

IMPRISONMENT IN NIGERIA: A COMPARATIVE STUDY*

Abstract

Imprisonment is a term used to denote a condition wherein an individual is confined in an institution called a prison by judicial process for a definite period of time with the intent to punish the prisoner for failing to follow the rule of law which is intended to prevent him/her from further crime and warning intenders of crime to desist from the act. The problem of the work essentially is whether imprisonment serves the purpose of its essence. The major finding of the work is that quite certain that imprisonment serves its purpose for certain kinds of crime involving serious felony, that alternatives to prison have a better prognosis than imprisonment in terms of the rate of recidivism and rehabilitating the prisoner to be a more productive member of the society. The doctrinal method was used and it is suggested that more research be carried out in the area of alternatives to prison in Nigeria.

1.0 Introduction

This work primarily aims at x-raying the meaning of imprisonment as conceived in the American and Nigerian perspectives with a view of sharing the benefits in their similarities and dissimilarities. There is no doubt that imprisonment is the final destination of all criminal processes. From the report of a crime to the law enforcement agents, to arrest, investigation, charging the case to the law court, trial, conviction, to sentencing all ends up with imprisonment. The experience of the offender while in prison determines a lot of what the prisoner will be or do after the prison term hence the motivation of this paper in analyzing what we know about imprisonment in Nigeria and what Nigeria can learn from the concept of imprisonment in other jurisdictions.

2.0 Jail and Prison

First, a few distinctions. The criminal justice system can hold people in jails or prisons. Jails are distinguished from prisons by their function. Jails are short-term holding cells operated by cities or counties in the United States of America and administered by local authorities (usually county sheriffs or city police or prison warders). Sometimes people convicted of misdemeanors (relatively minor crimes usually punishable by less than a year in prison) serve out short sentences in the local jail. Jails are also places where potentially dangerous defendants charged with serious violent crimes can be held before and during trial. Non-violent crimes (e.g. embezzlement or theft) might be held in jail before and during trial to prevent them from fleeing to escape justice. Later, if a defendant is convicted he or she is held in jail between conviction and sentencing, and between sentencing, and transport to a prison. Jails (like prisons) are overcrowded. Several detainees might be held in a large cell and many scandals have involved assaults on non serious offenders by violent offenders held in the same cell¹.

In Nigeria, the jail system does not exist except the police cells where people are detained during investigation until they are charged to the court and because of the contractual nature of bail, the court or police can grant them bail for bailable offence on the execution of a bond or remand them in prison custody for non-bailable offences. If a defendant is granted bail by the court for a criminal offence but could not perfect the bail terms, he will be remanded in prison custody until he perfects the bail condition. In *Suleman v C.O.P Plateau State*² the court held that:

¹ DC Anderson, *Sensible Justice: Alternatives to prison*. (New York: The New Press, 1998)

² (2008) 8 NWLR (pt 1089) 298of contract, without the contract documents being provided to the court cited in Bo Liu *Op. cit.* 43

“The contractual nature of a bail as provided in Section 345 of the Criminal Procedure Code provides that before any person is released on bail, he must execute a bond for such a sum of money as determined by the police or the court on the condition that such a person must attend at the time and place mentioned therein until otherwise directed. And that if the person is released on bail, the sureties must execute same or another bond or other bonds containing conditions to the same effect” per Niki Tobi J.S.C (p. 20, paras A-C)

Most prisoners will eventually be released into free society, but a small minority will live out the remainder of their natural lives behind prison walls. A tiny minority of prisoners (a fraction of 1%) will be held until they are killed in an execution chamber or by firing squad or hanging³. Every state in the US has its own prison system where it houses people convicted of felonies. There are also Federal prisons for people who break Federal Law. Federal Laws attempt to target crimes that reach beyond the borders of individual states or crimes that involve multi state conspiracies. In the United States of America, drug offenders are the largest group of inmates in federal prisons, constituting more than 60% of the total⁴.

³ M Constanzo, *Just revenge: Costs and Consequences of the Death Penalty*. (New York St. Martins Press, 1997).

⁴ Bureau of Justice Statistics Profile of Federal Prisoners in 200. (Washington DC; US Department of Justice, 2002.)

State and Federal prisons range from minimum security to maximum security. At one end of the continuum are the open-security federal prisons for offenders convicted of white-collar crimes such as insider trading, fraud, or embezzlement. These open-federal prisons have no fences, guards or cellblocks. Prisoners are held in cottages or dormitories. They interact with few restrictions and spend much of their time doing light prison labour. These institutions usually have exercise equipment, athletic fields, and sometimes, tennis court and softball leagues. Some medium security “campus style” prisons feature small, scattered buildings enclosed by a tall fence⁵.

At the other end of continuum are “supermax” (super maximum security) prisons reserved for people deemed to be especially serious or violent criminals. Inmates are held in small cells, interaction is tightly controlled, and educational and recreational opportunities are scarce or entirely absent.

In Nigeria, state prison does not exist. All prisons in Nigeria are owned, built and managed by the Federal Government of Nigeria in the 36 states and Federal Capital Territory Abuja. Nigeria prison is over crowded holding a lot of inmates awaiting trial and violating their Fundamental Human rights enshrined in the 1999 Constitution of Nigeria as Amended. In *EDD v C.O.P*⁶ the court stated thus:

“It is a travesty of justice to detain an
accused person in prison custody for almost

⁵ TR Clear & GF Cole, *American Corrections*. (Belmont, CA: West/Wadsworth, 2000).

⁶ (2007) ALL FWLR (pt. 367) 960 at 967 paras G-B (CA)

two years without arraigning him before a court of competent jurisdiction for his life trial. It is indeed flagrant violation of the accused person Fundamental right as enshrined I Section 35(4) of the Constitution of the Federal Republic of Nigeria 1999...” per Muntaka Commassier JCA

3.0 The Goals of Imprisonment

Even the terms used to describe prisons reveal ambivalence. “penal institution” implies a place of punishment: the term “penitentiary” is religious in origin and refers to a place where one can repent and atone for ones sins; and the term “correctional institution” suggests a place where the behaviour of the criminal can be improved or corrected.

Prisons serve many ends. The simplest goal is **incapacitation** through containment. If a prisoner is securely contained inside prison walls, he or she is unable to harm people outside the prison. The criminal is incapacitated. Society is spared the crimes that may have been committed if the prisoner were still free. Successful incapacitation requires only that prisons hold criminals securely- that they cannot escape. A second goal of prison is **deterrence**. For a particular criminal, it is hoped that the experience of suffering in prison will dissuade him from committing further crimes after he is released from prison (this is called specific deterrence). We also hope for general deterrence- that other people will chose not to commit crimes because they fear going to prison.

The third goal, **retribution**, is less practical and more emotional. Most of us feel a sense of rage and revulsion when we hear about a crime, especially hideous crime. For example, the murder of a child. We want to see the murderer

punished. Prison is a punishing environment where the convict will suffer. Because societies are held together, in part, by a shared consensus of what constitutes immoral behaviour, law-abiding members of society feel a justified sense of moral outrage when someone commits a terrible crime. The criminal who violates the moral order must be punished to restore moral balance. Retribution, it is argued, promotes moral solidarity among law-abiding citizens and educates potential criminals about which behaviours are strongly condemned^{7,8}. The problem with retribution is that there is no precise formula for deciding how much suffering to inflict. And there is also the question of ethics-how much pain can be ethically inflicted on criminals. Retribution is largely backward looking in that it focuses on the crime.

The final, most forward-looking goal of prisons is rehabilitation. In *Lomrig Nigeria Ltd v FRN*⁹ the court entered a correctional system in a frame of mind that affords hope for success in rehabilitation. Nearly all prisoners will eventually be released back into free society so it makes sense to try to “improve” criminals during their time in prison. Although today's prison administrators seldom claim that they are in the business of rehabilitating criminals, Nigerian Prisons as well as American Prisons were developed for the explicit purpose of transforming criminals into productive members of society. A core problem is that the optimistic goal of rehabilitation is in conflict with the other goals of imprisonment. Painfully unpleasant prisons are likely to take prisoners angrier and more aggressive while providing few of the skills necessary to become law-abiding citizens¹⁰.

⁷ W. Berns. *For Capital Punishment*. [New York: Basic Books. 1979]

⁸ (2014) LPELR-22759 (CA)

⁹ *Karumu v FRN* (2016) LPELR- 4047 (CA)

¹⁰ *Ibid*

The basic justifications for punishment are even older than prisons. For example, around 300 B.C the Greek philosopher Plato articulated the goals of rehabilitation and deterrence. "... the proper office of all punishment is twofold: he who is rightly punished ought either to become better and profit by it, or he ought to be made an example to his fellows, that they may see what he suffers and fear to suffer the like, and become better¹¹".

4.0 Prisoner Rights and the Role of the Courts

Until the middle of the twentieth century, Federal and State courts in the US did not exert much control over the internal management of prisons. There were several reasons for this "hands off" doctrine: It was felt that judges lacked the expertise to intervene in prison administration, that complaints from prisoners usually involved privileges rather than rights, and that societal standards favoured (or at least accepted) the harshness of prisons¹².

Especially during the years when Earl Warren served as the Chief Justice of the American Supreme Court, there was a broad expansion of civil liberties for many of society's least powerful groups including racial minorities, women, children and prison inmates. An early victory for prisoners came in 1964, when Black Muslim inmates were permitted to receive copies of the Koran, eat meals free of the pork, and hold religious meetings *Cooper v Pate*¹³, . In *Procunier v Martin*¹⁴, the Supreme Court approved the rights of prisoners to receive mail and to make use of

¹¹ MM Mackenzie, *Plato on Punishment*. (Berkeley. University of California Press, 1981).

¹² National Advisory Commission on Criminal Justice Standards and Goals. *Task Force Report on Corrections*. (Washington, D.C: Government Printing Office, 1973g).

¹³ *Cooper v Pate* 378 U.S 546 (1964).

¹⁴ *Procunier v Martin* 426 U.S 396 (1974).

law students and paralegals to investigate their cases. Through the 1960s and 1970, the courts responded to prisoner class-action law-suits by defining minimum health care standards and raising due-process standards for disciplinary actions against prison inmates. Courts also imposed limits on prison overcrowding.

But the court's willingness to act on behalf of inmates did not continue in the 1980s. In 1981, the U.S Supreme Court signaled its intention to retreat from its commitment to easing inhumane conditions in prisons. In *Rhodes v Chapman*¹⁵, the court suggested that as long as conditions were not “grossly disproportionate to the severity of the crime” and not “totally without penological justification” they would no longer be viewed as “cruel and unusual”. Double –ceiling (holding two people in a six –by nine- foot cell for example, was judged to be acceptable. In the court view, “to the extent that such conditions are restrictive and even harsh, they are part of the penalty that criminal offenders pay for their offences against society”. A decade later, in *Wilson v Seiter*¹⁶, the court went further: To be judged cruel and unusual, conditions would need to show “deliberate indifference” to those inhumane conditions. Extending this new standard in 1994 in a case where an inmate had been raped by other inmates, the court held that inmate would be required to prove “subjective recklessness” on the part of prison officials *Farmer v Brennan*¹⁷.

Prison officials are still obliged to provide treatment for “serious” mental illness. But to qualify as “serious” the condition must “.... result in further significant injury, not routine discomfort that is part of the penalty

¹⁵ *Rhodes v. Chapman* U.S 214 (1974)

¹⁶ *Wilson v Seiter* U.S 235 (1959)

¹⁷ *Farmer v Brennan* 274 F. 2D (6th CIR) 1993

that criminal offenders pay for their offences against society”¹⁸. Whether or not a prisoner receives treatment is typically left to the discretion of prison warders. If a prisoner is perceived as “faking” to get sympathy or time away from his cell, requests for help may be denied. Prisoners cannot be forced to take psychoactive medications until it has been determined that the drug is medically warranted or necessary to prevent the prisoner from doing harm to himself or others¹⁹.

In the Nigerian case of Solomon Adekunle v. Attorney General of Ogun State, the court held that a prisoner have the right to enforce a breach to his or her Fundamental Human Right and in the instant case cruel in human and degrading treatment even if he is on a death roe as in the instant case but that the onus is on the defendant appellant to prove same²⁰ which in the instance case he did not establish.

5.0 Does Prison Work

Imprisonment is a public program paid for by taxpayers. The effectiveness of that program can be evaluated by researchers. Of course, prisons may achieve some goals but not others. In deciding whether prison work, there need to be a cost benefit analysis-an assessment of whether prisons are worth the cost, and whether less expensive alternatives might work as well or better. Of all possible responses to crime except the death penalty, prison is by far the most expensive, costing on average over \$23, 000.00 per prisoner per year²¹. Prison is so costly because it is so encompassing. When someone is put behind bars, government pays for his basic needs 24 hours per day, 365 days per year,

¹⁸ McGuckin v Smith 974 F. 2D 1050 (9th CIR.) 1992.

¹⁹ Washington v Harper 494.U.S 210 (1990).

²⁰ (2014) LPELR- 22569 (CA)

²¹ *Ibid*

year after year. Sometimes, it makes sense to pay this steep price. It is imperative to take murderers out of circulation even if it is costly. Moreover even from a crassly financial perspective, a justification can be made for imprisoning murderers. According to some estimates in the U.S. a single murder cost society more than a million dollars because of lost wages and productivity and increased public services to families of victims²². However, for non-violent offenders, it is difficult to justify imprisonment from a financial perspective. Money spent on prisons is money not spent on other public needs. From 1990 to 2000, state spending on higher education decreased in the U.S by 18% but spending on prisons increased by 30%²³.

As prisoners age and develop health problems, it costs even more to keep them behind bars. The average cost of imprisonment for prisoners over the age of 55 is more than \$60,000.00 per year. Medical care for prisoners is especially costly because prison is not an environment that promotes physical or mental health. Poor nutrition, lack of exercise, physical injuries, inadequate medical care, fear, high levels of stress, and a lack of intellectual and recreational opportunities combine with the normal aging process to produce many prisoners with serious health problems. Moreover, disease spreads quickly among prisons. The rate of HIV/AIDS among State and Federal Prisoners is 13 times higher than the rate in the general population. Prisons also spawn new forms of infectious disease. In 1990, the emergence of a virulent, drug-resistant form of tuberculosis was traced to prisons in the state of New York²⁴.

²² *Ibid.*

²³ J Caplow & J Simon 'Understanding Prison Policy and Population Trends' (1999) 26, Crime and Justice, 63-120.

²⁴ M Mauer, *Race to Incarcerate* (New York: The New Press, 1999). Because of mandatory sentencing laws and so-called "truth in sentencing" laws that have eliminated parole for many crimes, elderly prisoners must remain in prison.

Because of mandatory sentencing laws and so-called “truth in sentencing” laws that have eliminated parole for many crimes, elderly prisoners must remain in prison.

Another way of assessing the effectiveness of prisons is to ask how well they achieve their stated goals. Prisons do an extraordinary good job of incapacitating criminals. Once a criminal is admitted into a maximum- security prison, the chance of escape is zero. The individual criminal is prevented from committing crimes in free society for as long as he or she is inside the prison walls. Unfortunately, just because a particular criminal is kept away from society doesn't always mean that the crime rate will fall. This is because of what criminologists call the problem of “new recruits”. For chronically violent offenders for example, some rapists, child molester, and murderers- further crimes are probably prevented by holding the violent offender in prison. But financially motivated crimes such as selling drugs, stealing cars, and fencing stolen property, seem to be organized like a labour market. If a criminal is taken off the streets, a sort of job vacancy is created that tends to be quickly filled with a new recruit²⁵. If measured against the goal of retribution, prison is also a great success. Few doubt that any period of confinement in a maximum security prison is a frightening, numbing experience marked by anxiety, frustration, unrelenting monotony, and loss of control. Although minimum-security prisons are vastly more pleasant than maximum security prisons, even minimum security inflicts the essential pains of imprisonment: loss of autonomy, loss of power, loss of privacy, banishment from loved ones, and removal from the opportunities of free society.

²⁵ J Petersilia, *Violent Crimes and Violent Criminal: The Response of the Justice System*. In M Costanzo & S Oskamp (Eds). *Violence and the Law*. (Thousand Oaks CA: Sage Publications, (1994)

When measured against the goal of rehabilitation, prisons are a failure. It is obvious that the problem with abandoning the goal of rehabilitation is that nearly all prisoners will eventually return to the free society. If no attempt has been made to give them skills and resources necessary to mend their ways, released convicts will be likely to return to a life of crime. There is ample evidence that prison does little to improve the behaviour of criminals. A study conducted by RAND corporation compared two group of convicts. The groups were matched on a variety of variables including age, crime, and prior criminal record. They differed only in the sentence they received: one group was sent to prison while the other group received supervised probation. After tracking the offenders for more than three years, the researchers found that the prison group did worse than the probation group. Compared to the probation group, drug offenders who had been to prison were 11% more likely to be charged with another crime. Violent offenders sent to prison were 3% more likely to be charged again, and property offenders were 17% more likely to re-offend²⁶. In this study, prison time increased crime. Furthermore, the overall rate of recidivism is not encouraging. Following their release from prison, about 67% of former inmates will be rearrested for serious crimes and sent back to prison²⁷. The punishing aspects of prison tend to work against rehabilitation.

Rehabilitation programs can take a variety of forms. But all aim to change the criminal so that he or she will be less likely to continue breaking the law after release from custody. Some programs involve group therapy intended to change the thinking and behaviour of

²⁶ JPetersilia et al, 'Prison Versus Probation in California' Implications for Crime and Offender Recidivism-- (R-3323-NIJ)Santa Monica, CA: RAND.

²⁷ J Reiman, 'The Rich Get Richer and the Poor Get Poorer' Prison-Bosten: (Allyn & Bacon, 1998)

criminals. Educational and training programs are also rehabilitative in that they attempt to provide prisoners with marketable skills that may lead to productive employment after release. There have now been several large-scale analyses of what makes rehabilitation programs successful. Based on their extensive analyses of programs, Lawrence Sherman and his colleagues found that the most effective programs attempts to: (1) correct educational and job skill deficits, (2) change attitudes and thinking patterns that promote criminal behaviour (3) improve self awareness and self-esteem, (4) enhance interpersonal relationship skills, (5) reduce drug abuse, and (6) reduce contact with criminal peers²⁸.

6.0 Alternatives to Prison

At the far end of the sentencing spectrum is the death penalty. The most severe option is life in prison without possibility of parole, followed by long prison term. But several other alternatives are available. Perhaps the least serious sentence is to pay a fine *Ushie v. The State*²⁹ (e.g. for a traffic violation) Forfeiture of “goods and instrumentalities” used to commit crimes is a more severe type of financial penalty. Federal law allows law enforcement to seize the property of drug traffickers, including car and boats used to transport drugs, buildings used to store drugs, and houses paid for with profits from drug deals. Paying monetary restitution (e.g. a petty thief paying, for stolen property) or paying restitution through labour, for example, a teenager repainting a wall he spray-painted is a possibility of some types of crimes. Community service is a more general form of restitution.

²⁸ LW Sherman et al, Preventing Crime: What Works, What Doesn't, What's Promising. (Washington, DC: National Institute of Justice, 1997).²⁹ (2012) LPELR 9595 (CA)

²⁹ (2012) LPELR 9595 (CA)

People convicted of non-violent crimes can be sentenced to community service and placed in a variety of settings, including hospitals, homeless shelters, schools and nursing homes. Restitution is often used in combination with probation and has increasingly been used as a means of compensating victims, helping the community, and repairing the damage caused by minor crimes³⁰.

Probation involves suspending a jail or prison sentence and releasing the criminal into the community under the supervision of a probation officer. The conditions of probation can be fairly strict, requiring the convict to meet weekly with a probation officer, to find and keep a job, to submit to random drug tests, and to attend therapy groups. If the offender violates the conditions of probation, he can be sent to prison. Each year in the United States, about 1.5 Million Americans are placed on probation and about 1.3 Million complete their probationary sentence³¹. Unfortunately, probation has a relatively high failure rate. In a massive study of nearly 79,000 probationers in 17 States in the U.S., 43% of people on probation were rearrested within three years³². Although this recidivism rate is discouraging it is substantially better than the recidivism rate for inmates released from prison.

A relatively recent variation on probation is house arrest (also called home confinement) enforced through some form of electronic monitoring. House arrest is likely to involve many of the same conditions of parole, with the additional requirement that the offender will not leave his or her home or yard except to go to school or work.

³⁰ *Ibid*

³¹ LJ Siegel *Criminology*. (Belmont, CA: West. 1998)

³² P Lagan & M Cuniff. *Recidivism of Felons on Probation* (Washington DC: Bureau of Justice Statistics, 1992).

Electronic bracelets locked on the ankle or wrist alert authorities when the offender leaves the house. A somewhat less high-tech version involves random frequent computer-generated phone calls to the offender's home. These phone calls must be answered quickly by the offender (e.g. picked up before the fourth ring). Home arrest is often a last chance if the offender leaves the designated areas, he or she can be sent to prison.

Other alternatives to prison involve brief incarceration or what has been called Shock Incarceration. The “shock” usually consists of a brief period where young offenders are put in prison. One example is the widely publicized “scared straight” program that became popular during the 1980s. That program took juvenile offenders into maximum – security prisons where they were verbally abused by inmates serving life sentences for violent crimes. The “lifers” told the young criminals about the horrors of prison life, for example, rape, fear, violence in graphic, frightening detail. An extended version of shock incarceration is the “boot camp” program modeled after military basic training programs. For several weeks, non violent offenders are subjected to an abusive, demanding drill sergeant; tough living conditions; marching; and intense exercise. Although such programs enjoy popularity and support among prison officials and the general public, they don't seem to have beneficial effects' on the juvenile offenders who go through the program. Systematic analyses of shock incarceration programs indicate that they often backfire. Graduates of shock programs are somewhat more likely to become repeat offenders than offenders who are simply put on probation^{33, 34}.

³³ J Bottcher *et al* 'LEAD: A Boot Camp and Intensive Parole Program: An Impact Evaluation.' (Sacramento, CA: State of California Department of Youth Authority, 1996).

³⁴ M Peters. Evaluation of the Impact of boot Camps for Juvenile Offenders. (Washington DC: Office of Juvenile Justice and Delinquency Prevention, 1996).

Heavy reliance on fear, disrespect, and humiliation appear to undermine the effectiveness of such programs and to create a negative response in many youthful offenders. Indeed, the shock incarceration programs that do produced benefits devote several hours a day to therapy, education, or drug treatment and provide follow-up supervision after offenders have left the program³⁵.

Residential community corrections centres (better known as “halfway houses”) are also used as a sentencing option for some offenders. These are places (sometimes large houses or small apartment buildings) where groups of offenders live in a communal environment and attend some form of group therapy. Offenders are usually required to find jobs and to perform household chores. Originally, these facilities were designed to ease the shock of re-entry into free society. The final months of prison sentence could be spent in a halfway house so that ex-convict could find job, build up cash reserves, find an apartment, and re-establish family relationships. Currently, if a judge believes that a particular offender should not be sentenced to prison but needs a more structured environment than probation, that offender can be sentenced to a residential community corrections centre³⁶.

Alternatives to prisons are essential for several reasons. First, all alternative to prison are much cheaper than prison. Second, prison is much too severe a punishment for many crimes and many make offenders more likely to commit crimes.

³⁵ DL Mackenzie et al, 'Boot camp Prisons and Recidivism in Eight States' (1995) 33, Criminology 327-358; see also JO Finckenaue et al, Sacred Straight: The Panacea phenomenon Revisited. (Prospects Heights, IL: Waveland press, 1999).

³⁶ SE Barkan, Criminology. (Upper saddle River, N. J. prentice-Hall, 1997).

Third, there is simply not enough public money to build and maintain prisons to hold every criminal. Fourth, alternatives allow first-time offenders and people convicted of non-serious crimes to avoid trauma and stigma of imprisonment.

7.0 Conclusion/Recommendation

We conclude by advocating for alternative to prison especially for adolescents and youths who have committed anon-felony offence as such alternative places can be a better place to rehabilitate the offender and keep him/her away form interaction with serious offenders that may further contaminate them.

7.1 Recommendation

1. For a reform in our criminal justice system through legislation that will establish alternatives to prison in Nigeria with vocational curriculum at its primary essence.