imprisonment especially in an ethnically and religiously diverse country like Nigeria is the need for legislative reform that will ensure the availability of such alternatives in legislation. This is needful because absence or lack of related laws that allow such alternatives to be imposed will in no small measure bring to a halt the adoption of such options. In essence, a framework of sentencing law that accommodates alternatives and encourages the sparing use of the sentence of imprisonment must have been legislated or put in place.

Another important factor is the creation of the administrative structure for implementation of whatever alternative that is to be used. Part of this is what is referred to as supervisory mechanism. The authority that oversees the release of the offender into the community has the responsibility of putting in place mechanisms to ensure compliance with the condition set and also protect victims of crime.

Also, political leadership and contribution of Non-governmental Organizations cannot be over-emphasized as keeping the issue of alternatives to imprisonment on political agenda are concerned. Equally important also is the need to understand the role of the judiciary in implementing these options. As a matter of fact, judges and courts are key players as far as using discretion in the choice of sentences that are alternatives to imprisonment.

These are the only few people by the virtue of their offices to impose alternatives where possible and imprisonment when it is unavoidable. Of utmost importance also is the place accorded the involvement of community leaders and members as far as adoption and sustaining of alternatives to imprisonment is concerned. Community members have different ways of assisting in implementing community-based alternatives to imprisonment without putting the rights of offenders at risk.

In the same vein, the leaders of the community have the power to persuade or encourage members of the public to accept and assist offenders and lawbreakers that serve sentences in their midst as far as implementation of such sentences is concerned (UNODC, 2007).

The accentuated steps above are important due to the following enumerated reasons.

(a) To ascertain whether these aforementioned options are capable of contributing to a reduction of the prison population.
(b) Would meet the offence-related needs of offenders.
(c) Would it be cost- effective, will it contribute to the reduction of crime in the society.
(d) And the fact whether it would provide legal safeguards to protect human rights of offenders.

CONCLUSION AND RECOMMENDATIONS

The claim that imprisonment is fraught with many serious disadvantages has been established in the body of this study. Findings from social research have shown that over-reliance on imprisonment option particularly in Nigeria has more deleterious effects than its much-hyped bright side. Indeed, the enormity of its disadvantages is attributed to be the chief among factors responsible for the United Nations' urge for all its members' states to embrace alternatives to imprisonment. However, literature is equally inundated with diverse advantages of alternative imprisonment. Core among these is the fact that alternatives to imprisonment are often more effective at achieving important public safety objectives than imprisonment. If properly designed and implemented, they may infringe less on human rights while costing less in the short and/or long term. Implementing effective alternatives to imprisonment will to a great extent reduce overcrowding and also allow states to meet their basic obligations to prisoners. Based on the foregoing, the study recommends that the Nigerian Criminal Justice System should be revisited and made to rely less on imprisonment and embrace related alternatives to imprisonment particularly at pre-trial, sentencing and the level at which early prisoners are released early into the society. This practice is common in many developed climes; however, its practicability and reality are yet to take a proper shape in the country. Though, few of these options, mostly at pre-trial and sentencing levels have for long found their ways into the justice system, yet, the main alternatives to imprisonment options such as suspended or deferred sentence, probation and judicial supervision, community service order, referral to an attendance centre such as Furlough and halfway houses, work or education release, various forms of parole, remission and pardon and reintegration which have recorded a huge success in many countries of the world are yet to be adopted.

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