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Articles

Privatization of Prisons: Solution to Prison Congestion in Nigeria?

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Abstract

The aim of establishing the prison institution in all parts of the world including Nigeria is to produce a rehabilitation and correctional facility for people who have violated the rules and regulations of their society. The extent to which this is true in practice has been a subject of discussion. An observation of the population that goes in and out of the prisons in Nigeria shows that there are problems in the system, hence, over time, the prison system has not been able to live up to its expected role in Nigeria. An enquiry into the state of prisons in Nigeria will reveal a system afflicted with over-population and a litany of human right abuses and contradictions, including incessant occurrences of jail breaks.

Undoubtedly, the prisons are run at more than 150% capacity as no less than 60% of the inmates await trial. The problem of over-crowding and unhygienic conditions of Nigerian prisons has remained a source of worry and has continued to attract rapidly increasing attention among scholars and policy makers.

Aware of the poor condition of Nigerian prisons, government has undertaken a number of reforms in the last decade which have no less failed to adequately address the poor state of prisons in Nigeria. On the other hand, many scholars have proffered solutions to the horrifying state of Nigerian prisons, including privatization as an alternative mechanism to address the contradiction that characterizes the prison system. This paper examines the history, objectives and modes of privatization of prisons, as well as the viability of privatizing Nigerian prisons.

Introduction

Privatization connotes many things to many people. Privatization within the context of this paper generally refers to the transfer of traditional government responsibilities from the public sector to the private sector. The issue of privatization has been a recurrent item in the area of corrections.

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Historically, all prisons were private endeavours, which gradually came under the control of government. During the last two decades a renewed interest has led government all over the world to reconsider the usefulness of private prisons as a means of curbing or eliminating the harsh effects of prison congestion on inmates and consequently the society. This interest has resulted in intense debates across the world, with scholars and practitioners alike arguing both for and against the institution of private prisons or rather private operation of prisons.

Many theoretical and practical issues have been identified. In the meantime, private prisons have rapidly re-emerged in the United States of America, Australia and United Kingdom; and have recently found its way to Canada.

This paper is aimed at looking at history of criminal justice system, which is fundamental to effective maintenance of law and order in every society, how it affects system congestion and the attendant delays in the criminal prosecution with the motive of examining the private alternatives in the operation of prisons as a means of solving the problem associated with the congestion and over-crowding of prisons in Nigeria, using the experience of the more advanced jurisdictions of United Kingdom and United States of America.

Congestion in the Criminal Justice System

Delay in the administration of justice has been recognized as the greatest evil confronting the justice sector. In the case of criminal justice, the situation is worse when it is considered against the background of the fundamental and constitutional rights of individuals. Criminal process and system congestion can be viewed in two ways. There is the congestion in the courts, which is caused by delays in the trial of cases. This leads to the congestion in the prisons, which is the major problem in the delivery of criminal justice system.

Speeding up the criminal justice system is of paramount importance, it is therefore absolutely necessary to devise means of decongestion. In order to buttress this point, a study of the Ikoyi prison as at the end of 2004 shows that the prison accommodates 2,035 inmates as against the prison capacity of 800. Of the 2,035 inmates, 1,955 inmates are awaiting trials, while 94 are convicted.

Again, in looking into the cell, there were 92 inmates living in a room meant for 25 people[2] - the situation is better imagined.

The components and stakeholders of the criminal justice system include the police, the ministry of justice - office of the Director of Public Prosecution; the judiciary; the Bar and the prisons. Each of these components is bedeviled with its peculiar problem in the criminal justice process. This includes the tardiness of the police in investigating and subsequent forwarding of case files to the Director of Public Prosecution.

It has been rightly noted that the most important instrument of the exercise of the Director of public powers and one that has the most profound effect on the criminal justice system, is the legal advice which issues from his office as to whether a citizen who allegedly committed a criminal offence will face trial or not.[3] The Director of Public Persecution's advice impacts in the system in terms of prison congestion, the right to liberty, control of powers of arrests, trials, public perception on corruption and the efficiency or otherwise of the system. In discharging this responsibility, the most important raw material or tool relied upon by the Director of Public Prosecution is the duplicate copy of the police investigation case file, which is forwarded to him through well-established administrative channels with a covering letter requesting legal advice. This is to enable the Director of Public Prosecution to study the facts of any particular case and issues involved, he then issues the requested legal advice as to whether the case is to be tried or not.

Causes of Congestion in the Criminal Justice System

Serious delays are experienced between the periods when the police prosecution informs the Magistrate court that the case file has been forwarded to the Director of Public Prosecution's office for legal advice and when the legal advice was finally issued. In

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[2] Ayodele Odugbesan, in a paper delivered at the Lagos State third stakeholders' summit on the reform of the Criminal Justice System held between 16th and 17th June 2004 titled Criminal Process and System Congestion, causes and practical methods of decongestion.

[3] Directorate of Public Prosecution, Lagos State, in a speech delivered at the Lagos State third stakeholders summit on the reform of the Criminal Justice System between 16th and 17th June 2004.

fact, the visit to any of the Magistrate courts in any part of the country will reveal a long list of cases in which suspects have been brought by the Commissioner of Police before the presiding Magistrate for purpose of remand with the comments "Awaiting Director of Public Prosecution's advice" on the respective remand papers. In truth however, many of the files are never sent to the Director of Public Prosecution's office, duplicate files are forwarded sometimes two to three years after the alleged commission of the offence. It is sad to note that some of these suspects after a review of their case files may eventually be recommended for non-prosecution.[4]

It must be pointed out that this delay in forwarding case files to the Director of Public Prosecution's office at trial stage results in a lot of difficulty in locating prosecution witnesses who often move away without leaving any traceable/known address. This is yet another factor that delays and frustrates speedy trials.

Poor investigation from the police is also attributable to the delays sometimes encountered while issuing legal advice in certain cases. Vital issues such as the *alibi* raised by a suspect, are not investigated by the police at all and this can be fatal. In homicide cases, it is expected that the *post mortem* report will accompany every case file forwarded to the Directorate. It is not in doubt that medical evidence may be dispensed with in some cases, but a *post mortem* report will be required to reach a justifiable conclusion in many other cases. In the later case, where the *post mortem* report is not forwarded, the Director of Public Prosecution's office makes a request which may have to be repeated several times before police deems it fit to respond.[5]

There are also instances where the Director of Public Prosecution will need report from a handwriting analyst, the ballistic expert or the forensic laboratory whereas it usually takes the police some period of time before forwarding the above mentioned reports to the directorate. Indeed as regards the ballistic report, because there is only one known ballistician in the whole of Nigeria the delay in the report required is better imagined. These

[4] Directorate of Public Prosecution, Lagos State, in a speech delivered at the Lagos State third stakeholders summit on the reform of the Criminal Justice System between 16th and 17th June 2004.
[5] Nwankwo V the Queen (1959) 4 FSC 274.

situations that are endemic to the police administration are major contributors to the interminable delays.

The Director of Public Prosecution's role is so central to the criminal justice system that a fairly competent officer with a good team can radically influence the system in positive terms; while a less committed officer can willingly or unwillingly create real problems for the administration of criminal justice.[6]

One can safely say therefore that the other component of the criminal justice system reacts to the pace and drive of the Director of Public Prosecution. If legal opinions are slow in coming, prison is congested. If cases are slow to be filed in court and slow to be prosecuted, there will definitely be court congestion. Furthermore, if the police, defence counsel and the public as a whole perceive the Director of Public Prosecution to be efficient or open to compromise then they will be encouraged to follow the same course.

After issuing legal advice, the Director of Public Prosecution proceeds to file information papers if there is a *prima facie* case against the suspect. A letter informing the Chief Registrar of the Attorney General's intention to file necessary information against a named suspect does this. This letter is accompanied by the information and proof of evidence. This process requires a functional photocopying machine and a dedicated operator. The Directorate is sometimes faced with incessant breakdown of this machine without which the proofs of evidence cannot be compiled.

The Directorate of Public Prosecution, after filing information awaits the hearing notice from the High Court. These notices are however not received promptly. There are situations where the Director of Public Prosecution's office will file information and maynot receive hearing notice for years because cases are not listed in time. The above are some of the reasons why a scholar Fola Arthur Worry opined in his paper that ***"One of the major problems of the administration of criminal justice is the excruciating slow pace of trials"***[7]

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[6] Directorate of public prosecution, Lagos State, in a speech delivered at the Lagos State third stakeholders summit on the reform of the criminal justice system between 16th and 17th June 2004.

[7] Fola Arthur Worry, The Prosecutor. Unpublished. Retrieved from *http://www.pfi.org* on August, 2006.

In Nigerian, the Magistrate Court is the first port of call in the criminal justice system. Delays usually start at the point of arraignment. All cases whether indictable or not are primarily charged to the Magistrate Court. Where the Magistrate Court has no jurisdiction to try the case he remands the accused pending the Director of Public Prosecution's advice. The issue of whether the Magistrate has the power to remand is still an ongoing debate, which is still not settled.

History of Criminal Justice System as it Affects Prison Congestion in Nigeria

There is no gain-saying the fact that our criminal justice system seems to have lost its capacity to respond to the needs of the society to check the escalation of crime and bring criminals to justice. Before and during the colonial era, over 90% of crimes in Nigeria were tried and punished by native courts which include the Customary Courts and Shariah Courts. The enormous work done by the courts then may be imagined by the fact that there was only one judge of the High Court serving the whole of the Northern Nigeria, which now comprises 19 states.[8] The native courts applied the customary and Shariah criminal laws, which were primarily designed to compensate the victims of crime rather than punish the culprits. Only those who were unable to pay the compensation or fine were eventually sent to prison. Consequently crimes in those days were generally punished in the native court by the award of compensation.

However, in the 1960s, the 1960 Independence Constitution put a stop to that by prohibiting the enforcement of Shariah and customary criminal laws by these native courts. Thereafter, the Courts in Southern Nigeria were bound to apply the criminal code and other written laws while the Courts in Northern Nigeria were to apply the penal code and other written laws. The Criminal Code law came into operation in Nigeria on the 1st June 1916 while the Criminal Procedure Law came into operation on the 1st June 1945. Since then none of these criminal law enactments has come under comprehensive review or reform. Nigeria of 1916 and 1945 was

[8] Hon. Justice M.L. Uwais, GCON, Chief Justice of Nigeria in a speech delivered at the opening ceremony of Lagos State Third Stakeholders Summit on the Reform of Criminal Justice System held on 16th June 2004 at Ikoyi, Lagos.

obviously not socially and economically as developed as Nigeria of today, therefore reliance only on the crimes and punishment as provided for by the Criminal Code Law is grossly inadequate to meet our current level of development.[9]

Similarly, the procedure as provided for by the Criminal Procedure Law entails delay in both prosecution of offences and trials by the court. It is imperative that the system of administering justice must be made to meet the yearnings of the society that it serves otherwise, there will be loss of faith in the system. Presently, the law does not appear to serve as a deterrent to criminals, it leads to the guilty being acquitted, the amount prescribed as fine is grossly inadequate and it does not provide for a reliable alternative to prison sentence in order to avoid prison congestion. Hence, most of our prisons in Nigeria are over congested.[10]

Black Law Dictionary[11] defines criminal justice as the methods by which a society deals with those who are accused of having committed crime. While criminal justice system refers to the collective institutions through which an accused offender passes through until the accusation has been disposed of or the assessed punishment concluded. From the definition above which is by no means exhaustive, one can safely say that an effective criminal justice system is fundamental to the maintenance of law and order in every society. The problem attendant with the reform of the criminal justice system is that several key components of the system are beyond the control of the state - the prison system, the power of the police and the rules of evidence are the exclusive preserve of the Federal legislation.

The basic objective of a very perfect criminal justice system is to ensure that offenders are duly punished and through this, it is believed, other potential offenders would be deterred - but this is no longer true as a result of so many imperfections in the system. In Nigeria, the criminal justice system may better be described as

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[9] Hon. Justice M. L. Uwais, GCON, Chief Justice of Nigeria in a speech delivered at the opening ceremony of Lagos State Third Stakeholders Summit of the Reform of Criminal Justice System held on 16th June 2004 at Ikoyi, Lagos.

[10] Olaniyan K. O. Privatization of Criminal Justice System: Prison in focus. LLM Thesis, University of Ibadan, Ibadan Nigeria 2005.

[11] 1990, sixth Ed, West Publishing Company USA pg 1194.

collapsed. This is because the imperfection in the system is obvious throughout every stage of the process.

Though, it is a truism that there is no perfect justice system, whether criminal or civil anywhere, but the assessment carried out on the criminal justice system in Nigeria left much to be desired. For instance, the Criminal Code Law, which is the main law incorporating the criminal justice process was passed in 1916 and the Criminal Procedure Act was passed in 1943 both statutes had undergone virtually no substantial change since then.

Privatization of Prison: Journey So Far

Privatization refers to the transfer of traditional government responsibilities from the public sector to the private sector. The issue of privatization has been a recurrent theme in the area of corrections. Historically, all prisons were private endeavours, which gradually came under the control of government. During the last two decades, a renewed interest has led governments around the world to reconsider the usefulness of private prisons. This interest has resulted in an intense debate, with scholars and practitioners alike arguing both for and against the institution of private prisons. Many theoretical and practical issues have been identified. In the meantime private prisons have rapidly re-emerged in the USA, Australia, and Britain, as well as Canada of late.

Private Prison Alternative: Experience from Some Developed Jurisdictions

Prisons today in civilized societies of England, Wales and the U.S have more civilized *regimes* than what obtains in the third world societies of which, Nigeria is a typical example. Prison is about curtailing a person's liberty. On the other hand it is tantamount to dishing out punishment to the person. This act of taking a person's liberty constitutes penitence.

The decision to privatize prisons derives from government questioning whether it can afford to house the current or anticipated offender population. In some cases, government will consider privatization in an effort to reduce the overall cost of corrections. In both cases, a full review of the direct hidden and opportunity costs should be undertaken to obtain a full impression of the existing situation. A private contracting agency should

Contracting with a Specific Private Contracting Agency[14]

Following the selection of the private contracting agency, a comprehensive contract must be drawn up detailing the specific conditions necessary to meet the objectives of that agency. Guzek (1992) outlines three potential types of contracts, each referring to the basic type of privatization being pursued.

Firstly, operation and maintenance contract describes the situation where assets are owned by the public sector, but are managed by the private sector. This type of contract creates reduced *per diem* figures as a result of lower overhead costs to the private contracting agency, and permits greater attention to be paid to the staffing and programming available at the facility.

Next, a lease contract describes the situation where assets are owned by the public sector, but are operated by government. This contract offers government the ability to have fixed monthly expenses, and to avoid tying up future taxpayer's funds without a long-term commitment.

Finally, a service contract describes the situation where assets are both owned and operated by the private sector. The type of contract has all the benefits of an operations and maintenance contract, but allows for deferred costs through capital gains for the private sector.

By way of evaluation the first type of contract is likely to divide the responsibilities of prison operations equally between the private and the public sectors, which will necessarily lead to efficiency of service in the long-run. This is because each of the private and the public sectors must keep itself within the agreed standard framework in their respective areas or sphere of operation as determined by the contract. This is obviously lacking in the other two types. In each of the other two, each of the parties is in absolute control of all the operational responsibilities involved. In this way the issue of public sector acting as checks and balances on the private sector for prudent, effective and efficient management of resources and vice versa is totally absent. This might not be in the best interest of the institution or system in the long- run. Going by the Nigerian experience in privatization of other institutions in the opinion of this writer, the first type is preferred and more suitable to take care of what is being advocated in this paper.

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[14] Ibid

Regardless of the type of contract being pursued, other considerations need to be balanced in the final contract, as well. The question of liability needs to be addressed, since ultimately private contracting may remove the constitutional protection granted to offenders. Price caps are usually incorporated to prevent unreasonable increases in fees once a service has been established. Typically, fee increases are restricted to inflation as marked by the Consumer Price Index (Logan 1990).

In addition, government may also make provision for contractors to gain accreditation from formal correctional associations. Once the contract is completed, services may be transferred. The initial transfer of services is usually included in the contracting phase, since it may involve an inordinate number of considerations not regarded as normal operating procedure. This includes compensating displaced workers, training new staff members, transferring and securing files, transferring inmates, establishing services and contracting other criminal justice agencies.

Organizational Review[15]

Once a review of current costs and correctional goals has been conducted, government must conduct an internal analysis to consider an option for change. Occasionally, having refocused and clarified certain issues, government is able to determine areas of excess where savings may be accrued. If the existing bureaucracy is amenable to making those changes, then it is possible to avoid contracting out. If sufficient savings cannot be found, however, then government may proceed with privatization.

Analysis of Legal and Liability Issues[16]

When proceeding with privatization, a review of federal and provincial legislation must first determine that privatization is permitted. Specific constitutional issues must be addressed to protect the rights of offenders. One might draw from the experience of Canada in the Canadian Charter of Rights and Freedoms ("the Charter") (1982). Furthermore, correctional Legislation must be adapted to include the use of private contracting agencies, under the same guidelines. Typically, legal

[15] ibid
[16] ibid

questions will not surface until after a private contracting agency has initiated services and will, therefore, be referred to the courts for adjudication.

Preparation of the Request for Proposal[17]

In preparing a Request for Proposal (RFP), government must be clear about its goals and expectations (Calabrese 1993). In order for private contracting agencies to submit valid proposals, they must be provided with sufficient information to account for all expenditures and programming. If a RFP does not delineate anticipations clearly, then a few well developed major private contracting agencies may appear more impressive than smaller ones that may also be capable of providing quality programming.

Monitoring the Performance of the Contractor[18]

Monitoring the performance of the contractor is typically the final aspect of privatization. However, it is an ongoing aspect that should last throughout the duration of any contract. Historically, monitoring by private contracting agencies was incapable of preventing prison wardens from committing atrocious abuses. Not until John Howard formally initiated the monitoring process did the situation begin to change. Keating (1990) describes several methods of monitoring private contracting agencies. The first method involves government holding responsibility for ensuring that a contract is fulfilled adequately. This method involves three different processes: document review, basic observation and a financial audit. A document review should consist of statistical data, periodic reports, grievance reports, incidence reports and programming reports. With respect to basic observation, monitoring personnel should be required to visit a prison site at least annually, preferably more frequently, to conduct inspections and interviews with staff and inmates. Finally, experienced auditors who should review a private contracting agency's financial statements to determine any savings should perform a financial audit. The combination of these processes allows government to determine the degree of contract compliance.

[17] ibid
[18] ibid

A second method of monitoring involves the requirement of accreditation. Accrediting private contracting agencies, like the American Correctional Association, requires private prisons to undergo an extensive examination of conditions, operations, security, programmes, staffing, training, services, management and so on. Through this process, an independent agency is used to monitor the operations of private prisons.

A third method of monitoring private corrections is the court model. In the United States, the courts have created "institutional masters" in cases where defendant correctional bureaucrats were unwilling and unable to implement remedial orders after their institutions or systems were found to be unconstructional. These masters are given free rein to inspect the working of facilities. They make regular reports on the courts, informing them of institutional conditions and of compliance with court orders. This mechanism has been used to monitor both private and public sector management where deemed necessary.

Three types of internal administrative mechanisms have also been used to monitor privatization. First, some areas have created a public official position known as an "ombudsman" to investigate and resolve complaints. Typically, government's effort at policing its own agencies has resulted in using ombudsmen, but Keating (1990) suggests that ombudsmen could have their power extended to the private sector. A similar position could be created by private institutions to formalize the grievance process internally.

Second, grievance procedures may be established so that prisoners can voice their concerns. These procedures are thought, however, to be tools by which management can control staff, as opposed to legitimate means for monitoring the quality of institutional life. A third option is the creation of grievance commissions consisting of people from outside the correctional establishment. The commission would hear inmate and staff complaints. The final method of monitoring private prisons is the use of public scrutiny. This can take the form of visiting attorneys or of advocacy groups. In Canada, this has taken the form of non-profit advocacy groups like the John Howard Society and the Elizabeth Fry Society.

The involvement of volunteers and staff from these organizations may be made a requirement of contracting, to ensure that an

external non- government agency is involved in monitoring private prisons. Keating (1990) notes that there are some limits to the use of public scrutiny, in that some community representatives may be easily influenced to overlook infractions by prison managers, and volunteers tend to burn out more quickly than paid staff members.

Motivation towards Privatizing Prison[19]

In recent years, two major concerns have encouraged governments around the world to reconsider the privatization of prisons. One concern is the perception of deteriorating conditions of public prisons. The second concern is the growing trend towards over-incarceration. Scholars have attributed the latter trend to several factors including: perceived increases in crime, heightened fear of victimization, and increased enforcement of drug offences, domestic abuse and sex offences (Avio 1991; Cox & Osterhoff 1993; McDonald 1990). As such, existing prison facilities are overcrowded, and some governments have begun to either build new facilities or look to the private sector.

In Canada, the issue of overcrowding remains a concern. In fact, the Correctional Service of Canada (CSC) and seven of the provinces/territories reported over-capacity populations as reported by the Canadian Centre For Justice Statistics, (1996). According to Graham Stewart, Executive Director of the John Howard Society of Canada, prison overcrowding is less severe than it was, but it is still a problem, in particular in some provincial prisons like those in Ontario. In fact, these institutions sometimes house up to five inmates per cell in extreme circumstances, although three appears to be the norm, Double bunking in federal prisons is still common as well.

Generally, the literature lends support to the concern regarding prison overcrowding. However, certain authors raise the question as to the appropriateness of prison expansion as the best solution to the crisis. Gregory (1989) suggests that the criminal justice system has failed to clarify an acceptable basis for its policies of crime and punishment, such that a growing prison population and rampant costs are the most *obvious* results, with prison construction programmes following suit.

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[19] *http://www.prisonpastor.com*. Retrieved in June 2008.

Indeed, perhaps focusing the debate on private prisons is simply trying to avoid addressing the real issue, which is prison expansion. It is suggested that Nigeria may be well advised to take a cue from the expansion of the more developed private prisons, until jurisdiction of the norm is instituted and forged ahead with privatization.

In Alberta, the suggestion of the privatization of corrections can be seen in the larger context of increasing private sector involvement in traditional government functions. This is illustrated by the sale of government departments, such as vital statistics, liquor sales and the department of motor vehicles. Convinced by private sector claims of reducing the cost of incarceration, the Alberta government is considering private prison management.

Categories of Privatization[20]

Privatization in corrections is separated into four broad categories: private financing and construction of facilities, private prison industries, private provision of specific services and private prison management (Cox & Osterhoff 1993; Joel; Leonard 1990; McCrie 1993; Sevick 1987). The first three categories will be briefly discussed while the fourth category, the most preferred by this writer shall be discussed in details

Private Financing and Construction[21]

Private financing and construction involves the use of private capital to fund and build prisons that government will operate (Cox & Osterhoff 1993). This is achieved through two types of agreements. In a rental agreement, government pays a slightly elevated monthly charge, with the understanding that it will own the facility after a specified time. Both types of agreements offer government the freedom to stop using the facility should jail populations diminish, as well as fixed monthly costs without any long term.

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[20] Freda Adler, Gerhard O.W. Mueller, William S. Laufer, *Criminal Justice Administration in the United States*, McGraw Hill Inc. 1994, Pages 526.

[21] ibid

Private Prison Industries[22]

Private prison industries involve the use of inmate labour for private purposes (Bronson, Bronson, Wynne & Olson 1992). These industries operate like public prison industries, in that inmates receive daily pay for the labour, and the goods and services produced are sold to the public. The most common public examples of prison industry in Canada is CORCAN, a federal corrections initiative.

Private Provision of Specific Service[23]

The private provision of specific services involves the contracting out of particular services, including, food services, medical and mental health services, pre-trial release and diversion programmes, halfway houses, restitution programmes, and alcohol and drug treatment programmes (Cox & Osterhoff 1993; Joel 1993; Saxton 1988). In Canada, non-profit advocacy groups such as the John Howard Society provide a variety of programmes for offenders, both in the community and in prisons.

Private Prisons Management[24]

Private prison management is the fourth of the categories which involves the management of prison facilities by the private sector and individual persons. All the four categories as a matter of fact are variants of private involvement in prison management and administration.

Advantages of Private Management of Prisons in Nigeria

Privatization in criminal justice system is widespread and is by no means limited to corrections. Leonard (1990) observes that there are other aspects of the criminal justice system that have been subject of varying degrees of private investment. These areas have included everything from policing and victim services to court services and community corrections.

The focus of this paper as stated earlier is to attempt to elucidate on the benefit of privatizing the Nigeria prison service as a way of decongesting the prisons, and reduce the risk of jailbreaks

[22] ibid
[23] ibid
[24] Olaniyan K.O. Privatization of Criminal Justice System: Prison in focus, LLM Project, University of Ibadan, 2005.

which is caused by several factors bordering on our archaic criminal justice system which is now yearning for total overhaul. As a form of recommendation, the benefits/advantages that Nigeria is out to gain in adopting the private alternative option, which are drawn from the experience of the more advanced criminal justice system jurisdictions like the United Kingdom and United State of America. The advantages which are in form of obvious benefits *which Nigeria stands to gain are therefore discussed below:*

The Benefits of Private Management of Prisons[25]

Cost

Contracting out prisons reduces cost of running the prisons. Critics who are not in support of private management of prisons, and who initially argued that contracting with private companies could not save money have been proved wrong. Firstly the fact that contracts exist implies that the contracting agencies are confident that cost savings are being realized. Many statutes even require tangible evidence of savings before contract can be awarded. Secondly, private sector fringe benefits especially retirement contributions are less generous for private employees than for government employees. Thirdly, private prisons are designed to operate efficiently with fewer personnel whereas public prisons are not.

The precise magnitude of cost savings is difficult to determine because governmental accounting systems generally do not show the total cost of public operations. Government agencies depend in varying degrees on services provided by other governmental agencies free of charge for profit firms must account for all costs. Nevertheless, a good deal of evidence on efficiency improvements has been accumulated. For example in a 1994 study, Australian economist Allan Brown found that a privately operated prison in Queensland saved 20% of the total budgetary allocation to prison management compared to a similar facility operated by government.

The Quality of Services Provided by the Private Prisons

Faced with the evidence of cost saving, critics then argued that "you get what you pay for". About 75 percent of American jurisdictions now have major facilities or entire systems operation

[25] ibid

under judicial interventions. Secondly, contracting could hardly do worse than some current public prisons in terms of quality. Thirdly, contracting motivates both governmental and private prisons to compete on quality as well as costs. It also provides an alternative yardstick against which to measure government service, it allows for comparisons.

In a careful comparison of New Mexico and West Virginia prisons using 333 empirical indicators of quality, University of Connecticut Sociologist Logan Fund "the private prisons outperformed the state and Federal prisons often by quite substantial margins across nearly all dimensions".

Also the Tennessee Select Oversight Committee on corrections found that a CCA - (Corrections Cup of America) - operated facility had a higher overall rating and cost less than two similar state facilities.[26]

Housing Facilities

When the modern correctional privatization movement started it was widely believed that any private role would be limited to small facilities housing low-security prisoners. Today, however it is common to see contract awards, for facilities with rated capacities of between 1,000 and 2,000 prisoners and for prisoners requiring medium or high security. Contractors of private prisons complement the public prisons and help reduce the capacity crisis by building new prisons even faster than the government. It also allows quicker response in future to meet the changing needs or to correct mistakes resulting from inaccurate predictions or faulty policies.

Reduction of Government Liability

Contracting may reduce the number of the risks for which government remains liable through higher quality performance and through indemnification and insurance, for example, the risks of congestion and overcrowding, which also increase the risk of maintaining adequate welfare of the inmates. These risks also lead to jailbreaks.

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[26] Brakel, S. Private Correction in G Brownman, S. Hakim and P. Seldenstat (Eds). *Privatizing the United State Justice System: Police Adjudication and Corrections Services from Private Sector* (Jefferson North Carolina Mcferland & Company, Inc, Publisher) 1992 pg 17.

Public and Inmate Safety is Assured
Contracting may enhance public and inmate safety through increased staff training and professionalism and correction - officers in private prisons are more likely to be highly motivated and are therefore less likely to go on strike. The prison inmates are more efficiently controlled and secured because the private prison officials are likely to be more committed than government officials in the effective handling of inmates.

Efficiency and Effective Management is Assured
The issue of property is an ethical one based on assumption about the nature of government and its role in correction. Indeed decisions regarding the appropriateness of government to contract out prison management to the private sector must include an element of principle based on beliefs about justice. Crucial to any debate about private prisons is the identification of government's limit in delegating its authority to punish. Proponents of privatization argue that contracting out prison management to the private sector does not necessarily replace government in dispensing justice. They further assert that government maintains controls over essential services through effective monitoring of private contracting agency activities thereby adding new layer of independent correction review.

Contracting does not jeopardize due process since private and public wardens are equally subject to the risk of law and accountable to the same constitutional standard. Finally, private prison staff have multiple incentives to treat inmates as family; to gain the co-operation of inmates, to cover cost and to ensure contract renewal.

Accountability
The issue of accountability involves the degree to which private contracting agencies are accountable to the public regarding their treatment of and security over inmates. Proponents argue that privately contracted prisons are more visible and accountable in their operation owing to the fact that they receive greater attention from the media, advocacy groups and the public. They also argue that privatization increases accountability in several ways - it enables government to monitor and regulate a private contracting

agency better than it can monitor itself and also to address the issue of objective performance that has to be developed.

Eradication of Corruption
Contracting gives managers more of a vested interest in the reputation of their institutions to manage creditably. It also puts the profits motive higher than other motives of investing.

Dependence
Contracting can increase the number of suppliers, thus reducing dependence and vulnerability to strikes or bad management arising from overdependence on single management structure.

Conclusion
The recommendations and suggestions in form of benefits, which may accrue to Nigeria are borne out of the fact that prison congestion in Nigeria has direct impact on both the inmates and the officials. The deplorable condition of our prisons, which is a direct effect of government neglect, is another case in point. At the time of working on this paper, it was reported on the *Nigerian Television Authority* Network news at 9.00pm that the Nigerian Government released 3 billion Naira out of 13 billion Naira owed the food contractors that supplied food to the prisons all over the country. This means that the Government is still indebted to the prison food contractors.

Again, there has been an increase in the number of new offences now created by different laws all over the country, which were not initially catered for by our Criminal Code and the Penal Code. Corruption is now a serious crime, yet new prisons are not built while new cells are not created. The existing old ones are still crying for renovation and about to burst out as a result of pressure of overcrowding. Yet the government budgetary allocation to the Nigerian prison service is on the increase and will continue to be on the increase. Then where do we go from here?

It is hoped that if all concerned vigorously pursue some of the suggested reforms and recommendations highlighted in this paper, our prisons will stop being a crime-breeding institution, which they have turned out to be in recent years.