

NON-CUSTODIAL PENAL MEASURES AND  
STRATEGIES FOR IMPLEMENTATION OF  
NON-CUSTODIAL MEASURES.  
BY  
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## Introduction

The root of the problem for the Criminal Justice System in Nigeria as to the increase in prison congestion has been the extensive use of custodial sentences and other pre-trial custodial processes by the Nigerian Criminal Justice System, to the near exclusion of other forms of penal measures.

According to the World Prison Brief data, the Nigerian Prison population total (including pre-trial detainees/remand prisoners) is 75, 639 at 26.9.2022 (national prison administration). The excessive use of imprisonment causes congestion and drains public resources as well as impede on the efforts of the Nigerian Correctional Service to deliver on its mandate using the custodial measures.

A major strategy for prison decongestion is the embrace of the non-custodial penal measures as an alternative means of custodial sentencing.

The focus of this work is centered on the Nigerian Criminal Justice System looking at the strategies that improve the implementation and increases the use of the non-custodial measures in Nigeria. This work also examined the adequacy of the provisions of the non-custodial measures in the Federal Acts: the Administration of Criminal Justice Act 2015 (ACJA) and the Nigerian Correctional Service Act 2019 (NCoSA).

## Categories/Evaluation of Non-Custodial Penal Measures

There is need to look at the various categories on non-custodial penal measures which are contained in the ACJA 2015 and the NCoS Act 2019.

Part 44 of the ACJA particularly presents some non-custodial measures:

- ❖ Probation,
- ❖ Community Service,
- ❖ Parole

Others like Fines, Restitution, Compensation, Suspended Sentence, Deportation etc.

A body is created under section 37(2) of the NCoS Act known as The National Committee on Non-Custodial Measures to establish the Technical Committees on non-custodial penal measures such as (a) Parole (b) Probation (c) Community Service (d) Restorative Justice Measures; and (e) any other thing as may be determined by the National Committee on Non-Custodial Measures.

## Probation

Under subsection of section 454(2), the Court may make an order under subsection (1):

- (a) dismissing the charge; or
- (b) discharging the defendant conditionally on his entering into a recognizance, with or without sureties, to be of good behaviour and to appear at any time during such period not exceeding 3 years as may be specified in the order.”

The Probation order by the Court shall be given to the defendant and state in simple terms the conditions he/she is required to observe such as residence, abstention from intoxicating substance and any other matters as the court may deem fit. The various duties and powers of the Probation Officers are stipulated in Sections 456-458 ACJA.

## **Suspended Sentence and Community Service.**

Where a defendant has been found guilty and convicted by the court, and the court sees reason may, after conviction, the court may make order that the sentence it imposed on the convict be, with or without conditions, suspended, in which case, the convict shall not be required to serve the sentence in accordance with the conditions of the suspension. (Section 460(1) ACJA)

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. (Section 460(2) ACJA).

Under the NCoS Act the Controller-General of the Nigerian Correctional Service is empowered under section 42(1) to administer Community Service and ensure its compliance.

Conversely, under section 461(1) and (2) the Chief Judge in every Judicial Division is empowered to establish a Community Service Centre to be headed by a Registrar who shall be responsible for overseeing the execution of Community Service Orders in that Division.

There seems to be controversy between the NCoS Act and ACJA on who oversees Community Service Order.

A Community service sentence should be performed as close as possible to the place where convict ordinarily resides to ensure that the Community can monitor his movement. The Court shall also consider the Character, Circumstances and antecedents of the Convict when making a Community Service Order. (Section 461(5) & (6) ACJA)

## **Types of Community Service (Section 461 (4))**

- ❖ environmental sanitation, including cutting grasses, washing drainages, cleaning the environment and washing public places;
- ❖ assisting in the production of agricultural produce, construction, or mining; and
- ❖ any other type of service which in the opinion of the court would have a beneficial and reformatory effect on the character of the convict.



# Parole

Section 468(1) ACJA describes circumstances where the court after hearing the prosecution and the prisoner or his legal representative may release a prisoner before the completion of his/her sentence to be where the Comptroller of Correctional Service makes a report to the court recommending that a prisoner: sentenced and serving his sentence in prison is of good behaviour; and has served at least one third of his prison term, where he is sentenced to imprisonment for a term of at least fifteen years or where he is sentenced to life imprisonment.

Proper administration of the parole sentence, the Comptroller General of the Correctional Services shall:

- (a) make adequate arrangement, including budgetary provision, for the facility (Sec. 468(3) ACJA)
- (b) the appointment of members of the parole board;
- (b) supervision of parolees;
- (c) rehabilitation of the parolees;
- (d) administration of the designated parole facilities. (Sec. 468(3) ACJA )

## **Sentencing Guidelines and Non-Custodial Penal Measures**

Having regard to the fact that a sentence should be fair and just, judges and magistrates must have regard to the gravity of the offence, its impact on the victim, the circumstances of the accused and the wider public interest. The way to achieve this is through implementation of sentencing guidelines.

The primary purpose of a Sentencing Guideline is to assist judges and magistrates, to attain some level of uniformity, proportionality and fairness in sentencing within the criminal justice system and it will also ensure the decongestion of the Nigerian correctional centers in line with section 470 (2)(c) of ACJA and section 2(1)(b) of NCoS Act.

It has been adopted by all the States of the Federation except for States like Cross Rivers, Lagos, Edo and FCT as a Practice Direction in line with their respective Administration of Criminal Justice Laws (ACJL).

Sentencing Guideline should group offences as offences against the State, person, public order, morality, homicide, property, corruption, financial crimes and other related offences.

**Factors to consider by the Court:**

(a) The objectives of sentencing which are-

(i) prevention, that is, the objective of persuading the convict to give up committing offence in the future, because the consequences of crime is unpleasant;

(ii) restraint, that is, the objective of keeping the convict from committing more offence by isolating him from society;

(iii) rehabilitation, that is, the objective of providing the convict with treatment or training that will make him into a reformed citizen;

(iv) deterrence, that is, the objective of warning others not to commit offence by making an example of the convict;

(v) education of the public, that is, the objective of making a clear distinction between good and bad conduct by punishing bad conduct;

(vi) retribution, that is, the objective of giving the convict the punishment he deserves, and giving the society or the victim revenge; and

vii) restitution, that is, the objective of compensating the victim or family of the victim of the offence.

(b) The interest of the victim, the convict and the community.

(c) Appropriateness of non-custodial sentence or treatment in lieu of imprisonment.

(d) Necessary aggravating and mitigating evidence or information.

(e) A trial court shall not pass the maximum sentence on a first offender except in a mandatory sentence.

(f) Sentencing to a term of imprisonment shall apply only to those offenders who should be isolated from society and with whom other forms of punishment have failed or are likely to fail. This shall be determined in accordance with the sentencing guidelines in this Practice Direction. See Order 1, Rule 3, CONSOLIDATED FEDERAL CAPITAL TERRITORY COURTS (CUSTODIAL AND NON-CUSTODIAL SENTENCING) PRACTICE DIRECTIONS, 2020

This work is focused on the Sentencing Guideline as it relates to non-custodial penal measure as an alternative to custodial sentencing. Ordinarily, the court should not impose a non-custodial sentence where the statute that creates offence provides for a mandatory sentence or a minimum custodial sentence. The Court may in all other cases may sentence a convict to a non-custodial option including fine as provided under the ACJA.

The court should impose a non-custodial sentence where the offence has been categorized as “Low Culpability Offence” and “Limited Harm Offence” and there are other mitigating factors.

The Court prior to the imposition of non-custodial sentence should ensure that:

(a) the interest of the victim, the convict and the community are considered;

(b) it is appropriate to impose non-custodial sentence as an alternative to imprisonment in the particular case;

(c) there are necessary mitigating factor, evidence, information or circumstances that necessitate the imposition of the non-custodial sentence; and

(d) the convict is not a habitual convict and will not pose danger to the community by the imposition of non-custodial sentence. (Order 1, Rule 4 (1-7) )

# STRATEGIES TO IMPROVE THE IMPLEMENTATION AND SUSTAINABILITY OF NON-CUSTODIAL MEASURES

## ❖ Supervision

The purpose of supervision is to reduce re-offending and to assist the offender's integration into the society in a way which minimizes the likelihood of a return to crime. The supervision should be carried out by a competent authority under the specific conditions prescribed by law.

Personnel mentioned under section 461(2) of the ACJA Administration of Criminal Justice Act 2015 and supervising officer under section 38 of NCoS Act.

Although there might be confusion as to under which Act should the appointing authority derives its power to appoint.

As under section 39 of the NCoS Act the Controller-General of the Nigerian Correctional Service regulates the non-custodial measures. Whereas, under ACJA the Chief Judge of the Federal High Court or the High Court of the Federal Capital Territory or National Industrial Court.

## ❖ Duration and Condition

The duration of a non-custodial measure shall not exceed the period established by the competent authority in accordance with the law. Under the ACJA one of the functions of the Community Service Centre includes ascertaining the nature, duration and location of the Community service. Section 461(3)(a)(iii)

In determination of the conditions to be observed by the defendant (offender), account should be taken as to both the needs of society and the needs and rights of the defendant (offender) and the victim.



## ❖ Funding

One of such is the activation of the Non-custodial Special Fund as adequately provided under section 44 of the NCoS Act. A proper funding will enhance the implementation of non-custodial sentences by the courts and strengthen the criminal justice system.

Federal/State Ministries, Departments and Agencies and in fact all stakeholders should key into the process of raising the necessary funds and taking immediate steps to ensure the payment into the Special Non-custodial Fund

## **Conclusion**

Effective implementation of existing non-custodial measures and creatively exploring new alternatives to imprisonment is one of the strategies recommended to achieve this. However, under the ACJA, the power to appoint probation officers is assigned to the Chief Judge of the Federal High Court or the High Court of the Federal Capital Territory or National Industrial Court who shall make regulations for the appointment of Probation Officers. There is also the Community Service Centre to be established by the Chief Judge to be run by the Registrar to be assisted by suitable personnel to supervise the Community service which is at variance with the provisions of the Act.

## Recommendation

- ❖ Effective implementation of existing non-custodial measures and creatively exploring new alternatives to imprisonment.
- ❖ The areas of convergences and divergences between the Nigerian Correctional Services Act and the Administration of Criminal Justice Act should be reviewed and streamlined.
- ❖ Effective supervision should be carried out by a competent authority under the specific conditions prescribed by law.
- ❖ Effective implementation of the Non-custodial Special Fund as adequately provided under section 44 of the NCoS Act.
- ❖ A proper implementation of Sentencing Guideline should establish the requirements and procedures for imposing custodial and non-custodial sentences for the purpose of preventing abuse and ensuring reasonable uniformity and fairness in sentencing.

THANK YOU