

**PROBLEM OF PRISON OVERCROWDING IN NIGERIA:
SOME LESSONS FROM SOUTH AFRICA AND AMERICA**

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DEDICATION

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ABSTRACT

This thesis examines the problem of overcrowding in Nigeria drawing lessons from South Africa and America. It explores the root causes and impact of overcrowding. It further examines specific provisions of Regional and International Human Rights Instruments which addresses overcrowding issues and say whether is binding in Nigeria. This paper answers the question whether overcrowding is unique to Nigeria, South Africa and America. It explores strategies and policies employed by Nigeria, South Africa and America to address overcrowding and hold that the problem persists despite these strategies. It went deeper to examine the responses and attitude of courts to overcrowding and the plight of prisoners.

The paper examines the roles and problems besetting Civil Society Organisations, Non Governmental Organisations and Churches in addressing overcrowding in South Africa and America. The paper made recommendation for improving the working of these organisations in addressing crowding problem and apply lessons to Nigeria. The paper finally suggests recommendations ultimately, to find a solution or series of solutions to the problem of prison overpopulation in Nigeria.

EXECUTIVE SUMMARY

This thesis looks at the problems brought to bear by conditions of prison overcrowding on incarcerated persons majorly and goes to excel its effects on the prison administration and the community or society generally. It presents the exposition of the problems of prisons in Nigeria highlighting the contribution of NGOs and Churches in prisons. It gives a general description of the prison conditions reflective of rights violation of inmates. The legal frame work governing the administration of prison in Nigeria is examined.

The thesis proceeds further to address the causes and contributors of prison overcrowding. The paper pigeon holes the root causes in Nigeria into lack of police expertise to investigate and prosecute within a reasonable time, delay in the administration of justice by the courts to include: lack of access to justice, overreliance on pre-trial detention, lack of coordination among the actors in the criminal justice sector and over criminalisation of behaviours. The paper went further to elaborate in details, the negative impact of prison overcrowding on incarcerated person, prison institutions and the community.

The thesis goes deeper to discuss specific provisions of both International and Regional Human Rights Instruments that addresses minimum standards, conditions and treatment of persons deprive of their liberty. The paper finds out that, this set of rules or principles are aphorism and good practice to be applied by national authorities for the administration of prisons with local variation and as such not binding as treaties do. The paper takes the view that since Nigeria has domesticated the African Charter on Human and Peoples' Rights and the Child Right Act which it has incorporated into the body of her laws consistent with the provision of section 12 of the Constitution of the Federal Republic of Nigeria 1999 and the case law on this point, this two instrument become binding which other instruments not

domesticated can double to have combine effect. The paper takes the position that, most of the provisions in these instruments are replicated by others.

The thesis further looks and finds in the course of research that, prison overcrowding is a global phenomenon not just peculiar to Nigeria, South Africa and in America. The paper thus takes the view that the problem of prison overcrowding pose challenges to both poor and rich countries, but the causes differs from one region to another. More so, strategies and policies to address same also vary from jurisdiction to jurisdiction. The paper further finds out that, while the root causes of overcrowding in South Africa and America is hinged on tougher sentences, the passing of mandatory Minimum which gives lengthy period of imprisonment, preference of incarceration in a fight against drugs and recidivism are responsible for the soaring prison population, while in Nigeria is different as seen above. Both South Africa and America

Offer useful lessons to Nigeria in terms of strategies and polices adopting privatisation and unit management which combines for efficient management of the rapid growing prison population through effective supervision and customised individual needs of offenders.

A further input is seen in the diversion and community service sentences featuring suspended sentences such as parole, supervise probation, booth camp and halfway homes utilised to address individual unique needs to prevent recidivism, indirectly reducing overcrowding. An interested policy initiative for capacity expansion through construction of new prisons though quite commendable, the paper takes the view that, it is a very expensive venture moreover, overcrowding in Nigeria is only an issue in prisons at the urban cities, Nigeria could take the cure to transfer inmates from congested prisons to those operating under capacity just as it is done in America from states to out of station, California is a typical example. The paper also

finds that Both South Africa and American courts demonstrate profound sympathy towards prisoners' rights especially, overcrowding related issues though courts in South Africa are hindered by political consideration while Americans courts places high burden on the complainants violation of the eighth Amendment who must show that overcrowding conditions lead to deprivation of basic needs, physical health and personal safety which makes it onerous to attend. The paper takes the position that despite the strategies and policies to address prison overcrowding, its challenges had persisted un-abated. It's expected that the courts have to be more proactive to make prison overcrowding jurisprudence more meaningful in the frontier of prisoners' rights.

The thesis make an excursion to the role played by civil society organisations, non governmental organisations and faith base organisations in South Africa and America. The paper finds that, these groups contributed immensely in addressing overcrowding issues through its projects and programmes to rehabilitate and reintegrate ex offender back to society. The paper finds that South Africa and America are blessed with virile civil society working inside and outside prison to provide after care services, providing life skills, renders individual and group counselling, job placement and offer contract jobs and start up capital to ex-offenders and actively work to prevent crime, embark on diversion programmes and restorative justice through victim/ offender reconciliation and supervised parolee on community base monitoring without imprisonment. Appling lesson to Nigeria, of great input is the government sponsored programmes NACRO enjoyed government sponsored water project to rehabilitate offenders while FBOs enjoyed government patronage in America on programmes with potentials to rehabilitate offenders. Nigeria government should replicate such gesture and the CSOs and NGOs should equally take a bold step to focus it programmes on after care service, job placement and contract jobs calculated to make the

offender self reliant and law abiding, without relapsing to criminal behavior and equally engage on diversion programmes from formal judicial procedure in cases involving juveniles with minor offences and first offenders should be sentenced to warning order.

The paper observe that, these organisations are yet to achieve greater height due to challenges such as fund and capacity building, lack of coordination in programmes executions, dialogue deficit, restricted access to prison facilities and lack of awareness of its programmes. The paper takes the position that these groups could perform better given government patronage, frequent collaborative engagement through partnership between the departments of corrections and CSOs and other organisations working to address overcrowding related issues. The paper also holds the view that too much government patronage breeds problem of legitimacy and autonomy enjoyed

INTRODUCTION

“All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.”¹ The rights addressed here are those inherent in dignity in the concept of the ‘worth and value’ of man as a human being.² As good as these rights are entitled to human beings; it is not totally clear whether inmates or prisoners have recognisable rights embracing this dignity of the human person. This is traceable to the United Kingdom when in 1688, the Bill of rights aptly out law cruel and unusual treatment, set stage for a universal standard for the treatment of prisoners in detention.³ America proclaimed such rights.⁴ Canada in its charter⁵ replicated same. South Africa presents a good example of a constitutional democracy that incorporated such ideals.⁶ Nigeria⁷ and most other countries who albeit do not incorporate but recognised that prisoners be treated with human respect.

In this respect, International Human rights instruments recognised these rights; a typical example is the minimum standard Rules which set minimum standards for the treatment of prisoners.⁸ A regional effort in this regard is the Kampala Declaration on prison conditions,⁹ this envisioned that prisoners’ rights be respected at all times, prisoners retained rights not expressly taken by the fact of imprisonment, conditions of detention should be consistent with human dignity.

¹ Article 1 of The United Nations Universal Declaration of Human Rights adopted and proclaimed by the General Assembly Resolution 217 A (111) of 10 July 1948 hereafter referred to as (UDHR)

² Rodley, Nigel S. The treatment of prisoners under International Law (ed 2) 1999 p.6

³United Kingdom Bill of Rights An Act Declaring the Rights and Liberties of the Subject and the Succession of the Crown 1688 available at http://www.hereticpress.com/Dogstar/History/Bentley/govt_bill_of_rights1688.pdf “(accessed on 5 October 2010) Article 10 states that “excessive Bail ought not to be required nor excessive Fines imposed nor cruel and unusual Punishments inflicted.”

⁴ Eight Amendment of the Constitution of United States of America, Constitution of the United States of America adopted convention of states, September 17, 1788

⁵ Section 12 of the Constitution of the Canadian Charter of Rights and freedom, Constitution Act, 1982

⁶ Section 35 (2) (a) of the Constitution of the Republic of South Africa 1996

⁷ Section 34 of the Constitution of the Federal Republic of Nigeria 1999

⁸The United Nations Standard Minimum Rules for the Treatment of Prisoners under any form of imprisonment was adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Geneva, 1955, and subsequently approved by the Economic and Social Council resolution 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977 available at <http://www2.ohchr.org/english/law/treatmentprisoners.htm#wp1018339> last accessed on 17th October, 2010)

⁹ The Kampala Declaration for Prison Conditions in Africa a conference held from 19-21 September, 1996, 133 delegates from 47 countries were in attendance including 40 African countries converged in Uganda

There is a climate of view represented by the society's emphasis on the retributive nature of imprisonment, thus prisoners' rights should be juxtaposed with public security concerns of penal institutions. To this end, some scholars argued that Prisoners' rights to some extent are 'limited in the most part.'¹⁰ While others canvass that inmates does not relinquish all constitutional rights on admission into prison. The Minimum Standard Rules in its Rules (9-22) graphically specific provisions for accommodation, floor space, bed and beddings, ventilation, personal hygiene, sanitation, classification of inmate, medical care, contact to family members and access to legal representation.¹¹ The issue of overcrowding is a critical problem which has led to the infraction of these rights, the high influx of persons in prison results to strain and deteriorating prison conditions coercing inmates to diverse means of survival which traumatise prisoners both physical and mentally.¹²

To find out the threshold at which overcrowding exposes prisoners to rights violation is tasking and hotly debatable.¹³ The courts have been reluctant to give a definitive decision on overcrowding but had rather linked it to variety of other rights such as to whether overcrowding had adversely affects personal safety, mental and physical health, clothing and nutrition. Even though the seventh circuit held that the conditions of housing five men in a 'single cell of 10.6 square metre shocked the general conscience'' and constitutes crude and degrading treatment contrary to the spirit of the Eight Amendment.¹⁴ But this position has not been consistent but shifting, indicating that overcrowding per se does not amount to violation except it is proven to affect the inmates as mentioned above. This debate is on going. In South Africa overcrowding is consider as a matter of political will and the 'courts cannot replace this political will.'¹⁵ While in Nigeria overcrowding is of no moment, the attitude of courts has been equally reticent on overcrowding issues. As dicey as this position seems to be, the European court jurisprudence

¹⁰ Union County jail Inmates V. Di Dibuono, 713 F. 2d 984 (3d Cir.1983) the court in Para. 24 expresses the view that restricting the rights of detainee to ensure court attendance and for effective management is legitimate thus prisoners may be entitle to 'a minimal civilised measure of shelter'

¹¹ Supra note 8 Para 2 at 11

¹² Johnny Steinberg, "Prison Overcrowding and Constitutional Right to Adequate Accommodation in South Africa." Paper Commissioned by the Centre for the Study of Violence and Reconciliation, January, 2005 pp1-25 p3 available at <http://www.csvr.org.za/docs/correctional/prisoncovercrowding.pdf> (accessed on 7th January 2010)

¹³ Ibid

¹⁴ Chavis V Rowe, 643 F.2d 1281 (7th Cir. 1981), see also Battle V. Anderson, 564 F. 2d. 388, 395 (10th Cir. 1977) where the court had found that housing two men in a small 35-40 square metre 'cubby hole' is contrary to the 'contemporary standard of decency'

¹⁵ Supra note 8 Para. 2 at 11

though not too ready to make any declaration on conditions created by overcrowding, found that a situation where the applicants were crammed in a cell of size approximately 09-19 square metres housed together with other 11-14 inmates raises concerns under Article 3 of the European convention on Human Rights which prohibits 'cruel and degrading punishment.'¹⁶

The debate is renewed to insist that prisoners be housed and quartered on conditions consistent with human dignity, thus the Committee for the prevention of torture recommends 4 square metres per prisoner as a minimum in a communal cell and 6 square metres in a single cell.¹⁷ Whereas the American Association specifies 60 square feet¹⁸ which has found its expression in the Federal Bureau of Prisons to formulate its rated capacity¹⁹ which has been replicated by most states in America typically the state of Florida where it is explicitly illegal for penal institutions to exceed its rated capacity.²⁰ This debate is further amplified by Mandela's dictum, "no one truly knows a nation until one has been inside its jail" this affirms the notion that the success of a correctional system is determined by the security it gives to the public and the treatment it gives to its prisoners clearing the misconception that imprisonment is purely punitive. The German concept of imprisonment is not for punishment but for rehabilitation, it presupposes that punishment is not achieved by imprisonment but the presence of an active criminal justice system reflected by its high conviction rate. Once an inmate is admitted into prison, it is purely for treatment through an appropriate sentence plan or programming to reform and reintegrate him or her back to society as a law-abiding citizen.²¹ Despite the seemingly lack of sustained policy and court consistency on this current debate, there is no doubt that prisoners' rights and especially overcrowding has received renewed attention by scholars, penologists and criminologists who actively stem the course in the voyage of addressing the adverse effect of prison overpopulation.

¹⁶ Kalashnikov V. Russia, ECHR. 2002, Para, 101

¹⁷ European Committee for the Prevention of Torture and Inhuman or Degrading Punishment hereafter referred to as "CPT" Morgan R and Evans M. D *Protecting Prisoners, The Standards of the European Committee of the Prevention of Torture in Context* 1999 pp1-215 p3

¹⁸ Chung, "Prison Overcrowding", 2356 Steinberg J, op cit note 12 American Correctional Association and American Public Health Association both work to set standard for the treatment of prisoners in America

¹⁹ Bureau of Prisons; Rated Capacities for Bureau Facilities, Program Statement 1060.11 (30 June, 1997) – Rate capacity is aptly referred to the Number of inmates that can be housed safely in a facility" Steinberg J, Op cit note 12

²⁰ William D. Bales and Linda G. Dees, "Mandatory minimum Sentencing in Florida; Past Trend and Future Implications", in *Crime and Delinquency* Vol. 38 No. 3, (1992), p 309 Steinberg J. Op cit note 12

²¹ Klofas et al "The Meaning of Correctional Crowding" at 182 op cit Steinberg J, note 12

This thesis on the problems of overcrowding locates itself within the current debate to raising additional concerns on the subject matter. This paper associate itself with the German position. This paper more emphatically looks at the problems of overcrowding in Nigeria drawing lessons from South Africa and America experience. This thesis focus its search light on international and regional human right instruments elaborating on specific provisions that addresses Overcrowding, noting their status and legal implication in Nigeria as to whether there are binding instruments but opined that there are precept of good practice except those domesticated by Nigeria. The paper looks to see whether over crowding is unique to only Nigeria, South Africa and America, taking a deep lip on the causes, policies and strategies utilise to address overcrowding issues. The thesis before applying input from South Africa and America examine the role of Civil Society Organisations, Non governmental Organisation and churches on overcrowding related issues, locates its challenges, while suggesting ways of improving there activities goes to apply silence lessons which are on effective management, diversion, community service supervision and government sponsored programmes for successful rehabilitative programmes to eschew recidivism. The thesis believing on an urgent attention to address the systemic problem of overcrowding makes some suggestions and or recommendations on the hope that with commitment and Political will coupled with sustain policy, these problems will be minimised if not ameliorated.

CHAPTER ONE

1.1. OVERVIEW

The first chapter in this paper discusses the issue of overcrowding generally, constituting itself into discussion of available literature. The literature review will provide insight into the rights of inmates inclusive of overcrowding the core of this paper. This chapter explore the significance of this study navigating through thesis statement, hypothesis or research questions which heat the debate; presenting the methodology used in the research. This chapter also examines the scope of the research and present the proposed outline.

1.2 BACK GROUND INFORMATION

Overcrowding in prison is say to be the state of affairs in which the number of inmates exceeds the capacity of a prison to the extent it cannot safely provide for the adequate ‘‘physical and psychological’’ needs of incarcerated persons.²² Professor Craig referred to overcrowding as ‘an art’ which is not only consider in terms of the ratio of inmates to the capacity but the extent to which prison system houses inmate ‘than it has adequate infrastructure’ to quartered.²³ Overcrowding is a feature of all criminal justice system across the board which poses serious challenges to both developed and developing nations.²⁴ With adverse consequences on the incarcerated person, prison itself and the community to which the offender returns upon released.²⁵ This is largely as a result of the want of ‘effective programming and treatment’ and the continued use of harmful couple with ‘deprive confinement conditions.’ The problem persist due to the deficit criminal systems which has failed to proactively apply long term goals to address overcrowding problems but seemingly provides palliative measures which has kept the prisons crowded.

²² Curt Taylor Griffiths, Ph.D. Danielle J. Murdoch, M. Phil, Strategies and Best Practices Against Overcrowding in Correctional Institutions, Vancouver B. C V6T 1Z1 Canada, February, 2009 pp1-63 p 1 available at <http://www.icclr.law.ubc.ca/files/2009/Overcrowding.pdf> (accessed on 8th October, 2010)

²³ Prison Overcrowding Harmful Consequences and Dysfunctional Reaction, Testimony of Professor Craig Haney, University of California, Santa Cruz, pp 1-17 p1 available at http://www.prisoncommission.org/statements/haney_craig.pdf (accessed on 16th October, 2010in foot note 2 aptly defined overcrowding as an art where prisons houses inmate more than it capacity can carry and have tended to increase it capacity with out a corresponding consideration to design programmes to customise individual needs

²⁴ Supra note 22

²⁵ Supra note 22

1.3 LITERATURE REVIEW

This research area has benefited from enormous literature but little work is done in the context of African prisoners' rights: A. Reynaud²⁶ elaborates extensively on domestic and international concerns for prisoners and argued that at both level prisoners are treated as human beings. He discusses the fundamental function of the prisons. He argued that the traditional function of the prison is to protect the society by “neutralizing offenders and re-educate offenders” back to the society. He focuses on the European instrument of protection of prisoners rights and made copious reference to the Universal Declaration of human rights. He critically analysed prison conditions and extensively argued that overcrowding is inconsistent to human dignity. Even though his work focuses on the European system, it offer useful hint to this debate on overcrowding and on how prisoners' rights are guaranteed. This paper align with his argument on inmates rights which embraces the emerging debate on overcrowding

Sheldon Krantz and Lynn A. Branham: focuses mainly on American prisoners' rights jurisprudence and gave comprehensive evaluation on how the American courts have over time responded to prisoners' claims. They critically analyze the right of access to court, prisoners search and correspondences and argued that these rights have been variously violated by prison staff. They deal with state policy of rewarding prisoners for good behaviours such policies like “parole, releases, probation and revocation”²⁷ which indirectly addresses overcrowding in prison. These policies are long standing strategies to avoid incarceration relevant in overcrowding debate as an input to Nigeria and to proffer solution but differ to say that, these privileges have often been abused resulting to re-arrest thus soaring prison population.

Jim Murdoch²⁸: elaborate on the regional instruments for the protection of detainees in the European system. He critically discusses the duties of the European Committee for the Prevention of Torture (CPT) which requires a minimum space of 4 square metres per prisoner in a communal cell and 6 square metres in a single cell. And argued that its preventive functions through visitation of prison institutions, police cells and other detention camps has proven to be very effective. Its primary concerns are to protect the rights and ensue that the conditions of detention are in compliance to set standards. He replicated the European Prisoners Act in light of the work of (CPT) with the standards the European Human Rights court has applied for the

²⁶ See generally A. Reynaud, *Human Rights in Prisons*, Council of Europe Press, 1994 pp 21-112

²⁷ See Sheldon Krantz and Lynn A. Branham, “The Law of Sentence, Corrections and Prisoners' Rights” 4 ed. 1994

²⁸ See Jim Murdoch, “The Treatment of Prisoners European Standards”, Council of Europe Publishing unit, May, 2006 pp15-361

protection of detainees. Though it focuses on the European system, it is relevant in this research work as it provide useful insight comparable to United Nations Minimum Standard Rules for the treatment of Prisoners especially on space and accommodation. This paper seems to agree with their thesis as space and accommodation are the hall mark of overcrowding jurisprudence

Michael Tonry and Joan Petersdia: They concentrated mainly on American prison system. They focus on the collateral consequences of imprisonment of children on the community and prisoners. They critically argued that overcrowding causes prison suicide and coping. They elaborate extensively on the management of prisons and argued that “interpersonal violence”²⁹ is as a result of overcrowding and poor management of prisons. And suggest unit management for effective supervision of inmates their work gives an insight into the proper management and effects of overcrowding in prisons. The paper intends to translate this useful input on ‘effective unit management’ to Nigeria. And associate itself with their argument.

Muntingh Lukas: deal extensively on the violation of “inmate’s rights.” He argues that the continuous violation is as a result of limited involvement of civil society in the debate on corrections and on prisons reform, which has degenerated to a general “weak civilian oversight” and severe ‘overcrowding’ has severe consequences on the incarcerated person which limit and violate prisoner’s rights. He argued that offenders do not suffer “social death” and do not automatically forfeits all civil rights.³⁰ He further posits that: inmates are citizens entitle to the right to vote, only rights required to implement court sentence are affected. He concludes that Inmates remain part of the society, although “temporary segregated” need to be treated with human dignity as citizens and any act fallen below the minimum” will put society on a “slippery slope of creating second class citizens”³¹ This thesis agrees with this argument to the extent that incarcerated persons do not enjoy equal rights with law abiders whose rights should be determined by the court sentence as aptly argued. This paper is critical on the point relating to civil society organisations which has indeed been active in addressing overcrowding related issues in both Nigeria, South Africa and in America.

²⁹ Michael Tonry and Joan Petersdia: Prisons, Crime and Justice Review, Vol. 26 University of Chicago Press, Chicago, 1999 pp 121-275

³⁰ Muntingh Luka, South African Constitutional Court Rules on Inmates' Right to Vote “Correction to Day” Vol. 66 Issue 7, December 2004 p p76-79 <http://web.ebscohost.com/ehost/detail?vid=1&hid=105&sid=e68b06a6-d4ad-41f1-b106-05e9e4d86dc3%40sessionmgr111&bdata=JnNpdGU9ZWZWhvc3QtbGl2ZQ%3d%3d#db=a9h&AN=15569040> (accessed on 3rd April, 2010)

³¹ Ibid

Amnesty International: elaborates on the problems of criminal justice system in Nigeria, critically deal with access to court and legal representation. It argues that “inefficient criminal justice system” leads to overcrowding in prisons. Amnesty argued that 65% of prisoners in Nigeria have no legal representation, more so, only ‘one in seven of awaiting trial persons have access to private lawyers, that the legal aid council has only 91 legal aid officers’.³²

This paper agrees with Amnesty on these grounds even though the report is referring to only Nigeria, but its critical analysis with figures gives an insight on possible recommendation to address overcrowding problems Nigeria.

Imibekhai Clement;³³ give a broad account of support services of NGOS and civil societies in the prison system. He focuses on Justice Development and peace Commission in Benin Nigeria. He argued that churches and non governmental organizations have being of immense assistance in the social, moral and spiritual well being of inmates. He argued that these organisations feature prominently in rehabilitation and reintegration programmes by offering vocational training and entrepreneur skills, which addresses overcrowding problems. He strongly canvassed that both national and international donors should fund the activities of these groups working to rehabilitate offenders as to avoid recidivism. This paper saw reason in this argument as it offer useful insight on the debate on the role played by Civil Society Organisations, Non governmental Organisations and Churches in addressing overcrowding problems in Nigeria, South Africa and America.

Morgan and Evan³⁴ work is on European system of human rights. They presented a robust view on how prisoner’s rights are protected in the European jurisprudence. They give a critical account of the activities of the European committee for the prevention of torture (ECPT) together with the Human Right Committee (HRC). They make copious allusion to the United Nations Standards and how best there could be applied to protect prisoner’s rights overcrowding inclusive specifically on space and accommodation in a safe and humane conditions. They

³²Amnesty International, “Al Condemned System” Africa Research Bulletin, vol. 45 Issue 3, March 2008 p17468, 1/3p available <http://web.ebscohost.com/ehost/detail?vid=1&hid=3&sid=b7c2eb90-035f-4c1a-a5c1-ac274f226604%40sessionmgr11&bdata=JnNpdGU9ZWVhc3QtbGl2ZQ%3d%3d#db=a9h&AN=32836771> (accessed on 4th April, 2010)

³³Imibekhai Clement; Non-Governmental Organization and Prison Support Services in Nigeria: “A Case Study of the Justice, Development and Peace Commission,” Journal of Correctional Education Vol. 53 Issue 4 December 2002, p153-153 available at <http://web.ebscohost.com/ehost/detail?vid=1&hid=104&sid=637ed40f-cad5-4d36-b583-4522485a9107%40sessionmgr114&bdata=JnNpdGU9ZWVhc3QtbGl2ZQ%3d%3d#db=a9h&AN=11094669>

³⁴ Morgan and Evan protecting prisoners rights: “The Standard of the European Committee for the Prevention of Torture in Context”, Oxford University Press , (5th ed), 1999

argued that cramming inmates in a cell above its capacity is in violation of the standard specified. They perhaps argued that ECPT is a more effective system

Their work is relevant to this research paper as it gives an insight to what recommendation could be made to government and the step to be taken to ensure its implementation. This paper is perhaps critical on their assessments as to which of the system is more effective in the protection of human rights. It seems that both systems are relevant and has shown indicators on minimum space for each prisoner per night to avoid overcrowding and specified conditions of detention similar to those of the Minimum Standard Rules for the treatment of prisoners. Both systems offer useful insight on the best practice for the management of inmate population in keeping with the standard minimum as to decent accommodation, ventilation, hygiene and sanitation.

Rodley N.³⁵ elaborates on the various international instruments that deal with the treatment of prisoners and conditions of detention. He argued that inmates are to be protected against discrimination, and not to be subjected to torture and inhuman and degrading punishment which borders on overcrowding. He focuses mainly on the protection of prisoners under the European system; Rodley work provides insight to discussing specific provision of human rights instruments addressing overcrowding related issues. This paper agrees with his argument on non discrimination and humane treatment of inmates without torture or the like of it.

1.3 RELEVANCE OF THE STUDY

The significance of this study is to raise additional concerns and awareness on the problems of overcrowding which is one among others critical challenges that needs to be address. It is to identify the root causes, consequences and locate policies and strategies applied to address this endemic problem in Nigeria, South Africa and America. Apply lessons from South Africa and America to tackle or reduce prison over population in Nigeria. The ultimate and eventual aim is to seek workable solution or series of solutions to the problem in tandem with other actors in the criminal justice system more particularly Civil Society Organisations Non Governmental Organisations and Churches. And to propose suggestions and or recommendations appropriate in the Nigerian context that addresses prison overpopulation.

³⁵See generally Rodley N: Treatment of Prisoners under International Law, Oxford University Press 4th ed. 2000.

1.4 DEFINITION OF CONCEPTS

- **OVERCROWDING**- is referred to as a state of affairs where the number of persons confined are higher than the capacity designed for the prison to safely provide for the needs of person.³⁶
- **PRISON**: Is defined as “any building or place in Nigeria declared by the minister of Internal Affairs, through an order in a federal Gazette as a prison.”³⁷
- **PRISONER**-Prisoner is generally defined as “any one deprive of his liberty either awaiting trial or as a result of conviction for any offence”³⁸ For the purpose of this paper prisoner means any person awaiting trial, convicted or juvenile who are unable to get out of the claws of the authority.
- **PRE- TRIAL DETENTION**- keeping in custody an alleged offender under coercive measure to secure attendance in a criminal prosecution.³⁹
- **PAROLE** - It implies a conditional release of a convicted person after he has served the portion of his sentence to serve his last portion of his sentence out side the prison under supervision under conditions that the parolee “abides to certain rules during the pendency of his sentence.”⁴⁰ It is contingent on future conduct as agreed on terms.
- **GAOL DELIVERING**- It refers to the procedure adopted by chief judge of the federation or the state where mini trials are held inside the prison premises. Judges look at each inmate’s file history, conduct hearing, it is mostly legal aid lawyers and Non Governmental activist who plead for the release of deserving prisoners. The judge will at the end of the proceedings order the release of large number of prisoners.⁴¹
- **PROBATION**- refers to the procedure of releasing a convicted person on suspended sentence to the community to be supervised avoiding imprisonment mostly on low risk offenders where the offender pose no threat to the public safety.⁴²

³⁶ Supra note 22 Para.1 at 15

³⁷ Prison Act CAP. P29 of the Laws of the Federal Republic of Nigeria, No. 9 Of 1972

³⁸ United Nations Body of Principles for the protection of All Persons under any Form of Detention or Imprisonment, Res. 35/177 December, 1980-available at http://www.unhcr.ch/html/menu3/b/h_comp36.htm (last accessed on 17th October, 2010)

³⁹ The Criminal Procedural Act CAP.77 of 1945, see also The Criminal Procedural (Northern States) Code CAP.81 of 1960 in the interpretation and definition of terms

⁴⁰ John W. Palmer: Constitutional Rights of Prisoners 15th ed (1997).pp143-176

⁴¹ Black’s law dictionary sixth edition

⁴² Supra note 27 Para. 2 at 16

- **REHABILITATION**- this is refers to support service or therapy to the offender in form of educational and vocational training to make offer self reliance and law abiding and prevent re-offending.⁴³
- **DIVERSION**- is refer to as a sort of suspension where an offender is remove from the formal judicial proceedings for alternative means of settlement especially in juvenile cases for treatment or care in a special centre or referral to a non judicial administrative agency.⁴⁴
- **COMMUNITY SERVICE**- aptly defined as a community base programming where a sentenced offender is supervised in the community either under the prosecuting authority or non governmental organisation as oppose to imprisonment.⁴⁵

1.5 SYNONYMS

The under listed words will be used as synonyms

Inmates, prisoners, offenders, awaiting trail, un-sentenced, convicted, unconvicted and ex offender

Prisoner, Correctional institution, Correctional institution custody and Correctional

Correctional official, personnel, warder and staff

Citizens, free-citizen and ordinary people

Department of Correctional, department correctional services DCS

1.6 THESIS STATEMENT

The problem of overcrowding in prison poses serious challenges to so many criminal justice systems and has exposed prisoners to human rights violations. The need for rehabilitation and reintegration of offender back to society calls for urgent attention to address these problems.

1.7 ISSUES

- (i) What are the problems confronting prisons in Nigeria and how has been the response of stake holders like Civil Society Organisations, Non Governmental Organisations and Churches?
- (ii) What are the reasons, consequences and conditions created by overcrowding in Nigeria?
- (iii) Are there any International Human Rights Instruments which addresses overcrowding issues? If any are there binding in Nigeria?
- (iv)(a) Is overcrowding unique to Nigeria, South Africa and America?

⁴³ Supra note 27 Para. 2 at 16

⁴⁴Supra note 33 Para.2 at 18

⁴⁵Supra note 33 Para.2 at 18

- (b) What are the root causes of overcrowding in Nigeria, South Africa and America?
- (c) Are there any policies and strategies adopted to curb the effect of overcrowding?
- (v) What are the responses of court to prisoners and overcrowding in these jurisdictions?
- (v) (a) Do Civil Society Organisations, Non Governmental Organisations and churches play any role in addressing overcrowding in prisons in South and America?
- (b) What are their challenges and the strategies to improve their work towards addressing overcrowding in prison?
- (vi) (a) What are the lessons to Nigeria?
- (b) Are there any workable recommendation to address prison overcrowding in Nigeria?

1.8 METHODOLOGY

- I shall rely on the under listed source materials for the research:
- Books,
- Periodicals,
- Analysis of relevant statutes and international instruments,
- Internet sources shall be extensively used,
- Statistical data, mainly from Nigeria shall be obtain and apply and
- Reports from Government and relevant Bodies or Agencies shall be consulted.

The availability of these source materials have been the inspiration behind the successful completion of this research work. Both National and International sources combined to heighten the debate on this paper which is on the problems of overcrowding in Nigeria: lessons from South Africa and America. The topic instigated these manifold methods used to identify causes, consequences and seek solutions to address these challenges in Nigeria, this indeed requires robust methodologies.

1.9 LIMITATION OF THE SCOPE

The research seek to explore the causes and Consequences of overcrowding drawing lessons from South Africa and America, with the eventual aim of finding a solution or series of solutions to address challenges brought to bear by prison over population in Nigeria.

Specific provisions of both Regional and International Human Rights Instruments shall be examined to find whether they are binding on Nigeria or else where.

The role played by stake holders especially Civil Society Organisations, Non Governmental Organisations and Churches together with myriads of challenges and how best to improve their work in the area under discussion shall be equally examined. The courts responses and attitudes in this regards shall be high lighted.

Chapter one shall constitute the domain to be research into and the methods use to conduct the research, revealing the relevance of the research embark upon and shall most importantly present the foundational frame on which the research is designed and constructed.

Chapter two shall focus on the exposition of the problem of prisons in Nigeria and the role played by Civil Society Organisations NGOs and Churches, The data on when and who built the prisons to show the age and state of disrepairs is reveal here

Chapter three discusses the reasons, consequences and conditions created by overcrowding in Nigeria. Statistic on capacity lock up, number of convict and awaiting trial persons in selected prisons to show the nature of overcrowding in Nigeria is reveal in this chapter.

Chapter four identify both International and Regional Human Rights Instruments with specific provisions that addresses overcrowding and indicating it legal status in Nigeria.

Chapter five answer the question as to whether overcrowding is peculiar to Nigeria, South Africa and America. This chapter also reveal the causes, strategies and policies adopted by Nigeria, South Africa and America to curb prison over population and show the courts' responses to prisoners' plight in overcrowded prisons in these jurisdictions under discussion.

Chapter six explores the role played by CSOs, NGOs and Churches on prisons overcrowding related issues and reveal challenges faced by these organisations.

Chapter seven addresses the challenges faced by these organisations; suggest strategies for improvement; Apply lesson learnt from South Africa and America to Nigeria; Made workable recommendations to address overcrowding in Nigeria and finally concludes the paper.

1.10 CONCLUSION

In light of the fact that overcrowding is a feature of many criminal justice systems, Nigeria as well many other correctional institutions are under pressure grappling with high volume of prison population. This poses serious challenges. Critical among which is the inability of penal institutions to design programme to rehabilitate and reintegrate offenders back to society as law abiding citizens. To address overcrowding in Nigeria it will be advisable to developed sentencing plan that customise offender individual needs. Consider other alternatives to incarceration like fine, probation, parole, community service and other appropriate options that will be recommended in chapter seven of this paper.

CHAPTER TWO

2.1 OVERVIEW

This chapter discusses the problems of prisons in Nigeria, focusing on the types of prisons, number of prisons and level of security inclusive of population, prison administration and staff welfare. It examines the legal frame work regulating Nigerian prisons. This chapter also focuses on the general prisons conditions, examining prisons facilities, lack of separation of various categories of inmates, mistreatment and lack of access to justice. It will also look at the problems female inmates faces in prison with particular focus on pregnant women and the role of Non Governmental Organisation hereafter referred to as ‘NGOs’ and churches in prison in Nigeria.

2.2 THE OPERATION OF THE NIGERIAN PRISONS SERVICE

The Nigerian prison service is under item 46⁴⁶ within the exclusive legislative list, by virtue of this provision; it is only the federal government that can make laws that regulates prisons. This by implication means that, states cannot legislate on matters that concerns prisons. Prisons are placed under the supervision of the Ministry of Internal Affairs now Ministry of Interior.⁴⁷ However, the prisons service is under the direct supervision of the Controller General of prisons. But the formulation of policies and management of prisons, immigration and custom services is under the Custom and Immigration Board⁴⁸. Under this structure, the prison service was decentralized and the Controller General is assisted by the five deputy Directors in charge of: Administration, Finance and Budget; Inspectorate; Welfare; Operations and Training.⁴⁹ The Deputy Directors are assisted by eleven Assistant Directors at the Headquarters located at Abuja.

The prison system is divided into six Zones manned by Controller of Prisons who are respectively responsible to the Controller General of prisons acting as coordination⁵⁰ It seems to operate a unitary system, one single chain of command. Each prison unit is under the control of

⁴⁶ Supra note 7 Para. 1 at 11

⁴⁷ Schedule 2 of the Prison Act 1972 which contain 20 sections which provides the “Institutional and functional frame work” See also the Nigeria prison Act CAP P29 (Revised ed) Laws of the Federation of Nigeria 2004

⁴⁸ Immigration and Custom Board decree Section 4 of 1986

⁴⁹ Organogram of Nigerian Prison service contains the operational departments.

⁵⁰ B.A Mato, (Controller of prisons, Kaduna State): “The Nigerian prison system, the need for performance”. (Paper Presented to the Nigerian Bar Association, (NBA) Kaduna Branch Unreported, 10 to 12 July, 1989)

officer in charge not below the rank of superintendent. There are different classes of prisons.⁵¹ This classification determined the prisoners to be intern in such a facility, condemned prisoners and persons serving life sentences would only be held in maximum security prison while persons sentenced to terms not less than 2 years are kept in convict/medium security prison. While Borstal institutions are to serve as a training institution for children⁵² District prison/Lock ups are prisons for first offenders or minor offenders. And prison farms are mechanized farm for prisoners. There is one Open prison which is not operational. Nigerian prisons consist of 232 prisons,⁵³ 9 prison farms with five poultry farms, 4 training schools, 3 Borstal institutions, one prison Staff College.⁵⁴

2.3 CONDITIONS OF NIGRIAN PRISON STAFF

The Nigerian prisons personnel have a civil service status and enjoy “security of tenure subject to good conduct”. The prison service is channel as a professional career a standard set out in the rules of the United Nation minimum Rules.⁵⁵ The working conditions of prison personnel is deplorable, uniforms are mostly procured by the warders. Communication and transport and communication equipment is inadequate, no car loan except few for senior officials cadre. Accommodation is a problem, there is no prison barracks in most prisons, warders are forced to live far off from prisons, making it difficult to be punctual to work, few accommodation provided are obsolete and dilapidated which are preserved for senior officers .

There remuneration is poor; the take home basic salary is so meagre, that the welfare of warders is compare to that of prisoners. This makes it hard to accomplish the reformation, rehabilitation and reintegration of offender. Staff mobility is very poor, promotion is solemnly given which revolves around staff with God fathers to lobby for them. A warden can remain in a particular rank for more than ten years without promotion and refresher courses thus making staff

⁵¹ Nigerian police Stations and Prisons indicators (available at http://www.nigerianlawresources.com/nigeria_police_stations_and_prisons_locator.html) last accessed on October 8, 2010) There are 145 Convict prisons; 85 Satellite Prisons; 12 Farm Centres; 9 Cottage Industries; 9 Subsidiary Farms; 124 Market Gardens; 3 Borstal Institutions(Abeokuta, Ilorin and Kaduna); 1 Open Camp; 1 Staff College (Kaduna); 4 Training Schools(Kaduna, Enugu, Lagos and Owerri) and 1 Prison Academic (Ijebu-Ode)

⁵² Borstal Institutions and Remand Centre Act No.32 of 1960 Governs this type of Prisons though under control of the controller General of Prisons.

⁵³ Summary of Prison Capacity and Inmates Population in Nigeria, Statistics Unit PHQ Abuja June 30, 2010, The statistic department in the prison head quarter gave me a hard copy which contains all prisons in Nigeria

⁵⁴ Ibid

⁵⁵ Rule 46 (3) of Minimum Standard Rules Supra note 8 Para.2 at 11

development low key. The combination of these inadequacies dampens the morale of Nigeria prison staff resulting to dereliction of duty and indiscipline.

2.4 NIGERIAN PRISONS' INFRASTRUCTURE

Majority of prisons in Nigeria were built by the “Colonial administration” and “Native authority” predating the era Nigeria gain independence in 1960.⁵⁶ The conditions of these prisons are in an “alarming state of disrepair⁵⁷ with no sense of “Maintenance culture or renovation reflective of long neglect by the Nigeria government. In fact most of the prisons constructed at this period are old fashion, in bad shape and at the brinks of collapse.⁵⁸ However, few prisons have been constructed with most substandard materials, which are a far cry from modern prisons. Examples of such new prisons include, Funtua (2003) Gusua Medium Security Prisons Kirikiri (1993), Kebbi New Prisons (1991), Oyo and Eket Prisons (2007)⁵⁹ respectively. Below are details representation of some prisons and year of construction.⁶⁰

TABLE (1): YEAR AND WHO BUILD THE PRISON

Adamawa State Prison	Year	Built by which Authority
Ganye	1960	Native Authority
Jada	1930	Native Authority
Jimeta	1938	Native Authority
Numan	1953	Native Authority
Micheka	1932	Native Authority
Yola central	1914	Native Authority
Bauchi State		
Azare	1916	Native Authority

⁵⁶ National prison Audit, The National Human Rights Commission; blues land communications Ltd, 2007-2008 pp1-213, p 21 This prisons Audit was conducted in Nigerian prisons nation wide and Published by the National Human Right Commission in Collaboration with United Nations National Development Programme “UNDP” and Nowagain organization For Reform Agency and Development “NORAD”

⁵⁷ Behind the wall, A report on prison conditions in Nigeria and the Nigerian prison System, A Civil Liberties organization Publication, Revised(ed.) August 16, 1996, PP 1-234

⁵⁸ Supra note 57 Para.2 at 27

⁵⁹ Supra note 56 Para.2 at 27

⁶⁰ Supra Note 56 Para.2 at 27

Bauchi	1820	Native Authority
Medium Security Prison Jama' are	1996	Federal Government of Nigeria
Ningi	1827	Native Authority
Misua	1831	Native Authority
Borno State		
Bama	1942	Native Authority
Biu	1912	N.A
Gwoza	1946	N.A
Maidugari Farm	1976	Federal Government of Nigeria
Maidugari New	1952	N.A
Maidugari	1992	Federal Government Of Nigeria
Gombe State		
Bajoga	2000	Government of Nigeria
Gombe	1919	N.A
Tula	1932	N.A
Taraba State		
Gembu	1946	N.A
Jalingo	1912	N.A
Serti	1961	FGN
Wukari	1992	FGN

Yobe State		
Nashua	1925	N.A
Nguru	Nil	
Postiskum	1988	FGN
Jigawa State		
Kazaure	1908	Colonial Government
Prison Farm, Benin Gudu	1976	FGN
Kaduna State		
Makarfi	1918	Colonial Government
Kujama Prison Farm central	1976	FGN
Binin Gwari	1958	Colonial Government
Kaduna Prison	2002	FGN
Bostal Training institute Kaduna	1962	FGN
Zaria Prison Kaduna	1903	Colonial Government
Ikara	1979	FGN
Convict Prison Kaduna	1915	Colonial Government
Kafanchan	1933	Colonial Government
Katsina State		
Katsina State		
Katsina Prison	1918	Colonial Government
Funtua	2003	FGN
Kebbi State		
Zuru prison	1927	Colonial Government

Brinin Kebbi old	1912	Colonial Government
Medium security Kebbi New	1991	FGN
Argungu	1988	FGN
Yelwa Yauri	1960	FGN
Sokoto State		
Sokoto Central	1908	Native Authority
Bislam Farm	-	
Sokoto Zamfara State		-
Gusau	1993	FGN
Kano State		
Kano Central	1910	Colonial Authority
Wudil Divisional Prison	1976	FG
Goron Dutse Prison	1935	Colonial Government
North Central		
Niger State		
Agai	1932	NA
Bida	1887	NA
Kagara	1887	NA
Lapai Prison	1952	NA
New Bussa	1968	FGN
Nasarawa State		
Keffi Prison	1930	NA
Lafia Prison	1977	NA

Nasarawa Prison	1912	NA
Wamba Prison	1919	NA
Kwara State		
Ilorin State	1914	FGN
Lafiagi Prison Farm	1966	FGN
Kogi State		
Ankpa Prison	1915	NA
Dekina Prison	1916	NA
Idah Prison	1901	NA
Kabba Prison	1945	NA
Icoton- Karfe	1933	NA
Medium Security Okene	2007	NA
Plateau State		
Lantang Prison	1979	FGN
Hakushi Farm	1976	FGN
Jos Prison	1936	FGN
Shendam Prison	1933	FGN
Wase Prison	1933	FGN
Benue State		
Gboko Prison	1932	NA
Makurdi	2001	FGN
Otukpo	1929	NA
FCT Abuja		

Kuje	1944	Colonial Government
Suleja	1989	FGN
South East		
Abia State		
Umuahia	1913	Colonial Government
Aba Prison Iboyin State	1911	Colonial Government
Abakaliki	1946	Colonial Government
Afikpo	1911	Colonial Government
Enugu State		
Enugu Prison	1924	Colonial Government
Orji River	1992	FGN
Imo River		
Owerri	1920	Colonial Government
Okigwe	1913	Colonial State
Anambra State		
Onitsha	1915	Colonial Government
Awka	1904	Colonial Government
Orreh Farm	1992	FGN
Arochuku	1901	Colonial Government
Ibite-olo	1976	FGN
South-West		
Kirikiri Female	1963	FGN

Kirikiri Medium	1954	FGN
Ikoyi Prison	1961	NA
Badagry	1838	NA
Shagamu	1938	NA
Ilaro	1938	Colonial Government
Ado Ekiti	1929	Colonial Administration
Owo	1910	Colonial Government
Okitipupa	1935	NA
Agodi	1895	Colonial Government
Oyo	2007	FGN
Ilesha	1920	Colonial Government
Ondo State		
Ondo prison	1910	Colonial Government
Ile Ife	Rebuilt 2001	FGN
Abeokota Borstal Institute	1984	FGN
Abeokuta Ijebu-Ode	1925	Colonial Administration
South, South		
Akwa Ibom State		
Abak	1926	Colonial Government
Eket	1902	Colonial Government
Ikot Ekpene	1955	Colonial Government
Uyo	1956	Colonial Government

Cross River		
Ikom	1926	Colonial Government
Obubra	1928	Colonial Government
Ogoja	1928	Colonial Government
Obudu	1941	Colonial Government
Calabar	1918	Colonial Government
DEALTA STATE		
Agbor	1909	Colonial Government
Kwale	1920	Colonial Government
Ogwashiuku	2007	FGN
Sapale	1909	Colonial Government
Warri	1880	Colonial Government
EDO STATE		
Auchi	1922	Colonial Government
Benin City	1908	Colonial Government
Oko Medium	1988	FGN
Ogba	1945	Colonial Government
Ozalla	1976	FGN
Ubiaja	1920	Colonial Government
RIVER STATE		
Ahoadu	1910	Colonial Government
Elele	1976	FGN
Port Harcourt	1918	Colonial Government

2.4.2 TABLE (1) ANALYSIS

As can be glean from the above table, out of 27 prisons in the North East, seven were built by the Federal Government of Nigeria while 20 were built by the Native Authority and Colonial Administration showing how unsophisticated the facilities could be in the majority of prisons built by the Colonial Government and Native Authority. More so, the one built by the federal government were poorly done with sub-standard infrastructure. In the North central, out of the 25 prison in the table, majorities were built before 1960, 18 out of which were constructed by Colonial Administration with obsolete facilities. Even in North West built by the federal government in Makurdi and Okene are not with modest infrastructure. Looking at prisons in the North West Zone, 10 were built in the early 1900 with similar features. While in the south East, only three prisons were built from 1970 to 1990, the rest were built in the 20th century with outdated and dilapidated structures which have not been renovation up till date. While in the south west zone, out of the 19 prisons 12 were built before independence, only 7 were built thereafter. Prisons infrastructures are old and in bad shape reflective of the neglect and lack of concern by the federal government.⁶¹ In the South, South Zone, the scenario is the same, Warri zone is historic and indicative of the prison that was used as slave camp but converted. All except Elele farm centre and Oko medium were built by the Native Authority or the Colonial Administration, built with low profile material, now in a state of disrepair⁶².

2.4.3 SITUATIONS IN NIGERIA PRISON

This simply represented in this quote “A long stretch of misery and deprivation which sometimes sparks a flame of silent, it usually subdued, rage in the breast of the prisoner, but more often only efficiently and systematically grinds away his spirit and body until he is a human wretch spiritually and physically broken”⁶³

This quotation is typical of life situation in Nigeria prisons for both convicts and awaiting trial prisons, inmates are looked as a “thing beyond the fringe of humanity and subjected to all sort of

⁶¹ My participation in the Nation wide Prisons Inspection Conducted by Constitutional Rights Project in Collaboration with National Human Rights Commission 2nd- 5th December, 2008 gave me a balanced and unbiased analysis of this table.

⁶² Supra note 56 Para.2 at 27

⁶³ Supra note 57 Para.2 at 27

indignities''. This reflects the mind set the community holds of its prison, which is consider a place for punishment open to all kinds of violation of human rights.⁶⁴

Prisoner's rights to correspondence in Nigeria are unknown. There is a bricks wall between the prison and the outside world. There is no free flow of in coming and out going mails. Prisoners rights to privacy is fragrantly violated, prison officers censor communications and read all mails, listens to phone calls and conversations even between the prisoners and his counsel. The justification for this is to check inmates against weapons considered to be injurious to the security of prison. This is an affront to freedom of expression, association, contact to the outside world set out by rule 37⁶⁵ prison officer's demand for mobilization, bribe to allow visitors and often times, the visitors wait in vain and leave without seeing the inmates in frustration.⁶⁶

The Nigeria prison houses inmates without consideration as to their status, segregation of inmates according to sex; age; nature or degree of criminality; convicts; untried; condemned; lifers and habitual offenders (recidivism).⁶⁷ Thus separation of inmates is a mere policy which is not observed, juveniles are housed with hardened adult offenders with no facilities suitable to their treatment. Borstal Training Institutes are few in the country and remote from the location where the Juvenile is found. Juveniles are consequently confined with, adult. Example Ikoyi prison has 8, Onitsha prison 21; Oko prison 8 as of 2007 when the audit was conducted without any facilities to cater for their warfare.⁶⁸ Prison cells are poorly ventilated; lighting is a serious problem without stand -by generators, inmates are constrained to contribute to buy kerosene for latten; with few beds and beddings, double bunks are provided without mattresses. Mats are mostly used especially in awaiting trial cells where beds are not provided at all. There exist solitary cells at all prisons designed for disciplinary confinement. Inmates sent to this cells are chained, hand cuffed and subjected to all kinds of degrading treatment.⁶⁹

⁶⁴ Supra note 56 Para.2 at 27

⁶⁵ Supra note 8 Para.2 at 11 Rule 37 States "Prisoners shall be allowed to communicate with their family and all prison or representatives of organizations and to receive visitors from these persons at regular intervals subject only to such restrictions and supervision as are necessary in the interest of their treatment and the security and good order of the institution."

⁶⁶ Supra note 56 Para.2 at 27

⁶⁷ Supra note 56 Para.2 at 27

⁶⁸ Supra note 56 Para.2 at 27

⁶⁹ Supra note 56 Para.2 at 27

However, the prison authorities make justification for misclassification of inmates for lack of accommodation. In any event, such reason has no legal basis for the inhuman treatment of inmates. But there is no Nigeria Judicial authority on this point. United Nations minimum standard rules and good practices from other countries even though of persuasive authority suffices, on this issue, the United State case⁷⁰ is apt to buttress this point where the prison officials were held liable for negligence for failure to prevent tort from an inmate with traces of violence on other inmates. Nigerian courts should learn a lesson from this pronouncement.

The account of prisons' sanitation in Nigeria revealed a deplorable state of affairs. Its' discloses a "grime picture of poor personal and environmental hygiene."⁷¹ Most prisons in Nigeria make use of well water; some tankers supply water; few prisons have bore holes with tap. There is hardly enough water to drink and wash. Contrary to rule 14⁷² most cells have no bath rooms and pit toilets are provided, toiletries and disinfectants are not supplied, prisons where cistern toilets are provided were all broken down and blocked. Most cells like Abak, Eket, Ozaila, Ubiaja and Kwali have pit latrines⁷³ while some cells have no bath rooms and toilet, some cells are provided with bucket to defecate and discharge into a suck away out side the cells, without any disinfectants. Where flush toilets are provided, there are dysfunctional and broken down, cells are dirty and stinking.⁷⁴

The health condition of inmates in prison is precarious, some prison like Kagara, Biu, Gwoza, Bajoga, Makafi, Ikara, Zuru, Eket, Ogoja and Serti prisons have no health facilities of any sort. While some have no health personnel to attend to sick inmates, in prison example, Lafiagi, Idah, Bama, Gwoza, Makarfi, Zaria and Ikara.⁷⁵ In some prison, clinic and health centre are provided

⁷⁰ Cohen V. United State 252 F. Supp. 679 (NDGA. 1966) where a prisoner in Georgia Federal Penalty institutions who brought a claim against prison officials under the United State Federal tort Act for a physical assault by another prisoner, the court found the prison officials negligent for failure not to prevent the assault by a proper segregate in a case of an inmate with a history of vicious assaults on Inmates. See also Rule 9 of the United Nations Minimum, Rules

⁷¹ Supra note 56 Para.2 at 27

⁷² Supra note 8 Para.2 at 11 The Rule states that prisoners shall be required to keep their person clean and to this end they shall be provided with water and such toilet facilities as are necessary for health and cleanliness" See also Rule 31 of the Nigeria prison Act 1972 revised 2004

⁷³ Supra note 56 Para.2 at 27

⁷⁴ Supra note 56 Para.2 at 27

⁷⁵ Supra note 56 Para.2 at 27

without essential drugs. Some prisons houses both civil and criminal lunatics⁷⁶ The prison audit also revealed that other terminal diseases like HIV/AIDS, Tuberculosis, Cancer and Chronic Asthma are prevalent in prisons without proper treatments, and drugs. And the process of referral to general or specialist hospital has to be initiated by a relation which is a very slow procedure.⁷⁷ Inmates in Nigerian prisons are poorly fed without the basic nutrition of a balance diet.⁷⁸ This situation remained the same even after the increased in feeding allowance.⁷⁹

2.4.4 THE PLIGHT OF PREGNANT WOMEN IN PRISON

The situation of pregnant and nursing mothers in prison is appalling. The prison Audit 2007-2008 revealed that, pregnant and nursing mothers were in prisons and the following numbers of pregnant women were found in the following prisons: kerikeri 1, Okilipupa 1, Ilesha 3, Ondo 2, and Abeokuta 1.⁸⁰ The plight of these women is the lack of Antenatal and post natal facilities to attend to pregnant and nursing mothers and they are incarcerated together with the other inmates. The official justification is that, there are few such cases which can be attended to by regular doctors, which is not always the case in situation of extreme urgency.

Unfortunately our courts in Nigeria have demonstrated lack of willingness to consider the plight of inmates in prisons. The case of Johnson Adeyemi and 5 others vs. Inspector General of police⁸¹ Applicants contented that they were poorly fed; live on unhealthy conditions; insufficient sleeping space and sanitary facilities” to which their health was badly affected. The court merely released them without deciding on these issues. The courts in Nigeria have consistently found that, issues of such nature are not Justifiable.⁸² However, the American courts seem to be more concern about the rights of prisoners as was illustrated in the case of Wright V. MC Cann.⁸³ The complainants inter alia were left nude, subjected to sleep on bare floor with no

⁷⁶ Ikoyi 18 Inmates, Maidugari 16, Potiskum 14 Inmates, Owerri 10 Inmates, Warri 14 Inmates, Port Harcourt 2, Ikot Abasi 2, Ikot Ekpene 2, Kerikeri medium 9 Inmates, Enugu prison 87 Inmates, Abakiliki prison 15 and Akwa 5 Inmates are both civil and criminal lunatics imprisoned.

⁷⁷ Supra note 56 Para.2 at 27

⁷⁸ Supra note 56 Para.2 at 27

⁷⁹ The Federal Government under president Alhaji Umaru Musa Yare-Adua in 2007 increased feeding allowance for inmates from N150 to N200 per day

⁸⁰ Supra note 56 Para.2 at 27

⁸¹ Unreported Suit No 2m/643/88 of June 1 1990

⁸² Israel Odutayo & 4 others V. President of the Federal Republic of Nigeria unreported suit No: M/85/90 of October 23, 1990.

⁸³ 387 F. 2d.519 (Cir. 1967) at 526

space without toilet tissues. The court held that. “We are of the view that civilized standards of humane decency simply do not permit a man, for a substantial period of time, to be denuded and exposed to the bitter cold And to be deprived of the basic elements of hygiene such as soap and toilet paper”⁸⁴

2.4.5 LACK OF ACCESS TO COURT.

It is uncommon among the inmates incarcerated in Nigeria prisons to have easy access to court and legal representation. Access to family is a problem, communication and contact to family members is hampered by the obscured prison system. Family members could be of assistance in arranging for a lawyer if there are no obstacles. Most inmates are indigent and could not afford the services of private legal practitioners. The Nigerian Legal Aid Council has few lawyers to meet up the high population of inmates especially the awaiting trial persons.⁸⁵ The factors that marred inmates access to court are enormous which includes the following: The police prosecuting officers who are to investigate⁸⁶ before arrest and arraign before the court with the prima facie evidence, witnesses and exhibit ready for prosecution, apparently failed in their duty. Rather arrest before investigation, often at times, have no evidence and witnesses while the suspect is already been remanded with the help of a holding charge.⁸⁷ The investigating police officer goes out fishing for evidence and witnesses where none existed and the suspect continued to languish in detention indefinitely. The problem is aggravated when the matter comes up in court without the prosecuting police officer who is on transfer or is no longer in the service of the police force. Worse situation exist where case files are said to be missing. The ministry of justice has not help matter delay in giving legal advice on the propriety and otherwise of proffering a criminal charges. The court system has its own fault, long adjournment of cases, lack of tracking of cases coming before it thus accumulated back log of cases, most time oblige lawyers’ flimsy excuses for an adjournment.⁸⁸ Another important factor which has been the root cause of overcrowding is the state enforcement agencies.⁸⁹ Prison is a federal concern and state does not

⁸⁴ Ibid

⁸⁵ Legal Aid Council Act No. 56 of 1976 Revised (ed) Laws of the Federation of Nigeria 1990

⁸⁶ Section 23 Police Act Cap P19 Laws of Federation Nigeria 2003

⁸⁷ Section 236 (3) Criminal Procedure Law, Cap. 32 Laws of Lagos State 1994

⁸⁸ Supra note 56 Para.2 at 27

⁸⁹ The Lagos State Traffic Management Authority hereafter referred to as “LASMA” established in Lagos to ease Traffic Congestion and kick Against Indiscipline hereafter referred to as “KAI” established to regulate public conduct and other environmental offences. Other states apart from Lagos states have their own agencies in this respect. Other enactment empowers law enforcement officers to arrest and institute criminal proceedings on

legislate or contribute anything to the welfare of inmates but feed into the prisons by it arrest and remand orders by magistrate court swelling the prison population.

However an elegant provision for access to justice to prisoners both standing and awaiting trial is an essential component of a virile criminal system. A failure of which manifests the bulk number of awaiting trial inmates in the Nigeria prisons, some of which have stayed in custody for 5 years without trial. The combination of these factors is the consequence of the present congestion which will be discuss in great detail in the next chapter.

2.4.6 LEGAL FRAME WORK OF NIGERIA PRISON

The prison system as it is today is a reflection of the legacy of colonial Prison administration. The history and legal frame work of prison in Nigeria dates back from colonial era. The first prison legislation was the prisons ordinances⁹⁰ this was the main law regulating colonial; prisons until 1914. In 1900 there was a proclamation of native courts. Authority which witnessed the development of Native Authority prisons majorly in northern Nigeria which was extended to the other parts of Nigeria in 1906.⁹¹ In 1916, prison ordinance was enacted with the mandate to establish and regulate prisons, in the same year, Native Authority ordinance was empowered to “establish and maintain their own prisons; this constitutes the principal enactments regulating prisons until independence in 1960. This dual system⁹² continued until the unification of the two systems in 1966, following “Gobir Report on prisons” when the military government took over the management of prisons.⁹³

Subsequently, in 1968, a conference on “the Nigerian prisons system was held by the inspiration of the Federal Attorney General and commissioner for Justice.⁹⁴ This conference stimulated major developments leading to the publication of a white paper⁹⁵. This led to the promulgation of

offences created by law example Customs and immigration can institute proceedings with prisons at the receiving ends

⁹⁰ Enacted in 1876, four Years after 1872 of the establishment of Broad Street prison which Usher in the First Modern Prison System in Colonial Nigeria

⁹¹ Ibid

⁹² Colonial Prison Ordinance of 1916 and the Native Authority Ordinance 1906

⁹³ The prisons Control Act, No 9 of 1966 This state is reflective of the unification of the dual System

⁹⁴ Professor Taslim Olawale Elias the former Dean of the University of Lagos became the first Federal Attorney General and commissioner for justice.

⁹⁵ A Statement of Federal local Government’s policy on the Re-organization of the Prison and the Integration of Federal local Government, and Native Administration of Prisons 1971

another prison Act, ⁹⁶ which revises and replaces the prison Act of 1960 for purposes of implementing the proposals set out on the white paper of 1971. It is note worthy to stress that, the 1972 Act is the principal law governing the prison system in Nigeria every other subsequent Amendments are mere recitals.⁹⁷

Following from the preceding enactments, the prison Act is not the only “principal statutory instrument” regulating the prison system in Nigeria, applicable too, are the prison regulations and standing orders.⁹⁸ The essence of the regulations and standing orders as set forth in section 15 of the Act ⁹⁹ was to organise and make appointment to office in the Nigeria prison service subject of course to the recommendation of the public service commission¹⁰⁰It is perhaps unfortunate that, these Regulations and standing orders remains in enforce till today by virtue of section 18 of the prison Act which stipulates that: “subsidiary legislation made or deemed to have been made under the prison Act 1960, if it was enforce with necessary modification, and may be amended or revoked as if it had been made under this Act.”¹⁰¹ Fundamentally, the Nigeria prison system derive its status and legality form the constitution,¹⁰² sections 34 and 35 protect personal liberty, dignity of human person and freedom from degrading treatment. Thus the legal frame works of the Nigerian prison rest on the constitution.¹⁰³

2.4.7 THE ROLE OF NON GOVERNMENTAL ORGANISATIONS AND CHURCHES IN PRISONS

Both NGOs and churches actively work inside and outside the prison to compliment the Nigeria Prison service which has the oversight function of keeping in safe custody, rehabilitate, and reintegrate offenders back to the society. NGOs engage on programmes depending on their mission statement.¹⁰⁴ They embark on educational and vocational training and render other

⁹⁶ The Prison Act No. 9 of April 10, 1972

⁹⁷ There have been no major changes, what ever is done is just reprint and publications without any fundamental reform

⁹⁸ The Prisons Regulation 1955, the Prison Standing Orders 1960. The Governor General and the Director of prisons were empowered to make regulations and standing orders under sections 7 and 8 of the 1916 prisons ordinance see supra note 87. The first were Made in 1917 and revisited and published as legal notice No. 17 of 1955.

⁹⁹ Supra note 92 Para.1 at 40

¹⁰⁰ Supra note 92 Para.1 at 40

¹⁰¹ Supra note 92 Para.1 at 40

¹⁰² Supra note 7 Para.1 at 11

¹⁰³ Supra note 7 Para.1 at 11

¹⁰⁴ Bonny Ibhawoh, Human Rights Organisations in Nigeria: “An Appraisal Report on the Human Rights NGOs Community in Nigeria,” CJ Grafik, Denmark, ISBN 87-90744-34-9, 2001, pp 1-103 p 55, he argued that NGOs work on different area such as advocacy, litigation, research base and lobbying and campaign for reforms in the criminal justice system to which prisons form a part

support services like aftercare to prisoners and ex-prisoners this is to rehabilitate and re-socialise offender and prevent recidivism.¹⁰⁵ Some NGOs take up specialise roles in prison such as protecting prisoners rights, juveniles, women and health issues and some do so to decongest prison overcrowding and conditions of detention.¹⁰⁶ Churches on the other hand provide both physical and spiritual wellbeing for prisoners through individual and group counselling for reformation, change of attitude and behaviour.¹⁰⁷ Some churches provide food, clothing, reading materials and condom to prevent transmission of HIV/AIDS and other transmittable diseases. There are pastoral and catholic ministries in prisons, preaching to recover lost souls. Prison Fellowship of Nigeria has designed “onesimus project” which is to give hope, self esteem and recover life for prisoners and ex-prisoners. Though it has not taken off, it is hope to provide life skills and job placement for effective transition back to main stream society.

2.5 CONCLUSION

The Nigeria prison service is one department of the criminal justice sector that has suffers from century neglect. Most prisons facilities were built by colonial administration and native authority before independent in 1960 with dilapidated infrastructure. Those constructed by federal government were built with inferior materials in the same state of disrepairs without renovation. Prison inmates are confined in the most appalling and inhumane conditions with out neither access to justice nor special provision to vulnerable groups like juveniles and pregnant women. The prison staffs are badly affected by this neglect with out job motivation, promotion and refresher courses. The 1945 prison ordinance and its accompanying regulations have not since been reform. The role of NGOs and churches in prisons is yet to attract attention on job creation and placement for ex offenders and little has been done on restorative justice and community service programme as we shall see in chapter six. It is recommended that the prisons should be renovated to give humane treatment to inmates, prison personnel be adequately motivated and

¹⁰⁵ Usiwoma Evawoma Enuke, “Humanizing the Nigeria Prison, ‘Through Literacy Education ECHO from Afar, Journal of Correctional Vol. 52, 1 March, 2001, pp18-22 p22 Education, providing education and life skills is to enable offender live a fulfilling life and contribute to the society instead of going back to criminal activities

¹⁰⁶ Prisoners Rights and Welfare Action “PRAWA” work to rehabilitate and provide after care services, Society for the Welfare of Women Prisoners “SWEWP” work specifically for women prisoners, Constitutional Rights Project “CRP” work to decongest prison population through litigation and criminal law reforms , Human Right Law Service “HURILAWS” equally work to decongest prisons and instigate criminal reforms, Civil Liberty Organisation “CLO”

¹⁰⁷ Tenibiaje Dele Joseph, “Counselling for Productivity Employment of Prisons Inmates, ‘European Journal of Educational Studies, 2(3), 2010, pp 1946-6331 counselling is considered as a tool to empower prison inmates to change their thinking before offending to a life of fulfilment, which reduces crime and prevent re- offending.

regularly expose to on the job training and the prison Act be reform to meet minimum standards. And the Nigerian NGOs and churches should learn their lesson from their counterpart not to provide temporary measures but proactive toward treatment of offender and community service programmes and reforms.

CHAPTER THREE

3.1 OVERVIEW

This chapter discusses over crowding in Nigeria prisons. It examines the reasons for overcrowding in Nigeria. It also focuses on the conditions created by overcrowding on prisoners, community and on the prison institution. In this chapter reasons are treated as causes while conditions are examined with consequences of overcrowding

3.2 OVERCROWDING IN NIGERIA

Overcrowding in Nigeria prisons occurs where the numbers of prisoners exceeds prison capacity to an extent inmates cannot be housed in a “humane, healthy and psychological manner”¹⁰⁸. In Nigeria overcrowding is generally called congestion. It constitutes a serious challenge in Nigeria prisons especially in prison located in the metropolitan cities. In such prisons cells in Nigeria, facilities hold as many as twice or thrice their capacity. In such cells there is hardly enough room for prison inmates to move body and limbs freely. In such state each prisoner is allocated a “post” which approximately is a space of a foot and a half¹⁰⁹. Overcrowding in Nigeria according to Nigerian prisons service statistic as at 30th June, 2010¹¹⁰ and prisons audit is a phenomenon in prisons in urban centres. Below are tables showing trend of congestion on selected prisons, the same prisons were audited by the National Human Rights Commission in collaboration with the United Nations Development Project and Norwegian Agency for Development Corporation.¹¹¹

¹⁰⁸ Supra 22 Para.1 at 15 the legal implication of overcrowding was aptly captured by The Report of the African Commission on Human and People’s Rights, Special Repporteur on Prisons and condition of detentions in Africa, 2004 Curt Taylor Griffiths, Ph.D. Danielle J. Murdoch, M. Phil, Strategies and Best Practices Against Overcrowding in Correctional Institutions Op Cit note 22, In its report in South Africa, the Repporteur says that overcrowding “is by itself a human right violation...” In extreme cases overcrowding exacts a condition which has been “found to constitute ill treatment of prisoners within the provision of the Convention against Torture.”

¹⁰⁹ Supra note 56 Para.2 at 27

¹¹⁰ Nigerian Prisons Service, Prisons Capacity and Inmates Population as of 30th June,2010 Data obtained from statistics department, Prison Head Quarters, Abuja

¹¹¹ Supra note 56 Para.2 at 27

TABLE (2): CAPACITY, LOCKUP NUMBER OF AWAITING TRIAL PERSONS AND CONVICTS IN NORTH EAST ZONE

Prison	Capacity	Lock up	Convict	Awaiting Trail
Adamawa State				
1. Ganye	200	180	83	25
2. Jada	100	104	89	15
3. Jimeta	300	412	113	299
4. Numan	400	174	139	35
5. Michika	100	87	40	47
6. Yola Central	500	324	149	174
Bauchi State				
7. Azare	152	84	61	23
8. Bauchi	500	741	111	630
9. Jama`are	320	68	56	12
10. Ningi	110	68	56	12
11. Misau	120	44	39	43
Borno State				
12. Bama	320	67	62	5
13. Kukawa Satellite	72	31	2	29
14. Biu	130	102	80	22
15. Gamboru-Ngala	76	31	18	13
16. Gwoza	680	379	222	157
17. Maiduguri Farm	120	114	114	Nil

18. Maiduguri New	680	-	-	-
19. Maiduguri Maximum	1,600	732	273	459
20. Kakawa	100	45	18	27
21. Mongono	36	32	16	16
22. Kumshe	50	38	24	14
23. Konduga	30	26	26	Nil
Taraba State				
24. Gembu	200	128	64	64
25. Jalingo	250	408	139	269
26. Serti	150	79	63	16
27. Wukari	320	179	110	69
Yobe State				
28. Gashua	104	123	109	14
29. Nguru	94	45	45	45
30. Potiskum	832	285	130	155
TOTAL	8646	5130	2321	2691

3.3.2: ANALYSIS OF TABLE (3) CAPACITY, LOCKUP, ATPs AND CONVICTS IN NORTH WEST ZONE.

There seems to be no noticeable congestion in this zone except Jalingo but what is glaring is that convicts outnumbered the awaiting trial inmates. It is only in few prisons like Yola Bauchi, Jimeta, Maiduguri maximum, Jalingo, Guluk and Potiskum that have higher awaiting trial inmates than convicts. This zone was operating below capacity as of 30th June, 2010

TABLE (3): CAPACITY, LUCKUPS, CONVICTS AND ATPS PUPOLATION

Prison	Capacity	Lock up	Convict	Awaiting Trial
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Jigawa State				
1. Kazaure Farm	150	60	44	16
2. Birnin Kudu	300	114	114	Nil
3. Kaduna State	100	57	27	30
4. Makarfi	350	155	152	3
5. Kujama Prison Farm	100	83	59	24
6. Birnin Gwari	208	482	Nil	Nil
Kaduna State				
7. Borstal Training Institute	378	218	122	96
8. Zaria	20	54	17	37
9. Kafanchan	548	867	331	534
10. Katsina State	110	153	123	30
11. Katsina	238	733	166	567
12. Funtua	160	254	64	190
Kebbi State				
1. Zuru	320	112	78	34
2. Old Kebbi	100	128	75	53
3. Medium Security Kebbi	250	226	226	440
4. Argungu	832	568	128	441
5. Yelwa Yuri	690	1,249	309	912
Sokoto State				

6. Sokoto Central	160	129	104	25
7. Gusau	600	698	284	414
Kano State				
8. Kano Central	690	1,218	309	940
9. Wudil	160	129	105	122
10. Goron Dutse	600	698	284	414
Total	6964	8360	2844	5321

3.3.3: TABLE (3) ANALYSIS CAPACITY, LOCKUP, NUMBER OF ATPS AND CONVICTS IN NORTH CENTRAL ZONE

In the North west zone out of the 22 prisons selected 12 as of 30th June, 2010 were operating under capacity while 8 prisons located at the urban cities were congested operating almost twice their capacities example Kaduna Borstal training institute with a capacity of 280 holds a population of 482 juveniles while Kaduna maximum, Kano, Goron Dutse, Gausau, Yelwa Yuri, Kastina, Funtua and Kafanchan were apparently congested. These same prisons housed more ATPs than convicts' exception of Yelwa Yuri. Out of those not congested only Kano central has more ATPs, the rest have more convicted persons. While the sum total reveal there were more ATPS 6964 against convicts with a population of 8360, while the prison capacity in the overall was overcapacity with lockup of 2844 above capacity of 6494.

TABLE (4): CAPACITY, LOCKUP, NUMBER OF ATPs AND CONVICTS IN NORTH CENTRAL ZONE

PRISON	CAPACITY	LOCK UP	CONVICTS	
Niger State				
1. Agaie	60	13	12	1
2. Bida	200	69	49	20
3. Kagara	50	55	45	10
4. Lapai	63	64	63	1

5. New Bussa	288	68	42	26
Nasarawa State				
6. Keffi	130	280	99	181
7. Lafia	300	316	63	251
8. Nasarawa	104	31	25	6
9. Wamba	68	47	40	7
Kwara State				
10. Ilorin	122	298	70	228
11. Lafiagi Farm	34	45	44	1
Kogi State				
12. Ankpa	30	27	14	13
13. Dekina	34	23	16	18
14. Idah	102	23	17	6
15. Kabba	200	68	38	30
16. Koton karfe	50	131	17	114
17. Medium security Okene	114	102	48	54
18. Lakushi Farm	150	52	52	-
19. Lantang	150	34	24	10
20. Jos	1,150	771	216	555
21. Shendam	130	51	30	21
22. Wase	100	21	20	1
23. Panshin	162	55	22	32

Benue State				
24. Gboko	810	220	118	102
25. Makurdi	280	481	96	385
26. Otukpo	118	85	28	57
FCT Abuja				
27. Kuje	320	669	136	533
28. Suleja	250	358	187	171
Total	5569	4457	1591	2817

3.3.4 ANALYSIS OF TABLE (4) CAPACITY, LOCKUP, NUMBER OF ATPs AND CONVICTS IN NORTH CENTRAL ZONE

In this zone, only five prisons: Ilorin, Keffi, Makurdi, Kuje and Suleja were congested reflecting the trend of city prisons overcrowding while those in the suburbs are not. Kuje, Suleja, Jos, Ilorin, Okene, Katon Karfe, Kabba and Jos have higher number of ATPs more than convicted persons. The zone was generally operating below capacity; it has the capacity of 5569 but housed 4457 inmates. The number of ATPs as of 30th June, 2010 was 1591 far above the convicts of 2817.

TABLE (5): CAPACITY, LOCCKUP, NUMBER OF ATPS AND CONVICTS SOUTH EAST ZONE

PRISON	CAPACITY	LOCK UP	CONVICTS	AWAITING TRAIL
Abia State				
1. Aba	500	483	114	369
2. Umuahia	400	780	46	734
Ebonyi State				
3. Abakaliki	388	938	92	846
4. Afikpo	200	104	23	81

Enugu State				
5. Enugu	638	1,042	169	1,045
6. Oji River	320	146	20	126
Imo State				
7. Owerri	548	1,580	143	1,433
8. Okigwe	540	264	47	217
Anambra State				
9. Onitsha	326	898	43	855
10. Akwa	238	497	27	470
11. Orreh Farm	100	48	48	Nil
12. Arochukwu	180	51	22	28
13. Ibite-olo	250	55	55	Nil
TOTAL	4628	6886	849	620

3.3.4 ANALYSIS ON TABLE (5) CAPACITY, LOCKUP, NUMBER OF ATPS AND CONVICTS IN SOUTH EAST ZONE

Overcrowding in this zone is in seven out of 13 prisons all located in the cities such as Owerri, Umuhia, Enugu, Akwa, Onitsha, Abakiliki, and Aba prisons. In all these prisons, ATPs far out numbered those convicted in nine prisons and housed inmates over capacity. The total sum shows that the zone has the capacity of 4628 but house 2886 above twice its capacity while at of 30th June, 2010 the number of convicts was 849 above ATPs with a population of 620 inmates.

TABLE (6): CAPACITY, LOCKUP, POPULATION OF ATPS AND CONVICTS IN SOUTH WEST ZONE

PRISON	CAPACITY	LOCK UP	CONVICTS	AWAITING TRAIL
Lagos State				
1. Kirikiri female	106	170	34	136

2. Kirikir medium	704	1,680	172	1,508
3. Kerikiri maximum	1056	880	255	625
4. Badagry	130	310	111	215
5. Ikoyi	800	1,745	111	1,634
Ekiti State				
6. Shagamu	48	174	7	167
7. Illaro	126	222	27	195
8. Ado Ekiti	200	309	54	255
Ondo State				
9. Akure medium	320	541	49	492
10. Owo	180	80	43	37
11. Okitipupa	66	76	39	37
12. Agodi	394	646	69	577
13. Ondo	80	72	22	50
Oyo State				
14. Ilesha	586	381	77	304
15. Ile-Ife	320	147	26	121
Ogun State				
16. Abeokuta	502	830	249	578
17. Ijebu-ode	49	298	28	270
TOTAL	5670	8831	1372	7201

3.3.6: ANALYSIS ON TABLE (6) CAPACITY, LUCKUP, POPULATION OF ATPS AND CONVICTS IN SOUTH WEST ZONE

Out of the 19 prisons in the zone, 8 prisons in the suburb are operating under capacity while 11 prisons in the major towns Akure medium, Ikoyi, Agodi, kirikiri female, Badagary, Ado Ekiti, Shagamu, Ejebu-Ode and Abeokuta were congested with higher ATPS and five other prisons not overcrowded holds more awaiting trial persons than convicted persons. On a general summation, the zone with a capacity of 5670 was housing 8831 inmates well over its capacity. On 30th of June, 2010, the number of convict was 1372 which was below the number of ATPs with a population of 7201.

TABLE (7): CAPACITY, LOCKUP, POPULATION OF ATPs AND CONVICTS IN SOUTH-SOUTH ZONE

PRISON	CAPACITY	LOCK UP	CONVICTS	AWAITING TRAIL
Akwa Ibom State				
1. Abak	200	134	30	104
2. Eket	124	173	40	133
3. Ikot Abasi	400	132	43	89
4. Ikot Ekpene	614	466	137	333
Cross River				
5. Obudu	50	24	13	11
6. Ogoja	400	42	14	38
7. Ikom	200	57	15	57
8. Obubra	128	79	29	50
9. Calabar	250	611	86	525
Delta State				
10. Agbor	179	185	12	173
11. Kwale	262	184	33	141

12. Ogwashi-Uke	64	319	46	273
13. Sapele	294	263	27	263
14. Warri	307	556	156	400
Edo State				
15. Auchi	200	185	36	148
16. Benin city	1,216	879	83	796
17. Oko	307	523	122	401
18. Ogba Prison farm	106	53	53	Nil
19. Ozalla farm	200	150	50	Nil
20. Ubiaja	240	141	31	110
River State				
21. Ahoada	150	347	74	273
22. Elele farm	200	70	70	Nil
23. Port Harcourt	804	2,927	284	2,636
TOTAL	6645	7941	6897	6897
Ground Total	<u>33122</u>	<u>41603</u>	<u>15874</u>	<u>25547</u>

3.3.6: ANALYSIS ON TABLE (7) CAPACITY AND PRISON POPULATION SOUTH, SOUTH ZONE AND GENERAL SUMMATION.

The same trend of congestion in prisons at urban centres is evinced in South, South zone eight prisons: Calabar, Oko, Warri, Ikot-Abasi, Kwashi-Uke, Agbor, Port Harcourt and Ahoada out of twenty four are overcrowded with more ATPs. Benin and Sapele presents rare case scenario where there was no congestion in prison in the urban centres. As of 30th June, 2010 the number of inmate housed in the zone was above capacity which is 5357 while the lockup was 8443. It also showed that the ATPs was equal the number of convicts

Generally speaking, the number of awaiting trial inmates outnumbered those convicted in all the zones. Total number of convicts in the selected zones was 10341 while that of awaiting trial persons was 29,103; the capacity in these select zones was 33065 while the lockup was 39278 above capacity. According to data Nigeria prison has a capacity of 46,698 and was housing a total number of 47,177 inmates as of 30th June, 2010¹¹² which is indicative of overpopulation in the country prisons. The findings revealed that there is congestion or overcrowding in almost all semi or metropolitan cities, in such prison facilities the population far exceeds their capacities while those in the suburbs operate far below capacities. These are indicators that crime rate is higher at the cities. These indices show prisons with more convicts while majority have a record of higher number of awaiting trial inmates. This may likely be as a result of effective or ineffective criminal justice administration coupled with other reasons for overcrowding in Nigerian prisons. The next segment turns to discuss these reasons.

3.4 REASONS RESPONSIBLE FOR OVERCROWDING IN NIGERIA

There are legion of factors responsible for prisons congestion in Nigeria. These factors can be pigeon hold into: the Police, the Court or Justice System and the Criminal Law or Legislation.

3.4.1 THE POLICE

The Nigeria Police Force¹¹³ is empowered to arrest and detain persons suspected to have committed criminal offences. Under these powers the Police Force arrest and detain without investigation¹¹⁴. The suspects are remanded in prison custody to enable the prosecution investigate the matter as oppose to the precautionary measure to ensure accused persons come to take his/her trial in court as provided in section 35(4)(a-b) of the constitution.¹¹⁵ The Police Force, often delay¹¹⁶ in duplicating case files and sent to the ministry of justice for legal opinion, more frustrating is the issue of missing case files, Prosecutors come to court without witnesses or that IPOs are on transfer or no longer in the services of the police Force. Cases of murder

¹¹² Supra note 110 Para.1 at 45

¹¹³ Supra note 86 Para.2 at 39

¹¹⁴ Supra note 86 Para.2 at 39, See also the case of *Onangoruwa V. State* (1993) 7 Nigerian Weekly Law Report Part 303 Pp 52-73 at p 69, Ratio 56 where Tobi J.C.A said that ".....In a good number of cases, the police in this country rush to court on what is generally refer to as a holding charge, ever before they conduct investigations"

¹¹⁵ Supra note 7 Para.1.at 11

¹¹⁶ *Miscellaneous Offences Tribunal V. Okafor* 2001 Federation Weekly Law Report Part 81 Pg1736 Ratio 9 per Ejiwunmi JSC: (PP 1756-1756, Para. (A-G) held that time frame for prosecution of criminal matter is an exception not the rule as "time does not run against the state in criminal matters"

require autopsy report, forgery, hand writing experts¹¹⁷ and in Indian hempo matters all exhibits necessarily has to be taken to the only one government chemist in Kaduna and specimens in cases of murder or man slaughter has to be sent to Lagos the only government pathologist laboratory, for forensic analysis. Consequently, accused persons remain in custody for an average period of two to five years for the report to be received before the criminal prosecution will commence.¹¹⁸ It will take another period of five months for compilation of the criminal diary with incompetent typist and shortage of typewriters and no computers.

3.4.2 DELAY IN THE DISPENSATION OF JUSTICE

It was crystal clear in the analysis from the preceding section that more than 65% of the total numbers of inmates are awaiting trial persons. The administration of justice is directly responsible, inadequacy of courts and supporting staff coupled with lack of equipment causes overcrowding. The influx of people into cosmopolitan cities is not match with increase of court buildings. Most courts in Nigeria have no computer; those with some have no competent staff. Information technology is completely non existence. Court dockets are scattered, courts and cases list are hand written without case flow management. No tracking of cases, leading to back log of cases.¹¹⁹

Some magistrate and judges are lazy and incompetent, no refresher courses and on the job training, while some are not committed and adjourned cases on flimsy excuses coupled with legal practitioners who come ill-prepared only to apply for an adjournment. Another dimension to this problem is over reliance on pre-trial detention by courts, especially magistrates over indulged in remand orders, accused most must be sent to prison at all cost on every trivial and minor offences on difficult bail conditions. It is difficult to compile criminal appeals as most take down evidence in long hands “illegibly spread all over the record note book.” The indifference of the court secretarial staff whose duty is to compile record of proceedings does not help matters. Magistrates and judges are frequently transferred to different jurisdiction; cases affected in this process are to start denovo by the new judge¹²⁰.

¹¹⁷ Criminal Procedure Law of Lagos State Section 419 requires the investigating police officers to procure “disputed documents, specimen hand writing and signature to be examined and analysed in the laboratory”

¹¹⁸ In cases involving possession of ammunition, cartridges have to be sent to a ballistic laboratory and requiring a ballistic expert, it takes a minimum of a year before the criminal case could be ripe for hearing.

¹¹⁹ Supra note 57 Para.2 at 27

¹²⁰ Supra note 57 Para.2 at 27

However, the chief judges of a state and the federation who are empowered to conduct jail or gaol delivery hardly release inmates who have over stayed without trial, juveniles in prison, and over aged prisoners. Prisons in urban centres continued to be overcrowded without any effort to transfer inmates to some other prisons with enough space or for appropriate treatment. From the table in the north east, convicts out numbered awaiting trial person because courts always give lengthy sentences without option of fine or other form of restorative justice system The table analysis in South-South and South East/West with more awaiting trial persons is indicative of courts granting bail on onerous terms. And most accused persons are poor unable to fulfil their bail conditions and usually remain in prison even more than the period if convicted and sentenced.¹²¹ The lack of legal assistance to indigent persons; delay by the Ministry of Justice in giving legal opinion and shortage of staff in the Legal Aid Council in Nigeria¹²² to adequately render legal assistance to the poor who cannot afford the services of private legal practitioners is one reason responsible for congestion in prisons in Nigeria.¹²³ Apart from these, over criminalization and legislation causes overcrowding in Nigerian prisons, which is the next focus in this chapter.

3.4.3 CRIMINILIZATION OF MORAL BEHAVOVOIRS AND/OR LEGISATION

The Nigerian prison service which is to provide treatment, rehabilitate and re-socialise inmates back to society is however not feasible as this philosophy is in theory not in practice. The characteristic of the prison population is indicative of imprisonment for purposes of punishment rather than ideal social function of prisons. A critical examination of the rate of incarceration in the Nigerian prisons justifies this position. About one fourth of the population are interned for the offence of stealing without causing harm, 50% of which are sentenced for offences for a period less than 2 years, there are juveniles, over aged, civil lunatic, children, nursing and pregnant mothers in Nigeria prisons which buttress this position. But never the less, there has been increase in criminal activities, drugs trafficking, kidnapping, child trafficking which has contributed to overcrowding but this is due to the deteriorating economic situation.¹²⁴

¹²¹ **Nwapa, A.**, "Building and Sustaining Change: Pre-trial detention reform in Nigeria" in Justice Initiatives: Pre-trial Detention, New York Open Justice Initiative (2008) pp 86-102 as cited in Curt Taylor Griffiths, Ph. D. Danielle J. Phil, Strategies and Best Practices Against Overcrowding in Correctional Institutions, Supra note 22

¹²² Supra note 85 Para.2 at 39

¹²³ Supra note 32 Para.1 at 18

¹²⁴ Supra note 56 Para.2 at 27

Be as it may, the spate of criminal activities has led to the over criminalization of certain behaviours, such as Arson of public building, Damage to public property, electric cables, oil pipelines, tempering with telephone wires, forgery and false pretence, cyber crime, counterfeiting, stealing, fighting, selling in the street (hawking), prostitution, wondering, disrespect to parents, aiding and abetting and conspiracy to commit any of the mentioned offences.¹²⁵ It cannot be gain said that, criminalising offences such as vendor selling on the street, crossing the road, improper dressing, wondering, in which the police arrest and remand¹²⁶ has tremendously contributed to prisons population upsurge.

3.4.4 POOR ADMINISTRATION OF PRISONS IN NIGERIA

Most significantly, recalling that one of the fundamental social functions of prison is to treat and rehabilitate prisoners. Realising too that persons sent to prisons would ultimately return back to society. The Nigeria prison personnel lack the requisite competent and have woefully failed in its responsibility. The criminal justice system has no commitment to develop and sustain programmes which will assist offenders re-enter the community and live a worthwhile, self reliance and life free from crime. There is no effective “after care” programme, the society is hostile to released prisoners; above all, stigmatization had led to re offending and re-arrest.¹²⁷ According to the special Rapporteur observed that “... is reluctant to assist the department in its programme of rehabilitation and reintegration and it is therefore difficult for ex-offenders to be employed, to get loans and to get meaningful support from their families and community.¹²⁸ Even though this was in respect to South Africa but is aptly related to Nigeria government sentiment, families and community reaction towards released prisoners.

Having discussed the reason for overcrowding, it is necessary to carefully elucidate the consequences which overcrowding brought to bear on incarcerated person, community and prison itself. This has a nexus with conditions of overcrowding and shall be espoused together in the next segment in this chapter.

¹²⁵ Criminal Code Act Cap 77 (Revised Edition) Law of Federation of Nigeria 1990

¹²⁶ Supra note 89 Para.2 at 39 (KAI and LASMA) respectively send persons to prisons even though, these are state paramilitary force, while the prison is a federal concern under the federal exclusive list.

¹²⁷ Dandurand, Y. J. Christian, D. Murdoch, R. E., Brown, and V., Chin, Conditional Release Violations, Suspensions and Revocations. “A comparative Analysis, Vancouver.”: The International Centre for Criminal Law Reform Justice Policy as cited in Curt Taylor Griffiths, Ph. D. Danielle J. Phil, Strategies and Best Practices Against Overcrowding in Correctional Institutions, Supra note 22

¹²⁸ The African Commission’s Special Rapporteur Report on Prisons in South Africa (2004) as cited in Curt Taylor Griffiths, Ph. D. Danielle J. Phil, Strategies and Best Practices Against Overcrowding in Correctional Institutions, Op Cit Supra note 22

3.5 EFFECTS OF OVER CROWDING IN NIGERIA

Over crowding has a negative effect on interned persons, penal institutions and for the society or community.

3.5.1 EFFECT ON PERSON IMPRISONED

Overcrowding conditions in prison “suppresses correctional institutions and tasks its ability to provide basic needs” in facilities like health care, “food” and accommodation. It equally undermines rehabilitation programmes, vocational and educational training, “recreational activities”. It also violates the basic rights of prisoners such as “right to an adequate standard of living and highest attainable standard of physical and mental health”.¹²⁹ Overcrowding condition results to physical and mental problems and creates room for self infliction of injury, high risk of contacting HIV/AIDS, Tuberculosis, respiratory track infections, Asthma and other communicable diseases due to “poor hygiene and poor medical care”¹³⁰.

Overcrowding create acute accommodation problems, inmates scramble for space, making classification of inmates a mirage. It turns to where there is available space, without bed and beddings, ventilation, excessive lock up without time for recreational activities or contact with family members and friends.¹³¹ Over crowding apart from causing strain and stress, prisoners’ are fed with poor diet, due to influx of persons in prison, inmates struggle for any available food, malnutrition is prevalent. Poor nutrition and sanitation make body resistance to disease impossible leading to “high death and morbidity rate” in Nigerian prisons without a reliable medical care.¹³² Cells are poorly ventilated, no toilet facilities, most cells have pit and bucket as toilets with out bath rooms, which have been converted to rooms, few beds without beddings. In the awaiting trail cells, no mattresses, beds at all are provided; inmates have to sleep on bare floor or use cartons and mats. Because of congestion beds are considered as occupying space and inmates have to sleep “one head up and one leg down”. In this situation, inmates bath and defecate openly without any privacy.¹³³

¹²⁹ Penal Reform International, “Prison overcrowding 2007” as cited in Curt Taylor Griffiths, Ph. D. Danielle J. Phil, Strategies and Best Practices Against Overcrowding in Correctional Institutions, Supra note 22

¹³⁰ Walmsley, R. “Prisoner Health Care and extent of Prison Overcrowding,” International Journal of Prisoner Health, Londres, Taylor & Francis, Vol. 1 no 1 March, 2005 as cited in Jeremy Sarkin, Prison in Africa an evaluation from Human Rights Perspective Sur. Revista Internacional Deritos Human foot note 29

¹³¹ Schonteich, M. “The Scale and Consequences of Pre trial Detention Around the World” in Justice Initiatives: Pre trail Detention, New York: Open Society Justice Initiative (2008), pp 44 – 56 as cited in Curt Taylor Griffiths, Ph. D. Danielle J. Phil, Strategies and Best Practices Against Overcrowding in Correctional Institutions, Supra note 22

¹³² Supra note 57 Para.2 at 27

¹³³ Supra note 57 Para.2 at 27

Generally, hygiene is poor without tap water, well water and stream is a source of water, while some prisons, tanker supply water to inmate which is not regular, the toilet dirty and stinking without water. Tissues, soap and disinfectants are not provided and inmates are shabbily dressed, uniforms are not supplied to awaiting trial persons at all, and few sentenced prisoners are provided ¹³⁴with old uniforms. Literacy level is very low, prisoners are twenty three hours locked up for security reasons, some in dark and solitary cells, no time for recreation, vocational and educational training is so limited. Prisons staff is over strained with high population to contain with, there is little or no time to treat or rehabilitate the prisoners. In such situation, inmates are idle resulting to frustration, ‘uncertainty’, ‘interpersonal conflict’ and ‘violence’ especially in cases of juveniles interned with adult result to assault¹³⁵, suicide¹³⁶, rape and sexual exploitation.¹³⁷

3.5.2 EFFECT ON PRISON MANAGEMENT

Overcrowding causes strain and over stretched prison facilities, affects prison management to a level of undermining ‘international human rights standards.’ Its question the competence of prisons management to effectively ‘provide basic needs for the prisoners’ such as classification, balance diet, sanitation, safety environment and addresses educational needs in which most prisons are found wanting.¹³⁸ It hinders prison officials from addressing the special needs of vulnerable prisoners like mentally ill, children and pregnant women, nursing mothers, juvenile and old prisoners.

Overcrowding create unsafe working environment for prison personnel due to deteriorating facilities over stretched by overcrowded prisons, leading to ‘disciplinary infraction,’ violence, riot and assault. It exposes prison staff to infectious diseases and breed corruptive tendencies by officers to extort money from prisoners to provide basic needs like food, water, space and

¹³⁴ Supra note 56 Para.2 at 27

¹³⁵ Laham, K.F. “Inmates Assault: A Multi Level Examination of Prison Violence” Criminal Justice Behaviour 2008, PP 120 – 13 as cited in Curt Taylor Griffiths, Ph. D. Danielle J. Phil, Strategies and Best Practices Against Overcrowding in Correctional Institutions, Supra note 22 .

¹³⁶ Adwell, S. “A Case for Single Cell Occupancy” Journal of Federal Probation 1991 pp. 64 -67 see also Sloth – Nielson, J. “Children in African Prisons” in Jarkin, ed. Human Rights in African Prisons Athens, Ohio: Ohio University Press (2008) pp 117 - 133 as cited in Curt Taylor Griffiths, Ph. D. Danielle J. Phil, Strategies and Best Practices Against Overcrowding in Correctional Institutions, Supra note 22

¹³⁷ Ibid

¹³⁸ Griffiths, C.T. “Canadian Corrections” 4th (ed), Toronto, 2009 as cited in Curt Taylor Griffiths, Ph. D. Danielle J. Phil, Strategies and Best Practices Against Overcrowding in Correctional Institutions, Supra note 22

beddings¹³⁹. Over crowding is also frustrating to prison managers who have no absolute control over the fluid population which keep increasing but on a fixed budgetary allocation on a prison they hold. Thus making it impossible to provide humane treatment to prisoners¹⁴⁰

3.5.3 EFFECTS ON THE COMMUNITY

Prisons overcrowding have an adverse risk on the entire community. Prisoners will eventually be release back to the community; it leads to break down of families especially where spouse is incarcerated.¹⁴¹ It causes ‘economic hardship and reproductive health’ in cases where the persons imprisoned for a lengthy period is the bread winner. It spread contagious deceases such as HIV/AIDS and Tuberculosis¹⁴². It is a major security risk, most especially where offenders had no access to rehabilitation programs before released, thus presenting a high propensity for recidivism.¹⁴³

3.5.4 CONCLUSION

Overcrowding in Nigeria referred to as congestion is mostly in urban cities while prisons in the suburb operate under capacity. Most prisons in Nigeria were constructed by the colonial government currently in the state of disrepairs; the few constructed by the federal government were built with substandard infrastructure equally at the brinks of collapse without renovation. Inmates are quartered in most inhumane environment without basic needs to medical care, sanitation, hygiene, decent accommodation with adequate beds and beddings, balance diet and inmate classification according to status is unknown, juveniles are incarcerated with adult, pregnant women and nursing mothers are housed together with other prisoners with no antenatal and post natal facilities.

Overcrowding in Nigerian prisons is caused by the police who demonstrated lack of expertise to investigate and prosecute offenders within a reasonable time. Delay in the criminal justice

¹³⁹ Nowak, M. Report of Special Report on Torture and other cruel, Inhumane or Degrading Treatment or Punishment, Addendum, Mission to Indonesia 2008, cited in Curt Taylor Griffiths, Ph. D. Danielle J. Phil, Strategies and Best Practices Against Overcrowding in Correctional Institutions, Supra note 22

¹⁴⁰ Hill, G. “Prison Population in Europe looking at the number”, Corrections Compendium (2007) pp. 31 -34 as cited in Curt Taylor Griffiths, Ph. D. Danielle J. Phil, Strategies and Best Practices Against Overcrowding in Correctional Institutions, Supra note 22

¹⁴¹ Supra note 131 Para.2 at 60

¹⁴² Egamberdi, N. HIV and Prisons in Sub-Sahara Africa: Opportunities fro Action. Vienna: United Nations Office on Drugs and Crime as cited in Curt Taylor Griffiths, Ph. D. Danielle J. Phil, Strategies and Best Practices Against Overcrowding in Correctional Institutions, Supra note 22

¹⁴³ Haney, C. The Wages of prison Overcrowding: “Harmful Psychological Consequences and Dysfunctional Correctional Reactions” Journal of Law and policy, (2006) pp 265 -293 as cited in Curt Taylor Griffiths, Ph. D. Danielle J. Phil, Strategies and Best Practices Against Overcrowding in Correctional Institutions, Supra note 22

system which witnessed the court over reliance on pre-trial detention with remand order as the rule, court prolong adjournment, lack of case flow management, frequent transfer of judges, lack of commitment by ministry of justice and over criminalization of conduct without alternative to incarceration are the major reasons for overcrowding in Nigeria which has an adverse consequence on the incarcerated persons, prison administration and community in general.

Overcrowding in Nigeria can be address if the police are well equipped with trained personnel and mandated to investigate and prosecute within the time prescribed by law. There should a robust arrangement for the transfer of inmates for congested prisons to area with facilities with space. The court magistrates and judges should consider option of fine, unconditional bail on personal recognisance and community service as an alternative to remand orders and imprisonment. There should be a criminal justice reform, possibly a bill decriminalising offences such hawking, prostitution, wondering and disrespect to one's parents which often result to detention and imprisonment. The ministry of justice should consider proactive sentencing guidelines for judges and magistrate. And the prison personnel be exposed to training, promotion and motivation for effective management. More so, those imprisoned be rehabilitated and given life and entrepreneurial skills to be self reliance when released.

CHAPTER FOUR

4.1 OVERVIEW

This chapter discusses international human rights instruments which set out standards for states to follow in the administration of penal institutions which inter alia include overcrowding in prisons. It focuses on the United Nation Minimum Rules; The Basic Principle for the treatment of prisoners; International Covenant on Civil and Political Rights; The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. It examines the International Committee of the Red Cross; United Nations Standards Minimum Rules for Non Custodial Standards; The Convention on the Right of the Child and tersely addresses some Regional instruments like the Kampala Declaration for the protection of Prison Conditions in Africa; The Africa Charter on Human and Peoples' Rights. And finally addresses the legal status of these instruments in the discussion of overcrowding in Nigeria.

4.2 INTERNATIONAL HUMAN RIGHTS INSTRUMENTS

Both regional and international instruments prescribe minimum standards for national prison authorities to observe. This section deals on international instruments, first in this category is the Minimum Standard Rule for the Treatment of Prisoners (hereinafter refer to as MSR)¹⁴⁴ It set out conditions, which are envisioned to be applied in the light of local variation. Rule {9} requires persons to be confined in single cells per night, the accommodation should be well ventilated as to allow fresh air, and 'artificial light as may be necessary require.' Rules {12 & 15} deals with sanitation; hygiene and requires national authorities to work to see that penal institutions ensures prisoners conforms to the rule of cleanness consistent with the needs of nature is possible in a 'decent and clean manner', prisoners be provided with toilet and water and with 'other articles as are necessary for health and cleanness. The environment must at all times be kept scrupulously clean''¹⁴⁵

Accordingly, Rule 63 {1} enjoins penal institutions to ensure 'individualization of treatment' and recommend the size of prison population to be (500) inmates, requiring separate bed space with clean beddings for each prisoner to be 'accommodated in a cubic content of air'', minimum floor space, lighting and ventilation.¹⁴⁶ Rules {19, 84-86} requires segregation of prisoners:

¹⁴⁴Supra note 8 para.2 at 11

¹⁴⁵ Supra note 8 para.2 at 11

¹⁴⁶ Supra note 8 para.2 at 11 See also Richard D. Vogel, "Dismantling the Prison House of the Nations II: The Treatment of prisoners in the us 'available at <http://combainglobalization.com> (last accessed on 17th October,2010)

convicts from awaiting trial persons, juveniles from adult, female from male and pregnant with infant from the rest.

While Rules {22 & 23} requires medical facilities to be accessible to every prisoner in the prison clinic which must have at least one qualified medical personnel with specialised knowledge on psychiatric medicine. Special provision for the treatment of women - with ante natal and post natal facilities for pregnant women and prisoners with mental abnormalities to be separated as well as those with contagious diseases separately confined or transfer to a special facilities for proper treatment. The Minimum Standard Rules contemplates a relax prison population to coincide with medical facilities adequate to provide medical care to inmates diagnosed with communicable and chronic diseases and ensure convenient referral as fast as possible to special institutions for treatment of insane or persons with personality abnormality as provided in Rules { 82 & 83}.¹⁴⁷

The Rules restrain penal institutions from imposing without due process long term solitary confinement as disciplinary sanction. It must be on rare but deserving circumstances, with the prisoners' needs as the ultimate consideration, reduction of diet for any time must be approved by medical officer and review from time to time. Rules {31; 32; 57; 58; 59; 60 & 61}¹⁴⁸ these provisions directly influences the discussion on overcrowding which are undermined in Nigeria

The International Covenant on Civil and Political Rights (ICCPR)¹⁴⁹ also contain some key provisions pertaining to prison overcrowding. Article 10 {1} requires ‘all persons deprived of liberty shall be treated with ‘humanity...dignity inherent to human persons’. It expects prisoners to be segregated: adult prisoners should be separated from juveniles, females from men and insane should be confined in separate cells. In redressing the issue of massive detention, the International Covenant on Civil and Political Rights in Article 9 {1-5} seek to prevent arbitrary arrest and detention by executive authorities. Thus requires that the person arrested must be informed of the rationale for his or her arrest and the charge thereof, with right to an effective trial within a reasonable time if not be realised on bail and guaranteed the right to challenge the’

¹⁴⁷Ibid,

¹⁴⁸ Supra note 8 para.2 at 11

¹⁴⁹ The International Covenant for Civil and Political Rights, 16th December, 1966 (Available at <http://www2.ohchr.org/english/law/ccpr.htm>)adopted last accessed on 17th October, 2010) it was opened for signing, ratification and accession by the General Assembly on 16th December 1966 and entered into force on 23rd March, 1976

lawfulness of an arrest and detention' with the right to an effective remedy.''¹⁵⁰ The essence is to see that fewer persons remain in detention. Article {7} stipulates that no person under detention shall be subjected to any form of 'torture, cruel, inhuman, degrading treatment or punishment''. And no person under detention shall be made to undergo medical or any form of scientific experiment without his free consent.''¹⁵¹ While Article {14} requires that no persons under pre-trial detention shall be treated as convicts but presumed innocent until the contrary is proved.¹⁵² These provisions is an attack on prolong pre-trial detention and inhuman treatment to which Nigeria as a party to ICCPR has not comply to her obligations under this Covenant.

The Body of Principles for the Protection of All Persons under Any Form of Detention,¹⁵³ equally contain specific provisions relating to prison overcrowding, principles {1-39}, set out standards for the treatment of those under confinement. Principle {1} requires that any person under any form of detention shall be respected and treated in a manner consistent with the dignity of human person. While principle {5} requires special protection for vulnerable groups: pregnant women or infants, juveniles, handicapped and aging inmates, such treatment not to be viewed as discrimination. Principle {6} prohibits torture, while principle {8} requires that detainees be treated according to their legal status by separating all categories of prisoners. Principles {10-15} requires arrested person to be informed of the reason for his or her arrest and charge thereof; guarantees the right to counsel; to a defense; to be communicated with the order of detention ; to periodic review of detention and contact to his family. It prohibits authorities from instigating self incrimination, not to subject any person to 'scientific experiment without the accused consent, not to impose permanent solitary confinement as disciplinary sanction.

The United Nations though not directly involve overcrowding issues encourages states to make use of non custodial measure in addressing overcrowding and adopted the Standard Minimum Rules for the Non Custodial Measures¹⁵⁴ which envision the promotion of community involvement in the management of criminal justice system; articulates a sense of responsibility towards the society. Principle 1{5} enjoin member states to adopt possible options and craft policies in their national legal systems, for non custodial measures while ensuring safeguards and

¹⁵⁰ Ibid

¹⁵¹ Ibid

¹⁵² Ibid

¹⁵³ Supra 38 para.3 at 20

¹⁵⁴United Nations Standards Minimum Rules for Non-custodial Measures (The Tokyo Rules) 14th December, 1990 (Available at <http://www2.ohchr.org/english/law/pdf/tokyorules.pdf> last accessed on 17th October, 2010)

guarantees to those subject to alternative to imprisonment. The essence is to “reduce the use of imprisonment and rationalize criminal justice policies” consistent with universal human rights standards, “social justice and rehabilitative needs of the offender.”¹⁵⁵ The founding objective of the adoption of these principles is perhaps to tackle the endemic problems of overcrowding with community based alternative to incarceration to which Nigeria is yet to implement

The notion that pre-trial detention should not be the rule, but apply as a last resort had its expression in the United Nations Standards Minimum Rules for Non Custodial Measures.¹⁵⁶ The Rules insist that pre-trial detention should be applicable only on circumstances that are reasonable, lawful and necessary for the protection of the offender, victim and the society. And Rule 6{1} thus states that “pre-trial detention shall be use as a means of last resort... for the protection of society and the victim.”¹⁵⁷ While Rule {2} requires detention to be for purposes of treatment of offender and period of detention “shall last no longer than necessary” and “be administered humanely with respect.”¹⁵⁸ To this end Nigeria is doing the very opposite of this stipulation but rely heavily on remand and pre-trial detention which has causes congestion in its prisons

Another international instrument in this category is the Universal Declaration of Human Rights (hereinafter called (UDHR)).¹⁵⁹ Article {1} of this Declaration require that persons under detention be treated decently and explicitly provides that any person under detention “shll not be subjected to torture, Cruel, inhuman or degrading treatment or punishment.” Persons crammed under massive incarceration in a poor accommodated facility amount to physical and mental torture.¹⁶⁰ In view of the fact that, unnecessary and unprecedented trial in itself results to overcrowding, Article 2{1}¹⁶¹ states that persons held in pre-trial detention shall be tried

¹⁵⁵ Ibid

¹⁵⁶ Ibid

¹⁵⁷ Ibid

¹⁵⁸ Ibid

¹⁵⁹ Supra note 1 Para.1 at 11 the Universal Declaration of Human Rights, 10th December, 1945 (Available at (<http://www.un.org/Overview/rights.html> last accessed on 17th October, 2010) Adopted by the first United Congress on the prevention of Crime and Treatment of offenders in 1948 at Palais de Chaillot in Paris

¹⁶⁰ R. V. Deputy Governor of Parkhers Prison, *Exparte Hague* {1991} Where House of Lord found that, prisoners have remedies and “being subjected to an intolerable degrading conditions by overcrowding is unwarranted and amounts to physical and psychological torture” See also *Kalashnikov v. Russia* ECHR {200}, Para. 101 where the court held that a cell cramming 9-10 inmates rises an issue under Article 3 of the Convention which prohibits degrading treatment. See also *Chavis v. Rowe*, 643 F.2d,388, 395 {7th cir. 1981} and also *Battle v. Anderson*, 564 F.2d, 388,385 {10th cir.1977} Supra

¹⁶¹ Supra note 159

expeditiously with a minimum of delay and shall be presumed innocent until proven guilty in accordance to law. The criminal defendant is entitled to all the fair trial guarantees including examining and re-examining of witnesses.

This section will seem to be incomplete if there is no mention of International Committee of the Red Cross {ICRC}¹⁶² a body which has contributed immensely in the condition of prisoners in armed conflict or during war. The committee derives its mandate from Article 3 common to all the four Geneva Conventions.¹⁶³ Which give the Committee the right to visit, inspect places of detentions especially facilities like detention camps, toilet, kitchen and medical facilities.¹⁶⁴ The committee strives to restore humanity and respect to persons deprived of liberty. ICRC offer direct assistance by providing relief materials in form of food, clothing, beddings, render medical assistance and made recommendations to authorities for improvement. It recommends a minimum space of 3.4 sqm per prisoner.¹⁶⁵ The Committee prohibit Torture under any guise and accept no derogation. It requires the authorities to Register and keep track of all persons placed in detention to avoid summary execution and force disappearance.¹⁶⁶

The Committee Generally made the following recommendations to authorities to: ensure equality of all detainees to access facilities and essential services; provides detainees with balance diet with at least two square meals a day; allow access to good drinking water, fresh air and recreation for a minimum of two hours a day; expeditiously conduct investigation to allegations;¹⁶⁷ ensures prisoners' family contact and access to the out side world; stimulate discussion between the detainee and the authorities to douse tension, depression; ensure that

¹⁶² The International Committee of the Red Cross {1949} (Available at <http://www.icrc.org/>)

¹⁶³ The Geneva Convention {I} relative for the Relief of the wounded and sick in Armies in the Field,; Geneva Convention {II} of the Armed Forces at Sea; The Geneva Convention {III} relative to the Treatment of War and The Geneva Convention {iv} Relative for the Protection of Civilians persons in Time of War

¹⁶⁴ International Review of the Red Cross (2005 NO.867 Available at http://www.ehl.icrc.org/images/stories/explorations_pdfs/5cforteach2.pdf last accessed on 17th October, 2010)

¹⁶⁵ See generally Rob Allen, Current Situation of Prison overcrowding International Centre for Prison Studies, February, 2010 {Rob'allen@kcl.ac.uk} also (Available at http://www.kcl.ac.uk/depsta/law/research/icps/downloads/Current_Situation_of_Prison_Overcrowding_paper.pdf) see also Membrini G.P. "water. Sanitation, Hygiene and Habitat in Prison Geneva: International Committee of the Red Cross" (2005)

¹⁶⁶ Ibid

¹⁶⁷ Ibid

guards treat prisoners with modicum of respect; ensure prisoners' accessibility to information; guaranteed prisoners' right to challenge the lawfulness of detention and released if otherwise.¹⁶⁸

4.3 REGIONAL HUMAN RIGHTS INSTRUMENTS

Express concerns on overcrowded prisons population is reflected in some regional instruments which provisions are relevant to the debate under discourse. Worthy of mention here is the European Convention on Human Rights.¹⁶⁹ These guarantees have the potentials of reducing the number of detainees as provided in (ICCPR)¹⁷⁰ which is elegantly replicated by the European Convention on Human Rights.¹⁷¹ It's Article 5 {1-5} provisions provide that: "every person have the right to liberty and security of person" and stipulate permissible grounds upon which arrest and detention could be justify. And requires that any person arrested must be informed of the reasons for his arrest; the charge against him or her and be promptly brought before the court and released on bail if possible.

This provision requires that pre-trial detention should not be taken as a rule and gives the detainee the right to challenge the factual circumstances of his or her arrest in Article 5{4}.¹⁷²

The Convention thus gives persons under detention the right to an enforceable remedy to prevent arbitrary deprivation of liberty.¹⁷³ It is perhaps a deliberate effort to address pre-trial detention which contributes to the issue of overcrowding in most jurisdiction that necessitated Article 5 jurisprudence under the ECHR.¹⁷⁴ Even though Nigeria does not fall within the jurisdiction of the ECHR but it suffice to say that good practice is worthy of emulation to address the challenges posed by overcrowding in Nigeria

At the heart of the European prisons condition jurisprudence is the Council of Europe Committee for the prevention of Torture and Inhuman and Degrading Treatment (CPT)¹⁷⁵ The Committee

¹⁶⁸ Ibid

¹⁶⁹ The European Convention on Human Rights, 4th November, 1950 (Available at <http://www.echr.coe.int/nr/rdonlyres/d5cc24a7-dc13-4318-b457-5c9014916d7a/0/englishanglais.pdf> last accessed on 17th October, 2010)

¹⁷⁰ Supra note 149 para.2 at 65

¹⁷¹ Supra note 169 para.2 at 69

¹⁷² Supra not 169 para.2 at 69

¹⁷³ Supra note 169 para.2 at 69

¹⁷⁴ It is apparent that if persons are justly arrested, investigated with few arrest and detention and speedily tried prison population will be keep within a manageable limit.

¹⁷⁵ Supra note 17 Para.2 at 3 The Council of Europe Committee for the prevention of Torture and Inhuman and Degrading Treatment (CPT)-Strasbourg 26 xi 1987 (Available at <http://www.cpt.coe.int/en/documents/ecpt.htm> last accessed on 17th October, 2010) The convention entered into force on 1st March, 2002, it has the powers to visit, inspect places where persons deprived of

whose mandate is accomplished through visit and periodic review of member states is committed and its recommendation becomes standard to be adopted by the host states or other member states. It set minimum space per prisoner as stated in the introduction to this paper

In this line of regional instruments useful for the discussion of overcrowding is the Kampala Declaration on Prison Conditions.¹⁷⁶ This Declaration proffered solutions in three dimensions Alternative to sentencing, remand prisoners and staff welfare. It requires that judicial investigation of persons under pre-trial detention be conducted in such a manner as to ensure that detainees are confined or kept in prison as short as possible. It requires the prosecuting authorities to provide automatic review mechanisms from time to time to consider the time spent and the justification for an extension.¹⁷⁷

It calls on the police; prison authorities; the judiciary and the ministries of justice to rise to the occasion to effectively resolve the problems of overcrowding. The Declaration requires the court to consider the option of community services on minor offences and recommend mediation between parties, a diversion from formal judicial proceedings. It recommend that prison staff be career-oriented and ensure regular training of staff and recruitment be conducted by prison authority with a distinct chain of command to cope with overcrowding problems {Recommendations 1-10}¹⁷⁸ The participants recommends among others, the preservation of prisoners' rights at all times; access to counsel; contact to families and reputable friends; prisoners should be provided with living conditions compatible to dignity of human person and the negative impact of 'prison be minimised to avoid loose of self respect.'¹⁷⁹

Another regional instrument in this regards is the African Charter on Human and Peoples Rights¹⁸⁰.The charter in its Article 6 require that persons under detention be tried within a reasonable time and avoid prolong detention.¹⁸¹ The driving force behind this requirement is perhaps to ease the looming problems of overcrowding caused by pre-trial detention in prisons

liberty are kept and make recommendation and comment. And direct the authorities to take appropriate measure to remedy the situation and publish its recommendation on it websites and submit report to the committee of ministers for necessary action

¹⁷⁶ Supra note 9 para.2 at 11

¹⁷⁷ Supra note 9 Para.2 at 11

¹⁷⁸ Supra note 9 Para.2 at 11

¹⁷⁹ It was adopted at the International Seminar on Prison conditions in Africa, 19-21, September, 1996

¹⁸⁰ The African Charter on Human and Peoples' Rights 27th June, 1981(Available at <http://www.hrcr.org/docs/Banjul/afhr.html> last accessed on 17th October, 2010)

¹⁸¹ Ibid

provided members states judiciously apply these provision, which is has not been complied to even though it was domesticated in Nigeria in 1990

4.4. HUMAN RIGHTS INSTRUMENT FOR JURVENILE

These instruments pertain to children and Juveniles caught in conflict with the law, one of which is the Beijing Rules.¹⁸² This instrument exclusively enumerates guidelines for the administration of juvenile justice over institutions where children or juveniles are imprisoned or confined. Rule [7] stipulates that juveniles are entitled to fair trial rights encompassing the right to a counsel; the present of parents or guardians' right to be notify of the reason of arrest or the charge against him or her; to be presumed innocent and the right to remain silent and right to examine and cross examine witnesses. While Rules {11} require diversion of cases and encourages member states to take informal procedure rather than judicial proceedings. Its core provision on overcrowding jurisprudence is Rule 13 {1} which explicitly emphasised that, pre-trial detention of juveniles ‘shall be the last resort’ and envision the consideration of an alternative option of ‘placement in a family for close supervision and under intensive care in an educational setting.’¹⁸³ Emphasis is placed on rule 13{3} which made United Nations Standards Minimum Rules applicable in the administration of juvenile justice.¹⁸⁴ It requires that juveniles shall not be house in the same cells with adult prisoners but must be segregated from the Adults and confined in a separate part of the penal institution. It gives priority attention to care and necessary protection such assistance on educational, vocational, psychological and physical needs’ consistent with the ‘age, sex and personality of the juvenile.’¹⁸⁵

Another instrument with provision for the discussion of juvenile is the United Nations Convention for the Rights of the Child {hereinafter refer to as CRC}¹⁸⁶ though not a regional instrument but highlighted here for ease of dealing with the section on instrument on juveniles in conflict with the law. It promotes and protects the welfare and best interest of the child. It safe guards persons under the ages of 18 deprived of liberty for educational supervision or medical

¹⁸²United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) 29th November, 1985, available at <http://www.interpol.int/public/Children/Conventions/unRules.asp> (last accessed on 17th October, 2010)

¹⁸³ Ibid

¹⁸⁴ Ibid

¹⁸⁵ Ibid

¹⁸⁶ The United Nations Convention for the Rights of the Child, 20th November, 1989 (Available at <http://www2.ohchr.org/english/law/crc.htm> last accessed on 17th October, 2010).. It was adopted and open for signature, ratification and accession by the General Assembly Resolution 44/25 of 20th November, 1989 and entered into force on 2nd of September, 1990

treatment.¹⁸⁷ Article 37 {a-c} elaborates the guarantees, requiring that no child under detention shall be subjected to torture or any form of mistreatment amounting to life imprisonment without been released; no child shall be deprived of his liberty except in accordance to law and as a ‘‘last resort for a shortest appropriate period of time;’’ and more particularly, any child deprived of his or liberty shall be segregated from adults except it is deem necessary for his best interest and ‘‘the right to maintain contact with his family through correspondence ‘‘and ‘‘right to prompt access to legal assistance’’ with opportunity to challenge the lawfulness of his or her detention.¹⁸⁸ The essence of this convention is to reduce incarceration by encouraging diversion and community services in matters involving juvenile. It suffices to say that Nigeria is in fragrant violation of this convention even though Nigeria ratified convention in 1979 and subsequently domesticated it in 2003. Yet juveniles are housed together with adult and proceeded against in regular courts.

4.5 STATUS OF INTERNATIONAL AND REGIONAL INSTRUMENTS IN NIGERIA

Nigeria has ratified all the instruments enumerated in the preceding sections in this chapter. The pertinent question is what is the legal effect of these instruments in the Nigeria legal order? What relevant are there to the administration of penal institutions in Nigeria? The responses to these questions are of two dimensions- that which have binding effect and the order which do not but merely set standards for good practice acceptable by the comity of nations. In this respect, of all the international and regional instruments exception of ICCPR,¹⁸⁹ CRC¹⁹⁰ and ACHPR¹⁹¹ the rest consist of set of precepts, guidelines, directives and declarations.¹⁹² Which are at best ‘‘authoritative interpretation of states obligations under international law,’’ but does not have formally binding nature as treaties but essentially relevant to countries that refused to ratify the parent treaty body.¹⁹³

To buttress this position, the preliminary observation {2} and {3} of the Minimum Standards Rules explicitly set out the legal impact of the rules which are to be regarded as representing the

¹⁸⁷ Ibid

¹⁸⁸ Ibid

¹⁸⁹ Supra 149 Para.2 at 65

¹⁹⁰ Supra note 186 Para.2 at 71

¹⁹¹ Supra note 180 Para.3 at 70

¹⁹² Global Detention Project, Frame work international, United Nation Declaration, 1990 (Available at <http://www.globaldetentionproject.org/law/legal-framework/international/un-declarations-principles-guidelines.html> last accessed on 17th October, 2010)

¹⁹³ Ibid

“general consensus”, “thoughts” and “adequate system acceptable as good practice, ‘in the management of penal institutions.’” These rules are to be applicable with necessary modification and regards being had to the level of advancement in terms of legal, socioeconomic and “geographical conditions to stimulate” and strengthened systems in the face of apparent difficulties.¹⁹⁴ It presupposes that, the rules are not to be implemented at all cost which explain the status of others standard setting instruments discussed in this section.

Flowing from this back ground, Nigeria is not legally bound to strictly apply the Rules in the enforcement of claims against violation of any of these instruments. Even though as a signatory, is expected to move along with the rest of the civilised nations in the observance of human rights.¹⁹⁵ However, addressing the binding nature of the Child Rights Act and the African Charter on Human and Peoples’ Rights is to say affirmatively that these two Conventions have been ratified and domesticated by Nigeria in accordance to section {12 } of the constitution which gives them legal force.¹⁹⁶ The African Charter has been incorporated into the body of Nigerian legislations as the Ratification and Enforcement Act.¹⁹⁷ In the same token, Nigeria ratified the convention for the right of the Child on 21st March 1991 and thereafter the Child Right Act 2003,¹⁹⁸ was domesticated by the National Assembly in Nigeria. This legislative act is consistent with the Constitution.¹⁹⁹

It could therefore be argued that since the Child Rights Act and the African Charter has the force of law in the courts in Nigeria, other instruments could have combined effect in litigating prisoners’ rights especially as it relates to overcrowding. This argument is premised on the fact that, most of the provisions are fashioned and have similar provisions analogous to other instruments with only persuasive effect being not incorporated into the constitution by the act of the National Assembly, the Supreme Court²⁰⁰ says that “an international treaty of which Nigeria

¹⁹⁴ Supra note 8 Para.2 at 11

¹⁹⁵ Nomi Simon Vs AG Lagos State (1996) NWLR part 462 at page 58 Para. F-G the Nigerian Federal Supreme Court in this case stated with categorical finality that the “observance of human rights is the rule of law” and strongly condemned the mistreatment and deprivation of the rights of condemned prisoners who has the constitutional right to challenge such abuses.

¹⁹⁶ Supra note 7 Para.1 at 11 the Constitution in section 12 (1) states that “no treaty between the Federal government of Nigeria and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly.”

¹⁹⁷ African Charter on Human and Peoples’ Rights(Ratification and Enforcement) Act Cap 10, Laws of the Federal Republic of Nigeria, 1990

¹⁹⁸ The Nigerian Child Right Act 2003

¹⁹⁹ Supra note 7 Para.1 at 11

²⁰⁰ Abacha V. Fawehinmi 2000 F WLR Part 4 SC.533 Ratio 1

is a signatory does not ipso facto become a law enforceable as such in Nigeria....only if the same has been enacted into law by the National Assembly.’’ One could draw a conclusion that, given that most of the instruments set down conditions generally regarded as good practice by the United Nations and other regional organisations which are not legally binding documents exception of those discussed above. But enjoin member states to adopt in the treatment of prisoners and in administration of penal institutions. Its hope that if National authorities utilise these Rules judiciously, even though, not binding, the systemic problems of prisons over population could be mitigated.

4.6. CONCLUSION

In conclusion, the issue of overcrowding is clearly emphasized in both regional and international instruments which have it root in Article 1 of the UN Universal Declaration of Human Rights which states that ‘All persons are born free and equal in dignity and rights, and should act towards one another in a spirit of brotherhood.’²⁰¹ The rationale is that prisoners are entitle to some basic rights as prescribed by the United Nation’s Standard Minimum Rules for the Treatment of Prisoners²⁰² such as in the provision of decent accommodation, clean environment and adequate beds and beddings, good feeding and medical care. Prisoners are required to have access to counsel, family members, and with enough time for recreation and rehabilitation. Segregation of prisoners according to sex, age, sentenced and un-sentenced is vital to individualization of treatment. Diversion in matters involving juveniles and other minor offences with low risk from formal judicial procedure to community service and other forms of alternative to incarceration is an essential means of addressing overcrowding in prisons. Nigeria is a signatory to all the human rights instruments enumerated in this section except the European Convention on Human Rights and its Committee for the Prevention of Torture but has not complied with its obligations by deliberate refusal to incorporate them into the legal frame work as prescribed by law.²⁰³

Most human rights instruments set out standards for good practice in the administration of prison institutions and do not constitute binding effect on State parties However, CRC and ACHPR have been domesticated in Nigeria which by implication acquires force of law but the child right Act is yet to be tested by the Nigerian courts while the court have been reluctant to enforce

²⁰¹ Supra note 1 Para. 1 at 11

²⁰² Supra note 8 Para.2 at 11

²⁰³ Supra note 7 Para.1 at 11

condition of detention on grounds of justiciability. It's expected that with judicial activism, the courts in Nigeria could make the legal force of these instruments meaningful to litigate prisoners' rights particularly on issues of overcrowding

CHAPTER FIVE

5.1 OVERVIEW

This chapter focus in exploring the issue of overcrowding as both a problem in developed and developing nations. It examines its distinctive features in Nigeria, South Africa and America with emphasis on its root causes, policy formulation to cushion or curb its intensity and discusses the attitude of courts to overcrowding in prisons in relation to prisoners' rights.

5.2 OVERCROWDING IS NOT UNIQUE TO NIGERIA, SOUTH AFRICA AND AMERICA

Overcrowding could here be regarded as a circumstance when the numbers of inmates interned in a prison are 'greater than the capacity of a prison to sufficiently' cater for the "physical" and "psychological" needs of the incarcerated person.²⁰⁴ Overcrowding in prison is a feature of most criminal justice system across the globe.²⁰⁵ It is a challenge to most criminal justice systems world wide which persists unabated in the face of decreasing crime rate and extensive prison construction programmes.²⁰⁶ Overcrowding however is not a unique feature of only Nigeria, South Africa and America, it is a problem both to developed nations with 'well resourced' economy and developing countries with 'challenging economy'.²⁰⁷

An overview of prison "occupancy rates gathered from different regions in the world in 'an on going basis' from 2000 indicates that most prisons in 'many jurisdictions are over capacity.'²⁰⁸ Accordingly, in Europe, population stood at the average of 130% which is official capacity while in the United State of America, it stands at 152.8% over capacity.²⁰⁹ Bangladesh at 288% overcapacity being highest in South Asia²¹⁰ El Salvador 199.2%, Pakistan 249.5%, Bolivia 330; Kenya prison held an approximate number of 50,000 inmates against the official capacity of 14,000 as of 2004²¹¹ and Uganda housed 18,000 detainees in a prison capacity meant for less than 9,000. It's also well documented that India with a prison population rated to be very low holds a

²⁰⁴Supra note 22 Para.1 at 15

²⁰⁵ Supra note 22 Para.1 at 15

²⁰⁶Penal Reform International (PRI) available at <http://www.pri.ge/eng/prison overcrowding.php> (last accessed on 17th October, 2010

²⁰⁷ Supra note 22 Para. 1 at 15

²⁰⁸King's College, London World Prison Brief 2000

²⁰⁹ International Centre for Prison Studies World Prison Brief for United States of America 2009 available at <http://www.klcl.depstol/law/research/icps/worldbrief> last accessed on 27th October, 2010

²¹⁰ BBC News online, world prison population

²¹¹ Supra note 209 Para.2 at 76 see also Penal Reform International, 2004

population of inmates well over 98, 500 above its designed capacity as of 2004.²¹² Overcrowding is also an issue in Brazil where the population is almost 15, 000 more than the official capacity.²¹³ Prison population upsurge is prevalent in Russia which has continued to increase over decades almost equivalent to that of England and Wales.²¹⁴

However, overcrowding is deemed to be the consequences of a criminal justice policy, ‘tougher sentencing practice’ and over reliance on pre-trial detention but not due to crime rate²¹⁵ Nigeria represents a typical example, where awaiting trial persons constitute 65% of the prison population.²¹⁶ The next section in this chapter would be discussing the features of overcrowding in Nigeria, South Africa and America focusing key areas such as its causes, policy adopted to reduce overcrowding and attitude of courts to it in relation to prisoners’ rights.

5.3 CAUSES OF OVERCROWDING IN NIGERIA, SOUTH AFRICA AND AMERICA

However, it has been shown from the preceding section that overcrowding is a global phenomenon,²¹⁷ its root causes, policies to curb rapid overcrowding growth and responses by courts varies from region to regions.²¹⁸ The causes of overcrowding in Nigeria are quite different from those in South Africa and America which will be the main focus of the next section in this chapter

The root causes of overcrowding in Nigeria have been exhaustively discussed in Section 3(4.) (1-5) of chapter three to include enormous powers granted to police and lack of expertise by law enforcement agents to investigate and prosecute within a reasonable time,²¹⁹ lack of commitment by ministry of justice, delay in the administration of justice,²²⁰ over reliance on pre-trial

²¹² National Human Rights Commission of India, 2004

²¹³ Supra note 209 Para.2 at 76

²¹⁴ R. King, prison watch Eastern Europe, Criminal Justice Matters, 27 May, 1997 p.7, See also Howard League for Prison Reform, 2006 available at <http://www.howardleague.org/overcrowding/> (last accessed on 17th October, 2010)

²¹⁵ Supra note 8 Para.2 at 11

²¹⁶ Amnesty International Report, “Nigerian Prisoners’ Rights Systematically Flouted, London WCIXODW, February, 2008 , pp1-50 p23,available online www.amnesty.org, (accessed on 23rd October, 2010) see also supra note 32 Para.1 at 18 and Supra note 121 Para.1 at 54

²¹⁷ Supra note 22 Para.1 at 15

²¹⁸ Supra note 22 Para. 1 at 15

²¹⁹ Supra note 86 Para. 2 at 39

²²⁰ Supra note 57 Para.2 at 27

detention,²²¹ remand orders,²²² over criminalization of behaviours without alternative to imprisonment,²²³ hash bail procedure²²⁴ and poor administration of correctional institutions in Nigeria.²²⁵ Lack of co-ordination among the actors in the administration of Justice create problem of allocating of responsibilities The prison service is a Federal Agency empowered to keep safe custody of those it holds;²²⁶ the police force also under the control of the Federal Government ²²⁷ with power to arrest, detain and prosecute both federal and state offenders, causing delay and abuses.²²⁸ This is often the result of influence exerted by both state and Federal government.²²⁹ The judiciary is a hybrid between the state and the federal government.²³⁰ This ultimately frustrates the process of prosecution and entire coordination of activities in the criminal justice sector.

While the causes of prisons overcrowding in South Africa and America are slightly different. In South Africa, correctional institutions are witnessing rapid prisons population growth, the prison population is going worse.²³¹ The root causes of overcrowding in South Africa prisons is due to

²²¹ Supra note 121 Para.1at 54

²²² Supra note 86 Para.2 at 39 see also Supra note 87 Para.1 at 39- Section 236(3) Criminal Procedure Law Cap 32 of Lagos State 1994 empowers the magistrate courts to remand pending arraignment of persons brought before them on offences of murder, homicide, treason and armed robbery over which they have no jurisdiction to trial. This is done with the use of holding charge which keeps accused persons pending trial for long period of time causing overcrowding in prisons. Unfortunately even with this negative effect, the Nigeria Federal Supreme court in the Case of Mrs E.A. Lufadeju & others V. Evangelist Bayo Johnson S.C.247/2007 on 30th March reversed the decision of the court of Appeal to hold a holding charge is constitutional.

²²³ Supra note 56 Para.2 at 27

²²⁴The Audit Report of the Prison Population undertaken under the Ministry of Justice concluded that about 75% of pre-trial inmates in the country are too poor to pay for legal services, see also supra note 121 Para.1 at 54

²²⁵ Supra note 56 Para.2 at 27

²²⁶ Supra note 224

²²⁷ Supra note 86 Para. 2 at 39

²²⁸ Sam v Commissioner of police 2009 All Federation Law Report part 450 C.A 760 pp760-774.p762 at ration 4, where the court held that “.....if the police is uncertain or unsure, they should not arrest, detain or prosecute an accused person”. Contrary to this position, the police rush cases to court without investigation while accused is remanded in custody without a proper charge.

²²⁹ Supra note 7 S. 211 empowers the state Attorney General to initiate criminal proceedings while section 174 of the 1999 constitution cap 23 L FN 2004 empowers the Attorney General of the Federation to initiate discontinue same (nolle prosecute) and Supra note 86 section 23 gives the Nigerian police force powers to arrest, detain and prosecute as well as to –‘prevent crime and protect public security.’

²³⁰ Supra note 7 S. 6(6) gives High Court its original jurisdiction.

²³¹ Report of Correctional Services, Head Office, Pretoria, Published in Monograph No.29 October,1994-March, 1998 (Available at <http://www.iss.co.za/pubs/monographs/no29/prison.html>)last accessed on 17th October, 2010, South Africa 231 prisons has to contained with 146, 435 inmates at the close of March,1998 which was 47.31 % overcapacity and the ‘problem is growing worse’

harsh and tougher sentencing legislation.²³² South Africa tends to follow America's "incarceration style."²³³ This legislation establishes minimum sentences ranging from 5, 7 and 25 years and imposes lengthy sentences as high as 75 years and life imprisonment.²³⁴ Magistrates and judges are mandated to impose not less than minimum terms prescribed by the Act exception compelling factor. The essence is to make offenders serve 50% of their sentence, for those sentence for life, they must serve 25 years before becoming eligible for parole.²³⁵ Mandatory sentences keep more persons in prisons. It gives magistrate and judges discretions to increase sentence to 65%.²³⁶

The South Africa new bail statute²³⁷ is comprehensive and requires careful investigation, "weighing up both interest of the community and individual accused person."²³⁸ This ends up in keeping more prisoners in detention due to the requirement of financial deposit as bond²³⁹

Overcrowding in South Africa is caused by government response to public sentiment that "prisoners deserve long sentences" and stiffer punishment for their criminal act for safety and public security.²⁴⁰ Thus efforts by the government to implement early releases to manage the problems of overcrowding was met with stiff resistance²⁴¹. The vast majority of the detainees in

²³² Section 51 of the Criminal Law Amendment Act 105 of 1997 This covers offences such as theft, assault, murder, rape, corruption and dealing on drugs

²³³ Thomas Callahan "United Against the Creeps. Living Africa," November, 1996, pp 40-43, p40 as cited in Bianca A. Poindexter, "The War on Crime Increases the Time :Sentencing Policies in the United States and South Africa," 22 Loy. L. INT' l & Comp. L. Review, 2000, argued that South Africa sentencing guidelines is "modelled after the United States targeting indirectly relating to drugs"

²³⁴ Supra note 232

²³⁵ Supra note 232 see also Judge H. Fagan; "Curb Vengeance, Laws on Minimum Sentencing and Parole Spell Worsening Prison Conditions," South Africa Crime Quarterly No.10, December, 2004 p2

²³⁶Supra note 232

²³⁷ Second Amendment Act, 1995 (No.75 of 1995) of the Republic of South Africa, See also Criminal Procedure Second Amendment Act, 1997 No.85 of 1997, Republic of South Africa. Amending the Criminal Procedure Act, 1977 (No.51of 1977), on granting of bail to an accused person. Granting of bail to offences like murder, aggravated robbery, rape , dealing on drugs and treason is hard except on special circumstances

²³⁸ R. Paschee, Pollsmoor Awaiting Trial Population Profile, a study of past Appearance Dele SunSin Mitchell's plain magistrate Court; preliminary Results and Role of the pre-trial service Demonstration Bureau of Justice Assistance Cape Town, November, 1997, see also, Africa Commission special Rapporteur, 2004 who examined prisons detention in South Africa revealed that, there has been increased in the use of "imprisonment "imposition of long sentences" and little use of non-custodian sentence" and stated that the prison population is constituted of 71% of those awaiting trial in 2004.

²³⁹ Ibid

²⁴⁰Sections 51 and 53 of the 1977 Criminal Procedure Act sections 61 and 62 gives the magistrate power to vary the condition of bail either by increasing or reducing the terms while section 60 requires the person arrested to pay some money which result to long detention for await persons that cannot afford to pay

²⁴¹ Ibid

South Africa prison are those awaiting trial due to the powers given to police to arrest without a warrant²⁴²

Even though South Africa seems to copy the American's incarceration style, the causes of overcrowding varies from region to region and jurisdiction specific.²⁴³ America is rated to be the nation with the highest prison population in the world 2.29 million incarcerated.²⁴⁴ Both State and Federal prisons in America are operating at overcapacity.²⁴⁵ As can be seen from the Nigerian and South African examined above that the root causes of overcrowding is the deficiency in their criminal justice systems, same is applicable in America which over criminalised criminal behaviours in a war against drugs.²⁴⁶ This statute set forth "mandatory minimum sentences" varying from 10-20 years for specific drug offenders such as drug trafficking and possession of crack cocaine²⁴⁷, congress also passed sentencing law which inters into force in 1987²⁴⁸ which seeks to bring uniformity in the judiciary sentencing procedures.²⁴⁹ Unlike the South Africa, sentencing Act which gives the magistrates and judges discretion to vary terms, the America sentencing guide lines restrict judges' discretion in sentencing convicted persons except in 'aggravated or mitigating circumstances'. Thus establishes tougher sentences which increases time served by offenders and minimises the application of probation and parole.²⁵⁰ It also reduces good time.²⁵¹ This "get tough legislation" is the root cause of prisons

²⁴² Supra note 232 Para.2 at 79

²⁴³ Supra note 22 Para.1 at 15

²⁴⁴ David W, Van Ness, An Introduction to Prison Population, An Updated Paper entitled "Trend in Prison around the World and in Latin America" Presented at Panama, Prison Overcrowding Briefing paper 1 & 2, March, 2008, paper1

²⁴⁵ Anti- Drug Abuse Act of 1986, Pub. L. No. 99-570, 100 Statute 3207, See also Federal prison population: Present and feature trend; Hearing Before the sub-committee on intellectual *property and judicial Administration of the House Committee on the Judiciary*, 103d Congress, No.14 1993 here congress demonstrated its frantic determination for the enforcement of tougher sentencing legislation.

²⁴⁶ Ibid

²⁴⁷ Ibid

²⁴⁸ Sentencing Reform Act, of 1987, Pub. L. No. 98-473, 98 Statute 1987, (codified as amended at U.S.C Sections 3551-3580, 1991, See also Section 21 USC 5841(b) (1) (iii), 2001 Federal Sentencing Guidelines Manuel-Chapter 3 available at www.uss.gov. (accessed on August 12, 2010)

²⁴⁹ Supra note 232 Para.2 at 79

²⁵⁰ supra note 232 Section 3621(a)

²⁵¹ Sheldon Ekland-Olson & William, R. Kelly, "Justice under pressure: A comparison of recidivism Patterns Among Four Successive Parole cohort" 120-29 (Alfred Blumstein & David P. Farrington ed., 1993) as cited in Kelly I. Pyle, "Prison Employment : long- Term Solution to the Overcrowding Crisis"77 University of Boston Law Review February, 1997, p3 good time is a program of early releases which reward good behaviour for those who actively participated in prison programmes and eliminate certain categories of inmates from parole

overcrowding in America. Even though the Supreme Court struck down the two statutes in 2005 the rapid growth in American prisons has not gotten any better.²⁵²

In America, federal and states have adopted different legislation with “indeterminate sentencing structure, “ truth in sentencing and some passed the famous “three strikes and you are out”²⁵³ California has the strictest of the three strikes and you are out which is replicated by other states, imposes long sentences and reviewing policies on parole restricting legibility for those with violent offences and reduces good time credit for early releases of offenders.²⁵⁴

The major factors which precipitate overcrowding in Nigeria are perhaps over reliance in pre-trial detention and lack of coordination among the actors in the criminal justice system while causes of overcrowding in South Africa seems to follow the America pattern with some variations, American sentencing and mandatory minimum remain tougher. Despite the fact that the causes of overcrowding are jurisdictional specific, the Bottom line is the criminal justice system which favours incarceration than alternative to custodial sentences.

5.4 POLICIES AND STRATEGIES ADOPTED IN NIGERIA, SOUTH AFRICA AND AMERICA TO ADDRESS OVERCROWDING

Overcrowding is a global problem which most countries exact energies to combat with no visible impact. This is because prison population is fluid and keep increasing steadily.²⁵⁵ The next effort in this work discusses efforts made by Nigeria, South Africa and America to in terms of action plan and strategies to curb prison overcrowding.

In comparative terms, Nigeria prison population is below 30 percent 100,000 of the general population, South Africa 335 per 1000,000 of its national population and America is 756 per 100,000.²⁵⁶ While Nigeria overcrowding is only an issue in prison located at the metropolitan

²⁵² United State V Booker 125 S.C. 738 (2005) The us Supreme court in a split majority ruling relying on the case of Backely V. Washington 542 US 296(2004), struck down the Federal Sentencing Statute which imposes Federal Sentencing Guidelines on district judges And held that judges could now review decisions basing their decisions on facts and evidence beyond reasonable doubt. Ruled that the present sentencing Guideline should be advisory rather than mandatory thus giving judges the discretion to so depart from it, just like it is in South Africa

²⁵³ Lisa M; Seghetti and M. Smith CRS Report RL 32766 Federal sentencing Guidelines; Background, Legal Analysis and Policy options update June 30, 2007 pp1-21, p15 available at <http://www.fas.org/sgp/crs/misc/RL32766.pdf> (accessed on 25th October, 2010)

²⁵⁴ Ibid

²⁵⁵Supra note 244 Para.2 at 80

²⁵⁶ Ibid

centres, prisons in the sub-urban areas are operating below capacities²⁵⁷ as was indicated in chapter one.

The Nigerian government over the years “expressed willingness” to reform criminal justice system to curb the issue of prison congestion²⁵⁸ In a bid to tackle this issue, a prison task force was established²⁵⁹; which witnessed the release of about 80, 000 prisoners. This effort was not marched with long policy reform despite promises.²⁶⁰ But rather culminated into many committees, working Groups and Commissions²⁶¹. These committees made various recommendations tailored towards reforms on decongestion of prisons improve condition of detention and rehabilitate inmate which the Nigeria government do not implement²⁶² nor have any law been pass to give effect to criminal law reform.²⁶³ In 2007 amnesty was reported to have been granted to elderly and prisoners on death row which was only on pages of paper.²⁶⁴ The Federal Attorney General and Minister of Justice in 2009, employed the services of private lawyers in Nigeria,²⁶⁵ to compliment legal Aid Council,²⁶⁶ to assist indigent inmates and decongest prisons The private lawyers engaged by the federal government demonstrated lukewarm and lack of commitment in conducting decongestion project.²⁶⁷

²⁵⁷ Supra note 56 Para.2 at 27

²⁵⁸ Supra note 216 Para.1 at 77

²⁵⁹ Presidential Task Force on prison Reform and Decongestion 1999

²⁶⁰ Chief Afolabi then Minister of Interior in 2001 promised to instigate prison reforms, revitalized prison condition and rehabilitate inmates all to no avail.

²⁶¹ National Working Group on Prisons Reform, 2002, Inter-Ministerial summit on state of Remand Inmates in Nigeria’s Prison, 2005; Presidential Committee on Prison Reform and Rehabilitation, 2006; Presidential Commission on Reform of the Administration of Justice (PCRAJ), 16 March, 2006; and the Committee on the Harmonization of Reports of presidential committees working on Justice sector Reform, April, 2007

²⁶² Supra note 216 Para.1 at 77

²⁶³ The Draft Prison (Amendment Bill), 2004 with the sole aim to ‘revitalising prison conditions’, eliminate and rehabilitate prison inmates is yet to be passed into law by the National Assembly. The victim of justice bill; Administration of justice bill; National Human Rights Commission Act; victims of Justice Bill and a host of others are still pending in the National Assembly without any attention whatsoever..

²⁶⁴ The government through the Minister of Information in 2007 announced granting of amnesty and pardon to over aged prisoners above 70 years and those on death row who are over 60 years, all was paper news and there were no subsequent releases intensified accelerated hearing with no visible results

²⁶⁵ Mr. Mohammed Bello Adoke (SAN) Federal Attorney General and Minister of Justice engaged 3000 private lawyers to address the problem of legal representation of indigent inmates.

²⁶⁶Supra note 85 Para.2 at 39 Legal Aid Council of Nigeria “LACON” is under staffed and inadequately funded, see also the Administration of Justice Commission (AJC) Act 1991 established to coordinate the activities of the institution of justice. It has not been activated nor any money appropriated to it for its oversight function

²⁶⁷ The lawyers employed to conduct decongestion project and assist poor inmates get legal representation were not properly monitored, cases were assigned to cronies who abandon and do not even visit accused in prison nor render any legal assistance whatsoever

However, amidst tough sentencing legislation, South Africa and America tend to be more proactive in policy approach to curb overcrowding, South Africa established the Independent Judicial Inspectorate²⁶⁸ inters alia, appoint independent visitors which conduct regular visits, instigated releases.²⁶⁹ In America independent oversight is under utilised with only few states appointing independent inspectors of prison,²⁷⁰ the dire of Independent Inspectors is reflective of apparent resistance of corrections to public due to the close nature of its prison.²⁷¹ While Nigeria has National Human Rights Commission²⁷² with mandate to conduct prison audit and make recommendations. Chief Judges of the States and of the Federation visit prisons for goal delivery aimed to decongest prison which often result to only few been released.²⁷³

South Africa and America have introduced plea and sentence agreement in both civil and criminal cases to ensure accelerated proceedings without having to go to full trial on minor offences or cases where there is prima facie evidence for quick disposal of matters to reduce backlog of cases and efficient administration of justice.²⁷⁴

South Africa has a practice of prison privatization borrowed from America²⁷⁵ which is hope will “improve services and reduce overcrowding”.²⁷⁶ The practice of prison privatization is more

²⁶⁸ The Judicial Inspectorate was established in South Africa in 1998, independent from Correctional Department, is headed by an inspectorate judge whose mandate is to conduct prisons inspection, recommend and report on conditions and treatment of prisoners

²⁶⁹ Press release from Ministry of Correctional Services, 9 October, 2000, (available at <http://www-dcs-pwv.gov.za>)

²⁷⁰ Michele Deitch, “Effective Prison Oversight” Prepared for the Commission on Safety and Abuse in America’s Prisons 4th Hearing, Los Angeles, California February 8, 2008 , pp1-10 p6 Available at http://www.prisoncommission.org/statements/deitch_michele.pdf (accessed on 11th October, 2010) There exist few agencies with the independent mandate to inspect prisons such as Ohio Correctional Institutions Inspection Committee ‘a legislative- base entity’, The Correctional Association of New York which is ‘non profit advocacy group’ with power to conduct visit and inspect prison and The New York Board of Correction which is an autonomous body with duty to inspection and monitor jail within city. What is most common in America is internal supervision by United States Department of justice Inspector headed by Inspector General of Inspectors (Glen Fine) is currently the General Inspector who over see all federal prisons

²⁷¹ Ibid

²⁷² National Human Rights Commission Act 1995

²⁷³ In Nigeria Chief judge of the federation conducts proceedings in prisons located in federal territory while those of the states do so in their respective jurisdiction hearing is conducted and deserving prisoners with good conduct and long detention and missing case files are released, representation is mostly by legal Aid council and lawyers from NGOs working on prisons decongestion

²⁷⁴ South African Law Commission, Simplification of Criminal Procedure ‘Sentence Agreements’ Discussion Paper 94, (January 31 2001), pp1-50 (available at http://www.justice.gov.za/salrc/dpapers/dp94_prj73_sentagree_2000.pdf) accessed on 27 October,2010, A Bill to insert chapter 16A into Act 51 of 1977 which ‘provide for prosecution and accused to enter into plea and sentence agreement ‘drawing lessons from America and Canada

²⁷⁵ Introduced in 1994 with initial criticism from NGOs, two prisons have been privatized, one in 2001-Ikhivezi Bloem-Fontein, a Maximum Security prison with a capacity of 2,928 and the in 2001-Louis Trichardt with a capacity of 2, 928.

entrenched in America²⁷⁷ which is not applicable in Nigeria. Another policy adopted by federal and states to address overcrowding is by expansion of capacity through prison construction²⁷⁸ this method is expensive and not utilized by Nigeria while South Africa with the construction of additional prisons in 2001 and 2002 is tended towards capacity expansion program.²⁷⁹ Both South Africa and America courts employ alternative option to imprisonment, America fully applies community service programs like electronic monitoring and house arrest²⁸⁰ instead of incarceration. South Africa in the same token adopted this Program of electronic monitoring²⁸¹ for non violent crimes while Nigeria does not. Even with tough sentencing legislation in America and South Africa, suspended sentences such as probation and parole are still being passed in South Africa²⁸² and America.²⁸³ Intensive supervised probation enhances diversion programs and reduces the number of persons sent to prisons²⁸⁴.

Another method used by America in both states and federal system is booth camp²⁸⁵ not common in South Africa and Nigeria. Another policy used by America²⁸⁶ copied by South Africa²⁸⁷ is unit

²⁷⁶David E. Pozen, Managing, "A Correctional Market Place": Prison Privatization in the United States and in the United Kingdom, *Journal of politics* Vol. 19, 2003, pp253-284 p256, says the supporters of prison privatization argued that, it is 'innovative,' leads to 'better management and reduces 'competitive pressure.' also see generally Goyer, K.C.Prison privatization, Institution for security studies Pretoria, 2001

²⁷⁷ Ibid

²⁷⁸. Texas Criminal Justice Coalition, 2007. The state of Texas in America for instance has tripled the capacity of its prison as far back as 1990s and hope to exceed its current capacity by approximately 11, 000 beds in 2010.

²⁷⁹ Supra note 275 Para.1 at 84

²⁸⁰ J Robert Lilly, "Electronic Monitoring in US: An updates," *overcrowded Times*, October 1993, p.15. This alternative sanction became actively used in the late 1960's. But now is more pronounced as 'about 50, 000 to 70, 000 are put under electronic monitoring daily'.

²⁸¹ See judiciary inspectorate report on overcrowding in prisons (2000) (available at <http://www.judicialinsp.pwv.gov.za> See generally Mr. Ben Skosana, Minister of Correctional Services in National Assembly Budget speech on June, 2001

²⁸² South Africa Parole and Correctional Services Amendment Act No.87 of 1997

²⁸³ See generally John W. Palmer: *Constitutional Rights of Prisoners* 1997 5th ed.pp143-176. This is a long standing alternative to imprisonment by placing the defendant under supervision of a probationer officer. Under a memorandum of understanding that the defendant gets a job, agreed to report at regular interval and submit for drugs / alcoholic test and if he fails, the probationer officer revoke his probation and send him back to prison

²⁸⁴ Whereas standard probation is based on the probationer keeping to terms agreed and scheduled meetings. Intensive supervised probation is more onerous, wherein the probation officer has power to visit parolee or probationer's home at night to detect violation of conditions agreed see Todd R. Clear Edward J. Latessa, "probation officers' Roles in intensive supervision: surveillance Versus Treatment," *Justice Quarterly* 10 No 3 (September 1993) as cited in David B. Kopel, *Prison Blues: "How America's Foolish Sentencing Policies Endanger Public Safety"* *Cato Policy Analysis* No 208, May, 17 1994

²⁸⁵ Dale G. Parent "Booth Camps Failing to Achieve Goals" *Overcrowding Time*,(August 1993), p1.as cited in David B. Kopel note 284 The issue of booth camp is based on a notion that, a criminal defendant be subjected to military discipline for two to nine months to bring order to his live. It simply to shock defendant and intended to give a kind of overview of life in prison, its horrible side to prevent recidivism Booth Camp a sort of half-way home is intended to reduce overcrowding. The practice of Booth Camps became well entrenched in US in 1990s with 26 state and

management²⁸⁸ which is not used in Nigeria. It is perhaps disheartening to highlight that, despite these strategies and policies adopted in the preceding section, overcrowding has continued to be posing a serious threat to prisoners' rights, the community and prison administration. It becomes pertinent to explore the courts.

Response in these jurisdictions on issues of overcrowding as it affects prisoners rights. This is the focus of the next section in this chapter.

5.5.1 COURTS RESPONSES TO OVERCROWDING IN NIGERIA, SOUTH AFRICA AND AMERICA

The courts in Nigeria, South Africa and America have over the year's demonstrated different attitude and give differing decisions on the issues of overcrowding in relation to prisoner's rights.

5.5.2 NIGERIAN'S COURTS

The Nigerian courts have not given any land mark decision on issues brothering overcrowding in prison. Enforcing prisoners' rights for lack of decent accommodation, bed and beddings, good diet, privacy and degrading treatment caused by overcrowding have not been possible as the courts often sheer away.²⁸⁹ The high court of Lagos refused to address applicants' contentions on poor sleeping condition, poor feeding and degrading treatment as recondite issue for determination but rather considered the question on bail. The court lack of concern on this issue was explicitly expressed in another decision.²⁹⁰ Where the court held that, overcrowding and other conditions of imprisonment in prison are unjusticiable by virtue of chapter two of the constitution of Nigeria.²⁹¹ While access to justice and right of condemned prisoners are acknowledged by the court.²⁹²

the federal system establishing booth camps as rumble side and as to prevent repeat offending. This intermediate or

²⁸⁶ Unit Management was introduced by United State Bureau of Prison as far back as 1965 and replicated by South Africa for effective supervision of inmates and rehabilitation programmes.

²⁸⁷ Correctional Services Minster Ben Skosana MP. Address at the unveiling of the New Generation Prisons, Cape Town, (2002) (available at <http://www.info.gov.za/speeches/2002/020826154604.htm>) last accessed on 21st October,2010

²⁸⁸ Unit management is a device for effective supervision of inmates, easy response to individual needs and treatment by placing not more than 60 per unit, under the care of specialised prison personnel. In other words it implies not to receive number of inmates not more than the designed capacity.

²⁸⁹ Supra note 82 Para.2 at 38

²⁹⁰ Supra note 81 Para.2 at 38

²⁹¹ Supra note 7 Para.1 at 11 Chapter two of this constitution deals with fundamental objectives and directive principles of state policy, this make issue of accommodation and related matters unenforceable in court as the provision of such facilities are dependant on the economy viability and development of the federal government. This provision is contrary to the position of the African charter on Human and Peoples' Rights which in its preamble

5.5.3. SOUTH AFRICAN'S COURTS

The courts in South Africa unlike in Nigeria have shown a more responsive sympathy towards prisoners, the South Africa supreme court of Appeal²⁹³ stated that “we cannot dispose with the essential values that make us a civilised society. We are bound by the values entrenched in our constitution”²⁹⁴ Prisoners’ conditions in prison reflective of the right to lighting, heat and access to other electrical appliance have

been given judicial approval by the South African constitutional court²⁹⁵ where court found Johannesburg prisons in violation of prisoners constitutional right when the socket was removed disconnecting all electrical appliances and kept the applicants in darkness .A further ruling on prison conditions is illustrated in another decision ²⁹⁶ where Justice Ackermann said that “the proportionality of a prison sentence in relations to the crime committed must be judged, among other things by the conditions under which it is served”.

However, prisoners’ rights in South Africa was elucidated in the residuum principle²⁹⁷ The constitutional court of appeal in a dissenting decision,²⁹⁸ by Justice Corbett J.A said that “... fundamentally a convicted and sentenced prisoner retains all the basic rights and liberties of an ordinary citizen except those taken away from him by law...or those necessarily inconsistent with the circumstances in which he, as prisoners, is placed ...” the rationale of this principle is that prisoners are entitle to some basic rights, the denial of which entitled them to an enforceable

state that “...civil and political rights cannot be disassociated from economic, social and cultural right.....the satisfaction of economic, social and cultural rights is the guarantee for the enjoyment of civil and political rights” Nigerian has equally domesticated this charter by implication of which overcrowding and order claims prisoners’ could be litigated

²⁹² Supra note 195 Para.1 at 39

²⁹³ Minister of Correctional Services & others V. Kwakwa & others, SCA 60/2000, Para.28

²⁹⁴ Supra note 6 Para.1 at 11 Section 35(2) South Africa constitution (1996) elegantly indicated this values which on very clear terms spelt out prisoner’s rights to personal dignity.

²⁹⁵ Strydom V. Minister of Correctional Services and others WLD(3) BCLR 342 1999

²⁹⁶ Dodo V The state CCT 1/01/CC (2001) Para.36 See also Martin Schonteich, Duxita Mistry and Johan Struwig Qualitative Research Report sentencing: “An empirical qualitative study on sentencing practices” of the South Africa criminal Law Amendment Act 105 of 1997, South Africa Law Commission Discussion paper, (May, 2000). In a survey in 2000, it was found that most judges and magistrates never consider the capacity of penal institutions before sending prisoner to it.

²⁹⁷ Residuum Principles is a common law rule which indicate that the prisoner retain all his rights except those curtailed by the fact of his imprisonment.

²⁹⁸ Goldbery & others V. Minister of Prison & others AP,(1979) (1) SALR, 39 Para. D-E, See also Minister of Justice V. Hopmeyer (1993)(3) S.A 131 (A) also see S.V Makwanyane (1995) 6 BCLR 665 (CC) 142 where the court reiterated this principle

remedy the Latin maxim *ubi jus ubi remedium* is applicable. Thus where prisoners have a right they equally have a remedy.

This principle was also robustly emasculated by the Supreme Court²⁹⁹ where Brand J. Made an order directing the Correctional Minister to make available antoviral drugs to prisoners with HIV, even when non is provided for free ‘citizens in public hospitals.’ This sympathy was extended to voting right³⁰⁰ the court gave an order directing the independent electoral commission to extend time and budget for registration of prisoners to participate in the April, 2004 election and declared the Electoral (Amendment) Act, (34 of 2003) which disenfranchises prisoners unconstitutional. However, the courts in South Africa have not performed as expected; some courts still feel reluctant to take decisive stand on issue of overcrowding while regarding it as a political will which the court cannot replace.³⁰¹

5.5.4 AMERICAN'S COURTS

The response of America courts differ in many respect from Nigeria and South Africa courts in overcrowding jurisprudence. Courts in America consider overcrowding condition under the 8th Amendment.³⁰² US Supreme Court for the first time in 1991³⁰³ found that overcrowding per se does not constitute an infringement to the eighth Amendment and held that ‘housing two inmates in a cell designed for one man’ is not unconstitutional but fail short of the ‘measure of decency and civilised standard’. While several federal courts have continued to grant relief on prison and jail matters where overcrowding had led to deprivation of human basic needs, negatively impact on safety and health of inmates.³⁰⁴ The court requires the defendant to show, prison’s official deliberate indifference which amount to denial of “medical care,” physical and mental health, essential food or sanitation.³⁰⁵ This view was accepted in Nebraska federal court of appeal,³⁰⁶

²⁹⁹ Van Biljon & others v The Minister of Correctional Services & others (1997) (4) SA 441, SALR,456-4573

³⁰⁰ South Africa Minister of Home Affairs & others V. National Institute of Crime Prevention and Reintegration of Offenders (CCT O3/04) 2004 ZACC 10, See also Supra note 30 Para.2.at 17

³⁰¹ Supra note 12 Para.1 at 12 See also Christian Care Network & another V. Republic of South Africa as cited in Lukas Muntingh, “Prison Constitutional Democracy,” Centre for the Study of Violence and Reconciliation, October, 2007, pp1-33, p22 available at <http://www.csvr.org.za/docs/correctional/prisonsinsa.pdf> (accessed on 24th November,2010)

³⁰² The Eighth Amendment to the US Constitution was adopted in 1791 which prohibits excessive bail, fines and cruel and unusual punishment.

³⁰³ Rhodes V Chapman 452 U.S. 337, 101 S. Ct 1981

³⁰⁴ David Rudousky, Alvin J., Bronstein, Edward I, Koren Julia D. Cade, the Right of Prisoners, the Basic Civil Liberties Union Hand Book, Southern Illinois University Press 4th ed. (1988)pp 1-127 p4 See also Ruiz V. Estelle, 688 F. 2d 266 (5th Cir.1982). Toussaint v.Yockey, 722 F.2d 1490 (19th Cir. 1984)

³⁰⁵ Estelle V. Gamble, 429, U.S. 97, 104 (1976), see also Jones V. Johnson, 781 F. 2d 769, 771 (9th Cir. 1986

although Wesley Kitt was estopped from re-litigating the issue of exposure to contact HIV virus already decided in 1983 while a prisoner in the Nebraska medium security unit but accepted that the prison officials have the duty to protect inmates from contacting HIV virus. Also the court have accepted that ‘double bunking’ amounts to cruel and inhuman punishment if it leads to deprivation of “essential food”, ‘medical care ‘or sanitation or if it increases violence among inmates.³⁰⁷ In 1990 about forty-one states were under court order to address overcrowding problems.³⁰⁸ A recent court reform order on overcrowding is in California where the court ordered Correctional Institutions to decrease its overcrowded facilities in a law suit on medical care³⁰⁹ where a ‘special 3 judge penal’ ordered the state of California to design a structural plan to reduce the prison population by 40, 000 prisoners within two years duration. It is well documented that even when this population reduction is achieved, the prison will still be 137% over capacity.³¹⁰

Although Nigeria and South Africa courts lay emphasis on personal dignity not on personal needs as in the case with United States courts. But sadly to note that Nigerian courts have done little or nothing in adjudicating overcrowding matters and prisoners’ rights, while South African courts have demonstrated stronger impetuosity on overcrowding issues and prisoners rights albeit hindered by ‘political will’ considerations. American courts on the other hand showed more sympathy to prisoners’ rights, both state and federal courts consistently grant claims brought by prisoners on overcrowding conditions and other matters but placed onerous task on prisoners to show that overcrowding conditions has led to denial of basic needs, safety and personal health. This perhaps is one of the reasons why overcrowding issue has continued despite policies and strategies put in place to impact negatively on the incarcerated persons, the prison and the community which have been exhaustively discussed in chapter two.

³⁰⁶ Kitt V. Ferguson, 750 F.1014, 1018 (D.Neb. 1990)

³⁰⁷ Hoptowit V. Ray , 682 F. 2d.1237,1246 (9th Cir. 1982)

³⁰⁸ See generally Wayne N. Welsh, counties in court: Jail overcrowding and court ordered Reform , Temple University Press, 1995

³⁰⁹ Schwarzenegger V. Plata (N.D.Cal 2006) No. 101-135 TEH, see also Coleman V. Schwarzenegger (ED Cal 2009) No. 590-0520 LKK J FMP. The Federal High Court has ordered this reform but governors Schwarzenegger has appealed to the supreme court and, execution or implementation have been suspended pending the supreme court decision

³¹⁰ Leonard C. Gilroy, Adam B. Summers, Anthony Randazzo and Harris Kenny, Public- Private Partnerships for Corrections in California: Bridging the Gap between Crisis in Reforms, (April, 2010)pp1-82 p 13 available at http://reason.org/files/private_prisons_california.pdf (accessed on 23rd October, 2010)

5.5.5. CONCLUSION

In concluding this chapter, the issue of overcrowding in prison is a global phenomenon, not only peculiar to Nigeria, South Africa and America, both developed and developing countries in the world are grappling with overcrowding problems, it causes are jurisdiction specific and each region and jurisdiction adopts different policies and strategies such as suitable to tackle rapid growth of prison population. Yet, none have achieved a long term policy strategies and programmes capable of checking the soaring causes of overcrowding such as delay in the administration of justice, over reliance on remand orders and lack of coordination between the actors in the criminal justice sector in Nigeria, and tough sentencing legislation, war against drugs, truth in sentencing and preference to incarceration in both South Africa and America. The courts in this jurisdictions responded differently on issues of overcrowding though acknowledged prisoners' rights but are yet to show serious judicial activism to ameliorate these systemic problems. The bottom line revolves round the criminal justice system which is dysfunctional and deficient in these jurisdictions. It's however expected that effort be devoted on specialised programmes like drug treatment juveniles and repeat offenders rehabilitation as well as aftercare services. Alternative sentences should be rigorously pursued on minor and non violent offences with low risk and incarceration option be apply only on offenders with serious threat to the society.

CHAPTER SIX

6.1 OVERVIEW

This chapter explores the activities of Civil Society Organizations (CSOs), Non-Governmental Organizations discusses some key organisations and their project initiative articulated to tackle

overcrowding issues in prisons, focusing on NGOs and Churches in addressing overcrowding problems in South Africa and America's prisons, on policy advocacy, research and litigation base. It also examines challenges confronting these organizations towards achieving the set goals of rehabilitation, offender-victim reconciliation, reintegration back to society and community service option as alternative to imprisonment.

It's necessary for a proper assessment of the role play by this organization to tersely say what Civil Society Organizations implies. There have been no consensus on what the term Civil Society connote, a working definition adopted by London School of Economics' Centre for Civil Society ³¹¹ refer to Civil Society as “.....embraces a diversity of spaces, actors and institutional forms, varying in their degree of formality, autonomy and power. Civil societies are often populated by organisations such as registered charities, development non-governmental organisations, community groups, women's organisations, faith base organisation, professional associations, trade unions, self help groups and social movement, coalition and advocacy groups.”³¹²

From this definition the word civil society could be used interchangeably as either non governmental organisation NGOs, Faith base hereafter referred as ‘FBO’ or community base organisations hereafter referred to as ‘CBOs’ depending on the context, they enjoyed enormous independence quiet distinct from government and operate both in developed and in developing countries providing social services and improving the quality of life depending on the level of operation. Some function mainly in the grass root, there are also national organisations operating in the whole country while some are internationally based providing services in more than one country.³¹³

6.2 INVOLMENT OF CIVIL SOCIETY ACTORS CHUCHES AND NON-GOVERNMENTAL ORGANIZATIONS ON PRISONS OVERCROWDING IN SOUTH AFRICA AND AMERICA

³¹¹London School of Economics' Centre for Civil Society (LSE 2006) cited Ziyaad Lunat, the Internet and the Public Sphere: Evidence from Civil Society in Developing Countries Electronic Journal on Information systems in developing Countries No 35 (2008)pp1-12 p2(Available at <http://www.ejisd.org/ojs2/index.php/ejisd/article/viewFile/501/253>) accessed on 25th October, 2010

³¹² Ibid

³¹³ Ibid

South Africa is blessed with vibrant and active Civil Society Organizations and Non-Governmental organizations some of which work ‘exclusively on prison’ addresses overcrowding related issue like juvenile, women, convicts and re-offenders³¹⁴ some are right focused “Faith Based” “service directed”, ‘private and labour sensitive’ using diverse methods such as litigation, Research, “therapeutic and developmental services” renders educational and skill training to prisoners in a collaborative fashion.³¹⁵ America is equally blessed with virile Civil Society Organizations and non-profit organizations which played a pivotal role ranging from policy formulation to rehabilitation and restorative programming.³¹⁶ Civil Society Organizations in South Africa are well articulate in the area of victim empowerment, treatment of offenders, rape and domestic violence division, monitoring, capacity building in criminal justice sector.³¹⁷ The creativity of Civil Society Organization and NGOs in addressing overcrowding is perhaps premise on the Notion that positive intervention is essentially for treatment of prisoners, attend to offender unique needs and rehabilitate offenders which ultimately reduces the likely “possibility to recidivate” thus preventing ex-offenders from going back to criminal behaviour, this has the potential effect of reducing the number of persons sent back to prisons.³¹⁸

It is predicated on this that the Civil Society and Non-governmental Organizations in South Africa and America has and continued to be engage on Educational, Vocational training, life time skills, job counselling and job placement programs to persons and families affected by imprisonment to ensure a smooth transition from prison back to free society.³¹⁹ The essence is to

³¹⁴ Lukas Muntungh, “Prison in South Africa’s Constitutional Democracy, centre for the study of violence and Reconciliation”, October, 2007 pp1-33 P24 (available at <http://www.csvr.org.za/docs/correctional/prisonsinsa.pdf>) accessed on 25th October, 2010

³¹⁵ Ibid

³¹⁶ Top: Society :Issues : Crime and Justice :Prisons: organizations (50) (available http://www.dmoz.org/Society/Issues/Crime_and_Justice/Prisons/Organizations/) accessed on 25th October,2010

³¹⁷ Crime and Crime prevention in South Africa; 10 years after anton duplessis and Antoinette Louw crime and justice program, Institute for Security Studies South Africa (April 2005) pp 428-446 p434 (available at <http://www.iss.co.za/pubs/Other/worldcrimconfaug05.pdf>)

³¹⁸ Raph Fretz, Kirk Heilbruun, and Devon Brown, “outcome Research as an Integral Component of performance-Base offender Treatment, ‘America Association Correctional Compendium, (July/August 2004) as cited in Leonard C. Gilroy, Adam B. Summers, Anthony Randazzo and Harris Kenny, Public- Private Partnerships for Corrections in California: Bridging the Gap between Crisis in Reforms, Supra note 310

³¹⁹ Ibid

give the prisoner skills and abilities that are self sustaining to lead a fulfilling life, free from crime and positively contribute to the community to which he returns.³²⁰

The social role of civil society and non-governmental organizations are complimentary and where necessary fill the void created by inadequate programmes by correctional institutions which has the

Statutory responsibility to custody rehabilitates, re-socialise offenders and ensure public safety.³²¹ Thus where prisoners could not participate in programmes offer by prisons, they could readily attend those offered by Civil Society and Non-governmental Organisations.³²² It is equally documented that some prisoners prefer programmes offered by non-governmental organizations which is said to be more effective in rehabilitation and reintegration process of offenders. The rationale is that most CSOs programmes are designed and operated in a free community.³²³ The next section in this chapter discusses activities of some key non-governmental organizations in South Africa and America working inside and outside prisons to address overcrowding issues.

6.3 SELECT INITIATIVES OF KEY CSOs, NGOS AND FBOs IN SOUTH AFRICA AND AMERICA.

It has been indicated that both South Africa and America are blessed with a sizeable number of CSOs, NGOs CBOs and FBOs working in diverse areas. Some have projects and programmes designed exclusively to address prisons overcrowding through diversion program, crime prevention activities, and treatment of offender, educational and vocational training and a host of others. It is against this background, that this section explores such programmes of organisations working directly on these issues to tackle rapid growth in prison population. In South Africa L. Muntingh selected nine NGOs working to promote prison reforms and addressing overcrowding

³²⁰ Supra note 314 Para.1 at 91

³²¹ L., Muntingh Role of Civil Society Organization. In prisoner support, rehabilitation and reintegration, Civil Society Reform Initiative Research Report (2008) p1 cited in Chesne Albertus, Offender Reintegration in South Africa, A Complementary Crime Prevention, Open Society Foundation in South Africa, 2010,pp1-30 p 17

³²² Ibid

³²³ Open Society Foundation for South Africa, Creating Paths for Offender Reintegration Conference Report ,(14-15 October 2008) pp1-107 p59 (available at http://www.osf.org.za/File_Uploads/docs/Offender-Reintegration-Conference-Report4.pdf) accessed on 26th October, 2010 see also Drexel study op cit Leonard C. Gilroy, Adam B. Summers, Anthony Randazzo and Harris Kenny note 310 indicated that participants from Community education centers have lower rate of recidivism compared to those who participated in public in New Jersey Department of Correctional which is less effective to community base in terms of efficiency.

problems.³²⁴ While in America a Top Society Issues displayed fifty organisations with their projects.³²⁵

One of such NGOs in South Africa is the National Institute for Crime Prevention and reintegration of Offender hereafter referred to as ‘NICRO’ was established in 1910 has offices in all nine provinces in South Africa³²⁶ while Northern California Service League hereafter referred to as ‘NCSL’ was founded in 1948 operates only in San Francisco and California Jail³²⁷. Both organisations run educational and vocational training programmes, NICRO

In South Africa apart from giving training to ex-prisoners also award bursary to sentence prisoners, about 60 have enrolled and graduated in 1998,³²⁸ NCSL in America provides both post and pre-release educational training and both work for offender re-entry back to society.

Both NGOs provide job counselling and job placement, NICRO gives participants employment for 60 day on contract basis. With 500 spaces for participants³²⁹ while NCSL do arranged annual job fair for participants graduates are placed under a job specialist. About 468 participants have graduated from San-Francisco and Jose of whom 59% were placed under contract jobs for 6-18 months with average wages of 11.36 Dollars³³⁰ NICRO operates an entrepreneurial skills selection, conduct screening and prisoners inclined to do businesses are selected and send to another agency for business training. It provide start up capital for participants through (NACRO Finance Enterprise (NFE) and Economic Opportunity Project (EOP) began in 1998 and 1999 respectively. Give ex-offenders a grant of R750 as loan with prospect of increasing to R 6,000. While NCSL has no entrepreneurial Scheme, but rather operates a housing scheme Cameo Housing Project which saves as an awaiting room and diversion for juvenile who are not to attend proceedings, parents and care givers represent juveniles in court.

³²⁴ Lukas Muntingh, After Prison, the case for Offender Reintegration published in monograph NO 52, March 2001 chapter 5 (available at <http://www.iss.co.za/pubs/monographs/no52;chap5.html> (last accessed on 25th August, 2010)

³²⁵ Supra note 316 Para.1 at 92

³²⁶ http://www.nicro.org.za/programmes/programmes_offenders.asp

³²⁷ <http://www.norcalervicesleague.org>.

³²⁸ Supra note 324

³²⁹ Supra note 324

³³⁰ <http://www.norcalerviceleague.org/annrpt08pdf>

NICRO too have a diversion scheme for juvenile offenders with minor and non violent offences, conduct mediation as an alternative to prosecution , Holds mediation for six weeks with 25 spaces for participant once a week. NICRO equally handles domestic violent cases referred to it from magistrate court on suspended sentences. It apply group conference and ensure offender accept responsibility and accountable for his or her act to prevent future occurrences and report back to court. NICRO too supervises community sentences and report to the prosecutor. NCSL on the other hand provide group management and parenting skills, arrange a visit once a week to establish family contact; restore self esteem and hope to offenders; give drugs abuse, anger and stress treatment. NICRO also operate a litigation department which offer pro bono services to prisoners.

Another set of NGOs using almost the same method to pursue their objective is Civil Society Prison Reform Initiative hereafter referred to as ‘‘CSPRI’’ was established in 2003³³¹ is a project of the community law centre at the University of Cape town and Family Against Mandatory Minimum hereafter referred as ‘‘FAMM’’ was founded in 1991³³² while CSPRI work to ‘strengthen Civil Societies involvement in Correctional activities’ on policy formulation in South Africa, FAMM in America targets ‘specific reform against massive incarceration due to lengthy sentences and tougher policies against crime. CSPRI had stimulated the use of non custodian sanction as alternative to incarceration while FAAM fight to eliminate sentencing disparity between crack cocaine and powder substances. CSPRI research programme, disseminate information and provide capacity and expertise to department of correctional in South Africa and Justice Ministry. While FAMM on the other hand lobby and sensitise the United State Congress on the implications of mandatory minimum on the prison population and its cost on tax payers. It has established presence in the state of Massachusetts, Florida, New Jersey and Michigan where it successfully lobbied for the ‘passage of the safety value’ in 1994 while in 1998 and 2003 fought for the change of ‘harsh life sentences’ who are now legible for parole under marijuana charges in Michigan. It offered pro bono services to 17 lifers and were granted reprieve.³³³ And

³³¹ <http://www.communitylawcentre.org.za/clc-projects/civil-society-prison-reform-initiative> Supra note 17

³³² <http://famm.org>

³³³ The programmes and project both past and on going are display in Family Against Mandatory Minimum Web page located at <http://www.famm.org> about FAMM and Michigan FAMM

CSPRI too operate a litigation department, filed and support class Action suits for prisoners, and was party in the landmark case of NICRO and others V. Ministry of Home Affairs and others.³³⁴

Faith Base Organizations FBOs are significant both in the ‘physical and spiritual dimension’ to prisoners.³³⁵ In South Africa, Prison Fellowship International, a Faith Based NGO founded in 1977, has consultative status with the United Nations socio-economic council, with 88 representatives across the world.³³⁶ The Prison Fellowship International in America was founded in 1972.³³⁷ Both assist incarcerated and released offenders by providing individual counselling and group session through prison ministry on the need for transformation and forgiveness by God. Present prison seminars in an interactive fashion, thus provide both physical and spiritual well being of prisoners.³³⁸ It provides life skills and HIV/AIDS prevention training through catholic ministry in prisons.

The Prison Fellowship International in South Africa runs a care group system which strives to bring restorative justice system between the victim family and the offenders. The ‘‘sycamore tree’’ scheme facilitates the meeting between the victim and the offender. While the American model is ‘‘Bridge to Life’’ which stem the spirit of restitution, forgiveness and healing, bring the offender and victim, in a ‘face to face dialogue.’³³⁹

The second model is the ‘‘Angel Tree’’ which is applicable to both South African and American prison Fellowships. The project anchors the relationship between the prisoner and his family through private gift

to his family for atonement and healing. The goal is to empower victims and rehabilitate offenders. The American model focuses on monitoring and giving assistance to children whose parents and guardians are incarcerated.³⁴⁰ Faith base organisations now enjoyed so much

³³⁴ Supra note 300 Para.1 at 87

³³⁵ See generally A Statement of the Catholic Bishops, a Perceptibility, Rehabilitation and Restoration: on Crime and Criminal Justice, USCCB, November 15, 2000

³³⁶ Supra note 321 Para.2 at 92

³³⁷ <http://www.ministrywatch.com/profile/prison>

³³⁸ Supra note 324 Para.1 at 93

³³⁹ <http://www.bridgestolife.org> , see also <http://www.bridgestolife/the-program>.

³⁴⁰ http://www.demosnewspond/dom/pdf/additional/angeltreefact_sheet .

patronage from government in America.³⁴¹ The pastoral prison fellowship also strives to achieve physical and spiritual rebirth, change of attitude to prevent offender from relapse to crime.

The list is not exhaustive but, it is glaring from programmes and project initiated by CSOs, NGOs and FBOs that the centre concerns in addressing prison overcrowding related issues is tailored on offender rehabilitation, successful reintegration back into main stream society, crime prevention and reducing the rate of re-offending. However, these groups face challenges in their effort to tackle this systemic problem which is being address in the next section in this chapter.

6.4 CHALLENGES OF CIVIL SOCIETY ORGANIZATIONS, NGOS, CHURCHES AND FAITH BASE

Civil Society, NGOs and Churches have demonstrated a commendable effort in addressing prison overcrowding issues in Nigeria, South Africa and America. But are beset with myriad of challenges; funding and capacity building³⁴² constitute the major challenges; most NGOs depend solely on donor agencies without government support with exception to NICRO in South Africa³⁴³ and Faith Based in America³⁴⁴ that enjoyed government patronage and sponsored projects. As a result of this factor, some CSOs and NGOs are only concern on self sustaining effort rather than addressing overcrowding related issues in prisons.³⁴⁵

Lack of accommodation and space in Correctional Institutions hinders the activities of CSOs and NGOS in prisons. Most prisons facilities do not have a conducive functional environment with space enough to enable CSOs embark on elaborate rehabilitation programming and the obscurity nature of prisons hinders prisoners from benefiting from programmes designed outside the prison except those release³⁴⁶. Further, most of these programmes lack coordination and structure, there

³⁴¹ . President Bush's Faith –Based Community Initiative Program offer grant and financial support to faith based project that work on the spiritual rehabilitative. The second chance Act 2007 signed into law on April 9, 2008 (pl.110-195 to facilitate successful re-entry of offenders, to prevent crime and re-offending. This has triggered criticism for Right Groups and many tend suits for violating the land for the separation of state and religion. See Americans united for separation Church and states VS prison fellowship ministries and Inner charge freedom (available at <http://www.becketfund.org/index.php/article/534.ht>

³⁴² Supra note 321 Para.1 at 92

³⁴³ Supra note 324 Para.1 at 93

³⁴⁴ Supra note 321 Para.1 at 92

³⁴⁵ Supra note 321 Para.1 at 92

³⁴⁶ Amanda Dissel, Tracking Transformation in South Africa Prisons Vol. 21. No.2 April, 2002 http://ccrweb.ccr.uct.ac.za/archive/two/11_2/transformation.htm |

exist 'dialogue deficit' between the correctional service departments and CSOs and other organisation working exclusively on prison issues,³⁴⁷ this lack of awareness has a crippling impact on prisoners who hardly access or avail themselves of these programmes.

There is a problem of access to prison access to penal institutions by CSOs , NGO and FBOs making most of them not to be critical of correctional activities, this pose an enormous set back as their relationship is strictly adhoc³⁴⁸ coupled with the 'lax attitude of society.'³⁴⁹ The next section will focus on applying lessons learnt to Nigeria situations

6.5. CONCLUSION

Concluding this chapter, Civil Society Organisations embraces other organisations working on promotional activities distinct and independent from government. South Africa and America are blessed with many CSOs, NGOs and FBOs who actively work both inside and outside prisons on diverse areas such as health, pregnant women, juvenile, re-offenders, drug addicts and a host of other issues in addressing prisons overcrowding. They utilised various methods, while some are research base others are rights focus with litigation as its tool, some as well are advocacy centre, policy initiators and those lobbying for criminal justice reform.

All these groups engages on programmes and projects gearing towards rehabilitation with programmes that customises individual needs; reintegration; community services and suspended sentences as alternative to imprisonment; restorative justice focusing on victim/offender reconciliation and restitution; crime prevention through moral and spiritual rebirth to reduce recidivism and abrogation of mandatory minimum legislation on the notion that if less persons are sent to prisons and offenders sentenced for lesser period prison overcrowding will be minimise. It is perhaps strongly suggested that there should be a powerful partnership and collaborative effort between correctional institutions and these organisations for effective net working to address overpopulation in prison.

³⁴⁷ Amanda Dissel, Stephen Ellis, Reform and Stasis: Transformation in South African Prisons, Per first Published in "Ambitions Refomatories et Inertie du social dans less prisons sud- africaine" Critique Internationale No. 16, July 2001 available at <http://www.csvr.org.za/wits/papers/papadse.htm>(accessed on 3rd November, 2010

³⁴⁸ South Africa Correctional Amendment Bill (B 32 of 2007 was adopted by portfolio Committee Services on May 6, 2008. Even though, its section 13 (7) empowers National Commissioner to permit CBOs, NGOs and Faith Based to have access to prisons but inserted a clause which requires them to undergo rigorous screening.

³⁴⁹ Ibid

CHAPTER SEVEN

7.1 OVERVIEW

This chapter applies lessons learnt from South Africa and America experience in dealing with overcrowding issues in Nigeria prison. It also examines strategies for improving the activities of Civil Society Organizations and Churches in addressing the maladies of overcrowding in prisons. It discusses the possible recommendations which could be use in Nigeria to address overcrowding related issues. And finally draw a conclusion on this research work.

7.2 LEASSONS LEARNT FROM SOUTH AFRICA AND AMERICA

It has already been evinced in chapter five that, overcrowding in prisons is not only unique in Nigeria, South Africa and America but a serious phenomena all over the world. Both developed and developing nations are grappling with the soaring prisons population and its attendant effects on prisoners, community and prison administration. However, policies and strategies adopted by South African's and American's Governments and Correctional as well as programmes employed by CSOs, NGOs and Churches in addressing issues of overcrowding which are worthy to be replicated in Nigeria to address overcrowding in prison. Thus these lessons learnt are being applied to Nigeria in this section.

The good practice in South Africa model and America can be seen from its criminal legislation on plea Bargain³⁵⁰ which allows the defendant to plead guilty to the offence as charged for a lesser offence by submitting to the judge or magistrate an agreement entered with the prosecutor, this has the effect of reducing the workload of the courts, and favours restitution, and the victim is being compensated rather than sending the offender to prison.³⁵¹ Plea bargain if employ in Nigeria, the courts will relax from its excessive remand orders and pre-trial detention. America has shown inclination in this respect repealing the minimum sentencing guideline³⁵² and crack on cocaine substance, a get tough on crime which created disparity in sentences with the effect of putting more persons with state offences in prisons. Civil Society Organizations like NICROs, CSPRI, and Family Against Mandatory Minimum have actively advocated for the repeal of this law which has the ultimate goal of reducing number of persons in prisons, Nigeria should follow suit to abrogate it obnoxious laws in the criminal code such as death penalty, hawking and prostitution.

³⁵⁰ Supra note 274 Para.2 at 83

³⁵¹ Supra note 274 Para.2 at 83

³⁵² Supra note 252 Para.1 at 81

Both South Africa and America have strategies which are community service driven, such policies on parole, probation (suspended sentences) booth camps, and half way homes with extensive electronic surveillance to monitor parolees. Even though this policies are at it meagre stages in South Africa but extensively used in America to divert drug addicts and juveniles with non violent offences and minor offences from prosecution and incarceration.³⁵³ The National Institute for Crime Prevention and Rehabilitation (NICRO)³⁵⁴ in South Africa and Northern California Service League (NCSL)³⁵⁵ have remarkable programmes for diversion of juveniles from court proceedings, NICRO operates a care scheme which empowers youth while NCSL operates a CAMEO Housing Project which saves as a diversion home for juveniles. This policies are also uncommon in Nigeria, juvenile are remanded in prisons together with adult and prosecuted., Nigeria courts and prison service should refuse to attend to such cases.

Another lesson worthy to be replicated in Nigeria is the robust government initiatives on rehabilitation, reintegration and re-entry programmes for the offenders. Both South African and American governments sponsor these programmes, South Africa, runs an integrated justice system³⁵⁶ and involves CSO, NGO, and Churches, Other stakeholders such as family and community to collaborate with Department of Correctional Services as its social responsibility³⁵⁷ to ensuring the Department of Correctional Service take offender individual needs rehabilitation program, reintegration, incapacitation as well as public safety as one very important function.³⁵⁸ Americans government is committed to this ideal and has promulgated the second chance Bill,³⁵⁹ which fund Faith Base Organization to rehabilitate offenders. While South African government sponsored NIRO rehabilitation base project.³⁶⁰This legislative and policy initiatives is not a practice in Nigeria and should be replicated to tackle overcrowding issues

³⁵³ Supra note 280 & 281 Para.1 at 67 for South Africa and 283, 284 & 285 Para.2 at 68 for America

³⁵⁴ Supra note 324 Para.1 at 93

³⁵⁵Supra note 316 Para.1 at 91

³⁵⁶ Supra note 314 Para.1 at 91

³⁵⁷ Supra note 314 Para.1 at 91

³⁵⁸ The White paper on Correction in South Africa, (March 2005), set standards and prioritise rehabilitation and reintegration of offender. This is not merely for prevention of crime but for a holistic social responsibility including 'incapacitation, rehabilitation, reintegration and for public safety'

³⁵⁹ Supra note 341 Para.1 at 92

³⁶⁰ Supra note 316 Para.1.at 91

Further to this, CSOs, NGOs and FBOs in South Africa and America strive to provide offenders with educational and vocational training to ensure effective transition back to the society. Provide contract jobs and start up capital.³⁶¹ In both South Africa and America faith based operate projects that are victim driven to rehabilitate both the offenders and victims, mediate to bring victim/offender reconciliation.³⁶² In Nigeria, the criminal law have no concern for the victims who are not protected but merely treated as a nominal complainants, the offender is squared with the state. Victim empowerment programmes should be introduced and sustained in Nigeria as is done in South Africa and America.

Privatization of prison and capacity expansion of prison facilities in South Africa and America is employed to ease the problem in overcrowded prisons,³⁶³ using unit management scheme³⁶⁴ which emphasizes admitting manageable number of prisoners and place under the care of a specialised welfare officer for easy treatment of prisoners according to individual special needs. The program is designed for each prisoner on admission after sentence for easy supervision until after release. The essence is for efficient management of correction. This managerial technique is totally lacking in prison administration in Nigeria where prisons in the metropolitan cities are dangerously overcrowded while those in the suburb are operating below capacity.³⁶⁵ There is no need for private prisons now in Nigeria but the prison administration should be encouraged to transfer prisoners from crowded prisons to those with enough space. It is perhaps with great optimism that if all these lessons learnt from South Africa and America experience are utilised in Nigeria with necessary modifications to suit geographical and socio-economic realities, standard and good practice in prison management currently lacking could be raised to a level universally acceptable to custody, rehabilitate and treat prisoners in a humane manner. And above all tackle the problem of overcrowding in prison with effective transfer mechanism to prisons with less population.

³⁶¹ National Institute for Crime Prevention and the Reintegration of Offenders Organisation and Northern California Service League both offer ex-offenders contract jobs and job placement. While NICRO Financial Enterprise provides start up capital for participants to engage in business. This is to ensure released offenders are self reliance and law abiding without going back to criminal activities

³⁶² The Sycamore Tree Project (STP) in South Africa and Bridges to Life (BTL) in America work to achieve victim /offender reconciliation

³⁶³ Supra note 276 Para.2 at 83

³⁶⁴ Supra note 286 Para.2.at 84

³⁶⁵ Supra note 56 Para.2 at 27

It must be noted however that, CSOs, NGOs and Churches played significant role through its programmes to address the problem of prison overcrowding. But encountered myriad of obstacles. The next segment in this chapter suggests strategies to improve the working of CSOs, NGOs and Churches in addressing overcrowding in prisons.

7.3 STRATEGIES OR RECOMMENDATIONS TO IMPROVE THE WORKING OF CSOs, NGOs AND CHURCHES IN PRISON

It has already been demonstrated in section 6.4 of chapter six that CSOs, NGOs and FBOs are face with funding and capacity building problem and host of other obstacles which have hinder them from achieving maximal results in addressing overcrowding problem which has continued to plague the various criminal justice systems under this discourse. In the light of these problems the following strategies or recommendations are suggested to address these challenges. To wit:

1. The activities of CSOs, NGOs and Churches should be streamlined and well define to ensure effective coordination,³⁶⁶ providing an enabling environment for “interactive engagement” with other key actors in the criminal justice sector. This has to be sustained by “political well”³⁶⁷ articulating a robust policy promoting “collaborative partnership” between justice ministry, ministry of interior, correctional institutions and other service providers such as CSOs, NGOs FBOs working on overcrowding related issues in prison.
2. States and Federal Government should support CSOs, NGOs CBOs and FBOs through fiscal and budgetary allocations as well as capacity building. It is imperative that states should actively seek and support initiatives and programmes of NGOs CSOs and FBOs which has the potential of empowering prisoners to be self reliance, law abiding and live a life free from crime. And government patronage should be free from any strings as to keep the autonomy enjoyed by CSOs.
3. There should be a constant and frequent dialogue between NGOs, Churches and department of correctional, ensuring accessibility and, remove all barriers such as reprisal, intimidation associated with the management of prison. NGOs should be

³⁶⁶ Archdiocese of Dublin, prison Chaplain’s Report, 2005 op cit in Curt Taylor Griffiths, Ph. D. Dannielle J. Phil Supra note 22

³⁶⁷ Varenik, R.O, “mixing politics, Data and Detention: Reflections on Reform effects,” In justice initiative: pre-trial detention New York: Open Society Justice Initiative(2008) pp 172-183 op cit in Curt Taylor Griffiths, Ph. D. Dannielle J. Phil Supra note 22

guaranteed access, to freely show case, initiate reforms, and adopt programmes and policy advocacy without fear or favour.

4. The activities and programmes of NGOs, CSOs and churches should be well published with wide media coverage. A programme design to educate offenders and ex-offenders on the activities of each NGOs and churches and how to access them as easily as possible.

7.4. CONCLUSION AND RECOMMENDATION

The significant of this study is premise on the problems of overcrowding in Nigeria drawing some lessons from South Africa and America. Prison overcrowding is a situation where prisoners are housed in a number above rated capacity of a prison facility. Prison congestion as it is known in Nigeria is a problem mostly in prisons in the metropolitan cities while prisons in the suburb operate below capacities. The prisons conditions are generally deplorable, majority of prisons about seventy five percent in Nigeria were constructed by colonial administration with dilapidated structures at the brinks of collapse, of the twenty five percent constructed by native authority and federal government were built with substandard materials now in the same state of disrepairs without the basic facilities for inmates welfare.

In such a situation in metropolitan cities like Ikoyi prisons, Kerikeri maximum, Abeokota, Kano, Port harcourt, Calabar, Enugu, Warri, Owerri and most other cities where overcrowding occurs, inmates are crammed in cells in appalling conditions without the basic necessities to decent accommodation, hygiene, sanitation, nitrating and medical care which fall short of standard stipulations by United Nations and other regional and international human rights instruments. This has led to the violation of prisoners' rights such as the right to privacy is denied where buckets, pit toilets and bath are in the cells, inmate bath and defecate before the glaring eyes of other inmates without toiletries and disinfectants. The idea of classification of inmates is a mirage as juveniles are housed together with adult, pregnant women; children and nursing mothers are incarcerated with other prisoners without post and prenatal facilities; inmates with conic and contagious diseases are housed with other inmates with no adequate drugs nor transferred to special facilities for proper treatment; Inmates are twenty three hours lock up without enough time for recreation, lighting, ventilation and heating; most time denied communication with counsels and contact with family members.

Overcrowding in Nigeria is caused by series of factors which includes, overreliance on pre-trial detention, 75 % of the prison population are the awaiting trial, magistrates and judges make excessive use of remand orders even on trivial matters due to over criminalisation of behaviours, Magistrates are empowers to make remand orders on offences in which they lack jurisdiction to prosecute such as homicides, murder, treason and armed robbery; The Nigeria police force is empowered to arrest and detained before investigation while the suspect is remanded in custody waiting the out come of investigation which may last for several years. The police delay duplicating case files for legal advice, often times misplaced case files and come to court with no evidence nor witnesses and without the investigating police officers; Ministry of justice delay in giving legal opinion on files submitted by the police; there is delay in the administration of justice, the courts have backlog of cases and give prolong adjournments while the lawyers come to court ill prepare only to seek for adjournments and the lack of coordination between the actor in the criminal justice sector leading to confusion and delay to act. The combination of these factors has led to prisons congestion in Nigeria.

The conditions created by overcrowding have negative implications on both the incarcerated person, prison administration and the society. For the incarcerated person, it affects both his mental and physical health, exposing him to infectious diseases like HIV/AIDS, tuberculosis, spread of skin diseases and other venereal diseases and often result to death; causes anti social behaviours like sodomy, rape and sexual exploitation, it also causes idleness and frustration leading to inmates infraction of prison regulations and interpersonal confrontation with the prison warders, this is the sole cause of jail breaks, riot and prisons escapee.

The prison managers are over task to provide for the basic need of prisoners, prison facilities are overstretched making personnel to violet international standards, prisoners are always lock up without separation of inmates according to classes or any time for recreation and rehabilitation and exposes the prison personnel to the risk of contacting diseases, physical attack and dampened their morality while the community to which the offender without rehabilitation and untreated disease retunes to, after release harvest the net effects of imprisonment on the ex offender who come to spread diseases to his family members, threat to public safety as he relapse to crime; create economic hardship to families where person affected is the bread winner; causes broken families and task the tax payers to cater for offender to whom he offends.

There exist both Regional and International Human Rights Instruments which set standards and principles for good practice in prison management and enjoin national authorities to apply with variations depending on locality and economic advancement. Those International Human Rights instruments which addresses overcrowding related issues includes: The United Nations Standard Minimum Rules, The United Nations Covenant on Civil and Political Rights, The body of principles for the Protection of All Persons under Any Form of Detention, The International Committee of the Red Cross, United Nations Declaration on Human Rights, United Nations Minimum Rules for the Administration of Juvenile Justice and the United Nations Convention for the Rights of the Child. While Regional Human Rights Instruments includes: European Convention on Human Rights, European Committee for the Prevention of Torture, The Kampala Declaration on Prison conditions in Africa and the Africa Charter on Human and Peoples' Rights.

It is clear from all the specific provisions enumerated in these instrument that there tend to be replication of the United Nations Standard Minimum Rules which requires Humane treatment of prisoners, separation of all categories of prisoners convicted from awaiting trial, male from female and juvenile from adult; prisoners should be provided with basic needs as to a decent accommodation in a clean hygienic environment that is necessary for health, Cells should be well ventilated with lighting and heating facilities, Each prisoner should sleep in a bed per night with clean beddings and toiletries, balance diet and medical care. Prisoners should have access to legal representation and contact to family members, entitled to recreation for at least one hour per day, further require that prisons should be reformative in nature with educational and vocational programmes to take care of individual unique needs and effective reintegration back to society.

And require that special treatment be accorded to vulnerable groups like juveniles, children, pregnant women and those with personality abnormalities who should be separated or transferred to special facilities for treatment. To this end, the Kampala declaration on Prison Conditions in Africa, United Nations Minimum Rules for the Administration of Juvenile and the United Nations Convention for the Right of the Child amplify diversion of cases concerning juveniles from formal judicial proceedings, placement of juvenile on intensive family supervision, counselling and emphasised that, the welfare and special needs of the child should take the paramount preoccupation of all intervention in this regards, while imprisonment should be the last option.

Unfortunately, Nigeria though signatory to most of the instruments except the European convention and the European Committee for the Prevention of torture, have not comply to any of these rules as prisoners in Nigerian prisons are not separated, awaiting trial persons have no beds at all, who are crammed together without ventilation, lighting and in the most appalling conditions without water, sanitation is so poor, pit toilets and buckets are mostly provided without tissue paper nor disinfectants. Pregnant women and children are not provided with post and pre natal facilities, civil and criminal lunatics are not transfer to special facilities and access to justice is uncommon in Nigeria.

But however, Nigeria is not bound to strictly apply the rules in the administration of its prison except where such have been domesticated according to section 12 of the 1999 Constitution of the Federal Republic of Nigeria. Nigeria has domesticated the African Charter on Human and Peoples' Rights and the Convention on the Rights of the Child which makes the specific provisions binding and enforceable by the courts in Nigeria.

Overcrowding is not unique to only Nigeria, South Africa and America but pose serious challenges to both developed and developing nations. But the causes of over crowding vary from region to region and policies and strategies put in place to tackle overcrowding equally differ. While the root causes of overcrowding in Nigeria is over dependence on pre-trial detention, delay in the administration of justice, police lack of expertise to investigate promptly, over criminalisation and lack of coordination between the actors in the criminal justice sector. The causes of overcrowding in South Africa and America is principally preference to incarceration, lengthy sentences because of the war on drugs with the passing of mandatory minimum, truth in sentencing and recidivism and the requirement of the new bail law which places financial burden on the accused majority of which are too poor to afford bail in South Africa is responsible for prison over population in these countries.

The policies and strategies adopted to tackle overcrowding are also different, while Nigeria employ legal aid council ,jail delivery, amnesty and private lawyers to address the problem of congestion and reduce prison overpopulation with little success as lawyers employed demonstrated lack worm attitude due to lack of government commitment to monitor the project . South Africa and America uses diversionary programmes like parole, probation booth camp and community services; prison privatisation, capacity expansion through construction of new prisons, unit management to customise individual needs of offenders and

South Africa in addition uses inspectorate judge, Saturday courts and the president in charge of prisons could apply for the release of inmates already on bail if the population in prisons constitutes a threat to health, human dignity and security risk in prison.

The Nigerian courts have done little or nothing to adjudicate on matters of overcrowding being handicapped by the non justiciability provision, while courts in South Africa and America have shown more sympathy towards prisoners' rights and prison conditions. Yet South African's courts are constrained by political consideration on this point while American's courts places burden on applicants to show that overcrowding conditions has led to deprivation of basic needs such as nutrition, physical and mental health, clothing and personal safety. This is in part indicative why overcrowding persist unabated despite strategies and policies adopted to tackle it in these jurisdictions. It's perhaps hope that with long term policies, criminal reforms and programmes that emphasis treatment on cases of drugs, juvenile with non violent offences in specialised institutions and community base rehabilitation rather than imprisonment, overcrowding could be minimised.

The role of Civil Society Organisations, Non Governmental Organisations and faith base has been remarkable in addressing prison overcrowding related issues in Nigeria, South Africa and in America. They apply diverse methods like policy advocacy, research, litigation and lobbying to instigate reforms. They actively engages in programmes and projects such as rehabilitation and after care, provide prisoners and ex prisoner with life skills, job placement and contract jobs; victim/offender reconciliation; diversion of cases from formal judicial procedure on cases involving juveniles and domestic violent through individual and group counselling, mediation and other forms of alternative dispute intervention.

They supervises parolee on community service programmes and report back to the prosecuting authority and handle cases on suspended sentences on domestic violent referrals and recommend to the prosecuting magistrate. This is reminiscent of NICRO in South Africa and faith base work on the spiritual and physical well being of prisoners. The essence of these programmes is premise on the notion that reformation, successful reintegration makes ex-offenders self reliance, law abiding and prevent reoffending which will reduce the number of persons sent to prisons.

These organisations are beset with myriad of challenges on their efforts to address overcrowding related issues in prison; this includes lack of funding and capacity building;

dialogue deficit between the correctional service department and civil society organisations; lack of coordination on programmes of civil society organisations, limited access to prisons facilities and lack of awareness of their programmes. To improve on the activities of CSOs, NGOs and FBOs in addressing overcrowding in prisons and overcome these challenges, the following strategies and /recommendations are suggested: Government patronage in terms of funding and capacity building; the programmes of CSOs should be streamlined and defined; there should be frequent collaborative engagement between the correctional department and other stakeholders working on prison especially on overcrowding related issues and the programmes of CSOs be well publicised with a wide media coverage.

The overview is that overcrowding is caused by series of factors and has series of negative effects on the incarcerated person, prison management and the society in general. This has posed serious challenges, to this end, a solution or series of solutions has to be contemplated to address the problems of overcrowding suitable to Nigeria context in view of the fact that causes of overcrowding differ from jurisdiction to jurisdiction. The understated recommendations are suggested:

1. There should be accelerated trial³⁶⁸, remand orders and pre trial detention should not be the role³⁶⁹. But should be considered as a last possible option, pre-trial detention should be made subject to periodic review to prolong or release detainees to avoid detention in perpetuity. Bail condition should not be onerous but affordable with benefit of early release, unconditional release on self recognisance; plea bargain should be introduced in criminal trial especially on drugs, property and economic offences to attract compulsory compensation, forfeiture and restitution. This has the potential of empowering victims, reduces court workload and checkmate back logs of cases. Case file management steering committee be established with enormous mandate to ensure speedy trail.
2. An effective transfer mechanism of prisoners from congested metropolitan prisons to suburb facilities operating under capacity.³⁷⁰ Recommend the establishment of a task

³⁶⁸ Plan of Action for Ouagadougou Declaration on Accelerating Prison and Panel Reform in Africa ,18-20 (September, 2002) it was the action plan from the Ouagadougou Conference held in Kampala Burkina Faso, The themes covered in this conference include among others ; 'Alternative sanction to imprisonment,' 'African model of community service', 'reducing remand prison population's and 'juvenile justice.'

³⁶⁹Supra note 121 Para.1 at 58

³⁷⁰ supra note 56 Para.2 at 27

force on prisoners' transfer with adequate funds, facilities, security and net work to establish family contact on new prison location to which the prisoner is being transferred.

3. Non custodial sentences should be ordered by magistrates and judges in cases of first offenders, juvenile and adult offenders with minor and non violent offences which do not constitute a threat to public safety. As alternative to imprisonment, sentences with option to pay fine, parole, probation, treatment facilities, house arrest and community service be order.³⁷¹ There should be a mass public campaign team to sensitise the public that community services is as effective as imprisonment.
4. The criminal code should be review to effectively decriminalise offences that are moral in nature such as disrespect to parents, loitering, hawking. Prostitution, indecent dressing, drunkenness and drug addiction should not be subject to sanction of imprisonment but treatment in specialised institutions. This will indirectly address overcrowding.
5. Diversion strategy applying alternative to criminal prosecution. In such cases involving juvenile on minor case of non violent in nature, mental health and drug addiction to be settled without court proceedings but through reconciliations, conciliation and mediation group conference, counselling and alternative dispute resolution.
6. Rehabilitation of offender should be focus on individual special needs to discover what is responsible for his or her criminal behaviour, reform and reintegrate back to society. Punishment should not be the ultimate consideration for imprisonment. Concession should be given to victim rehabilitation and offender /victim reconciliation, the net effect is to prevent re-offending and stimulate forgiveness.

It is perhaps hope that if these recommendations are religiously implemented with a concerted endeavour of all the actors involved in the criminal justice system i.e. prisons, police, court, CSOs, NGOs, religious bodies and a strong political will by the government, prison congestion will be substantially reduced.

³⁷¹ The Kadoma Declaration on Community Services 1996, In this declaration community services was accepted as the best component of alternative sentences , Africa model which has been the traditional way of settling disputes was consider imperative see also supra note 154 Para.2 at 66

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APPENDIX

SUMMARY OF INMATES POPULATION IN NIGERIA PRISONS AS AT 30TH JUNE 2010

S/NO	STATE	INMATE POPULATION																STAFF DISPOSITION									
		CONVICTED						UNCONVICTED						INMATES TOTAL				ASP I & ABOVE		INSPEC TORS		RANKS FILE		STAFF TOTAL		INMATES/STAF F RATIO	
		SHORT TERM		LONG TERM		CONDEMNED		LIFEY		REMAIND & AWAITING TRIAL		DETAIN- EES		OTHERS		M	F	MF	M	F	M	F	M	F			
		M	F	M	F	M	F	M	F	M	F	M	F	M	F										M		F
1	ABIA	60	1	108			14		1030	47			50	3	1252	51	1303										
2	ABUJA	307	4	98	5		2		686	17			1		1094	28	1120										
3	ADAMAWA	438	4	532	5				820	21					1790	30	1820										
4	AKWA-IBOM	31	1	217	4	1	26		669	24					946	29	975										
5	ANAMBRA	18		49	3				328	2			862	23	1357	38	1395										
6	BAYELSA	216	2	175	1		2		758	21			16		1167	24	1191										
7	BAYELSA																										
8	BENUE	102	3	121	1	3	12		620	15					707	19	726										
9	BORNO	432	8	302	1	7	11		805	11			14		1371	20	1391										
10	CROSS RIVER	85	2	85	1	12	15	1	643	10	1				841	15	856										
11	DELTA	83	4	175	3	80	2	17	1154	25	3	1			1472	35	1507										
12	EBONYI	61	1	51	1		1		271				630	26	1014	28	1042										
13	EDO	86		263	4	37	1	7	568	8	6		825	38	1782	48	1831										
14	EKITI	14		38			1		250	6					304	5	308										
15	ENUGU	72	2	107		74	1	14	1384	45			78	1	1700	48	1758										
16	GOMBE	217	3	138			1		360	12					766	15	781										
17	IWO	34	2	192	2		6		1027	23					1059	27	1086										
18	JIGAWA	214	3	140		1	6		263	5					622	8	630										
19	KADUNA	582	3	865		139	2	23	888	10					2475	15	2490										
20	KANO	630	3	227	1	38	8		1439	35	3	2			2345	39	2384										

SOURCE: STATISTICS UNIT, PHO ABUJA

NIGERIAN PRISONS SERVICE
PRISONS CAPACITY AND INMATES POPULATION AS AT 30TH JUNE, 2010

STATE / HEAD-	S/NO	PRISON	CAPACITY	INMATE POPULATION								
				CONVICTED			UNCONVICTED			TOTAL		
				M	F	MF	M	F	MF	M	F	MF
	1	Max. Sec Kiriiri	1,056	255		255	625		625	880		880
	2	Med. Sec. Kiriiri	704	172		172	1,508		1,508	1,680		1,680
LAGOS - LAGOS	3	Female	106		34	34		136	136		170	170
	4	Ikoj	800	111		111	1,634		1,634	1,745		1,745
	5	Badagry	130	95		95	215		215	310		310
		TOTAL	2,798	633	34	667	3,902	136	4,118	4,615	170	4,785
	6	Abeokuta	502	249	3	252	556	22	578	805	25	830
	7	Ijebu-Ode	49	28		28	265	5	270	293	5	298
OGUN - ABEOKUTA	8	Ilaro	126	27		27	195		195	222		222
	9	Shagamu	48	7		7	167		167	174		174
	10	Borstal	39	19		19	91		91	110		110
	11	New MSP Ab		41		41	153		153	194		194
		TOTAL	744	371	3	374	1,427	27	1,454	1,756	30	1,829
	12	Bimin Gwari	103	59		59	24		24	83		83
	13	Kaduna	548	331	2	333	524	10	534	865	12	867
	14	Kafanchan	110	120	3	123	30		30	150	3	153
	15	Kakuri Prison	446	140		140				140		140
	16	Zaria	378	122		122	96		96	218		218
	17	Kujama	350	152		152	3		3	155		155
	18	Borstal	206	482		482				482		482
KADUNA - KADUNA	19	Kachia Satellite	70	19		19	30		30	49		49
	20	Saminaka Satellite	100	36		36	28		28	64		64
	21	Soba Satellite	82	20		20	25		25	45		45
	22	Manchok Satellite	70	16		16	14		14	30		30
	23	Gwantu Satellite	50	15		15	27		27	42		42
	24	Kwoi Satellite	70	32		32	19		19	51		51
	25	Ikara Satellite	20	17		17	37		37	54		54
	26	Makarfi Satellite	100	28		28	29		29	57		57
		TOTAL	2,702	1,589	5	1,594	888	10	898	2,475	15	2,490

				INMATE POPULATION								
				CONVICTED			UNCONVICTED			TOTAL		
STATE / LEAD	S/NO	PRISON	CAPA-CITY	M	F	MF	M	F	MF	M	F	MF
	93	Bama	320	62		62	5		5	67		67
	94	Biu	130	80		80	21	1	22	101	1	102
	95	New Maiduguri	680									
	96	Gwoza	150	75		75	13	1	14	88	1	89
	97	Maiduguri Prison Centre	120	114		114				114		114
	98	Maximum Security Maiduguri	1,600	265	7	273	452	7	459	718	14	732
	99	Mongono Satellite	36	16		16	16		16	32		32
	100	Kukawa Satellite	70	2		2	28	1	29	30	1	31
BORNO - MAIDUGURI	101	Gamboru-Ngala Satellite	76	18		18	13		13	31		31
	102	Kumshe Satellite	50	24		24	14		14	38		38
	103	Konduga Satellite	30	26		26				26		26
	104	Damasak Satellite	30	14		14	20		20	34		34
	105	Askira Satellite	50	28	2	30	14	1	15	42	3	45
	106	Shani Satellite	50	8		8	10		10	18		18
	107	Kwayakusar Satellite	30	19		19	13		13	32		32
		TOTAL	3,492	752	9	761	619	11	630	1,371	20	1,391
	108	Jalingo	250	139		139	267	2	269	406	2	408
	109	New Wukari	320	110		110	67	2	69	177	2	179
	110	Seri	150	63		63	15	1	16	78	1	79
	111	Gumbu	200	63	1	64	62	2	64	125	3	128
TARABA - JALINGO	112	Zing Satellite	100	22		22	13		13	35		35
	113	Takum Satellite	100	6	1	7	40	3	43	46	4	50
	114	Bassa Satellite	100	6		6	3		3	9		9
	115	Bali Satellite	100	16		16	30	1	31	46	1	47
	116	Lau Satellite	80	25		25	3		3	29		29
	117	Gaseci Satellite	100	11		11	3		3	14		14
	118	MBiya Satellite	50	19		19	51	3	54	70	3	73
	119	Karn - Lamido Satellite	100	9		9	17	1	18	26	1	27
		TOTAL	1,650	480	2	482	571	15	586	1,061	17	1,078

STATE / HEAD-QUARTERS	S/N	PRISON	CAPA- city	INMATE POPULATION								
				CONVICTED			UNCONVICTED			TOTAL		
				M	F	MF	M	F	MF	M	F	MF
	120	Gashua	104	109		109	14		14	123		123
	121	Nguru	94	45		45				45		45
	122	MSP Potiskum	832	127	3	130	153	2	155	280	5	285
	123	Dapchi Satellite	30	10		10	1		1	11		11
YORUBA - OSMANABU	124	Damagun Satellite	30	14		14				14		14
	125	Geidam Satellite	30	16		16	1		1	17		17
	126	Damaturu Satellite	30	12		12	47		47	59		59
	127	Fika Satellite	30	19		19				19		19
		TOTAL	1,180	352	3	355	216	2	218	568	5	573
	128	Agale	60	11		11	1		1	12		12
	129	Bida	200	48	1	49	19	1	20	67	2	69
	130	MSP Kolongona	320	137		137	30	1	31	167	1	168
	131	MSP Minna	320	51		51	192		192	243		243
NIGER - MINNA	132	Lapai	63	63		63	1		1	64		64
	133	Minna	41	41	1	42	291	4	295	332	5	337
	134	New - Bussa	268	41	1	42	26		26	67	1	68
	135	Kagara	50	45		45	10		10	55		55
		TOTAL	1,342	437	3	440	570	8	578	1,007	9	1,016
	136	Iron	122	70		70	225	3	228	295	3	298
KWARA - ILODI	137	Iron newMandala	160	35		35				35		35
	138	Lafagi	34	44		44	1		1	45		45
	139	Bortol	200	132		132				132		132
		TOTAL	516	281		281	226	3	229	507	3	510
	140	Old Kebbi	200	17		17	163	3	166	180	3	183
	141	New Kebbi	480	165		165	16		16	181		181
	142	Argungu	320	78		78	34		34	112		112
	143	Zuru	200	80	2	82	57	6	63	140	8	148
KEBBI - BIRNI	144	Yelwa Yauri	100	75		75	53		53	128		128
KEBBI	145	Kamba Satellite	50	8		8	40		40	48		48
	146	Kangwa Satellite	50	2		2	43		43	45		45
	147	Jega Satellite	50	10		10	39		39	49		49
	148	Bagundu Satellite	40	4		4	37	3	40	41	3	44
	149	Waza Satellite	30	7		7	35		35	42		42
		TOTAL	1,526	449	2	451	517	12	529	666	14	680
ZAMBARA	150	Gusau MSP	832	128		128	439	1	440	567	1	568
GUSAU	151	Talata Mafara Sat.	100	4		4	36		36	40		40
	152	Maru Satellite	60	6		6	30		30	36		36
	153	Gumi Satellite	50	3		3	40		40	43		43
	154	Kaura Namoda Sat	136	15		15	30		30	45		45
		TOTAL	1,178	156		156	575	1	576	731	1	732

	S/NE	PRISON	CAPA- city	INMATE POPULATION												
				CONVICTED			UNCONVICTED			TOTAL						
				M	F	MF	M	F	MF	M	F	MF				
BAYELSA- YENAGA		-														
		TOTAL														
F-BADAN	184	Agob	294	69		69	571	6	577	640	6	646				
OYO-BADAN	185	Oyo	52	45		45	98		98	143		143				
		TOTAL	346	114		114	669	6	675	783	6	789				
OSUN-	186	Ile-Ife	320	26		26	121		121	147		147				
OSONGBO	187	Sesa	588	75	2	77	297	7	304	372	9	381				
		TOTAL	906	101	2	103	418	7	425	519	9	528				
ONDO-	188	Okitipupa	66	39		39	37		37	76		76				
AKURE	189	MSP-Ondo	80	22		22	50		50	72		72				
O-BADAN	190	Owo	180	43		43	37		37	80		80				
	191	Akure	320	49		49	492		492	541		541				
	192	Female			2	2		19	19		21	21				
3-BENIN		TOTAL	646	153	2	155	616	19	635	769	21	790				
EKITI-ADO-EKITI	193	Ado-Ekiti	200	54		54	250	5	255	304	5	309				
		TOTAL	200	54		54	250	5	255	304	5	309				
G-BENIN	194	Awka	238	27		27	470		470	497		497				
ANAMBRA- AWKA	195	Onitsha	326	40	3	43	820	35	855	860	38	898				
		TOTAL	564	67	3	70	1,290	35	1,325	1,357	38	1,395				
EDO-BENIN	196	Benin(Old)	230	143	2	145	355	24	379	498	26	524				
	197	Benin(New)	1,216	81	2	83	781	15	796	862	17	879				
	198	Ogba Farm	108	53		53				53		53				
	199	Ozalla Farm	200	50		50				50		50				
	200	Ubiaja	140	31		31	109	1	110	140	1	141				
	201	Auchi	200	35	1	36	144	4	148	179	5	184				
		TOTAL	2,092	393	5	398	1,389	44	1,433	1,762	49	1,811				
DELTA-	202	Warri	308	152	4	156	391	9	400	543	13	556				
ASABA	203	Ogwashi-Liku	84	48		48	273		273	319		319				
	204	Sapele	294	36	1	37	224	2	226	260	3	263				
	205	Agbor	170	38	4	42	135	8	143	173	12	185				
	206	Kwale	262	43		43	134	7	141	177	7	184				
		TOTAL	1,098	315	9	324	1,157	26	1,183	1,472	35	1,507				
EBONY-	207	Abakaliki	388	90	2	92	820	26	846	910	28	938				
ABAKALIKI	208	Akpo	200	23		23	81		81	104		104				
		TOTAL	588	113	2	115	901	26	927	1,014	28	1,042				
ENUGU-	209	Enugu	638	166	3	169	999	48	1,045	1,165	49	1,214				
ENUGU	210	Ibfe-Oio	250	55		55				55		55				
	211	Nsukka	186	26		26	317		317	343		343				
	212	Oy River	320	20		20	126		126	146		146				
		TOTAL	1,394	267	3	270	1,442	48	1,488	1,709	49	1,758				

				INMATE POPULATION											
				CONVICTED			UNCONVICTED			TOTAL					
	SNO	PRISON	CAPA- CITY	M	F	MF	M	F	MF	M	F	MF			
HMAKURDI	213	Gboko	810	114	4	118	87	15	102	201	19	220			
BENUE	214	MSP Makurdi	480	96		96	385		385	481		481			
MAKURDI	215	Onkpa	118	28		28	57		57	85		85			
		TOTAL	1,408	238	4	242	529	15	544	767	19	786			
NASSARAWA	216	Lafia	300	61	2	63	251	2	253	312	4	316			
NASSARAWA	217	Wamba	68	40		40	7		7	47		47			
	218	Keffi	130	96	3	99	176	5	181	272	8	280			
	219	Nassarawa	104	25		25	6		6	31		31			
		TOTAL	602	222	5	227	440	7	447	662	12	674			
PLATEAU	220	Jos	1,150	214	2	216	553	2	555	767	4	771			
JOS	221	Lamingo Prison Camp	84	12		12				12		12			
	222	Lakushi Farm center	150	52		52				52		52			
	223	Pankshin	162	22		22	32	1	33	54	1	55			
	224	Stadam	130	30		30	21		21	51		51			
	225	Wase	100	20		20	1		1	21		21			
	226	Langtang	150	24		24	8	2	10	32	2	34			
		TOTAL	1,926	374	2	376	615	5	620	989	7	996			
	227	Ankpa	30	14		14	13		13	27		27			
	228	Dekina	34	16		16	7		7	23		23			
	229	Kaduna	102	17		17	6		6	23		23			
	230	Koton-Karfe	50	17		17	114		114	131		131			
	231	Kabba	200	38		38	30		30	68		68			
	232	Okene	114	46	2	48	54		54	100	2	102			
		TOTAL	530	148	2	150	224		224	372	2	374			
GRAND TOTAL			46,898	13,761	167	13,928	32,477	772	33,249	46,238	938	47,177			

STATE / HEAD-	S/N	PRISON	CAPA-CITY	INMATE POPULATION								
				CONVICTED			UNCONVICTED			TOTAL		
				M	F	MF	M	F	MF	M	F	MF
	27	MSP Daura (New)	300	45		45	141		141	186		186
	28	Daura Old	100	36		36	51	4	55	87	4	91
	29	Katsina	238	157	9	166	581	6	567	718	15	733
	30	MSP Funtua	320	84		84	180		180	254		254
	31	Durshima Satellite	50	6		6	40	7	47	46	7	53
	32	Kankia Satellite	50	2		2	46		46	48		48
	33	Maumfashi Satellite	50	6		6	45		45	51		51
KATSINA - KATSINA	34	Jiba Satellite	50	1		1	48	3	49	47	3	50
	35	Mari Satellite	50				58		58	58		58
	36	Musawa Satellite	50	3		3	47		47	50		50
	37	Jingawa	50	27		27				27		27
		TOTAL	1,178	347	9	356	1,225	20	1,245	1,572	29	1,601
	38	Hadeja New	300	60		60	47	1	48	107	1	108
	39	Kazaure	150	42	2	44	15	1	16	57	3	60
	40	Gumel	180	73		73	21		21	94		94
	41	Birin Kudu Farm	300	114		114				114		114
	42	Birin Kudu Satellite	50	16	1	17	35	3	38	51	4	55
JIGAWA - JIGAWA	43	Gwaram Satellite	20	12		12	24		24	38		38
	44	Dutse Satellite	50	9		9	61		61	70		70
	45	Ringim Satellite	20	11		11	22		22	33		33
	46	Jahun Satellite	50	12		12	20		20	32		32
	47	Garri Satellite	24	20		20	8		8	28		28
			1,464	389	3	372	253	5	258	622	8	630
	48	Coron Dutse	600	284		284	414		414	698		698
	49	Kano Central	600	308	3	309	912	28	940	1,218	31	1,249
	50	Wudil	100	104	1	105	18	8	24	122	7	129
	51	Gwarzo Main Satellite	60	66		66	4		4	70		70
	52	Bichi Satellite	50	28		28	4		4	32		32
KANO - KANO	53	Rano Satellite	50	7		7	19		19	26		26
	54	Tukur Main Satellite	20	21		21	11		11	32		32
	55	Sumala Satellite	80	28		28	14		14	43		43
	56	Kiru Satellite	50	34		34	8		8	42		42
	57	Dawakin Toto Satellite	50	22		22	40	1	41	62	1	63
		TOTAL	1,840	301	4	305	1,444	35	1,479	2,345	39	2,384

