THE CASE FOR PRISON REFORM IN NIGERIA–
THE NEEDS AND ASPIRATIONS

By

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1. INTRODUCTION:

The Prison and Correctional Services play key role in the promotion of security and development of any given community or country. Unfortunately, several years after independence, the state of Nigerian Prisons remains a source of serious concern to many – including the government, civil society organisations, criminal justice agencies, and indeed the general public. There have been several calls for urgent, coordinated and sustainable reforms in this key institution. This point was aptly made by the present Controller General of Nigeria Prisons when he stated that:

There is need to coordinate reform efforts in the Nigerian Prisons Service as well as develop strategic partnerships that will enhance the capacity and delivery of effective, comprehensive and sustainable prisons and correctional best practices in Nigeria. There is also need to develop a process that will help set the reform agenda of the Nigerian Prisons Service, identify and encourage support for the implementation of these in a coordinated and sustainable manner over the short, medium and long term with clear deliverables/indicators of success. The current leadership of the Nigeria Prisons Service recognizes the need to urgently address this. On our part, we promise to do all that is necessary to build the capacity of our staff and inmates as well as enhance our service delivery.¹

There are many challenges confronting the Nigerian Prisons Service, many issues requiring intervention, many needs of the service and indeed many aspirations. These include the need to address the following: quality of facilities and infrastructure, high number of awaiting trial prisoners, conditions of imprisonment/treatment of prisoners, staff capacity, inadequate resources, etc. These issues/challenges affect the effective discharge of the mandate of the Nigerian Prison Service. The question therefore is whether the prison service is enabled to keep safe custody of all those legally interned in its facilities? Is the prison service enabled to effectively reform, rehabilitate and reintegrated offenders? Is the prison service enabled to train its inmates and generate adequate revenue from its prison farms and industries?

The purpose of this paper is not to address these questions but to focus rather on a very critical issue which this forum can go a long way in assisting the prison service to address – The problem of high number of awaiting trial prison population. It is important to state right from the start that to control the population of awaiting trial persons in prisons (or indeed in any other detention facility) two important issues should be addressed, namely, the control of the rate of reception (inflow) of awaiting trial persons into the prison and the duration in custody of the awaiting trial persons in prisons.

¹Excerpt from Welcome/Keynote Address by Dr. Peter Ekpendu mni, Controller General of Prisons, Federal Republic of Nigeria, Delivered at the National Retreat on the Development of the Nigerian Prisons Service Strategic Plan 2015-2020, Held at the Rockview Hotel, Abuja on Wednesday 24th June, 2015, at page 1.
As stated above, one of the critical challenges faced by the Nigerian Prison Service relates mostly to the large number of ATPs in its prisons, the long period they spend in prison and the attendant congestion/overcrowding of the prison facilities. In May 1999, the prison population was 40,797. Of this number 21,579 (52.8%) were awaiting trial prisoners. In November 2000, the figures were 42,298 (total inmate population), 24,953 (59%) of this awaiting trial prisoners. In some prisons the number/percentage of ATPs are higher. To demonstrate this point, see for the same November 2000, the statistics below for five prisons in Nigeria:

<table>
<thead>
<tr>
<th>Prison</th>
<th>Inmate Population</th>
<th>Convicts</th>
<th>ATPs</th>
<th>Prison Capacity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kano</td>
<td>817</td>
<td>225</td>
<td>592</td>
<td>690</td>
</tr>
<tr>
<td>Kirikiri Medium</td>
<td>2289</td>
<td>521</td>
<td>1768</td>
<td>704</td>
</tr>
<tr>
<td>Ikoyi Prison</td>
<td>1661</td>
<td>144</td>
<td>1517</td>
<td>800</td>
</tr>
<tr>
<td>Port Harcourt</td>
<td>1344</td>
<td>379</td>
<td>965</td>
<td>804</td>
</tr>
<tr>
<td>Owerri Prison</td>
<td>1045</td>
<td>100</td>
<td>945</td>
<td>630</td>
</tr>
</tbody>
</table>

This situation has worsened in recent times. As at end of 2013, awaiting trial prisoners consisted of 68.9%. As at the end of January 2013, 79% of those in Kuje prison were ATPs. Speaking of the long duration in prison custody by ATPs, in 2014 PRAWA facilitated the release from Nsukka prison of an ATP who had stayed 17 years awaiting trial through the pro bono Clearing House project. Many stay up to 5 years or more in prison awaiting conclusion of their trial. Representatives of the Nigeria Prison Service are present at this Forum. They are best positioned to inform this gathering of the current situation with regards to the total prison lock up today and the percentage of awaiting trial population as well as the impact of these on their facilities and day-to-day functioning. Note, we have not included in this discourse the number of persons in pre-trial detention in the police cells and the several other detention facilities in the country. There are about 19 institutions in Nigeria with detention facilities which keep in custody pre-trial detainees for varying duration.

Perhaps in a bid to address this problem especially in relation to awaiting trial prison population, the Government utilizes periodic amnesties to reduce the inmate population,
usually on the occasion of a regime anniversary or a national holiday. Indeed, reform process of the prisons system is supposed to be instituted as an on-going and self-sustaining exercise, rather than a once off palliative approach.

The Nigerian Constitution provides that a person arrested on suspicion of committing a crime is presumed innocent until otherwise proven guilty by a competent court of law. Such a person has a right to counsel, is privileged against self-incrimination, and should appear before a magistrate or other judicial official within a reasonable time or be released from custody two to three months from the date of arrest as may be applicable. Holding persons awaiting trial beyond the legally allowed time, or even longer than they would have spent had they been sentenced for the offence they have been detained or charged for is an infringement on their fundamental human rights which is guaranteed under section 35 of the 1999 constitution [as amended].

Some of the causes of congestion/overcrowding in our prisons has been severally highlighted. For example, Agomoh et al (2001) indicated the following: high remand /awaiting trial population; congestion and lack of speedy trial; overuse of imprisonment by the courts; abuse of arrest powers and bail conditions by the police; inadequate legal aid facilities; logistics problems relating to transportation of defendants to court; inadequate legal aid facilities; logistics problems relating to transportation of defendants to court; inadequacy in prison structures; and inadequate utilization of non-custodial measures and corruption. Apart from the above, the authors identified other critical problem areas/issues namely: lack of adequate juvenile justice system (including inadequate juvenile/young offender facilities, presence of young offenders in adult prisons, inadequate juvenile justice machinery including courts and personnel, etc.); poor treatment of prisoners, women prisoners, and mentally ill prisoners (including health and welfare facilities); lack of adequate coordination and planning within the justice sector; and inadequate community involvement in dispensation of justice. See also the Nigeria Prison Service Strategic Plan 2015 – 2020 for more information the Nigeria Prison Service needs, challenges and strategic priorities.

Lawyers play a key role in the administration of justice both from the platform of the bench and the bar (in prosecution and defense). As mentioned above, this paper will focus primarily on the issue of delay in the criminal justice delivery process and the high

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9 Developed in June 2015 by the Nigeria Prison Service.
number of awaiting trial persons in Nigeria. The paper will share with this forum some of the identified root causes of delays in the criminal justice system and recommend the development and implementation of selected ‘coordinated’ solutions aimed at speeding up criminal trials. These were generated through series of consultations with relevant stakeholders in the administration of justice in Nigeria during the inception phase of the Speeding Up Criminal Justice Project implemented by Prisoners’ Rehabilitation And Welfare Action (PRAWA) in partnership with relevant criminal justice institutions in the targeted States/locations (including the Nigeria Prison Service, Ministry of Justice, The Judiciary, Nigeria Police Force, Legal Aid Council of Nigeria, Nigeria Bar Association, etc.) with the support of Justice for All / DFID. From these, it will be clear the specific roles lawyers can play in addressing the identified issues:

2. RECOMMENDED AREAS OF INTERVENTIONS:

These include the following:

(i). Promote Diligent and High Quality Prosecution

**Rationale:**

Note the following:

- Lack of capacity and requisite investigative and prosecutorial skills for effective and efficient service delivery. For example, insufficient training, weak evidence gathering and handling techniques; absence of effective case management system and strategies; inadequate funding resulting in dearth of working tools and low staff morale; high costs of post-mortems in murder cases; overly bureaucratic systems and procedures; lack of diligence and irregular court attendance by witnesses and prosecutors; redeployment/transfer of investigating officers and prosecutors without proper hand over of pending matters.

- A lack of structured and effective coordination between the investigative and prosecutorial agencies partly due to unhealthy rivalry, but also because of a lack of

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10 These were piloted in Enugu State and the Federal Capital Territory in the first instance with some aspects currently being nationally rolled out/replicated in other States in the country.

11 See, PRAWA/J4A (2013), Concept Notes on “Enhancing Diligent and High Quality Prosecution”; “Enhancing Attendance of Witnesses in Criminal Trials”; “Enhancing Attendance of Remand Persons to Court”; “Enhancing Quality Legal Representation for Remand Persons”; “Enhancing Efficient and Speedy Management of Court Proceedings” and “Enhancing Coordination and Monitoring within the Justice Sector” produced as part of the Speeding Up Criminal Justice Project.
understanding of each other’s functions and how the agencies can help each other.

- Prosecution and defence counsel abuse court processes through the use of frivolous interlocutory applications and appeals to delay prosecution. There are also management issues at the court such as delay in assignment of cases, irregular court sittings and transfer of judges/magistrates and heavy caseloads, all of which lead to long adjournments.

**Interventions:**

a. Training and Capacity Development, including staff skills development and institutional strengthening for selected investigative Institutions including training and development of guidance materials on basic investigation techniques, evidence gathering and storage, crime scene management, analysis of evidence, case building and preparation of case files, legal and rights aspects of investigation work, etc. Staff skills development and institutional strengthening for selected prosecutorial agencies/units including: training and development of guidance materials such as a prosecutors’ handbook, code of conduct, checklists, templates and other materials as well as development of systems and procedures to aid effective prosecution (speed and quality).

b. Support for the establishment of effective case management systems and strategies for the efficient management of casework including establishment of an automated Case Management System (CMS) to monitor and manage the progress of cases of Awaiting Trial Prisoners (ATPs) and manage convicts’ serving of sentences.

c. Support for the establishment of mechanisms to monitor/track pending cases in courts including the attendance of prosecutors to courts and take necessary steps to address any observed problems including communicating with the relevant institutions for necessary action(s).

d. Training and sensitisation of Judges on effective case management strategies to cover such areas as condensation of trial time, introduction of pre-trial conference/settlement of documents, witness statement on oath in criminal cases.

e. Facilitate intra and inter agency interface to enhance coordination, and improve the speed and quality of investigations and prosecutions.

f. Establish a system of regular bilateral coordination meetings between key interfacing agencies to discuss and agree solutions to mutual concerns and issues and to identify aspects where they can work together for their mutual benefit. Examples include Investigators and Prosecutors, Prisons and Courts, Prisons and Legal Assistance Service Providers.
g. Establish regular forum for justice sector service providers to discuss key issues affecting the delivery of criminal justice and key performance data from the relevant institutions.

(ii). Promote Quality Legal Representation for Remand Persons

Rationale:

Note the following:

The lack of legal representation for many of these ATPs is a significant factor that delays the progression of their cases. There are a few initiatives, both from state and non-state actors that seek to address this issue, but they are not adequate to meet the demand and do not operate in a coordinated manner.

An overwhelming majority of remand prisoners are indigent persons who cannot afford the services of a lawyer, and thus have no legal representation. The following 'root causes' were identified as contributory factors:

• Remand prisoners are often not aware of their constitutional rights and justice sector professional often do not inform accused persons of their right to legal representation on arrest. Most remand prisoners on arrival to the prison do not have legal representation nor do they have the funds to pay for the services of a lawyer.

• Insufficient personnel (lawyers) in government agencies with a defence mandate.

• Lack of effective coordination between agencies/organisations offering pro bono services/legal aid (e.g. Legal Aid Council, NBA and NGOs) leading to duplication and dissipation of resources.

• Inadequate working tools (e.g. reference materials) and other equipment and limited capacity of providers (e.g. training and re-training to update their knowledge) to enable them to provide timely and effective legal representation to remand prisoners.

Interventions:

a. Carry out advocacy to sensitize investigation and prosecutorial agencies and the courts on their obligation to inform accused persons of their constitutional rights to legal representation from the point of arrest to arraignment and trial. Support actions to facilitate the development of mechanisms to aid this access including prison visiting procedures.

b. Identify and conduct a capacity assessment of providers of free legal representation for remand prisoners and the legal representation needs of
remand prisoners. Facilitate the development of a database (Clearing House) to enable efficient access to free legal representation services for those that require it. The system should enable effective monitoring of pro bono cases to ensure that cases are continued to the end. This was piloted in Enugu and FCT and currently being rolled out nationally utilising the platform of the Legal Aid Council of Nigeria while encouraging partnership and support from other relevant stakeholders including the Nigeria Bar Association.

c. Assist the development of inter-agency cooperation and coordination mechanisms to share information on remand prisoners and providers of free legal representation with a view to matching remand prisoners with providers of free legal representation.

d. Advocacy for provision of adequate institutional and financial support by government, private sector, and development partners to the Legal Aid Council of Nigeria (LACON). The Legal Aid Act 2011 (As Amended) made provision for the establishment of the Legal Aid Fund. This need to be activated. Strengthening the capacity of LACON to effectively coordinate and access the support of private legal practitioners, NGOs and Faith Based Organisations providing free legal services in Nigeria will go a long way towards supporting LACON to effectively discharge its mandate.

e. Advocacy through the Nigeria Bar Association (NBA) to increase the pool of lawyers rendering pro bono services to remand prisoners and enhance non-monetary incentives to encourage pro bono services by lawyers. Other CSOs such as NGOs and faith based organisations have a role to play on this. This will go a long way in strengthening the provision of legal aid services to pre-trial detainees in Nigeria as well as enhancing the work of the Legal Aid Council of Nigeria.

(iii). Enhance Attendance of Witnesses in Criminal Trials

Rationale:
Irregular and non-attendance of witnesses\(^{12}\) at trials is a major cause of delay in criminal justice administration.

Note the following:

\(^{12}\)Witnesses in a criminal case include eye-witnesses (e.g. ordinary citizens), ‘specialist’ witnesses (e.g. investigating police officers – IPOs), expert witnesses (e.g. medical doctors and coroners) and character witnesses.
• Lack of funds across all agencies to cover the cost of witness expenses, including transportation, subsistence and loss of earnings. Witnesses are often expected to bear their own costs which can be substantial. Investigative Police Officers (IPOs) that have been transferred to other locations are often expected to pay their own transport costs. In some cases prosecutors fund witness travel costs from their own personal resources. The consequence of this lack of funds is that many witnesses simply do not go to court when invited.

• Absence of mechanisms to keep track of the current address/location of witnesses and keep witnesses informed of the progress/status of their case. This is a particular problem when trials do not get concluded until several years after the occurrence of the events which they concern. The result is that many times witnesses cannot be traced when needed or are disinclined to attend the court if they are contacted years after the event.

• Lack of effective witness protection facilities. Some witnesses are subjected to stigmatization and social exclusion (this is common in sexual assault and rape cases) or are exposed to ridicule (e.g. human trafficking cases). Some witnesses also feel (rightly or otherwise) that their safety is at risk if they give evidence and are reluctant to testify without adequate security and assurances that they will be protected if they are threatened.

• Long delays in the completion of the trial process affect the recollection of witnesses of the events that they witnessed. Delays also reduce their interest in the case. Allowing the deferral of all interlocutory applications in a criminal proceedings till after conclusion of trial is one of alleviating this problem.

• Witness's lack of understanding of their duty to support the criminal justice process; lack of information about how the system works and what it means to be a witness; and a lack of confidence due to the perceived biased of the justice system.

Intervention:

a. Establishment of witness tracking processes in selected prosecutorial agencies and support for their operation.

b. Consideration of support for development and enactment of a policy and legislative framework for establishment of a Court Witness Fund and Witness Protection Programme.

c. Sensitization and awareness campaigns on civic duties and responsibilities of a citizen with emphasis on support to and participation in effective justice delivery.

d. Provision of information and other necessary support including the establishment of witness support units in courts will encourage attendance of witnesses to court.
e. Educating and sensitisation of media practitioners covering the criminal justice sector and judges/magistrates, court registrars and lawyers on the importance of protecting the identity of witnesses.

(iv). Promote Efficient and Speedy Management of Court Proceedings

*Rationale:*

In Nigeria, criminal trials progress very slowly. It is not uncommon to see criminal cases that have been in court for 5 years without any prospect of conclusion. Efficient management of criminal proceedings is of significant concern to stakeholders.

Note the following:

- Delays in assignment of cases and consideration of applications for leave to prefer a charge.
- Frequent adjournments of cases due to the non-appearance of prosecutors, defence lawyers, accused persons and witnesses. Late arrivals of judges and irregular court sittings are also a factor.
- Ineffective tracking of the court cases and coordination by relevant agencies. For example, many institutions (prosecutorial and detention agencies) may sometime not be aware that their cases are coming up in court or may not receive formal notification (production warrants) until it is too late to make adequate arrangement to attend court.
- Inefficient case management systems, worsened by heavy caseloads and logistics constraints.
- Delays by prosecutors in assembling witnesses and exhibits.
- Defence lawyers delay progress of cases, especially when there is a high probability of conviction. This includes the introduction of frivolous interlocutory applications and petitions and request for transfer of cases on grounds of interests and bias by defence counsels ('Forum Shopping') especially in high profile cases.
- Lack of adequate use of non-custodial measures and other procedures that would help to fast track cases, etc.
- Time consuming trial processes, including long-hand recording of trial proceedings by judges and magistrates as all testimonies and submissions are recorded verbatim.
- High frequency of transfer of judges leading to cases starting de novo.
- Delay in filing charges without taking next court date, lack of transportation for and delay in the service of the court processes or the charge by bailiffs,
• Distances between locations to file processes and absence of decentralisation in filing court processes. Bureaucratic procedures and delays in the procurement and access to basic materials (e.g. stationery).

• Security agencies sometimes frustrate service of court processes and the intimidation of court bailiffs by some of these officers.

Interventions:

a. Support improved communication and coordination between the judiciary and other key criminal justice sector agencies such as NPS, MoJ, NPF, EFCC, ICPC, NAPTIP, LACON, Defence lawyers, NBA and relevant NGOs.

b. Support advocacy for practice directions to be issued by the Chief Judge of respective States to streamline the procedures in criminal trials e.g. to shorten the timeframe for consideration of application for leave to prefer a charge; all preliminary issues to be addressed before commencement of trial; timeframe for conclusion of criminal trials; judicial policy to curb frivolous use of interlocutory applications; improve usage of non-custodial measures, etc.

c. Advocacy for the development and introduction of a case tracking and management system in the Judiciary and for the effective use of modern technology (e.g. Video conferencing) to expedite proceedings in criminal trials, with requisite budgetary provision.

d. Advocacy for the provision of equipment and processes to speed up the pace of hearings in the courts.

e. Capacity development and sensitisation for judges and magistrates on effective management of cases and support the development of systems and guidelines including: condensation of trial time, introduction of pre-trial conference/settlement of documents, witness statement on oath in criminal cases.

f. Facilitate the establishment of mechanisms to ensure that the Court Cause Lists are provided well in advance and accessible to all those that require them.

(v). Enhancing Attendance of Remand Persons to Court

Rationale:

The non-appearance of remand prisoners/accused persons in court on/at the scheduled date and time is a significant cause of delay in criminal justice proceedings.

• Inadequate functional vehicles to convey remand prisoners to court when required. The vehicles that are available are expected to cover several judicial divisions and
magisterial districts and cannot cope with the demand. Example, Kuje Prison which covers about 136 courts, many of which are far from the prison, has only six operational vehicles. Sometime a prison with one vehicle will be covering over 100 courts. The consequences of this are that there are occasions remand prisoners arrive in court after their cases have been called and adjourned.

- Lack of resources to maintain and run the vehicles (e.g. fuelling, repair/replacement of parts). The resources allocated for this purpose is grossly inadequate and their release often delayed. The consequence is that remand prisoners do not get taken to court or on occasions prisoners or their families are asked to cover the costs.

- Poor coordination, communication and logistics planning internally and between agencies leading to misunderstandings of when prisoners need to go to which court. Opportunities to increase efficiency are missed and resources are sometimes wasted.

**Intervention:**

Support advocacy to enhance the processes including provision of resources and equipment/facilities to aid the implementation of the NPS transportation of remand persons to court.

**(vi). Enhancing Coordination and Monitoring within the Justice Sector”**

**Rationale:**

Effective coordination of criminal justice process is one of the biggest challenges to the speedy delivery of criminal justice in Nigeria. Events at each stage of the criminal justice process are interconnected and developments in one area impact others. All the organisations involved in the process rely to some extent on others carrying out their duties effectively. Lapses often have a far reaching effect and cause significant delays.

Note the following:

- Mutual suspicion and rivalry between the agencies/institutions leads to mistrust and reluctance to cooperate with each.

- Ineffective interface between agencies and other institutions. Delays in the interface with relevant agencies/institutions, especially at the investigation stage, slow down the criminal justice process.

- Poor communication mechanisms lead to information gaps which fuel suspicion and mistrust. Agencies often do not realise how working together in a
coordinated way will improve the ability of all to do their work more efficiently and effectively.

• Poor appreciation of the principle of human rights and the need to put monitoring mechanisms in place to ensure that operators of the criminal justice system give appropriate consideration to the legal obligation to respect human rights in the discharge of their functions.

Interventions:

a. Support the sector to enhance coordination, synergy and cooperation within and amongst justice sector institutions in respective States towards efficient criminal justice delivery, probably through the Criminal Justice Administration Committee (CJAC). Advocate for the expansion of the CJAC’s membership to ensure that all relevant heads of institutions are included in the membership and that they meet regularly. Support also establishment of Justice Reform Teams involving the membership of representatives of criminal justice agencies, CSOs and traditional rulers.

b. Development of mechanisms to guide intra and inter-agency coordination between relevant departments at different levels including operational levels (e.g. investigators and prosecutors, prosecutors and courts, courts and prisons, etc.) and at strategic level to agree policies and procedures that will be mutually beneficial. Guidance materials may also be developed to assist this process.

c. Establishment of lines of communication between organisations on key criminal justice process events such as hearing dates. Support the establishment and utilisation of contact/service points in each agency within the criminal justice sector.

d. Facilitate the production of performance data by each agency for sharing with other agencies and to inform discussions of the CJAC and other coordinating meetings.

e. Advocacy to policy makers for improved funding for criminal justice agencies.

3. CONCLUSION:

The above interventions need to be implemented across the various States of the Federation. Recent developments in our criminal justice administration raises hopes of a better future for our prisons and indeed our entire criminal justice system. The enactment of the Administration of Criminal Justice Act 2015 is a big plus for any genuine move to reform our prison service especially as relates to the reduction in the number of awaiting trial prisoners and their duration in prison custody. Same also should apply to all pre-trial detainees in other detention facilities in the country.
We should therefore:

- Build on the opportunities offered by the Act for improved criminal justice sector
- Advocate for full implementation of the Act, including its adoption by various states beyond the few States that have currently adopted it.
- Ensure that the efforts at reforms in our prisons are comprehensive, well coordinated and sustainable.
- Collaborate with the Legal Aid Council of Nigeria (LACON) towards provision of free legal services to awaiting trial prisoners and other pre-trial detainees.
- Advocate for the strengthening of the capacity and functioning of all criminal justice agencies.
- Deploy all our professional and intellectual skills as lawyers towards ensuring that there is improvement in the speed at which criminal cases are completed in courts.

Indeed the call for reform in the Nigerian prisons is a laudable and well desired step towards promotion of a secure, just and humane society. A close look at the needs of Nigerian prisons and recommendations for their actualization obviously point to the fact that a far reaching reform in the system can only be achieved through effective collaboration of all stakeholders in the criminal justice sector. It is important to stress once again the role of lawyers in the achievement of this much desired reform in the Nigerian Prison/Correctional Service as well as the entire Nigerian Criminal Justice System. It is our professional obligation and as such, much is expected of all of us. Our candid prayers therefore is that we do not fail Nigeria. Remember, these reforms should be based on sustainable mechanisms, platforms and processes.

Thank you for listening and God bless you all.