



Exploring Non-Custodial Sentencing in Magistrates Courts

2017 Orientation Course for Newly Appointed Magistrates

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Introduction

1.The topic assigned to me by the National Judicial Institute for this presentation is “Exploring non-custodial sentencing in magistrate's courts’. Considering the importance of this topic and the magnitude of the problems that can be addressed by the paper, I decided to expand the topic to accommodate **“The use of non-custodial measures in the administration of justice.”** Thus broadening the scope of the topic to admit issues of pretrial detention. I apologise for the diversion but believe firmly that this has given better value to the topic and will also be of great utility value to the audience to be addressed (newly appointed magistrates) who will most likely be faced with requests for custodial detention of suspects.

According to records from the Nigerian Prisons service sources, as at April 2011, of the 48,632 prison inmates in Nigeria, 34,819 or 72 % were awaiting trial with an average duration in custody of 3.7 years between arrest and commencement of trial¹. In 2014 the Total number of prison inmates was 56,785 out of which 18,042 or 31% were convicted prisoners while awaiting trial inmates figure was about 38,743(68.2%)ⁱ. By October 2015, the figure was 63,000 with 75% awaiting trial inmates on record. According to the records on 29th August 2016 the figures are as followsⁱⁱ; Total inmates population; 63, 000, convicted inmates population; 17,897 (28%), awaiting trial inmates 45,263 (72%).

From the above statistics it is clear that the incidence of high numbers of awaiting trial prisoners is not reducing and that the real problem in the penal system is not really the number of imprisoned persons but the number of unimprisoned persons populating the prisons. It therefore becomes essential to explore ways of reducing these figures to some reasonable levels to ensure access to justice to these sometimes innocent “prisoners”. Effective implementation of existing non-custodial measures and creatively exploring new alternatives to imprisonment is one of the strategies recommended to achieve this. It has also been found that detention periods can last for from 1 to 15 years or more without trial.

¹ Nigerian prisons Service website 29 August 2016

The size of pre-trial prisoner population from the above statistics gets incrementally larger than that of the convicted prisoner population. According to Amnesty International Report² "Seventy per cent of Nigerians nearly 48,000 prison inmates were pre-trial detainees. Many had been held for years awaiting trial in appalling conditions. Few could afford a lawyer and the government funded Legal Aid Council had only 222 lawyers for the whole country. This situation contradicts the provisions of the international standards, including International Covenant on Civil and Political Rights (ICCPR) that provides for the limited use of pre-trial detention for only when certain conditions are present. Non-Custodial measures are also provided under our laws especially the Administration of Criminal Justice Act(ACJA) and State Administration of Criminal Justice Laws(ACJL).

This paper will propose measures and actions that can be taken to reduce the number of convicts in prison as well as pre-trial detainees so that deserving cases can be heard and disposed of efficiently and expeditiously

2. Terminology

2.1. Sentencing is a post-conviction process of ascertaining and imposing penalties on offenders. It is the final stage of the trial process, when the court has found the defendant guilty or the defendant has pleaded guilty, the judge then decides on a sentence appropriate for the offence established. Sentencing can be described as punishment for overstepping legal boundaries. Sentences may be custodial or non-custodial and may include the following;

2.2. Custodial Sentence; This involves placement in a restricted area known as a prison or other such institution. This is the most frequently used penal sanction for crime. While imprisonment is necessary in many cases especially for very serious offences, it has not solved the problem of crime prevention or the social reintegration of offenders. Moreover in many countries prison system faces major challenges because of overcrowding and outdated facilities, with the result that prisoners find themselves in deplorable conditions of detention that

² Amnesty international 2012 report

could have adverse effects on their physical and mental health . It could also impede their educational /vocational advancement to an ordinary life thereby affecting their chances of future adjustment and development in their communities. The impact of long term imprisonment on a person's life and work can be enormous. This could include psychological and health problems, death, stigmatization and social exclusion.

2.3. Non-Custodial Sentence;

Non-Custodial Measures refers to a sentence / disposition measure that is given to an offender that does not involve imprisonment. Depending on the offence, secondary or non-custodial options may be appropriate including disqualification, confiscation and compensation (These are used more in sex, drug and trafficking offences). In other words the sentence is served outside the physical facility designated as a prison which is administered by the State or by any other agency on behalf of the State. Other words that can be used interchangeably with the term 'non-custodial measure' is 'non-custodial sanctions', 'non-custodial punishment', 'non-custodial sentence', 'alternatives to imprisonment', or 'alternatives to custodial sentence/sanction'. The Webster's New World Law Dictionary defines non-custodial sentence as 'a criminal

As skepticism has grown on the usefulness and effectiveness of imprisonment, experts have tried to develop other useful measures to help achieve a better result both for the community and the offender. One such measure is the United Nations Standard Minimum rules for Non-Custodial measure (Also referred to as the Tokyo rules). According to the Tokyo rules the purpose of non-custodial measures is to find effective alternatives to imprisonment (incarceration), for offenders and to enable the authorities to adjust penal sanctions to the needs of the individual offender in a manner proportionate to the offence committed. Provisions on the use of Non-Custodial measures can also be found in our local laws like the Administration of Criminal Justice Act and laws, the penal and criminal procedure

laws and other laws. Non-custodial measures include Suspended Sentences, Community Service, Fines, Curfews, Parole orders, binding over etc:

Sentence served elsewhere than in a prison¹³. Community Service, Probation Order, Suspended Sentence, Conditional Discharge, Fine.

2.4. Offender ; The term offender is applied to all persons subject to prosecution, trial or the execution of a sentence, at all stages of the administration of criminal justice and these persons are referred to as “offenders” irrespective of whether they are suspected, accused or sentenced. Consequently the term “offender” is used in a generic sense without detracting from the presumption of innocenceⁱⁱⁱ

3. Aims of Sentencing:

The general aims of sentences include the following;

- To keep the offender away from the society,
 - Deterrence- to reduce Crime, prevent reoffending
 - Reform and Rehabilitation of offenders
 - Protection of the public
 - Retribution is punishment inflicted as revenge for doing wrong or committing crime
(*an eye for and eye*),it's an archaic measure
 - Reparation includes compensation includes reparation, repayment, atonement, etc by the offender to those affected by the Crime
 - Denunciation-Reflecting society's abhorrence of the crime
- The above list while being by no means exhaustive covers most of the reasons for imposing sentences.

The question is ...Has the sentencing practices as we know it today really achieved these aims over the years? The common perception about sentences in Nigeria are that;

- There are significant variations in sentencing patterns across jurisdictions and individual courts.

³ Copyright © 2010 by Wiley Publishing, Inc., Hoboken, New Jersey.

- There is absence of an objective methodology for exercising sentencing discretion.
- There is perceived inequity in sentencing between blue and white crimes
- The courts have the tendency to pronounce custodial sentences even for the most menial of offences without consideration for the circumstances leading to the offence including age, social condition or other mitigating circumstances

This has resulted in the perception by the public that the ordinary citizen will not get just punishment in our courts. The general belief is that the law punishes only the poor, weak and most vulnerable in our society. This is shown in the tendency for people to resort to the use of unorthodox means to settle scores (Assassinations, kidnapping, sometimes lynching, blackmail, shaming etc) is on the increase. Recidivism or reoffending is also on the increase.

For example the Daily trust newspaper headline of Monday May 29, 2017 "Steal a goat, go to jail. Steal billions, pay a small fine.

Only a few weeks ago there was outrage when a former manager of skye bank who stole two billion Naira was sentenced to pay a fine of N100,000(One hundred thousand Naira) or one year imprisonment while a young man who committed robbery of N750,000 (Seven Hundred and Fifty thousand Naira)was sentenced to death by hanging.

We also have seen situations where high profile persons convicted of defrauding people of millions of Naira, is sentenced to few months in imprisonment (most of which is spent on a hospital bed) or an option of fine paid to the government. The bargain is to return a portion and society gets nothing while the criminal keeps most of the loot. Does this satisfy the aims of sentencing for the society? There are two broad approaches to sentencing.

3. Approaches in sentencing:

3.1. Retributive Justice "Retributive Approach"

The traditional approach/method to sentencing/criminal justice administration supports the idea of retaliation or punishment for offenders. Although this approach was quite effective by ensuring

public protection through the removal of criminals from civil society through imprisonment or custody and ensuring that there is a price to pay for crime committed thereby deterring others from committing crime, there are however, several challenges associated with the approach. One of the major challenges of the retributive custodial form of sentencing is the unwitting creation of career criminals. Most people who go through the prison system return to civil society losing the ability to reintegrate into society and return to normalcy as law abiding citizens. There is also the problem of very high cost incurred by the government in the maintenance of prisons, overcrowding of prisons and inadequate facilities for the rehabilitation of criminals. Even the deterrent effect of this approach became questionable.

3.2. Restorative Justice “Restorative Approach”

The restorative justice approach gives the victim a greater sense of justice, as offenders are made to compensate the victim and make repairs for the damages they might have caused, unlike the retributive approach.

It also seeks to remedy the adverse effects of crime in a manner that addresses the needs of all parties involved. This is accomplished in part, through the rehabilitation of the offender, reparations to the victims and to the community and the promotion of a sense of responsibility by the offender and acknowledgment of the harm done to the victims and the community.⁴ The restorative approach to justice often makes it a part of a sentence for the offenders to apologize, compensate the damage they have caused or repair it with their own labour.⁵ The attempt to address the challenges of the custodial system of criminal justice has given rise to a new approach- the restorative justice approach which is the philosophy behind non-custodial sentences.

The key question here is whether imprisonment / incarcerations as a form of punishment has served the intended purposes as listed

⁴ Introduction: Community-Based Sentencing: The Perspectives of Crime Victims. <http://www.justice.gc.ca/eng/rp-pr/cj-jp/victims>.

⁵ Community Sentence. en.wikipedia.org/wiki/community_sentence.

above. The rate of re-offending behavior (recidivism rate) amongst ex-prisoners challenges this position. Also, the fact that Nigerian prisons have about 70 percent of its population as awaiting trial prisoners (ATPs) should be of great concern to criminal justice operates and stakeholders. In some prisons, the percentage of ATPs is as high as 80 percent of the total prison population, with these situation one will question how the prison service can deliver appropriate treatment and rehabilitation. The issue of poor rehabilitation activities in prisons, lack of adequate re-integration and resettlement activities, poor living conditions in prison, existence of torture inhumane and degrading treatment in places of detention, lack of adequate mental and psychological treatment in prison etc questions the validity of the position that the prison provides treatment and rehabilitation of offenders as provided in the Nigerian Prisons Service mandate as well as be able to identify the anti-social behavior. It therefore becomes important for courts to consider the use of non-custodial measures as the first line of sentencing when the right conditions are present.

4. Criteria for use of Non-custodial Measures and the need for discretion

In considering the application of non-custodial measures the court shall base its decision on best practices including the following established criteria⁶ as well as our own laws such as the Administration of Criminal Justice Act/Laws and other national laws.

1. The nature of the offence
2. The personality and background of the offender
3. The purpose of the sentence
4. The rights of the victim

This provides a clear framework for the selection of non-custodial measures which considers the interest of the offender as well as those of both the society and the victim. In applying these criteria the judge is still expected to apply considerable degrees of

⁶ Rule 1.4 and 2.3. of the Tokyo Rules

discretion which according to rule 3.3 of the Tokyo rules shall be exercised at all stages of the proceedings by ensuring full accountability and only in accordance with the rule of law. Non-custodial measures can be applied at different stages of the trial process namely the pre-trial stage , the trial stage and the sentencing stage. There must also be in place the needed structure for supervision of the measures imposed.

The United Nations plays a huge role in criminal justice systems to ensure that they meet fundamental human rights standards. It is in consequence of this role that the UN developed an instrument -The United Nations Standard Minimum Rules for Non-Custodial Measures (The Tokyo Rules) 1990- to promote the use of non-custodial measures as well as minimum safeguards for persons subject to alternatives to imprisonment.

Apart from the Tokyo Rules, there are some other United Nations instruments that are directly applicable to alternatives to imprisonment. These include:

- Declaration of Basic Principles of Justice for victims of Crime and Abuse of Power.
- Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters.

These standards, norms and practices represent a collective vision of how to structure a criminal justice system. Though nations are not bound by these standards, they provide a framework for them to foster in depth assessments that may lead to necessary reforms. These standards have also helped countries develop sub-regional strategies.

The United Nations Standard Minimum Rules for Non-Custodial Measures (The Tokyo Rules) has its fundamental aims in the reduction of the use of imprisonment. The Tokyo Rules emphasized that states should “endeavour to ensure a proper balance between the rights of individual offenders, the rights of victims and the concern of the society for public safety crime prevention”.

4. Review of Available Alternatives to Imprisonment and Non-Custodial Measures;

4.1.Fine

This is one of the most common kinds of non-custodial sentences. A fine is a sum of money specified by law which an offender is required to pay to the authorities as penalty for an offence committed by him. Usually, there are statutory limits to the amount an offender will pay as fine. The imposition of fine as an alternative to custodial sentencing has the following advantages-

- It is beneficial to the community because it serves as a huge source of revenue.
- It is very economical to collect and manage funds collected from fines in comparison with the management of prison sentences.
- It is handy when other forms of sentencing would be inappropriate, for example, sentencing of a corporate organization such as a company.

The **disadvantages** include the following-

- There is a tendency of the fine to have a low impact on the offender especially when the fine can be easily afforded.
- An offender may abuse the fine by thinking the payment of fine is a small price to pay for an offence than altering an offending behavior, leading to a minimal deterrence to future offending. For instance, if the fine for exceeding speeding limits is N5, 000, it would hardly deter a repeated offender who would rather pay the fine than change his reckless habit.

The ACJA in various provisions including sections 327, 422, 424, 434 and 437 confers wide discretion on the court to impose, vary, enforce or alternate a sentence of fine.

4.2. Restitution and Compensation;

While fines go to the state (or federal or local government prosecuting the crime), restitution or compensation is money paid by

the defendant to the victim or victim's estate or to a state restitution fund.

Offenders may be required to return or replace stolen or damaged property, to compensate victims for physical injuries or for medical and psychological treatment costs, or to pay funeral and other costs where a victim dies. In some cases, the "victim" is society, such as in welfare and Medicare fraud schemes, where defendants may be sentenced to pay back to the state the money defrauded. The defendant may be ordered to pay restitution either as an alternative to imprisonment or as just one part of the sentence, in addition to prison, community service, and/or probation.⁷

Section 321 of the ACJA specifically provides for restitution and compensation as sentencing options. Section 321(a) states that:

“A court after conviction may adjourn proceedings to consider and determine sentence appropriate for each convict:

In addition to or in lieu of any other penalty authorized by law, order the convict to make restitution or pay compensation to any victim of the crime for which the offender was convicted, or to the victim's estate.”

4.3.Probation

Probation is a pre-conviction order whereby a defendant is discharged or released from confinement on conditions and under court supervision. If the probationer violates a condition of probation, the court may revoke the probation and proceed to convict and sentence the probationer to imprisonment. Usually, the conditions for probation are at the discretion of the court and may include the following :⁸(depending on the type of offence)

- i. Report regularly to the probation officer.
- ii. Obey all laws.

⁷ Sentencing Alternatives: Prison, Probation, Fines, and Community Service: Prison sentences and alternatives to prison for defendants convicted of crimes, <http://www.nolo.com/legal-encyclopedia/sentencing-alternatives-prison-probation-fines-30294.html>

⁸ Alternative Sentences- [Findlaw.criminal.findlaw.com](http://findlaw.criminal.findlaw.com).

- iii. Abide by any court orders, such as an order to pay a fine or restitution.
- iv. Report any change of employment or address to the probation officer.
- v. Abstain from the excessive use of alcohol or the use of drugs.(Where the offence is related to the use of abuse of alcohol or drugs)
- vi. Submit to regular alcohol or drug testing.
- vii. Refrain from travel outside of the jurisdiction without prior permission of the probation officer. (In more developed countries a censor is used to track movement)
- viii. Avoid certain people and places.(Not to engage in fighting or appearing in certain locations)

One of the advantages of probation is that it saves the offender the societal stigmatization of being labeled a convict and helps in the reintegration of the offender into society. In terms of cost, it benefits the system because it is a lot cheaper for the government than imprisonment. However, the success of probation as an alternative sentence is dependent on the content and aim of the probation programme. It is also more likely to be successful when the probation is tailored to the needs of the offender.

ACJA Provisions on Probation

Sections 453-459 of the ACJA provide for probation. The following are some of the salient provisions.

.When to make probation order

Under **section 454** of the ACJA the court may make a probation order only where the offence against the defendant has been proved but it considers that it is expedient to release the defendant on probation having regard to the following considerations –

- The character, antecedents, age, health or mental condition of the defendant;
- The trivial nature of the offence; and
- The extenuating circumstances under which the offence was committed.

(These circumstances will be considered in detail later in the paper).

Period of Order

By section 454 (2)(b), the probation period shall not exceed 3 years. This is a mandatory provision and must be complied with by the sentencing court.

Conditions for Probation

The conditions for probation are stipulated in **section 455** and shall include-

That the defendant be under the supervision of a probation officer who shall be a person or persons of same sex;

Abstention from intoxicating substance;

Any matter which the court considers necessary for preventing a repetition of the same offence or other offences.

The Probation Officer

He is a person who is appointed by either the Chief Judge of the Federal High Court, the High Court of the Federal Capital Territory, Abuja or the President of the National Industrial Court through a regulation.(section 457(2)) He acts as a supervisor to the defendant, making sure the defendant abide by the probation order and the conditions of recognizance.

Duties of probation officers

The **duties** of a probation officer are as follows:

- Visit or receive reports on the person under supervision;
- Ensure that the probationer observes the conditions of his recognizance;
- Report to the court as to his behavior;
- Advise, assist, and befriend him and when necessary to endeavour to find him suitable employment. Section 457 (1).

Variation of terms and conditions of probation

Under section 458, the court may vary the terms and conditions of probation by-

- extending or reducing the duration of the probation which shall not exceed 3 years from the date of the original order; or
- by altering the conditions or inserting additional conditions; or
- by discharging the recognizance.
- other such orders as the court may deem fit

Revocation of Probation

Under section 459, the court may where satisfied that the defendant has failed to observe a condition of his recognizance, proceed to convict and sentence him for the original offence.

4.4.Parole

Parole is a conditional release from prison(incarceration) during which a prisoner promises to heed certain conditions (usually set by a parole board) and submits to the supervision of a parole officer. Any violation of those conditions would result in the return of the person to prison.

A parole board is an independent statutory agency, delegated broad discretionary powers in determination of eligibility for parole. In making such determinations, the parole board may consider the length and seriousness of an inmate's prior criminal record to determine whether a prospective parolee will remain at liberty without violating the law and whether such release will be compatible with the welfare of society.⁹ The safety of the public is always the permanent consideration in all parole decisions¹⁰."

ACJA provisions on parole

The following are the provisions for parole under section 468 ACJA.

⁹ Parole definition- www.duhaime.org> Legal Dictionary.

¹⁰ ibid

- A parole can only be ordered on the basis of a report by the Comptroller-General of Prisons to the court recommending the prisoner on the grounds that the prisoner is of good behavior; and has served at least one-third of his prison term of at least 15years or life imprisonment.
- The court may release the prisoner with or without condition.
- A prisoner released under this provision shall undergo a rehabilitation programme in a government facility or any other appropriate facility to enable him to be properly reintegrated to society.
- It is the responsibility of the Comptroller General to make arrangement including budgetary provisions for the facility.

4.5 Distinguishing between Probation and Parole

Probation is sometimes used interchangeably with Parole. However, there exists a distinction between the two concepts.

Parole is a conditional release from actual confinement under sentence of imprisonment, contingent upon future conduct with respect to terms of parole, and the parolee is subject to future confinement for the unserved portion of sentence in the event that he violates provisions of parole.

Probation orders on the other hand, usually take place before conviction or confinement. However with modern trends in probation, an offender may be placed in a correctional institution for a short period before being placed under supervision by a probation officer.

The similarity lies in the fact that breach of the conditions may lead to imprisonment in both cases.

While it is indisputable that probation and parole are two different non-custodial measures, the fact remains that probationers and parolees are usually supervised by the Probation officers.¹¹

4.6. Suspended Sentence

A suspended sentence involves the judge imposing a prison sentence but suspending it on certain conditions. This means that the offender is not sent to prison if he/she does not break the conditions.

A suspended sentence contains 3 elements:

- i. The term of imprisonment (for example, 4 years);
- ii. The conditions on which it is suspended (for example, to keep the peace and be of good behaviour or to undergo certain treatment);
- iii. The period for which the sentence is suspended.

If the offender breaks a condition during the period for which the sentence is suspended, he/she will have to serve the term of imprisonment originally imposed.

Difference between Suspended Sentence and Parole

The difference between suspended sentence and parole is that no part of the sentence is served in suspended sentence.

Difference between Suspended Sentence and Probation

The difference between suspended sentence and probation is that there is no conviction or sentence of imprisonment in probation.

4.7. Community service (CS)

A community service order requires an offender to do unpaid work in the community as reparation for his offence. It is a sentence imposed by the court as alternative to imprisonment. Failure to comply with the order however attracts the risk of imprisonment.

¹¹ PROBATION AS A NON-CUSTODIAL MEASURE IN NIGERIA: MAKING A CASE FOR ADULT PROBATION SERVICE By Abubakri O. Yekini Department of Jurisprudence & International Law Lagos State University, Nigeria and Mashkur Salisu Esq Department of Public Law Umaru Musa Yar'adua University, Nigeria, *African Journal of Criminology and Justice Studies: AJCS*, Vol.7, #s1 &2 November 2013 ISSN 1554-3897

In most advanced jurisdictions, the unpaid work is for a specified number of hours say about 40 hours weekly for a period of one year or less but not exceeding 240 hours.

Most times it is specifically targeted to the convict's crime. For example, a drunk driver may appear before a school group to explain the dangers of drunk driving

Community service order is one of the most beneficial forms of alternative sentences because it has a direct positive impact on the community and makes an offender take personal responsibility for his offences.

ACJA provisions on Community Service

According to Section 460(2) of the ACJA 2015, the court may with or without conditions, sentence a convict to perform specified service in his community or such community or place as the court may direct.

By section 460 (3) community service order, like suspended sentence, cannot be made in respect of an offence involving the use of arms or offensive weapon, sexual offence or an offence which the punishment exceeds 3 years imprisonment.

Factors to be considered in making Community service order or suspended sentence

Under section 460 (4), the court is required to consider the following factors in making an order for suspended sentence or community service:

- a. Reduction in overcrowding in the prisons,
- b. Rehabilitation of the prisoners by making them undertake productive work; and
- c. Prevention of convicts who committed simple offences in mixing with hardened criminals.

Nature of community services

Section 461 (4) of ACJA provides for the nature of community service that the court may order as follows:

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

Place for Performance of Community Service

The community service sentence is to be performed as close as possible to the place where the convict ordinarily resides to ensure that the community can monitor his movement. Section 461(5).

Duration for community service

The community service must be performed for a period of not more than 6months and the convict shall not work more than 5 hours a day.¹²

Violation of Community Service Order

By section 463 (3), where the convict defaults in complying with the directive of the community service order, the court is empowered to make the following orders:

- (a) Vary the community service order to suit the circumstances of the case; or
- (b) Impose on the convict a fine not exceeding ₦100, 000.00 or cancel the order and sentence the convict to any punishment which could have been imposed in respect of the offence, although the court may take cognizance of the period of the community service already performed.

¹² Section 462(1) ACJA 2015

Commission of offence during Community Service

According to Section 464 (a)&(b), where a convict who had been ordered by a court to undergo community service, commits another offence during the period of community service, he may be charged for that offence in another court and that court may add to the sentence or impose a term of imprisonment which might have been passed by the original court and cancel the order of community service.

To determine the term of imprisonment by the court for such other crime committed, the court may take cognizance of the period of community service served.

4.8.Rehabilitation and Correctional Centre

According to section 467(1)(2)(3), a defendant convicted of an offence triable summarily, may be sentenced and ordered to serve the sentence at a Rehabilitation and Correctional Centre established by the Federal government in lieu of imprisonment.

The court here shall have regard to the following;

- (a) The age of the convict;
- (b) The fact that the convict is a first offender; and
- (c) Any other relevant circumstance necessitating an order of confinement at a Rehabilitation and Correctional Centre.

Where the person standing trial is a child, the court may make an order remanding him at the Rehabilitation and Correctional Centre.

4.9 Deportation (Foreign offenders)

Section 439 ACJA defines deportation as legal expulsion or removal from Nigeria of a person not being a citizen of Nigeria.

It is one of the alternatives to imprisonment provided for under the ACJA. Under section 440, where a defendant is convicted of an offence punishable by imprisonment without option of fine, the court

may, in addition to or instead of any other punishment, make recommendation to the Minister of Interior that the convict be deported, where it is in the interest of peace, order and good governance.

- It is important to mention that non-custodial measures can be applied pre-trial by granting bail or through victim offender mediation, during trial by using restorative justice models (verbal sanctions, reparation, restitution, conditional discharge, house arrest etc. Especially where the offender shows remorse and is will to make good the wrong done and at the sentencing stage. Pre-trial and during trial it helps to reduce pre-trial detention and complies with rule 6.2 of the Tokyo rules which promotes the earliest possible use of pre-trial detention.

5. General Provisions on Alternatives to imprisonment and Non-Custodial Sentence under the ACJA

The relevant provision of the ACJA is section 311(2) and (3) which is reproduced below:

Section 311

(2) The court shall, in pronouncing sentence, consider the following factors in addition to sections 239 and 240 of this Act.

- (a) The objectives of sentencing, including the principles of reformation and deterrence;
- (b) The interest of the victim, the convict and the community;
- (c) Appropriateness of non-custodial sentence or treatment in lieu of imprisonment; and
- (d) Previous conviction of the convict.

(3) A court, after conviction, shall take all necessary aggravating and mitigating evidence or information in respect of each convict that may guide it in deciding the nature and extent of sentence to

pass on the convict in each particular case, even though the convicts were charged and tried together.

Below is overview^{iv} of non-custodial measure contained in the provisions on non-custodial measures of the ACJA and the ACJ laws of Anambra, Ekiti¹³ Cross River and Lagos state. The idea is to familiarize us with some of options available to us within our national laws.

Bail: ACJA Part 19 Sec 158; Bail Where a person who is suspected to have committed an offence or accused of an offence is arrested or detained, or appears or is brought before a court, he shall subject to the provisions of this part be entitled to bail.

Anambra ACJL Chapter 5 Sec 68(1) goes further to empower the police to grant bail to a person arrested without warrant if it will not be possible to bring the person to court within 24 hours

ACJA, ACJL Lagos, Anambra , Ekiti, Cross River requires that minors are removed from association with adult criminals and can be released on bail on recognizance entered into by a parent or guardian.

ACJL Cross River State provides for bail under section 156

All the laws do not allow granting of bail for persons charges with offences punishable with death but ACJA under section 161(2) and ACJL Cross River State 156 makes an exception for special circumstances which includes the health of the applicant confirmed by a government doctor and extra ordinary delay in investigation prosecution and arraignment.as well as any other circumstances that the judge may in a particular case consider exceptional. This is a revolutionary provision that should be adopted by other States.

Community Service (CS): ACJA Sec 461, Ekiti 347(4) and Lagos 347(3) iv Cross River State 457 provides for community service, while ACJL Anambra has no provision for community service

Fines: All existing laws old and new have provisions for fines most of which need to be reviewed in view of the unrealistic amounts

¹³ the ACJ Bill of, Anambra ,Cross River , Ekiti and Lagos States was used in this document

mentioned as fines in lieu of imprisonment. Fines are found in section 327 ACJA, 363 Anambra, 318 Ekiti and 318 Lagos

Compensation; ACJA section 454 and the ACLs of Anambra sec 396 ,Ekiti sec 341 and Lagos sec 341 all have provisions for probation . Under the ACJA compensation can also be a sentence not an addition to a sentence as in the state laws.

Probation; Is provided for under 454 and 455 of the ACJA sec 451 and 452 of ACJL of Cross River State

Suspended Sentence; This is provided for in the ACJA under section 460 and 457 of the ACJL of Cross River State.

Parole; This is provided for under part 45, section 468 of the ACJA and section 465 of ACJL of Cross River State and not mentioned in any of the other state laws. According to the law parole can be granted upon the recommendation of the Comptroller general of Prisons as to the good behavior of a prisoner who has served at least one third of the prison term.

6. Way Forward –

The modern trend in sentencing is that main aim of sentencing should not be punishment but to preserve harmony in the society and reform the offender and pacify the victim. Custodial sentencing should never be the first line of action and within the limits of the court's jurisdiction. It is a good practice to always start with non-custodial and then work towards custodial measures. It is also important to stress that great care has to be taken when dealing with cases involving children. Special considerations which must be in line with the Child Rights Act or Child Rights Laws must be applied. Words like convict, accused person etc must not be used. Cross River State has issued adjudication guidelines for child offenders which outlines the processes to be adopted while pronouncing judgement in cases involving children in conflict with the law.

6.1.The Role of the ACJMC

Section 469 of the ACJA and 466 of the ACJL of Cross River State has established the Administration of Criminal Justice Monitoring

Committee (ACJMC) with the general responsibility of ensuring effective and efficient application of the law.

Section 470(2)(b) and 467 of ACJL of Cross River State specifically confers on the Committee the function of ensuring that congestion in prisons is reduced to the barest minimum. This committee is expected to facilitate and monitor the setting up of the necessary structures that will give effect to the implementation of some of the non-custodial measures provided under the law as well as monitor the effective and efficient implementation of the law such as

- To identify and recommend necessary draft rules and regulations in respect of Probation and Community Service on regulations relating to appointment of probation officers, etc.
- To monitor the appointment of probation, community service and other relevant officers.
- To identify and provide support for the training of relevant officers in respect of probation and CS.
- To monitor compliance with the regulations and effectiveness of probation and CS.

The above is very necessary because the success of orders relating to probation, parole, suspended sentences and community services may largely depend on these structures being in place for effective supervision and implementation of the conditions. The courts are not likely to send people to non-existent institutions.

7. Adjudication of Child Offenders;

There is a need at this point to mention the adjudication of child offenders. It is pertinent to state that terms used for adult offenders such as imprisonment, sentencing, accused person etc are not used with reference to children. Also the provisions of the Child Rights Laws with regards to privacy, discretion and great caution to protect the best interest of the child must be followed. Cross River has issued adjudication guidelines for child offenders. All cases involving children must be tried in a family court even where the child acted

with adults and children should under no circumstance be sent to adult prisons.

8. Conclusion

Sentencing is one of the most important steps in the trial process because it is then that the fate of the offender is decided and any decision taken weighs heavily one way or the other on the integrity of the individual judge and the judiciary . It is for this reason that the National Judicial Institute conducted a nationwide survey between 2012 and 2013 on the need for sentencing guidelines in Nigeria's criminal justice administration. The respondents of the study were High Court judges, Magistrates, Khadis and Alkalis. Only 21.11% of the respondents were of the opinion that the open discretion based sentencing procedures are working well while 89.45% considered the adoption of sentencing guidelines to guide the court while exercising its discretion including guidance on when non-custodial measures can be applied. UNODC has been working with the Nigerian law reform commission and the NJI to make this a reality. So far FCT, Cross River State, Benue State and the federal High Court has introduced sentencing guidelines. There is no doubt that the ACJA has made tremendous provisions on alternatives to imprisonment and non-custodial sentences. Magistrates who have the ACJL already passed in their States are urged to find innovative ways to take advantage of these provisions to ensure that unnecessary incarceration is not always our first line of action in sentencing. Period spent in custody shall be computed and considered while sentencing. Time has come to shift from custodial sentences and adopt a sentencing models that gives more value to the society the victim and the offender. The public interest is indeed served when the offender turn away from crime and the society is safer for everyone. That should be our main consideration while passing sentence.

Thank you very Much for your attention
