

**PAPER PRESENTED AT THE NBA CONFERENCE ON THE 24<sup>TH</sup> OF AUGUST, 2015 AT THE INTERNATIONAL CONFERENCE CENTRE ABUJA**

**THE CASE FOR PRISON REFORM IN NIGERIA:  
THE PLIGHT OF PERSONS AWAITING TRIAL-THE WAY  
FORWARD FOR PRISON REFORMS IN NIGERIA.**

**INTRODUCTION**

The President Nigerian Bar Association Augustine Alegeh SAN FCI Arb (UK). The chairman of this session, members of the high table, my Lords, ladies and gentlemen, it gives me great pleasure and honour to be called upon to participate at the Breakout Session and talk on "The Plight of Persons Awaiting Trial - The Way Forward For Prison Reforms in Nigeria".

The first thing we have to define here is who are the Persons Awaiting Trial, otherwise referred to generally as ATPs. These are persons who are in prison, but are yet to be tried or convicted of any offence. The Concise Oxford Dictionary defines prison thus:

"a building for the confinement of criminals and those awaiting trial"

It is clear that the definition above includes the ATPs as part of the persons to be kept in prison, but could this really be right when they are yet to be tried and convicted at times? However, some of them end up staying in prison in excess of the length of time they would have spent after conviction. S. 35 (1) (a) of the 1999 Constitution provides as follows '

**35. (1)** *"every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in the following cases and in accordance with a procedure permitted by law-*

*(a) in execution of the sentence or order of a court in respect of a criminal offence of which he has been found guilty"*

In the light of the above provision, the confinement of the ATPs is against fundamental human rights and unlawful. Some school of thought believe that

the delay in criminal trials is the cause of overcrowding of prisons by ATPs and that this needs to be seen to with a view to providing remedies to tackle the problem of our criminal trials.<sup>1</sup>

<sup>1</sup> Ogundele E.O (Assistant Controller-General of Prisons) *Awaiting Trials And Prison Congestion in Nigeria: A Study of Federal Capital Territory, Abuja*. A dissertation presented to the National Institute, Kuru in Nov. 2013; *Plight of Awaiting Trial Inmates*. The Punch Newspaper Jan 16, 2012; Agomoh U (1996), *Decongesting The Nigerian Prisons And Police Cells: A Handbook of Practical Strategies for the Remand Population*, PRAWA: Lagos

<sup>2</sup> Ibid.

<sup>3</sup> Ogundele E.O (2013) *ibid*

<sup>4</sup> *Plight of Awaiting Trial Inmates*' The Punch Newspaper Jan 16, 2012

<sup>5</sup> Aborn, R.N, Cannon A.D *Prisons: In Jail but not Sentenced* (Winter 2013) (online) [americanquarterly.org](http://americanquarterly.org) from

<http://www.americasquarterly.org/aborn-prisons>. last accessed 12th Aug, 2015

The situation from the various articles read show that the rise in the increase of ATPS has mainly been in the last 25 years. For the last 20 – 25 years there has been a dominance of ATPS. This was not so earlier.<sup>2</sup> In 1985 the total number of Prisoners in Nigerian Prisons was 53,786 out of which 21,515 were ATPS. In 1990 the figure changed with 55,331 inmates and 27,665 being ATPS.<sup>3</sup> In 2014, the situation had become even much worse. Of the 56,785 inmates in the Nigerian prisons, only 17,775 were convicted. The rest, a staggering 39,010 are ATPs!<sup>4</sup>

From the foregoing, we can see that the major problem facing the Nigerian Prison Service is that the prisons are over congested with ATPs

The problem of ATPS is not only confined to Nigeria, records show that countries in the Americas are also facing this problem. The pre-trial detention is a system widely adopted in these countries; however, studies have shown that it is being used arbitrarily and excessively. In 2013, the US had the largest population of pretrial detainees which was about 487,000, followed by Brazil with 190,000, Mexico 38,000. Peru, Columbia and Argentina 31,000-34,000.<sup>5</sup> The studies also show that as a result of these high pre-trial detention rates, 10 to 40 percent of the entire incarcerated population is behind bars without a conviction in most countries in the Americas. The highest proportion of pre-trial detainees among the total prison population is in Bolivia (83.6 percent), followed by Paraguay (71.2 percent), Haiti (67.7 percent), Venezuela (66.2 percent), Dominican Republic (64.7 percent), Uruguay (64.6 percent), Panama

(60.8 percent), Peru (58.6 percent), Guatemala (54.4 percent), Argentina (52.6 percent), and Honduras (50.1 percent).<sup>6</sup>

<sup>6</sup> . International Centre for Prison Studies, *World Prison Brief*, available at:<http://www.prisonstudies.org/info/worldbrief/> (Prison population total (including pre-trial detainees / remand prisoners);

<sup>7</sup> see Ogundele E.O (2013) at p.54

<sup>8</sup> Okpi, A 'Police main cause of prison congestion' Punch newspaper 12<sup>th</sup> Feb. 2013

In some cases pre-trial detention is used to keep politicians in prison so as to prevent them from frustrating the activities of their political opponents. In Africa the percentage of the total inmate population awaiting trial in Nigeria is the worst followed only by South Africa.

The state of ATPs in Nigeria is pitiful as they hang between life and death, uncertain of their fate. In the Nigerian prisons, they make up to 75 percent of the prison population, overburdening the already stretched resources allocated to the prisons. Their situation is lamentable as they are not entitled to any of the rights the convicted inmates have. Thus they are not entitled to any training, vocational or otherwise. They are not even entitled to the processes that have been put in place to reform prisoners because they are not regarded as legal residents. They are therefore left to languish and decay. When (and if) they are finally released, they do not have anything to show for the loss of time, except their bitterness at a heartless government and legal system and the tough experiences they must have passed through in jail and this also gives room for recidivism once they are released from prison.<sup>7</sup>

#### **B. CAUSES OF PRISON CONGESTION BY ATPs**

**The major reason why there are so many inmates awaiting trial is due to the slow pace in our criminal justice system, augmented by the lock up mentality of the police.**

##### **i. Who Is To Be Blamed?**

Who are the main culprits in this shameful state of affairs? The police.

Usually, the lapses in the Nigerian justice administration system start when the police arrest a suspect who may be guilty of nothing more than being in the wrong place at the wrong time.<sup>8</sup> Scantily equipped and poorly funded, the police lack the capacity for a thorough and effective investigation. More often than not, they see the arrest of any suspect as an opportunity to extort money. Though the law provides for a suspect to be charged to court within 48 hours of detention, the police end up holding people for longer periods than the law

permits. Those who may not have the means of obtaining bail or hiring lawyers are left to languish in detention over minor infractions. In some cases, it has been opined that the police are of the mentality that once people are locked up, the keys should be thrown away and will not be able to see the light of day.<sup>9</sup>

<sup>9</sup> Ogundipe O.A OFR, MNI Controller General Of Prisons *'Decongestion Of Courts And Prisons: The Way Forward'*. A Paper Presented At The Induction Course For Newly Appointed Judges And Kadis On 22<sup>nd</sup> June, 2009 At The National Judicial Institute, Abuja.

<sup>10</sup> See *Ogunsanya v The State* (2011) 9 SCM 5; see also Ogundipe O.R( June 2009) ibid

<sup>11</sup> Ogundipe O.A OFR, MNI (June 2009)

<sup>125</sup> Ogundele E.O 2013 ibid; Ogundipe O.A OFR, MNI (June 2009) ibid

ii. There are instances where ATPS have spent upwards of 10 years in prison without trial because either the case file has been misplaced at the DPP's office or that it is among those awaiting for the DPP's advice. In some cases, court adjournments are made for such long periods that the accused who should have been taken to court on a particular day, could not because, maybe there was no vehicle available to convey him to the court and therefore the case had to be adjourned.

iii. There are instances where the accused person even prefers the long adjournments and advise their counsel accordingly.<sup>10</sup> According to Ogundipe O.A,

*"...it could now be insinuated rightly that ATP detention period in Nigeria is considered a rest period for many criminals. They are no longer interested in going to courts, and when they get to courts they ask their lawyers to take long adjournments so that the cases do not get regularly called up... indeed, some suspects are no longer interested in engaging lawyers thereby leading to intervention from the office of the Attorney-General of the Federation. It is their belief that if they stay in prison for long time, they will be released to go back to what they know how to do best-crime"<sup>11</sup>*

Counsel should be advised not to allow their clients to dictate to them in this regard as this adds up to the government expenditure and depletes the already stretched resources of the prison service. Also, the ratio of the warden to prisoners is very high and so the lesser the prisoner population, the better for the prison service so as to be able to cater for them properly. 12 5

*iv.* It is also absurd that in many instances, people are arrested before investigations are completed and charges are preferred against them. In many cases, the police claim that a long period of detention, especially in criminal cases, is necessary to prevent suspects from interfering with investigations or obstructing the cause of justice. This has swelled the number of awaiting trial inmates in Nigerian prisons

*v.* Arbitrary arrest by police and keeping persons on holding charge also contribute to the congestion in the prisons

#### **vi. Non Availability of Witnesses**

Some of the incessant adjournments that are pertinent to criminal cases are caused by the reluctance of witnesses to give their testimony. This slows down the trial and sometimes brings it to a standstill, thereby prolonging the stay of the affected ATPs

*vii.* Some of these inmates cannot afford legal representation due to poverty and the ones accorded by the state are usually very ineffective, inexperienced and inefficient.

### **C. THE CONDITION OF ATPS IN NIGERIAN PRISONS**

#### **i. Lack of medical attention and adequate feeding**

Medical facilities are severely limited; food, which represents 80 percent of annual prison expenditures, is inadequate, despite a prison agricultural programme designed to produce local foodstuffs for the commercial market. Malnutrition and disease are therefore rampant. In May 1987 at Benin Prison, armed police killed twenty-four inmates rioting over food supplies. In May 1987 at Benin Prison, armed police killed twenty-four inmates rioting over food supplies.

#### **ii. Rape**

In a recent report about the state of inmates in Nigerian prisons from the Nigerian prison service, it was stated that of the 56,785 inmates in Nigerian 6

prisons, 10 were babies with their mothers<sup>13</sup>. The Guardian Newspaper of 13/8/15 had an article which indicated that these children are serving in prison with their mothers<sup>14</sup>. This is unacceptable. The question to be asked is, how did these babies come about? Reports have shown that police officers and prison wardens harass and rape female inmates, some of who conceive and bear children in jail. There have also been reports of some extreme measures taken by the unhappy mothers, like the strangulation of their unwanted children. Unfortunately for them, these children go unclaimed by their fathers and NOTHING is done to punish these errant men.<sup>15</sup>

<sup>13</sup> *Nigeria Prisons holds over 56,000 Inmates: Over 30,000 Awaiting Trial*. Online article accessed from <http://www.premiumtimesng.com/news/top-news/170701-nigeria-prisons-holds-over-56000-inmates-over-30000-awaiting-trial.html> [last retrieved 19/8/2015]

<sup>14</sup> *15 Infants Among Umuahia Inmates, Says NGO* Guardian Newspaper of 13<sup>th</sup> August, 2015

<sup>15</sup> *ibid*

<sup>16</sup> *Prison Officials Rape Terror suspect-Keyamo*. Accessed online from <http://www.huhuonline.com/index.php/more-news/1950-prison-officials-rape-terror-suspect-keyamo> {last accessed 19/8/2014}

<sup>17</sup> *Plight of Awaiting Trial Inmates*. The Punch Newspaper Jan 16, 2012

<sup>18</sup> Cited in Eze M.C *Institutional Reforms and the Development of Nigeria Prisons Service, 1999-2007* (2010) Journal of African studies And Development. Vol 2(5) pg.114-121

Some reports have also shown that male prisoners are being raped by prison officials!<sup>16</sup>

### **iii. Inhuman and Degrading Treatment**

This is a common practice in Nigerian prisons whereby inmates being brought in on heinous charges are brutalized. Maltreatment of inmates is common, abuse frequent with some occasional torture. Some of the detainees are kept under inhuman conditions, shackled, and hooded. As recounted by one Effiong Elemi-Edu, who was released after spending 15 years in prison for his alleged role in the 1995 murder of pro-democracy activist, Chief Alfred Rewane. Elemi-Edu, who was picked up alongside others, said he was “asked to lie face down on the ground, my hands up, and they chained me with a rubber twine and then suspended me from my legs.” This type of brutality is commonplace in the detention experience of Nigerian inmates.<sup>17</sup> According to Alemika and Alemika, the fundamental aims of penal policy in Nigeria are punishment, deference and “sowetal” protection through custodial incapacitation. <sup>18</sup> 7

#### iv. Overcrowding

Rooms which were originally built to house not more than fifty inmates are usually stretched to contain not less than 150. The rooms have very little ventilation and so are very stuffy and flea infested. This stretch in resources usually leads to bullying and the more pertinent danger of an epidemic in case one of the inmates has contacted a contagious disease.

The Kuje Prison in Abuja for example, was commissioned in 1989 with a capacity for 160 inmates. It has modern facilities like a hospital, tennis and basketball courts, Army Observation Tower, barbed wire and a control room. However, its capacity was overstretched. <sup>19</sup> Professor E. Alemika who was the Chairman of the Presidential Committee on Prison Reform had this to say after visiting the Kuje prisons in 2006:

<sup>19</sup> Ogundele E.O 2013 .ibid

<sup>20</sup> Ibid. at p.57

<sup>21</sup> Yusuf, I A paper presented at The International Conference on Human Rights and Prison Reform Organised by Citizens United by Rehabilitation of Errants (CURE) Held In Bangkok, Thailand on 4<sup>th</sup>-8<sup>th</sup> March, 2014. Accessed from[ <http://childdevelopmentandconcern.com/index.php/reports/paper-presented-at-international-conference-on-human-rights-and-prison-reform.>] last accessed 19/8/2015

*“This is one of the newest prisons in the country and it is supposed to be the best. The capacity has been exceeded by nearly 100 percent. But that is not the tragedy. The tragedy is that you have almost 700 inmates and only 43 of them are convicted, the rest awaiting trial, some ranging from a few months to seven years...”*<sup>20</sup>

#### **The Effects of Overcrowding**

**-Prison Riot-** In 1952 there was a prison riot caused by overcrowding in the former Broad Street Prison Lagos as the 300 capacity prison facility was housing over 700 inmates. This led to the construction of the Maximum Security Prison Kirikiri with a capacity for over 1700 inmates. However, this same facility has exceeded its capacity and is the most overcrowded in Nigeria.<sup>21</sup>

On the 28<sup>th</sup> of March, 2007, a riot occurred in Kuje prison which resulted to the death of two inmates and the wounding of many others. According to the inmates, the riot occurred as a result of food and water shortages. To quote some of them, “before they gave water, it was late in the evening”. They also blamed the judiciary for the slow pace of court cases which in turn 8

increases prison population.<sup>22</sup> After this incident, in 2008, the facility was upgraded to house 1120 inmates but still faces problems of overcrowding.<sup>23</sup>

<sup>22</sup> See Ogundele E.O (2013) *ibid*

<sup>23</sup> See Ogundele E.O 2013 at p.43 and 52

<sup>24</sup> *Nigeria Prisons Rising Population*. Online articles accessed from

[<http://www.thisdaylive.com/articles/nigerian-prison-s-rising-population/77570/>] last retrieved 19/8/2015

**-Death-** There is so much overcrowding and poor ventilation with poor environmental sanitation that this sort of situation causes death and diseases. These deaths usually occur as a result of suicide, illness or a fracas in the prisons. Nearly 300 prisoners died of “natural causes” in 1984, and 79 committed suicides, a dramatic increase from the average of 12 suicides per year between 1980 and 1983. Ikoyi prison alone recorded more than 300 deaths in 1988, and 42 deaths in the first three months of 1989. In June 1989, the Civil Liberties Organization filed a suit on behalf of 1,000 detainees held without trial at Ikoyi, charging the government with mistreatment and urging that the over 100-year-old prison be closed.<sup>24</sup>

#### **D. Why Decongest the Nigerian Prisons?**

A disproportional number of those in prison are awaiting trial persons, an equally high number of these are detained for long period before the completion of their trial process. In some instance, this ranges as high as 4 year to 10 years or even more. The situation was worse pre 1999 (during the military era and its aftermath) with many cases ranging from 10 years to 15 years or more. It has been stated that,

*“having a high proportion of remand prisoners leads to several administrative and practical problems for both the prison establishment, the police, the judiciary, (the ministry of justice), the prisoners, and their families and the society in general. For the prison establishment, these include: overcrowding, high cost of maintenance, increased staff stress and work load, non-qualitative prison regime, poor management and discipline. For the judiciary (ministry of justice) and the police, it raises a lot of philosophical and credibility questions. For instance, remands in prison have been linked to poor outcome of trial. Evidence suggests that the probability of conviction is higher among those remanded in custody than those remanded on bail.*

*Also, among those convicted, the probability of a custodial sentence is higher for those remanded in custody than those granted bail. Various reasons have been attributed to these which include viz: the lower rate of pleading not guilty by defendants who have been remanded in custody, their disadvantages in 9*

*preparing their cases for trial and their higher likelihood of receiving custodial sentence. Furthermore, the problems faced by the remand prisoners and their families are numerous. In fact, they have been found to suffer the worst conditions in prisons than any other category of prisoners. Such problems relate to physical, psychological, medical and economic conditions'.<sup>25</sup>*

<sup>25</sup> Agomoh U (1996), *Decongesting The Nigerian Prisons And Police Cells: A Handbook of Practical Strategies for the Remand Population*, PRAWA: Lagos at pages 2 - 3

### **-Benefits of Prison Decongestion**

Decongestion of the prisons of the ATPs will be of great benefit to the prison service, the ATP and to the image of the Nigerian criminal justice system as a whole. Some of these benefits are

#### **a. The Nigerian Prison Service**

- Reduction in monetary expenses

Reduction of staff workload and stress

Manageability of the prisons/Improved prison regime

Reduction in prison overcrowding rate

Improved sanitary and living conditions in prisons

- Reduction of lack of discipline, disturbances and aggression in prison

**b. Benefits to the ATPs:**

- Reduction of unnecessary violation of the individual's right to liberty
- Prevention of the negative effects of incarceration such as psychological stress to the prisoner; financial, psychological and social stress faced by their families.
- Opportunity for better preparation of their cases
- Prevention of criminal socialisation of those innocent by the more serious and sophisticated offenders. ( To this end, it is proposed that separate centre be built for the incarceration of ATPs)

**E. WHAT IS THE WAY FORWARD?**

Responsibility for alleviating the plight of ATPs is a collective one that should be shared between all the forces involved. Thus, the government and the whole criminal justice system share obligations in this cause.

**The Police**

**a.** Good investigating and preventive policing initiative including surveillance, improved criteria and practice of police bail procedure, independent lay visits and other monitoring mechanisms; improved transportation of suspects to court and adoption of pre-trial diversion

measures. The government should embark on the training of paralegals to help in the work both of the prison, the police and the courts as is done in other countries abroad.<sup>26</sup>

<sup>26</sup> Like in the UK and the USA

<sup>27</sup> Cap.40 vol.4 LFN 2004

<sup>28</sup> *Ekiti CJ Orders Release of 34 Awaiting Trial Inmates* The Guardian Newspaper 10<sup>th</sup> August 2015 at pg 14  
Incidentally, the Hon. Justice Aremu's Academy for Basic Studies is a pioneer institution established since 2005 for the training of paralegals.

### **b. Training of Police Personnel**

Adequate attention needs to be paid to the quality of police personnel who handle investigation and prosecution of cases in courts. These personnel should be both intensively and extensively trained on the criminal investigation and prosecution so as to curb the level of delays caused by the police in criminal justice administration.

c. There should be an enhanced cooperation between police and the public, particularly in terms of encouraging witnesses to come forth. This will help to speed up the process of criminal proceedings as witnesses are very important in the trial process. Incentives to encourage both the investigators and the prosecution should be considered. Incentives may be provided for these witnesses to make their duty of witnessing attractive.

### **The Government**

a. Should properly address the problem of prison decongestion, especially in ATPs cells. Prison congestion has over the years created problems that have ripple effects and urgent attention is needed from the federal government to plan and restructure the prison system in all ramifications so as to have effective and efficient criminal justice administration.

b. In the interim, government should release inmates who have stayed long awaiting trial than they would have done had they been convicted and sentenced. This is called Jail Delivery which is empowered by section 1(1) of the Criminal Justice (Release from Custody) Special Provisions Act<sup>27</sup>. The fire brigade attitude of Chief Judges visiting prisons once in a year or so should be made regularly. An exercise of this nature was done in Ekiti state where the release of 34 ATPs was made on the order of the Chief Judge of the state.<sup>28</sup> I humbly suggest that it should be done quarterly. 11

On the 6<sup>th</sup> of August, 2015, there was a broadcast on the NTA about the liaison between the Legal Aid Council and some NGOs which provide human rights services to provide additional lawyers to help provide services to bring speedy trials of persons awaiting trials.

c. There is an urgent need for the construction of adequately staffed and equipped modern hospitals to improve the health status of inmates.

d. The rehabilitation of existing prisons and construction of new ones is also pertinent because the old ones are in a deplorable state, some in a state of decay having been built since pre-colonial times. However, this will cause extra budgetary allocation of funds which in the end may be counterproductive because the extra space will encourage more ATPs! –A good example of this is the case of the Kuje prisons in Abuja.<sup>29</sup>

<sup>29</sup> See Ogundele E.O (Assistant Controller-General of Prisons) *Awaiting Trials And Prison Congestion in Nigeria: A Study of Federal Capital Territory, Abuja*. A dissertation presented to the National Institute, Kuru in Nov. 2013

e. The issue of rape especially of women in prisons should be tackled with seriously. Errant prison officials and police officers should be reported and punished appropriately. There should be strict sanctions on prison warders and their superiors where women in prison suddenly become pregnant and have to deliver in prison. The paternity of the children should also be ascertained.

### **Judiciary**

a. Steps should be taken to address the frequent use of holding charges and consequent prolonged arbitrary detention.

b. Recruitment and training of additional court and judicial personnel.

c. Improved court bail criteria and practice, efficiency of court /law officers (including speedy recording of court proceedings)improved legal aid criteria and introduction of bail information scheme to improve bail decisions, practice, supervision and support scheme for those on bail, use of bail hostels, alternative to pre-trial detention (including introduction of pre-trial victim-offender mediation).

### **The Prison Service**

a. There is a need for an improvement in the following areas- Communication and information on awaiting trial/remand prisoners, independent lay visits and other monitoring mechanisms, regular

utilization of the decongestion committees at the state level and transportation of defendants to courts.

b. Strategic action in the following critical areas of concern, namely:

Indiscriminate Arrest; Inadequate Investigation before Arrest; Abuse of the right to bail and the bail procedure; Lack of quality legal representation; Long Detention without Trial, Prison Congestion and Prolonged Trial; Transportation of defendants from prison/police cells to court; Over utilisation of incarceration (remand in custody); and under utilisation of non-custodial (alternatives to imprisonment) measures.

### **c. Availability of Vocational Training To ATPs**

These trainings are only available to the convicts. ATPs are adjudged innocent no matter how long they are incarcerated and so are not allowed to benefit from the reformation and rehabilitation programmes.<sup>30</sup>

<sup>30</sup> Agomoh U (1996), *Decongesting The Nigerian Prisons And Police Cells: A Handbook of Practical Strategies for the Remand Population*, PRAWA: Lagos; Ogundele E.O (2013) *ibid*

<sup>31</sup> See Ogundele E.O (2013) *ibid*; Obioha E.E *Prison Culture in Nigeria: A Study of Life within Agodi Prison Community, Ibadan. A Dissertation Submitted To The Dept Of Sociology, University of Ibadan in 1995.*

<sup>32</sup> *Remarks by the President at the NAACP Conference* (online) accessed from <https://www.whitehouse.gov/the-press-office/2015/07/14/remarks-president-naacp-conference>; last accessed 13/8/2015

This practice of exclusion should be abolished. These people though not technically prisoners, are inmates in the prison who may spend a very long time being incarcerated. Thus if and when they are released, they should have something positive to show for the time lost. It is on record that some of the ATPs spend as long as between 4-10 years so why should the time be wasted? In what ways are they going to be able to fit into the society when they are released? Prison should be a place of punishment and retribution and should be used for reform and not degeneration. Studies have shown that most of the people in this category, become worse when they re-enter the society because of the gory treatments they experienced during incarceration; experiences that would have been alleviated by the processes of reformation available to convicts.<sup>31</sup>

### **ATPs IN THE U.S.A**

As had been said before, Nigeria is not the only country facing this problem. The prison population of the US for example, accounts for 25% of prison population worldwide<sup>32</sup>. Recently, President Obama addressed the NAACP<sup>33</sup>

*Prisons- President Obama's Lasting Legacy Will Be Penal Reform* The Independent Newspaper, Sat 18<sup>th</sup> July, 2015

<sup>33</sup> NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE.

<sup>34</sup> *Remarks by the President at the NAACP Conference.* ibid.

<sup>35</sup> Remarks by The president at the NAACP Conference (online) accessed accessed from <https://www.whitehouse.gov/the-press-office/2015/07/14/remarks-president-naacp-conference>; last accessed 13/8/2015

<sup>36</sup> ibid

<sup>37</sup> ibid

on the American criminal justice system. He bemoaned the lamentable state of prisoners, especially those who should not have been there in the first place or who were spending too much valuable time being there as a result of the extremisms of the justice system. In his words,

*".. We should not tolerate conditions in prison that have no place in any civilized country. We should not be tolerating overcrowding in prison. We should not be tolerating gang activity in prison. We should not be tolerating rape in prison. And we shouldn't be making jokes about it in our popular culture. That's no joke. These things are unacceptable..."*<sup>34</sup>

He also gave details about the type of reforms he would like to see enacted by congress.<sup>35</sup> These reforms include-

**a. Reducing prison congestion and overcrowding by adopting sentencing alternatives to incarceration.**

He bemoaned the fact that overcrowding in prisons was costing a lot of money, a staggering USD80 billion. He advocated for cheaper alternatives like investing in drugs courts and treatment and probation programmes. <sup>36</sup> Nigeria could also benefit from such wise counsel.

**b. After prison what next?**

To ensure that they have lesser trauma with their re-introduction into the society, President Obama proposed ways to link former prisoners with employers and help them stay on track. For instance, eliminating the practice by which job applicants are asked to state whether they have had previous convictions or not so that former prisoners who have done their time and are now trying to re-enter with society can have a decent job interview. <sup>37</sup> Fortunately, the Criminal Justice Act 2015 of Nigeria seems to be a light at the end of the tunnel for the criminal justice system. If well implemented, it may be able to alleviate a lot of the difficulties in criminal trials and also 14

reduce the number of persons being kept in custody without trial. Section 230 provides for alternative sentences other than prison custody, such as community service, parole, and suspended sentences, as a way of reducing prison congestion by ATPS.

The new provisions set the limit for carrying out investigations, arraignment and prosecution of suspects. The police are now under a duty to submit to the Attorneys General quarterly reports of persons, arrested, released on bail or refused bail, and the bail conditions.

The Act makes provision for plea bargain where a prosecutor is of the view that the acceptance of such bargain will be in the interest of justice.<sup>38</sup>

<sup>38</sup> S.270 CJA 2015

Under S. 167 (3) of the Act, women can now stand as sureties for bail. There are instances where lack of suitable sureties for an accused has ended the accused in prison as an ATP.

However, as with all new solutions, the implementation of the provisions will make a success of the new Act. Without a conscious effort to make the new provisions count, we may soon find that the situation as it is now will continue to get worse.

### **RECOMMENDATIONS**

In the light of the aforementioned, I hereby propose the following reforms-

1. It may be suggested that the police and other paralegal personnel can be trained to be able to expedite trial of cases to reduce the ATPs. To this end, I humbly propose that there should be a cooperation between the NBA and the National Board for Technical Education (NBTE) to implement the federal government's vision for the training of middle level manpower, including paralegals, who will be in a position to assist in the investigation of criminal cases and also be of assistance to the lawyers, judiciary and the legal system as a whole. The investigation of cases could be speeded up by such trained personnel

2. That the Jail Delivery system should be done more often and I humbly suggest again that it should be done quarterly at least.

3. Vocational training should be open to all inmates for the purpose of rehabilitation moreso, for those who have not been found guilty of the crimes for which they have been incarcerated.

4. The practice of the authorities deliberately transferring some prisoners farthest from their homes, thus making it difficult for family visit ought to be stopped. This is done for political vendetta against opponents of the government. In Denmark, facilities are provided to prisons to facilitate family visits and they are allowed some kind of privacy. This is done to provide opportunities for parenting and also strengthen family ties.

5. Most of the prisons were built 70-80 years ago and therefore lack basic facilities like pipe borne water, churches and mosques. These are necessities which need to be provided to enable the prisoners to be reformed before they are released. Thus I humbly suggest that new prisons be built and the old ones be rehabilitated and furnished with the aforementioned facilities.

6. Ogundipe posited that “the present face of Criminal Justice Delivery System is far from the ideal” as we have become accustomed to seeing remand of suspects in prison custody as an end of judicial process”.<sup>39</sup> This must also be addressed.

<sup>39</sup> Ogundipe O.A OFR, MNI Controller General Of Prisons ‘*Decongestion Of Courts And Prisons: The Way Forward*’. A Paper Presented At The Induction Course For Newly Appointed Judges And Kadis On 22<sup>nd</sup> June, 2009 At The National Judicial Institute, Abuja.

7. It would be ideal if separate criminal courts could be established in line with the famous Old Bailey in Central London which only deals with criminal trials. Once the trial begins, it goes on from day to day till judgement is given. This will speed up trials and also reduce prison congestion.

8. Judges could be appointed mainly for criminal matters in some state capitals so as to clear ATPs and decongest prisons. In addition senior

criminal lawyers can be appointed as 'Recorders' to expedite the hearing of criminal cases as is the case in the U.K.

I must thank Mr. Emmanuel Oladepo Ogundele Acting Deputy Comptroller - General of Prisons (Operations) whose dissertation in Awaiting Trials and Prisons Congestion in Nigeria, a paper he presented at the national Institute Kuru in 2013, assisted me a great deal.

Thank you for listening

Chief (Mrs) Connie-Jean Aremu (SAN)