

## SERVICE WORK AS AN ANTIDOTE TO PRISON PROBLEMS IN NIGERIA S-P. A. St. Emmanuel

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### **Abstract**

The prison system and welfare of inmates in Nigeria has been of great concern because Nigerian prisons are overcrowded due to the rampant use of imprisonment as a form of punishment. The inherent rights and dignity of prisoners are on a daily basis violated as a result of overcrowding, insanitary and unhygienic conditions, and non-availability of beds to sleep on, amongst others. The aims of imprisonment as a form of reforming offenders have not been achieved and there is a high rate of recidivism amongst ex-inmates. The Nigerian government also made matters worse by not reforming the country's underdeveloped prison system. This paper comparatively explores the prison systems in Nigeria, the United Kingdom and United States. It examines service work as a form of punishment and in conclusion, advocates and recommends its use as an alternative to imprisonment because, the dignity of prisoners is maintained. Furthermore, it reduces overcrowding and overstretching of prison facilities and also curbs recidivism.

**Keywords: Prisons, Prisoners, Service Work, Imprisonment and Prison System.**

### **1. Introduction**

A Prison is a building where people are kept as a punishment for a crime they have committed, or while they are awaiting trial or the system of keeping people in prisons.<sup>1</sup> It is also called penitentiaries<sup>2</sup> and has also been defined as an institution designed to securely house people who have been convicted of crimes. These individuals, known as prisoners or inmates, are kept in continuous custody on a long-term basis. Individuals who commit the most serious crimes are sent to prison for one or more years; the more serious the offence, the longer the prison term imposed. For certain crimes, such as murder, offenders may be sentenced to prison for the remainder of their lifetime<sup>3</sup> or to death.

Prisons form part of the criminal justice system of a country, thus imprisonment is a legal penalty that may be imposed by the state for the commission of a crime. It should be noted that prisons are different from jails, which are facilities operated by the counties and are used to detain adult criminal offenders who receive short-term sentences of less than one year as in the United States. Jails are also used to temporarily house individuals awaiting trial, witnesses in protective custody, offenders charged with crimes in other jurisdictions, probation and parole violators, and juveniles awaiting transfer to juvenile facilities. There are other types of detention facilities such as immigration detention centres, police lock up cells, psychiatric wards, prisoners of war camps and military prisons such as the Guantanamo Bay facility operated by the United States government.

An accused who has been charged with or is likely to be charged with a criminal offence may be remanded in prison if he or she is denied or unable to meet conditions of bail

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<sup>1</sup> Hornby A.S. *Oxford Advanced Learner's Dictionary of current English* 6<sup>th</sup> ed, 2000, 926.

<sup>2</sup> The word *penitentiary* was coined in the late 1700s because it was believed that through solitary religious study of the Bible, prisoners would become remorseful and reform their behavior.

<sup>3</sup> Prisons; retrieved from Microsoft Encarta (2009) by Microsoft Corporation.

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or while waiting for judgment and if found guilty, such a defendant will be convicted and may receive a custodial sentence requiring imprisonment. Also, dictatorial governments use prisons as a tool of political subjugation to detain political opponents and critics.

Although, prison structures existed in ancient civilizations, the widespread use of long-term confinement as a form of criminal punishment began only in the 15th century. Today every nation of the world has prisons, and their function is to punish criminals by restricting their freedom. In most countries, governments construct and operate prison systems. However, several countries, including the United Kingdom and United States, also permit private organizations to construct and operate prisons under contract for the government.

Prisons frequently offer vocational and educational programmes for inmates' rehabilitation and self-improvement. It should be pointed out that prison facilities are divided into levels, violent inmates' cells are separated from less-dangerous inmates' cells and are surrounded with high walls perimeter fences.

Prisons all over the world are set up by statute to provide restraint and custody of individuals accused or convicted for crimes by the state. In Nigeria, the present prison system dates back to the colonial era and is modelled after the British system. For most of history, imprisonment has not been a punishment in itself, but rather a way to confine criminals until corporal or capital punishment is administered. For instance, there were prisons used for detention in Jerusalem in the Old Testament era.<sup>4</sup> Prisoners were detained in dungeons; those who were not executed or left to die in dungeons often became galley slaves or faced penal transportations.

Prisons arose from the evolution of punishment, which has been part of human culture throughout times.<sup>5</sup> Though imprisonment was not widely used in the pre-colonial era, it was not totally new to the Nigerian legal system.<sup>6</sup> Confinement existed in many Nigerian societies and was used before the advent of the British as one of the customary legal instruments to maintain peace, law and order. During the colonization era, imprisonment was used to incarcerate persons who were threats to the political and economic interests of the British.

The modern system of imprisonment as a societal punishment started in London, Great Britain in the 19th century, due to the views of Jeremy Bentham. The notion of prisoners being imprisoned as part of their punishment, and not simply as a holding state till trial or hanging, was at that time revolutionary. The first modern prisons of the early 19th Century were sometimes known by the term "penitentiary" (a term still used by some prisons in the USA today). It was not until the late 19th Century that rehabilitation through education and skilled labour became the standard goal of prisons.

### **2. Prison system and administration: the usa, uk and nigeria**

A prison system is the organizational arrangement of provision for incarceration of those convicted of committing a crime and it involves the operation of prisons. It is a system that lays emphasis on punishment and deterrence.

In the United States, prisons are funded and operated through state and federal taxes but in the United Kingdom and Nigeria,<sup>7</sup> they are funded by unitary and federal taxes respectively. The Federal Bureau of Prisons oversees all prisons and other facilities designed to incarcerate individuals convicted of violating federal laws in the USA, while in the United Kingdom, Her Majesty's Prison Service oversees all prisons and that of Nigeria is overseen

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<sup>4</sup>"Prisons" Catholic Encyclopedia, 1913, Robert Appleton Company, New York.

<sup>5</sup>Privatization of the Prison System: A Panacea J. Howard. The state of prisons 1780, 10 culled from Bamgbose O; "Privatization of Prison System: A panacea for Nigeria" in Ogungbe. M.O (ed) *Nigerian Law: Contemporary Issues, Essays in Honour of Sir, Chief, (Dr.) G.O Igbinedion, JP., LLD, GCFR*, 154  
*Ibid* at 152

<sup>7</sup> In Nigeria, the Prison system is under the Exclusive list of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) thus it is within the purview of the Federal Government.

by the Nigerian Prisons Services under the auspices of the Ministry of Interior. The administration of the prison system in Nigeria is centralized and it is placed under the direct supervisions of the Ministry of Interior, the Comptroller-General of Prisons, is the overall head while at the State level, it is controlled by the Comptroller. The operational powers of the Nigerian Prison Service, is derived from the Prison Act<sup>8</sup> and it charges the prisons, *inter alia*, to take into lawful custody all those certified to be so kept by courts of competent jurisdiction; produce suspects in courts as and when due; identify the causes of anti-social behaviour; set in motion mechanisms for their treatment; train inmates for eventual reintegration into society as normal law abiding citizens upon discharge; administer prisons farms and industries for this purpose; and in the process generate revenue for the government.

Some facilities operated by the United States federal government accommodate prisoners who have physical or mental ailments and are more like hospitals, while state prisons house inmates who have been convicted of violating state criminal laws. Given the focus of this paper, particular attention shall be placed on the prison and administration of criminal justice system in Nigeria.

### **3. Imprisonment under nigerian criminal justice system**

Section 24 of the Criminal Procedure Code provides that except in the case of a sentence of death, the court passing such sentence or order shall issue a warrant for the execution of any sentence or order of a criminal court. Upon the passing of an imprisonment sentence, the judge fills out the warrant in judicial form (NR.30) committing the convict to prison. If the convict is found guilty of several offences, the court may direct that the terms of imprisonment for each offence shall run consecutively or concurrently. Imprisonment is available either in addition or in alternative to a fine or in some rare cases without the option of a fine. Other conditions attached to imprisonment may include 'with hard labour' or apartments of maximum, medium, or minimum security definitions within the prison yard. Detention in Borstal or remand homes is used to correct the criminal tendencies in the behaviour of convicted children, so as to make better citizens of them.<sup>9</sup>

#### **3.1 Open Prison**

This is a variation of the terms of a prisoner, who may have conducted himself in good stead while in prison and is about to be released. Such a prisoner maybe taken to an open prison where there is no total restraint on his freedom of movement and where he could be given time within which to visit other places and return back to prison unaccompanied. If such freedom is violated, the prison sentence earlier imposed on him maybe doubled, this is an administrative concession of the prisons department.<sup>10</sup>

#### **3.2 Prison Problems in Nigeria**

According to Amnesty International, "Nigeria's prisons are filled with people whose human rights are systematically violated. Approximately 65 per cent of the inmates are awaiting trial most of whom have been waiting for their trial for years. Most of the people in Nigeria's prisons are too poor to be able to pay lawyers, and only one in seven of those awaiting trial have private legal representation."<sup>11</sup> Though free legal aid is provided by the Legal Aid Council of Nigeria and Citizens Rights Departments of the various States Ministries of Justice, there is still a dearth of legal representation for those who require same.

At times, people not suspected of committing any crime are imprisoned along with convicted criminals. Some of such people were often arrested in place of family members the Police could not locate, while others suffer from mental illness and were brought to prison due to lack of persons to take care of them. Most have no lawyer to advocate on their behalf,

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<sup>8</sup> CAP. P29, Laws of the Federation of Nigeria, 2004

<sup>9</sup> Section 77 of the Penal Code Act, (Cap P.3), Laws of the Federation of Nigeria, 2004

<sup>10</sup> Section 5(2) of the Prisons Act, (Cap P.29), LFN 2004

<sup>11</sup> Amnesty International., *Nigeria: Human Rights Agenda 2011-2015* AI Index: AFR 44/014/2011 Amnesty International Publications (2011) 3

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thereby violating their rights because when a state arrests or imprisons someone solely because he/she is a relative of a suspect or because he/she suffers from mental illness, it violates that person's right not to be subjected to arbitrary arrest or detention, This is a fundamental right guaranteed under the Constitution of the Federal Republic of Nigeria, 1999, the International Covenant on Civil and Political Rights (ICCPR) and the African Charter on Human and Peoples' Right (African Charter), which Nigeria is a signatory.

Amnesty International also highlights the plight of prison staff, who work long and stressful hours for low wages that are often paid late. Poor pay often leads to petty extortion of prisoners, and staff shortages create security risks for both staff and inmates. Inmates are often relied on to govern themselves as a result of high ratio of prisoners to prison staff and have taken on disciplinary functions, including meting out corporal punishment, close confinement and diet restrictions - all of which do not comply with international standards.<sup>12</sup>

Living conditions in Nigerian prisons are appalling. They are damaging to the physical and mental well-being of inmates and in many cases, constitute clear threats to health. Conditions such as overcrowding, poor sanitation, lack of food and medicines and denial of contact with families and friends fall short of the UN standard minimum rules for the treatment of prisoners. The worst conditions constitute ill-treatment. In many Nigerian prisons inmates sleep two to a bed or on the floor in filthy cells. Toilets are blocked and overflowing or simply non-existent, and most often, there is no running water. As a result, disease is widespread.

Most prisons have small clinics or sick bays which lack medicines, and in many prisons, inmates have to pay for their own medicines. Guards frequently demand that inmates pay bribes for such privileges as visiting the hospital, receiving visitors, contacting their families and, in some cases, being allowed outside their cells at all. Prisoners with money may even be allowed mobile phones, whereas those that are poor are left languishing in their cells. Consequently, Nigerian prison system is one of the most under-developed institutions in the criminal justice sector globally.

Imprisonment in the United States on the other hand is a concurrent power held by both the federal and state governments. The federal government, states, counties, and many individual cities have facilities to confine people. Incarceration is one of the main forms of punishment for the commission of felony offences in the United States. Less serious offenders, who are convicted of misdemeanour offences, may be sentenced to a short term in a local jail or with alternative forms of sanctions such as community corrections halfway house, house arrest, probation, and/or restitution. Prisons are operated at various levels of security, ranging from minimum-security prisons that mainly house non-violent offenders to Supermax facilities that house violent and high profiled criminals and terrorists.

It is reported that more than 10.2 million people are held in penal institutions throughout the World mostly as pre-trial detainees/remand prisoners or sentenced prisoners and almost half of these are in the United States, which has the highest documented incarceration rate and total documented prison population in the world.<sup>13</sup> Available statistics show that at the beginning of October 2013, 2.24 million prisoners were incarcerated in the United States.<sup>14</sup>

The same prison congestion scenario in Nigeria also plays out in the United States in that, many prisons are congested. For example, California's 33 prisons have a total capacity of 100,000, but they hold 170,000 inmates.<sup>15</sup> As a result, old gymnasiums and classrooms are

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<sup>12</sup>*Ibid*, at 17

<sup>13</sup>Walmsley, R (2010). *World Prison Population List. 10th edition* "Available at [http://www.prisonstudies.org/sites/prisonstudies.org/files/resources/downloads/wppl\\_10.pdf](http://www.prisonstudies.org/sites/prisonstudies.org/files/resources/downloads/wppl_10.pdf). Accessed on 10/5/2015.

<sup>14</sup>*Ibid*

<sup>15</sup>Thompson, D. *Prison Attacks Calling Attention to Overcrowding*". Available at [http://www.utsandiego.com/uniontrib/20080405/news\\_1n5prisons.html](http://www.utsandiego.com/uniontrib/20080405/news_1n5prisons.html). Accessed on 10/5/2015.

turned into huge bunkhouses for inmates by placing hundreds of bunk beds next to one another, in these gyms, without any type of barriers to keep inmates separated. The derisory security caused by this situation, coupled with insufficient staffing levels, has led to increased violence and a prison health system that causes one unnecessary death a week. This situation has led the courts to order California to release 27% of the current prison population, citing the Eight Amendment's prohibition of cruel and unusual punishment.<sup>16</sup> The three-judge court in considering the requests in *Plata v. Schwarzenegger*<sup>17</sup> and *Coleman v. Schwarzenegger*<sup>18</sup> found that California's prisons have become criminalized as a result of overcrowding.<sup>19</sup>

#### 4. Private prisons as solution to prison congestion

A private prison, jail, or detention centre is a place in which individuals are physically confined or interned by a third party that is contracted by a local, state or federal government agency. Private prison companies typically enter into contractual agreements with local, state, or federal governments that commit prisoners and then pay daily fee or monthly rate for each prisoner confined in the facility.

For many governments and emerging economies, the private finance initiative (PFI) appears to be fiscally and economically approved;<sup>20</sup> the government hands over the finance, design and construction of a new facility and the provision of related service to a company or consortium in exchange for monthly fee over a period of years. Here, the government has no immediate capital cost as the company or consortium borrows the necessary finance.<sup>21</sup> The privatization of prisons involves the takeover of existing public facilities by private operators and the building and operation of new and additional prisons by for-profit prison companies.

The United Kingdom was the first country in Europe to use private prisons to hold its prisoners. Wolds Prison opened as the first privately managed prison in the UK in April, 1993 by the Group 4 Remand Services. It should be noted that the said G4S lost its contract to run Wolds prison in East Yorkshire in 2012.<sup>22</sup> A prisoner who had done time in most of the northern jails in England felt Wolds was more of a nursing home than a prison because of the relaxed atmosphere and the treatment she received there unlike in public prisons at Hull and Leeds.<sup>23</sup> Thereafter, private prisons were established under the government's Private Finance Initiative, contracts were awarded for the entire design, construction, management and finance of a prison.

Private prisons emerged in England to provide a source of competition and new ideas, so as to raise standard throughout the prison system and also as a result of the tougher sentencing laws and complaints from tax payers on the huge amount allocated to the prison system.<sup>24</sup>

All private prisons in the UK are regularly inspected by Her Majesty's Chief Inspector of Prisons in the same way as public sector prisons. All private prisons have a Controller linking them to the Ministry of Justice, and the Governors of private prisons are called 'Directors'.<sup>25</sup>

The first for-profit prison in the United States was San Quentin prison in California, which was opened in 1852. It initially operated as a private enterprise. After a number of

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<sup>16</sup>Moore, S. *California Prisons Must Cut Inmate Population*. *New York Times*.

<http://www.nytimes.com/2009/08/05/us/05calif.html?pagewanted=print>. accessed on 10/5/2015.

<sup>17</sup> Docket no. 3:01-C-0-1351-TEH (N.D. Cal.)

<sup>18</sup> Docket no. 2:90-CIV-S-90-0520-LKK-JFM (E.D. Cal.)

<sup>19</sup>*Order for population reduction plan*, pg. 9, three-judge court convened by the Chief Judge of the United States Court of Appeals for the Ninth Circuit hearing *Plata v. Schwarzenegger* and *Coleman v. Schwarzenegger*. Available at <http://www.cdcr.ca.gov/News/docs/Order-population-reduction.pdf>. accessed on 10/5/2015

<sup>20</sup>Bamgbose, *op. cit.*, at 153

<sup>21</sup> *Ibid*

<sup>22</sup><http://www.bbc.com/news/uk-20252359>. Accessed on 10/5/2015

<sup>23</sup> Bean, J, A private sort of place, *New Law Journal*, vol. 142, No. 6577, Friday, November 20, 1992, 1610

<sup>24</sup>Bamgbose, *op. cit.*, at 155

<sup>25</sup><http://www.hmprisonservice.gov.uk/prisoninformation/privateprison/> accessed on 30/6/2009

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major scandals surfaced due to the mismanagement of the facility, the government of the State of California took control of San Quentin prison.<sup>26</sup>

Private sector participation in United States prisons is not new, federal and state governments contracted out specific services such as medical services, food preparation, vocational training, and inmate transportation to private firms. With a growing prison population due to the “war on drugs” and increased use of imprisonment, prison overcrowding and rising costs became increasingly problematic for local, state and federal governments in the 1980s. In response to this expanding criminal justice system, private business interests saw an opportunity for expansion, and consequently, private-sector involvement in prisons moved from the simple contracting of services to contracting for the complete management and operation of entire prisons.<sup>27</sup>

Modern private prison business first emerged and established itself publicly in 1984 when the Corrections Corporation of America (CCA) was awarded a contract to take over a facility in Hamilton County, Tennessee.<sup>28</sup> The USA government unlike its British counterpart did not divest itself of the complete control of prisons but a few states have proved to be exceptions.<sup>29</sup>

It should be noted that, private prisons contracts were awarded due to the need for new facilities in South Africa, while in the Netherlands, private prisons emerged due to the need and pressure to end human rights abuses and appalling prison conditions.<sup>30</sup>

The genesis of private prisons is similar in most jurisdictions where it has been introduced though operation of private prisons varies from jurisdiction to jurisdiction; private firms would build the needed facilities using their own capital and then charge the government a price that would recoup both the capital investment and current operation cost. The industry has grown rapidly over the past decade and is now an established part of the correctional landscape<sup>31</sup>

In recent years, there has been much debate over the privatization of prisons. The argument for privatization stresses cost reduction, whereas the arguments against it focus on standards of care, and the question of whether a market economy for prisons might not also lead to a market demand for prisoners, that is tougher sentencing for cheap labour. While privatized prisons have only a short history, there is a long tradition of inmates in state and federal-run prisons undertaking active employment in prison for low pay.

Privatization of the Prison system in Nigeria is yet to be a reality. However, due to the poor state of the Nigerian economy, as a result of dwindling oil revenue, the construction of new prisons is not a priority of the government, therefore private prisons with the option of private finance maybe used to reform the prison system, thereby removing the burden of capital loss on the government.

However, high profit margin associated with the private sector and capitalism may come into play thereby negatively affecting public safety, staff and inmate safety, environmental well being and integration of inmates, as such the government should be cautious in adopting the concept of private prisons.

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<sup>26</sup>Schmallegger, F., & Smykla, J. (2007, 2005, 2002). *Corrections in the 21st Century*. New York: McGraw-Hill, 552.

<sup>27</sup>The Sentencing Project, "Prison Privatization and the Use of Incarceration" (2004)

<sup>28</sup> This was the first time that any government had contracted out the complete operation of a jail to a private operator.

<sup>29</sup>the District of Columbia in 1999 sold its correctional facilities to the Corrections Corporation of America for a sum of fifty-nine million dollars for a twenty year lease agreement.

<sup>30</sup>Bamgbose, *op. cit.*, at 155

<sup>31</sup>*Ibid*

## 5. The concept of service work

The nation of Israel introduced a new manner of implementing an old sanction in 1987, whereby offenders could be sentenced to imprisonment and serve their sentence without actually ever passing through prison gates. This was not a suspended sentence.<sup>32</sup>

Under the service work scheme, an offender could apply to the prison Governor or police officer responsible for his/her custody requesting that permission be given to serve the sentence while remaining at home and reporting daily for work at the local police station.

This system was criticized because it gives the police the power to determine the sentence, it favours well-connected offenders and caters for a small number of offenders despite the increase pressure of overcrowding on the prison system. To correct these shortcomings, Judges are empowered to make decisions on terms of imprisonment (not exceeding six months) to be converted into service work. However, it has been proposed that this type of penal disposition be extended as well to offenders sentenced to prison terms of nine or twelve months.<sup>33</sup> The work was no longer to be performed at the police station, (although this possibility was not overruled) but in any state or other public institution and for the benefit of the public.

Service work differs from community service in that the offender has been sentenced to prison and is, therefore, legally a prisoner, the offender is not supervised by the probation service but by prison officers and the work is to be full-time and not merely a few hours a week.

Under the Israeli Penal Code, there are two forms of service work;

- **service in work related to the economy:** this is work outside the prison walls including in state institutions, as to which type, the place and conditions have been determined by the employment service according to the needs of the economy.<sup>34</sup> Here, the offender is to be paid the minimum statutory wage for such work through the Prisons Service, which may deduct from it the payment of fines and restitution to victims ordered by the Court as well as ten percent for administrative expenses. However, this has not been utilized by the court because of organizational considerations, lack of paid work available in times of high unemployment and perceived non-punitive character. Furthermore, such a sanction may be seen as a reward.
- **service in public work:** this is work in a state or other public institution, and does not amount to work for the economy and is for the benefit of the public and not for profit bodies such as hospitals and homes for the disabled.<sup>35</sup> This type of work is unpaid. This form of sentence is highly popular and is similar to community service.

Service work benefits the justice system because it provides an equitable, cost effective sanction, and punishes offenders through measures that benefit the community wherein the offence occurred. Also service work benefits the offender by making non-monetary restitution to the community where the offence was committed, enabling the offender to keep family ties and provides such offender with the prospect of gaining work experience, occupational skills and training. Though the work performed may be manual in nature, there are opportunities such as clerical assistance, carpentry, painting and other skilled services. Furthermore, service work benefits the community by saving tax payers, prison costs.

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<sup>32</sup>A sanction similar in form to this was found in communist countries and it was related to official ideologies. Thus in Hungary, it served primarily to “re-educate” the “worksly”. See Bard K; “work in liberty under surveillance in Hungary” in Zvekcic U(ed); Alternatives to imprisonment in comparative perspective, Chicago: UNICRI, 1994, pp. 293-304.

<sup>33</sup>Sebba L, Horovitz M & Geva R; *ISRAEL, Criminal Justice Systems in Europe and North America*; the European Institute for Crime Prevention and Control, affiliated with the United Nations, (2003) Helsinki, Finland 64

<sup>34</sup>Section 51 A, Penal Law, 1977

<sup>35</sup>*Ibid*

## 6. Can service work be deemed as imprisonment?

According to Sebba, there are three perspectives to this question; legal realism, normative formalism and penal policy.<sup>36</sup> A legal realist might focus on the external-physical attributes, for instance whether there is any similarity between service work and conventional ideas of a prison, that is, a closed fortress-like building in which offenders are compelled to live is non-existent. Also, pains of imprisonment maybe presumed to be absent.

A normative formalist on the other hand believes that service work was deemed to be a form of imprisonment in the legislation. This legislative technique was employed to overcome the external-physical reality, which would indicate that service work was a form of community sanction. This has led to the imposition of service work in cases where imprisonment was perceived as inappropriate.

The sentence work imposed is one of actual imprisonment and even when converted to service work, the offender still has to serve the prison sentence. This is to encourage the courts to limit the use of sanctions to cases that are serious to have justified a sentence of imprisonment. The penal policy view is that the community in which the sentence is carried out maybe perceived as rehabilitative in a way that prison is not.

It is trite among judges that the court should determine what is the appropriate term to be imposed and only at the second stage should the court now decide whether it should be preemptory or suspended, for instance, the sentencing court would decide first, whether a prison sentence was called for and if so, secondly, the appropriate duration of time and thirdly, whether the terms should be suspended.<sup>37</sup> It should be noted that service work is still a prison sentence but the prisoner serves the sentence within the community.

## 7. Lessons for Nigeria

Punishment is the indispensable reasonable complement for a crime and its philosophies are that of deterrence, reformation, rehabilitation and retribution. Imprisonment as a form of punishment has not yielded the desired results especially that of deterrence in that it does not discourage current and potential criminals from committing crime. Also, it does not reform convicts who have served time for crime especially in Nigerian prisons, they come out of prison, worsen and hardened as if prison is an institution of higher criminal learning. Ex-prisoners due to non-rehabilitation while in prison are not able to re-integrate into the society thereby resorting back to a life of crime. Furthermore, overcrowding and inadequate provisions of basic amenities has led to violence in Nigerian prisons. For instance, on the 28<sup>th</sup> day of March, 2007, inmates at the Kuje prisons went on rampage due to shortage of food and water. Also at the Kano Prisons and Ibadan prisons, there were cases of riots on 31<sup>st</sup> August, 2007 and 11<sup>th</sup> September, 2007 respectively.

It is suggested that Nigeria emulates the Israeli approach because the Israeli experience with service work, it can be deduced that service work is far better than imprisonment in that it reduces prison overcrowding especially future/further increases in the prison population and its non-custodial nature has not caused a problem in Israel because there seems not to have been high crime rates committed by prisoners while at large. Furthermore, the recidivism rate among such prisoners is lower than that of similar offenders who served terms behind bars.<sup>38</sup>

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<sup>36</sup>Sebba L, When is a prisoner not a prisoner? The Criminal Law Review 2001, Sweet & Maxwell, 849

<sup>37</sup>Havevi J, then president of the Jerusalem district court and subsequently elevated to the Supreme Court. This was also followed by the English Court of Appeal in *O'keefe*[1962] 2 Q.B 29. See also Bottoms A.E "The suspended sentences in England 1967-1978 ". This formulation was later incorporated into statute. B.J Crim. Pp 1; The Criminal Courts Act, 1973

<sup>38</sup>Nirel, R., Landau, S.F., Sebba, L. & Sagiv, B. (1997) "The effectiveness of service work: The analysis of recidivism", *Journal of Quantitative Criminology*, Vol. 13, pp. 73-92 cited in Sebba et al, *op. cit.*, at 64.



It is therefore submitted that service work can be practiced in Nigeria with the help of the Nigeria Police (NP) and Nigerian Prison Service (NPS) monitoring and administering the scheme respectively. With Nigeria adopting service work as a form of punishment into its criminal justice system, inmates will have a sense of human dignity.<sup>39</sup>

Furthermore, even though inmates are prisoners, they still possess their inherent and inalienable right except if deprived by law as emphasised by the Court of Appeal in *Peter Nemiv. Attorney General of Lagos State &Ors.*<sup>40</sup>

Furthermore, through service work, prisoners will be easily rehabilitated and re-integrate into society upon release and probably not revert to crime.

It is further suggested that Nigerian courts should have supervisory and oversight powers over the scheme, whereby convicts who adequately complete their service work will be released from the scheme and those who fail in their service work debt will have their cases reverted to the court for appropriate action such as possible sentence to term in prison. It is opined that fear of time in prison will put such convicts on their toes towards successful completion of the scheme.

## 8. Recommendations and conclusion

Cases take so long to get to court that once an inmate has been tried and convicted, they are reluctant to launch an appeal. Even those claiming innocence say they risk staying in prison longer waiting for their appeal to be heard than if they simply serve their sentence.

The use of holding charges to detain suspects for prolonged periods is prevalent in Nigeria. The Nigerian Police charge people suspected of capital offences, such as armed robbery or murder to a Magistrate Court instead of forwarding the case file to the Public Prosecution Department of the relevant State Ministry of Justice for legal advice on whether a charge should be recommended against the suspect at the High Court. Magistrates do not have jurisdiction over capital offences, neither can they grant bail in such cases. Suspects brought before Magistrates are remanded in prison pending police investigation and rendering of legal advice. In many cases, this takes several years. Though the practice of holding charge has been abolished with the passage into law of the *Administration of Criminal Justice Act, 2015* by the erstwhile President, Goodluck Jonathan, shortly before he left in May, 2015, its impact is yet to be felt because of partial implementation.

Many court cases are repeatedly adjourned. Witnesses often fail to appear because police and the various states Department of Public Prosecutions lack the funds to bring witnesses or Investigating Police Officers (IPOs) to court, and at times, such IPOs are transferred outside jurisdictions by the police high command. Inmates or their family members with means, at times, pay for these costs. Those who cannot afford to pay, remain in prison untried and without remedy.

The Nigerian government has, on numerous occasions, stated its willingness to reform the criminal justice system, acknowledging its role in creating a situation of prolonged detention and overcrowding. Many Presidential Commissions and Committees<sup>41</sup> recommended reform of the criminal justice system but these recommendations have not been implemented. Instead, the government has simply set up new committees and commissions to study, review and harmonize the previous recommendations. The truth is that inmates stand

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<sup>39</sup>Article 10 (1) of the ICCPR, states: “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person”

<sup>40</sup>(1996) 6 NWLR (Pt.452) 42

<sup>41</sup>Such presidential commissions and committees include; the National Working Group on Prison Reform and Decongestion, Inter-Ministerial Summit on the State of Remand Inmates in Nigeria’s Prisons, Presidential Committee on Prison Reform and Rehabilitation, Presidential Commission on the Reform of the Administration of Justice, the Committee on the Harmonization of Reports of Presidential Committees Working on Justice Sector Reform and the Committee on the implementation of the Justice Sector reforms.

## SERVICE WORK AS AN ANTIDOTE TO PRISON PROBLEMS IN NIGERIA

little chance of their rights being respected, while those who lack money stand even less chance.

The Nigerian prison system has numerous problems like overcrowding/congestions, run down facilities, lack of amenities, among others and in need for urgent reforms and that's why the Nigerian government through the office of the Attorney-General of the Federation (AGF) has put in place measures to decongest the Nigerian prisons and reduce the problem of overcrowding by giving out prison decongestion briefs to private Legal Practitioners. However, this turn out not to be the best solution because it is quite expensive and highly politicized. Moreover, its impact is not felt much because it does not tackle the cause of delay in the criminal justice sector.

A draft Prison Bill presented to the Nigerian National Assembly in 2004 has not been enacted into law up till date. The National Assembly should take a cue from the Israeli Knesset (Parliament) and enact the said draft prison bill in order to provide a legal regime for an ample reform of the Nigerian prison system and administration.

Also, statistics and data of prisoners should be properly documented like it is in the USA, which has the highest rate of prisoners and well documented data of all its prisoners. The immediate past Comptroller-General of the Nigerian Prisons Services while in office had once confessed that he did not know the prison number of a former Chairman of the Nigerian Ports Authority, and a chieftain of the People Democratic Party of Nigeria, Chief Olabode George, who was imprisoned in October, 2009 because, according to him, there are about 40,000 inmates within the Nigerian Prisons system.<sup>42</sup> This is an evidence of lack of articulate and proper documentation of mere 40,000 prisoners in Nigeria compared to the USA which has millions of prisoners in its custody with proper documentations.

Given the foregoing, the following solutions are hereby suggested as an antidote to prison problems in Nigeria:

- the concept of service work should be introduced as a form of sentence into the Nigerian criminal justice system for lesser offences punishable with up to two years imprisonment in order to reduce overcrowding in prisons.
- the National Assembly should accelerate and fast track action on the new Prison Bill to bring in the desired and much expected reforms.
- forms of non-custodial punishments like fines, community service, compensation, curfew orders and especially service work should be embraced for lesser offences.
- Pre-trial detention should be out-rightly discouraged in order to stop overcrowding and overstretching of facilities in the prisons. Furthermore, the provisions of the new *Administration of the Criminal Justice Act, 2015* in respect of pre-trial detention should be fully implemented.
- The Nigerian government should also adopt a correctional and not only a penal approach on the issue of prisoners. Prisoners should not be punished alone but reformed and rehabilitated with skills acquisitions and job trainings.
- Nigerian superior courts of records should be empowered with supervisory and oversight functions over the service work scheme in order to regulate same.
- Men and officers of the Nigeria Police and Nigeria Prisons Service should be properly trained on monitoring and administering the suggested service work scheme.
- Service work should be one of the recommendations of the Presidential Advisory Committee on the Prerogative of Mercy and the various State Advisory Council on Prerogative of Mercy while making recommendations in respect of the prerogative powers of the President and that of the State Governors as provided for in sections 175 and 212 respectively of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

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<sup>42</sup> The Punch Newspaper; (Saturday, December 5, 2009) 14. It should be noted that the said former NPA Chairman, Chief Bode George has since been released from prison after serving his prison term.

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