



Responding to the Problem of Prison Overcrowding in Nigeria through Restorative Justice: A Challenge to the Traditional Criminal Justice System

Macpherson U Nnam¹

Federal University Ndufu-Alike Ikwo, Ebonyi State, Nigeria

Abstract

The intrinsic interest of this article is to address the problem of prison overcrowding in Nigeria using restorative justice initiative against the traditional criminal justice system, which places much emphasis on housing offenders and the accused in prisons and thereby causing prison population to increase. Re-integrative shaming theory was used to underpin the article. Contextually, to restore justice is to 'shame' (correct) criminals and deviants, and re-establish and revivify estranged relationships as well as to guard against further breakdown of law and order in society. Restorative justice is an emerging non-custodian, non-punitive and humanistic strategy for the treatment (not punishment) of offenders without recourse to legal battle that often results in remanding one party in prison custody. Considering the encompassing merits of restorative justice, there is an urgent need to officially integrate this alternative to incarceration intervention programme into the Nigerian legal system, as this will go a long way in decongesting the seemingly overpopulated correctional institutions in the country. Here, restorative justice facilitators, victims and their families, offenders and their families, and 'community' as a sole owner of every individual leaving in it, collectively strive to restore justice, order, security, property, and core values in the community.

Keywords: Challenge, Nigeria, Prison Overcrowding, Problem, Restorative Justice, Traditional Criminal Justice System.

Introduction

The traditional criminal justice system in its effort to achieve public safety has for years tenaciously held to the notion that 'tough on crime' involves an effective system of incarceration, and that this alone would address any and all issues we have with social problems like prison overcrowding. The standing belief by many commentators and the public was that the punitive aspects of imprisonment would deter further crime and effectively hold offenders accountable for their decision to commit crime (Downen, 2011). Crime is a social and moral turpitude. It is a bane of the society, which requires the

¹ Department of Sociology/Psychology/Criminology And Security Studies, Faculty of Management and Social Sciences, Federal University Ndufu-Alike Ikwo, PMB 1010, Ebonyi State, Nigeria. Email: ichtarilife@yahoo.com.

application of justifiable coercions to prevent and control. For this reason, punishment or treatment from the traditional criminal system as an act of fighting crime or subjection of an offender to expiation and penitence becomes necessary. Nonetheless, it is imperative and always ideal to try as much as possible to resolve victim-offender differences, correct antisocial conducts and heal the 'wound' (violation of law without justification) done to the 'collective sentiment' (core norms and values, law) using alternatives to institutional confinement. Therefore, if there is any programme that can be employed in addressing the problem of prison overcrowding in Nigeria is restorative justice measure.

At present, Nigeria has no statutory provision for restorative justice in its traditional criminal justice system, although such justice intervention programme was widely practiced in the county prior to the British incursions and stretched to the early phase of colonialism in the country. What is more, restorative justice is still though, to a lesser extent and in an informal setting, practiced in some communities in contemporary Nigeria. The traditional Igbo society in the present-day Southern Nigeria, for instance, placed prime emphasis on restorative justice as a means of processing deviants and criminals. Nnam, Agboti and Otu (2013) affirm that the Igbo socio-politico-legal system is deep-rooted in traditional associations (restorative justice administrators) which serve as informal agents of crime prevention and control (restorative justice administration). Beginning from the pre-colonial era through to the present, these revered justice institutions: age grades, town unions, youth organizations, masquerades/secret societies, among others, have maintained and sustained social justice, order, progress, stability and peaceful coexistence among the Igbo nation using restorative justice mechanisms.

Restorative justice is victim-offender-community-centered justice intervention programme. It is devoid of non-custodian measures of balancing the scale of justice that was made uneven by crime and criminals. To restore justice is to re-establish sanity, mutual understanding and peaceful coexistence after an estrangement, conflict, victimization and occurrence of crime. With this particular justice system in place, the social harm inflicted on individual or community, threatened security and property loss are, to a large extent, restored. In support of the views so far expressed in this article, Braithwaite (1998), Levrant, Cullen, Fulton and Wozniak (1999), and Braithwaite (2002) acknowledge that restorative justice is touted and praised for its efforts at working towards accountability on the part of the offender and the efforts of the offender to restore victims and the community to the position they were at prior to the crime.

Zehr (2002) explains that restorative justice requires that society address victim's harms and needs, hold offenders accountable to put right those harms, and involve victims, offenders, and communities in the process of healing. It is a set of guiding questions that provide an alternative framework for thinking about wrongdoing. Despite the inclusive role of restorative justice in penal administration, Nigeria is yet to formalized this emerging option for conventional criminal justice system in its criminal code (for Southern Nigeria) and penal code (for Northern Nigeria). Paradoxically, restorative justice system is informally and relatively practiced in our different communities with great success, and is only and rarely tenable in a formal parlance within the framework of community policing and 'out-of-court' settlement of cases. In respect to the informal restorative justice, for instance, this approach to social control was and is still an integral part of traditional legal system of the Afikpo ancient society—a culturally homogeneous and egalitarian community in the South East geopolitical zone (Igbo tribe) of Nigeria.

Nevertheless, this common and age-long practice may be thrust aside and ignored in some criminal matters, for such cases are forwarded to the formal criminal justice system for adjudication. Therefore, the broad objective of this article is to address the issue of prison overcrowding in Nigeria using restorative justice instead of cleaving to the traditional criminal justice system which places much emphasis on elimination of outlaws from the society to the prison as a way of controlling crime and criminality.

Theoretical Framework

There are scores of theories that can be used to explain the role of restorative justice in controlling prison overcrowding, but the nature of this article paves way for re-integrative shaming theory to be adopted as a suitable theoretical framework. This theory was advanced by John Braithwaite in 1989, who systematically integrated quite a number of sociological/criminological theories of crime and delinquency into a single, unifying model to account for crime and delinquency at both the individual and the community levels. The concept of shaming is here referred to as a successful attempt to make or compel law violators to show remorse, imbibe attitudinal change and make up for their criminal life-course as a way of restoring justice, law and order in the community. The process of shaming criminals does not entail exclusion, humiliation and stigmatization as the name implies. Rather, the community, through its justice facilitators, not only punctiliously 'shamed' (corrected) the antisocial behavior of people but also follow them up to guarantee their proper re-integration and even aftercare.

From the theory of re-integrative shaming, the accent is on 'shame' or 'shaming' for clarity and avoidance of misconception and misrepresentation of fact by the uninitiated observers. The use of shaming in restoring justice posits that offenders are reconciled with their victims/community outside the traditional criminal justice system and by implication reduces the population that goes into the prison. Here, those who flout the law are made to feel regret and guilt about their criminal activities, but their self-concept and self-esteem are not in any manner damaged or battered as they are constructively and socially 'shamed' (corrected) by restorative justice facilitators who share familial and/or communal affinity with both the victim and the offender. It is therefore not surprising that Braithwaite (1989) theorizes that re-integrative (but not disintegrative) shaming occurs when people's antisocial behavior is condemned, but their self-esteem and confidence are upheld through positive comments about them and gestures of forgiveness and re-acceptance. This theorist strongly opposed disintegrative or stigmatic shaming and warns that it may not yield positive and important results in the restoration process.

Moreover, the article deems it necessary to differentiate disintegrative shaming from re-integrative shaming. The idea of disintegrative shaming represents a situation when and/or where wrongdoers are summarily and arbitrarily degraded, stigmatized, dehumanized and mortified for their aberrant behavior. On the other hand, re-integrative shaming stresses that people's antisocial behavior should be impartially condemned but their self-esteem, image, confidence and trust must be maintained, or reanimated (if it was battered resulting from their criminal activities) by making gestures of goodwill and friendship and positive comments about them. Above all, re-integrative shaming encourages community members to show those that flouted the law a high sense of clemency and re-integration before, during and after restoring justice in the community. Disintegrative shaming pursues punitive measures by sending offenders away from the community to prison custody—a philosophy that is widely acknowledged and strongly

upheld by the conventional criminal justice system. The art of shaming as a means of restoring justice is almost always held outside the formal police and court contexts and as a consequence diminishes the rate of admission into the correctional institution.

According to the proponent of this theory, Braithwaite (1989), the effectiveness of re-integrative shaming theory is seen in its effort to control crime, in that the offence rather than the offender is condemned, and the offender instead of rejected is reintegrated into the society. Re-integrative shaming is followed immediately by the gesture of reconciliation and inclusion, before the deviant or criminal identity is established as a master status. Thus, structurally successful reintegration ceremonies usually include two aspects: confrontation with the victim which leads to effective shaming and inclusion of the people who respect and care most about the offender. This theory is most effective when those who are closest to the offender and/or to the situation participate in the justice restoration. In sum, the thrust of Braithwaite's (1989, 1998, 2001, 2002) argument is that crime victims and some of their supporters, offenders and some of their supporters, and other concerned community members appear before an experienced community facilitator to discuss the incident and what should be done about it.

From the re-integrative shaming theory, when members of the community are the primary controllers through active participation in shaming offenders and having shamed them through concerted participation in ways of reintegrating the offender back into the community of law abiding citizens, crime is best controlled. In other words, low crime societies are societies where communities prefer to handle their own crime problems rather than handing them over to professionals in the traditional criminal justice system (Braithwaite, 1989; Yekini & Salisu, 2013). The outcome of this social gesture is bound to be a reflective of public interest and safety, especially when influential and people of high moral rectitude in the community (including victims' and offenders' family members) actively participate in the justice restoration exercise. Besides, re-integrative shaming is likely to be effective in preventing and controlling prison overcrowding, given that most of the cases are rather resolved within the community level

The Nature and Extent of Prison Overcrowding in Nigeria

Paradoxically, the high rate of imprisonment in a given country may not necessarily leads to overcrowding while low incarceration rate does not mean that the prison system is not overcrowded. This suggests that the location of prison and paucity of allotted space (in terms of cell rooms) and adjustment facilities may or may not constitute overcrowding across correctional institutions. According to the World Prison Population Lists (WPPL), Nigeria inclusive, some prisons located in central/urban areas or close to the courts have high population rate while the general imprisonment rate of the country may be comparatively low, thus masking the actual situation on the ground. Pre-trial detention facilities often have the highest levels of overcrowding. In some countries where different prison systems exist, such as Federal and State prisons, there are very different occupancy rates and overcrowding in the two systems (WPPL, 2011). Guided by the WPPL working document, this article submits that the simplest and easiest way of determining whether a prison is overcrowded or not is to know the official capacity and present occupancy rate. Hence, a prison is said to be overcrowded when the occupancy rate is above 100%. And overcrowding occurs when and where the total number of inmates exceeds 100% of the prison official capacity.

The size of the prison population throughout the world is growing. It is estimated that more than 10.1 million people, including sentenced and pre-trial prisoners, were held in penal institutions worldwide in May 2011. This means that 146 out of every 100,000 people of the world were in prison at that time. The prison population grew in 78% of countries between 2008 and 2011, and in 71% of countries in the previous two years (WPPL, 2008, 2011). Specifically, recent studies indicate that virtually all the Nigerian prisons are heavily congested owing to the daily admission of people believed to have flouted the law into the system (Omale, 2006; Adetula & Fatusin, 2010; Alabi & Alabi, 2011; Chukwudi, 2012; Otu, Otu & Eteng, 2013; Otu & Nnam, 2014). The Nigerian Prisons Service Annual Report (NPSAR, 2014), revealed that the total population of prison inmates in Nigeria is 56, 055 for an installed capacity of 49, 505 inmates in the 239 total prisons nationwide. Of the total prison inmates population, 17, 404 representing 31% were convicted prisoners; a total of 38, 651 inmates representing 69% were unconvicted/awaiting trial. The implication of this staggering statistics is that about 38, 651 inmates are awaiting trial because they cannot afford the services of a lawyer, corruption in the system, and other bureaucratic processes (Okwendi & Nwankwoala, 2014).

In Kaduna prisons in 2005, 957 detainees were crammed into 10 buildings designed for 550 inmates, meaning that some prisons in Nigeria hold up to two times their capacity. As the conditions are bad for the inmates, prisoners fight for space on the floor to sleep; they fight not to become depressed and equally not to be victims of violence (Iwarimie-Jaja, 2003). The Abakaliki prison has the capacity to accommodate 387 inmates but now houses 871 inmates. This condition certainly results in overcrowding which medically, socially and psychologically are not conducive for prison inmates' adjustment and rehabilitation (Otu *et al.*, 2013). The Umuahia prison has the capacity to accommodate 500 prisoners but now shelters 755 inmates (Nnam, 2015). Admittedly, the core of the problem is that Nigerian prisons are characterized by chronic overcrowding and this constitutes a major source of worry not only to the government and its justice system, but also the society in its entirety. This implies that many Nigerians incessantly fall foul of the law and accordingly processed through the traditional criminal justice system in their numbers instead of adopting alternative to incarceration (restorative justice precisely) in some cases. Consequently, the upsurge in crime rate in the country speaks volume about the correspondingly massive influx of both real and pseudo-law violators in correctional facilities in Nigeria.

Role of Restorative Justice in Combating Prison Overcrowding in Nigeria

The age-long retributive philosophy in sentencing instead of alternative measures which has dominated the global criminal justice system is currently a worrisome trend. This development brings about undue prison congestion and increasing recidivism rate in the penal institution. It is therefore high time in the annals of Nigerian penology we realized the imperativeness of using non-custodian procedures to decongest the ever-increasing prison population. Both extant and current studies, Wilson and Herrnstein (1986) and Yekini and Salisu (2013), suggest that quite a number of States (countries) have now realized that it is imperative to devise non-custodial measures in dealing with offenders as most legal systems are now faced with the problem of recidivism and consequent prison congestion. This is as a result of the failure of the retributive and deterrence sentencing philosophies that have dominated the global criminal justice sector.

The traditional criminal justice system in Nigeria is patterned on punitive and retributive measures, with our correctional facilities on the receiving, as a large number of offenders and the accused are on a daily basis remanded in the institution. Thus, suggesting that Nigeria has not yet realized the fact that restorative justice is an alternative to imprisonment and a strategy for decongesting the prison. Its timely implementation will invariably play a vital role in combating overcrowding in Nigerian penal institutions. Instead of clinging to the rigours of punitive approach and holding tenaciously to the court principle or ideology of separating offenders from victims and the entire society, the article emphasized the need for the Nigerian criminal justice administrators to formally exploit the numerous opportunities restorative justice offers in order to reduce the number of people on admission in Nigerian prisons. It is on the basis of this that Siegel (2008) describes restorative justice as a process of using humanistic, non-punitive strategies to right wrongs and restored social harmony. It has grown out of a belief that the traditional justice system has done little to involve the community in the process of dealing with crime and wrongdoing. What has developed is a system of coercive punishment, administered by bureaucrats, which are inherently harmful to offenders and reduce the likelihood offenders will ever become productive members of society.

Restorative justice offers an ideal opportunity for prison reformers and penologists to combat prison congestion in a given country. The article indeed accentuated the dire need and urgent call to adopt and incorporate restorative justice programme into the three phases of the Nigerian criminal justice system (the police, courts and prisons), for this will go long way in addressing the systemic problem of overcrowding in our prisons. In doing so, restorative justice will bring to the knowledge and conviction of the presiding officer the need to reconsider an offender or an accused by probing deeper into their profile, remorsefulness and contrite apology. This development will ultimately result in a more lenient treatment and recommendation other than incarceration or remanding deviants in prison custody. Bradshaw (1988) stated that the reason in favor of restorative justice intervention is based on the fact that because judgments and adjudication by professionals in the traditional criminal justice most of the times prove unhelpful and fail to reflect the justice need of the stakeholders. Interestingly, as emphasized by restorative justice, the intervention of family members of the parties involved who are knowledgeable about the incident will go a long a way in creating an avenue for the resolution of the conflict amicably to the satisfaction of the parties involved.

Restorative justice is encompassing; it covers or touches virtually all the areas of alternative to incarceration. It will not amount to a baseless conclusion or an overstatement to establish in this article that community policing and the sparingly applied principle of 'out of court settlement' (mediation) are emerging forms of formal restorative justice programme in Nigeria. Mediation as a core aspect of community policing across the globe and which usually and unofficially takes place outside the traditional criminal justice setting, is part of restorative justice initiative. Under this state of affairs, offenders or the accused are rather processed in the community and by implication reduces the population of people that go to the prison. Rather, a justifiable alternative provision(s) will be made in the community to restore the 'stolen' justice and threatened security caused by crime and criminals. Alluding to this assertion though in an implicit manner, Cooper (1997) reiterates that the ability of police officers to mediate disputes rather than resorting to formal arrest has long been recognized—it is an essential element of community

policing—which according to Siegel (2008)—is geared towards the principle of restorative justice. And this approach obtains in contemporary Nigeria.

Some scholars have identified mediation and conflict resolution outside the conventional criminal justice system as commonly used strategies for settling cases like domestic violence and hate crimes (Coates, Umbreit & Vos, 2006). Some commentators have accused the customary criminal justice system in Nigeria of being slow, favoritism, expensive and complex, which is unfavorable and detrimental to the poor; a situation that has swelled prison population in Nigeria (Okwendi & Nwankwoala, 2014). Accordingly, the role of restorative justice is to maintain a balance in the restoration of justice to victims of crime and their families, offenders and their families, and the community in its entirety. It complements and strengthens the conventional police subsystem and courts in law enforcement and justice delivery with the aim of achieving social justice and maintaining public safety at the community level, thereby drastically reducing the number of people that serve their time in the total institution.

Restorative justice is a non-custodian justice delivery initiative that has recorded a great success in conflict resolution and crime/deviance adjudication. It strongly encourages impartial settlement of cases within the community where both victims of crime and their offenders reside, in that way reducing the intractable problem of prison overcrowding as guilty offenders are rather meted with treatment-based alternative to imprisonment penalties. This is done having given the disagreeing parties and their family members an unbiased audience, fair hearing and guaranteed chances of full participation in the deliberations and decision-taking. Nevertheless, some cases can still be sent to either the first (police) or second (courts) agents in the customary criminal justice ladder for reconsideration and necessary action if restorative justice facilitators reach a complete deadlock in serious offences. In a similar note, Bradshaw and Roseborough (2005) underscore the relevance of restorative justice in prison decongestion; it is emerging as a formidable alternative to imprisonment and prosecution, as well as a means of holding offenders accountable in a way that corresponds to the needs of offenders, victims and the society at large.

Interestingly, Nigeria is currently addressing the problem of overcrowding in its prison system through somewhat official introduction of restorative justice initiative in some correctional institutions in the country. Having recognized the merits of restorative justice in prison decongestion, Roy and Randel (2013) submit that Nigeria is piloting a 'Front Loading' restorative justice programme in Lagos and Enugu prisons, in which programme prison authorities identify cases that have been awaiting trial for lengthy periods of time and refer them to the Director of Public Prosecution (DPP). After analyzing the files, if the DPP finds that the case is minor, they are approved for 'front loading'. Contact is then made with both the offender and the victim and both are referred to the mediation centre where a trained and certified (restorative justice) facilitator attempts to bring the two parties to an agreement of restitution and reconciliation. Where this is achieved, a written agreement is signed and sent to the magistrate to sign in order to release the inmate. This frees up time for magistrates to deal with more serious cases and helps to reduce overcrowding in prisons, Roy and Randel argued.

Conclusion and Recommendations

Rather than cleaving to the custodian-centered traditional criminal justice system, the article sets out to solve the problem of prison overcrowding in Nigeria using restorative justice programme. Restorative justice is one of the philosophies of punishment and/or treatment in penology that are seriously struggling to gain official attention, recognition and dominance in the sphere of criminal justice administration. Many advocates of restorative justice frowns upon the idea of frequently sending people to prisons as commonly practiced in the traditional criminal justice system. It is a non-punitive and humanistic approach employed in the community level to restore social justice, and enforce and maintain law and order in society. Rather than outright punishment and confinement of offenders or accused persons in the penal institution (prison custody) as obtainable in the conventional criminal justice system, restorative justice intervention advocates for a community-based ‘legal therapy’ that promotes victim-offender dialogue and reconciliation at home. This pattern of justice administration emphasized that adjudication of crime and deviant should strive to resolve victim-offender discrepancies within the community where the act (crime) was committed.

One central and critical observation the article teased out of the review is intriguing but regrettable; the inability of both traditional criminal justice system and the emerging restorative justice to restore life in the case of murder. Admittedly, life is not restored in a case of murder and no amount of compensation will commensurate with the actual harm done to murder victims, their families and the larger society. Notwithstanding, such a loss can be greatly assuaged and atoned for when the matter is settled within the domain of restorative justice initiative using the theory of re-integrative shaming. The stance of this present article therefore is that re-integrative shaming theory of restorative justice is an indispensable philosophy of punishment/treatment which can favorably address the problem of prison overcrowding in Nigeria. Unlike in the police or court where most cases end up in remanding offenders or the accused in prison custody and thus leading to congestion in the system, restorative justice system restores social justice, pacifies social harm and rights wrongdoing in the community. Under restorative justice system, punishment or treatment of offenders, conflict resolution and crime adjudication, are humanely handled outside the formal agencies detailed by the government to enforce law (the police), process crime and criminals (courts), and correct or rehabilitate outlaws (prisons).

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