

## RESTORATIVE JUSTICE AND NON-CUSTODIAL MEASURES: PANACEA TO RECIDIVISM AND PRISON CONGESTION IN NIGERIA\*

### Abstract

*A functional justice system is a pointer to economic growth, development and stability. A system which is characterized by problems ranging from but not limited to abuse of court processes, bureaucracy, lack of funds for the judiciary and the police, delay in trial, non-reformation of correctional institutions, congestion of prisons, and recidivism will be abhorrent to social justice, foreign investment and human rights principles, thereby, affecting the economic, infrastructural and human development of the state. The criminal justice system comprising of the police, the judiciary and the correctional agencies provides solutions to these problems and patterns the direction of crime policy in a state. This paper posits that the Nigerian state should provide the necessary framework to complement the traditional utilitarian system of punishment, 'imprisonment', and pursue a more victim /offender engagement for prevention of crime, guarantee non-custodial treatment for crime offenders, and consequently forestall recidivism and decongest the prisons.*

**Key words:** Restorative justice, Non-custodial measures, Prison congestion, Courts, Recidivism

### 1. Introduction

Restorative justice (hereinafter referred to as RJ) has become a global model in contemporary times. In view of this fact, more people are embracing restorative justice and looking within their extant cultures, norms and values as well as legislation for traditions that can be adapted to fit 'this' culturally sensitive dispute resolution process.<sup>1</sup> In Nigeria however, not very much of this practice vis-a-vis its potential benefits when it comes to crime prevention and reduction, reconciliation and decongestion of prison, have been looked into let alone giving it adequate attention. Prior to the promulgation of the Administration of Criminal Justice Act (ACJL) 2015, the criminal justice administration in Nigeria entailed the use of the Criminal Code (based on English Common Law) in the West and Penal Code (based on Islamic Law) in the Northern part of the country. We also have customary laws (based on the culture and customs of the people).<sup>2</sup>

It is pertinent to note however, that despite the fact that these laws are in place, crimes, conflicts, disorderliness have been prevalent in the society. This invariably has resulted in overcrowding at the prisons and high recidivism rate.<sup>3</sup> This can be attributed to the criminal justice administration models in Nigeria which focus largely on arrest, prosecution, imprisonment and even death sentence as punishment for crimes in the RJ concept and informal dispute resolution mechanism. Another major factor responsible for overcrowding and recidivism in Nigerian prisons is the issue of corruption and high-handedness within the police force, which is supposed to be an agent of justice.<sup>4</sup> Nigerian police situation is a case of 'putting the cart before the horse'. The criminal justice system is supposed to be sequential i.e from initial contact of crime, investigation, arrest, arraignment, among others, but what we have is arrest before investigation therefore encouraging custodial system and constituting

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<sup>1</sup> I Ogunniran, "The Lock and Key Phenomenon: Reforming the Penal Policy for Child Offenders in Nigeria" (2013) 10 (1) *Justice Journal*, p. 13.

<sup>2</sup> D J O Omale, "Justice in History: An Examination of 'African Restorative Traditions' and the Emerging 'Restorative Justice' Paradigm" (2006) 2 (2) *African Journal of Criminology and Justice Studies*, pp. 33-63, cited in J S Okwendi and R Nwankwoala, "The Role of Restorative Justice in Contemplating the Justice System and Restoring Community Values in Nigeria" (2014) 2 (3) *Asian Journal of Humanities and Social Sciences (AJHSS)*, p. 127.

<sup>3</sup> J S Okwendi and R Nwankwoala (n. 2), p. 127.

<sup>4</sup> M C Ogwezy, "From Reformation to Deformation: An Approach Towards Sustainable Development of the Defective Prison System in Nigeria" (2011) 12 (7) *Journal of Sustainable Development in Africa*, p. 274.

infringement to right of personal liberty. Cases that ordinarily would have been settled at the police station, examples, possession of computer gadgets by a university student without receipt and bullying of neighbour's daughter (one wonders if these are offences but they are to Nigerian police) and filed at our magistrate courts, especially where the parties have failed to meet up with their monetary and other demands. Added to the later are delay in trials, lack of rehabilitation and reformation of prison inmate, and improper mixture of minor, hardened and major offenders in our prison facilities.

It is therefore apparent that, the more the criminal justice system focuses on ways of punishing offenders through harsh legislation, tough policing and criminal trial and incarceration, the less the time that is being devoted to finding the root causes of crimes and other ancillary issues such as crime victim needs, interest, expectations, reformation and reintegration of offenders. The over-focus on conventional criminal justice system and penal sentencing has therefore been found wanting in crime prevention, reduction, decongestion of prison and rehabilitation of offenders, hence the need to diversify by shifting attention from the conventional penal punishing to RJ.

## 2. Restorative Justice

The concept of restorative justice deals with harm done, taking responsibility by the offender, and engagement of victim and offender's supporters through conferencing to facilitate healing and reintegration process. According to Braithwaite, restorative justice is:

[A] process where all stakeholders affected by an injustice have opportunity to discuss how they have been affected by the injustice and to decide what should be done to repair the harm. With crime, restorative justice is about the idea that because crime hurts, justice should heal. It follows that conversations between those who have been hurt and with those who have inflicted the harm must be central to the process<sup>5</sup>

Omale described restorative justice thus:

.... [A] Whereas the principles of shaming, compensation and restitution are inherent in both Restorative Justice and Alternative Dispute Resolution. Restorative justice is an Alternative Dispute Resolution mechanism, but not all Alternative Dispute Resolution mechanisms are necessarily Restorative Justice.<sup>6</sup>

He further described restorative justice as an age long concept that has existed in the pre-colonial Igbo community in Nigeria. At that time, it took the form of sanctions known as 'nkuchi' and 'ikwala' which literally meant 'replacement' and 'shaming'.<sup>7</sup> In the same vein, Vanham argues that restorative justice is a viable alternative to incarceration and punishment.<sup>8</sup> Bradshaw and Roseborough posit that the best way to reduce youth crime is through restorative justice.<sup>9</sup> Furthermore, Crisostomo argues that mistakes are part of life. Restorative justice creates room for people to recognize their mistakes and to constantly

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<sup>5</sup> J Braithwaite, "Restorative Justice and De-Professionalization" (2004) 13 (1) *The Good Society*, pp. 28 -31 and D J O Omale, "Restorative Justice As An alternative Dispute Resolution Model: Opinions of Victim of Crime, and Criminal Justice Professionals in Nigeria" (2009 Unpublished Ph.D Thesis submitted to DeMontfort University, Leicester, UK) pp. 18-19.

<sup>6</sup> D J O Omale, "Restorative Justice and Alternative Dispute Resolution: Analytical Discourse for African Professional" (2001) 2 (1) *International Journal of Advanced Legal Studies and Governance*, p. 102.

<sup>7</sup> D J O Omale, "Justice in History: An Examination of the African Restorative Traditions and Emerging Restorative Justice Paradigm" 2 (2) *African Journal of Criminology and Criminal Justice*, pp. 30-60, cited in D J O Omale, (n. 5), p. 32.

<sup>8</sup> S Vanham, "Seeing Things Differently: Restorative Justice and School Discipline," *Education and Law* (2005) 17 (3), p. 87, cited in J S Okwendi and R Nwankwoala (n. 3), p. 132.

<sup>9</sup> W Bradshaw and D Roseborough, "Restorative Justice Dialogue (2005) The Impact of Mediation and Conferencing on Juvenile Recidivism" (2005) 69 (2) *Federal Probation*, p.15, cited in J S Okwendi and R Nwankwoala (n. 3), p.133.

improve upon these mistakes, as well as develop acts of reparation. He further opined that restorative justice works and should therefore be used as strategy for crime prevention and reduction.<sup>10</sup> To Marshall, restorative justice “is a problem-solving approach to crime which involves the approach to crime which involves the parties themselves and the community generally, in an active relationship with statutory agencies.”<sup>11</sup> Johnstone identifies the following as ideals and characteristics of restorative justice:<sup>12</sup>

- a. Crime is, in essence, a violation of a person by another person, and this is much more significant than the breach of legal rules;
- b. In responding to crime, our primary concern should be to make offenders aware of the harm they have caused, and to prevent them repeating that harm;
- c. The nature of reparation and measures to prevent re-offending should be decided collectively and consensually by offenders, victims and the community;
- d. Efforts should be made to improve the relationship between the victim and the offender to reintegrate the offender into the community.

From the foregoing, it can be deduced that the object of restorative justice is to enable offenders, victims and the community generally participate in a process which could help them and heal the damage caused by their offences.<sup>13</sup> The offenders basically attempt to fix the harm they have done by apologising, restitution, shaming and engaging in community service. In the same vein, it helps the offender to avoid committing further offences in future. Victims of crime thus find restorative justice more satisfying.<sup>14</sup> Consequently, RJ can be said to have its root in theory of justice that considers crime and wrongdoings as offences against individual and the community, rather than the state.<sup>15</sup> Often, a RJ conference is usually arranged and it involves the prior admission of the responsibility by the offender, voluntary attendance of all parties concerned, assistance of a neutral third party as facilitator, presence of law enforcement agents, Director of Public Prosecution (sometimes), the opportunity for explanations to be given, questions answered, apologies tendered, drawing of plan on how to address the wrong done and an agreement on how the plan will be implemented and monitored.<sup>16</sup> Another benefit of RJ is the fact that judgements and adjudications through the court system often prove unhelpful and fail to reflect the justice need of stakeholders, the intervention of family members of the parties who are most of the time in the know of the facts surrounding the cases may go a long way in assisting the parties resolve their disputes amicably.<sup>17</sup>

However, with these lofty objectives and relevancies of RJ, it is pertinent to note however that RJ may not work in all circumstances, for example, in situations where the offender does not admit the commission of the offence in question, or where the victim shows unwillingness towards the process.<sup>18</sup> It

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<sup>10</sup> R Crisostomo, “The Effectiveness of Restorative Justice Practices: How to Restore Justice for At-Risk Youth”, (2008 Unpublished Master of Science Dissertation submitted to Dominican University of California) available online at [www.dominican.edu/academics/education/departments-of-education/](http://www.dominican.edu/academics/education/departments-of-education/), cited in J S Okwendi and R Nwankwoala (n. 3), p. 133.

<sup>11</sup> T F Marshall, “Restorative Justice: An Overview”, London: Home Office Research and Statistics Directorate, cited in D J O Omale (n. 5), p. 20.

<sup>12</sup> G Johnstone, *Restorative Justice: Ideas, Values, Debates* (Cullompton Devon: Willan Publishing, 2002) cited in D J O Omale (n. 5), pp. 20-21.

<sup>13</sup> D J O Omale (n. 5), pp. 18-19.

<sup>14</sup> J S Okwendi and R. Nwankwoala (n. 3), pp. 127-128.

<sup>15</sup> E A Oji, “Compensation for Victims of Crime in the Nigerian Criminal Justice System: The Need to the Need” (2015) 18 (1) *The Nigerian Law Journal*, p. 121.

<sup>16</sup> D J O Omale, *Restorative Justice and Victimology, Euro-Africa Perspectives* (Wolf Publishers, 2012) p. 221.

<sup>17</sup> J Bradshaw, *Healing the shame that binds you* (Florida: Heath Communications, 1988) cited in J S Okwendi and R Nwankwoala (n. 3), p. 130.

<sup>18</sup> G Bazemore and M Schiff, *Restorative Community Justice: Repairing Harm and Transforming Communities*, (Cincinnati Ohio, USA: Anderson Publishing, 2001) p. 54.

is also worthy of note that RJ may not replace the criminal justice system; rather, it should complement the extant justice system. Thus, RJ is a formidable alternative mechanism of justice to Nigerian penal sentencing, prosecution and incarceration likewise very important in our contemporary society.<sup>19</sup>

### 3. Recidivism in Nigeria

Restorative justice, through different processes, research and evaluation reduces crime, grants justice, restores dignity and heals victims of crime.<sup>20</sup> RJ helps to reduce recidivism, gives victims of crime a voice, engages members of the local community and emphasizes parental responsibilities. Ancillary to that, it helps to reduce anti-social behaviours, reduces fear of crime and boosts the confidence of the society in the justice system. It encourages everyone to play active roles in the integration and restorative process for all the wrong doings and anti-social behaviours. In essence, victims are able to receive the help they need as a result of the harm caused; so also the offender is helped to make amends to the victim and the community at large. This will ultimately restore, improve and develop relationships between the offender and victim as well as the community.<sup>21</sup>

At this juncture, what is recidivism? Different scholars and researchers in law, sociology and criminology have provided varying definition. Some of these conceptualizations conclude at the thought; “repetition of criminal behaviour”. Recidivism is defined as the tendency to relapse into a habit of criminal activity or behavior.<sup>22</sup> Again, it is defined as the relapse into crime of one once convicted and punished for a crime.<sup>23</sup> It is one of the most fundamental concepts in criminal justice administration. It refers to a person’s relapse into criminal behaviour, often after receiving sanctions or undergoing intervention for a previous crime. Lipsey *et al* argue that RJ can effectively reduce recidivism rate in the society.<sup>24</sup> As good as this may sound, some writers posit clearly that reduced recidivism is not a goal of restorative justice.<sup>25</sup> They argue that reduced recidivism may result from RJ but it does not constitute a sufficient degree of its success. They believe that the goal of RJ is to “balance the need of victim, offender and communities rather than being solely offender-focused.”<sup>26</sup> Llewellyn *et al* concluded from evaluations that RJ emerges as a preferable *process* that is successful in terms of recidivism and is more satisfying for the participants.<sup>27</sup> An individual recidivates when he or she commits a crime at any time during or after the intervention or sanctioning process. A recidivist is one who has been convicted of multiple criminal offences; a repeat offender; career criminal or habitual offender.<sup>28</sup>

Recently, recidivism has been on the increase in Nigeria and has become a major social concern to the society, government at all levels and the world at large. Discharged prisoners find it extremely difficult to re-integrate into the society because of social and cultural factors.<sup>29</sup> Even after the release of a prisoner, the society still perceives him as a social misfit who should be avoided thereby making re-integration difficult. The social stigma “ex-convict” attached to a released prisoner seems to have

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<sup>19</sup> J S Okwendi and R. Nwankwoala (n. 3), p. 130.

<sup>20</sup> J Braithwaite, *Restorative Justice and Responsive Regulation* (New York: Oxford University Press, 2002) p. 69.

<sup>21</sup> J S Okwendi and R Nwankwoala (n. 3), p.134.

<sup>22</sup> Black’s Law Dictionary, 7<sup>th</sup>Edn., (USA: West Publishing Co., 1999), p. 1276.

<sup>23</sup> *Blantine’s Law Dictionary*, 3<sup>rd</sup>Edn., (New York, USA: The Lawyers Cooperative Publishing Co., 1969), p. 1065.

<sup>24</sup> Lipsey, *et al*: “Effective Intervention for Serious Juvenile Offenders” Washington DC: U.S Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Preventions, cited in J S Okwendi and R. Nwankwoala (n. 3), p. 133.

<sup>25</sup> P McCold & B Watchel, *Restorative Policing Experiment: The Bethlehem Pennsylvania Police Family Group Conferencing Project*, (1998) Pipersville, PA: International Institute of Restorative Practices, p. 93.

<sup>26</sup> P McCold and B Watchel (n. 25), p. 74.

<sup>27</sup> J Llewellyn *et.al*, “Imagining Success for a Restorative Approach to Justice: Implications for Measurement and Evaluation” (2013) *Dalhousie Law Journal*, p. 308.

<sup>28</sup> *Black’s Law Dictionary* (n. 22), p. 1276.

<sup>29</sup> K K Osayi, “Socio-Cultural Factors Affecting Reintegration of Discharged Prisoners in Anambra State, South-East, Nigeria” (2013) 4 (10) *Mediterranean Journal of Social Sciences*, p. 775.

contributed to the problem of resettling in the society. It looks as if a released prisoner automatically becomes an outcast and ostracized once he is discovered to have been in and out of prison. Another which could affect post-release crime rate is placing a minor offender amongst hardened offenders. Often times, the minor offender get corrupted and tutored by the hardened ones and by the time they are out of prisons, they engage in more serious offences.<sup>30</sup> Research shows however, that, being exposed to inmates who have higher propensities to crime may increase criminal behaviour or reinforce antisocial attitudes. In a study conducted across five selected prisons in Nigeria between 2007 and 2010, Abrifor, *et.al* reported that there was a sharp increase in recidivism rate from 35% to 44% in 2007 and 52.4% in 2010.<sup>31</sup>

Factors identified as being responsible for the high rate of recidivism in Nigeria include lack of funding to procure materials and equipment for training<sup>32</sup>, reformation and rehabilitation of prisoner,<sup>33</sup> failure to replace worn out training equipment and machines at prison facilities,<sup>34</sup> lack of qualified personnel to operate the available equipment and engage the prisoners meaningfully,<sup>35</sup> little or no provision by government and private organizations for gainful employment opportunities for discharged prisoners,<sup>36</sup> lack of empowerment for discharged prisoners,<sup>37</sup> highly restrictive nature of the prison facilities which creates an unhealthy gap between prisoners and their family and friends, the very people they are going home to after discharge.<sup>38</sup>

Scholars have however observed that punishment cannot stop re-offending. They have further postulated that besides punishment, there should be other opportunities to compensate and empower the victims of crime while gaining better understanding of what happened for the parties to move on with their lives and the offender to note the impact of his actions or behaviours on the victims and the community at large. This will consequently help the offender avoid committing further offences in the future.

#### 4. Non-Custodial Measures

The over-concentration on conventional criminal justice system and penal sentencing in Nigeria has been found wanting in crime prevention, reduction, decongestion of prison and rehabilitation of offenders.<sup>39</sup> Thus, the need arises to diversify by shifting attention from the conventional penal system of social control to restorative justice.<sup>40</sup> Non-custodial measures have been proven to be far more effective in reformation of offenders instead of condemning them and relegating them to the position of an outcast.<sup>41</sup> Non-custodial measures include:

**Community service order:** A community service order is an order of the court mandating an offender to undertake certain number of hours of unpaid work for the benefit of the community. The rationale

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<sup>30</sup> K K Osayi (n. 29), p. 776.

<sup>31</sup> C A Abrifor, *et.al*, "Gender Difference Trends and Pattern Recidivism Among Inmates in Selected Nigerian Prisons" (2011) 8 (24) *European Scientific Journal*, pp. 25-44.

<sup>32</sup> M C Ogwezzy (n. 4), p. 276; R G Awopetu, "An Assessment of Prison Overcrowding in Nigeria: Implications for Rehabilitation, Reformation and Reintegration of Inmates" (2014) 19 (3) *IOSR Journal of Humanities and Social Science*, p. 25.

<sup>33</sup> K K Osayi (n. 29), p. 776; M C Ogwezzy (n. 4), p. 276.

<sup>34</sup> K K Osayi (n. 29), p. 776; M C Ogwezzy (n. 4), p. 276.

<sup>35</sup> K K Osayi (n. 29), p. 776; M C Ogwezzy (n. 4), p. 276.

<sup>36</sup> K K Osayi (n. 29), p. 776; M C Ogwezzy (n. 4), p. 276.

<sup>37</sup> K K Osayi (n. 29), p. 776; M C Ogwezzy (n. 4), p. 276.

<sup>38</sup> K K Osayi (n. 29), p. 776; M C Ogwezzy (n. 4), p. 276.

<sup>39</sup> A O Yekini and M Salisu, "Probation As A Non-Custodial Measure In Nigeria: Making A Case For Adult Probation Service" (2013) 7 (1) and (2) *African Journal of Criminology and Justice Studies*, pp. 101-104.

<sup>40</sup> I Ogunniran (n. 1), p. 15.

<sup>41</sup> Y Akinseye-George, *Nigerian Prisons: Justice Sector Reform and Human Rights in Nigeria* – Centre for Socio-Legal Studies CSLS, (Abuja, Nigeria: CSLS Publishing, 2009), p. 308 and A O Yekini and M Salisu (n. 39), pp. 101-113.

behind this is that the community is viewed as the victim of the crime, therefore requires some sort of reparation.<sup>42</sup>

**Probation and Judicial Supervision:** Probation is a non-custodial measure with the objective of rehabilitating an offender, rather than punish by making the offender undergo some compulsory treatment and supervision processes in order to reform him.<sup>43</sup>

**Verbal Sanctions:** This could take the form of admonition, reprimand, warning, guidance and counseling. Verbal sanctions and supervision can be administered by the parents of the offender, social worker, probation officer or law enforcement agent. It may entail regular counseling, encouraging and close monitoring of the offender. It may even mean that the offender may have to be reporting a police station every couple of days.<sup>44</sup>

**Suspended sentence:** This is the delaying of an offender from serving a sentence after he must have been found guilty by the court, provided the offender complies with the conditions set by the court as requirement for the suspended sentence. This is aimed at affording the offender an opportunity to go through reformation and probation process.<sup>45</sup>

**Conditional discharge:** The court after finding an offender guilty of the offence charged may discharge the offender conditionally on his entering into a recognizance, with or without sureties, to be of good conduct and appear before the court at any time as may be specified in the order.<sup>46</sup>

**Confiscation order:** This is an order of a court confiscating an offender's properties found to be proceeds of crime. Rather than send the offender to jail, the court orders him to pay the amount he has benefited from crime.<sup>47</sup>

**Monetary sanctions and penalties:** An offender found guilty of a crime may be ordered by the court to pay some money as penalty for the crime.<sup>48</sup>

**Restitution and compensation to victim:** It means the return or restoration of items either stolen, fraudulently acquired or taken without permission. It will ensure that an offender does not enjoy the proceeds crime by mandating him to return or compensate the owner.<sup>49</sup>

**House Arrest:** This is a situation whereby an offender or a convict is monitored and restricted to home confinement rather than prison, for a given period of time.<sup>50</sup>

**Referral to an Attendance Centre:** The court may refer an offender to an attendance centre, rather than prison with certain conditions as part of rehabilitation process.<sup>51</sup>

**Plea Bargaining:** Plea bargaining is the process whereby an offender and the prosecutor negotiate and agree that the offender will enter a plea of guilty in exchange for a reduced charge or sentence. The United States Supreme Court affirmed the constitutional validity of plea bargaining in America in the following words:

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<sup>42</sup> D G Shajobi-Ibikunle, "Challenges of Imprisonment in the Nigerian Penal System: The Way Forward", *American Journal of Humanities and Social Sciences* (2014) 2 (2), p. 101. See also I Ogunniran (n. 1), p. 17; Administration of Criminal Justice Laws of Lagos State 2011, s. 347.

<sup>43</sup> A O Yekini and M Salisu (n. 39) pp. 102-114. See also J A. Agaba and G D Shajobi-Ibikunle, "Probation as a Non-Custodial Measure in the Treatment of Adult Offenders in the Nigerian Penal System" (2015) 6, *Ekiti State University Ado-Ekiti Law Journal*, pp. 74-96.

<sup>44</sup> I Ogunniran (n. 1), pp. 15-16.

<sup>45</sup> Criminal Procedure Act, CAP C41, Laws of the Federation of Nigeria, 2004, s. 435 (1); A O Yekini and M Salisu (n. 39), p. 103.

<sup>46</sup> D G Shajobi-Ibikunle (n. 42); Criminal Procedure Act, CAP C41, Laws of the Federation of Nigeria, 2004, s. 435 (1) and 436.

<sup>47</sup> D G Shajobi-Ibikunle (n. 42); A. O. Yekini and M Salisu (n. 39), p. 103.

<sup>48</sup> O B Uruchi, "Creative Approaches to Crime: The Case for Alternative Dispute Resolution (ADR) in the Magistracy in Nigeria" (2015) 36, *Journal of Law, Policy and Globalization*, pp. 96-98. See also D. G. Shajobi-Ibikunle (n. 42).

<sup>49</sup> E A Oji (n. 15), p. 143; M C Ogwezzu (n. 4), p. 278. See also O M Osinibi, "Unjust Enrichment: The Exigency of Restitution in Nigeria's Criminal Justice System" (2015) 6, *Ekiti State University Ado-Ekiti Law Journal*, pp. 74-96.

<sup>50</sup> S Daniel, "Dasuki Still Under House Arrest, May be Prosecuted", Vanguard newspaper – 17 July 2015, available online at <http://www.vanguardngr.com/2015/07/dasuki-still-under-house-arrest-may-be-prosecuted/> [accessed 30/12/2015]; A O Yekini and M. Salisu (n. 39), p. 108 and M C Ogwezzu (n. 4), p. 278.

<sup>51</sup> S Daniel, "Dasuki Still Under House Arrest, May be Prosecuted" (n. 50); A O Yekini and M Salisu (n. 39), p. 108 and M C Ogwezzu (n. 4), p. 278.

The disposition of criminal charges by agreement between the prosecutor and the accused, sometimes loosely called ‘plea bargaining’ is an essential component of the administration of justice. Properly administered, it is to be encouraged. If every criminal charge were subjected to a full-scale trial, the States and the Federal Government would need to multiply by many times the number of Judges and court facilities.<sup>52</sup>

Plea bargain has been adjudged to be of immense benefit to stakeholders in the administration of criminal justice in Nigeria, despite its wide criticism.<sup>53</sup>

### 5. Overcrowding in Nigerian Prisons

The issue of overcrowding in Prisons across Nigeria remains a major source of concern in the administration of criminal justice. Some of these inmates live in very terrible and dehumanizing conditions.<sup>54</sup> They are crammed into very tiny cells, they experience hostility from other inmates and the prison officials, they struggle for food and denied their rights and privileges.<sup>55</sup> It has been observed that despite the intervention of the government through various initiatives to reduce the population, particularly awaiting trial inmates at the Nigerian Prisons, the figure has remained almost constant.<sup>56</sup> Record has it that as of October 2014, the total inmates population in 240 prisons with 50, 153 installed capacity was 57, 121. Convicted inmates (both male and female) were 17, 544, representing 32% of the prison population. For Awaiting Trial Inmates, the population (both male and female) was 39, 577, representing 68% of the prison population.<sup>57</sup> It therefore means that 39, 577 inmates, the larger percentage of the prison population were awaiting trial inmates due to several factors and other bureaucratic processes. This therefore has defeated the aim of the criminal justice system, which is meant to do justice and be fair to all, both offender and victims alike.<sup>58</sup>

One major factor that is responsible for congestion in prison is the fact that those released from prison are often times quickly replaced by some other persons or they find their way back to the prison within a very short time after their release.<sup>59</sup> Others include:

**Onerous and stringent bail conditions:** Accused persons most often in capital offences upon arraignment get remanded in prisons on the order of the court and in cases where bail is granted, some of the accused persons find it extremely difficult to fulfil the conditions of the bail terms so they remain in prison custody pending the perfection of their bail conditions.<sup>60</sup> For instance, a situation where a very poor person standing trial is granted bail and asked to produce certificate of occupancy or senior civil servant not below the Grade Level 14 is too onerous.

**Delay in issuing legal advice:** In offences requiring the issuance of legal advice by the office of the Director of Public Prosecution, it sometimes takes several months and even years for this to be done.<sup>61</sup>

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<sup>52</sup> B O Uruchi (n. 48), p. 96.

<sup>53</sup> Economic and Financial Crimes Commission Act 2004, s. 14; Administration of Criminal Justice Laws of Lagos State 2011, s. 74-76 and *Federal Republic of Nigeria v. Emmanuel Nwude & Anor* (2006) EFCSLR 145.

<sup>54</sup> M C Ogwezy (n. 4), p. 275.

<sup>55</sup> Y Akinseye-George (n. 41), p. 307; A O Yekini and M Salisu (n. 39).

<sup>56</sup> R G Awopetu (n. 32), p. 21.

<sup>57</sup> Statistics on prison population in Nigeria, available online at <http://www.prisons.gov.ng/about/statistical-info.php> (accessed 04/09/2015).

<sup>58</sup> Statistics on Prison Population in Nigeria (n. 57).

<sup>59</sup> Y Akinseye-George (n. 41), p. 310.

<sup>60</sup> Y Akinseye-George (N. 41), P. 303. See Also Section 120 of the Criminal Procedure Act, cap C41, Laws of the Federation of Nigeria, 2004 and the case of *Tochukwu V. F. R. N* (2005) All FWLR (Pt. 278) 1048 at 1072 – 1073, Para C – A where it was held *inter alia*... “to ask that a surety must not be lower in rank than that of a Director in the Federal Civil Service is to give a condition which is unattainable and therefore negates the court’s decision to grant bail”.

<sup>61</sup> M C Ogwezy (n. 4). See also O Olopade, “Access to Justice-Factors Militating Against and Solutions thereto”, paper presented at the 18<sup>th</sup> International Conference of the Society for the Reform of Criminal Law – Keeping

**Unnecessary adjournment and delay by counsels:** For order where trials have commenced, the trial gets stalled by litany of incidents ranging from request for unnecessary adjournments by counsel to the parties.<sup>62</sup> Some of the counsels engage in this unethical and unwholesome attitude in order to keep the cases pending in court while appearance fees are still being collected from their clients.<sup>63</sup>

**Incessant transfer and unavailability of Investigating Police Officers and key prosecution witnesses:** It is very common to find key witnesses for the prosecution and investigating police officers being moved from one station to another frequently. This has often times stalled so many trials and the accused persons in such cases will have to remain in prison custody while the prosecution awaits the availability of these witnesses before trial would continue.<sup>64</sup>

**Incessant industrial action by Judiciary staff:** Recently, the Judiciary Staff Union of Nigeria embarked on an industrial action which lasted for over four months, in order to press home their demands for better service.<sup>65</sup> So many awaiting trial inmates had to remain in prison for those periods as their trial was stalled as a result of the strike action.

**Bail denial:** Another factor that has contributed to congestion in Nigerian prisons is the denial of bail to awaiting trial prison inmates, treating them as if they are convicts even though the presumption of innocence as enshrined under section 36 of the 1999 constitution of Nigeria (as amended) is in their favour.<sup>66</sup>

**Logistics problem:** The Nigerian Prisons are faced with a lot of challenges. One of the salient challenge which affect access to justice and cause prison congestion is the unavailability of operational vehicles to convey awaiting trial prison inmates to court for their trials. Often experienced is a situation whereby you find criminal cases being mentioned and the prison officials as well as the accused person will be absent in court and where the Prison Authorities are contacted, they claim to have been absent from court as a result of unavailability of operational vehicle to convey inmates to courts for their trial.<sup>67</sup>

**Missing case files:** It is not uncommon to find cases of missing case files in the administration of criminal justice in Nigeria. Often times, cases files of accused persons get missing or lost in transit from the police authorities to the office of the Director of Public Prosecution. This has caused a lot of untold hardship on the concerned accused persons as some of them have had to remain in prison custody while the concerned authorities try to trace their case files.<sup>68</sup>

**Incomplete investigation:** The Nigerian Police and other related agencies often times are in the habit of not concluding their investigations before charging accused persons to court. This has stalled and made progress in several criminal trials to be slow. Incomplete investigation are mostly caused by incessant change and transfer of Investigating Police Officers, inability to apprehend co-accused persons, failure to duplicate case files, administrative bottlenecks in the office of the Director of Public Prosecution, inadequate logistics to conduct and conclude investigation.<sup>69</sup>

**Holding charge:** Holding charge is a frame up charge, it is improper, unconstitutional and generally used by the police in holding an accused person in custody while they conduct investigation and gather evidence to bring the accused person before the appropriate courts for trial. It has constituted a major source of congestion in Nigerian Prison and a major clog in the administration of criminal justice.<sup>70</sup>

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Justice System Just and Accountable: A Principled approach in Challenging Times, held at Montreal, Canada between 8-12 August 2004, pp. 14-15.

<sup>62</sup> Y Akinseye-George (n. 41), p. 310.

<sup>63</sup> O Olopade (n. 61).

<sup>64</sup> Y Akinseye-George (n. 41), p. 303.

<sup>65</sup> Judicial Workers End 7 Months Strike in Edo – 7 July 2015, available online at [www.newsnwnigeria.com.ng/judicial-workers-end-7-month-strike-in-edo/](http://www.newsnwnigeria.com.ng/judicial-workers-end-7-month-strike-in-edo/) and Anambra Judiciary Workers suspends Four-Months strike – 22 April 2015, available online at [www.punchng.com/news/anambra-judiciary-workers-suspend-four-month-strike/](http://www.punchng.com/news/anambra-judiciary-workers-suspend-four-month-strike/) (accessed on 26/12/2015)

<sup>66</sup> The 1999 Constitution of the Federal Republic of Nigeria (as amended).

<sup>67</sup> C Ndukwe and C I Nwuzor, "Nigerian Prison Service (NPS) and the Challenges of Social Welfare Administration: A Case Study of Abakaliki Prison" (2014) 9 (2), *Journal of Policy and Development Studies*, p. 25. See also E E Obioha, "Challenges and Reform in the Nigerian Prison System" (2011) 27 (2) *Journal of Social Science*, p. 102.

<sup>68</sup> Y Akinseye-George (n. 41), p. 303.

<sup>69</sup> Y Akinseye-George (n. 41), p. 304-305.

<sup>70</sup> Y Akinseye-George (n. 41), p. 304-305.

## 6. Initiatives to Decongest Nigerian Prisons and Reform Administration of Criminal Justice in Nigeria

The issue of prison congestion has been the major concern of successive governments and a major challenge in the administration of criminal justice in Nigeria. It has constituted a national embarrassment to the nation. In view of this, several Initiatives have been put in place by the government in the past to look into the menace and proffer solutions.<sup>71</sup> Some of the Initiatives include:

**National Working Group on Prison Decongestion:** This group came into existence in 2003 during the administration of former President Obasanjo. The group conducted comprehensive research into prison congestion in Nigeria. Members of the group as part of their undertakings visited several prisons across the country and came up with commanding reports which could be relied upon for planning and reform in the administration of criminal justice in Nigeria.<sup>72</sup>

**National Working group on the Reform of Administration of Criminal Justice:** This initiative was carried out by the Federal Ministry of Justice in partnership with Legal Defence and Assistance Project (LEDAP). The group spearheaded the draft bill on the Reform of Administration of Criminal Justice which is now an Act of the National Assembly.<sup>73</sup>

**Police Duty Solicitor Scheme (PDSS):** This project was initiated to address the challenge of pre-trial detention in Nigeria by affording early legal advice and assistance to persons arrested by the police. The aim of this project is to reduce as much as possible the number of persons ending up in prison custody. The project started in four pilot states namely; Ondo, Imo, Kaduna and Sokoto. It has since extended to some other states.<sup>74</sup>

**National Human Rights Commission (NHRC):** The National Human Rights Commission being an agency of the Federal Government of Nigeria saddled with responsibility of promoting and protecting fundamental human rights of Nigerians has on several occasions seen to the release of a lot of inmates from prison custody. It has also brought to the attention of the government the pathetic condition of the Nigerian prisons, how this has violated the rights of prison inmates and championed several initiatives aimed at improving the condition of prison inmates.<sup>75</sup>

**Prison Decongestion Programme of the Federal Ministry of Justice:** The primary aim of the initiative was facilitating the release of awaiting trial inmates in prisons across the country. In implementing this, the services of defence counsel were engaged. They were paid by the Federal Ministry of Justice for their services.<sup>76</sup>

**The Legal Aid Council of Nigeria:** The Legal Aid Council is an agency of the Federal Government saddled with the responsibility of assisting indigent Nigerians who are in need of legal practitioners and cannot afford the services of one by providing pro bono service to them.<sup>77</sup> In order to decongest the prisons, the Council has since inception been offering free legal representation and instrumental to the release of many awaiting trial inmates across Nigeria.<sup>78</sup>

**Prisoners' Rehabilitation and Welfare Action (PRAWA):** This organization came into being with the primary aim of working with prison authorities to build the capacities of prison officials in dealing with the rights of prison inmates, reform the prison system, suggest more liberal penal policies, make better arrangement for re-integration of discharged inmates, advocate for the rights of vulnerable inmates, among others.<sup>79</sup>

**State Initiatives:** Lagos State of Nigeria with the Administration of Criminal Justice Laws of Lagos State (ACJL) 2007<sup>80</sup> set the pace for major reforms in the criminal justice administration by including restorative justice model and other non-custodial measures in the criminal procedure laws in the state,

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<sup>71</sup> Y Akinseye-George (n. 41), p 310; M C Ogwezzy (n. 4), p. 280.

<sup>72</sup> Y Akinseye-George (n. 41), p. 311.

<sup>73</sup> Y Akinseye-George (n. 41), p. 310.

<sup>74</sup> This project was initiated by Legal Aid Council of Nigeria, the Open Society Justice Initiative (OSJI-REPLACE) and McArthur Foundation. See Y Akinseye-George (n. 41), p. 311.

<sup>75</sup> Y Akinseye-George (n. 41), p. 312.

<sup>76</sup> This project was initiated by the office of the Attorney-General of the Federation and Minister of Justice in the year 2006. See Y Akinseye-George (n. 41), p. 310.

<sup>77</sup> Legal Aid Act 2011, s. 1 and 8.

<sup>78</sup> Y Akinseye-George (n. 41), p. 313.

<sup>79</sup> Ibid., p. 314.

<sup>80</sup> Administration of Criminal Justice Laws of Lagos State (ACJL) 2007.

in a bid to decongest the prisons. The said law has the following innovations: Sections 75 and 76 of ACJL of Lagos state provide for plea bargain and plea/sentencing agreement; Section 298 provides for restoration of possession of immovable property; Section 300 provides for restitution and disposition of property found on person arrested; Section 301 provides for restitution of property stolen; Sections 346 – 349 provide for Probation orders and Section 350 provides for community service.

Recently, Ekiti and Anambra states promulgated the Administration of Criminal Justice Laws which respectively contains laudable innovations and reforms in the administration of criminal justice in the states.<sup>81</sup> It is also pertinent to note that the National Assembly has passed the Administration of Criminal Justice Act 2015 into law.

**Strategic Litigation:** Human Rights Organization such as; Civil Liberties Organization, Constitutional Rights Project, among others have embarked on high impact litigation which facilitated the release of many awaiting trial inmates from prisons across the country.<sup>82</sup>

## 7. Conclusion and Recommendations

It is apparent that, the over-concentration on conventional criminal justice system and penal sentencing has been found wanting in crime prevention, reduction, decongestion of prison and rehabilitation of offenders, hence the need to diversify by shifting attention from the conventional penal punishing to non-custodial measure and restorative justice. It is pertinent to note that despite all the efforts and initiatives put in place by the government and some non-governmental organizations, overcrowding and recidivism has remained a constant challenge in the administration of criminal justice in Nigeria. To decongest the prisons, there is a dire need to educate the police, magistrates and other judicial officers about employing non-custodial measures for minor offences. The Nigerian Police Force and other related agencies should always ensure they conduct thorough investigation of cases before charging them to court. Investigation should be done within a reasonable time so as to forestall delay in administration of justice. There should be penalties for inconclusive or incomplete investigation within a specified period of time. To further decongest the prisons, legal practitioners should be seriously encouraged to offer *pro bono* services to awaiting trial inmates who are in dire need of their services. The federal and states legislature should work at integrating into our laws a mandatory restorative justice process for all offences with different modality for each classification of offence. To reduce the rate at which ex-prison inmates recidivate, prison inmates should be categorized and separated based on the gravity of offence they have been charged to avoid minor offenders mingling with hardened offenders thereby getting corrupted. Alternatively, awaiting trial inmates should be held in Remand Centres, which should be created by the governments to prevent congestion in the regular prisons. Proximate to that is the fact that vocational and educational facilities should be provided for awaiting trial inmates in prisons in order to empower and train them for post-prison life. If this is done, it will go a long way in reducing the rate at which ex-inmates recidivate.

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<sup>81</sup> Administration of Criminal Justice Law of Anambra State, 2010 and Administration of Criminal Justice Law of Ekiti, 2014.

<sup>82</sup> Y Akinseye-George (n. 41), p. 313.