

# ALTERNATIVE SENTENCING AND CONGESTION IN PORT HARCOURT CORRECTION SERVICE, RIVERS STATE, NIGERIA

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## **Abstract**

*Alternative sentencing in Nigeria criminal justice system has failed to decongest inmates in correction centre. This study examined alternative sentencing and how it can provide decongestion in Port Harcourt prison. The study has insight into the administration of the criminal justice system. The alternative sentencing and prison congestion, the level of congestion is high due to increment in crime rate, Court delay and adjournment of cases. Conclusively, excessive use of imprisonment is not actually the only cause of prison congestion but other factors as the court, the police not carrying out proper investigation before apprehending the offender. It also revealed that the alternative sentencing available in Nigeria criminal justice system are limited compared to the ones employed by the developed nations of the world. This research recommends that the National Assembly should make more policies to suit the crimes committed by offenders. The court should endeavor to judge cases without delay and adjournments, the government should limit the discretionary power conferred on the criminal justice system and build more correctional centres. The plan should include reformation and rehabilitation programmes.*

**Keywords:** *Alternative sentencing, congestion, inmates, correctional service, criminal justice system,*

## **Introduction**

Congestion in the correctional centres has become a problem that attracts global attention (Abrecht, 2012). Throughout history, people who violate the society's norms and values have often been subjected to various forms of punishment, sanction and discipline. Obviously, crime permeates every segment of the society of which the offender is sentenced and punished by the Criminal Justice System. The different philosophers and retributivists stress that a deviant should be punished so as to pay him back for his action (retribution) and to deter him and others from committing such crime in the future (Obioha, 2011). Incarceration is the most appropriately conceived as a formal perspective of inflicting pain on an individual who has committed crime and has been an aspect of the conventional criminal justice system in various societies in Nigeria (Obioha, 2011).

From the inception of correctional centre in the colonial era, Nigeria correctional centre was not designed for reformation instead prisoners were engaged in road repairs, conservancy, reclamation of the logo land, burying of dead paupers and other jobs for the

colonial administration. They served the colonial interest ensuring law and order was maintained, collecting taxes etc until the commencement of the modern correctional centres in the nineteenth century. Then imprisonment assumed a new and different dimension. Nigeria criminal justice system enacted a Procedure Act 9 of 1972 which anchors its objectives on rehabilitation, reformation and reintegration of offenders in the society (Adetula et al, 20107 & Otulola, 2017).

The correctional institution was established and structured to protect members of the society by incarcerating the convicted criminals or offenders to avoid those who pose a threat to the lives and properties of the members of the society. The modern correctional centres depict a structure that would provide retribution, deterrence to crime, rehabilitation, of reformation and reintegration for the convicted offenders (Prierty, 1985, Otulola, 2017). Despite all the criminal justice Act and procedures, findings from empirical research proves that the correctional objectives of rehabilitation, reformation and reintegration of offenders back to the community as good citizens has been a mirage due to the congestion. Congestion in the correctional centres has been escalating as a result of excessive use of prison sentencing, increase in the rate of crime committed by the offenders, attitude of police officers, incomplete investigation, sentencing policy of heavy fines, public resentment,, inadequate prison facilities, overuse and stringent bail condition, delay in issuing legal advice, unnecessary delay and adjournment of cases, incessant transfer and unavailability of investigating police officers and key prosecution witnesses, bail denial, missing case file, logistics problem, incessant industrial action by judiciary staff, holding charge etc. Congestion in a correctional centre is a situation where the prison accommodates the number of inmates that exceeds its official capacity at a given period of time. This problem has become a major threat in the Nigeria criminal justice system causing these prisoners to live in a very terrible and dehumanizing condition. This treatment contradicts the international Human Rights which its minimum standard rule stipulates that prisoner's right be respected at all times. (Ayade, 2010). The Nigeria correctional centres still remain in its obsolete state where the colonial masters left it. The size and the number of the population growth, the cells are too small for the number of prisoners they hold. This condition infringes on the fundamental human rights both for national and international prisons (Abrecht, 2012).

Due to the over-population of the prison, the inmates are faced with many challenges such as inadequate health care delivery, health problems such as asthma, tuberculosis, rashes and HIV/AIDS (Jarma, 1999). The inmates display hostility among themselves and to the prison officials, the issue of inadequate feeding, those prisons are characterized with little space without ventilation and which also often leads to aggression and violence for struggling for space, poor clothing, over used amenities shortage or dilapidated welfare

rehabilitated facilities. On the part of the management, inability to separate the hardened criminals from the minor offenders (Ottite and Albert cited in Ukwayi & Okpa, 2017).

Port Harcourt correctional centre was built in 1920 by the British colonial administration with the official capacity of 804 inmates but currently housing 3008 inmates (Statistics Office, Port-Harcourt Prison, Rivers State Command Port-Harcourt). The correctional centre is over-populated with the Awaiting Trial Persons (ATPs). Statistics show that ATPs form about 65% of the prison population contributing to the problem of congestion in the correctional centre (African Focus Report, 2008). The condition of the Port-Harcourt correctional centre also contributes to the problem of recidivism because of indiscriminate mixing of inmates where the minor offenders learn different strategies from the hardened criminals.

Despite the Federal Government budgeting allocation, Nigeria correctional centres remain in squalor (Akpede, 2019). The Federal Government has appropriated over 613.5 billion naira to Nigerian correctional service in the last ten years and yet the prison population is still on the increase. This money would have been allocated to other sectors such as education, health care centers, etc.

The condition of the Nigeria correctional centres mentioned above is evident that congestion is creating adverse effect on the inmates, constituting an obstacle to the aims of establishing correctional centres for rehabilitation, reformation and reintegration of the offender in the society.

The first historical tendency on alternative sentencing was the rapid expansion of the prison populations between 1925 and 1972, the prison population had fluctuated between 100,000 to 200,000 inmates globally [Andrew, Allison & Rodney, 2003]. Alternative to incarceration was enacted into Penal Law at the end of nineteenth century in western countries.

Due to the inability of penal sentencing to curtail the congestion in the correctional centres, the need arises to diversify by shifting attention from imprisonment to alternative sentencing in the criminal justice system. Alternative sentencing has been proven to be more effective in reformation of offenders than condemning them and relegating them to the position of outcast [Akingboye, 2014]. The following are some of the alternative sentencing in the Criminal Justice System: community service order, probation and judicial supervision, verbal sanctions, suspended sentence, conditional discharge, compensation order, monetary, sanction and penalties, restitution and compensation to victim, house arrest and referral to an attendance centre, plea bargaining.

Though these measures are more effective in crime preventing because of the positive impact but they have not been able to reduce the congestion in Port-Harcourt correctional centre.

## **Literature Review**

### **Concept of Alternative Sentencing**

Alternative sentencing is a sanction or punishment imposed on a convicted criminal by a judge or magistrate in the court other than imprisonment [Ohazulike, 2015]. According to Steven [2018], alternative sentencing comprises all the various forms of punishment that a court can impose on a defendant after he or she has been convicted of an offense, other than a jail term or death penalty it is also called community sentencing or non-custodial measure.

### **Concept of Congestion in the Correctional Centre**

According to Ayade [2010], overcrowding in correction centre could be regarded as a situation in which the number of inmates in a prison exceeds the capacity of the prison to the extent that it cannot safely provide for the adequate physical and psychological needs of the incarcerated persons. Craig in Ayade [2010] also referred to overcrowding in the correction centre as an art which is not only considered in terms of the ratio of inmates to the official capacity but the extent to which prison system houses inmate than it has adequate infrastructure to accommodate. Overcrowding is a feature of all Criminal Justice System across the board which poses serious challenge both to developed and developing nations with adverse effect on the incarcerated persons, prison itself and the community to which the offenders will be integrated. Obiorah [2011] explained congestion in the correction centre as a situation where most of the prisons are over-populated beyond their designated capacity. This manifests in the prisons holding more population of inmates than they were originally planned to accommodate, which in turn overstretches available infrastructure beyond their limits to function due to human pressure.

Congestion in the correction centre arises where the number of inmates at a given period of time exceeds the actual capacity originally meant for that prison. The number of awaiting trial persons varies from day to day and is dependent on social, legal and constitutional problems [Obiora, 2013]. Abrecht [2012] argued that congestion in the correction centre emerges as a result of slow, steady and long term increase in the number of prisoners, thereby evolving into a culture of chronic congestion.

### **Criminal Justice System and Congestion in Correction Centre**

According to temple university libraries, criminal justice system is a set of legal and social institutions for enforcing the criminal law in accordance with defined set of procedural rules and limitations.

Onwuchekwe (2015) posits that criminal justice is a system of practice and constitution of governments charged with power to uphold social control deterring and mitigating crime or sanctions those who violate laws with criminal penalties and rehabilitation initiatives.

In Nigeria the three components of the criminal justice system are the police, court and prison.

The federal government conferred power to Nigeria police force to operate, under Section 4, Police Act of 1967. Cap 359 of the Law of the Federation 1990. This power has been conferred to the police by the federal government to maintain peace law and order throughout the nation. The Nigeria Police have a centralized management command and control structure whereby the Inspector General is appointed by the President of the country who singlehandedly utilizes his discretionary power to determine the mode of operation and policy that will thrive in the force. The police are the entry point in the criminal justice process because the first contact of a defendant with the criminal justice system usually commences with the police or law enforcement agents who detect the crime, investigate the suspect and apprehend the suspect. (Onwuchekwe, 2015).

The police also commence with law enforcement, crime prevention, crime control and the socio-political matters (Iwarimie, 2010). Often people accuse the police of abuse of power, false arrest, oppression, apathy, ignorance of and contempt for the law (Niederhoffer, 1968 cited in Iwarimie, 2010). The police arrest without proper investigation to detain the suspects in their custody without trial and continue with the investigation, the discretionary power of police and their power to arrest with or without warrant, they apprehend, bail denial and at the same time detain the suspect as pre-trial detainees. These conditions to a large extent contribute to the prison congestion in Nigeria correctional centres.

The court is the second component of the criminal justice system charged with the responsibility of interpreting the law, adjudication and ensures that all due processes are adhered to in dispensation of justice. It is the obligation of the court to establish without controversy the guilt or innocence of a person accused of an offence and ascertain that proper and adequate punishment is administered through sentencing. Therefore, an effective judicial system endeavors to ensure that justice is upheld in all proceedings.

The consequence of the discretionary power conferred on the judicial system is corruption. The court is an embodiment of corruption and injustice. Often times they abuse this power because the society we associate with is the one that incapacitate the masses even if their lives are threatened.

As a result of the discretionary power conferred on the Nigeria Criminal Justice System by the federal government and the corruption in the system. The Judges and magistrate

adjourn and delay cases unnecessarily, employing the process of holding charge which is unconstitutional, excessive use of imprisonment, imposing heavy fine on the convicted which will be difficult for them to pay thereby worsening the situation of congestion in the Nigeria correctional centres.

The prison is a form of correctional institution saddled with the role of confining those who violated the criminal law of the state and are legally held while awaiting trial or serving punishment after being adjudged guilty (Olanisakin, Ogunleye and Adebayo, 2017). Nigeria correction centre is established to deter, incapacitate, rehabilitate, reform and reintegrate the offenders into the society but some Nigeria correction centres have become "hell on earth with overcrowding," extortion of money from the inmates and their family members, social and psychological problems, moral and spiritual problems, poor medical care, inadequate feeding, rape (Ohazulike, 2015).

### **Alternative Sentencing and Congestion in the Correction Centres**

Originally alternative sentencing emerged as the issue of high rate of rising crime which propelled punitive sentencing policy in the United States from 1972. The escalation of incarceration rate that emerged in 1972 was accompanied by a tumultuous period of social and political change. The annual number of homicides increased from 8,530 to 18,670 from 1962 to 1972 and the overall violent crime was also doubled in the same decade (Ma guire, n.d). This era produced several conditions that warranted the link between crime and incarceration such as political activism, race relations, civil right and conservative reaction. These incidence produced contention, protest and disorder. In a nutshell, this era of increment in crime was accompanied by the intense political conflict and transformation.

The rate of increment of crime attracted a prominent attention in the national policy debate (National Research Council, 2014). The congestion in the correctional centres was the product of escalation in the rate of incarceration, decreased opportunity for rehabilitation programs and a growing burden on medical health delivery services (National Research Council, 2014). The rationale behind excessive use of incarceration was to reduce crime which means that imprisonment was adopted as a mechanism for crime prevention and control in the criminal justice system. Consequently, prison sentencing promoted repeated offenses, diseases, material deprivations, restricted movement and absence of prisoner privacy, fear, unemployment, education derivation and high level of uncertainty.

In weighing the causes and consequences of high rate of incarceration and its implications reflected deep change in the society as well as a change in thinking. It is violent that imposition of criminal sanction is considered a validation of the social compact and recognized as a long-established objective of the criminal justice system. The policy

makers sought to revive the previous principles of expanding the use of imprisonment by striking a new balance in the nation's penal policies. Based on the suggestion sentencing was implemented to reduce incarceration rate. The following are the alternative sentencing to imprisonment.

### **Theoretical Thrust**

**The Classical Theory of Penal Justice: The Principle of Proportionality**

The classical theory of Penal Justice emphasizes the notion of proportionality which posits that the sanction imposed on the individual for the violation of the criminal law should be proportionate to the seriousness of crime.

Immanuel Kant (1965) was the proponent of this theory. He believed that the principle of proportionality should guide the distribution of punishment for different forms of crime. This classical model must maintain a strict equivalence between crime and punishment which demand a phrase Beccaria called a mathematical exactness in fixing corresponding scale of punishment that in a situation two persons incur different punishment for the same offence, it means that equity has been disregarded and caprice has replaced justice. There is need for equal punishment for equal crime. The opinion was that not only the gravity of the crime but also the personality and unique circumstances of the offender must be considered in deterring the sentences.

Based on this assumption, the House of Assembly should establish alternative sentencing options in the Nigeria Criminal Justice System to meet the demand of appropriate sentencing for a particular offence to actualize the aim of punishment, deter the offender and others from indulging in such crime in future, present the offenders as a reformed and better citizen to the community.

### **Conclusion**

This study depicts that congestion in correction centre is a global problem. The growth of incarceration is the product of rising crime rate, police unabated arrest without proper investigation, bail denial, the court delay and adjournment of cases, holding charge, corruption, excessive use of imprisonment by the judges and magistrates.

The government has not been able to achieve the aim of establishing Nigeria correctional service because of the overcrowding. The majority of the inmates of the prison, when integrated into the community came back worse than the period they were incarcerated being hardened criminals. Based on this condition, the policy makers found it necessary to seek for alternative sentencing that will enable the offenders to be reformed and become good citizens of the society.

The discretionary power conferred by the government to the components of the criminal justice system is also a threat in dispensing justice in the country. The alternative sentencing options are actually veritable instruments for the decongestion of prisons since the convicts are given sentence other than imprisonment, it assumes to have been catalyst in reducing the number of prison inmates and helps to ameliorate the problem of shortage spaces in the prison with its attendant problems. Though alternative sentencing has been an instrument for decongestion yet the prisons are over-population.

### **Recommendations**

1. The National Assembly should make more policies with regardsto creating alternative sentencing options that can handle these minor offences and pass them into the law to reduce congestion in the correctional centres.
2. The government should limit the discretionary power conferred on the Nigeria criminal justice and mandate them to operate under supervision.
3. The government should create policy for agencies saddled with the responsibility of criminal justice process to follow the stipulated due procedures in discharging their duties
4. The human right commission should visit prison and interfere in the issue of awaiting trial persons to release those whose human rights have been infringed upon by holding them beyond the time stipulated by the law for offence which they had committed.
5. The government should find the legal aid council design to mitigate the increasing number of prisoners and determine who are poor and rendered helpless as they are unable to engage the service of private lawyers to offer proper criminal defense.
6. The Federal government should endeavor to expand the existing prison in order to generate more spaces for the inmates.
7. The prison administration should be serious with one of the fundamental social functions of prison to treat and rehabilitate prisoners in order to ascertain that they will not return to prison after their release rather they will become better citizens to the community.

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