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## **PRISON PRIVITIZATION: A SOLUTION TO PRISON OVERCROWDING**

### **1.0 ABSTRACT**

*We cannot overstate the fact that Nigeria suffers from a collapsed reformatory and correctional system. Prominent among the many and myriads of issues with the system is the overcrowding of our remedial and correctional centers. As at the last count, Nigeria has well over 75,000 (Seventy Five Thousand) inmates captured under the National Security Database. It is also on record that 71% of these inmates are awaiting trial while only 29% of them are convicted inmates. The Nigeria Correctional Service formerly known as the Nigeria Prison Service which is charged with the responsibility of managing inmates in Nigeria has been overburdened with too many inmates, over and above the number that the facilities provided can carry. Too many times or better put, often than not, the failure of our judicial system and the delays in dispensation of justice by the Nigerian Judiciary contribute to the larger part of why our correctional facilities have much more inmates than is required. Added to that is the irresponsible actions of various law enforcement agencies in Nigeria. From indiscriminate arrest of persons without due process, lack of thorough investigations and interrogation of suspects before arrest and lack of the will to prosecute matters as soon as they arise without delays and zero sense of urgency as required in criminal prosecution, all contribute to the gross abuse of human rights of inmates and other innocent Nigerian citizens in violation of their inalienable and constitutionally guaranteed right under the Constitution of the Federal Republic of Nigeria 1999 as amended and other international documents, treaties and charters including the United Nation Charter on Human Rights 1948 duly domiciled within our jurisdiction through the act of the National Assembly. It must also be noted that the dearth of infrastructure to meet our rising population and the failure of successive governments to erect new, modernized and expansive detention centers or better still maintain the existing ones,*

*contribute the most to why our detention centers are overcrowded and has become a hub of many untoward things. This presentation is an attempt to evaluate the role that prison privatization and involvement of the private sector within the field can play in order to address the obvious deficits and challenge of prison overcrowding in Nigeria.*

## **2.0 DEFINITION OF TERMS**

**2.1 PRISON OVERCROWDING:** A Prison is said to be overcrowded when the number of inmates exceed the capacity for which a detention or correctional center is constructed for. The Penal Reforms International Organization has observed from its extensive inquiry that prison overcrowding most of the times is not as a result of rising crime rate but the failure of the criminal justice system or policy as is the case in Nigeria. Agreed that the scourge of kidnapping, banditry, terrorism and other crimes are on the rise, it will be an overstatement to attribute the endemic situation of prison overcrowding in Nigeria to just that factor. Hon. Justice Opayemi Olufumilayo Oke, former Chief Judge of Lagos State in one of her commentaries observed that;

“Today in Nigeria, we have seen countless cases where Defendants are arrested for minor offences such as burglary and wandering. They are locked up in our prisons for the flimsiest reasons to join the teeming population of awaiting trial inmates. They are in our prisons with hardened criminals and by the time they come out; they have been initiated into a life of crime and are ready to spread terror, death and destruction in their post prisons escapades”<sup>1</sup>

The above statement paints a clear picture of our justice system and it is indeed an issue that we must collectively address because, an overcrowded prison is the hub of many things. It is first and foremost medically unhealthy and also hinders effective profiling and categorization of criminals and this results to lumping up of hardened criminals and naïve individuals who has committed simple offences like stealing, burglary, and the likes. It is also a breach of their constitutional right to the respect of their human dignity as provided for in section 35 of the Constitution of the Federal Republic of Nigeria.

**2.2 PRIVITIZATION:** The Oxford Dictionary has defined Privatization as the transfer of a business, industry, or service from public to private ownership and control.<sup>2</sup> It is said to have occurred when government enterprises or businesses are transferred to private individuals, institutions or firm for the purpose of effective management and/or administration. Privatization shifts the responsibility for a function from institutions of state to private individuals. It should also be noted that the process have inherent advantages and disadvantages. Within the context of our discourse, privatization of prison in Nigeria will infer, the transfer of the building, maintenance, and administration of prisons from government to private companies, institutions or firms.

### **3.0 THE ROLE OF PRIVATE PRISONS IN JUSTICE REFORM**

A private prison is usually a for profit facility where inmates are imprisoned by a contracted third party or institution by the government in order to provide correctional and detention services as the conventional and government owned detention centers. It is a sort of outsourcing the building, maintenance and operationalization of detention centers to third party individuals who are driven by profits. Harvard International Review noted that one of the earliest private prisons in the world commenced in 1844 in the state of Louisiana, USA. Ever since then, nations across the world have adopted the practice as a veritable means of resolving overcrowding in public prisons.

Although it has been argued that since profit making is the driving force that motivates operators of private prisons, the quality of service rendered by them may not be substantial owing to the fact that they may cut down crucial services including feeding, cleaning, medical services and overall welfare of inmates when they think so to be expedient for profit making. Notwithstanding the above, the importance of private prisons cannot be overemphasized because over the years, privatization has been identified as a critical component for promoting efficiency, reducing fiscal responsibility on government, attracting new investment opportunities and deepening participation of a wider range of persons in a sector of the national economy and in this case, the prisons and correctional centers.

Privatization will help to reduce the monopoly of managing correctional facilities by government and encourage private bodies to join in providing that essential services thereby engendering competition in the sector which will in turn help reduce the burden on government and its agencies.

Private prisons are very crucial to the justice reforms project because they provide credible alternatives to the conventional prisons and will help to solve some of the challenges identified including the overall welfare of inmates, their safety, health, feeding and post prison lifestyle including the acquisition of skills, reformatory programs and psychological therapies. Although there has been proposals for privatization of prisons in Nigeria as far back as 2012 which was to be carried out under the ministry of interior through a public private partnership (PPP); there has not been a national effort or consensus on how to proceed with the plans. Some has argued that the series of privatization that took place in Nigeria has failed to deliver on the promises of efficiency. They have cited the power, rail and oil and gas sector (refineries) as examples of those failures and are doubtful whether privatization of prisons will be successful more so, owing to the sensitive nature of the subject matter and the fact that it is driven by profit. They have argued that this may undermine the cardinal purpose of the correctional system which is primarily for the “treatment and rehabilitation of offenders through a well administered system” and if this will not be the case, then the purpose of the system fails flatly.

The first prison in Nigeria was built in 1872 and till date, there are only 240 prisons in Nigeria for a population of over 200,000,000 (Two Hundred Million) people with well over 75,000 inmates and over 70% of that number awaiting trial. Currently, we have one of the highest number of

inmates and ranks 27<sup>th</sup> globally. Hence, the imminent need for a robust legislative and judicial intervention to resolve the root causes of overcrowding in our detention centers. Private prisons will therefore play critical role in managing the situation as privatization is necessary in the grand scheme of things and will be crucial for the effective and efficient management of our correctional facilities and aid a fair and just judicial system.

### **3.1 ADVANTAGES OF PRISON PRIVATIZATION**

1. Privatization of prisons will reduce overcrowding as more facilities will be constructed.
2. It will cut the cost of management and fiscal responsibility on the part of government.
3. It will create employment opportunities and other ancillary economic benefits for businesses and communities within the area.
4. It will promote efficiency and better service delivery as there will be incentives for doing so like renewal of contract by government with such centers,

### **3.2 DISADVANTAGES OF PRISON PRIVATIZATION**

1. As a for profit entity, the quality of service may be compromised and the welfare of inmates may be affected.
2. The reformatory purpose of prisons may fail if private individuals who administer prisons neglect their responsibility and this may affect the post-prison lifestyle of inmates.
3. Incidences of prisoner swap may occur and hardened inmates who can influence the top administration of those prisons may escape justice through bribery and corruption.

## **4.0 PRIVATE PRISONS IN OTHER JURISDICTIONS: UNITED KINGDOM, UNITED STATES OF AMERICA AND SOUTH AFRICA IN PERSPECTIVE.**

**4.1 PRIVATE PRISONS IN THE UNITED KINGDOM:** The United Kingdom presently have 14 private prisons which houses 17% of her prison population. Although there has been oppositions to privatization of prison services in UK based on the fact that the concept of prison care is antithetical to the notion of commercial business and that it is morally inappropriate to profit from the punishment of offenders; it is observed generally that private prisons are incentivized to operate more efficiently in order to retain their contract hence, they maintain a level of discipline which most times is lacking in public prisons. Private prisons has become part of the criminal justice structure of the United Kingdom and has been successful over the years.

**4.2 PRIVATE PRISONS IN THE UNITED STATES OF AMERICA:** The United States of America presently have about 158 private prisons which houses 8% of incarcerated inmates. One of the biggest corporation managing these private prisons is CoreCivic which manages over half of all private prisons in the US. They have helped to alleviate the issue of overcrowding in most federal prisons in US and has saved tax payers money which could have gone into housing, feeding the inmates and maintaining the facilities. The government pay the companies for the number of inmates they harbor and they save government the hassle of taking full responsibility of both the housing and welfare of inmates. Although arguments exists that there is little or no oversight and accountability including reports of

human rights violations and other corrupt practice, private prisons has proved effective in the management of inmates with the right legislations and supervision.

**4.3 PRIVATE PRISONS IN SOUTH AFRICA:** South Africa is one of the African countries with an established private prison system. It has 2 prominent privately run prisons –Kutama Sinthumule Correctional Center which is administered by an American private correctional company GEO Group and Mangaung Correctional Center administered by British Security Company G4S. There has been reports of high rate of human rights abuses by different investigative journalists which strengthens the argument against private prisons. Mention must also be made of the abundant evidence that they have made tremendous impact on the justice system of South Africa and has helped to provide the needed services required of detention centers including providing opportunities for inmates to acquire some level of education and learn various skills which will assist their post-prison life.

Kenya, Ghana, and Nigeria are yet to fully implement and facilitate the process of privatization of prisons in their various systems but has commenced conversation in that direction and it is the authors hope that they will scale up measure, draft guiding legislations to allow for increased private involvement in the correctional system to alleviate the fiscal and administrative burden on their various government which has led to the shortfall and resulting prison overcrowding.

## **5.0 THE ROLE OF THE EXECUTIVE ARM OF GOVERNMENT IN RESOLVING OVERCROWDING IN NIGERIAN CORRECTIONAL FACILITIES.**

The pandemic of overcrowding in our public prisons is a product of leadership failures over the years as successive governments neglect their constitutional role as provided in section 14 (1) of the Constitution of the Federal Republic of Nigeria that “the welfare and security of citizens shall be the primary responsibility of government” one of which is the provision and construction of critical infrastructures which are necessary for social, economic and political stability. This has resulted to collapse of social order, disenchantment by citizens and lack of trust on the government. Correctional facilities in Nigeria suffer from neglect and lack of maintenance, meagre or insufficient funding and budgetary allocation, understaffing, corruption, diversion, misappropriation of public funds by stakeholders in the sector and this has seriously affected the efficient and effective management of prisons across the different prisons in Nigeria.

It is therefore incumbent on the Executive arm of government both at the federal and state level to seat up to their responsibility and declare an emergency in our justice sector and should as a matter of urgency commence the process of privatization of the prison sector, allow more private bodies to build and maintain prison facilities while at the same time, provide sufficient funding for public owned facilities, develop mechanisms that will checkmate embezzlement of funds by stakeholders and also facilitate the recruitment of more officers, retraining and equipping of prison workers in order to create a decent correctional system that truly reforms inmate than one that brings out the beast in them.

## **6.0 THE ROLE OF THE LEGISLATIVE ARM OF GOVERNMENT IN RESOLVING OVERCROWDING IN NIGERIAN CORRECTIONAL FACILITIES.**

The legislature is vested with the responsibility of making laws for the purpose of promoting peace and security as provided for under Section 4 of the Constitution of the Federal Republic of Nigeria. Note also that the National Assembly has the exclusive jurisdiction under schedule \_\_\_\_ of the Constitution to legislate on security matters in Nigeria, it behooves therefore on the legislature to set down the template and legislate on enabling laws necessary for resolving the issue of overcrowding in our prisons.

Importantly, consideration should be had to enacting a law on prison privatization which provides for a public private partnership between government and the private sector which will create a robust environment for collective efforts towards promoting efficiency, transparency, accountability and professionalism in the administration of criminal justice system in Nigeria.

The legislature should also exercise its oversight function on the management of our correctional facilities through creation of special committees on administration of criminal justice system in Nigeria comprising of the police, the courts and our prisons. This triangle is very crucial to the enforcement, interpretation and implementation of our laws in order to promote the rule of law, maintain social order and sustain peace and security.

## **7.0 THE ROLE OF THE JUDICIAL ARM OF GOVERNMENT IN RESOLVING OVERCROWDING IN NIGERIAN CORRECTIONAL FACILITIES.**

The Judiciary and its numerous failures over the years with respect to the dispensation of speedy justice has dominated conversations especially in the last decade. Numerous recommendations have been made on how the Judiciary can rise to the occasion and deliver on its responsibility. In 2015, the Administration of Criminal Justice Act was enacted as a veritable document that will drive positive change especially with respect to the time frame within which criminal matters should be heard and concluded. However, as is the case with our litany of legislations, compliance and implementation of the letters of that piece of legislation has been very insignificant. The Judiciary is at the core and occupies the most crucial position in the journey of reducing the ever growing population of inmates across the federation.

With over 71% of inmates awaiting trial, the Judiciary must now develop a strategy which will facilitate a quick dispensation of justice especially in criminal matters as provided by the Administration of Criminal Justice Act 2015. The endless adjournment of cases and the rising number of inmates awaiting trial poses a question on the efficacy of the Judiciary as the last hope of the common man. The number of innocent people languishing in our prisons and numerous others who have committed simple offences indeed connotes a failure that needs to be urgently addressed.

The prosecutorial agencies The State Security Services (SSS), The Nigeria Police Force (NPF), The Economic and Financial Crimes commission (EFCC), The Office of Attorney General of the Federation and various States in Nigeria and other agencies of State should sit up to their responsibility and endeavor to arraign and prosecute suspects at the earliest possible time especially when the evidence is still available and accessible and should not allow effluxion of

time and unnecessary delays which will inadvertently affect the constitutional rights of inmates.

To drastically reduce the number of inmates awaiting trial, our courts must place priority on criminal litigation like it has for election matters and fix timelines for commencement and conclusion of criminal trials. This is very necessary considering the fact that too many inmates who are innocent has suffered unjustly as a result of long years of incarceration without trial or conviction. Some has spent 10 to 20 years or more in prison for crimes they never committed. Since there is a right of appeal even to the Supreme Court, the rigors of obtaining judgment at court of first instance-the Magistrate Courts and High Courts should be urgently done with as fast as possible to aid the accused person pursue their constitutional rights of appeal and see to the conclusion of the matter within reasonable time. The saying comes to mind “it is better to free 10 guilty men than to allow 1 innocent man suffer unjustly”.

## **8.0 THE ROLE OF NON-GOVERNMENTAL ORGANIZATIONS, RELIGIOUS BODIES, TRADITIONAL INSTITUTIONS IN RESOLVING OVERCROWDING IN NIGERIAN CORRECTIONAL FACILITIES.**

The role of Non-Governmental Organizations, Religious Bodies, Traditional Institutions and all well-meaning Nigerians on the subject natter cannot be over emphasized. Acknowledging the fact that the overcrowding of our prisons is a social issue with ripple effects on communal existence, it behooves on us all to join and lend voice to the conversation on how to address the issue. Over the years, numerous NGO’s has emerged with the sole mandate of advocating and actively representing in courts, numerous inmates who have no legal representation or cannot afford one. A lot more has been involved with the provision of social welfare packages like food, clothing, and toiletries to inmates including offering post-detention services to ex-inmates. However, a lot more needs to be done with respect to engaging major stakeholders in the sector by our religious bodies and traditional institutions on how to facilitate broader participation of the private sector and bring to front burner of social and public discourse, the concept of privatization of prisons in Nigeria as a veritable means of addressing the issue of overcrowding in our prisons. Mention must be made of the significant impact that the private sector has made with the education and health sectors in Nigeria and how the liberalization of such services has greatly improved the quality and efficiency of the sectors.

There should be ongoing conversations and implementation of policies that will create enabling environment and employment opportunities for young people to thrive economically, as this will go a long way in discouraging them from going into the life of crime. Skill acquisition programs can be facilitated by different organizations in order to provide them with source of income and take them off the streets.

## **CONCLUSION**

We all have a role to play in addressing the challenges posed by our collective failures over the years and as a people, we should intensify efforts aimed at curbing the rise in crimes which include changing our perceptions and discouraging the get-rich-quick syndrome that has now plagued our young people. With lesser people going to the prisons and those there getting speedy judgment by the courts, we would have solved over 25% of the problem of overcrowding in our prisons. That way, the medical health challenge posed by overcrowding will be eliminated including the undue indoctrination of simple offenders by hardened and

convicted criminals due to lack of space can be further reduced. The non-governmental organizations, religious bodies, traditional institutions and all Nigerians have a role to play in prison decongestion. Added to financial and welfare supports to inmates, we must all join in the conversation and advocacy for the privatization of correctional system in Nigeria which will allow well-meaning private companies and individuals to join the sector and provide the much needed improvement in the quality of service of management of correctional centers that we all clamor for over the years.

#### About the Author

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