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Remembering the Forgotten: Benefits of Prison Education for Awaiting Trial Inmates in Nigeria

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Awaiting trial inmates (ATIs) make up over 60% of the Nigerian prison population. They are not classed as criminals/convicts within the prison system. Therefore, they are excluded from rehabilitation training, subjected to indefinite terms of confinement and enjoy fewer rights than convicted prisoners. This paper explores the practical characteristics of ATIs and factors militating against their inclusion in rehabilitative educational activities in prison. The paper argues that ATIs' inclusion in such programmes is a means of preventing their criminalisation and promoting rehabilitation pending their trial and conviction/release.

Keywords: Nigeria, Prison, Awaiting Trial Inmates, Prison Education, Rehabilitation

Rehabilitation is a globally recognised role of prisons - an accepted means of preventing criminalisation and ending the revolving door phenomenon. This paper explores the potential of prison education as a tool for preventing criminalisation of ATIs during confinement, and rehabilitating them for post-confinement life outside prison. Applying a doctrinal research methodology, the paper reviews primary and secondary sources including secondary empirical research data on characteristics and experiences of ATIs in the Nigerian criminal justice system. The paper continues in the next section with statistical data on the Nigerian prison population. Paying particular attention to ATIs as a disadvantaged subset of this population, the paper explores the factors responsible for ATIs' disadvantaged status. The paper goes on to examine the characteristics of typical ATIs in Nigerian prisons. Drawing from studies on prisoner characteristics and experiences, the paper discusses how these characteristics may predispose ATIs to criminalisation, and argues that prison education represents a means of rehabilitating and preventing criminalisation of ATIs. The paper then discusses possible avenues for providing prison education and the potentials of ODeI for meeting this obligation in Nigeria and concludes with recommendations.

Awaiting Trial Inmates and the Role of Prisons in Nigeria

NPS (2018) statistics indicate that more than two out of three prison inmates in Nigeria are ATIs (Table 1). In Port Harcourt, Rivers State, the figure is approximately 9 out of 10 inmates. (Ukwayi and Okpa 2017). Same for Agodi Prisons in Ibadan, Oyo State (Abdulmalik et al 2014).

	Male	Female	Total	Percentage
Awaiting Trial	50,207	1,177	51,384	68%
Convicts	23,979	409	24,388	32%
Grand Total			75,672	100%

Table 1: Nigerian Prison Population 2018 (Source: NPS)

The figures in Table 1 form part of a trend where ATIs have constituted up to 74% of the Nigerian prison population. Table 2 provides on this trend from 1985 - 2018.

Year	Prison Population	ATIs	ATIs as Percentage Of Prison Population
1985	53,786	21,515	40%
1990	55,331	27,665	50%
2000	43,212	26,485	61%
2005	38,328	28,363	74%
2010	41,524	29,372	71%
2013	53,841	36,983	68.7%
2014	57,121	39,577	69%
2018	74,186	51,384	68%

Table 2: Nigeria Prison Population trend 1985 – 2014 (Source: Sola Ogundipe)

Prisons serve three major functions in society. Retribution for crime/deterrence, incapacitation of dangerous criminals/remand of accused persons pending trial, and rehabilitation of criminals for reintegration into society. Nigerian prisons function more as instruments of incapacitation and retribution than for rehabilitation.

The main statute regulating Nigerian prisons is the Prisons Act 1972 – enacted under military rule mainly for incapacitation and retribution/deterrence. The Act is silent on rehabilitation of offenders which is arguably more relevant for crime control than incarceration (Crime Museum, 2017). Though educational and

training facilities are now available in some prisons, prison education is not an obligatory requirement of the law and prisons do not enjoy requisite funding to enable them perform rehabilitative functions. Obioha (2011) notes that the NPS is, by its establishment policy, a penal institution for adult offenders. Hence, it is more punitive and dehumanising than corrective. Nigerian prisons are characterised by extreme overcrowding, non-availability of basic health/sanitary facilities, idleness and inhuman treatment of inmates (Omoni & Ijeh 2009; Tanimu 2010; Obioha 2011).

ATIs as Disadvantaged Members of the Nigerian Prison Community

All prisoners are disadvantaged by virtue of their incarceration. However, ATIs constitute a special (and more disadvantaged) group. Not having been formally convicted or sentenced, they are neither fully in nor out of the system. Their stay, though temporary, is largely indeterminate. According to the Assessment of Justice System Integrity and Capacity in Bornu, Delta and Lagos States (UNODC, 2006) the average time spent by ATIs on remand without trial being concluded in Lagos state is 47 months while ATIs in Delta and Borno States spend 20 – 22 months awaiting final judgement after their trials have been concluded. Furthermore, 80% of the offences for which ATIs were remanded in Lagos and Borno Prisons are bailable offences. Ukwayi and Okpa (2017) also note that most ATIs in Port Harcourt Maximum Prison were arrested for minor offences.

ATIs are accommodated in the same facilities as convicts and subjected to the same treatment despite the constitutional guarantee of presumption of innocence. Unlike convicted prisoners, they are not allowed to take part in rehabilitative/training programmes because of gaps in the law. They find it difficult to settle down because of the possibility of transfer. This also makes educational programmes difficult to complete or organise properly. As a result, ATIs are victims of legal and social inequity within the prisons and are placed at greater disadvantaged than actual convicts.

ATIs Disadvantaged Status: Some Causative Factors

The overwhelming numbers of ATIs in Nigerian prisons and their continued disadvantaged status is attributable to many factors - of these the role of prisons in the Nigerian criminal justice system is fundamental. From the beginning, prisons were seen as a colonial import which did not form part of traditional systems of criminal justice in pre-colonial Nigeria. As Saleh-Hanna and Ume (2018) note, imprisonment as a form of punishment was alien to Africa's core values. Instead of being incarcerated, offenders remain part of their communities whilst serving punishment. Only grave offences warranted banishment and grave offenders were confined for a limited period until a decision was reached. Such confinement was therefore a signal for stigmatisation – shame being an instrument of social control which has been passed down over time. Nowadays ATIs charged with minor offences are stigmatised because of the association of prison confinement with grave offences. With the advent of colonialism, prisons constituted the punitive arm of a tripartite system of criminal justice which included the police and courts. However, this arm of criminal justice did not enjoy autochthony. Hence, though it survived independence, no efforts have been made to reform the prison system.

The process of criminal justice administration in Nigeria (from investigation, through trial to conviction/appeal) also place ATIs at a disadvantage. Nigeria practises an adversarial system where the prosecution bears the duty to prove the guilt of an accused. Hence Section 36(5) of the 1999 Constitution guarantees the presumption of innocence to everyone charged with a criminal offence. This presumption carries with it, the right to all fundamental freedoms until such person is convicted. For instance, Section 35 of the Constitution provides that every person is entitled to his/her personal liberty except where a suspect is detained in order to bring him/her to court upon a reasonable suspicion of an offence. Such suspect must be charged to court within one day and no later than two days or such longer period that the court may consider reasonable in the circumstances. Where a detained suspect is not tried within two months from the date of detention, Section 35(4)(a) requires that the suspect be released unconditionally or upon such conditions as to ensure his/her appearance in court for trial at a later date.

In theory, the above constitutional guarantees are non-derogable. However, the reality is different as data from UNODC (2006) indicates. Though illegal, the use of holding charges is still practised. A holding charge is the practice of arraigning a person accused of a crime before a court that lacks the capacity to try him/her for the purpose of securing a remand order (Bassey, 2019). This process is mostly used by the Police in Magistrate Courts. Police are not competent to appear before superior courts of record, and magistrate courts are inferior courts lacking competence to try felonies. Hence, the magistrate court cannot grant bail but remands the accused person in prison custody pending the receipt of the advice of the Director of Public Prosecutions (DPP). The process for obtaining the DPP's advice is not time bound, so the accused person may remain in custody as an ATI for an indeterminate period of time.

The judiciary have also contributed to the problems of ATIs through delays in the trial process, incessant adjournments, and transfer of judges/magistrates which necessitates trial *de novo* by a new judge. Stiff

bail conditions which are neither reflective of accused persons' economic realities or the nature of crimes with which they are charged also contribute to the problem. Bail conditions are necessary to guarantee the attendance of accused persons at trial, especially where they are considered to be a flight risk. However, the conditions should not be so strict as to render them impossible to meet. Such strict conditions may amount to a punitive negation of the constitutional right to presumption of innocence and freedom of movement. NULAI (2014) refers to a case of homeless menial workers and scavengers sleeping in uncompleted buildings who were charged with public nuisance and remanded in custody for failure to meet onerous bail conditions including 5,000 Naira and a surety who must be a civil servant or owns landed property in Abuja. Other factors contributing to ATI disadvantage include corruption, inadequate funding, logistic and administrative setbacks, inadequate legal aid facilities and inadequacy of prison structures. (Agomoh, 2001).

Characteristics of the Typical ATI

The factors examined above may apply to all ATIs regardless of particular circumstances. However, economic and social factors predispose certain classes of accused persons to greater disadvantage and a higher possibility of indeterminate remand in custody. As Table 1 clearly shows, the typical Nigerian prisoner is male. Available literature also indicates that he is likely to be socially/economically disadvantaged, at the prime of his life, illiterate/semi-literate, and unemployed/self-employed at the lowest occupational ladder (Tanimu, 2010; Ogunleye, 2014; Emeka et al, 2016; Orjiakor et al, 2017). These characteristics have implications for the possibility of criminalisation of ATIs or recidivism of offenders. With the exception of gender, the Nigerian prisons service does not provide statistical data on the aforementioned characteristics of ATIs. These characteristics will therefore be distilled from secondary data from two studies on ATIs' characteristics and experiences in Nigerian prisons.

Nigerian Prisons Survey Reports (PRAWA, 2018)

The Nigerian Prisons Survey looks at the socio-economic characteristics of prisoners and impact of imprisonment in Nigeria. The results of the survey align with Tanimu's (2010) findings that majority of prisoners are most likely to be economically disadvantaged and have little or no education. The survey findings (Table 3) indicate that 10-14% of prison inmates have no formal education. Of the educated, majority have not gone beyond secondary education.

Highest Level of Formal Education	Enugu	Kano	Ikoyi, Lagos
None	10.61%	18.13%	10.47%
Primary	26.14%	19.91%	21.42%
Junior Secondary	17.80%	13.11%	12.79%
Senior Secondary	35.23%	26.98%	38.19%
Tertiary	8.41%	7.23%	14.94%
Others	1.82%	14.64%	2.20%

Table 3: Highest Level of Education among Prisoners in Enugu, Kano and Ikoyi

With respect to economic status, the survey findings indicate that majority of the inmates are self-employed, unemployed or unable to work. Also, majority earned 50,000 naira (142.86 USD) or less per month prior to incarceration (Tables 4 and 5)

Average Monthly Income in Naira	
Less than 1000	1.17%
1000 – 5000	5.51%
5000 – 10000	9.99%
10000 – 50000	59.69%
50000 – 100000	14.40%
100000 – 500000	7.57%
500000 - 1000000	1.07%
More than 1000000	0.60%

Table 4: Average Monthly Income of Prison inmates prior to incarceration

Employment Status	Enugu	Kano	Ikoyi
Wage/Salaried Worker	15.27%	13.39%	48.31%
Self Employed	63.75%	65.10%	42.54%
Student	11.74%	7.02%	3.15%
Out of Work	0.96%	0.28%	3.0%
Retired	0.16%	0.18%	0.23%
Unable to Work	1.05%	1.20%	0.85%
Others	7.07%	12.83%	1.92%

Table 5: Employment Status of Prison Inmates Prior to Incarceration

Assessment of Justice System Integrity and Capacity in Three States (UNODC, 2006)

ATIs made up the largest survey group for the above study. Of the entire study sample of 5766 participants, 2150 (37.2%) were ATIs. The focus of the study was not on the particular characteristics of prisoners discussed above. However, they can be inferred from some of the variables examined in the study. Levels of education are inferable from participants' level of bail awareness before arrest. Economic abilities are also inferable from ability to retain a lawyer and source of lawyers' fees. This is based on the assumption that a person in comfortable employment should be able to bear legal costs.

The study findings align with Tanimu (2010) and PRAWA (2018) that majority of prisoners are economically disadvantaged. Only 38% of the total study sample had retained a lawyer. Of these, only 10% were able to pay their legal fees themselves. While majority (70% – 80%) depended on their social network to meet this obligation, others (about 10%) relied on legal aid or pro-bono legal services usually afforded to the indigent. These figures indicate that majority of ATIs are likely to be indigent, unemployed or semi-employed. With respect to education levels, the study findings indicate that less than 27% of respondents who were charged with bailable offences were aware of the possibility and conditions for applying for bail before arrest. Different levels of bail awareness in the three states align with adult literacy rates per state. Table 6 compares adult literacy rates for the 3 states (NBS, 2010) with levels of bail awareness before arrest.

State	Literacy Rate (NBS, 2010)	Bail Awareness before Arrest (UNODC 2006)
Bornu	58.6%	0%
Delta	71.3%	15%
Lagos	87.7%	36.2%

Table 6: Comparison of Literacy Rates and Bail Awareness in Bornu, Delta and Lagos States

Implications of Characteristics for Criminalisation of ATIs or Rehabilitation in Prison

In Nigeria, an accused person's economic ability significantly influences his experience of the entire criminal justice process including arrest, bail, speed of trial and length of custodial sentence. An economically viable accused person is likely to engage the services of competent lawyers who will ensure a speedy trial with short adjournments, admittance to bail on favourable terms, regular appearance in court and a light sentence upon conviction. These factors go on to influence a convict's prison experiences, possibility of early release, reintegration into society and stigmatisation. Bearing these factors in mind, it is likely that ATIs who spend up to 47 months in remand without conclusion of trial or final judgement (UNODC 2006) lack the economic ability to influence the criminal justice process. The socially disadvantaged status of the typical ATI is also clear from the level of impunity with which ATIs rights are violated. Hence, 59.7% - 84.9% of all the ATIs surveyed were in custody for bailable offences. Furthermore, 50% - 63% were not afforded the chance to apply for bail (UNODC 2006). These are clear breaches of section 35 of the 1999 constitution.

The characteristics of the typical Nigerian ATI exposes him to negative prison experiences and the possibility of criminalisation/re-offending. Being a young male, an ATI is more likely to reoffend than older males or females. (Abrifor, 2012) It is a fact that the nature of prisons may contribute to prisonisation of inmates (Haney, 2001). Nigerian prison conditions being inhuman and congested without any separation of hardened criminals from ATIs (Ukwayi & Okpa 2017), opportunities abound for prisonisation of ATIs. Furthermore, ATIs may be desensitised by their exposure to dehumanising treatment of prisoners in custody. Studies show that rather than rehabilitation, punitive conditions in prisons tend to place prisoners in a worse state of physical

and mental health than when they first entered (Penal Reform International, 2019). Though criticised for unethical research practices, the results of the 1971 Stanford Prison Experiment is an eye opener on the potential of inhuman or degrading prisons for radical negative transformation (Craig, Banks & Zimbardo, 1973; Zimbardo, 1999-2019). The following comment made by an actual prisoner after excessive solitary confinement in Ohio State Prison also points to this potential:

‘... I know that thieves must be punished ... But now I don't think I will be a thief when I am released. No, I am not rehabilitated either ... I no longer think of becoming wealthy or stealing. I now only think of killing – killing those who have beaten me and treated me as if I were a dog. I hope and pray ... that I am able to overcome the bitterness and hatred which eats daily at my soul...’

Majority of convicts being idle and ATIs not allowed to take part in rehabilitation programmes in Nigerian prisons, they are likely to interact frequently. While it is possible that some ATIs may be discharged and acquitted, exposure to the influence of convicts and hardened criminals while in confinement may result in prisonisation as ATIs imbibe the criminal values to which they were exposed while in custody. Results of a Prison Reform Trust study on incarceration and re-offending in the UK indicates that 70% of young convicts are likely to be reconvicted within two years of release from prison. (Prison Reform Trust, UK) In Nigeria, Abrifor et al (2012) estimate that 52.4% of Nigerian prisoners in 2010 were recidivists.

Preventing Criminalisation and Promoting Rehabilitation of ATIs through Prison Education

Prison education provides an avenue for preparing prisoners for life and employment post-confinement. Moak et al (2007) opine that ex-offenders are more likely to avoid criminalisation if they remain employed. The typical Nigerian ATI being usually illiterate/semi-literate, unemployed/under-employed prior to confinement is likely to be more disadvantaged having missed the opportunity to earn a living and not having benefitted from education or training while in custody. A meta-analysis of the effectiveness of correctional education on incarcerated adults indicated that prisoner education reduced recidivism by up to 43% and constituted a less costly alternative to re-incarceration (Davis et al, 2013). The role of education in the rehabilitation of Dr. Stanley Andrisse is a testament to the effectiveness of prisoner education for the prevention of criminalisation or re-offending. Having been convicted for drug trafficking, Andrisse took advantage of a prison education programme and acquired a postgraduate degree. Today he is a Professor of Medicine in John Hopkins University. Andrisse notes:

‘Education for me has been the biggest balancer to offset my criminal convictions. Education broadens horizons, tears down fences, and leads to career building. It has helped me build my personal and professional support network.’

Stories abound on the transformational influence of prison education in developed countries (Harrison, 2013; Stand Together Foundation, 2016; Kinzel, 2018). This influence cannot be limited to convicted prisoners. It is likely to be true for ATIs who are afforded prison education. Unfortunately, that is presently not an option in Nigerian prisons.

The Standard Minimum Rules for the Treatment of Prisoners (SMR) recognises the importance of prison education for the rehabilitation of offenders. Rule 92 recommends:

‘... all appropriate means shall be used, including religious care in the countries where this is possible, education, vocational guidance and training, social casework, employment counselling, physical development and strengthening of moral character, in accordance with the individual needs of each prisoner, taking account of his social and criminal history, his physical and mental capacities and aptitudes, his personal temperament, the length of his sentence and his prospects after release.’
(*Emphasis added*)

Apart from a prison rehabilitation tool, education is a human right which Nigeria, as state party to various treaties, is obligated to fulfill. For instance, Article 26 of the Universal Declaration on Human Rights provides:

‘Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.’

In line with this obligation, Section 18(3) of the 1999 constitution provides that the Nigerian government shall provide free, compulsory and universal primary education for all persons. The Universal Basic Education Commission (UBEC) established under the Universal Basic Education Act is responsible for the fulfilment of this obligation. School age children constitute the focus for the provision of basic education in Nigeria. However, some adults may be illiterate having fallen through the cracks in their early years. For such adults, UBEC owes the duty to free basic education. This is particularly important for illiterate prison inmates because though adult literacy centres exist for illiterate adults, such centres are not available in Nigerian prisons. The SMR recognises this fact and therefore recommends in Article 104 (1) that education of illiterate prisoners shall be compulsory.

ATIs in Nigerian Prisons: Avenues for Accessing Prison Education

The Nigerian Prison Services is severely hampered by funding constraints such that even feeding and other basic necessities are inadequate and rehabilitative programmes are few. In 2018, the budgeted cost of feeding per prisoner was fixed at N300 (less than 1USD per day). While lack of funding may constitute a reasonable excuse for not extending education to all prisoners, alternative means for providing education in prison can be used to bridge the gap. The International Centre for Prison Studies Handbook suggests that educated prisoners may assist by providing tuition for their fellow inmates. Furthermore, prisons authorities may consider developing partnerships with civil society and educational organisations to increase opportunities for providing education.

Education can also be provided through the open, distance and e-Learning (ODeL) mode. By its nature, ODeL is well suited for the education of larger populations without the need for face-to-face contact or strict teacher-student ratios. This also deals with issues of security and restriction of external influence. Students are afforded the flexibility of studying at their pace and the opportunity to pass their time in meaningful study. ODeL also facilitates socialisation among prisoners through informal discussion groups. The National Open University of Nigeria, as Nigeria's sole single-mode tertiary ODeL institution has contributed significantly to the provision of tertiary education in some Nigerian prisons. This is in line with NOUN's mandate to provide facilities for learning to those who, due to special circumstances, may not enrol for residential or full-time university education. At present, NOUN provides tuition-free education in ten prison study centres using special learning tools such as customized tablets, CD ROMs and flash drives (NOUN, 2019). Success stories such as that of Enugu Prison Special Centre which produced the best graduating students in 2014 and 2018 point to the importance of ODeL for the achievement of prison education goals.

Conclusion and Recommendations

ATIs constitute majority of the Nigerian prison population and suffer greater disadvantage despite being presumed innocent. Due to their socio-economic and educationally disadvantaged status they are victimised by failures in the Nigerian criminal justice system. In addition to exposure to inhuman treatment in prison, they also run the risk criminalisation and reoffending. Education represents a viable tool to prevent some of these ills and ensure the rehabilitation of prisoners in custody. Unfortunately, ATIs are excluded from education programmes despite their disproportionate burden as aforementioned. It is recognised that avenues for extending education to the entire prison population are few. However, the benefits for ATIs outweigh the burdens. Avenues for pursuing the rehabilitation of ATIs through prison education include:

- Provision of prison education through ODeL particularly through the establishment of NOUN special centres in populated prisons.
- Establishment of UBEC prison centres for compulsory education of all illiterate prisoners and those whose levels of educational achievement still fall below the basic level.
- Recruitment of educated inmates as volunteers to assist illiterate inmates in their learning process.
- Amendment of the Prisons Act to reflect current trends in prison functions especially rehabilitation of prison inmates.
- Criminal justice reform at all stages including the police, judiciary and prisons
- Adequate funding to enable prison authorities provide rehabilitative programmes for prison inmates and make legal assistance available to the majority of ATIs who are educationally and economically disadvantaged.

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