CHAPTER 3
AN EVOLUTION OF THE
PENAL SYSTEM: CRIMINAL
JUSTICE IN NIGERIA

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This chapter looks at the historical circumstances that came together to implement the Nigerian Prison Service and how they have affected its performance. What challenges has the institution been confronted with? The chapter also attempts to offer scenarios for the future. The first section looks at the justice system that existed before the advent of colonialism, the second section compares colonial penal systems and postcolonial penal systems, while the third section examines present penal systems and indicates options for responses. In laying out this history, we refer to geographical locations in Nigeria, and the following map will serve as a guide to these references.

TRADITIONAL MODELS OF NIGERIAN JUSTICE

Generally, crime in precolonial Nigerian societies was limited to serious violations of standard behaviours, customs, and traditions of the various communal groups. What was traditionally considered a crime or offence included behaviours generally regarded as abominations: murder, theft, adultery, rape, incest, and suicide. The definition of abominations was diverse according to the different cultures that exist in Nigeria. Offenders in these categories of crime were held responsible according to community sanctions. These sanctions were sometimes extended to their families and close relatives. Individualism was not, and
still is not, a central tenet of Nigerian society. For example, those who committed suicide were punished through the denial of decent burials (Igbo 1999). Any family member who violated such injunctions was in danger of being ostracized by the community until reparations and prescribed rituals of purification were undertaken by the family. In this way the extended family kept a close watch over the activities of its members to ensure good behaviour and compliance with societal norms, so as not
to drag the name of the family into the mud for selfish or other personal reasons. However, for a recalcitrant or uncontrollable member of the family the last resort was to disown him or her, thus exonerating the family from any charges of complicity or cover-up. As one looks at the history of our culture, one learns that social control in most traditional Nigerian societies and customs was exercised by the community and the family, not by the state.

Banishment or execution of offenders by the community (today what we use prisons to accomplish) was always a last option. It was saved particularly for repeat offenders who participated in violent behaviours. In general, there were three broad classifications of offences: those against individuals, those against the community, and those against the gods or spirit world. Each classification has its own set of punishments. But what remains significant is that, apart from the extreme punishment of banishment or execution, there was no consideration of incarceration, particularly in southeastern Nigeria.

THE PENAL SYSTEM IN NIGERIA: COLONIAL AND POSTCOLONIAL ERAS

Imprisonment as a form of punishing offenders is alien to Africa’s core values in the administration of justice. For the vast majority of cultures in Nigeria, imprisonment was not considered a valid form of dealing with conflict. To a small number of communities in Nigeria before the colonial era, separation of the offender from the community was employed. For instance, different communities in the western and northern parts of Nigeria did use various forms of imprisonment: the Ogbori House among the Yorubas in the west, the Ewedos among the Edos of Benis in the northeast, the Fulanis in the north, and the Tivs in the middle belt. In addition, the Lagos Blue Book indicates the existence of a place of confinement at Faji where offenders were imprisoned and employed mainly in street cleaning (Jarma 1998). These places of confinement functioned on small scales and were used
to handle issues of banishment from the community. Stigma and demonization of prisoners were not a function of these houses. Total separation through high-security cultures was not central. The purpose of these forms of confinement was to secure community safety, and there was never a total separation of offenders from the community for extended periods.

It was only during the formal annexation and subsequent colonization of Nigeria by the British that penal institutions were manned by trained and commissioned officers in 1861 (Elias 1964). By 1872 the first formal prison was built by the British colonial government to hold 300 prisoners. It was known as Her Majesty's Prison and was built in what is currently known as Broad Street in Lagos State. As the colonial invaders extended their frontiers, the number of prisons increased in areas where the British sphere of influence could be felt. Some of the prisons built around that period include Ewedo prison, originally built by a traditional ruler (Elias 1964), rebuilt and expanded by the British in 1910, and then moved to Oko village to assume greater responsibilities and capacities. In 1900 Sapele prison was built under the Oil Rivers protectorate before amalgamation with the Lagos colony in 1906. In 1890, Calabar prison was built to detain convicts from the Calabar Rice Scheme. It was destroyed, however, during the civil war in Nigeria and thereafter rebuilt by the British.

The notions of "convict" and "criminal" were imposed by the British as they implemented their criminal codes. Prior to this time offenders were people who offended. As the British colonial government extended its power over the Nigerian region, it also extended the imposition of its criminal justice institutions and its demonization of our offenders, who now came to be defined as criminals. The separation of an offender from the community took on a new aspect as that person became a criminal through British law. In addition, the number of acts that could be defined as offensive to a community grew as the British implemented their colonial laws.
For traditional forms of justice to be recognized by colonial governments, they had to become institutionalized. With the establishment of what the British came to call "native courts," an expansion of prison building was undertaken. Abeokuta prison was institutionalized in 1900, while Owo prison was established in 1911 at Ifon and transferred to Owo in 1925. Ijebu-Ode came into existence in 1895; Agodi was established in the same year under the Prison Ordinance of 1884, with only two cells, to accommodate only a few male prisoners. Similarly, Kano central prison was set up in 1903 and was later moved to its present site in 1910, while Kazaure was established in 1908 to accommodate fifty prisoners. Like the prison built by an oba (king) in Bini Kingdom, Zaria and Kafanchan prisons were initially accommodated in the emirs' ("princes'") palaces.

The vast majority of the current prisons in Nigeria were built in the first two decades of colonial rule. Abinsi (now Makurdi) prison was built in 1918, Gboko prison built as a Native Authority prison in 1932, and Oturkpo prison institutionalized in 1924 and briefly administered from Enugu before the creation of a divisional headquarters. Others include Gwoza in 1920 and Bia in 1910 (moved to its present site in 1923). Nguru was built in 1928, while Maiduguri was first built in 1920 and rebuilt in 1954.

With amalgamation of the northern and southern protectorates by Lord Lugard in 1914, the Prison Ordinance of 1916 and the Prison Regulations of 1917 were promulgated. The ordinance gave extensive powers to the governor to establish and regulate prison administration throughout Nigeria. It also gave powers to the governor to appoint directors and other officers to manage prisons, while the native authorities were operating at the local level and under the local district officers. Consequently, there was no uniformity in prison administration because of the difference in the mode of governance in northern and southern Nigeria. For instance, while prisons in the north were managed by yaris ("chief warders"), in the south there were three categories of prisons: the provincial prison, the divisional prison, and the convict prison for those serving sentences above two years. The
total institutionalization of a criminal justice administration had not yet occurred.

It is imperative to note that, although there were many ordinances and orders made by the colonial government to regulate prison administration between 1920 and 1960, it was not until 1966 (six years after independence) that the Nigerian federal government made concerted efforts toward the unification of prison administrations throughout the federation. These reforms worked to mirror what the British had institutionalized in Europe. With implementation of their institutions during colonialism, it was said that the best way to “work with what they had left behind” was to better institutionalize their laws. These transitions into a federally regulated prison service were encouraged, guided, and funded by Western (mainly European) governments. Thus, what we have today as the Nigerian Prison Service functioning under a centralized administration was established on April 1, 1968, following the Gobir Report (Jarma 1998) on unification of the existing central and native prison administrations. The unification of administration, among other implications, signalled the beginning of the gradual withdrawal of British officers who hitherto had manned prisons in Nigeria. As colonial institutions looked more like their own, they felt more comfortable in their withdrawals. Subsequent reorganizations in the prison service led to the promulgation of Prison Decree No. 9 of 1972. The decree chiefly placed the British prison system in the hands of Nigerians.

It is important to point out that the circumstances surrounding the period under review were also affected by sociocultural and economic changes. Crime rates had risen. Ugly incidents attended urbanization, and the creation of a British nation-state named Nigeria in West Africa had dire consequences. The exploitation of our economic fortunes and resources entered trade agreements with the industrialized world. Poverty was on the rise; so was crime. It was after the British pulled out of Nigeria that the economic situation here began to dwindle; as they deoccupied
our government positions, they continued to occupy economic agreements and relied heavily on the institutions they had put in place during colonialism to maintain a European status quo. Consequently, during colonialism there was no recurring record of prison overcrowding, with its attendant consequences. Tools and facilities (particularly at designated vocational skills acquisition centres within the prison) were enough to carry out sentence planning of prisoners. In the postcolonial era, when the British no longer occupy Nigeria, our resources extend further into the European economy, leaving Nigeria and Nigerians in greater distress. As the British left Nigeria, they took with them control over our livelihood. They expanded access to our oil reserves and in so doing destroyed our agricultural lands. They imposed a capitalist economy that keeps many poor and a few rich. And they left behind their criminal justice institutions, which could take care of those who did not fit well into the British capitalist economy.

THE NIGERIAN PRISON SERVICE TODAY

Against the backdrop of a series of efforts aimed at restructuring and positioning the prison service in Nigeria to meet up with its ever-increasing demands, particularly enacting Prison Decree No. 9 of 1972, another major shift took place in 1992. The Nigerian Prison Service became recognized as an important and strategic security agency. It was consequently removed from the civil service structure and made to incline more toward a paramilitary service. The prison service became retained under the Ministry of Internal Affairs under the aegis of the Custom, Immigration, and Prison Services Board. The board was mandated to manage and formulate general policy for the three paramilitary services, appoint and discipline all categories of staff for each service, and make regulations and standing orders for paramilitary services. The institutionalization of imprisonment through the centralization of criminal justice in Nigeria aided in a shift from
safety of the community in precolonial Nigeria to security for the state in contemporary times.

**Administrative Structure of the Nigerian Prison Service**

Currently the Nigerian Prison Service has six directorates created to ensure and enhance specialization and institutionalization of the *criminal* justice bureaucracy in Nigeria. The directorates comprise:

- operations;
- administration, personnel management, and training;
- finance and supplies;
- inmate training and productivity;
- medical and welfare services; and
- works and logistics.

Each directorate is headed by a deputy controller general. At the apex of the structure is the controller general of prison,\(^8\) the chief executive of the service, responsible for the formulation and implementation of penal policies. He is answerable to the president of the Federal Republic of Nigeria through the minister of internal affairs.

There are eight administrative zonal commands into which prisons in the thirty-six states, plus the Federal Capital Territory of Abuja, are clustered for proper coordination and supervision. Each zone is headed by an assistant controller general of prisons, a rank next to that of deputy controller general of prison, who heads the directorates at the headquarter office. Following the assistant controllers general, each state command is headed by a controller of prisons, who supervises the activities of the various prison formations at the state level.

**Functions of the Nigerian Prison Service**

According to the Federal Ministry of Internal Affairs annual report for 1997, the main functions of the Nigerian Prison Service are:
(1) to keep safe custody of people who are legally interned;
(2) to identify the causes of their antisocial behaviour, and to 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.

To implement any or all of these functions, the penal system is currently endowed with 148 prisons, 83 satellite or lock-up prisons, 10 prison farms, and 9 cottage industries for inmates’ vocational training (Agomoh et al. 2001). However, the achievement of these tasks by the prison service today has not been easy, especially when viewed from its background and other historical antecedents, vis-à-vis the present scope and operations throughout the federation, coupled with the ever-dwindling fortune of the nation’s economy.

The rate of recidivism, and the rate of deaths (or permanent disabilities) occasioned by malnutrition, long incarceration in the “single” or overcrowded cells, contagious diseases, and the generally poor welfare in most of the prisons in Nigeria today, indicate that prisoners are living in dangerous environments and, when they need it, are not receiving treatment or rehabilitation. In fact, the problems militating against the effective realization of these functions in the prison service today are many. Admittedly, most of these problems—overcrowding/congestion, high remand population, poor and dehumanizing ways of treating prisoners (health and welfare), poor planning and logistics—were ostensibly not in existence during and shortly after the recognized colonial period, for reasons initially outlined.

With the benefit of hindsight, it is obvious that there was no consideration or contingent plan for any or many of the problems affecting the prison system today. The concern then was primarily to contain a few dissident voices against colonial rule or the pocket
sizes of Nigerians in the employ of the British institutionalized commercial and capitalist interests. Nevertheless, some of these problems could and should have been handled by the various successive Nigerian administrations, while others are linked to other agencies of the government. Unfortunately our options in Nigeria included ostracization from the international community through rejection of Western institutions and economic structures, or ostracization of our people through the continued implementation of European economic and social control structures and institutions. Like the leaders of many nations in this position, our leaders have chosen the latter, either out of fear of the wrath of Western military aggressions, or out of greed for Western capitalist and imperialist wealth, or a combination of both greed and fear.

OUR TOMORROW: EMERGING ISSUES AND SUGGESTIONS

Despite all these problems, hope has always been kept alive. Over time there have been a series of interrelated efforts aimed at correcting some of these identified anomalies. We identify areas considered key for any meaningful reorientation and refocusing of the Nigerian Prison Service.

- In 1998 the federal government's Taskforce/Committee on Prison Decongestion and Reforms adopted a sector-wide approach and determined criteria for the release of prisoners, and by the end of the exercise some 8,000 prisoners were released nationwide. Regrettably, though, this exercise has not been sustained, only ad hoc. Those 8,000 prisoners were quickly replaced, and other prisoners have yet to be immediately released at such necessarily high rates.
- We believe that, rather than this approach, a more insightful method of prison decongestion such as alternatives to imprisonment or non-custodial
approaches should be embraced. Again, there should be a review of some of the obnoxious laws that enable law enforcement officers to arrest and detain suspects without having a reasonable conclusion of investigation by the police. There should also be some functional mechanism that allows our African values to re-enter justice through encouraged contact between prisoners and the community.

- As a starting step, we hope to implement a legitimate external non-governmental monitoring mechanism for the Nigerian Prison Service, conducted by independent observers who have the power to criticize and address brutality in prisons. Without external observation the prison system will be allowed to continue in its brutality toward and demonization of prisoners. External observation will allow us to concretely define brutality while abstractly allowing for questioning of the philosophies of imprisonment and its relevance to Nigeria. These approaches will put in place more sustainable solutions to the congestion of prisons in Nigeria because they will allow for identification of excessive use of power in imprisonment.

- Similarly, while we make the call for decongestion of the prison population, there is also every need for the prison system in Nigeria to consider urgent steps toward structural rehabilitation and provision of other related facilities. While we still have prisons in Nigeria, we need to address the immediate needs of the people inside them. Structural rehabilitation would include renovation of cells to allow for more healthy spaces (i.e. air ventilation) to combat disease and may include the reconstruction of wells to provide clean drinking water for prisoners.

- Also, in view of the dwindling economic fortunes of the country, coupled with the fact that we never have relied and likely never should rely on the state to fix our
problems, it remains imperative that members of the community should quickly come to the aid of prisoners and become more involved in the issues relating to prison management. It is time to shift back to community safety and away from state security as central to justice in Nigeria. If the "decay" in justice continues unarrested, other social structures will continue to be affected to the extent that no meaningful life will be allowed to take place. The interconnectivity of our social structures is recognized and accepted by Nigerians. If we begin to address the problem of imprisonment, we can start the journey toward healing the rest of this colonized, lived existence.

CONCLUSION

The Nigerian Prison Service occupies a primary place in the colonial criminal justice system. The problems associated with the ineffective operations of the service have been enumerated here and elsewhere (Agomoh 1996; Odinkalu and Ehonwal 1991; PRAWA 1998). Some of the options for intervention highlighted in this chapter would enhance empowerment of Nigerian communities and hopefully lead to prison decongestion (and eventually penal abolition) as a first step toward addressing penal coloniality in Nigeria. On a more specific and immediate level, we need to work to ensure an improved welfare system for prisoners. We need to work back toward employing a system that addresses conflict and harm in a manner that centralizes integration of all peoples into our communities.

The structural decay that the criminal justice system has imposed on our African societies must be arrested. It is our hope that a turnaround can be achieved within a reasonable period of time as we make further journeys into the new millennium. Nigeria has endured slavery, Nigeria has endured colonialism, and Nigeria continues to endure penal colonialism in all its forms. We are concerned not only about prisoners' rights but also
about a society that respects human dignity and inclusion; as long as we have prisoners, we are not free; as long as we have prisons, we are not postcolonial.

NOTES

2. The officers were commissioned by Governor H. S. Freeman.
3. Oba Ewedo was the fourth oba who ruled the Benin Kingdom from 1255 to 1280. The prison named after him was rebuilt and made a maximum-security prison to accommodate 608 beds.
4. For more details on the ordinance, see Order 60 of 1922. It is also important to note that the first director of prison appointed after the amalgamation was B. Dolan, who inclined toward the reformation and rehabilitation of prisoners. Much credit was also given to him for his efforts in initiating the classification of prisoners in Nigeria.
5. Here we see the mixing of a traditional African term (chief) with an early colonial term (warder). The term “warder” rather than “warden” is still used in Nigeria, reflecting the early British colonial influence.
8. The controller general of prisons used to be the director of prison as initiated by the colonial administration. This became unfashionable in line with some of the restructuring that took place in the prison service.
9. History and contemporary events show that those nations that do not “coincide” with the demands of the West become demonized and attacked. If our political, economic, and cultural structures do not match those of the West, either we become “uncivilized” and in need of “liberation,” or we become “dangerous” and in need of “attack.”

REFERENCES


