

# NIGERIAN LAW: CONTEMPORARY ISSUES

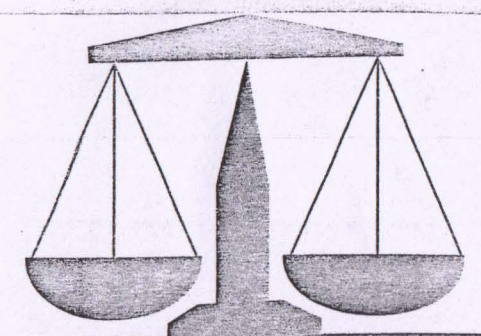


ESSAYS IN HONOUR OF:  
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ESSAYS IN HONOUR OF SIR, CHIEF (DR.) G. O. IGBINEDION, JP, LL.D., B.C.K.B.

**LANDMARKS IN LEGAL DEVELOPMENT**  
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The book is edited by Prof. (Mrs.) M. O. Ogungbe and Published by the College of Law, Igbinedion University, Okada.

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## Chapter Nine: PRIVATISATION OF THE PRISON SYSTEM: A PANACEA FOR NIGERIA?

Prisons have gone through many changes since its inception. As there are remodeling in the world outside, new attitudes and philosophies are being adopted under the criminal justice system. The prison regime over the last century has evolved largely as a response to criticisms within and outside governmental spheres. Despite its pre-eminence in the general penal scheme, the prison system has experienced a highly critical assessment. There is no doubt that crime rate has increased astronomically over the years and the use of imprisonment as a sentencing method has greatly increased.

The primary mandate of the prison is confinement. As succinctly put by Logan, the mission of a prison is to keep prisoners – to keep them in, keep them safe, keep them busy and to do it with fairness without undue suffering and as efficiently as possible. The question is the extent to which the prison has achieved this. A recurring problem in the prison system worldwide is that of overcrowding and congestion. The ripple effect of congestions in most prison are manifested in non – classification of prisoners, inadequate beddings, sickening physical conditions, poor feeding, inadequate staffing, bad state of prisoners health and increased rate of recidivism. This present state of the prisons has degenerated to a level that several methods have been adopted to solve the problem.

Privatisation of prisons is one of the methods adopted by different national policies in response to the growing problem of prisons crowding and congestion. In spite of every effort to use privatisation to solve the problem of prisons in different nations, the policy remains as controversial today as it was when it emerged. The crux of this paper is to examine the genesis of privatization in tackling the problem in prisons, the debates and controversies on its introduction into the prison system and finally lessons for the Nigerian government from global experience.

### Historical Facts on Prisons

Prisons arose from the evolution of punishment. Punishment has been part of human cultures throughout times. Sanctions for negative behavior evolved as early as social group attempted to control their members. The organized prison system as we have it today developed alongside a new socio-political system introduced by the colonizer.<sup>1</sup> Historically, confinement existed in many Nigerian societies before the advent of the British rule in the 19th century. It was then used as one of the traditional legal instrument for the maintenance of peace, law and order. As far back as the 13<sup>th</sup> century, Benin kingdom maintained traditional prisons for the same purpose.<sup>2</sup> Although imprisonment was not widely used in the pre-colonial time, it was not totally a strange practice to the Nigerian legal system.

With colonization, imprisonment was used to keep in close custody, persons that pose political and economical threats to the British administration. This was to guarantee a peaceful atmosphere for colonial, economical and political interest. Earlier societies in Europe and the United States of America did not consider it very important to salvage the individual and most simply could not afford to imprison large number of citizens. However, the modern concept of imprisonment is a relatively new form of societal punishment. It is the most common sentence administered by the Court. This has created some problems that led to the development of private prisons.

### Recent Trends And The Privatisation Move In Prisons

For many government and emerging economies, the private finance initiative (PFI) appears on the surface to be both fiscally and economically attractive. Private finance scheme means that a 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 usually a period of years. In such an arrangement, the government has no immediate capital cost as the company or consortium as the case may be borrows the necessary finance.

1. Honourable Justice Obaseki "Cause of Congestion in prison and proposal for solution", Law Development and Administration in Nigeria. Federal Ministry of Justice, Lagos, 1990, p.10.
2. Honourable Justice Obaseki "Cause of Congestion in prison and proposal for solution", Law Development and Administration in Nigeria. Federal Ministry of Justice, Lagos, 1990, p.10.

The issue whether or not to privatize the prison system and turn the management and operation of prisons over to private firms has been a hotly contested one in recent years. It was not unusual for narrowly focused services like the health care, food services and more recently in Nigeria the telecommunication services to be subject to contract. This action has been met with criticisms and objections.

Private prison is not a totally new invention of the 20<sup>th</sup> Century. In the 16<sup>th</sup> Century, the Church of England began using the bishop facilities for confining minor offenders for certain crime such as prostitution and begging. The use of the facility began to spread and this led to deteriorating conditions of such facilities as it became filthy and disease ridden.<sup>3</sup> Though not in its present state, private prisons existed in England until the 19<sup>th</sup> Century.<sup>4</sup>

Similarly in the United State of America during this same period some forms of contracts have existed in prisons with little controversy. This was in the low security prison where focused services such as health care or food services raised few objections. At this same time, prison warders began leasing convicts to work for and to be housed by private people.<sup>5</sup> Hitherto, the United States government took responsibility for prisons,<sup>6</sup> by mid 1980's, private firms had shown interest in the management and total take over of these public institutions. This issue came to a head in the mid 1980's when the correct corporation of America now the largest private prison company in the United States of America offered to take over the whole prison in Tennessee.

The genesis of the privatisation policy of prison has a resemblance in most jurisdictions where it has been introduced. The industry has grown rapidly during the past decade and they are now an established part of the correctional landscape. Further growth which is likely to be strong is expected.

3. J. Howard. *The State of Prisons* (Publisher Unknown) 1780, pg. 10.
4. A Crew. *London Prisons of Today and Yesterday*: London, Nicholson and Watson 1933, pg. 50.  
W. S. Holdsworth. *A History of English Law*, Vol. 4, 3ed, London; Cambridge University Press, 1922 – 1924. See also M. M. Feeley. *The Privatization of Prisons in Historical Perspectives in Privatization and its Alternatives*, ed. W. Gormley Madison W. I. University of Wisconsin Press 1991, pg. 397.
5. B. Mckelvey *American Prisons: A History of good intentions*, Montclair, N. J: Patterson Smith 1977
6. M. M. Feeley: *The Privatization of Prisons in Historical Perspective in Privatization and its alternatives*, ed. , W. Gormley (Madison W. I.), University of Wisconsin Press 1991, pg. 397.

The renewed interest of the privatisation policy of prisons in England started on the 1<sup>st</sup> of April 1993 when the idea moved from a debate to reality. The prison became an executive agency following a report on the management of the prison service by Sir Raymond Lygo, who was the Home Secretary during the period. One of the tasks of the new executive agency was the development of the privatisation policy.<sup>7</sup>

In England, the idea of a private prison came into reality in April 1993 with the opening of the Wolds by Group 4 Remand Services with Stephen Twinn as Director. It was the first custodial institution to be contracted out of the prison service. The prison had the capacity for three hundred and twenty inmates and was not meant or used for high risk remand. The prison at the time of opening was to be under the control and monitoring of the Home Office Controller who was to investigate complaints. In September, 1993, the British government announced plans to privatize ten percent of prisons before the end of 1994.<sup>8</sup> The Donaster private prison in England opened in June 1994.

The emergence of private prisons in England arose out of the need to provide a source of competition and new ideas. This competition was to serve to raise standard throughout the prison system and provide lasting improvement to the prison system. In addition, tougher sentencing laws and complaints from tax payers on the huge amount going to the prison system all contributed to the emergence of private prisons.

In South Africa, private prisons contract were awarded due to the need for new facilities. In the Netherlands, the idea of private prisons arose because of the need and pressure to end human right abuses and appalling prison conditions. Generally the idea arose basically for ideological reasons.<sup>9</sup>

Growth of private prisons has been growing stronger. It is alleged that between 1986 and 1996, the number of beds in private prison either in operation or under construction increased at an annual criminal rate of 45%. In 1987, there were about 3000 prisoners and by 1996, the number soared to more than 85,000. By the end of 1996, there were 132 prisons in operation and 39 under construction or planning stage in the

7. Prison Service News Release, February 1, 1993.
8. *The Guardian*, September 3, 1993.
9. Stephen Nathan: *Penal Reform International 2001*.  
Prison Privatization, Report International, [www.penlex.org.uk/page/prt\\_prep.html](http://www.penlex.org.uk/page/prt_prep.html). [www.penalreform.org/englsih/fresh\\_art\\_en.htm](http://www.penalreform.org/englsih/fresh_art_en.htm).

United States of America.<sup>10</sup>

The operation of private prisons varies from jurisdiction to jurisdiction. The logistic of private prisons was that the 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 ongoing operation cost. In contrast to the British government, the United States is exercising restraint in divesting itself completely of the control of prisons. However a few states are proving to be exceptions to this general trend. For example, the District of Columbia in 1997 sold its correctional treatment facilities to the Corrections Corporation of America (CCA) for a sum of fifty nine million Dollars for a twenty year lease back arrangement.

### The Crossroad of Decision: Arguments for and Against

The private prison industry has had its own fair share of criticisms. It has been highly commended by some actors and some governments have shown enthusiasm for the policy. While the reasons for its emergence are germane and appear convincing, there is still the pertinent burning question of whether, apart from its rhetoric of competition and efficiency, the privatisation of prison have any other thing to offer the prison system and whether or not it will offer a lasting solution and improvement to the prison system.

In many quarters, opposition to privatization remains powerful. In the United States, the National Organization of Public Correctional Employees and the Corrections and Criminal Justice Reform Task Force have greatly criticized this new movement of privatisation of prison facilities. It declared at its third annual meeting in 1997 that "privatisation was the number one threat of our profession in the nation".<sup>11</sup> On the other hand, a prisoner who had done time in most of the northern jails in England had this to say about a private prison "I didn't know what to expect when I knew I was coming here, but when I arrived, I couldn't believe it. You go to Hull or Leed's and they treat you like cattle, but I walked in this place and they gave me a cup of tea and switched on the telly."<sup>12</sup> Commending the Wold Remand Prison, Bean

10. Douglas C. Mc Donald, Growth of the Private Sector in Prison and Jail Administration. Practice and Theory ed. PM. Carlson and J.S. Garret. Gaithersburg, Maryland (Aspen Publication Inc. 1999 p 430.
11. Corrections and Criminal Justice Reform Task Force, Report on the 3<sup>rd</sup> Round Table Conference, 1977.
12. Julian Bean, A Private sort of Place, New Law Journal, Vol. 142, No. 6577, Friday, November 20, 1992, pg. 1610.

had this to say "Wold is very different from any State run establishment. The low key, relaxed atmosphere is more reminiscent of a nursing home than a prison."<sup>13</sup>

The argument for and against privatisation of prisons will for a very long time be a subject of debate and to a large extent will form a basis for certain countries that have not embarked on it or are at a crossroad to make definite decisions. It is therefore appropriate to consider the arguments for and against privatisation of prisons.

### No To Privatisation: The Arguments Against

Logan has extensively carried out studies on privatization of prisons.<sup>14</sup> Privatisation of prison facilities has been described as an improper delegation to private hands, of coercive power and authority. Critics have objected to the idea of the involvement of private enterprise in the penal system. The argument is that the suffering inflicted on the offender through the punishment imposed by the State or State run institution is legitimate, because the offender deserves it. Privatisation is therefore a core function of government which is so intrinsic that should not to be delegated.<sup>15</sup>

Dilulio further supports this argument by stating that in the eyes of the inmates, private prisons weakens the legitimacy of governmental authority.<sup>16</sup> From a constitutional perspective, the American Bar Association (ABA) argues that private prisons are unconstitutional and improper.<sup>17</sup> According to a report of the Association "there can be no doubt that an attempt to delegate total operational responsibility for a prison or jail would raise grave questions of constitutionality under both the Federal Constitution and that of the fifty States." The association further argues that the more sweeping the delegation, the more doubtful would be its constitutionality. It is appropriate to state that no decision of the federal court have found private prisons unconstitutional despite the ABA warning.

13. Julian Bean, Ibid.
14. I. Robbins, The Legal Dimension of Private Incarceration, Washington, D.C., American Bar Association, 1988.
15. I. Robbins The Legal Dimension of Private Incarceration (Washington D.C., American Bar Association, '89)
16. J. Dilulio, The Duty To Govern: A Critical Perspective on the Private Prisons and the Public Interest, ed., D. MacDonald (New Brunswick, N. J. Rutgers University Press, 1990).
17. American Bar Association: Report of the House of Delegates (Chicago 1989).



To guide against such a ruling, some states in the United States of America have passed laws authorizing delegation of correctional authority to private individuals and firms. This has been done in the States of Colorado, Florida, Massachusetts, Texas, Utah, New Mexico, Oklahoma and Tennessee<sup>18</sup>. On the other hand, some other States have objected to the privatization of formerly public functions such as the prison and have passed laws banning such actions. An example is the State of Washington.

Privatisation has been linked with profit making. This issue has arisen in the argument against privatization of prisons. It is contended that the policy of privatization of prisons, put profit motive ahead of public interest, which may result in the prison system losing its legitimacy and integrity. In the same vein, profit making may encourage cost cutting practice which is not suitable for a labor intensive and inherently dangerous industry like the prison. It is argued that this may jeopardize both the quality of service and public safety resulting in poor pay and understaffing.<sup>19</sup>

According to Sarabi and Bender, as attractive as the private prisons appear, profit can only be maintained by a steady flow of inmates.<sup>20</sup> To protect the profit margin, prison companies may have to resort to exerting political influence by contributing a lot to state political campaigning. The effect according to them is that lobbyist for private prison support tough on crime legislation that ensure continued need for a prison service even when it is apparent that the government can no longer fund such facilities.

Summarizing the above argument, Logan says that contracting of prisons to private corporation brings new opportunities for corruption as it allows for political spoils, conflict of interest, bribes and kickbacks.<sup>21</sup>

#### Yes To Privatisation of Prison: The Arguments For

In spite of the criticisms against privatisation of prisons, arguments have been canvassed in favour of the policy. While supporting the policy,

18. National Criminal Justice Association: Private Sector Involvement in Financing and managing Correctional Facilities. (Washington D.C., 1987).
19. Private Adult Correction Facilities: Fines Failures and Dubious Practices. Ontario Public Service [www.opseu.org/op.ministry/report/section\\_2.html](http://www.opseu.org/op.ministry/report/section_2.html) [www.afscme.org/private/lake.html](http://www.afscme.org/private/lake.html) - Lake Snell Perry Association, Private Prison Survey, August 1999.
20. Brigitte Sarabi and Edwin Bender, Western States Center and Western Prison Project, November, 2002. The Prison Payoff: The role of politics and private prisons in the incarceration boom.
21. Charles H. Logan, Private Prisons: Cons and Pros. (New York: Oxford University Press, 1990, pp. 41 - 48.

some arguments against the policy has been debunked. On the issue of the government delegating its function by allowing private prisons, supporters of the policy have stressed that it is possible for the government to provide a function and at the same time delegate the administration of the function. In *Medina v O'Neill*<sup>22</sup> and *Attorney Prison Health Service Inc*<sup>23</sup> the court ruled that private imprisonment on behalf of the government constitute state action and that government retain the ultimate responsibility of what goes on in them.

Logan suggests that to ensure that the government does not lose hold on the prisons; private facilities should be required to comply with the same standard and the law that apply to public prisons.<sup>24</sup> The universal concern for an alternative to prison is an argument canvassed for private prisons. According to Taylor and Pearse, state run penal system is a disastrous mess and the government should be receptive to ideas of improvement and progress.<sup>25</sup> They said "if one were to search for an instance of a state monopoly which has failed, one would not need to look beyond the prison service; it confines citizens and aspires to direct them towards a good and useful life. In fact, conditions give the lie to the aspiration. They are more likely to brutalize than to improve. It is against the back cloth of this failure that we must consider privatization."

Private prisons are a challenge to the institutional inertia of public prisons. In canvassing for private prisons, the above reason has been brought forward. In England, the monopoly enjoyed by the Home office is one of the criticisms against the state run penal system. It is argued that privatization of prisons will break the monopoly as it will separate the day to day administration of prisons from the home officer responsible for supervising and upholding prison standard.<sup>26</sup> However it is suggested that great caution must be exercised by the management of private prisons. There should be strong insistence on standard and at the same time due care must be taken to prevent increase in imprisonment. Private prisons must avoid gaining a reputation of value for money.

22. 569, F. Supple 1028, 1984.
23. 769, F. 2d 700, 702 (11<sup>th</sup> Circuit), 1985.
24. Charles H. Logan, Private Prisons: Pros and Cons, New York, Oxford University Press, 1990, pp. 41 - 48.
25. M. Taylor and K. Pearse, "Private Prisons and Penal Purpose." Chapter 8, Privatizing Criminal Justice, R. Mathew ed. Sage Publishing.
26. Independent, July 26 1988, Editorial Comment on Government Green Paper.

Proponents in favour of privatisation of prisons claim that it saves money. In a study by the National Center for Policy Analysis, it is said that prisons can be built and maintained less expensively in the private sector. A number of studies found a saving of twenty percent for private construction cost and five to fifty percent for private management of prison units.<sup>27</sup> However, a report from the United State government accounting office detected little difference and found no conclusive evidence to prove this.<sup>28</sup> In addition, a research work found that private prisons cost more than public prisons.<sup>29</sup> In favour of private prisons, it is said to be the most promising way to control tax payers cost.<sup>30</sup>

### Privatisation System in Nigeria

The prison system in Nigeria is a creation of Colonialism in pre-colonial Nigeria. There was evidence of the use of confinement and incarceration among the Yoruba and Edo people. The modern colonial prison system bore little or no relationship with similar indigenous institutions. The colonial prison to a large extent was modeled after the British prisons in terms of structure, building, administration, regulation, staffing and discipline.

Two main landmarks in the history of the prison system in Nigeria have implication for the administration, structure and condition of the prisons up to the present times.<sup>31</sup> These are: the impact of Frederick Lugard's administration in 1914 and the Dolan reform of the prison system which occurred after the Second World War from 1945 to 1955.

The Dolan era witnessed the putting into place what constitute contemporary practices and structures which unfortunately has deteriorated and decayed. In terms of structures and administration, not much change has occurred in the prison system in Nigeria despite the spirited efforts of the government to improve the conditions. The condition in the prisons has been summarized thus by Bolanle Awe; "the prison system still suffer from lack of good staff, from poor health and finally from absence of any clear idea of the purpose of prisons."<sup>32</sup>

The present condition of the Nigerian prisons has been attributed to many factors which include increase in prison population, under-funding and neglect.<sup>33</sup> The structures of most Nigerian prisons were built over fifty years ago and are not only physically unsuitable but grossly overcrowded. The prison buildings were built to reflect the needs of the Prison Ordinance of 1916 which emphasized the punitive aspect of incarceration.<sup>34</sup> According to Onyebuchi, the prisons are so dilapidated and require urgent reconstruction.<sup>35</sup>

There is no doubt that the Nigerian prison system is confronted with numerous problems and in urgent need for reforms. The Nigerian Institute of Advanced Legal Studies (NIALS) in a study of the prison system recommended that the government should encourage non-government organization to be involved in the prisons system and that cooperation in fund raising for the prisons should be encouraged.

The above recommendation has been adopted by the Federal Government. In his press briefing in the federal Capital Territory, the Attorney General of the Federation said that the Federal Ministry of Justice will collaborate with relevant agencies at the different level of Government and with other stakeholders towards a quick decongestion of the prisons.<sup>36</sup>

The above picture of the state of prisons worldwide, show that generally the prison system is experiencing some problems and the severity

27. Privatizing the Prisons System: Using the Private Sector to determine crime, National Center for Policy Analysis, Dallas, Texas 2001, NCPA – Study # 181, <http://wwwncpa.org/ncpa/studies/s181/181p.html>. Also see N.Xiong, "Private Prisons: A question of savings", The New York Times, 13 July 1997. See also N.Xiong, "Private Prisons: A Question of Savings", The New York Times, 13 July 1997.
28. Should Crime pay? Private Prisons do not save money. American Federation of State, county and municipal employees. [www.afscme.org/private/crime\\_po2.htm](http://www.afscme.org/private/crime_po2.htm).
29. Projected F. Y. 2000, Cost of Doc. Operated Medium Security Beds Compared to Private Prisons Contract. Dennis Cunningham, 4<sup>th</sup> Annual Privatizing Security Correctional Facilities, sponsored by World Research Group, Las Vegas, Nevada, September 24, 1999.
30. Privatizing the Prison System, using the private sector to Deter Crime, National Center for Policy Analysis, Dallas, Texas 2001, NCPA – Study # 181. <http://wwwncpa.org/~ncpa/studies/s181/181p.html>
31. Ayo Ajomo and I. E. Okagbue, Prison in Human Rights and the Administration of Criminal Justice in Nigeria, Nigerian Institute of Advanced Legal Studies Research Series No. 1 1999, pg. 176.
32. Bolanle Awe, History of the Prison System in Nigeria, in T. O. Elias, (ed.), The Prisons System in Nigeria, Lagos: University of Lagos, 1968, pg. 10.
33. Ayo Ajomo and I. E. Okagbue, Prisons in Human Rights and the Administration of Criminal Justice in Nigeria, (NIALS), Research Series No. 1, 1999, pg. 179.
34. F. O. Chukwura, Financing the Prison in Nigeria, Journal of the Nigerian Law Reform Commission, Law Reform No. 3 1983, pg. 49.
35. F. I. Onyebuchi, Restructuring the Prison System in Nigeria, Journal of the Nigerian Law Reform Commission, Law Reform No. 3, November, 1983, pg. 58.
36. Akintolu Olujinmi, "Reforming the Justice in Nigeria" in The Punch, Monday September 1, 2003, pg. 73.

vary from one jurisdiction to another. In solving the problems, various countries have taken steps which include privatization in improving the prison system. These steps may serve as a guide in improving the Nigerian prison system.

### **Privatisation of Prisons in Nigeria: A Panacea For Nigeria**

In the last decade there has been the move towards privatization of government owned corporations and parastatals. The privatization programme of the Federal government has continued to be implemented with vigour. This is geared at reforming all sectors of the economy; rehabilitate infrastructure, corporation and institution which hitherto were public dominated. The privatization debate and outcry, demonstrate an awakening of the unacceptable state of government owned institutions.

In view of the poor State of the Nigerian economy and the economy burden on the nation, the construction of new prison structures may not be a priority of the government. The argument in favour of private prisons which encourages a private finance scheme may be fiscally attractive in reforming the prison system. This is because the immediate capital loss is eliminated on the part of the government.

At the same time it is important to note that situation in Nigeria has shifted emphasis in business concern towards a high profit margin. This will no doubt be reflected in the privatization of the prisons. The effect may be the shift of the focus of the goals of prisonization from public safety, staff and inmate safety, environmental well being, and integration of inmate into the society, towards a profit goal. This will not augur well for the reformation of the prison system.\*

Unlike the style of prison administration in England where the Home office is said to enjoy a monopoly, in Nigeria, there is a tremendous amount of centralization of administration. In Nigeria, the flow of instructions within the prison system is from the headquarters to the States and finally to individual prisons. The prison remains under the Ministry of Internal Affairs headed by a Director of Prison at the apex, Assistant Directors at the headquarters and Controllers in the States.

Arguments relating to the legality of private prisons can be overcome through the legislative process as done in some States in America. However any attempt at privatization must be closely monitored by the government as it is being done in Australia. There should also be a quick intervention by a

monitoring group if and when necessary.<sup>37</sup>

No matter the argument in favour or against privatization of prisons there are still skeptics who are suspicious of the privatization policy for the prison system. Nathan succinctly described the privatization programme as "a fuse lit on a financial time bomb."<sup>38</sup> The experience in the United States is relevant as a lesson for Nigeria.

In the 1980's, Louisiana like many other States in the United States was faced with the problem of prison overcrowding and political pressure to privatize its prisons. The State approach to this idea was cautious; the State built three prisons of the same size, design and type. One of the prisons was run by the State while the other two were contracted to two private vendors. The three prisons were enjoined to follow laid down goals and missions as stipulated by the government.<sup>39</sup>

With the Louisiana experience, great caution must be taken in the decision to privatize the Nigerian prison system. While it is glaring that the prison system is in a disastrous mess, privatization should not be hailed as the cure all for the unacceptable ailing state of the prisons. It should be taken into cognizance that privatization is only one of the custodial measure in the treatment of an offender. Considering all the attendant problems associated with privatisation, it is recommended that in reforming the Nigerian prison system, more humane treatments which are cost effective and more constructive should be experimented and adopted if suitable to the Nigerian society.

These non custodial treatments include fines, community service, compensation and curfew orders. More recently a new form of "Prison Sentence" known as "Service Work" was adopted in Israel whereby an offender could be sentenced to imprisonment and would serve the sentence without actually ever passing through the prison gates.<sup>40</sup>

The Nigerian Government is aware of the importance of partnering with the private sector. According to the Attorney-General of the Federation,

37. Stephen Wathan, 2001, Penal Reform International, Prison Privatization Report International, [www.penalreform.org/english/frestart.htm](http://www.penalreform.org/english/frestart.htm).
38. Stephen, 2001, Penal Reform International, Prison Privatization Report International, [www.penalreform.org/english/frestart.htm](http://www.penalreform.org/english/frestart.htm), [www.penalreform.org/english/frestart.htm](http://www.penalreform.org/english/frestart.htm).
39. William G. Archambeault and Donald R. Deiss, Jr.
40. Leslie Sebba, when is a Prisoner not a prisoner? "Service Work" in Israel and Britain, 2001, *Criminal Law Review*, 43 – 549. See also K. Bard "Work in Liberty under Surveillance in Hungary" in U.Zvekcic (ed.) *Alternative to Imprisonment in Comparative perspective*. Chicago: UNICRI, 1994, pp. 293 – 304.

the government is "aware of the need to involve and carry along the private sector in designing and implementing reform measures". He further said that "the Federal Ministry of Justice will initiate dialogue with the private sector." It is hoped that the arguments for and against the privatization of the prisons and the suitability of the policy in Nigeria will be carefully considered.<sup>41</sup>

### **Conclusion**

The preceding review of events in other jurisdictions on private prisons, suggest a number of reasons why the Nigerian government should tread cautiously in deciding for or against the policy. In the light of the current state of the prison, that is, in the context of overcrowding, poor structure and the ailing Nigerian economy, any policy which has the potential for stemming the tide should surely be given a consideration.

In an attempt to decongest the prisons, the Nigerian Criminal Justice System must shift more in the direction of restorative justice; a new concept of looking at justice that shift the focus away from the offender and puts it on the victim and the community. While spending time in the prison may be important, it is not the only variable that should be considered.

In spite of high rate of success of private prisons in other jurisdictions, the transferability of penal institution between cultures may encounter unforeseeable obstacles. A high success rate in one jurisdiction may not be replicated in another. The practicality, political climate, government policy, public opinion, judicial philosophy, economic structure are some of the factors that should be considered in taking a concrete decision on whether or not to privatize the prison system in Nigeria.

41. Akinlolu Olujinmi, "Reforming the Justice System in Nigeria" *The Punch*, Monday September 1, 2003, pg. 73.