

NON-CUSTODIAL SENTENCING UNDER THE ACJA 2015: PROMISE, PERFORMANCE, AND PUBLIC PERCEPTION

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Abstract

The Nigerian correctional system has long been plagued by a crisis of overcrowding that undermines the constitutional presumption of innocence and the rehabilitative purpose of punishment. With awaiting-trial inmates constituting approximately 66% of the custodial population, the enactment of the Administration of Criminal Justice Act 2015 marked a paradigm shift by institutionalizing non-custodial measures as alternatives to imprisonment. This paper critically examines the promise, performance, and public perception of non-custodial sentencing under the ACJA 2015. The primary aim is to assess the legal framework for non-custodial sentencing in Nigeria, interrogate its implementation challenges, and evaluate whether it achieves its intended objectives of decongesting correctional facilities and rehabilitating offenders while maintaining public confidence in the criminal justice system. Adopting a doctrinal legal research methodology, the paper analyses primary sources including the ACJA 2015, the Nigerian Correctional Service Act 2019, relevant case law, and secondary sources such as academic articles, textbooks, and reports. The research employs both statutory

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interpretation and critical analysis of judicial decisions to evaluate the practical application of non-custodial measures. The paper finds that while the legal framework for non-custodial sentencing is robust on paper, its implementation is hampered by weak institutional capacity, inadequate monitoring mechanisms, judicial reluctance, and public misconception. The paper concludes that non-custodial sentencing possesses significant potential to address prison congestion, but this potential remains largely unrealized. The paper recommends the establishment of functional State Advisory Committees on Non-Custodial Measures, intensive training programmes for judicial officers, and the development of comprehensive monitoring frameworks.

Keywords: Non-Custodial Sentencing, Prison Congestion, Administration of Criminal Justice Act 2015, Nigerian Correctional Service, Criminal Justice Reform

1.0 INTRODUCTION

The Nigerian correctional system has long been burdened by a crisis of overcrowding that has defied successive reform efforts. As of the second quarter of 2025, Nigeria's total inmate population stood at 81,710, with awaiting-trial inmates constituting a staggering 53,790, representing nearly 66% of the total custodial population nationwide.¹ This situation not only violates the constitutional presumption of innocence but also undermines the rehabilitative purpose of punishment, transforming correctional facilities into breeding grounds for hardened criminality and human rights abuses.²

The enactment of the Administration of Criminal Justice Act, 2015, marked a significant paradigm shift from the punitive orientation of previous criminal procedure legislation to a more restorative and

¹ National Bureau of Statistics, Prison and Correctional Centers Data: Q2 2025 (NBS 2025)

² Constitution of the Federal Republic of Nigeria 1999, s 35

rehabilitative approach to criminal justice administration. Section 1 of the ACJA articulates the purpose of the Act as promoting efficient management of criminal justice institutions, speedy dispensation of justice, protection of the society from crimes and protection of the rights and interest of the suspect, the defendant and victims.³ This marks a deliberate shift from punishment as the main goal of criminal justice to restorative justice which pays attention to the needs of society, victims, vulnerable persons and human dignity.⁴

Central to this reform is the institutionalization of non-custodial measures, alternatives to imprisonment such as probation, suspended sentences, community service, fines, parole, and restorative justice.⁵ This legislative transformation was complemented by the Nigerian Correctional Service Act, 2019, which repealed the colonial-era Prisons Act and established the Non-Custodial Service as an integral part of the correctional system.⁶

In April 2025, the Lagos State Judiciary launched the Non-Custodial Sentencing Practice Directions, providing uniform guidelines for Judges, Magistrates, Police, and other justice sector agencies on the application and enforcement of alternative sentencing options.⁷ The Chief Judge of Lagos State stated that the document would ensure uniformity in sentencing and eliminate inconsistencies in the administration of non-custodial sentences, designed not only to reduce

³ Administration of Criminal Justice Act 2015, s 1

⁴ Y Akinseye-George, *An Overview of the Administration of Criminal Justice Act, 2015* (National Judicial Institute 2016) 5

⁵ Administration of Criminal Justice Act 2015, ss 454-468

⁶ Nigerian Correctional Service Act 2019, s 1

⁷ Lagos State Judiciary, *Non-Custodial Sentencing Practice Directions*, 2025 (2025).

the costs of imprisonment but also to aid the reintegration of offenders into society.⁸

However, the question that arises is whether these measures represent a genuine solution to prison congestion or merely a license for offenders to evade accountability. This paper critically examines the promise, performance, and public perception of non-custodial sentencing under the ACJA 2015, interrogates its implementation challenges, and assesses whether it achieves its intended objectives of decongesting correctional facilities and rehabilitating offenders.

2.0 CONCEPTUAL FRAMEWORK OF NON-CUSTODIAL SENTENCING

Sentencing is the judgment that a court formally pronounces after finding a criminal defendant guilty. Non-custodial sentencing refers to the punishment given by a court that does not involve a prison term.⁹ As skepticism has grown with regard to the effectiveness of imprisonment, experts have developed other useful measures to not only punish but also help offenders while keeping them within the community.¹⁰

The United Nations has played a significant role in promoting non-custodial measures through the development of the United Nations Standard Minimum Rules for Non-Custodial Measures, 1990, popularly referred to as the Tokyo Rules.¹¹ Article 1.5 of the Tokyo Rules provides that member states shall develop non-custodial measures within their legal system to provide other options, thus

⁸ 'Lagos Judiciary Launches Non-Custodial Sentencing Practice Directions' The Guardian (Lagos, 15 April 2025)

⁹ HL Hart, *The Concept of Law* (2nd edn, Clarendon Press 1994) 135

¹⁰ A Dambazau, *Criminology and Criminal Justice* (Spectrum Books 2007) 210

¹¹ United Nations, *Standard Minimum Rules for Non-Custodial Measures* (The Tokyo Rules) (1990)

reducing the use of imprisonment, and to rationalize criminal justice policies, taking into account the observance of human rights, the requirement of social justice, and the rehabilitation needs of the offender.¹²

Nigeria, being a signatory to this UN resolution, has incorporated these principles into its domestic legal framework through the ACJA 2015 and the Nigerian Correctional Service Act, 2019.¹³ The Tokyo Rules outline various non-custodial measures, including verbal sanctions, conditional discharge, economic sanctions and monetary penalties, restitution, suspended or deferred sentences, probation and judicial supervision, community service orders, and other modes of non-institutional treatment.¹⁴

Non-custodial sentencing encompasses a range of alternatives to imprisonment, including fines, probation, community service, compensation and restitution, suspended sentences, parole, and restorative justice measures.¹⁵ The philosophy behind these measures is the identification of certain groups of offenders that could be rehabilitated and made better citizens by giving them some form of specialized treatment, thereby saving the offender the societal stigmatization of being labelled an ex-convict and helping in the reintegration of the offender into society.¹⁶

The concept of restorative justice, which underpins many non-custodial measures, is rooted in the idea that crime is a violation of

¹² Tokyo Rules, art 1.5

¹³ Tokyo Rules, art 3.1

¹⁴ Tokyo Rules, arts 8-11

¹⁵ CO Okonkwo and ME Naish, Okonkwo and Naish on Criminal Law in Nigeria (Spectrum Books 1990) 350

¹⁶ Dambazau (n 11) 215

people and relationships rather than merely a violation of law.¹⁷ It seeks to repair the harm caused by criminal behavior through processes that bring together offenders, victims, and the community.¹⁸

3.0 THE LEGAL FRAMEWORK FOR NON-CUSTODIAL SENTENCING IN NIGERIA

3.1 The Administration of Criminal Justice Act, 2015

The Administration of Criminal Justice Act, 2015, provides comprehensive statutory support for non-custodial sentencing. Section 1 articulates the purpose of the Act as promoting efficient management of criminal justice institutions, speedy dispensation of justice, protection of the society from crimes and protection of the rights and interest of the suspect, the defendant and victims.¹⁹

Section 311(2) of the ACJA provides that in pronouncing sentence, the court shall consider the objectives of sentencing, including the principles of reformation and deterrence; the interest of the victim, the convict and the community; and the appropriateness of non-custodial sentence or treatment in lieu of imprisonment.²⁰ This provision mandates courts to actively consider non-custodial alternatives before imposing custodial sentences.

Section 401(2) of the ACJA further elaborates the objectives of sentencing, which include prevention, restraint, rehabilitation, and deterrence, education of the public, retribution, and restitution.²¹ Section 401(1) provides that the provisions of the Act shall apply to sentences of death, imprisonment, fine, and non-custodial sentences.²²

¹⁷ H Zehr, *The Little Book of Restorative Justice* (Good Books 2002) 35

¹⁸ Zehr (n 18) 45

¹⁹ ACJA 2015, s 1

²⁰ ACJA 2015, s 311(2)

²¹ ACJA 2015, s 401(2)

²² ACJA 2015, s 401(1)

Section 454 empowers the court to make a probation order where the offence has been proved but the court considers it expedient to release the defendant on probation having regard to the character, antecedents, age, health or mental condition of the defendant or the trivial nature of the offence and the extenuating circumstances.²³

Section 460 provides for suspended sentences and community service, with Section 460(2) empowering the court to sentence the convict to perform specified service in his community or such community or place as the court may direct.²⁴ Section 460(3) excludes from community service offences involving the use of arms, offensive weapon, sexual offences, or offences which the punishment exceeds imprisonment for a term of three years.²⁵ Section 460(4) provides that the court, in exercising its power, shall have regard to the need to reduce congestion in prisons; rehabilitate prisoners by making them undertake productive work; and prevent convicts who commit simple offences from mixing with hardened criminals.²⁶

Section 461 establishes Community Service Centers in every Judicial Division to be headed by a Registrar responsible for overseeing the execution of Community Service Orders.²⁷ Section 461(4) provides that community service shall be like environmental sanitation, assisting in agricultural production, construction, or mining, or any other service which would have a beneficial and reformatory effect on the character of the convict.²⁸ Section 461(5) provides that the community service sentence shall be performed as close as possible to the place where the convict ordinarily resides to ensure that the

²³ ACJA 2015, s 454

²⁴ ACJA 2015, s 460(2)

²⁵ ACJA 2015, s 460(3)

²⁶ ACJA 2015, s 460(4)

²⁷ ACJA 2015, s 461(1)

²⁸ ACJA 2015, s 461(4)

community can monitor his movement.²⁹ Section 461(8) requires a convict sentenced to community service to produce a guarantor who shall undertake to produce the convict if he absconds from community service.³⁰

Section 468 provides for parole, empowering the court to order the release of a prisoner who has served at least one-third of his prison term where sentenced to imprisonment for a term of at least 15 years or where sentenced to life imprisonment.³¹

3.2 The Nigerian Correctional Service Act, 2019

The Nigerian Correctional Service Act, 2019, represents a fundamental departure from the colonial-era Prisons Act, Cap P29, Laws of the Federation of Nigeria, 2004.³² Section 1(1) establishes the Nigerian Correctional Service to provide both custodial and non-custodial services.³³ The Correctional Service is divided into the Custodial Service and the Non-Custodial Service, with the latter overseen by one of at least eight Deputy Controllers-General.³⁴

Section 2 articulates the objectives of the Act, which include ensuring compliance with international human rights standards and good correctional practices, providing an enabling platform for implementation of non-custodial measures, enhancing the focus on corrections and promotion of reformation, rehabilitation and reintegration of offenders, and establishing institutional, systemic and

²⁹ ACJA 2015, s 461(5)

³⁰ ACJA 2015, s 461(8)

³¹ ACJA 2015, s 468.

³² Prisons Act, Cap P29, Laws of the Federation of Nigeria 2004

³³ Nigerian Correctional Service Act 2019, s 1(1)

³⁴ Nigerian Correctional Service Act 2019, s 1(2)

sustainable mechanisms to address the high number of persons awaiting trial.³⁵

The Act establishes the National Committee on Non-Custodial Measures, which is tasked with coordinating the application of non-custodial measures with the judiciary and other relevant agencies; monitoring and recommending improvements for the effective operation of such measures; receiving and considering feedback or complaints from offenders, victims, and affected communities, and advising on appropriate non-custodial interventions.³⁶ Section 37(5) empowers the National Committee to establish Technical Committees focusing on specific non-custodial measures, including parole, probation, community service, restorative justice measures, and any other matters deemed necessary.³⁷

The Controller-General, in consultation with the State and Federal Capital Territory authorities and with the approval of the National Committee on Non-Custodial Measures, is authorized to appoint State Committees on Non-Custodial Measures to oversee implementation at the state level.³⁸

3.3 State Administration of Criminal Justice Laws and Practice Directions

Several states have enacted their own Administration of Criminal Justice Laws (ACJL) that incorporate provisions on non-custodial measures. About 30 states have passed their ACJL.³⁹

The Lagos State Judiciary launched the Non-Custodial Sentencing Practice Directions, 2025, on April 14, 2025, to take effect from June

³⁵ Nigerian Correctional Service Act 2019, s 2

³⁶ Nigerian Correctional Service Act 2019, s 37

³⁷ Nigerian Correctional Service Act 2019, s 37(5)

³⁸ Nigerian Correctional Service Act 2019, s 37(6)

³⁹ Akinseye-George (n 5) 25

1, 2025.⁴⁰ The Practice Directions aim to ensure decongestion of correctional facilities and institutions and establish the requirements and procedure for the imposition of non-custodial sentences.⁴¹ The Practice Directions shall apply to all courts in Lagos State exercising criminal jurisdiction, though persons who are yet to attain the age of 18 years are exempted from the scope of application.⁴²

The courts may impose one or a combination of non-custodial sentences including fines, compensation, restitution, probation, suspended sentence, community service, caution, deportation, and any other non-custodial sentence as may be prescribed by an Act of the National Assembly or the Law of Lagos State.⁴³

4.0 THE CRISIS OF PRISON CONGESTION: A PERSISTENT CHALLENGE

The crisis of prison congestion in Nigeria has reached alarming proportions. As of the second quarter of 2025, Nigeria's total inmate population stood at 81,710, representing a 16.82% increase from the 69,946 recorded in 2017.⁴⁴ Correctional centers' capacity increased from 53,752 to 65,035 over the same period, representing a 20.99% increase, yet overcrowding remains severe.⁴⁵

Lagos State recorded the highest inmate population with 9,209 inmates against a correctional center's capacity of 4,167, indicating an overcrowding ratio of 221%.⁴⁶ Other states with high inmate

⁴⁰ Lagos State Practice Directions (n 8)

⁴¹ Lagos State Practice Directions (n 8)

⁴² Lagos State Practice Directions (n 8)

⁴³ Lagos State Practice Directions (n 8)

⁴⁴ NBS (n 1)

⁴⁵ NBS (n 1)

⁴⁶ NBS (n 1)

populations include Ogun with 4,939 inmates, Kano with 4,667, and Enugu with 3,536.⁴⁷

The number of unsentenced inmates rose from 47,610 in 2017 to 53,790 in the second quarter of 2025, representing a 12.98% increase over the reference period.⁴⁸ At the end of 2024, Nigeria's correctional facilities recorded a total of 176,536 inmate admissions across various offences, with remand/awaiting-trial cases recording the highest admissions with 94,614 inmates.⁴⁹

In terms of types of offences, stealing recorded the highest number of admissions at 55,722, followed by other offences at 46,043 and armed robbery at 10,090.⁵⁰

The Programme Director of CLEEN Foundation noted that most of Nigeria's custodial facilities today hold over three times their original installed capacity, with some at 300 percent above what they are meant to hold.⁵¹ This situation has profound implications for the criminal justice system, human rights, and national development.

The consequences of prison congestion are severe, including the violation of the constitutional presumption of innocence, the exposure of awaiting-trial inmates to hardened criminals, the spread of diseases in overcrowded facilities, the high cost of maintaining custodial centers, and the erosion of public confidence in the criminal justice system.⁵² A senior criminal justice expert observed that "someone who

⁴⁷ NBS (n 1)

⁴⁸ NBS (n 1)

⁴⁹ NBS (n 1)

⁵⁰ NBS (n 1)

⁵¹ 'Prison Congestion: Nigeria's Custodial Centers Operating at 300% Capacity' Daily Trust (Abuja, 10 June 2025)

⁵² NBS (n 1)

commits a minor offence becomes exposed to hardened criminals. Considering the current state of our custodial centers which are far from reformatory, such individuals often come out worse. Some even become institutionalized and repeatedly return to prison because they feel there is nothing else to aspire to outside."⁵³

5.0 NON-CUSTODIAL MEASURES UNDER THE ACJA 2015

5.1 Probation

Probation is a non-custodial measure rooted in the philosophy of identifying certain groups of offenders that could be rehabilitated and made better citizens by giving them some form of specialized treatment.⁵⁴ The basic purpose of probation is to provide a personalized programme offering an unhardened offender an opportunity to rehabilitate himself without institutional confinement, usually under the supervision of a probation officer.⁵⁵

Section 454 of the ACJA empowers the court to make a probation order where the offence has been proved but the court considers it expedient to release the defendant on probation.⁵⁶ The period of probation shall not exceed three years.⁵⁷ Section 455(1) provides that a recognizance ordered to be entered into shall contain a condition that the defendant be under the supervision of a person of the same sex, called a probation officer.⁵⁸

Section 457(2) provides that the Chief Judge of the Federal High Court, or of the High Court of the Federal Capital Territory, Abuja, or the President of the National Industrial Court shall make regulations with

⁵³ 'Prison Congestion' (n 52)

⁵⁴ Dambazau (n 11) 220

⁵⁵ Akinseye-George (n 5) 45

⁵⁶ ACJA 2015, s 454

⁵⁷ ACJA 2015, s 454(2)(b)

⁵⁸ ACJA 2015, s 455(1)

respect to the appointment of probation officers, including designation of persons of good character as probation officers.⁵⁹

5.2 Suspended Sentence

Suspended sentence was not part of Nigerian law prior to the enactment of the ACJA 2015. In **Nya v. Edem**, the Court of Appeal held that "suspended sentence is not part of Nigerian law, and has no application whatsoever under Nigeria's criminal justice system."⁶⁰ Similarly, in **State v. Audu**, the Supreme Court, per Elias, C.J.N., held that "of the various types of punishment provided for in Section 68 of the Penal Code, there is none for a suspended sentence of imprisonment."⁶¹

Section 460(1) of the ACJA now provides that "where the court sees reason, the court may 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."⁶²

Section 460(3) provides that a convict shall not be sentenced to suspended sentence or to community service for an offence involving the use of arms, offensive weapon, sexual offences or for an offence which the punishment exceeds imprisonment for a term of 3 years.⁶³

5.3 Community Service

Community service is one of the most significant innovations introduced by the ACJA 2015. Section 460(2) provides that "the court may, with or without conditions, sentence the convict to perform

⁵⁹ ACJA 2015, s 457(2)

⁶⁰ *Nya v Edem* (2005) 3 NWLR (Pt 927) 553

⁶¹ *State v Audu* (1972) 1 All NLR (Pt 1) 1

⁶² ACJA 2015, s 460(1)

⁶³ ACJA 2015, s 460(3)

specified service in his community or such community or place as the court may direct."⁶⁴

Section 461(4) provides that community service shall be in the nature of 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 reformative effect on the character of the convict.⁶⁵

Section 461(6) provides that before passing a community service order, the court shall consider the circumstances, character, antecedents of the convict and other factors that may be brought to its attention by the Registrar of the Community Service Centre.⁶⁶ Section 462(1) provides that the community service order shall be performed for a period of not more than 6 months and the convict shall not work for more than 5 hours a day.⁶⁷

Section 461(7) provides that a convict sentenced to community service shall not at the same time be sentenced to a term of imprisonment for the same offence, but may, in default of performing his community service diligently and to the satisfaction of the court, be sentenced to a term of imprisonment for the remaining part of his community service to which he is in default or neglect.⁶⁸

5.4 Parole

⁶⁴ ACJA 2015, s 460(2)

⁶⁵ ACJA 2015, s 461(4)

⁶⁶ ACJA 2015, s 461(6)

⁶⁷ ACJA 2015, s 462(1)

⁶⁸ ACJA 2015, s 461(7)

Parole is the conditional release of a prisoner before the expiry of the sentence, subject to good behavior and supervision. Section 468 of the ACJA provides for the release of a convict on parole where the prisoner has served at least one-third of his prison term where sentenced to imprisonment for a term of at least 15 years or where sentenced to life imprisonment.⁶⁹

The Nigerian Correctional Service Act, 2019, also provides for parole as a non-custodial measure. The parole system is designed to facilitate the reintegration of offenders into society and reduce the burden on custodial facilities.⁷⁰

5.5 Fines, Compensation, and Restitution

Fines, compensation, and restitution are traditional non-custodial measures that have been part of the Nigerian legal system for a long time. Section 321 of the ACJA provides for restitution and compensation as sentencing options.⁷¹ Section 319 empowers the court to order a defendant or convict to pay compensation to any person injured by the offence, irrespective of any other fine or other punishment that may be imposed.⁷²

6.0 THE PROMISE OF NON-CUSTODIAL SENTENCING

The proponents of non-custodial sentencing argue that these measures have the potential to significantly reduce prison congestion in Nigeria. By diverting minor and first-time offenders away from custodial facilities, non-custodial measures can reduce the inmate population and alleviate the pressure on overcrowded prisons.⁷³

⁶⁹ ACJA 2015, s 468

⁷⁰ Nigerian Correctional Service Act 2019, s 43

⁷¹ ACJA 2015, s 321

⁷² ACJA 2015, s 319

⁷³ Akinseye-George (n 5) 50

Non-custodial sentencing offers several advantages over custodial sentencing. First, it is more cost-effective as it reduces the financial burden on the government for maintaining custodial facilities. Second, it promotes the rehabilitation and reintegration of offenders into society rather than exposing them to hardened criminals in prison. Third, it addresses the root causes of crime by providing offenders with opportunities for education, training, and employment. Fourth, it reduces the stigmatization and labelling effects associated with imprisonment.⁷⁴

Section 460(4) of the ACJA explicitly recognizes these benefits, providing that the court shall have regard to the need to reduce congestion in prisons; rehabilitate prisoners by making them undertake productive work; and prevent convicts who commit simple offences from mixing with hardened criminals.⁷⁵

The Lagos State Non-Custodial Sentencing Practice Directions, 2025, represent a significant development in this regard. The Chief Judge of Lagos State stated that the document would ensure uniformity in sentencing and eliminate inconsistencies in the administration of non-custodial sentences, designed not only to reduce the costs of imprisonment but also to aid the reintegration of offenders into society.⁷⁶

The Lagos State Commissioner of Police described the framework as vital in addressing persistent prison congestion, noting that the Command has been involved in prison audits for over 20 years, and

⁷⁴ Dambazau (n 11) 225

⁷⁵ ACJA 2015, s 460(4)

⁷⁶ 'Lagos Judiciary' (n 9)

congestion has remained a major issue, making this development very welcome.⁷⁷

7.0 PERFORMANCE AND IMPLEMENTATION CHALLENGES

The gap between the legal framework and actual practice is one of the most significant challenges facing non-custodial sentencing in Nigeria. While the ACJA 2015 and the Nigerian Correctional Service Act, 2019, provide comprehensive provisions for non-custodial measures, these provisions remain largely unimplemented.⁷⁸

A study conducted revealed that 89.8% of respondents confirmed that there are challenges mitigating the successful application of non-custodial sentences. The study identified the following challenges: 90.5% of respondents stated that it is an error allotting the court sole responsibility or authority in applying non-custodial sentences; 92.6% stated that giving discretionary power to judges concerning the application of non-custodial sentences could be a challenge; 53.4% stated that there is a lack of facilities for the successful enforcement of non-custodial sentences in Nigeria; 62.5% identified that the few facilities made available by the Nigerian government have not been maximally utilized; and 48.3% stated that corrupt practices among ministers of justice are also one of the challenges mitigating against non-custodial sentences.⁷⁹

A senior criminal justice expert noted that only recently have some judicial officers begun to see non-custodial sentencing as a viable alternative. Many still do not consider community service or other

⁷⁷ 'Lagos Judiciary' (n 9)

⁷⁸ NI Obi, 'Sentencing Discretion and Penal Policy Under the Administration of Criminal Justice Act' (2017) 12 Nigerian Law Journal 45, 67

⁷⁹ EE Oaihimire and PA Aidonoije, 'Non-Custodial Sentences: A Panacea for Prison Congestion in Nigeria' (2023) 5(2) Journal of Law and Judicial System 45, 55.

non-custodial options as sufficiently punitive, so they prefer committing offenders to prison even for minor offences.⁸⁰ He further observed that many judges hesitate to adopt non-custodial measures, and their reluctance often stems from complaints by custodial officers who are supposed to monitor community service but claim they lack adequate manpower. As a result, judges choose the easier option of sending offenders to custodial centers.⁸¹

A review of the Lagos State Non-Custodial Sentencing Practice Directions, 2025, identified several weaknesses. The capacity to supervise non-custodial sentences remains a significant challenge; for alternatives to prison like probation, community service, or restorative justice to actually work, Nigeria needs strong systems in place to monitor and support them.⁸² The review noted that these services do not have enough funding or resources, and without serious investment, the push toward non-custodial sentencing might look good on paper but would not lead to real results.⁸³

The review further noted weaknesses in enforcement and oversight. The policy talks about the need for supervision and making sure people follow the rules, but it does not explain how that will actually happen. It is unclear who is in charge of monitoring, how often reports should be made, or what happens if someone breaks the rules.⁸⁴

The exclusion of juveniles from the Practice Directions, deferring to separate juvenile justice provisions, was also identified as an area requiring clearer cross-reference to the Child Rights Law to improve coherence and prevent misapplication. The text also states that courts

⁸⁰ 'Prison Congestion' (n 52)

⁸¹ 'Prison Congestion' (n 52)

⁸² 'Lagos Non-Custodial Sentencing Directions: A Step Forward or Paper Tiger?' Lawyard (Lagos, 20 April 2025)

⁸³ 'Lagos Non-Custodial Sentencing Directions' (n 83)

⁸⁴ 'Lagos Non-Custodial Sentencing Directions' (n 83)

should not impose non-custodial sentences on "habitual convicts" but does not define what constitutes "habitual," creating ambiguity.⁸⁵

8.0 PUBLIC PERCEPTION AND JUDICIAL RELUCTANCE

Public perception of non-custodial sentencing as a "soft option" has been identified as a significant challenge. Many members of the public view non-custodial measures as inadequate punishment for criminal behavior.⁸⁶

The Senior Programme Officer at the MacArthur Foundation commended Lagos for sustaining leadership in criminal justice reform, stating that the Practice Directions will set a powerful precedent for other states to follow.⁸⁷

However, stakeholders have raised concerns about the absence of a public awareness and sensitization strategy. The Practice Directions serve justice professionals but do not outline how the wider society will be educated about what non-custodial sentencing means, why it is being used, and what it hopes to achieve. Without this, public mistrust or misunderstanding could undermine the policy's acceptance and effectiveness.⁸⁸

There is also a legitimate fear that non-custodial sentencing could be abused, with wealthy or well-connected individuals buying their way out of real accountability. This perception could erode public confidence in the criminal justice system if not addressed through transparent and accountable implementation mechanisms.⁸⁹

⁸⁵ 'Lagos Non-Custodial Sentencing Directions' (n 83)

⁸⁶ Obi (n 79) 70

⁸⁷ 'Lagos Judiciary' (n 9)

⁸⁸ 'Lagos Non-Custodial Sentencing Directions' (n 83)

⁸⁹ 'Lagos Non-Custodial Sentencing Directions' (n 83)

Getting support from key players like prosecutors, defense lawyers, and the police is essential. If they do not trust these options or think they are too soft, they are less likely to use them. Public education and awareness campaigns are important to clear up misunderstandings and build support for these alternatives.⁹⁰

9.0 SUMMARY OF FINDINGS

This paper has examined the promise, performance, and public perception of non-custodial sentencing under the Administration of Criminal Justice Act 2015. The analysis yields several significant findings.

Firstly, the legal framework for non-custodial sentencing in Nigeria is robust and progressive. The ACJA 2015 provides comprehensive provisions for probation, suspended sentences, community service, parole, fines, compensation, and restitution. The Nigerian Correctional Service Act 2019 complements this framework by establishing the Non-Custodial Service and the National Committee on Non-Custodial Measures. The Lagos State Non-Custodial Sentencing Practice Directions, 2025, represent a significant step toward uniform application of these measures across courts.

Secondly, the crisis of prison congestion in Nigeria remains severe and persistent. As of the second quarter of 2025, Nigeria's total inmate population stood at 81,710, with awaiting-trial inmates constituting nearly 66% of the total custodial population. Some custodial facilities operate at over 300% of their installed capacity. This situation violates constitutional guarantees, exposes minor offenders to hardened criminals, and undermines the rehabilitative purpose of punishment.

⁹⁰ 'Lagos Non-Custodial Sentencing Directions' (n 83)

Thirdly, the implementation of non-custodial sentencing faces significant challenges. A study revealed that 89.8% of respondents confirmed challenges mitigating the successful application of non-custodial sentences. Key challenges include judicial conservatism and reluctance, inadequate supervision and monitoring structures, limited funding and resources, lack of public awareness, and fragmented enforcement at the state level.

Fourthly, public perception of non-custodial sentencing as a "soft option" remains a significant obstacle. Many members of the public view non-custodial measures as inadequate punishment for criminal behavior. This perception, coupled with the absence of comprehensive public awareness strategies, threatens to undermine the policy's acceptance and effectiveness.

Finally, while the statutory framework is progressive and aligned with modern penal philosophy, its transformative potential remains constrained by practical enforcement gaps. The gap between the law on the books and the law in practice remains wide, with non-custodial measures being significantly underutilized despite their clear statutory authorization.

10.0 CONCLUSION AND RECOMMENDATIONS

Non-custodial sentencing represents a critical reform in Nigeria's criminal justice system, designed to reduce prison congestion, uphold human rights, and promote rehabilitation and social reintegration. Measures such as probation, suspended sentences, community service, and parole provide alternatives to imprisonment, particularly for minor, non-violent, or first-time offenders, while supporting restorative justice and reducing recidivism.

Despite its statutory foundation, the practical implementation of non-custodial sentencing faces challenges including judicial conservatism,

limited awareness and training, inadequate monitoring structures, public pressure, resource constraints, fragmented state-level enforcement, and restricted eligibility for certain offences.

To strengthen Nigeria's legal response to prison congestion and the effective implementation of non-custodial sentencing, the following recommendations are proposed:

1. Judicial Training and Capacity Building: Regular training programmes should be organized for judges, magistrates, court staff, and legal practitioners to ensure they are fully conversant with the provisions and procedures for non-custodial sentencing. This should include practical workshops on the application of non-custodial measures and case management techniques.

2. Strengthening Institutional Capacity: Adequate budgetary allocations should be made for the appointment, training, and supervision of probation officers and community service supervisors at both the federal and state levels. The State Advisory Committees on Non-Custodial Measures should be established and properly funded in all states.

3. Public Awareness and Sensitization: Comprehensive public education campaigns should be launched to explain the purpose and benefits of non-custodial sentencing, address misconceptions, and build public confidence in the criminal justice system.

4. Data Collection and Monitoring: Robust record-keeping and empirical evaluation mechanisms should be established to track outcomes, assess recidivism rates, and fine-tune the implementation of non-custodial measures. Quarterly reports should be made to the Administration of Criminal Justice Monitoring Committee.

5. Clarification of Ambiguities: The Practice Directions should be reviewed to define key terms such as "habitual convict" and to provide clearer guidelines on supervision, monitoring, and enforcement mechanisms.

In conclusion, non-custodial sentencing offers a viable pathway for reducing prison overcrowding, safeguarding constitutional rights, minimizing recidivism, conserving public resources, and fostering restorative justice. When effectively applied, it can alleviate prison overcrowding, reduce government expenditure on custodial facilities, prevent the criminogenic effects of mixing minor offenders with hardened criminals, and facilitate faster, more humane, and rehabilitative justice. It offers a pathway for Nigeria to align its criminal justice system with global best practices, ensuring justice is both fair and constructive.