

Decongesting Prisons in Nigeria: Reduction Strategies for Improved Administration of Criminal Justice

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Abstract

Crime is a social disease which eats into the fabric of every organised and civilised society. According to Nelson Mandela, the way a society treats its prison population says a lot about that society. The purpose of imprisonment is to balance the goal of punishment and correction for the crime with deterrence and rehabilitation. Research shows that in recent decades there has been an unprecedented increase in imprisonment rates which has led to a serious overcrowding issue in prisons. The major reason for overcrowding seems to be the overuse or over reliance on imprisonment by the Criminal Justice System and the lack of prison capacity. Consequently, protection of human rights and the objective of reformation, correction and rehabilitation of prisoners could easily be lost in the prison system. Modern penal systems favour the use of alternatives to imprisonment such as community service, probation, parole and digital jail for non-violent offenders and awaiting trial inmates, in order to curb the overcrowding in prisons.

Key words: Prisons, Decongestion, Criminal Justice, Administration, Strategies.

1. INTRODUCTION

Overcrowding in Nigerian prisons continues to bedevil the Nigerian Correctional Service. This is not a problem peculiar to the Nigerian prison system alone, all over the world overcrowding in

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prisons is an issue for many jurisdictions. There have been records of severe overcrowding in prisons where ‘prisoners sleep in shifts, on top of each other, share beds or tie themselves to window bars so that they can sleep while standing’.¹ Overcrowding simply means that the number of prisoners exceed the official capacity of the prison.²

Now there is no international standard on what constitutes overcrowding in prisons and as such the definition of overcrowding will vary from one country to another and depend heavily on each nation or localities’ standard. For instance, in countries where four prisoners are housed in one cell and there are three or less prisoners in that cell, authorities there may not consider that a crowded cell, whereas in countries where single cells accommodations are used, and that cell houses two or more inmates that maybe considered overcrowding.³ A more substantial criteria for measuring overcrowding in prisons is that referred to by the European Convention on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). It considers spatial density (square meters / person), social density (number of persons in one space), and privacy (the time individuals can spend on their own).⁴ It further recommends an acceptable minimum to be 4 square meters in a shared space and 6 square meters in a single cell accommodation.⁵ While this standard might be difficult for a lot of countries to adhere to, for developing countries like Nigeria where no new prisons have been constructed in more than 20 years, this might seem more like a herculean task.⁶

¹ Penal Reform International, ‘Overcrowding’ <<https://www.penalreform.org/issues/prison-conditions/key-facts/overcrowding/>> last accessed 19 Nov. 2021

² Tapio Lappi-Seppala, ‘Causes of Prison Overcrowding’ <https://www.unafei.or.jp/publications/pdf/12th_Congress/12Tapio_Lappi-Seppala.pdf> last accessed 11 Nov. 21

³ Ibid, p 44

⁴ Ibid

⁵ Ibid, p 45

⁶ Awopetu, R. G., ‘An Assessment of Prison Overcrowding in Nigeria: Implications for Rehabilitation, Reformation & Reintegration of Inmates’ [2014] (19) (3) *Journal of Humanities and Social Sciences* P. 22-26; current prison conditions are reported to be old and in bad shape and at the brink of collapse as a result of lack of maintenance, renovation and long neglect from the government.

Furthermore, The Standard Minimum Rules for the Treatment of Prisoners (SMR) provide that “accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation”.⁷ Indicating the need to protect the human dignity of the inmates as well as their physical and mental health. Because often times living in harsh prison conditions jeopardises the health of inmates and fuels conflict between inmates. Consequently, making the punishment of loss of freedom exponentially worse.

Although there have been various attempts at reforming the current situation of Nigerian prisons, lack of speedy administration of justice continues to forestall significant progress. For instance, statistics show that as at the 18th of January 2021, the total prison population was set at 65,741 inmates, with 75.4% of that number recorded as pre-trial detainees or inmates popularly known as awaiting trial.⁸ To put it in perspective, the total prison population is more than enough people to fill the Abuja National stadium.⁹ While the 75.4% of awaiting trial inmates is the equivalent of about 48,254 persons who are currently languishing in prisons all around the country without being convicted of any crime whatsoever. It’s no wonder then that prisons built to accommodate 800 inmates have recorded over 4000 inmates occupying its cells.¹⁰ Identically, El Salvador a country with the second highest per capital prison population after the US, has prisons with the capacity of 18,051 but the system currently holds more than 38,000 inmates.¹¹

⁷ SMR, Rule 10, <https://www.unodc.org/pdf/criminal_justice/UN_Standard_Minimum_Rules_for_the_Treatment_of_Prisoners.pdf> last accessed 15 Nov. 21

⁸ World Prison Brief data, Nigeria < <https://www.prisonstudies.org/country/nigeria> > last accessed 8 Nov. 21

⁹ Biyi, Top 5 Stadiums in Nigeria < <https://soccernet.ng/2015/05/photos-top-5-stadiums-in-nigeria.html>> last accessed 19 Nov. 2021

¹⁰ Mani Ojeah, ‘Prison Reform in Nigeria’ < <https://www.manifieldsolicitors.com/2020/11/09/prison-reform-in-nigeria/> > last accessed 8 Nov. 2021

¹¹ BBC News, ‘El Salvador’s jails: Where Social Distancing is Impossible’ < <https://www.bbc.com/news/world-latin-america-52386404>> last assessed 23 Nov. 2021

Overcrowding occurs when the number of offenders being sent to prison are more than the prison capacity can contain. The slow dispensation of justice also leads to the inmates spending longer time in prison and sometimes even longer than the prescribed time for the offence which they are charged with. The over reliance on the punitive measure of imprisonment does not help the issue of overcrowding especially for pre-trial detainees.

The enactment of the Administration of Criminal Justice Act, 2015 (ACJA) which is impair material with the Rivers State Administration of Criminal Justice Law (ACJL), to the most recent unprecedented legislation in the country, the Nigerian Correctional Service Act, 2019 (NCSA) all aim to tackle very seriously the issue of overcrowding in Nigerian Prisons. As well as speedy dispensation of justice while being respectful of the human rights of all parties involved. These recent laws are made with the goal of finding a sustainable solution to decongesting the prison institutions in the country. This article will identify and x-ray why there is so much overcrowding in Nigerian prisons and police cells in the first part and then go on to analyse the progress made so far by these legislations with regards to management of overcrowding in prisons, as well as propose novel ideas as a foundation for future and further prison reform.

2. THE POLICE AND UNLAWFUL ARREST

The Police are empowered by law to carry out their duty of maintaining law and order in society by the prevention and detection of crime. So, Police arrest and detention of offenders are all part and parcel of Police activities. However, Section. 35 of the 1999 Constitution as amended and Article 3 of the African Charter on Human and People's Rights makes the Right to personal liberty a fundamental one and protects the right to freedom from wrongful arrest and false imprisonment, it equally limits the powers of the Police to arrest except as provided by law. Now the Police power to arrest is also provided for by Section. 38 of the Police Act 2020 but states that it should be done within certain conditions. Detention we all know is a consequence of arrest and this is the beginning of an offender's encounter with the criminal justice system.

The provisions of the ACJL and the NCSA deals extensively with this issue of overcrowding and decongestion of prisons and extends its reform to the Police. In the past, the police could arrest relatives or associates of suspects and require them to produce persons of interest during their investigation process.¹² Often times arrests are made on allegations of civil matters by the police which all adds to the problem of congestion of police jails and prisons.¹³

The ACJL repealed and replaced the former two principle criminal procedure legislations in the country, that is the CPA¹⁴ for the southern parts of Nigeria and CPC¹⁵ for the northern part of Nigeria. Under the repealed legislation, the Police could arrest without warrant any person who has no ostensible means of sustenance and who cannot give a satisfactory account of himself.¹⁶ Invariably criminalising poor and disadvantaged people. Such far and overreaching powers would usually be subject to abuse and indiscriminate arrest by police officers, which resultant effect will be congestion and overcrowding in police jails. The ACJL has completely expunged this provision and in its stead, provided in its section 7 a total prohibition of such arrest.

Also, the ACJL in sections 6 - 8 addresses specifically police interactions with suspects and insist on respect for the human rights of that suspects. It prohibits the police from arresting suspects indiscriminately on frivolous allegations. Also, it precisely eliminates the police's powers to arrest in lieu and sets down legal rules to follow to effect lawful arrest.

While these provisions target the police as a suspect's first point of contact with detention centres, jails and correctional institutions, it does not laydown any consequences for failure of the police to strictly adhere to these laws. Perhaps a huge fine or compensation paid to the suspect by the police, where wrongful

¹² This practice has now been prohibited by S.36 of the Police Act, 2020.

¹³ Ibid, by this section a suspect cannot be arrested for civil matters and for breaching a contract.

¹⁴ Criminal Procedure Act

¹⁵ Criminal Procedure Code

¹⁶ Section 10(i) of CPA- 2004, < <https://www.lawyard.ng/wp-content/uploads/2015/11/CRIMINAL-PROCEDURE-ACT-2004.pdf>> last accessed 8th Nov. 2021.

arrest or detention without arraignment before a court of competent jurisdiction as at when due, might further dissuade careless or malicious and unlawful arrest of citizens. The Constitution in S. 35(6) provides for public apology and compensation for victims of unlawful arrest by the police but the such public apology are yet to be seen.

The Police on the other hand have denied being the root cause of the congestion in prisons and point the blame at other players such as the complainants, suspects, the Bar, the Bench, the Director of Public Prosecution and the Correctional Centres.¹⁷ The Police point to the fact that if complainants want their case in a criminal matter charged to court, then there is nothing they can do than to handover the suspect to court for prosecution.¹⁸ Although the constitution provides that a suspect must be charged to court within 24 - 48 hours of being detained, in practice the Police have been reported to refuse granting administrative bail for suspects and delayed charging suspects to court as punishment.¹⁹ They have also been accused of making bail very difficult for suspects and have exercised their right to grant administrative bail in abusive terms.²⁰

The financial ability of a suspect to make bail is another major reason for congestion in police jails. The cliché that bail is free has never been true for all parties, as the police often see bail as an opportunity for financial enrichment.²¹ When there is a judicial strike like the one under taken early this year by the Judiciary Staff Union of Nigeria (JUNSUN) for 3 months, the Police were the major beneficiaries as detainees in police custody had to pay much more money in bribes in exchange for bail.²² Perhaps if our system

¹⁷ Wale Odunsi, 'Police Highlight Eight Components Responsible for Prison Congestion in Nigeria' *Daily post Nigeria* (Nigeria, 15 April 2021) <<https://dailypost.ng/2021/04/15/police-highlight-eight-components-responsible-for-prison-congestion-in-nigeria/>> last accessed 15 Nov. 21

¹⁸ *ibid*

¹⁹ Ameh Ejekwonyilo, 'Police Detention Facilities Overcrowded as Judiciary Workers' Strike Continues' *Premium Times* (Nigeria, 7 May 2021) <<https://www.premiumtimesng.com/news/headlines/459973-police-detention-facilities-overcrowded-as-judiciary-workers-strike-continues.html>> last accessed 15 Nov 2021.

²⁰ *ibid*

²¹ *ibid*

²² *ibid*

accommodated a bail bond industry like that in the United States of America and the Philippines, the position will be different. It maybe suggested that insurance companies or other financially independent bodies establish a bail bond to enable accused persons awaiting trial to be granted bail on the agreement that they will appear for trial. The bail bonds process operates in three quick steps which guarantees the accused released from custody faster than the sun rise.²³ The process entails the defendant or his family member to pay a small fraction of the full amount for the whole process.²⁴ The bail bondsman will then pursue the process of the defendant being granting bail in the courts.²⁵ This process will mitigate the burden on an accused person as he will not be required to pay the full amount for his bail and the bail bondsman will stand as shorty on his behalf and remove the immediate financial burden.

3. NON-CUSTODIAL SENTENCE

The implications of overcrowding in prison can be detrimental to the penal system as it adversely affects the main purpose of imprisonment. The purpose of imprisonment is to correct the wrong doer and rehabilitate him for re-entry into the society.²⁶ Congestion in prisons makes it difficult for inmates to maintain proper hygiene which leads to the spread of infectious and mental health diseases as well as fuel violence among inmates. Secondly, prison authorities would equally struggle to effect the real outcome of punishment which is correction. Correctional centres should include rehabilitation programs such as counselling, education and work release programs, supervisions, parole etc.²⁷ It's no secret that the

²³ Bail Bonds National, < <https://bailbondsnational.com/> > last accessed 26 Nov. 21

²⁴ ibid

²⁵ ibid

²⁶ David Scott and Nick Flynn, *Prisons and Punishment* (2nd edn, Sage Publication 2014)

²⁷ Oyeyipo Eytayo Joseph, Asamu Festus Femi, Arisukwu Ogadimma, Rasak Bamidele, Oyeyipo Oluwakemisola, Oyekola Isaac Akintoyese & Olorunmola Jide Joseph, 'Prison overcrowding trend in Nigeria and policy implications on health' (2021) 7(1) *Cogent Social Sciences* <<https://www.tandfonline.com/doi/full/10.1080/23311886.2021.1956035?scroll=top&needAccess=true>> accessed 29 Nov. 21

situation in Nigerian correction centres falls short of this requirement.

For these reasons and more, the Nigerian Correctional Service has made laws with the intention to reform the system. The NCSA sets out its objective in Section 2(1) to be International Human Rights standard compliant. It goes further to establish a non-custodial service which would be responsible for community service, parole, probation, restorative justice measures as well as any other non-custodial measures that a court may assign it.²⁸ The act further makes prearrangement for the administration of community service sentences and requires that a report be sent to the comptroller-general.²⁹ Emphasis on non-custodial sentences intersects and aligns with the provisions of the ACJA 2015 in sections 460 (2) & (4) where it provides thus:

The Court may, with or without conditions, sentence the convict to perform specified service in his community or such community or place as the court may direct.

(4) The Court, in exercising its power under subsection (1) or (2) of this section shall have regard to the need to

a. Reduce congestion in prisons;

b. Rehabilitate prisoners by making them to undertake productive work; and

c. Prevent convicts who commit simple offences from mixing with hardened criminals.

The inclusion of the provisions for community service in the two legislations above, highlight the progressive intent of the laws to reduce congestion in the prisons and promote restorative justice for minor offences.³⁰ A practical example of the law in action occurred

²⁸ NCSA s. 37(1)

²⁹ NCSA s. 42

³⁰ Chidubem Ezeilo and Princewell Akinseye-George, 'A Review of the Nigerian Correctional Service Act 2019' [2020] (4) (1) *Unilag Law Review* < <https://unilaglawreview.org/wp-content/uploads/2020/06/A-REVIEW-OF-THE-NIGERIAN-CORRECTIONAL-SERVICE-ACT-2019.pdf>> last accessed 9th Feb, 2021 @ 2:09

in April last year when a popular Nollywood actress, Mrs Funke Akindele-Bellow and her husband were sentenced to 14 days of community service each for violation and failure to adhere to covid-19 protocol for social distancing, after she hosted a house party during the lockdown that went viral online.³¹

In addition to more practical implementation of non-custodial sentences, it may be suggested that the use of house arrest for young offenders between the ages of 18 – 25 years, as well as nonviolent offences and perhaps misdemeanour cases should be considered in decongesting the prison system. Persons of interest in cases under investigation may also be put under house arrest when it can be confirmed that they have verifiable residential address.

Modern innovations such as body or ankle monitors maybe suggested for use in Nigeria, to supervise and notify the police electronically when such persons maybe defaulting. This idea is often referred to as a “digital jail”.³²

In America for instance, studies show that more than 200,000 Americans at any given time are currently wearing electronic ankle monitors.³³ Justice reform supporters have welcomed the use of e-incarceration as a way of reducing prison populations and claims that it cuts recidivism.³⁴ While there are debates as to whether the rise of e-carceration represents a solution to or an expansion of mass incarceration, it is clear that strategies to enable decongesting of prisons must be shrewdly examined and critiqued to enable fairness in the criminal justice system.³⁵ Additionally, careful attention must be paid to the use of this process to decongest prisons as defendants

³¹ Chiemelie Ezeobi, 'Court Sentences Funke Akindele, Husband to 14-day Community Service' *Thisday Newspaper* (7 April 2020) <<https://www.thisdaylive.com/index.php/2020/04/07/court-sentences-funke-akindele-husband-to-14-day-community-service/>> last accessed 9th Feb,2021 @ 02:25

³² Ava Kofman, 'Digital Jail: How Electronic Monitoring Drives Defendants into Debt' (3 July 2019) <<https://www.propublica.org/article/digital-jail-how-electronic-monitoring-drives-defendants-into-debt>> accessed 9 Feb 2021

³³ The Crime Report Your Criminal Justice Network, "The Dangers of America's Expanding 'Digital Prison'," March 2, 2020 <<https://thecrimereport.org/2020/03/02/the-dangers-of-americas-expanding-digital-prison/>> accessed 8th March 2021.

³⁴ *ibid*

³⁵ *ibid*

might be subject to abuse and exploitation by administrators of this so-called digital jails.

Custodial Service

In relation to custodial sentences, it goes without saying that new and modern prisons need to be constructed to comply with international human rights standard for sanitary environment for the holding of inmates. Historically, most prisons in Nigeria were built during the colonial era with little or no renovative improvements done to the structures since then.³⁶

Now, while it is agreed that new and more secure facilities need to be built to house inmates, others have seen this as a ploy to take focus out of the real reasons of overcrowding in places of incarceration. The view that prison construction does not provide a sustainable solution to the overcrowding problem because the more prisons that are built, the more likely we are to fill it up.³⁷ They cite the real issue of overcrowding to be the ‘fact that the justice system is sending more people to prison, and for longer periods than the prison capacity allows’.³⁸ What is clear is that there is the over use of imprisonment and most times insufficient space in prisons to effectively house them with respect to their humanity. On the other hand, the problem of over use of imprisonment can be seen from the perspective of population growth. In the sense that an increase in human population with less work opportunities would most likely lead to increase in crime rate in Nigeria.

One point of view that gains support, is the construction of modern correctional centres for effective custodial sentences. Overcrowding has been cited as one of the core reasons for prison break and in recent times Nigeria correctional service has experienced a menacing number of jail breaks around the country with more than 2000 inmates released.³⁹ The first incident happened on the 5th of April, 2021 when heavily armed gunmen attacked a

³⁶ Ibid n 10

³⁷ Ibid n 2 @ 46

³⁸ ibid

³⁹ RootsTV Nigeria, ‘JailBreak, The New Trend in Nigeria Prisons’ <https://www.youtube.com/watch?v=nTdT71YirKw&ab_channel=RootsTVNigeria> accessed 29 Nov. 21

Nigerian Correctional Centre in Owerri, Imo State, releasing 1,800 inmates from the centre and burnt down the police facility and other structures within the vicinity.⁴⁰ Again on the 13th of September, 2021, gunmen attacked a prison in Kogi State with explosives, killing two security officers and releasing over 240 inmates.⁴¹ The most recent attack was at the Abolongo Custodial Centre in Oyo State, on Friday the 22nd of October 2021, where unknown gunmen invaded the centre and released over 300 inmates.⁴² The issue of jailbreaks in Nigeria has become very rampant and has resulted in the escape of over 4,000 prisoners.⁴³ Authorities have admitted that the frequent jailbreaks is as a result of the general insecurity plaguing the Nigerian nation and that the Nigerian Correctional Service was never designed to withstand the level of attacks being experienced.⁴⁴ Consequently, the need for more secure modern prison facilities cannot be over emphasised in our criminal justice system.

The argument for regional autonomy of prisons gains positive nod in the sense that issues directly affecting inmates will most likely get the attention of regional government with regards to funding, faster than the federal government sitting miles away in Abuja.

Although privatization of prisons might seem like a farfetched and overreaching idea for the Nigerian Correctional Service, it's an idea that can be explored to ensure that more modern secure prison buildings or structures that comply with international human rights standards are constructed.

4. MONITORING & EVALUATION COMMITTEE COUNCIL

Equally important for the decongestion of prisons, is the speedy dispensation of justice. The ACJL introduces various robust and far sweeping reforms to the trial process of suspects or defendants. It reiterates the position of the constitution in S. 35(5)

⁴⁰ *ibid*

⁴¹ BBC News, 'Nigeria Jailbreak in Kabba: Prisoners on the Run After Armed Raid' (13 September 2021) <<https://www.bbc.com/news/world-africa-58549061>> accessed 29 Nov. 21

⁴² *Ibid* n 39

⁴³ *ibid*

⁴⁴ *ibid*

which relates to arraignment of a suspect in court within 24 to 48 hours of arrest and states that an arrest must not be made for violation of a purely civil wrong.⁴⁵ It further permits the police officer in charge of an investigation to release a suspect where his inquiry is not concluded subject to certain conditions.⁴⁶ Indicating the laws dissatisfaction for unnecessary detention in police custody.

Furthermore, the establishment of a monitoring committee called the Administration of Criminal Justice Monitoring Council in Section 479 is a welcomed innovation. The Council is tasked with the responsibility of ensuring effective application of the laws and it's applauded as an unprecedented development. By this improvement, Evelyn Membere-Asimiea, (Esq) believes that criminal matters will be speedily dealt with and the tore in the flesh which is the congestion of prisons will be reduced drastically to the barest minimum.⁴⁷ While this view can easily be accepted and agreed with, one has to bear in mind that with such huge task comes huge responsibility. The issue of funding for Legal Aid and filling of matters in court is not provided for, this might dampen the joy for speedy trial of cases. Considering that most people in the criminal justice system are most times financially disadvantaged.

Also, the requirement for serval reports by the Police, such as a quarterly report of all arrest in the State to the Attorney- General and secondly, a monthly report of the Police to a supervising Magistrate in the State is a brilliant innovation that will ensure checks and balances on the activities of the Police. Likewise, the law in section 34 empowers the chief Judge to inspect Police stations and places of detention every month. At such visit, the judge may: (a) call for and inspect the record of arrests; (b) direct the arraignment of a suspect, or (c) where bail has been refused, grant bail to any suspect where appropriate. Where there is a default by an officer in charge of a Police station or official in charge of an agency it shall be treated as misconduct and dealt with following the relevant regulation or law.

⁴⁵ ACJA S.30(1)– (2)

⁴⁶ ACJA S. 31 & 32

⁴⁷ Evelyn Membere-Asimiea, 'Analysis and Innovations of the Rivers State Administration of Criminal Justice Law (ACJL)' Training paper Presentation pg. 4

The strict implementation of these laws and reforms will definitely result in successful decongestion of the prison system.

However, it may be suggested that alternate provisions be made for when Judges are unable to carry out these functions due to workload of other cases before them or during the period of their annual vacation. Probably Magistrates who are generally closer to the people and deal with lower offences could step in their stead to ensure that the process for speedy dispensation of justice and decongestion of prisons is a continuous one that never stops.

Ultimately, the requirement of the Law in Section 111 for the Comptroller of Nigeria Correctional Service in Rivers State, to make returns every 90 days to the Attorney-General and Chief Judge of the State of all persons awaiting trial in their custody for a period beyond 180 days from arraignment would be the nail that seals the coffin shut in this issue of overcrowding in prisons if meticulously adhered to.

5. CONCLUSION

The issue of overcrowding of Nigerian prisons will soon be a thing of the past provided that those commissioned to act swiftly do their job with utmost decency and strict adherence to the rules.

We have seen that the issue of overcrowding in prisons is a menace in society and an utter disregard for the Human Right of inmates. The 2 legislations which we have discussed above with relation to solving the problem of overcrowding in prisons, have placed strict responsibility on the police in respecting the Human Rights of suspects while effecting arrest or carrying out any inquiry or investigation.

The conscious efforts of the law to reinforce human rights of suspects or defendants and reduce delays in the administration of criminal justice is a step in the right direction. It further puts judicial officers in a supervisory role to ensure that the decongestion of prisons is effectively dealt with. This role of Judicial officers is a huge one that requires non-stop dedication or commitment to work.

Innovative improvements for both custodial and non-custodial sentences like the use of digital jails and house arrest have also been advocated for to tackle the issue from all sides especially the

awaiting trial inmates. Similarly, prisons will be more effective places of correction and rehabilitation, if more modern and secure prisons are built. The establishment of a bail bondsman will go a long way to secure bail for suspects in Police custody as bail is mostly a financial issue which prejudices suspects with less financial means. Although the ACJL and NCSA are revolutionary laws, it remains ambiguous in a few parts like funding. Therefore, well thought out plans and strategies for funding is essential. Eventually, there is room for improvements and implementation plans for decongesting the Nigerian Prison system, these we have seen are at the forefront of respect for the Human Rights of inmate.