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Freeing the Caged: Indigenous Alternatives to Modern Incarceration in Nigeria

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Abstract

Incarceration, as a form of penalty in Nigeria, has not produced the desired deterrent effect. Apart from the inadequate funding of the existing 249 holding facilities occasioned by the blighted economic fortune, slow justice dispensation has drastically increased the inmates population, especially with Awaiting Trial Persons. Due to the formidable challenges, the Prisons Services (renamed as Nigerian Correctional Services) have not done too well in Reformation, Rehabilitation and Reintegration (RRR), thereby necessitating the need for alternative penalty. This paper interrogates the indigenous judicial system of the three major ethnic groups and its data were drawn from both primary (interviews with inmates, officials) and secondary data. Indigenous non-custodial penalty, community service, was found to be cheaper, humane and restitutive and was therefore recommended.

Keywords: *Prison, Indigenous penalty, Community service, Deterrence, Reformation*

1. Introduction

Modern penal incarceration system is fraught with many challenges; which have stirred up agitation for a complete overhaul or outright replacement by the abolitionist's philosophy which emphasizes that the contemporary idea of prisonization has gone beyond physical confinement. Correctional facilities in Nigeria have become more holding facilities where suspects or simple offenders are bred into hardened criminals as well as avenue for state-oppression rather than functioning as reform centers. There is a plethora of challenges inherent in the post-colonial incarcerating system. These include, inadequate rehabilitation facilities, congestion, custodial morbidity, recidivism, and disproportionate population of awaiting trial inmates resulting from elongated court trials. Compared to the precolonial practices, the post-colonial prisons in Nigeria are solely run by the State to the dangerous exclusion of the community thereby compounding the ease of correction and reintegration. It is against this backdrop that the inherited penal system was examined to determine its viability in contemporary Nigeria. This chapter discusses indigenous justice systems of Nigeria's three major ethnic groups, the Hausa, Ibo and Yoruba, purposively selected to represent the North, East and West respectively. The data for this chapter were sourced from in-depth interviews with prison officers and community leaders as well as secondary data which were subjected to content analysis through rich textual reproduction and the categorization of the emergent issues.

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The chapter concludes that the indigenous corrective system is driven by restorative philosophy because it emphasizes arbitration, community service, compensation, fine, negotiation and reconciliation. The indigenous practices promote restorative justice, are more humane, community-oriented and participatory. More importantly, the indigenous penal system is cost-effective because it operates at different levels of family, groups/community and has wide acceptability at the grassroots. It therefore, strongly supports the reinvention of indigenous penal system as a viable and humane alternative to the postcolonial incarceration arrangements for the treatment of offenders.

2. Colonial and Post-Colonial Context on Incarceration

Centralized penal incarceration began in 1861 in colonial Nigeria when Lagos became a colony of the Great Britain (Rotimi, 1982; Alemika, 1993; and Anzaku *et al.*, 2015). Typically, prison connotes a designated facility meant to keep offenders temporarily or permanently away from the society as a form of punishment. Obioha (2011) sees it as a place to punish offenders for criminal activities, rehabilitate and teach them to become law-abiding. Harping on peculiar form of behavior of incarcerated persons, Goffman (1961) agreed with McCoorkle and Korn (1954) that imprisonment limits inmates' physical contacts with their society and imposes stereotypical behavior on them.

The centralized penal system of the colonialist was necessitated by the wholesale imposition of the English Common law in British colonies (Okonkwo, 2005), which has been described as "a new system of oppression" (Beti, 1958, p. 126). Subsequently, prisons were built to keep 'offenders' (mostly community leaders who resisted colonial emasculation and mobilized subjects against their interests) who allegedly posed serious threats to the colonial government away from their respective community (Achebe, 2008). As a fact of history, economic cum political colonialism was vehemently resisted across indigenous communities to the extent that Lord Lugard, the colonial administrator, was forced to adopt different strategies. Indirect Rule was introduced in the Northern and Western parts with well-established Emirate and Obaship system whereas, Warrant Chiefs were appointed in the acephalous communities of the Eastern and parts of North. Even some unyielding monarchs such as King Jubo Jubogha (the Jaja of Opobo) and Oba Ovonramwen Nogbaisi of Benin Kingdom were deposed in the 1880s and banished from their immediate community to teach other 'recalcitrants' a lesson. The Jaja of Opobo was deposed in 1887 "for blocking British trade" in palm-oil in Bonny (Crowder, 1977, p. 99) whereas Oba Ovonramwen was exiled to Calabar in 1897 for resisting the annexation by British (Crowder, 1977; and van Zeijl, 2016). In fact, Achebe (2008, p. 140) lamented that "some of the prisoners were men of title who should be above such mean [humiliating treatment]." However, the idea of imprisonment in Nigeria predates the colonial era because many precolonial communities occasionally utilized short term confinement as one of the many approaches of dispensing justice and dealing with offenders (Awe, 1968; and Rotimi, 1982).

In the colonial and postcolonial Nigeria, the ownership and administration of prisons were/are restricted to the government at the center. This was evident with the British extension of their colonial justice system throughout Nigeria, with the amalgamation of the Northern and Southern protectorates by Lord Lugard in 1914, and the subsequent promulgation of the Prisons Ordinance in 1916, and the Prisons Regulations in 1917. These documents expressly gave the colonial Governors power to establish and regulate prisons anywhere in Nigeria while the Native Authorities were made to operate at the local levels under the District Officers (Saleh-Hanna and Chukwuma, 2008). However, independent Nigeria (Nigeria gained independence in October 1, 1960) continued the colonial arrangements until April 1968 when its prisons were unified. Consequently, the Nigerian Prisons Service (NPS) was established with the responsibility to regulate prisons federally following the Gobir Report on the Unification of Federal and Native Prisons (Jarma 1998, in Saleh-Hanna and Chukwuma, 2008). As one of the 68 issues in the Exclusive Legislative List in the 1999 Constitution (as amended), prisons are created and managed by the Federal Government. The supervision of the prisons in independent Nigeria is coordinated by the Comptroller General of Prisons who is assisted by Comptrollers of Prisons at the federating states. Basically, the penal philosophy in Nigeria is driven by Rehabilitation, Reformation and Re-integration. Put differently, prisonization is designed to keep and reform offenders in a bid to protect society from harms (Rotimi, 1982; and Nduke and Nwuzor, 2014). Reformation deploys all strategies to make offenders better persons while being lawfully punished whereas Rehabilitation involves a purposefully planned intervention aimed at changing offenders (Veldhuis 2012). Expectedly, offenders must be prepared for re-entry into the society after serving their jail terms. Thus, reintegration is a safe transition to the community, especially after the conditions that led to the offending had been mitigated (Gisler *et al.*, 2018). The overall essence of contemporary prisons is summed up in the Article 54 of the United

Nations, which states inter alia: "the institution should seek to utilize all the remedial, educational, moral, spiritual and other forces and forms of assistance, which are appropriate and available and should seek to apply them according to the individual treatment needs of the prisoner."

Despite the lofty goals of modern-day prisons, the arrangement is bedevilled with many problems, which have limited its capacity to effectively deliver on its 3-Rs' mandate of Rehabilitation, Reformation and Reintegration. The evident failure of modern incarceration amidst increasing criminality and financial implication has provoked (and still provokes) debates on its continued relevance in justice dispensation. The major among these challenges are congestion, soaring awaiting trial persons, recidivism/"jail-birdism", poor facilities and jail-break. Specifically, in his comparative study of prison facilities across Nigeria, Alemika (1993) found high prisons admissions, high proportion of the inmates awaiting trials, high rate of custodial morbidity, overcrowding, poor healthcare and inadequate nutrition. Indeed, prison congestion is a daunting challenge in Nigeria because most facilities were built by the colonial government and with the limited carrying capacity. The Kirikiri Maximum Security Center, Ikoyi-Lagos with initial holding capacity of 800 inmates once had 1,900 inmates, the Correctional Center in Port Harcourt locks up 2,924 persons despite its installed carrying capacity of eight hundred and four (Maiyaki, 2015) while Afokang Prisons in Calabar holds 550 persons instead of the 300 installed capacity (Ayuk *et al.*, 2013). Invariably, most prison facilities in Nigeria house almost twice of their carrying capacity. For instance, the prison population in Nigeria as at 2017 stood at 68,110, out of which only the 21,354 inmates were convicted (Prisoner's Rehabilitation and Welfare Action 'PRAWA', March 2017). This implies that about 69% of the inmates in Nigerian prisons are awaiting trial, and these awaiting trials could stay for up to 15 years without trial, thereby forcing huge maintenance costs on the society. Unfortunately, the Nigeria Prison Order did not envisage the awaiting trial inmates and therefore makes no specific provision for their welfare. Also, the fact that they are not technically seen as part of the prison population excludes the awaiting trial persons from any form of rehabilitation programs. This menace of awaiting trial inmates has aggravated the overarching and unfortunate custodial morbidity due largely to unwholesome treatment of the inmates (Federal Republic of Nigeria, 1984). The slow process of criminal trials in Nigeria has continued to swell up the population of persons awaiting trials and the entire prison population, especially because there is no timeline to dispense of criminal trial.

There is no doubt that inmates in Nigerian prisons face double jeopardy of vulnerability to harsh treatments and denial of rehabilitation. Due largely to improper classification and lumping together (Holman and Ziendenberg, 2006), incarceration facilities in Nigeria have become breeding grounds because those incarcerated are exposed to more opportunities for learning new criminality and more dangerous vices (Alemika and Chukwuma, 2001; Alemika *et al.*, 2005; and Oyesiji and Ayodele, 2019). The triplet-factor of biting poverty, weak prison-industry and exposure to unlawful skill explains the surge in the incidence of re-offending or recidivism in Nigeria despite the inclement environment of the correctional facilities (Benjamin, 2018). Recidivism, a relapse into crime and criminal lifestyle or activities by an offender who had once or more times been processed through the penal system, underscores the failure of modern prisons in Nigeria to successfully reform and rehabilitate. For instance, statistics from Nigerian prison authority indicated that over 60% of the inmates were recidivists (Otu, 2015). Also, Abrifor *et al.* (2012) in Otu (2015) intimated that the prevalence of recidivism in Nigeria was high at 37.3% in 2005 and increased to 54% in 2010. Upon their legitimate release, many ex-convicts usually return as hardened criminals (Usman, 2013) to contend with poverty and unemployment thereby impeding the efforts of the security operatives in curtailing criminal acts. Similarly, the urge to practice learnt criminality outside the walls could have prompted the high rate (70%) of escape from lawful custody in Ilorin (a Northcentral State) and the 88% attempts to escape in Abeokuta (a Southwestern State) Borstal Institutions (Oyesiji and Ayodele, 2019).

Prior to the modern prison system, the precolonial African societies had effective indigenous justice system which was restorative in nature. For example, Crowder (1977) re-echoed the sterling quality of great abhorrence for injustice. Ibn Battuta observed precolonial Niani community in present-day Mali compared to the unjust law-enforcement during colonial era (Osifodunrin, 2005). Similarly, Carlson (1986 cited in Richard, 2009) observed that "there is no process in Western society closely comparable to the dispute settlement procedures utilized by Arush" in Tanzania. These revealed that the African indigenous penal system was characterized by resolution of disputes rather than punishment so as to promote cohesion and solidarity with community. Putting it succinctly, Nwolise (2014 cited in Richard 2009) opined that indigenous African penal institutions geared towards peaceful resolution of disputes and restoration of social harmony while at the same time upholding the principle of fairness, equity and justice engrained in their customs and traditions.

3. Evidence-based Reasons against Incarceration in Nigeria

This chapter relies on the qualitative data drawn from selected inherited colonial prisons facilities in Northern Nigeria, specifically the Kano Central, Kurmawa and Goron Dutse Prisons located in Kano State. The aim was to evaluate the prevailing conditions of the persons undergoing punishment within the walls of imprisonment and the effectiveness of incarceration with a view to determining its retention or abolition. In other words, our interest was to understand the inherent challenges and prospects of the state-oriented and offender-focused penal system. In addition, notable community leaders were interviewed to gather information on alternatives to incarceration or imprisonment in contemporary Nigeria. Four Key Informant Interviews were conducted with prison officials and community leaders. In addition, secondary data were drawn from the literature, which carefully documented the precolonial penal practices in Iboland (Achebe's Things Fall Apart) and Yorubaland (Fagunwa's *Ogboju Ode Ninu Igbo Irunmole* and *Igbo Olodumare*) as well as indigenous proverbs. The novels were used because they captured precolonial experiences and the ultimate effects of clash of civilization (Akiwowo, 1980; 1999; and Rodney, 2005). Interestingly, the data depicting the current reality in incarceration in Nigeria, strengthen the abolitionist debate for penal deconstruction from African perspective.

Justifying the abolitionists' claim that imprisonment has lost its relevance as a form of punishment in contemporary society, all the prisons investigated were congested, with each carrying triple its original capacity. The Kano Central Prison with installed capacity of 750 houseds more than 2,000 prisoners of which about 65% were Awaiting Trial Persons (ATPs) or Awaiting Trial Inmates (ATIs). An Assistant Comptroller of Prison, Male, Kano Central Prison disclosed that the "prison was originally made to house only 750 prisoners, however, we now lock over 2,000 prisoners, and awaiting trial inmates constitute about 65-70% of the whole prison population, this is what caused the prison population." It was equally learnt that many of the ATPs had spent close to 8 years without their cases being resolved in courts. Apart from the agonising uncertainty for speedy trial, the prisoners had to contend with harrowing and dehumanizing living conditions within the walls in present-day Nigeria. The hellish congestion of contemporary Nigerian prisons is couched in the admittances by a senior prison officer overseeing Goron Dutse Prisons (GDP).

> *We have some cases of inmates who spent 8, 10 years, some, their files have gotten lost, we only call them ATPs (Awaiting Trial Persons) because we receive remand warrant, but they do not go to court* (Assistant Comptroller of Prisons, Male, Goron Dutse Prison)

Evidently, the appalling reality captured in the foregoing responses negated the hope of the inherited centralized prisons system serving as reformatory centers. As a matter of fact, the Nigeria Constitution (1999 as amended) categorically forbids undue incarceration without trials in Section 35 (1)(f).

> "a person who is charged with an offence and who has been detained in lawful custody awaiting trial *shall not continue to be kept in such detention for a period longer than the maximum period of imprisonment prescribed for the offence"* (Constitution, 1999: S35[1][f]).

Despite the due acknowledgement by the Assistant Comptroller of Prison in-charge of the Goron Dutse Prison that "prison is a place where law violators of the country or society are kept or detain for certain period, either for rehabilitation or reformation and reintegration back to society as law abiding," he was overwhelmed by the contrasting reality in the facility he oversees. Without any doubt whatsoever, the prisons boss was frustrated by the unfortunate development that has crippling effect on the penal system in contemporary Nigeria. Considering the statutory three-R purposes (Rehabilitation, Reformation and Reintegration) of formal incarceration in Nigeria, effective discharge is thwarted by many formidable and intractable problems of congestion hampering proper classification and treatment of prisoners. As a matter of fact, existing prison facilities in Nigeria are grossly inadequate, deficient in infrastructure and poorly funded to the extent that prisoners hardly get the attention necessary for their rehabilitation and reformation. Invariably, ill-treated, disoriented and disenchanted prisoners are released into the Nigerian society to constitute a menace and threat to security. It is also somewhat difficult to re-integrate convicts who have not been effectively rehabilitated and reformed during their harrowing period of incarceration.

Prison congestion in contemporary Nigeria results from numerous factors including slowed judicial process, court congestions, preference for custodial penalty, and poor investigation. One other factor is the case-on-hold which results when capital offences are taken to magistrate courts instead of higher courts with competent

jurisdiction. This has invariably created dual issues of congestion and much awaiting trial as the leading problems of prison being less effective. The Assistant Comptroller of Prison for Kano Central Prison hinted on the problems confronting his facility thus:

> The causes of this prison congestion are multidimensional, however, most of the blame the remand go to the judges: (a) There is no speedy trial of suspects; (b) most of the accused persons brought to prison especially of capital offences are on-holding, meaning the accused person is taken to a lower court that lacks competent jurisdiction to try the case. For example, capital offences like rape, murder and armed robbery which only High Court has the jurisdiction to try such cases but most of them in this prison were tried by Magistrate Court which lacks jurisdiction to try them, so you will see them staying for 5 years or more without trial.

This foregoing corroborates Achebe's (2008) observation in precolonial Iboland that the Whiteman's "prison was full of men who had offended against the white man's law." Equally recalling the indignity suffered by inmates hounded into colonial prison, Achebe said they "were beaten in the prison by the kotma (colonial officers) and made to work every morning clearing the government compound and fetching wood for the white Commissioner and the court messengers. … They were grieved by the indignity and mourned (Achebe, 2008). The dehumanizing milieu of the present-day prison system confirms that custodial penalty in postcolonial Nigeria has not significantly improved from what it was during the colonial era. The disclosure of the senior prison official also affirms Benjamin's (2018) accounted that "Nigerian prison is worse than a hell, with overcrowded population of about 53,100 inmates, [including] children of under-age awaiting trial."

In agreement with the abolitionists' stance on the advocacy for non-custodial alternatives to incarceration, we learnt that Nigeria faces the problem of over-reliance on custodial penalty for nearly all forms of crimes. For instance, misdemeanours like theft, breach of trust, affray, libel, and defamation involving no loss of life that do not attract imprisonment usually end up populating the prisons with its attendant problems. Senior prison officials intimated in their respective facilities:

> *… judges don't want to explore non-custodial alternatives to imprisonment like community service, probation, arbitration and imposition of fines. These non-custodial means of punishment greatly help in decongesting prison (Assistant Comptroller of Prison, Kano Central Prison).*

> *... simple cases that could be treated in the community or in the court using simple alternative than bring a suspect into our custody, are all ignored, we are left here with many awaiting trials that constituted the largest population of the prison. So these are the major causes of prison challenges, especially Goron Dutse prison (Assistant Comptroller of Prison, Goron Dutse Prison).*

The strange judicial preference for imprisonment even simple offences and the psychologically dehumanizing environment, do alter the social conditions of the prisoners thereby triggering a chain of reactions including graduation to secondary deviance. Thus, due to many overarching problems not limited to overstretched facilities, dehumanizing treatment, and poor funding, the prison institutions in Nigeria have inadvertently become unfriendly environment for human habitation and a nursery for the transfer of criminal skills and knowledge. These, put together, underscores the urgent need for the adoption of non-custodial alternative to imprisonment, which is the core of the abolitionist campaign.

4. Indigenous Noncustodial Alternative to Modern Incarceration

Treatment of crime suspects and penalty for convicts in precolonial Nigerian communities differ markedly from postcolonial Nigeria because of the differences in classification of offences (Ayodele, 2017). In the precolonial era, only the grievous aberrant behavior, categorized as abomination or sacrilege, attracted stiffest penalty of either banishment or propitiation. As a matter of fact, no distinction was made between civil and criminal matters in the precolonial arrangement. Although, Tamuno (1993a) reported a Briton's position that grievous offences in precolonial era equated crimes in Britain, this was not true because sacrilegious or abominable behavior stood out "due to their repercussion of collective liability" if not redressed (Ayodele, 2017). In the words of Ilogu (1974), "no one sins to the gods alone, [as] punishment for the sins of one man is visited on all." Also, despite the arrays of punitive measures in the precolonial Nigerian communities, imprisonment was unknown except in occasional instance, when few powerful individuals maintained private lock-up in their residence. A good example is Bashorun Gaa, a tyrant Prime Minister of the Oyo Empire in the 17th/18th century, who kept a private prison where he held

whoever challenged his despotism (Faleti, 2004). The precolonial Igboland, which had no prison due to the absence of central ruler, got its first prison after Warrant Chiefs were introduced to boost the enforcement of the imposed colonial laws (Achebe, 2008).

To contrast the precolonial and colonial penal system, Fagunwa (1984) scripted a typical court trial and its unjust outcome. Strangely, the trial judge relied on the unverified evidence given by prejudiced witnesses and drew inspiration from the colonial's religious book, the Bible. On the Biblical instruction regarding the culpability of the custodian of a lost property held-in-trust (Exodus 22:7-8), Akaraoogun, the custodian of a Judge's lost dog in Fagunwa's symbolic Forest of Demons, was convicted and humiliated despite being innocent because the thief was not found.

If someone gives goods to anyone to keep and it is stolen, the thief shall pay double if he is found. But if no thief is found, *then the man to whom the valuables were entrusted shall be brought before God to determine whether or not he himself has stolen his neighbor's property* (emphasis added) (The Holy Bible, Exodus, 22:7-8).

The clause "if no thief is found," is a presumption of guilt and a calculated attempt to condemn the custodian. As a matter of fact, most criminals including thieves do not want to be caught implying that they would do everything possible to cover their track. Thus, without any thorough investigation to fish out the real thief, Akaraoogun who had the custody of the King's dog was accused of stealing, arraigned and convicted based on the fabricated testimonies of two star Witnesses whose treasonable act the suspect had earlier reported. Consequently, Akaraoogun was flogged, pilloried in a pit-stock, his property confiscated after being shaven-with-cutlass.

> *…apa mi ni won ko sehin ti nwon si fun un lokun daindain. …nwon si ko ohun alumoni mi gbogbo: ati eyi ti mo ni ni ilu yi, ati eyi ti mo ti ni ki n to de ibe,…nwon mu mi o di aarin oja nwon si nna mi bi nwon ti nlo: gbogbo ara mi ri patipati. Nigbati a de aarin oja, nwon ni ki nbo sinu iho kan ti nwon ti gbe sile de mi, mo bo sii; nigbati mo duro ninu re o de mi ni orun, ori mi nikan ni o yo si ita. …nwon beresi iro erupe sinu iho naa nwon si nkii mo mi lara titi iho naa fi kun ti o je pe ori mi nikan ni o yo sita. Nwon mu ada, nwon beresi ifii fa mi lori; nigbati nwon faa ti o dan, nwon da oyin si mi lori, gbogbo esinsin sin kun ori mi wonyin.*

With my property seized, I was handcuffed and led to a purposely dug pit at the market center amidst flogging. Then, I was ordered into the pit as deep as my shoulder-level and instructed to stand upright before torrents of sand were poured to trap me. My hairs were shaven with cutlass and rubbed with honey to attract colony of flies before they left me helpless to die (Fagunwa, 2005).

In many ways, precolonial justice system differs from the imposed colonial alternative (Ayodele, 2011). Respected scholars including Achebe (2008) and Fagunwa (2005) have documented that precolonial adjudication was better handled by a team of well-informed elders in contrast to the colonial sole judge or District Commissioner who "judged cases in ignorance" (Achebe, 2008). For instance, the "nine egwugwu" or masked spirits judged cases in precolonial Iboland (Achebe, 2008), whereas the Oba-in-Council the Ogboni-society administered justice in precolonial Yorubaland. Apart from the prevalent team-trials, the precolonial justice system accepted testimonies only from credible persons. Achebe (2008) reported a trial in precolonial Iboland involving in-laws (Uzowulu and Odukwe) and Uzowulu's neighbors were summoned to assist the judges so as not to miscarry justice. In their separate testimony, the neighbors "agreed about the beating" (Achebe, 2008). However, in the Akaraoogun's trial for alleged theft, the agreement of the two testimonies on which conviction hinged, was fuelled by malice. The witnesses simply wanted the suspect eliminated for exposing their plans to overthrow the King: *"awon ara ilu ndi ote, …were ti mo [Akaraoogun] gbo ni mo ti dide o di ile ob"*" (Fagunwa, 2005). Apart from the lack of due investigation and deficient trials at the Whiteman's court, the officers were also corrupt by giving judgment to the highest bidder. Scripting the unjust resolution of a land dispute, Achebe (2008) noted that "the white man's court decided that it should belong to Nnama's family, who had given much money to the white man's messengers and interpreter."

Unlike the inherited punitive colonial justice system, precolonial system is driven by mediation, reconciliation and peace-building. The underlying purpose, according to Achebe (2008) "is not to blame this man or to praise that, but to settle the dispute." As a matter of fact, not all cases end up in court not to talk of imprisonment because some cases are considered too trivial to "come before egwugwu (Achebe, 2008)." Beyond the documented proofs, some proverbs currently in use among the Yoruba clearly support the reconciliatory penal philosophy of the

precolonial era. For instance, *"Bi elejo ba m'ejo re lebi, ko ni pe lori ikunle"* underscores the fact that admittance of guilt by a suspect mitigates penalty. In same vein, societal support for remedial measures was couched in both "*Bi oju ba nse ipin, a maa nfi han-an ni* (A person should be told his fault to make for remedy) and *"A ko ni tori awijare ki ito o tan lenu"* (Do't't wait till a suspect dies before believing alibi). Similarly, the precolonial Hausa communities promoted well-coordinated justice mechanisms under the Emir consisting of *Hakimi* (District Head), *Dagaci* (Village Head), and *Maiunguwa* (Ward Head). Other members of the Emirate council known as *'yan majalisar sarki'* also assisted in justice dispensation. However, the Emir's Palace Court was the highest because it was presided over by the Emir who was assisted by his learned appointee.

> *… shi hukunci fadar/majalisar Sarki su suke yin hukunci a wannan lokacin. Duk "yandoka da alkalai duka karkashin hukumar gargajiya suke'.*
>
> … the Emirate Council gave punishment in those days. It was traditional rulers and Alkalai (judges) that give verdict, because back then, even the court was under native authority. (Community Elder, Male)

However, the sharing of adjudicatory power between the court and the Emirate council or the *Sarki* (Emir) largely hinged on the nature, type and complexity of the issue at hand. Although the then societies were largely less complex, mostly witnessing simple offences, there existed some serious offences which were non-reconciliatory in nature. The adjudicatory power of Emir was usually on simple, reconciliatory offences which the presiding used to be at the palace, while non-reconciliatory offence were treated by Alkali (judge) in the court. A Hausa community leader disclosed that:

> The Court was in charge. It used to be between court and palace, if a case is bigger or complex for the palace to handle, they refer it to court, and if it is a reconciliatory case it was dealt with instantly there. There were cases that were reconciliatory and those that were not. (Community Elder, Male)

This circumstance of the wisdom of societies at that time to be able to distinguish reconciliatory infractions and non-reconciliatory infractions made a huge success in the area of penal system and administration in the olden days. Although societies were simple and most of the offences were simple, they were able to make a friendlier and less punitive system. Despite the existence of court system, cases were less often treated in court rather, treated at the traditional institution level and other levels of society like family. In contemporary Nigeria, some of the simple offences that attracted simpler penalties, attract harsher and dehumanizing penalty and unfortunately accounted for the soaring population of incarcerated convicts or awaiting trial persons. A community elder intimated:

> *Yawancin laifukan da ake aikatawa a kasar Hausa kafin zuwan Turawa basu wuce kamar shiga gidan mutane ba izini ba, ko diban kayan amfanin gona na mutane, ko karbar kayan mutum ka ki biya, sune laifuffukan, tunda babu laifuffukan sata a baya kamar yanzu. Laifukane na cin bashi, mutum yaci bashi yaki biya har ta kasance ma yayi kaura ya bar inda yake*.
>
> Mostly, the offences committed before the coming of colonial masters in Hausa society were not more than intruding into people's houses, stealing people's farm produce or debt-default. They were the type of offences since there were no much cases of theft compared to now. It was just a debt related offences, breach of trust and running away from the community (Community Elder, Male, 2).

Stressing the prevalence of community service in precolonial Hausa community, especially for simple offences, an elder reminisced.

> *Ai a da ni na shina idan mutum mai karamin laifi ne, kamar a gunduma, garin Hakimi, za'a iya yima mutum hukunci ace yaje ya share Masallaci kwana kaza, ko ya tafi gidan digaci ya zauna kwana kaza ana ganin sa. Duk yana faruwa.*
>
> For simple offences, guilty offenders were usually assigned serve the community by sweeping the Mosque, market, etc. (Community Elder, Male, 2).

Even the *Gidan Yari* introduced into the precolonial Hausa communities was more or less a temporary detention for more heinous offences and other category of offenders who could not comply with the non-custodial redress they were being offered. For example, a person who could not pay requisite compensation or comply with the sanction was remanded in such *Gidan Yari*.

Idan Mutum yayi laifi kuma yana da abin biya, za'ace ya saida kayansa ya biya mutum, in kuma wani gurine, ko gona, ko gida ya karbewa mutum ya cinye, in yana dashi za'a iya shatar nasa a bawa mutumin. Duk wannan ana yi

Offenders with the means were usually mandated to sell off to pay compensation. And if it is something like farm land or house he took from someone, his own personal land would be taken for the person he has infracted, it was all happening (Community Leader, Male 2).

To further underscore the mediatory strategy of precolonial justice system, it is important to revisit the case between in-laws earlier mentioned. Although the case bothered on wife battering and grievous assault, the community leaders who mediated knew they were not to destroy the marital bond. Thus, having heard the indicting

Table 1: Comparison of Offences and Penalties in Precolonial and Colonial/Postcolonial Nigeria

Precolonial/Colonial Crime/Offences		**Post-colonial Status**	
Crimes/Offences	**Penalty**	**Crimes/Offences**	**Penalty**
Murder of Whiteman, TFA97 Murder of native converts	Invasion and genocide, TFA98 Death by hanging TFA110, 138 * Murder attracts death in independent Nigeria	Murder (*ipaniyan*) Manslaughter	Death Propitiatory atonement, OONII58
Blasphemy, TFA103	Detention/Fine	Desecration of throne, tyranny	Death
Ancestral worship, TFA103,108	Psychological torture and physical abuse	Abuse of King/Chief	Banishment/enslavement
Unlawful assembly, TFA144	Detention/Fine	Conspiracy against kings. OONII30, 31	Banishment/enslavement
Molestation, TFA137	Fine, TFA137	Attempted regicide, TFA28	Banishment/enslavement
Arson, TFA137	Fine, TFA137	Intra-village murder (male-ochu) Inter-village murder, TFA8	Death,(1) War with perpetrator's clan; TFA9 (2) Atonement; (3) Compensation of victim's relatives/clan
Corpse mutilation, TFA130	Excommunication	Breaching Week of Peace (nso-ani) TFA21 * Fighting, quarrelling * Dying * Working/farming	* Fine of she-goat, hen, a length of cloth, and hundred cowries TFA22. * Burial denial/being cast into the Evil Forest * Ancestral curse
Child abandonment or dumping of twin, TFA95	Excommunication/ Ridicule Abandonment still attracts imprisonment in independent Nigeria CC (309, 327A)	Accidental killing of royal python	Fine: Appeasement and befitting burial, TFA121
Resisting arrest/ summon	Shooting at sight, TFA146	Clan's failure to prosecute and punish offender	Collective liability for the clan
Protest against government	Detention/Fine S69-88 of CC	Birth of twins	Dumping/killing of the twins TFA87
		Suicide	Denial of befitting, Cleansing/Propitiation TFA87

Table 1(Cont.)

Precolonial/Colonial Crime/Offences		Post-colonial Status	
Crimes/Offences	**Penalty**	**Crimes/Offences**	**Penalty**
		Rejection of ancestral worship, TFA108	Gods' anger, TFA103 Ostracism, TFA113
		Unmasking of Egwugwu in public	Death, TFA131
		Spousal severance, TFA64	Return of bride-price, TFA64
		Infidelity TFA93	Induced bareness or maternal-death
		Wife-battering, TFA65	Fine/compensation to in-laws
		Planting without propitiation. TFA12	Low farm yield.
		Unlawful land possession	Retrieval

Source: Ayodele. (2017). Afunrasi and Odaran: A Comparative Assessment of the Treatment of Persons Linked to Crime in Indigenous and Colonial in Nigeria. In Alexius Amtaika and Toyin Falola (eds.). Cultural Dynamics in Africa: Traditions, Rituals, Indigenous Knowledge and Modernity in Perspective. New York, USA: Cambria Press.

testimonies of Uzowulu's neighbors, the community leaders simply told the parties: "Go to your in-laws with a pot of wine and beg your wife to return to you. … if your in-law brings wine to you, let your sister go with him" (Achebe, 2008). For brevity and ease of comparison, the Table 1 overleaf shows some offences and penalties in Precolonial and Colonial/postcolonial Nigeria.

5. Conclusion/Recommendations

Evidently, the penal policy during the (post) colonial era contrasted that of the precolonial era. Despite the arrays of punishment in precolonial societies, imprisonment or incarceration was not common. The absence of imprisonment as a form of penalty was because of the precolonial penal system was wholly restorative or reconciliatory rather than retributive. For example, prior to the inversion of colonial masters and the subsequent capture of the area now known as Nigeria, there were exist administrative and justice systems among the various indigenous tribes or societies, these systems were the tools used for socio-political legal and administrative sentiments upheld by members. For example, in indigenous Igbo societies in South-East Nigeria, response to suicide was done by denying the deceased a befitting burial. The violation of such custom amounted to the family of the deceased being ostracized by the community until reparation and required ritual is performed. This invariably made families to keep watch of the activities of their members to avoid embarrassment from the community. The recalcitrant were, therefore, disowned by their family members. Also, the highest and last resort responses were banishment or execution of the most heinous wrong doers, and which was always given by community. In a nutshell, social control measures and mechanisms were carried out by the community and family members as against the state (Igbo, 1999, in Saleh-Hanna and Chukwuma, 2008).

Based on the foregoing, it is very clear that incarceration or custodial penalty was not prominent in precolonial Nigeria. Even after the custodial penalty had become entrenched in independent Nigeria, many communities are still very wary of embarking on litigation that would most likely end in imprisonment. "*Aa kii ti kootu de s'ore*" goes a Yoruba saying meaning that litigation in court destroys neighborliness. Basically, emphasis was placed on

restoring and sustaining peace within the community even when an offender was being punished. The reconciliatory stance known as Silhu among the Hausa consists of arbitration (*Fansa*), compensation (*Diyya*), Fine (*Tara*) and community service (*Aikin Gayya*), and it was couched in Yoruba proverb *"Ti a ba nja, bii ka ku ko"* (Disagreement should not lead to death). Thus, placed side by side with modern incarceration, contemporary society would benefit more by embracing non-custodial penalty which is more cost-effective and community-oriented. Paradigm shift in penal system has, therefore, become imperative in view of promising alternatives, especially for certain category of offences which are considered to be less serious. This is especially so in view of myriad of challenges confronting imprisonment in Nigeria. One way to this is to go back and take our indigenous approaches to justice and penal arrangements.

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