The Problems of Administration of Justice on Female Offenders in Nigeria

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ABSTRACT
The Nigerian Criminal Justice system arose as a part of the State to protect and promote the interests of the citizens of the country. By administering justice the legal order of the State is ensured. But in the administration of the law, certain principles which must be adhered to are violated, such as the rule of due process, legal equality and equity on female offenders. These violations of the rights of female offenders seem to be exacerbated by the very existence of economic, political, social and cultural inequalities operational in the socio-economic order of Nigeria. This paper contends that the problem of the violation of rights of female offenders by the criminal justice system should be addressed as these acts on female offenders are dehumanising and demoralising.

KEY WORDS: Criminal Justice System, Female offenders,

INTRODUCTION
Nigeria operates the English system of criminal justice administration. According to Uwais (2000), this system of criminal justice administration has undergone tremendous changes to suit the peculiarities of the Nigerian environment. The Criminal Justice System (CJS) here comprises of the Police, the Courts and the Prisons. A person may come in contact with any of these criminal justice institutions to determine whether there is a violation of the rights of a person or not. The criminal justice system is accusatory and based on the general principle that an accused is presumed innocent until proven guilty (Section 36 (5) 1999 Constitution of the Federal Republic of Nigeria). The Nigerian CJS arose as a part of the State to protect and promote the interests of the citizens of the country. Due to the confusion occurring in the administration of dual systems of criminal laws--one by the British or Colonial courts which applied the Nigerian Criminal Code, and the other by the customary courts which applied Maliki Law, an attempt was made to abolish the Nigerian customary law in 1933. However, the British administrators abandoned this idea, and instead introduced Section 10 of the Native Courts Ordinance. Today, Nigeria uses a tripartite system of criminal law and justice: the Criminal Code (based on English Common Law and legal practice); the Penal Code (based on Maliki Law and a Muslim system of law and justice); and Customary Law (based on the customs and traditions of the people) (Ebbe: 1997). By administering justice, the legal order of the State is ensured.

In 1999 the Nigerian Constitution guaranteed freedom of religion and separation of church and State. Also in 1999 Zamfara State adopted a Sharia Penal code, and since then, 11 other States, mostly Northern States which practice the Moslem religion, have
since followed suit. Women under these Sharia laws have separate code entirely different from men.

But in the administration of the law, certain principles which must be adhered to are violated, such as the rule of due process, legal equality and equity on female offenders. These violations of the rights of female offenders seem to be exacerbated by the very existence of economic, political, social and cultural inequalities operational in the socio-economic order of Nigeria. The fundamental rights of the 1999 Constitution of the Federal Republic of Nigeria show that it is not gender neutral both in its application and language (CODESRIA bulletin, 2003). Indeed, women suffer various forms of violence such as rape, battery and abuse at the hands of male perpetrators during the processes of the CJS, and such violence are not considered to be violations of human rights. This paper looks at the problems of administration of justice on female offenders in Nigeria when they come in contact with any component of the Criminal Justice System.

THE NATURE OF FEMALE OFFENDING IN NIGERIA

Crime in the sense of criminal offence is an intentional act committed or committed in violation of criminal law (statutory or case law) without defence or jurisdiction against the state authority proscribing it as a felony, misdemeanour or simple offence (Iwarimie-Jaja, 2003).

Gender is one of the most important predictors of criminal behaviour, if not arguably the most important. Feminist criminologist while placing women in the centre of their study and research, are seeking out ways of explaining why women engage in certain crimes and the consequences of such actions (Sharp: 2006). There is a body of literature which states that women tend to engage in some types of crime or criminal behaviour as against the types committed by their male counterparts due to several motivational reasons. For example, it is well known that women engage in victimless crime activity such as prostitution more than men. Women tend to feature in this kind of criminal behaviour which has been attributed to the “feminisation of poverty” thesis. Put simply, a poor woman would commit crime in other to put food on the table for her children (Walklate: 2004).

An analysis of types of offending behaviour or offences shows that some types of crimes are dominated by men while others by women. Men are more prone to commit crimes such as robbery, sex offences like rape, theft and drunkenness, while crimes such as prostitution are dominated by women. This trend raises the question of why would women engage in certain types of crime or criminal behaviour as against types committed by men? The key point is that women do not offend as much as men and that their offending behaviour is of a less serious nature (Silvestri & Crowther-Dowey, 2008).

In trying to explain why women engage in certain types of crimes as against others which are done by men. Anne Campbell (1999) “Staying alive hypothesis” states that when females engage in crime they almost always do so for instrumental reasons and their crimes rarely involve risk of physical injury. This is because females evolve a propensity to avoid engaging in behaviours that pose survival risks. Also according to Agnew and Broidy (1997), females are concerned with creating and maintaining close bonds and relationships with others, thus they engage in lower rates of property and violent crime.
In terms of the number of incarceration rate, although Nigeria comparatively has one of the lowest incarceration rates in the world according to the International Centre for prison studies (Walmsley, 2008), in the West African region, it has the highest incarceration rate, with the highest female incarceration rates (see figures 1 and 2 below).

**Figure 1 - WORLD PRISON POPULATION LIST 2008 - WEST AFRICA**

<table>
<thead>
<tr>
<th>Country</th>
<th>Prison population total (no. in penal institutions incl. pre-trial detainees)</th>
<th>Date</th>
<th>Estimated national rate population</th>
<th>Prison population (per 100,000 of national population)</th>
<th>Source of prison population total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Benin</td>
<td>6,083</td>
<td>1/08</td>
<td>9.15m</td>
<td>66</td>
<td>NGO’s in Benin</td>
</tr>
<tr>
<td>Burkina Faso</td>
<td>2,800</td>
<td>9/02</td>
<td>12.2m</td>
<td>23</td>
<td>NPA</td>
</tr>
<tr>
<td>Cape Verde</td>
<td>755 1</td>
<td>2/99</td>
<td>423,000</td>
<td>178</td>
<td>NPA</td>
</tr>
<tr>
<td>Côte d'Ivoire</td>
<td>10,621*</td>
<td>12/07</td>
<td>19.2m</td>
<td>55</td>
<td>US State Dep't human rights report</td>
</tr>
<tr>
<td>Gambia</td>
<td>450</td>
<td>9/02</td>
<td>1.4m</td>
<td>32</td>
<td>NPA</td>
</tr>
<tr>
<td>Ghana</td>
<td>12,736</td>
<td>9/06</td>
<td>23.0m</td>
<td>55</td>
<td>NPA</td>
</tr>
<tr>
<td>Guinea (Conakry)</td>
<td>3,070</td>
<td>mid-02</td>
<td>8.4m</td>
<td>37</td>
<td>NPA</td>
</tr>
<tr>
<td>Liberia</td>
<td>1,022</td>
<td>8/07</td>
<td>3.5m</td>
<td>29</td>
<td>NPA</td>
</tr>
<tr>
<td>Mali</td>
<td>4,407</td>
<td>/04</td>
<td>13.4m</td>
<td>33</td>
<td>Ministry of Justice,</td>
</tr>
<tr>
<td>Niger</td>
<td>5,709</td>
<td>5/06</td>
<td>12.5m</td>
<td>46</td>
<td>NPA</td>
</tr>
<tr>
<td>Nigeria</td>
<td>39,438</td>
<td>1/07</td>
<td>143.0m</td>
<td>28</td>
<td>NPA</td>
</tr>
<tr>
<td>Senegal</td>
<td>6,425</td>
<td>4/07</td>
<td>12.1m</td>
<td>53</td>
<td>NPA</td>
</tr>
<tr>
<td>Sierra Leone</td>
<td>1,899</td>
<td>9/07</td>
<td>5.8m</td>
<td>33</td>
<td>Prison Watch, Sierra</td>
</tr>
</tbody>
</table>

*Relates only to prisons under Government control.
Source: Kings College London, International Centre for Prison Studies (ICPS)

**Figure 2 - WORLD FEMALE IMPRISONMENT LIST 2006 – WEST AFRICA**

<table>
<thead>
<tr>
<th>Country</th>
<th>Female prison population (number of women and girls in penal institutions)</th>
<th>Date</th>
<th>Female prisoners – percentage of the total prison population</th>
<th>Source of female prison population total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Benin</td>
<td>c.140</td>
<td>23.8.99</td>
<td>c.3.6%</td>
<td>National prison adm.</td>
</tr>
<tr>
<td>Burkina Faso</td>
<td>25</td>
<td>01</td>
<td>1.0%</td>
<td>National prison adm.</td>
</tr>
<tr>
<td>Cape Verde</td>
<td>38</td>
<td>12.99</td>
<td>5.0%</td>
<td>National prison adm.</td>
</tr>
<tr>
<td>Côte d'Ivoire</td>
<td>236</td>
<td>8.3.02</td>
<td>2.3%</td>
<td>National prison adm.</td>
</tr>
<tr>
<td>Gambia</td>
<td>6</td>
<td>6.99</td>
<td>1.2%</td>
<td>Ministry of Interior</td>
</tr>
<tr>
<td>Ghana</td>
<td>257</td>
<td>11.11.05</td>
<td>2.1%</td>
<td>National prison adm.</td>
</tr>
<tr>
<td>Guinea (Rep. of)</td>
<td>61</td>
<td>mid-02</td>
<td>2.0%</td>
<td>National prison adm.</td>
</tr>
<tr>
<td>Mali</td>
<td>80</td>
<td>2.02</td>
<td>2.0%</td>
<td>National prison adm.</td>
</tr>
<tr>
<td>Mauritania</td>
<td>10*</td>
<td>9.03</td>
<td>2.7%*</td>
<td>US State Dept. human</td>
</tr>
<tr>
<td>Niger</td>
<td>756</td>
<td>29.2.04</td>
<td>1.9%</td>
<td>National prison adm.</td>
</tr>
<tr>
<td>Senegal</td>
<td>183</td>
<td>31.12.00</td>
<td>3.7%</td>
<td>National prison adm.</td>
</tr>
<tr>
<td>Togo</td>
<td>64</td>
<td>12.04</td>
<td>4.0%*</td>
<td>US State Dept. human</td>
</tr>
</tbody>
</table>

* The asterisked figures for Mauritania and Togo relate only to the main prison in the capitals of these countries.
Source: Kings College London, International Centre for Prison Studies (ICPS)

One of the major reasons for Nigeria’s lower incarceration rate as compared to other countries of the world is due to the few number of prisons in the country, which are
not enough to cater for the large number of incarcerated inmates. At present, Nigeria has about 227 prisons with a total prison population of about 4600. The prisons are always over crowded with a problem of over congestion, poor hygienic state and inadequate rehabilitation facilities, just to mention a few. The congestion problem is so much that most Governors of States in Nigeria have threatened to execute inmates to ease prison congestions (Amnesty International, 2010). According to the Amnesty International research, studies have shown that many death row prisoners may be innocent, as Nigeria’s justice system is riddled with flaws. Many have been sentenced to death after blatantly unfair trials. Also, there are more than 870 death row inmates in Nigeria, including women and juveniles.

Despite the fact that women are shown to commit less serious offences than men, female offenders experience gender specific problems in every stage of the CJS in Nigeria. The activities of the police, the courts, and the prisons show that female offenders are female victims in all stages of the CJS. In Nigeria, the number of practitioners in the criminal justice shows that there are more male than females in the service, from the police to the courts to the prison. As regards equality and justice, available information show that the police have not fared well. In 1993, women constituted 4.8% (6,900) of the 137,734 officers in the Nigeria Police Force (Alemika & Chukwuma, 2004). Further broken down, women constitute 4.1% and 8.0% of the junior and senior officer cadres. Furthermore, due to the gendered dimension of the CJS in Nigeria, women are violently abused by males and their human rights denied and violated. An examination of the stages of the contact of the female offender with the CJS, will give us an insight into the problems of administration on female offenders.

THE PROBLEMS OF ADMINISTRATION OF JUSTICE ON FEMALE OFFENDERS

One of the major problems in criminal justice system is the almost nonexistence of any interaction or co-ordination between the various agencies responsible for the administration of justice in the country. At present the police prosecute independently of the Ministry of Justice and the Attorney General’s office…The police and the prisons are federal agencies while the Judiciary is a hybrid between federal and state and the Ministry of Justice is wholly a state department (Ojukwu and Onimin, 2005).

Women who come in contact with the CJS are not generally given any preferential treatment due to their gender. From the point of arrest, some women’s rights are abridged, and they suffer illegal arrests, questioning and detention. The female offender can come in contact with any of the stages of the Criminal Justice System in the following stages: the pre-trial, trial and post trial stages. During these stages, the activities of the actors of the Criminal Justice System at these stages establish whether there is a violation of the rights of a person. During the pre-trial stage the female offender comes in contact with the police. This contact is at the point of arrest, search, seizure or detention. The Police are a department of Government charged with the responsibility of keeping public order. It is the nearest Government apparatus to the civil populace and the chief enforcer to its law. But in an attempt to fight crime in Nigeria, the Nigerian Police Force (NPF) has
demonstrated clearly that it is ineffective and inefficient in maintaining law and order (Iwarimie-Jaja, 2006).

Members of the Nigeria Police Force have statutory powers to investigate crimes, to apprehend offenders, to interrogate and prosecute suspects, to grant bail to suspects pending completion of investigation or prior to court arraignment, to serve summons, and to regulate or disperse processions and assemblies. They are also empowered to search and seize properties suspected to be stolen or associated with crime, and “to take and record for purposes of identification, the measurements, photographs and fingerprint impressions of all persons...”, in their custody (Sections 19-26 of Police Act).

However, due to a combination of structural factors (political oppression and instability as well as economic exploitation, mass poverty, widespread corruption, etc.) and institutional inadequacies (poor quality of personnel, inadequate training, poor facilities, grossly inadequate remuneration and general conditions of service, and hostile police public relations), the country’s police force is ill-equipped to perform its function well and in compliance with the rule of law. Instead, what is evident is that the Nigerian police are highly and visibly subservient to the rich and powerful, even in the rendering of services (Alemika & Chukwuma, 2004).

Economically in Nigeria, women do not have access to and control over resources. Most parts of Nigeria practice patrilineal kinship. Here women have limited access to land, which is a crucial determinant of their access profile. Women can have access to these assets and resources through marriage, purchasing by a kinsman, inheritance through male children or marriage to a kinsman after death of spouse. Due to modernisation and education, some of the laid down cultural rules concerning women’s access to resources have become less rigid. Currently, some women who are economically empowered can purchase lands and houses in the cities. Unfortunately very few women can afford to do these without the support of their husbands and other supports. This lack of resources has great impact on the economic situation of women in general. When a woman is faced with a very difficult economic situation and owing to lack of other opportunities, women are most of the time unable to get financial assistance to receive bail when held in police custody.

The culture of the Nigerian society plays a crucial role here where women suffer oppression and discrimination in a society controlled by men. Feminist criminologist scholars have argued that the men have passed laws and created customs to perpetuate their privileged positions (Belknap, 1996; Potter, 2006; Arnold, 1990). Due to the patriarchal contract embedded in the culture of the society, men’s violence against women is legitimated (Betty Reardon and Carol Pateman in Weber (2006). For example, a woman arrested and detained due to a minor offence, may be held in Police custody indefinitely till she can pay for her bail either by “cash or in kind”. “In kind” here means granting sexual favours in return for bail release. Accused persons or detainees are entitled to bail by virtue of Section 35(4) of the Constitution except where the offence is a capital offence which is still recognised in Nigeria. The law enforcement agencies especially the police and some judicial officers have constantly refused to allow women to stand as sureties to detainees contrary to the law. It is difficult to see why the sex of a proposed surety should be a factor that leads in many cases to the refusal of bail of accused persons generally and female accused in particular (Bamgbose, 1999).
The Problems of Administration of Justice on female offenders in Nigeria

AJCJS; Volume 4, No. 2, April 2011

The trial stage begins with the involvement of the courts. There are two levels of courts in Nigeria; the Federal courts and the State courts. The Judge presiding over any case in the courts has the power and mandate to determine the sentencing of an offender. The courts are constantly confronted with the enforcement of human rights brought before them at the trial stage. There are many Constitutional rights that women are entitled to, which are violated by the courts. In other to establish criminal responsibility, the court requires evidence of a wrongful deed (actus reus) and a wrongful mind (mens rea). Often in examining psychiatric reports written about female offenders, the female’s mental life, domestic life, and sexual life are x-rayed, thereby personalising the offence based on the gender of the offender. In Nigeria, once a woman is brought before a court, she is already found guilty of the offence before the trial begins, because culturally women are not expected to be involved in anything that would bring shame to womanhood. The court offers little for women in the courts that is different from their experience of a whole range of other institutional settings. Indeed, in a sense, this muting of women’s voices and experiences as offenders within the criminal justice system is a feature they share with female professionals working within it (Walkate, 2004).

Given that Nigeria recognises the Sharia penal code, women brought before Courts that operate the Sharia Penal code, are often given harsh sentences for minor crimes committed. A typical case is that of Amina Lawal, a Nigerian woman accused of Adultery and sentenced to death by stoning in 2003. But for the intervention of the International community, Amina Lawal would have been stoned to death. Another incident involves an unmarried girl who became pregnant, was sentenced to 100 lashes (increased to 180 because there was deemed insufficient evidence against the men she said had raped her) (http://www.law.harvard.edu/news/spotlight/civil-rights/related/defending-clients.html). This is just one of many examples of women’s experience in the Courts.

The Post trial stage includes the contact with the prisons. This occurs after conviction and later imprisonment. At the pre-trial stage, after arrest, a woman that is not granted bail is incarcerated. During trial, she may be incarcerated pending the determination of the case. Here the female offender if found guilty of crime punishable by prison incarceration, is sent to prison to serve a prison sentence. Studies done on the Nigerian prisons show that there are several cases of rape of female offenders by the prison warden, as well as poor nutritional and hygienically prison environment (Fayankinnu, 2010). Female offenders in Nigerian prisons suffer victimization while in prison custody by way of sexual abuse and physical abuse. Most of the times these rapes often result in women conceiving babies while in incarceration. According to a CLO report in 1989 which states that:

“In most female prisons, child birth takes place without adequate medical attention or infrastructure. Most of these children grow up in the prison and are kept there sharing the same cell with their mothers and other inmates.” (Bamgbose, 1999)

Such babies exist on charity and kindness of inmates, visitors, prison staffs and non-governmental organizations. Most of the babies born were products of rapes and victimisation of the female offender while in prison. The implications of the incidents of rape cannot be overemphasised considering the high rates of HIV infections in Nigerian prisons; also since the effects of rape on the psyche of the victims are serious and
enduring, issues such as rape and sexual violence in prisons require urgent and concerted attention. This is so because a victim of rape is a potential abuser in future, more so that most inmates will return to the society sooner or later (Ikuteyijo and Agunbiade, 2008). What is most peculiar about the Nigerian situation is that there have been no cases of such incidents being handled as criminal acts by the criminal justices system of Nigeria.

There have been documented cases where women were arrested for offences and detained for many months and even years without trial. In Nigeria in practice, most suspects of crimes wait for their trial in pre-trial detention, even if the accused person poses little or no risk to society; and even if the crime is not considered a serious one. As a general rule, people awaiting trial should not be remanded to prison. According to an audit of the National Working Group on Prison Reforms and Decongestion, around 15 percent of the awaiting trial inmates remain in prison because they can not post their bail (Amnesty International, 2007). Also statistics have shown in Nigeria that women make up about 3% percent of the total prison population. These groups of women were made up mostly of mothers with dependant children, and their offences were generally minor offences (Okagbue, 1991).

The Nigerian experience has shown that since the police are not trained to prosecute cases there is a general tendency to conduct prosecutions in an unprofessional manner. There is also the problem of condoning of abuses by the police while conducting the investigation and obtained evidence illegally or through torture in the first place. Female offenders have cited instances of being tortured while in detention.

A right peculiar to women at this post trial stage is the right of pregnant women and nursing mothers under the C.J.S. These women have been seriously neglected. Generally there are no provisions under the laws for the care of pregnant women and nursing mothers. The Prison Regulation (2) allows the child of a female prisoner to be admitted into a prison with the mother if such baby is at the breast and less than eighteen months old. Apart from allowing the mother to be with the baby while in Prison, no other care is given for the welfare and maintenance of the female offender and her child. There are reports to show that there are many female and male children in Nigerian prisons (Ehonwa, 1993).

**DISCUSSION AND CONCLUSION**

This paper has sought to examine some of the problems of the administration of justice on women by the criminal justice system in Nigeria. From the foregoing, the reports above paint a very grim picture for anyone caught up in the Nigerian penal system. This appears to be especially true for women offenders, as they are already regarded as second-class citizens in many respects, and this lessened status carries over to the police, courts and prison population, where they are accorded little respect, and very little access to the protections of civil society. Culture and class can be looked as possible explanations for sexual, emotional and physical abuses that women encounter during their contact with the criminal justice system. The disproportionate number of female practitioners in the criminal justice system put female offenders at more risk of being victimized and abused, as they do not have a strong voice in the CJS, who should fight for them. This would also explain why there are no quantifiable data on the number of reported sexual abuses in the Nigerian prisons. In general terms, it is possible to see that the criminal justice system of Nigeria is not immune from wider society. All things being
equal, female defendants are not processed fairly during the CJS process due to their gender (Walkate, 2004, emphasis mine). There is a need for the rights of female offenders to be protected and enforced through the stages of the CJS. The reform and modernization of the police force in Nigeria is a critical factor in developing justice in Nigeria. Many persons who come in contact with police have several complaints about manner in which the police carry out their functions. These complaints range from abuse of processes to the outright abuse of human rights (Ojukwu, et al, 2005). Lawyers should be sensitized to the rights of women in order to respond to the client’s consultation with a gender sensitive approach. Lawyers should charge less for women; so that they can be have access to justice. Members of the bench must the thoroughly educated on the development in the area of women’s rights. They must be gender sensitized so that this can reflect in their interpretation of right violation. The Police must be well equipped for their role and must be gender sensitive. They should deemphasize the traditional discrimination and violation of female offender’s rights. Conclusively, there is a need for reformation and modernisation of all components of the Nigerian Criminal Justice System.

REFERENCES


