

Decongesting Nigerian Correctional facilities: An Outline and Critique of the Efforts under the Administration of Criminal Justice Act 2015

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ABSTRACT

Congestion in the Nigerian Prison is a well-known phenomenon; over the years, it has hindered the aim of the prison to rehabilitate offenders back to the society. Even though the aim of establishing the prison institution in Nigeria is to provide a rehabilitation and correctional facility for people who have violated the rules and regulations of the society, in practice, achievement of this aim has been a mirage, occasioned by prison congestion. Several attempts have been made to decongest the prisons but none has yielded any positive result. In view of this, this paper examines the dynamics and polemics of the Nigerian prison system, and how to overcome them. It posits that the Administration of Criminal Justice Act (ACJA)2015 came with some needful provisions that are related to prison decongestion and it is a welcome development if it will not just be on paper but carefully implemented. The article begins with conceptualization of the key terms; it briefly narrates the historical overview and provides empirical evidence of prison congestion in Nigeria, and describes causes and consequences. More importantly, it outlines the efforts under the ACJA geared toward decongesting the prison; and concludes that enforcement of the relevant provisions of the law is paramount in the realization of prison decongestion in Nigeria.

Keywords: Decongestion, Nigerian Prisons, Administration of Criminal Justice Act 2015

INTRODUCTION

In Nigeria, the prison environment continues to pose serious threats to the physical and mental well-being of inmates and prison officers alike. Conditions such as lack of medical facilities, poor toilet facilities and beddings, and denial of access to justice, continue to persist in clear contrast to the established standards stipulated in the UN Standards for the Treatment of Persons in Custody.

Available records show that overcrowding in the Nigerian Prisons is a major challenge to the criminal justice system. Inmates are kept in prison custody beyond the capacity for which most prisons were built to accommodate.¹The

pain and suffering experienced by prisoners inside the Nigerian Prisons are untold and without measure. Considering the conditions of the prisoners, being sentenced to a term of imprisonment in Nigeria is akin to imposing death sentence. Thus, the problems of overcrowding are so blatant and egregious that the Nigerian Prisons have become breeding ground for criminals instead of being corrective homes.²It is therefore imperative to substantiate the level of prison congestion in Nigeria using empirical evidence. It is also important to outline and critique the efforts made under the Administration of Criminal Justice Act 2015 to resolve the issue.

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¹ See generally, Awopetu Ronke Grace, 'An Assessment of Prison Overcrowding in Nigeria: Implications for Rehabilitation, Reformation and Reintegration of Inmates' (2014) 19 Journal of Humanities and Social Science 21, 21.

²Benjamen Okorie Ajah, Criminal Justice Administration and Panic of Prison Correction in Nigeria (2018)2 Journal of Law and Judicial System 1.

CONCEPTUALIZATION OF KEY TERMS

Prisons

According to the Prisons Act in Nigeria, a prison is defined as a place delineated and declared as such by the law of the state and created to ensure restraint and custody of individuals accused or convicted of violating the criminal law of the state.³

According to Lloyd McCorkle and Richard Korn, a prison is a physical structure in a geographical location where a number of people living under highly specialised conditions adjust to the alternatives presented to them by the unique kind of social environment.⁴

Prisoner

According to the Black's Law Dictionary, a prisoner is a person who has been convicted and is serving term in prison.⁵ A prisoner is a person who is sent to the prison by a competent court for violating the laws of a place.⁶ The Prison Act describes a prisoner as any person lawfully committed to custody.⁷ As a matter of fact, this means that if one is lawfully committed to prison custody, he or she is a prisoner.⁸

³ Prisons Act Cap P29 LFN, 2004, Section 19.

⁴ Lloyd W McCorkle and Richard Korn, 'Resocialization within walls' (1954) 293 *The Annals of the American Academy of Political and Social Science* 88, 88.

⁵ Bryan A Gayner, *Black's Law Dictionary*, A(8th edn, West Publishing Co 2004) 1232.

⁶ Prisons Act (n 3) Section 19.

⁷ Ibid.

⁸ See generally Michael C Ogwezzy, 'From Reformation to Deformation: An Approach Towards Sustainable Development of the defective Prison System in Nigeria' (2011) 13 *Journal of Sustainable Development in Africa* 269; Anne Amuche Obiora, *Restorative Justice and Crime Prevention: Antidote for Prison Congestion and Improvement of Prison Condition in Nigeria* (Cambridge Scholars Publishing 2014); Chukwuma Innocent, 'The Legal Structure of the Police and Human Rights in Nigeria' (1997) 14 *Third World Legal Studies* 41, 49; The Court affirmed the view that a person becomes a prisoner from the date of his or her first admission into Prison custody. In effect, awaiting trial inmates (ATM) are prisoners because they are normally admitted pursuant to a court order and steps in regulation 2 of the Prisoners Act are observed before they are taken into custody which provides that no person may be admitted into a Prison unless by a warrant of arrest, a warrant or order of detention or a warrant of conviction or commitment and the superintendent shall verify that the person is the

HISTORY OF PRISON IN NIGERIA

The history of Nigeria's penal system confirms that some forms of imprisonment that were equivalent to prisons existed in pre-colonial Nigeria, where offenders remained locked up, and these were called by several names.⁹ In the Benin kingdom, now the Edos, it is called Ewedo.¹⁰

It is called Gidan Yari by the Hausas in the Northern part of Nigeria and in most cases, built at the back of the Emir's palace.¹¹ The Yorubas in the Western part of Nigeria refer to it as Ewon.¹² Additionally, a place of confinement existed in Lagos, named Faji, where offenders were incarcerated.¹³ It is appropriate to mention that all these forms of prisons remained operative until the British introduced the modern prison version in Lagos territory.¹⁴

However, the current prison system today is a colonial creation.¹⁵ The British colonial masters opened the first prison in Nigeria at the Broad Street in Lagos State. This prison that was intended to accommodate 300 prisoners was

person named in the warrant book or order, that the crime, sentence and date of conviction are recorded therein and that the warrant or order bears the signature of the proper authority. See *Edmond Okoro and Ords v Minister of Internal Affairs* Suit No FHC/EN/CP/102/2000.

⁹ Moses U Ikoh, 'The Nigerian Prison System and the Failure of Rehabilitation: An Examination of Incarceration Alternatives' (2011) 20 *The Nigerian Academic Forum* 1, 2; Kebreab Isaac Weldesellasse, 'The Development of Criminal Law and Justice in Africa from Pre-Colonial Rule to the Present Day' in Charles Chernor Jalloh and Ilias Bantekas (eds), *The International Criminal Court and Africa* (Oxford University Press 2017) 248.

¹⁰ Ikoh (n 9).

¹¹ Ibid.

¹² Joseph Omodele Adewumi, *Essentials of the Nigerian Corpus Juris* (Alabi-Eyo & Company 1998) 176.

¹³ Toyin Falola, 'Brigandage and piracy in nineteenth century Yoruba land' (1996) 12 *Journal of the Historical Society of Nigeria* 83, 105. This study offers insight into the organization of crime in different areas in the Yoruba hinterland before colonial rule.

¹⁴ Viviane Saleh-Hanna and Chukwura Ume, 'An Evolution of the Penal System: Criminal Justice in Nigeria' in Viviane Saleh-Hanna (ed), *Colonial Systems of Control: Criminal Justice in Nigeria* (University of Ottawa Press 2008) 57.

¹⁵ Chukwu Chigozie Brown, *Reforming Nigeria Prisoners* (Lulu.com 2012) 6; Elias (n 37).

modeled on the British system. This marked the first time trained officers were commissioned to man penal institutions in Nigeria.¹⁶ The indigenous system of imprisonment and confinement was disregarded and the British prison system adopted.¹⁷ It continued until 1876 when the Supreme Court Ordinances came into force and made provision for the establishment of prisons.¹⁸

However, with the spreading out of British rule, the Prison Ordinance also formalised the prison system. As a result of the expansion of the early colonial prison system, the number of prisons increased.¹⁹ By 1909, prisons had been established at various places such as Onitsha, Old Calabar, Sapele, Degema and Benin City.²⁰ However, like the colonial administration, the colonial prison was tailored towards the specific nature of the British system.²¹ Apparently, the British system also recognised the traditional system of punishment of offenders.²²

Furthermore, many of the present prisons in Nigeria were built in the first two decades of colonial rule.²³ For instance, Abinsi (now referred to as Makurdi Prison) was built in 1918, Oturkpo Prison was established in 1924 and temporarily controlled from Enugu prior to the creation of a divisional headquarter, and Gboko Prison was built as a Native Authority Prison in 1932.²⁴ Meanwhile, there were other prisons at the time. Biu Prison was built in 1910 and

subsequently, in 1923, it was moved to its present site. Gwoza Prison was also established in 1920.²⁵ Nguru Prison was later built in 1928, whereas Maiduguri Prison was first built in 1920, and in 1954, it was rebuilt again.²⁶

PRISON CONGESTION AND CAUSES IN NIGERIA

Among the myriad of problems faced by the Nigerian Prisons is that of congestion. Records show that overcrowding in the Nigerian Prisons is a major challenge to the criminal justice system. Inmates are kept in prison custody beyond the capacity for which most prisons were built to accommodate.²⁷

The pain and suffering experienced by prisoners inside the Nigerian Prisons are untold and without measure. Considering the conditions of the prisoners, being sentenced to a term of imprisonment in Nigeria is akin to imposing a death sentence. A critical look at Table 1 below shows that prisons are highly congested in Nigeria, going by the figures in the selected states (Enugu, Gombe, Kaduna, Lagos and Rivers States) as well as in the Federal Capital Territory (FCT), Abuja.

The states that are most industrialised with the highest population and rate of criminality were chosen to represent each of the six Nigerian Geo-political Zones in order to provide evidence on what obtains in the various zones and by extension, Nigeria. According to the data from the National Bureau of Statistics (NBS), the number of inmates exceeded the infrastructural capacity that was contemplated when they were built in all the States as well as the Federal Capital Territory, Abuja.

In Enugu State, representing the South-East Zone, the number of prison inmates was far above the maximum prison capacity.

The prison capacity was exceeded by over 91 to 806 inmates between 2007 and 2015. This represents seven to fifty-eight percent in excess of the population the facilities were meant to accommodate. This situation is even worse in

¹⁶ *ibid* 58; Etannibi E O Alemika, 'Criminal Victimization and Criminal Justice Administration in Nigeria' in Etannibi E O Alemika (ed), *Crime and Public Safety* (CLEEN Foundation Publisher 2014) 21.

¹⁷ Frank Dikotter and Ian Brown, *Cultures of Confinement: A History of Prison in Africa, Asia and Latin America* (Cornell University Press 2007) 7.

¹⁸ Cindy J Smith, Sheldon X Zhang and Rosemary Barberet (eds), *Routledge Handbook of Criminology* (Routledge 2011) 466.

¹⁹ Viviane Saleh-Hanna and Chukwura Ume, 'An Evolution of the Penal System: Criminal Justice in Nigeria' in Viviane Saleh-Hanna (ed), *Colonial Systems of Control: Criminal Justice in Nigeria* (University of Ottawa Press 2008) 58.

²⁰ Chukwu Chigozie Brown, *Reforming Nigeria Prisoners* (Lulu.com 2012) 8.

²¹ Bolanle Awe, 'The History of the Prison System in Nigeria' in Taslim Olawale Elias (ed), *The Prison System in Nigeria* (University of Lagos Press 1968) 4.

²² Viviane and Ume (n 14) 59.

²³ *ibid*.

²⁴ *ibid*.

²⁵ *ibid*.

²⁶ Teslim Olawale Elias, *The Prison System in Nigeria* (University of Lagos Press 1964) 59.

²⁷ Awopetu Ronke Grace, 'An Assessment of Prison Overcrowding in Nigeria: Implications for Rehabilitation, Reformation and Reintegration of Inmates' (2014) 19 *Journal of Humanities and Social Science* 21, 21.

Gombe State. Although there was no prison congestion from 2006 to 2007 in the State, extra inmate population above maximum prison capacity increased from 17 in 2007 to 1,049 in 2015.

This accounted for three percent overpopulation in 2007 to as much as one hundred and sixty-four percent increase (more than twice) over the population the prison facilities were meant to accommodate in 2015. In Kaduna State, however, the statistics show that there was no prison congestion within the period under study (from 2005 to 2014) but the problem of overpopulation in the Nigerian Prisons had started to affect the country in 2015. In the State, the total capacity of prisons stood at 2,702 but there were 2,720 inmates in 2015, representing eighteen percent increase over the maximum capacity.

Lagos Prison also experienced inmate congestion within the period under study (2005 to 2015) except in 2014. Prisons in Lagos State had extra inmates of 528 to 2,528, equivalent to twenty-one and ninety percent increase respectively above the maximum capacity. In Rivers State, the increase in the number of inmates above the maximum prison capacity is worrisome. Overcrowding of prison inmates cuts across all the years studied (2005 to 2015).

The prison had an excess in the number of inmates, ranging from 1,182 to 31,093 above the population that the facilities were designed for, amounting to between 87 and 2,296 percent increase (over 23 times) beyond the maximum capacity.

In the Federal Capital Territory (FCT), Abuja, the situation of prison congestion is similar to what obtained in the selected States. The prison accommodated extra inmates of 169 to 585, which is equivalent to thirty to one hundred and thirty percent above the maximum capacity (from 2005 to 2015).

This precarious situation is getting worse annually. For example, overpopulation with regard to prison inmates above the maximum capacity rose from twenty-seven percent in 2010 to fifty-seven percent in 2015 in Enugu State. Also, it rose from thirty-two percent to one hundred and forty-two percent in Gombe State. Likewise, it increased from forty-three percent to eighty-one percent in FCT Abuja.

In Kaduna State, where there was no prison congestion up to 2014, the inmate population

increased above the maximum capacity by 18 inmates in 2015. Even in recent times, prison congestion is still on the increase. For instance, there was an increase in the number of inmates in both Lagos and Rivers States between 2013 and 2015.

The extra number of inmates in Lagos Prison rose from 582 (twenty-one percent increase) in 2013 to 1,008 (twenty-five percent increase) in 2015. Likewise, in Rivers State, an extra number of inmates rose from 3,944 (two hundred and ninety-one percent increase) in 2013 to 4,934 (three hundred and sixty-four percent increase) in 2015.

The data reveal the precarious situation of overcrowding experienced in Nigeria's prisons. The few examples out of the 36 States in Nigeria suffice to show the level of congestion in the Nigerian Prisons. The situation is a typical example of what obtains in other prisons throughout the country.

Congestion has for long been a consistent feature of what is in vogue in the nation's prison. Many prison inmates in Nigeria have been on remand for more than the period they normally would serve if they were convicted on time, in the first place.

Besides, there are many minor offences, which do not justify prison terms.²⁸

CONSEQUENCES OF PRISON CONGESTION IN NIGERIA

Overcrowding affects the provision of certain essential needs such as beddings, food (both in quality and quantity), safe and secure environment for inmates. Obviously, hygiene, pollution and sanitation become real life-

²⁸ For example, 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 a 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 latter, are delays in trials, lack of rehabilitation and reformation of prison inmate, and improper mixture of minor, hardened and major offenders in our prison facilities. See Michael Chukwujindu Ogwezzy, Akintunde Abidemi Adebayo and Alaba Ibrinke Kekere 'Restorative Justice and non-Custodial Measures: Panacea to Recidivism and Prison Congestion in Nigeria' (2016) 7 Nnamdi Azikwe University Law Journal 69, 70.

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threatening challenges. Congestion in prisons makes life unbearable for inmates. For the inmates under such deplorable conditions, their health is highly endangered. Furthermore, a

physical examination of the infrastructure of these prisons shows that the buildings were built before 1950 (during the colonial era), about seventy years ago.

Table1. Prisons inmate population and capacity in selected States and Nigeria, 2005-2015

State/Year		2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
Enugu	Number of prisons	4	4	4	4	4	4	4	-	4	4	4
	Number of inmates	1,197	1,270	1,279	1,560	1,485	1,773	2,027	-	1,927	2,119	2,200
	Prison maximum capacity	1,394	1,394	1,154	1,154	1,394	1,394	1,394	-	1,394	1,394	1,394
Gombe	Number of prisons	5	5	5	5	5	5	5	-	5	5	5
	Number of inmates	719	592	558	654	705	843	890	-	1,687	1,332	1,549
	Prison maximum capacity	638	638	637	637	638	638	638	-	638	638	638
Kaduna	Number of prisons	15	15	17	16	16	15	15	-	15	15	15
	Number of inmates	2,363	2,307	2,243	2,221	2,294	2,238	1,883	-	2,396	2,368	2,720
	Prison maximum capacity	2,802	2,802	2,560	2,560	2,702	2,702	2,702	-	2,702	2,702	2,702
Lagos	Number of prisons	5	5	5	5	5	5	5	-	5	5	5
	Number of inmates	4077	3,755	3,902	3,874	4,372	4,740	5,324	-	3,380	3,480	4,905
	Prison maximum capacity	2,796	2,796	2,795	2,795	2,796	2,796	2,796	-	2,798	3,897	3,897
Rivers	Number of prisons	4	4	4	4	4	4	4	-	4	4	4
	Number of inmates	2,536	2,731	3,195	3,380	2,930	32,447	3,362	-	5,298	5,286	6,288
	Prison maximum capacity	1,354	1,354	1,354	1,354	1,354	1,354	1,354	-	1,354	1,354	1,354
FCT (Abuja)	Number of prisons	2	2	2	2	2	3	3	-	3	3	3
	Number of inmates	739	924	762	866	924	1027	959	-	1,073	1,296	1,305
	Prison maximum capacity	570	570	330	330	570	720	720	-	720	720	720
Nigeria	Number of prisons	227	227	228	228	230	238	238	-	240	240	240
	Number of inmates	39,006	40,953	39,691	41,143	41,786	75,261	49,451	-	55,173	56,058	64,974
	Prison maximum capacity	46,706	46,294	586	43,698	46,294	49,496	49,496	-	47,646	49,825	50,153

- represents data not available

Source: Nigerian Prisons Service

Most, if not all of these buildings that are still used as prisons, have become dilapidated and totally inadequate to meet the needs of contemporary prisons.

Thus, some prisoners now sleep on the bare floor while some do share single beds.²⁹ For example, some prisons in Lagos (Lagos Kirikiri, Ikoyi and Badagry Prisons) were built for a capacity of 3,000 prisoners, even though today, they actually hold twice the number.³⁰ Inmates live in very appalling and dehumanising

conditions.³¹ They are packed into very small cells. This over-crowding and indiscriminate mixture of prisoners, together in a choky cell originally meant for ten inmates and now housing 30 to 50 inmates, definitely provides room for constant prison violence and quarrelsome behaviour; significantly and adversely affecting the quality of life lived by inmates. More importantly, the conditions end up hardening inmates rather than reforming them.³² Inmates end up experiencing unfriendliness from other inmates and prison officials. They struggle for everything, including food and beddings, and they are often denied their human rights as prisoners.³³

²⁹Ogadimma Chukwubueze Arisukwu, Adejumo Yinka Philip and Festus Femi Asamu, 'Causes and Effects of Violence in Nigerian Prisons' (2015) 1 Journal of Social Sciences and Humanities 368, 369; Sam Erugo and Charels O Adekoya, *Lawyering with Integrity: Essays in Honour of Earnest Ojukwu* (Lulu.Com 2018) 130.

³⁰ Tinu O Ifaturoti, 'The Challenges of Nigerian Prisoners in the Light of the Human Rights Campaigns' in Cherif Bassiouni and Ziyad Motala (eds), *The Protection of Human Rights in African Criminal Proceedings* (Martinus Nijhoff Publishers 1995) 161.

³¹ Ogwezzy (n 8) 275-276; Ogwezzy, Adebayo and Kekere (n 28) 75.

³² Awopetu (n 1) 21; John Iliffe, *Obasanjo, Nigeria and the World* (Boydell & Brewer Ltd 2011) 155.

³³ Yemi Akinseye-George, *Nigerian Prisons: Justice Sector Reform and Human Rights in Nigeria-Centre for Socio Legal Studies* (CSLS Publishing 2009) 307; Abubakri Olakulehin Yekini and Mashkur Salisu, 'Probation as a Non-Custodial Measure in Nigeria:

As a consequence of overcrowding in prisons, inmates habitually share beds or sleep on the ground. Sometimes, inmates sleep and wake up in pains because of these unbearable conditions where they sleep. Mattresses and beddings are scarce; they are not easily procured because of the bureaucracy in government supply-chains. In most cases, the available ones are filthy and in unusable state.³⁴ Others sleep on mats. Some inmates add nothing to such mats. It has been revealed that lack of beddings is because supplies come from Abuja based on the number of inmates and the official prison capacity.³⁵ Consequently, in overcrowded prisons, where the holding capacity has almost been doubled, half of the inmates do not have beds. For instance, in Enugu Prison, there were no beds at all for the cells for inmates awaiting trial. This means that the vast majority of inmates sleep on the floor.³⁶ In addition to the shortage of beds and beddings, there is also the issue of poor food both in terms of quantity and quality. This adds to the complexities of life lived by prisoners. This contradicts the provisions of the Nigerian Prison Regulation 22, which states that ‘every prisoner shall be allowed a sufficient quantity of plain and wholesome food’³⁷ All these shortcomings inhibit the goals of reformation, rehabilitation and reintegration of prisoners back into the society.³⁸

AN OUTLINE AND CRITIQUE OF THE EFFORTS UNDER THE ADMINISTRATION OF CRIMINAL JUSTICE ACT 2015 (ACJA)

The ACJA is a repeal of the two principal legislations that governed the administration of

Making a Case for Adult Probation Service’ (2013) 7 African Journal of Criminology and Justice Studies 101, 104.

³⁴ Ogwezzu (n 8) 273; Nonso Okafo, *Reconstructing Law and Justice in a Post-colony* (Routledge 2016) 194.

³⁵ *ibid.*

³⁶ Country Report on Human Right Practices (2008) 438.

³⁷ Biko Agozino, ‘Nigerian Women in Prisons: Hostages in Law’ in Julia Sudbury (ed), *Global Lockdown: Race Gender and the Prison- Industrial Complex* (Routledge 2014) 192; Prisons Act (n 3) Section 22.

³⁸ Uche Ijeoma B, Uche Okala A, Ezumah Nkoli N, Ebue Malachy O, Okafor Agnes E and Ezege Bernedeth Nkiruka, ‘Effectiveness of Rehabilitation Programs in the Nigerian Prisons: A Study of Perception of Inmates in Enugu Prison’ (2015) 6 Mediterranean Journal of Social Sciences 164, 165.

criminal justice in Nigeria’s post-independence era, namely: the Criminal Procedure Code for the Northern Nigeria and the Criminal Procedure Act for the Southern Nigeria. It is imperative to mention that the ACJA does not apply to court Martial, as expressly provided for in the Act.³⁹ A critical assessment of its application shows a paradigm shift in the criminal justice of Nigeria, from a punitive to restorative approach, with the needs of the society, victims, vulnerable persons and human dignity at the forefront. It is made up of 48 parts and 495 sections; the specific areas of innovation with positive impact that will directly or indirectly aid decongestion of prison system in Nigeria are hereby discussed.

Imposition of Suspended Sentence(S) and Community Services

Suspended sentence is defined as

The practice of delaying 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;⁴⁰ and the purpose of suspended sentence is to give the offender an opportunity to go through the process of probation and reformation.⁴¹

A community service order is defined as

An order of the court sanctioning an offender to embark on a certain number of hours of unpaid work for the advantage of the community;⁴² the reason is that the community is regarded as the

³⁹ Section 2(2) of the Administration of Criminal Justice Act (2015)

⁴⁰ Criminal Procedure Act Cap 41 LFN, 2004, Section 435(1).

⁴¹ Abubakri O Yekini and Mashkur Salisu, ‘Probation as a Non-Custodial Measure in Nigeria: Making A Case for Adult Probation Service’ (2013) 7 African Journal of Criminology and Justice Studies 101, 103.

⁴² Administration of Criminal Justice Laws of Lagos State, 2011, Section 347; Paul Smith, *Moral and Political Philosophy: Key Issues Concept and Theories* (Palgrave Macmillan 2008) 26; Iyabode Ogunniran, ‘The Lock and Key Phenomenon: Reforming the Penal Policy for Child Offenders in Nigeria’ (2013) 10 Justice Journal 1, 16; Yahaya Abubakar Muhammad, ‘Reflections on the Introduction of Plea-Bargain and Community Service by the Administration of Criminal Justice Law 2007 in Lagos State and the Administration of Criminal Justice Act, 2015 in Nigeria’ (2017) 58 Journal of Law, Policy and Globalization 91, 97.

victim of the crime, thus calls for some kind of compensation and restitution.⁴³

Hence, the Administration of Criminal Justice Act, 2015 in fulfilment of its reformatory and restorative approach, provides that a court, having considered the need to decongest prisons, rehabilitates prisoners by making them to embark on fruitful work. Also, avoiding convicts who commit simple offences from mixing with hardened criminals may, with or without conditions, suspend a convict's sentence as the case may be. Such convict might not be required to serve the sentence in accordance with the conditions of the suspension or the convict may be sentenced to specified service in his community or such community or place as the court may direct. As long as though, the offence for which the convict was tried does not involve the use of arms or violent weapon, or for an offence which the punishment goes beyond imprisonment for a term of three years.⁴⁴

Curbing the Number of Unlawful Arrests

Curbing unlawful arrest, particularly by the Nigerian Police is one of the provisions of the Act that should gladden the heart of every Nigerian. According to Section 10(1) of the Criminal Procedure Act (CPA), the police could arrest without a warrant, any person who has no apparent means of sustenance and who cannot give an acceptable account of himself.

This particular provision has been greatly abused by the police who use it as a ground to arrest people arbitrarily. Interestingly, the provision has been expunged by the ACJA. As such, the police can no longer make such arrest or arrest persons in lieu of suspects, according to the provision of the Act.⁴⁵ Despite the law that prohibits this act, the Nigerian Police have not stopped.

Majority of people in police cells in Nigeria are there largely due to unlawful arrests. For instance, if the husband who is supposed to be arrested cannot be found, the police will arrest the wife or a relative until the actual suspect is found. Since the arrested relative cannot be charged to court because he is not the real suspect, he/she will continue to languish in

police cells hopelessly even when no offence has been committed⁴⁶

Accepting Women as Sureties

Prior to the promulgation of the ACJA, a lot of people have not been able to perfect their bail conditions because of the discrimination of women to stand as surety.⁴⁷ In the justice system in Nigeria and what is obtainable in practice, women were not allowed, in most cases, to stand as sureties for bail before the enactment of the Act.⁴⁸ This is, of course, one of the provisions of the Administration of Criminal Justice Act, 2015 that has been applauded the most. This is because it has finally laid to rest the long-standing controversy as to whether a woman can stand as a surety for a bail applicant.⁴⁹ As such, the Administration of Criminal Justice Act provides that: No person shall be denied, prevented or restricted from entering into any recognition or standing as surety for any defendant or application on the ground only that the person is a woman⁵⁰

Section 167(3) of the Administration of Criminal Justice Act is a gender-sensitive and

⁴³Ogunniran (n 41) 16.

⁴⁴Administration of Criminal Justice Act (n 38) Section 460.

⁴⁵ ibid Section 7 Arrest in lieu is prohibited.

⁴⁶Folashade B Okeshola, 'Human Rights Abuse by Nigerian Police in Four Selected States and the Federal Capital Territory, Abuja' (2013) 13 British Journal of Arts and Social Sciences 242, 243; Okonkwo Cyprian O, 'The Nigerian Penal System in the Light of the African Charter for Human and People's Rights' in Kalu A and Osinbajo Yemi (eds), *Perspectives on Human Rights* (Federal Ministry of Justice 1992) 94; Comfort Chinyere Ani, 'Reforms In The Nigerian Criminal Procedure Laws' (2011) 1 Journal on Criminal Law and Justice 52, 58.

⁴⁷Nnamdi J Aduba and Emily I Alemika, *Bail and Criminal Justice Administration in Nigeria* <<https://issafrica.s3.amazonaws.com/site/uploads/M161C5>> accessed 1 July 2019.

⁴⁸Patric E Iroegbu, 'The KPIM of Social Order: A Season of Inquiry Meaning, Significance in the Modern World', Goerge Uzoma, Ukagha Des O and Obi J Nwankwor (eds), *In the Studies in Philosophy, Culture of Uprising and Social Order* (Xelibris Publisher 2013) 309.

⁴⁹Charmaine Pereira, 'Endangering Governance in Federal Politics; The Nigeria Cases'; in Aaron Tsado Gana and Samuel G Egwu (eds), *Federalism in Africa: The imperative of democratic development*, Volume 2 (Africa World Press 2003) 300; Comfort Chinyere Ani, *Reforms in The Nigerian Criminal Procedure Laws* <<http://www.nials-nigeria.org/journals/Comfort%20Chinyere%20AniL.pdf>> accessed 1 July 2019.

⁵⁰Administration of Criminal Justice Act (n 38) Section 167 (3).

friendly provision. It expressly abolishes discrimination experienced up till now by women who desire to act as sureties. It gives practical effect to rights against discrimination on account of sex guaranteed by the Nigerian Constitution as stipulated below:

A citizen of Nigeria of a particular community, ethnic group, and place of origin, sex, religion or political opinion shall not, by reason only that he or she is such a person –

(a) be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religious or political opinions are not made subject; or

(b) be accorded either expressly by, or in the practical application of, any law in force in Nigeria or any such executive or administrative action, any privilege or advantage that is not accorded to citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religious or political opinions.⁵¹

The Administration of Criminal Justice Law equally provides that no person shall be denied or prevented or restricted from entering into any recognizance or standing as a surety or providing any security on a ground that the person is a woman. The above provision has evidently and finally laid to rest the issue of discrimination against women in the practice of bail in Nigeria.⁵²

Mandatory Stipulation of Time Limit to Remand

Police cells and prisons in Nigeria are chock-full today not only because of the number of convicts serving real jail terms, but basically because of the vast number of suspects being remanded in police cells and prisons.⁵³ Suspects are remanded at will, and every now and then, indeterminately. However, the Administration of Criminal Justice Act provides as follows:

A suspect shall not be remanded for more than 14 days at first instance and renewable for a time not exceeding fourteen days where ‘good cause’ is shown;⁵⁴ at the expiration of the remand order, if legal advice is still not supplied, the court shall issue hearing note to the Inspector-General of Police and Attorney-General of the Federation or the Commissioner of Police or any other authority in whose custody the suspect is remanded, to make an inquiry into the position of things and adjourn for another period not exceeding fourteen days for the above-mentioned officials to come and explain why the suspect should not be released unconditionally.⁵⁵

The above provision is a good development in preventing keeping criminal suspects in custody for a long period of time without charging them to court.

Daily Schedule of Criminal Trials

Long period of adjournments of criminal cases by courts in Nigeria is one of the factors responsible for delays in trials. In resolving this issue, the Administration of Criminal Justice Act provides that: Upon arraignment, the trial of the defendant shall proceed from day-to-day until the conclusion of the trial;⁵⁶ where day-to-day trial is impracticable, parties shall be entitled to only five adjournments each; the interval between each adjournment shall not exceed two weeks each; and where the trial is still not concluded, the interval for adjournments will be reduced to seven days each.⁵⁷ These provisions are meant to facilitate speedy trial, which is one of the problems encountered by the Nigerian Criminal Justice System.

Availability and Utilisation of Plea Bargain

Across the globe, criminal justice generally, is taking a new dimension due to the dynamic nature of human society. Laws are reviewed in order to reflect development in society.⁵⁸ One of the recent developments in the administration

⁵¹The Constitution of the Federal Republic of Nigeria 1999 Cap 23 LFN, 2004 Section 42(1) (a) and (b).

⁵²Administration of Criminal Justice Act (n 38) Section 167(3).

⁵³Law Pavilion, ‘The Administration of Criminal Justice Act, 2015’ <<http://lawpavilion.com/blog/the-administration-of-criminal-justice-act-2015-acja>> accessed 1 July 2019.

⁵⁴ *ibid.*

⁵⁵ *ibid.*

⁵⁶ Law Pavilion (n 52).

⁵⁷ Administration of Criminal Justice Act (n 38) Section 396.

⁵⁸ Yahaya Abubakar Muhammad, ‘Reflections on the Introduction of Plea-Bargain and Community Service by the Administration of Criminal Justice Law 2007 in Lagos State and the Administration of Criminal Justice Act, 2015 in Nigeria’ (2017) 58 *Journal of Law, Policy and Globalization* 91, 91.

of criminal justice is the emergence of plea bargaining. That has received legal flavour in the Administration of Criminal Justice Act, 2015, which finally laid to rest, the argument of legal practitioners and academic scholars on the use of plea bargaining in the Nigerian Criminal Justice System.⁵⁹ Plea bargaining can be described as:

A negotiated agreement between the prosecutor and a criminal defendant whereby the defendant pleads guilty to a lesser offence or to one of multiple charges in exchange for some concession by the prosecutor, usually a more lenient sentence or a dismissal of the other charges.⁶⁰ In addition, it is termed plea agreement or negotiated plea.⁶¹ Under the Administration of Criminal Justice Act, plea bargain refers to:

⁵⁹ A number of influential Nigerians have benefited from plea bargain, especially when charged with corruption and financial crimes. Plea bargain was kick-started in 2005 in the trial of former Inspector-General of Police Mr Tafa Balogun. Mr Balogun conceded to plead guilty to an amended eight count charge of corruption and embezzlement of public funds to the tune of 10 billion naira. He gave up most of the funds and got just six months for the offence which attracts a maximum of five-year jail term following a touching allocutus rendered by his lead counsel. Few years ago, former Governor Alamieyeseigha of Bayelsa State was sentenced to 12 years in prison on a six-count charge that bothered on corruption and other economic offences. He was sentenced to two years on each count but all sentences ran concurrently. In accordance with the Criminal Procedure, the sentences ran from the day he was arrested and detained. Also recently, on October 8, 2010, Economic and Financial Crimes Commission charged the Former Chief Executive Officer of Oceanic Bank International Nigeria PLC, Mrs. Cecilia Ibru with a twenty-five count criminal information bordering on financial crimes. However, she entered into a plea bargain with the prosecution and pleaded guilty to a lesser three-count charge. The Court, thereafter, convicted Ibru on the three-count charge and ordered the forfeiture of her assets amounting to about N191 billion. She was sentenced to six months on each of the three counts which were set to run concurrently. See Ige I <<http://www.vanguardngr.com/articles/2002/features/law/law123122005.html>> accessed 1 July 2017. The cases of Emmanuel Nwude and Amaka Anejemba were cases where plea bargain also played a major part.

⁶⁰ Bryan A Garner, *Black's Law Dictionary* (8th edn, Thompson Web Publishers 2004) 1189.

⁶¹ Administration of Criminal Justice Act (n 52) Section (270) (a) and (b).

The procedure in criminal proceedings whereby the defendant and the prosecution work out some modalities and acceptable disposition of the case. This involves the plea of the defendant to a lesser offence than that charged. This must, however, be done in conformity with conditions proposed by the prosecution in return for a lighter sentence than the higher one earlier charged, subject to the court's approval.⁶²

The Administration of Criminal Justice Act empowers the prosecution to enter into plea bargain with the defendant, with the consent of the victim during or after the presentation of the evidence of the prosecution.⁶³

This plea bargaining gains the legal backing because of the huge pile-up of cases which emanated from increased criminal activities in the society. It is meant to reduce pressure on the conventional courts and some other notable merits that flow from it. Plea bargain is expedient as it saves time and, at the same time, avoids the requirement of public trials, in so doing, protecting innocent victims of crime from the trouble of giving evidence during trial.

It also helps to de-clog the court system for more serious cases.⁶⁴ Plea bargain also reduces public expenditure, which would have been incurred during prolonged trials.

In a nut shell, plea bargain saves time and cost⁶⁵ and Furthermore, even though plea bargain may help in the decongestion of prisons,⁶⁶ the researcher however believes the adoption of plea bargain by the Act is just to provide a soft landing for criminals. Congestion of prisons in Nigeria is a bullet proof evidence of the inefficiency of the Nigerian Criminal

⁶² Francis Famoroti, 'Plea bargaining: A Blessing or Curse to Nigeria's criminal justice system' <<http://www.nigerianlawguru.com/articles/criminal%20law%20and%20procedure/PLEA%20>> accessed 1 July 2017

⁶³ Ibid..

⁶⁴ 15 Advantages and Disadvantages of Plea Bargaining <<https://thenextgalaxy.com/15-advantages-and-disadvantages-of-plea-bargaining>> accessed 1 July 2017.

⁶⁵ Oguche Samuel, 'Development of Plea Bargaining in the Administration of Criminal Justice in Nigeria: a Revolution, Vaccination against Punishment or mere Expediency?' in Epiphany Azinge and Laura Ani Azinge (eds), *Plea bargain in Nigeria: Law and practice* (Nigerian Institute of Advanced Legal Studies' Press 2012) 71

⁶⁶ *ibid.*

Justice System, considering the growing population of inmates who have not had the opportunity of being heard in court.

Thus, this problem appears insurmountable despite efforts made so far to decongest prisons. There is, therefore, a need to study the way prisons are run in the developed world, where there is a functional and efficient prison system rather than emphasising on plea bargain.

This is premised on the fact that plea bargain will only encourage Nigerians to deliberately commit crime with the intention of escaping justice through plea bargain.

Prohibition of Arrest in Civil Cases and Contractual Cases

The ACJA makes a very laudable provisions to the effect that ‘a suspect shall not be arrested merely on a civil wrong or breach of contract’⁶⁷ as it was stated in the case of *A.C (O.A O) Nigeria Limited v Umanah*⁶⁸ that ‘the statutory duties of the police under the police Act is to maintain peace, law and order in the society.

Visit To Police Stations and Other Detention Centres

The Chief Judge is to designate the Chief Magistrate or any other Magistrate to carry out, on a monthly basis, a visit to police stations and other detention centers.

The purpose of the visit is to call for and inspect the record of arrests, direct the arraignment of suspects, or where bail has been refused, grant bail to any suspect where appropriate.

The visiting magistrate is empowered to treat any default by an officer in charge of a police station or any agency as misconduct and deal with such with the relevant laws.⁶⁹

Returns by the Controller General of Prisons

The ACJA provides further that the Controller-General of Prisons is to make returns every 90 days to the Chief Judges, President of National Industrial Court and the Attorney- General of the Federation, of all persons awaiting trial held in custody for a period beyond 180 days from the date of arraignment. ACJA makes it mandatory that upon receipt of such return, the

recipient shall take such steps as necessary to address the issues raised in return in furtherance of the objectives of the Act⁷⁰

No to Application of Stay of Proceedings in Respect of Criminal Matter

Section 306 meant to curtail the rate at which interlocutory applications lead to the suspension of a substantive matters still pending in court. The section provides that, ‘an application for stay of proceedings in respect of criminal matter before the court shall not be entertained’; the court may also order the defendant to pay a sum of money to defray expenses incurred in the prosecution, ‘as the compensation to any person injured by the offence’⁷¹

Objections raised regarding the validity of a charge by defendant shall be considered along with the substantive matter and a ruling delivered on such objections at the time when judgement is delivered in the substantive suit.⁷²

Speedy Trial

ACJA also provides for the day-to-day trial of defendants ‘upon their arraignment, the trial of the defendant shall proceed from day-to-day until the conclusion of the trial’.⁷³ This is to discourage frivolous adjournments.

Promotion of a Judge Not Be Considered a Reason for Restating a Case

In Nigeria, when a judge presiding over a case is promoted to a higher court, the cases are usually reassigned to new ones thereby bringing about delay in trials. The ACJA resolved this issue by stating that promotion of a judge should not be considered a reason for restarting a case.

As such, the Act provides that a Judge of the Federal High Court who has been elevated to the Court of Appeal shall have dispensation to continue to sit as a High Court Judge, only for the purpose of concluding any part-head criminal matter, pending before him at the time of his elevation and shall conclude within a reasonable time.⁷⁴

The main essence of this provision is to avoid denovo (restart).

⁶⁷ The Administration of Criminal Justice Act (n 38) Section 8(2).

⁶⁸ (2013) 4 NWLR (Pt.1344) 323.

⁶⁹ The Administration of Criminal Justice Act (n 38) Section 34.

⁷⁰ *ibid* Section 111.

⁷¹ *ibid* Section 314 (1).

⁷² *ibid* Section 396 (2).

⁷³ *ibid* Section 396 (3).

⁷⁴ *ibid* Section 396(7).

Establishment of the Administration of Criminal Justice Monitoring Committee

Section 469 (1) provides for establishment of the Administration of Criminal Justice Monitoring Committee as a body charged with the responsibility of ensuring effective application of the Act. Apart from ensuring effective and efficient implementation of the Act by different relevant agencies, committee shall also, among other things, ensure that criminal matters are speedily dealt with; congestion of criminal cases in courts is drastically reduced; congestion in prison is drastically reduced to the barest minimum; and persons awaiting trial are as far as possible not detained in prison custody.

Section 468 of the ACJA 2015 really focuses on parole and post prison rehabilitation of inmates.⁷⁵

Protection of the Constitutional Rights of an Arrested Person

The ACJA also makes an elaborate provision for the protection of the constitutional rights of an arrested person. For instance, Section 6 of the Act provides that a suspect shall be informed of the reason for the arrest.⁷⁶

The Act places a duty on the police officer to notify the suspect of his right to remain silent or avoid answering any question or making, endorsing or writing any statement until after consultation with a legal practitioner or any other person of his own choice; and his rights to free legal representation by the Legal Aid Council of Nigeria where applicable.⁷⁷

Time Limit for Issuance of Legal Advice

By virtue of the provision of ACJA, the usual delay in the issuance of legal advice will come to an end as the Act makes provision for the time limit for the issuance of the Department of Public Prosecution's (DPP) legal advice; the advice must be issued within 14 days of receipt of police case file.⁷⁸

Witness Protection

The ACJA also ensures that the rights of witnesses in criminal cases are adequately protected. This will encourage people with

relevant information about a criminal matter to come up easily particularly on cases like sexual related offences, armed robbery, terrorism and offences related to economic and financial crimes.⁷⁹

Non-Custodial Sentence

This addresses excessive use of imprisonment as a disposal method by introducing some alternatives to imprisonments such as community service, suspected sentence parole and probation it help to decongest the prison.⁸⁰

Establishment of a Police Central Criminal Registry

The Act makes provision for the establishment, within Nigeria Police, a Central Criminal Record Registry of all arrests made by the police. The registry is to be located at the Police Headquarters and at every State Police Command.

The Act further states that every state including the Federal Capital Territory is to ensure that the decisions of the court in all criminal trials are transmitted to the Central Criminal Records Registry within thirty-days after delivery of judgment.⁸¹ When this is done, it will be easy to have proper record of arrests.

Quarterly Returns of Arrests to the Attorney-General of the Federation

The heads of every agency authorized by law to make arrest including the Inspector-General of Police are mandated to remit, on quarterly basis, to the Attorney- General of the federation.⁸²

CONCLUSION AND RECOMMENDATIONS

Apparently, with the foregoing innovations, the Administration of Criminal Justice Act 2015 has made provisions that could successfully resolve notable challenges faced by the Nigerian Prison. It has shown inclination towards restorative justice and speedy dispensation of justice which will go a long way in decongesting the Nigerian Prison if implemented.

Since crime commission is on the rise year-in-year-out with empirical evidence showcased in the article, more resources have to be dedicated to the penitentiary sector for sufficient facilities to be put in place to accommodate and take care

⁷⁵ *ibid.*

⁷⁶ The Administration of Criminal Justice Act (n 38) section 6.

⁷⁷ *ibid*

⁷⁸ *ibid* Section 376.

⁷⁹ *ibid* Section 232.

⁸⁰ *ibid* Section 453,460 and 468.

⁸¹ *ibid* Section 16.

⁸² *ibid* Section 15.

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of the present and future offenders. Besides, if prison officials are provided with special salary scale and good working conditions.

Their morale would be boosted and their work efficiency towards restorative justice could be enhanced.

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