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Colonial Systems of Control

Saleh-Hanna, Viviane

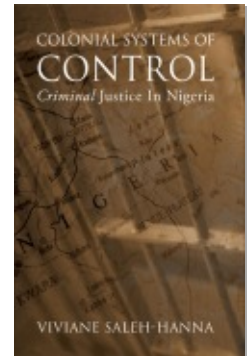
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CHAPTER 19

ALTERNATIVES TO IMPRISONMENT: COMMUNITY SERVICE ORDERS IN AFRICA

Chukwuma Ume

Many developing countries are finding it very difficult to manage their prisons. Overpopulated penal institutions can often only provide inadequate conditions to inmates, both physically and psychologically. Prisoners have to be detained for long periods on remand, and prisons are frequently unable to carry out the task of training and rehabilitation, despite these being stated as aims in the national statutory texts which govern them. At the same time, rising crime rates, especially in large conurbations, make these inadequacies all the more worrying. Minor offenders are brought into close proximity with more hardened criminals without there being any real possibility for their rehabilitation into society and employment.

— Magistrate Odette Luce Bourvier,
Technical Adviser to the Senegalese Minister of Justice

INTRODUCTION

The observations above are apt to describe penal institutions in most developing countries, Nigeria included. Indeed, they categorically sum up the problems that have bedevilled imprisonment and, by extension, entire criminal justice administrations on the African continent, particularly in Nigeria. To this end one may ask the following questions.

- Does the status quo offer justice and security to the people?
- To what extent have the agents of the criminal justice system, particularly of the prisons, been able to administer justice and enhance social cohesion, as expected of them statutorily?

To unravel these questions and many other salient ones, this chapter presents a brief account of the prison service in Nigeria. The concept and implementation of community service orders are presented as a practical alternative to imprisonment. The chapter also puts forward the rationale for the call for more viable and functional alternatives to imprisonment (ATI). In addition, the chapter draws on lessons from African countries where such ATI measures have been implemented. The chapter ends with suggestions for the criminal justice system in Nigeria.

Details of the prison service in Nigeria have been provided in previous chapters (see also Agomoh, Adeyemi, and Ogbekor 2001; Ume and Saleh-Hanna 2005). Suffice it to say here that the institution of imprisonment, like most public institutions in Nigeria, is part of our colonial heritage, intended to pursue, promote, and protect the then colonial interests. Thus, it was not only punitive but also lacked any systematic and well-developed programmes for rehabilitation and reintegration of ex-prisoners into the larger society upon discharge. Remarkably, though regrettably, this ugly trend had a spillover effect into our “post” colonial era; hence, prison officers not amenable to change are often described by prisoners as “colonial warders,” associating their current behaviours with the colonial militarized mentality in their dealings with prisoners.

Colonial warders are not an anomaly in Nigerian prison institutions but a function of them. When colonialists imposed their systems of justice upon Africa they recognized (minimally) that colonial justice systems existed alongside “native” ones. Upon so-called independence, policies were passed to “unify” colonial and native justice systems. This unification included

the increasing formalization and superiority of colonial justice systems compared with African ones. In Nigeria this unification was facilitated through the Gobir reports, which concluded that there was a need to unify the various prison commands in Nigeria: the “federal” and “native” authorities were unified on April 1, 1968. Subsequent reorganizations in the prison administration led to the promulgation of Prison Decree No. 9 in 1972 (Agomoh, Adeyemi, and Ogbemor 2001). The decree ordered, among other things, the following cardinal functions of the prison service:

- (1) to keep safe custody of persons legally interned;
- (2) to identify the causes of their anti-social behaviour, treat, and reform them to become law-abiding citizens of a free society;
- (3) to train them toward their rehabilitation on discharge; and
- (4) to generate revenue for the government through prison farms and industries.

Achievement of these lofty ideals has been at all times poor and questionable. This is the case in societies that have used prisons for centuries, and it certainly is the case in African societies that have had prisons imposed upon them by European colonial occupations.

CONTEMPORARY INSTITUTIONS OF IMPRISONMENT

Imprisonment in Nigeria has become a haven for human rights abuses, with countless custody deaths and acts that degrade human dignity. With a prison population that has exceeded sixty-five percent in awaiting-trial prisoners, conditions have reached epic brutality. People who ordinarily would be productively engaged in contributing to the functions and development of a balanced and healthy society are languishing in prisons. These ugly prison conditions are not solely attributable to the prison

department, but are also the result of various agencies and social institutions. Some of the problems of the prison service in Nigeria, especially those of overcrowding, inadequate facilities, and poor treatment of prisoners, suggest that the prison in Nigeria occupies the back burner and is the dumping ground for the larger problems with criminal justice administration in the country. Unfortunately, too, efforts toward eradicating some of these problems, or reducing the number of prisoners through “special arrangements” such as legal aid and presidential or state pardons, have made little or no impact.

Consequently the prison service lacks both deterrent and reformatory values. Yet, at a National Conference on Alternatives to Imprisonment in Nigeria in 2000, it was asserted that the government spends a lot of money on food, clothing, shelter, and other needs of prisoners. It was stated that the government spends as much as N1,825,000,000 annually on feeding inmates. This figure does not include the costs of medication, clothing, and accommodation. This institution is not only unjust and brutal in its treatment of prisoners, but also expensive. Although this expense is immense in Nigeria, it does not come near the expenses incurred with the administration of justice in industrialized nations.

Julita Lemgruber (1998), the former director of prisons in Rio de Janeiro, presented an argument along these lines. She noted that industrialized nations “go on incarcerating many people who commit petty crimes.” To illustrate the problematic nature of such practices, she pointed out that there were some “noteworthy” cases illustrating recklessness in the administration of criminal justice. These cases included a woman who served a sentence of two and a half years for stealing two packages of disposable diapers from a supermarket; a man who was sentenced to a prison term of more than four years for stealing a fighting cock (cock fights are illegal in Brazil); people who have served time for stealing twelve heads of lettuce or five heads of cabbage or twelve roof tiles; and so on. The items stolen do not justify, in terms of danger to the public or financial loss to the community, the use of imprisonment. Lemgruber explained that two packages

of disposable diapers cost about US\$ 14, while the woman who served time for these thefts ended up costing the taxpayer US\$ 16,000. Many more thousands are spent to keep petty thieves behind bars who could well be dealt with differently. In her assessment of the financial restraints and conditions of penal systems Lemgruber explained that countries such as Brazil or other developing nations are not in a position where they can (or should want to) afford the maintenance of large numbers of their citizens in prisons.

This understanding is not arguable in the “developing” world. It is an understood fact that the prison system is financially unreasonable, ineffective, and problematically colonial. In assessing the colonial structures of control that prisons represent it has been observed that prisons are not community-oriented. The penal system is self-contained and looks inward. For instance, when people are put in prison they have left their world behind. This impact of imprisonment works to destabilize both the individual and the community, which has been dichotomized by these institutions of control. Within the institution overcrowding, lack of nutritional diets, boredom, and the internal pains experienced with the loss of freedom are major issues that destabilize the humanity of this form of social control. From an African perspective the real pains of imprisonment include separation from family and friends, the loss of jobs and homes, the fear of being forgotten, and the anxiety in thinking about whether one will fit into society upon eventual release. Thus, imprisonment is recognized as a physiologically, psychologically, and emotionally destructive institution; in addition, it is socially damaging, culturally abhorrent, and penologically disastrous. Buttressing this view, Adeyemi (2000) stated that, in addition to the apparent inefficiency of imprisonment as a deterrent and the increasing financial burden it imposes on African countries, there is a growing resurgence in the African region of its culturally aberrant and abhorrent disposition. Hence the compelling need to look for viable alternatives of social control.

ALTERNATIVES TO IMPRISONMENT

Alternatives to imprisonment, as construed in this chapter, are measures used in the administration of justice that are not penal, alternatives to addressing conflict that do not criminalize or ostracize individuals while working to build and strengthen, not dichotomize and weaken, the community. Although fledgling, these concepts are not alien to Africa; rather, they are autochthonous. To underscore this assertion, Elias (1969) explains that, "in the traditional African societies, imprisonment as a form of punishment was almost unknown.... There [was] no room for institutionalized forms of punishment such as imprisonment for preventive detention.... Offenders were often left in the care of their families or extended families once the appropriate penalty had been imposed" (Adeyemi 2000). It therefore follows logically and is safe to say that an African system of justice to a large extent abhors imprisonment, and is not "criminal" but restorative and transformative.

Upholding the argument, Adeyemi (2000) pointed out that the use of imprisonment imprints on the ex-prisoner and his family a social stigma; in addition, imprisonment closes avenues for employment, rented accommodation, marriage, and the establishment of a family, and it encompasses other forms of social ostracism that are not coherent in Nigeria or conducive to the development of our society. Quoting Meek's "Law and Authority in a Nigerian Tribe" and Gunn's "Pagan Peoples of the Central Area of Northern Nigeria," Adeyemi illustrated his argument with examples from the Ibo and Kagoro peoples, who never had any form of imprisonment prior to the arrival of the British. According to Adeyemi, the disdain of the Nigerian people was further epitomized by the attitude that colonialists and Western legal scholars held toward what they termed "native courts." This attitude is evident in the instruction issued to Nigerians by Lord Lugard: when he discovered that the natives continued to employ restitution for theft, instead of imprisonment, he is recorded as having "instructed" native

courts that restitution for stolen property or an abducted person was not a sufficient penalty. According to Lugard, punishment should always be added to restitution. Remarkably, the native courts refused to comply with such instructions and resorted to compensation, compensatory fines, and fines as appropriate measures instead of imprisonment (Elias 1969).

This clear and emphatic rejection of imprisonment by the native courts, even in the face of instructions from the governor general of the Nigerian nation-state, indicates the odium toward imprisonment in Nigerian society – it was understood then, and on many levels is understood today, that the penal and criminal systems of control are seemingly incompatible with Nigerian traditional conceptions of justice.

Against this backdrop I now present an operational definition of alternatives to imprisonment as they exist in the African context. For the purpose of this chapter ATI measures to address conflicts include suspended sentencing, probation, fines, and community service. It is believed that an increase in the use of such sanctions by the criminal justice system would lead to a decrease in the use of imprisonment. While these measures continue to exist within the penal context, and are not necessarily congruent with all forms of community justice, it is advocated that an increase in these types of sanctions would aid in primarily decongesting the overcrowded prisons and restoring some semblance of balance to the communities that continue to lose their citizens to prisons.

Community Service Orders

Community service orders are a cardinal alternative to imprisonment. Recalling the Kampala Declaration of 1996, which takes into account the limited effectiveness of imprisonment, especially for those serving short sentences, and the cost of imprisonment to the whole society; noting the growing interest in measures that replace custodial sentences and recognizing the promising developments across the globe in this regard; appreciating the importance of the Kampala Declaration,

which annexed a resolution on international cooperation for the improvement of prison conditions in developing countries (United Nations 1997); bearing in mind the United Nations Standard Minimum Rules for Non-Custodial Measures (Tokyo Rules 1990); considering that the level of overcrowding in any prison is inhumane; recalling the African Charter on reaffirming the dignity inherent in a human being, and the prohibition of inhumane and degrading treatment; recognizing that a “stronger,” more bureaucratic, criminal justice system that does not prioritize community-based measures only leads to a growing prison population, as has been illustrated in the United States, I lend credence to these resolutions and observed facts, and accordingly state that there exists a strong platform on which we are calling for the adoption and establishment of alternative measures to imprisonment in all African countries.

In addition to the researched and policy-oriented support for the increased use of community service orders in Africa, the following are more administrative, justice-oriented, and ideological reasons to support an increase in the use of community service orders in all African nations.

- Our criminal justice system is comprised of agencies that work without coordination: African societies are not bureaucratically structured, and they should not strive to be.
- The court machinery is overloaded with cases, slow, and not readily accessible to all. Our options become to strengthen the system or dispense with our reliance on it.
- Prisoners are a low priority in Nigeria, as in many other African countries. Where three-quarters of the prison population is comprised of poor and powerless people, prisons are seen as not being worth the time, energy, or resources needed to improve them.
- Imprisonment is all too regularly used—even for minor offences and as punishment for first-time offenders. It

does not function in Africa or elsewhere as a means of last resort.

- Penal institutions have been shown to be overpowering in their dynamics within any society, and Africans need to decentralize and restructure their systems of justice before the penal system becomes as entrenched in our society as it for Western, industrialized nations.
- “Development” for Africa is not working to build societies and social structures that mirror colonial, European, or Western societies. Development in Africa is working to re-establish our own social structures. A reliance on penal institutions as social control continues to reinforce colonial social structures that have been destructive and decivilizing.

Community Service Orders in Africa

Efforts toward the implementation of alternatives to imprisonment in Nigeria, besides the statutory provision of fines and bail options, are still at embryonic stages (Penal Reform International 2000). However, in some African countries, such as Zimbabwe (despite much-touted human rights violations and political instability), Kenya, Uganda, Malawi, Mali, Senegal, and Burkina Faso, there are strong indications of the use of non-custodial measures on functional and legitimate levels. These countries have successfully established the use of community service orders, which are beginning to consolidate the accruable gains of less use of imprisonment as a means of administering justice. Community service orders are being used only for those people who have been sentenced to imprisonment. This regulation prohibits community service orders from being employed as an add-on to the criminal justice system and maintains them as an alternative to imprisonment. These orders are used for people who have been given short sentences and for first-time offenders.

It is worth noting that this innovative approach has hinged on two major areas: the first includes putting in place appropriate

structures to implement these orders, while the second involves comprehensive community involvement that builds on the strength of societies and incorporates a holistic approach to the administration of justice. Following I present case studies of two countries—Zimbabwe and Kenya—that have employed and benefit from an increased use of community service orders.

Zimbabwean Experience

Since 1993 Zimbabwean law has provided that offenders may have options other than prison sentences: namely, community service has been made applicable to all offences that carry a maximum sentence of one year in prison.¹ Community service has come to be recognized as a system that ensures non-custodial measures, and generates unpaid labour for community building and empowerment projects—it has essentially become the default measure for short-term imprisonment. Accordingly, if a court must impose imprisonment, in any of the countries that have implemented community service, the sentencing court must state specific findings why imprisonment is justified. This requirement has led to a high level of involvement of the members of the judiciary, at both the local level and the national level, in a discussion of both if and when imprisonment is necessary, and in a continued understanding that alternatives to imprisonment are legitimate, relevant, and necessary in African societies.

In assessing the contributions and accomplishments of the community service programme in Zimbabwe I briefly list some indicators of the benefits that it has presented as an ATI since its inception in 1993.

- There is a high success rate: 120,000 offenders have been sentenced to community service since its inception (Stern 1999). A survey of 6,000 participants revealed that ninety-four percent have completed their placements successfully.
- There is a decline in recidivism: a survey of 6,000 offenders who participated in the community service programme

showed that only fifty percent had reoffended following completion of their sentences.

- There has been a decreased prison population since 1993: the prison population has declined from 22,000 to 18,000, notwithstanding an increase in the crime rate.
- There is a reduction in cost: it costs approximately US\$ 120 per month to keep an individual in prison in Zimbabwe compared with approximately US\$ 20 per month for participation in the community service programme.
- There is public approval/acceptance: being placed in the community service programme permitted offenders to keep their jobs and continue to support their families. This along with other visible results has helped the programme to gain public approval. Public support is currently at such a level that requests from placement agencies to participate in the community service programme exceed the number of offenders sentenced to community service.

Kenyan Experience

In Kenya lessons were learned from earlier efforts to introduce alternative measures. Planning for the community service project was elaborate and had a well-thought-through implementation plan (Wahl et al. 2002). In December 1995, following a seminar report on community service orders and the administration of criminal justice in Kenya, an interim committee on the subject was established. The committee looked at the existing penalty, extramural penal employment (EMPE), and found a number of problems that affected the performance of this programme. These problems included lack of clear guidelines, inexperienced staff, lack of information on offenders sentenced to EMPE, and poor record-keeping and documentation (Stern 1999). Against this backdrop the committee, under the auspices of the Ministry of Justice, devised plans for implementing the recommendations of the December 1995 seminar. This led to the drafting of a community service order bill.

Between August and September 1996 the committee visited all the prisons in Kenya on a fact-finding mission. Also during that period committee members made frequent television appearances to publicize the state of conditions in the prisons in Kenya. By the end of 1996 they had made study tours of other jurisdictions, including South Africa, Swaziland, and Zimbabwe. All of these efforts gave rise to the preparation of new legislation hinged on the already functional Kenyan probation service. The new bill envisages that the probation service will hold the administrative responsibility for implementing community service orders, while the judiciary will manage the programme.

In 1997 another international conference was convened to discuss the report of the interim committee and a proposed draft bill. In late 1997 the cabinet endorsed the bill, and it was passed by parliament in December 1998. This development marked the beginning of a renewed and much more purposeful alternative to custodial measures within the justice system in Kenya. The new programme encompasses establishing and implementing treatment programmes, restorative justice, mediation and reconciliation, probation, fines, parole, bail, and suspended sentences. All these options are presented and encouraged in opposition to a reliance on imprisonment in the administration of justice in Kenya.

Implementation in Nigeria

Given the benefits of community service orders as an ATI in other African countries, it remains imperative for Nigeria, along with other African nations, to begin implementing these alternatives. In doing so African nations are affording themselves the ability to functionally and legitimately address the many interrelated problems of the criminal justice system, particularly the prisons, with their overcrowded cells, infectious diseases, malnourished and traumatized inmates, and high death rates. Against this backdrop the following comprise a possible panacea to the current Nigerian justice system.

- There is the need to demonstrate enough political will to implement non-custodial approaches to criminal justice. Legislators need to have a clearer picture of the situation on the ground to help them make laws to initiate and back the implementation of ATIs. This could well be the way out for Nigeria's crisis in penal justice. As all previous efforts and campaigns toward implementation of ATIs have yet to receive legislative attention, the starting point is political support for such measures.
- The judiciary in Nigeria has to be in the vanguard of the implementation stage. In trying to implement alternatives to imprisonment those who imprison people in Nigeria need to be involved. Magistrates and judges need to be trained specifically in this regard. There is a need for basic guidelines to ensure a standard upon which magistrates and judges can rely to identify and treat cases that are apt for non-custodial measures.
- The involvement of the judiciary is equally vital for the social impact of the scheme. Members of the judiciary need to be involved, not only in sentencing, but also in appreciating the negative consequences that flow from imprisonment. By including the judiciary in the educational elements and philosophies of ATIs we ensure their commitment to making these programmes successful.
- Wherever possible, and for offences meticulously specified, community service orders can be built into Nigerian sentencing options. To assist in this process the dynamics of successful alternative measures in other countries should be studied, copied, improved upon, and applied in Nigeria to suit our socioeconomic, political, and cultural imperatives.
- A national monitoring committee needs to be set up to fully implement these recommendations. The committee should include members from the Ministry of Justice,

the Ministry of Internal Affairs, the police force, prisons, the Bar Association, the Law Reform Commission, and relevant non-governmental organizations, as well as academics/researchers.

CONCLUSION

The problems of imprisonment and the need to find alternative forms of social control in Nigeria have been highlighted in this chapter. Accordingly, a significant reduction in the use of imprisonment in dispensing justice has been adduced. It is hoped that the judiciary and other identified stakeholders will commence a much more purposeful and diligent effort in the administration of justice, without recourse to the use of imprisonment as the first port of call. A quick reference could be made to other African countries where such ATI mechanisms are being used. Consequently this would lead to the use of other means of justice that can begin to rely on restitution, compensation, bail, fines, and innovative community service orders. These alternatives provide an opportunity both for offenders to take responsibility for the harms they have caused and for empowerment rather than dichotomization of the community.

To get to the point of having community service orders in Nigeria political and non-governmental support is needed in expediting actions aimed at passing a bill that will in turn enable implementation of ATIs in Nigeria. While various models of justice may continue to receive immediate attention and review to strengthen their existence in African societies, Nigeria needs to begin seriously considering the benefits of such measures while working toward the viable and legitimate implementation of these options. This way we can take a step in the right direction, recognizing healing for offenders, victims, and the community at large, and employ mechanisms of social control that are not alien to Nigeria. The African society we strive to achieve will give everyone the opportunity for self-development.

NOTES

- 1 Implementation of community service orders as an alternative to imprisonment in Nigeria has not received any legislative motion, and no bill has been passed for their eventual takeoff.

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