

## **ALTERNATIVE TO IMPRISONMENT: WHAT LESSONS FROM AFRICA**

### **INTRODUCTION:**

“Many developing countries are finding it very difficult to manage their prisons. Over populated penal institutions can often only provide inadequate conditions to inmates, both physically and psychologically. Prisoners have to be detained for long periods on remand and prisons are frequently unable to carry out the task of training and rehabilitation, despite these being stated aims in the national statutory texts which governs them. At the same time, rising crime rates, especially in large conurbation, make these inadequacies all the more worrying. Minor offenders are brought into close proximity with more hardened criminals with out there being any real possibility for their rehabilitation into society and employment”

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These observations are apt to Penal situations in most developing countries, Nigeria inclusive. Indeed, it categorically sums up the problems that have bedeviled imprisonment and by extension, the entire criminal justice, particularly in the African region. Accordingly one may ask; does the status quo offer justice and security to the people? Are there any solutions to this erratic situation in our criminal justice administration? To what extent have the agents of the criminal justice system, particularly the prisons being able to administer justice and enhance social cohesion, statutorily expected of them?

To unravel these questions, the paper has been divided into five sections. The first section deals with a brief account/report of the prison service, the second deals with the concept of alternative to imprisonment, while the third puts forward rationale for the call for an alternative measure. In the fourth section, an attempt was made to draw lessons from some African countries where ATI measures have been implemented, the fifth section talks about the way forward for Nigeria, and then the conclusion.

A detailed historical overview of the Prison Service in Nigeria may not be expedient here today for our discussion. This has been variously discussed elsewhere<sup>1</sup>. Suffice it to say

## **SECTION ONE: PRISON SERVICE IN NIGERIA TODAY:**

that the prison department, like most public institutions in Nigeria is part of our colonial heritage intended to pursue, promote and protect the then colonial interests. Thus, it was not only punitive; it lacked any proper and systematic programme of rehabilitation and reintegration of ex prisoners into the larger society upon discharge. Remarkably, though regrettably, this ugly trend had a spill over effect into our post colonial era, hence, prison officers not amenable to change are often describe as “colonial warders”<sup>2</sup>.

Following the Gobir reports on the need to unify the various prison commands in Nigeria: the Federal and Native authorities were unified on the April 1<sup>st</sup> 1968. Subsequent re organizations in the prison department led to the promulgation of Prison Decree number 9, of 1972. The Decree among other things ordered the following cardinal functions of the prison service:

1. To keep safe custody of persons legally interned.
2. To identify the causes of their anti social behavior; treat and reform them to become law abiding citizens of a free society.
3. To train them towards their rehabilitation on discharge.
4. And, to generate revenue for the government through prison farm and industries.

The achievement of all these “lofty” ideals has been at all times poor, and questionable. In fact imprisonment in

Nigeria has become a haven for Human Rights abuses of persons who would have been better and productively engaged towards a balanced and healthy society. But make no mistakes; this situation is not solely attributable to the department and its personnel, it is largely shared by the government and its various agencies in the criminal justice administration. However, some of these notable core problems of the prison service in Nigeria relates to over crowding, inadequate facilities, and poor treatment of prisoners. Unfortunately too, the many efforts aimed at reducing the numbers of prisoners through Legal Aids, and Presidential and States pardons have made little impact<sup>3</sup>. Furthermore the prison it lack both deterrent and reformative values. Furthermore also and most importantly too, it is very costly to the economy, and as such is poorly funded. For instance, at a National Conference, (2000), it was asserted that the government spends a lot of money on providing for feeding, clothing, shelter and other needs of prisoners. To illustrate this, it was stated that the government spends as much as one thousand, eight hundred and twenty five million Naira (N1, 825,000,000) annually on feeding of prison inmates' alone<sup>4</sup>. It has also been argued that it is physiologically, psychologically, and emotionally destructive as well as being socially damaging, culturally abhorrent, and penologically disastrous. Buttressing this, Prof. Adeyemi<sup>5</sup>, further stated that in addition to the apparent inefficiency of imprisonment as a deterrent and the increasing financial burden it imposes on African countries, there is also a growing resurgence in the African region of its recognition as a culturally aberrant and abhorrent disposition. Hence, the compelling needs to look for viable alternative measures.

## **SECTION TWO: THE CONCEPT OF ALTERNATIVE TO IMPRISONMENT**

Before delving into the attempt to conceptually capture the meaning of alternative to imprisonment for the purpose of this paper, I would want to quickly state here that, the advocated alternative to imprisonment measures in the administration of justice, (though fledging), is not alien to Africa, rather it is autochthonous. To underscore this assertion, Elias<sup>6</sup> had earlier opined that in the traditional African societies, imprisonment as a form of punishment was almost unknown.... There (was) no room for institutionalized forms of punishment such as imprisonment for preventive detention... offenders were often left in the care of their families or extended families once the appropriate penalty has been imposed. It therefore follows logically that African criminal justice systems despises imprisonment.

Up holding the argument, Prof. Adeyemi points out that it imprints on the ex prisoner and his family a social stigma, closes avenues for employment, rented accommodation, marriage for him/her, and him /her children and other forms of social ostracism in certain part of Nigeria. Quoting Meeks's "Law and Authority in a Nigerian Tribe" and Gunn's "Pagan Peoples of the Central Area of Northern Nigeria", he illustrated his argument with examples from the Ibo and the Kagoro peoples who never had any form of imprisonment prior to the advent of the British. According to him the disdain of the Nigerian people was further epitomized by the attitude of the native courts to the instruction issued to them by Lord Lugard, when he (Lugard) discovered that they (natives) continued to employ only

restitution for theft, instead of ordering imprisonment for the offenders. He instructed the native courts that restitution for stolen property or an abducted person, (was) not of itself a sufficient penalty<sup>7</sup>. To him, (Lugard), punishment should always be added to restitution. Remarkably, the native courts refused to comply with such instruction and rather resorted to compensation, compensatory fines, and fines as appropriate disposition measures in place of imprisonment<sup>8</sup>. This clear and emphatic rejection of imprisonment by the native courts, even in the face of the instructions of the then Governor General indicated its odium to the society and its seeming incompatibility with the Nigerian traditional conception of criminal justice.

Against this backdrop, we can now attempt an operational definition of the concept of Alternative to Imprisonment.

### **ALTERNATIVE TO IMPRISONMENT DEFINED**

For the purpose of this paper, Alternative to Imprisonment is defined as the embrace of suspended sentence, probation, fine, or community service, leading to a less use of the prisons/imprisonment in the administration of the criminal justice system.

### **SECTION THREE: RATIONALE FOR ALTERNATIVE TO IMPRISONMENT<sup>9</sup>**

Recalling the Kampala Declaration of 1996, which takes into account the limited effectiveness of imprisonment, especially for those serving short sentences, and the cost of imprisonment to the whole society; Noting the growing interest in measures, which replace custodial sentences and the promising development across the world in this regard; Further noting with appreciation that the importance of the Kampala Declaration was recognized when it was noted in, and annexed to a resolution on international cooperation for the improvement of prison conditions in developing countries by the United Nations 6<sup>th</sup> session of the Commission on Crime Prevention and Criminal Justice in Vienna, Austria (28<sup>th</sup> April 9<sup>th</sup> May, 1997); Bearing in mind the United Nations Standard Minimum Rules for Non custodial Measures (Tokyo Rules, 1990); Considering that the level of over crowding is inhuman; Recalling the African Charter on Human and Peoples Rights reaffirmation of the dignity inherent in a human being and the prohibition of inhuman and degrading treatment; I therefore make bold to lend credence to these resolutions, and accordingly state that these resolutions are a strong platform on which we are calling for the adoption and establishment of Alternative Measures to imprisonment in all the countries of Africa owing to the following reasons:

- Our Criminal Justice System is comprised of agencies that work without coordination.
- The Court machinery is over loaded with cases, slow and not readily accessible to all.

- Prisons are a low priority in Nigeria, as in many other African countries; and where three quarter of the prison population is comprised of poor and powerless people, prisons are seen as not being worth the time, energy or resources needed to improve them.
- Imprisonment is all too readily used even for small offences as a punishment of first instance rather than of last resort.

### **SECTION FOUR: LESSONS FROM AFRICA**

At this juncture it is important to observe that efforts towards the implementation of alternative to imprisonment in Nigeria beside, the statutory provisions of fines and bail options, rarely deployed and or effectively utilized, is still at its embryonic stage<sup>10</sup>. But the story is different from other African countries, such as Zimbabwe, Kenya, Uganda, Malawi, Mali, Senegal, and Burkina Faso. These countries have successfully established ATI measures and are now consolidating on the accruable gains of a less use of the prisons as a means of administering justice particularly on short sentences and first civil offenders. In these countries it is equally worthy of note that this innovative approach is hinged on two major areas: one, putting in place appropriate structures. Two, comprehensive community involvement and building on the strength of their societies. For our purpose we shall only make reference to two of these countries, Zimbabwe and Kenya.

## **ZIMBABWEAN EXPERIENCE:**

Since 1993, Zimbabwean law has provided that offenders may be sentenced to options other than prison sentence, (community service) if the applicable offence carries a maximum sentence of one year's imprisonment<sup>11</sup>. Thus, Community Service (a system that ensures non custodial measure and generates un- paid labor for community projects) has become the default punishment for these types of offenses; in fact if a court must impose imprisonment in any of these countries, the sentencing court must state specific findings as to why imprisonment is justified. Accordingly, there is a high level involvement of the members of the judiciary at both the local and national levels.

## **BENEFITS OF ATI IN ZIMBABWE:**

Here we shall briefly enumerate some of the major benefits of ATI since its inception in Zimbabwe in 1993.

High Success Rate - 120 000 offenders have been sentenced to community service since its inception<sup>12</sup>. A survey of 6000 participants revealed that 94% had completed their placements successfully.

Decline in Recidivism - a survey of 6000 offenders who participated in the community service programme showed that only 50 had re-offended following the completion of their sentences.

Decreased Prison Population since 1993, the prison population has declined from 22000 to 18000 notwithstanding an increase in the crime rate.

Reduction in Cost it costs approximately USD\$120 per month to keep an individual in prison in Zimbabwe as compared to approximately USD\$20 per month for participation in a community service programme.

Public Approval/Acceptance being placed in a community service programme permitted offenders to keep their jobs and continue to support their families. This, along with other visible results has helped the programme gain public approval. Public support is currently at such a level that requests from placement agencies to participate in the community service programme exceed the number of offenders sentenced to community service.

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## **KENYAN EXPERIENCE**

In Kenya lessons were learnt from earlier efforts to introduce alternative measures. Planning for the subject was elaborate and had a well thought through implementation plan<sup>13</sup>. In December 1995, following a seminal report on Community Service Orders and the Administration of Criminal Justice held in Kenya, an interim committee on the subject was established.

The Committee looked at the exiting penalty - Extra Mural Penal Employment (EMPE) and found out a number of problems that range from; lack of clear guidelines, inexperienced staff, lack of information on offenders sentenced to EMPE, to poor record keeping and documentation affected its effective performance<sup>14</sup>, thereby defeating its goals. Against this backdrop, the committee

under the auspices of the Ministry of justice devised plans for implementing the recommendations of the December 1995 seminar and this led to the drafting of a Community Service Order Bill. Between August and September 1996 the committee had visited all the prisons in Kenya on a fact-finding mission. Also, during that period the committee members made frequent television appearances to publicize the state of conditions in the prisons. Also by the end of 1996. They had made study tours of other jurisdictions including South Africa, Swaziland, and Zimbabwe. All these gave rise to the preparation of a new legislation hinged on the already functional Kenyan's probation service. The new bill envisages that the probation service will hold the administrative responsibility for implementing community service, while the judiciary will manage the programme. By 1997 another international conference was convened to discuss the report of the interim committee and a proposed draft bill. And by late 1997 the Cabinet endorsed the Community Service Order Bill, passed into law by the parliament in December 1998. This development by implication marked the beginning of a renewed and much more purposeful alternative to custody measures within the formal and non formal justice system of Kenya, which recognizes community service, treatment programs, restorative justice, mediation and reconciliation, probation, fines, parole, bail, and suspended system.

## **SECTION FIVE: STRATEGIES FOR IMPLEMENTATION IN NIGERIA**

Having seen the benefits of the various models of ATI in some other African countries, it will only be pertinent to articulate the forward for Nigeria, and other African countries that may want to address the many and interrelated problems of the criminal justice system, particularly the prisons replete with over crowding, cells ridden with infectious disease, replete with malnourished persons that would have otherwise been much more productively engaged, high death rate etc, etc.

Against this backdrop, the following are considered as panacea to the Nigerian situations:

- There is the need to demonstrate enough political will towards the implementation of the project. Essentially the Legislators need to have a clearer picture and full grasp of the situation on the ground to help propel and as well enable them make legislation to initiate and back the implementation. This remains imperative in Nigeria as all the efforts and campaigns made in regards to an alternative measure are yet to receive legislative attention.

Also, in Nigeria the Judiciary has to be in the Vanguard of the implementation stage. As such Magistrates and Judges are to be trained and retrained. There is also the need for the development of a basic guideline for the members of the judiciary to ensure a uniform standard on how to identify and treat cases that are apt for non-custodial measures. Besides, the involvement of the judiciary is equally a vital part of the social impact of the scheme. For instance, the members of the judiciary would not only be involved in making sentencing

decisions and its implementation, but would as well be involved in appreciating the negative consequences that would have been flowing from imprisonment.

● Wherever possible, and for offences meticulously specified, community service sanctions can be built into our sentencing options. To assist in this process the working dynamics of this advocated alternative measure in other countries where it has been successfully implemented should be studied, copied, improved upon and applied in Nigeria to suit our socio- political and economic imperatives.

A National monitoring committee should be set up to fully implement these recommendations. The Committee should be made up of the Ministries of Justice, Ministry of Internal Affairs, and public institutions such as the Police, Prisons, Nigerian Bar Association, Nigerian Law Reform Commission, relevant NGOs and the Academia.

## CONCLUSION

The problems of imprisonment and the need to find alternatives to it have been highlighted in this paper. Accordingly, a significant reduction in the use imprisonment, in the dispensation of criminal justice has been adduced. It is hoped that the judiciary, and other stakeholder will now begin a much more purposeful and diligent efforts in dealing with cases that would require alternative measures following the examples of other countries where it has been successfully implemented. Hence, the system that will resort to the use of restitution, compensation, bails, fine; and community service, (for community service, it is hope that legislators will quickly attend to the business of passing a bill into law for its purpose) among other models should be strengthened and employed.

This way, we can now begin a healthy and viable march to Justice Administration, that recognises healing for everyone involved, thus building a much more harmonious and purposeful society, not alien to Nigeria or Africa in General.

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