

THE NECESSITY OF NON-CUSTODIAL SENTENCING AND RESTORATIVE JUSTICE IN THE  
ADMINISTRATION OF CRIMINAL JUSTICE SYSTEM IN NIGERIA\*

**Abstract**

*The primary aim of the entire criminal justice policy is to guide the society as to the contents of substantive criminal law, procedural steps to be taken to bring suspects to justice, reintegration of suspects into the society and compensation of victims of crime. The traditional approach to criminal justice administration supports the idea of retaliation or punishment for offenders. Deterrence, atonement and retribution are at the heart of the criminal justice system. It is argued that adopting non-custodial sentencing and restorative justice may yield better results than over-reliance on punishment. The retributive custodial form of sentencing has several demerits inclusive of recidivism, creating career criminals, high cost of maintaining custodial facilities, overcrowded prisons and inadequate facilities for the rehabilitation of offenders. Worse still, even the deterrent effect of this obnoxious system remains questionable. On the other hand, restorative justice as an alternative adopts humane, non-punitive strategies to right wrongs and restores social harmony. It promotes accountability through reconciliation and reconnection to the community. It ensures that offenders are reconciled with their victims and the community outside of the traditional criminal justice system. Instead of the imprisonment option, the judge has a wide array of non-custodial sentencing alternatives available for him to choose from, thanks to the Administration of Criminal Justice Act and related laws. This paper recommends that the judiciary put into full effect these prescriptions, and practitioners are also to recommend these alternatives to the judges when the need arises.*

**Keywords:** Imprisonment, Non-custodial Sentence, Restorative Justice, Criminal Justice System, Administration of Criminal Justice Act

**1. Introduction**

The goal of administration of criminal justice system is the protection of the innocent from wrongful conviction. It aims to achieve the elimination of the risk of convicting innocent persons. At the same time, it appreciates that public interest would not be served if only rules that impede efficient law enforcement are developed.<sup>1</sup> However it may be, protecting the innocent from conviction is not and cannot be the only concern of criminal justice system. A procedure that would eliminate all errors and satisfy both interests of protecting the innocent and punishing the guilty without generating conflict between the two is desirable, but far-fetched.<sup>2</sup> Criminal policy is the totality of the strategies or measures adopted in any society to deal with prospective and actual criminal or delinquent conduct of members of that society.<sup>3</sup> As enunciated by Karibi-Whyte,<sup>4</sup> such strategies or measures may include removal of the factors that encourage criminal behaviour, offer of incentives, disincentives, education, deterrents and sanctions. The aim of the criminal policy is to guide the society as to contents of substantive criminal law, procedural steps that have to be taken to bring suspects to justice, punishment, rehabilitation and reintegration of suspects into the society and rights of and compensation to victims of crime. Criminal justice establishes procedures aimed at fair, accurate and expeditious determination of guilt or innocence that do not infringe upon the rights of citizens and aim to provide an enlightened but effective system of punishment for those found guilty. Thus, the primary aim of the entire criminal justice system comprises deterrence, atonement and retribution through punishment administered at the instance of the State.<sup>5</sup> As Karibi-Whyte<sup>6</sup> puts it, the repression of anti-social conduct by means of punishment is the paramount objective of criminal law.

Imprisonment as a punishment is one of the few exceptions to the rule against non-infracture of the right to personal liberty.<sup>7</sup> When sentenced to imprisonment, the convict leaves his usual residential premises in his community for a new residential accommodation in the prison yard. Here he will reside until the expiration of his term of imprisonment. Imprisonment has several objectives. It keeps persons suspected of having committed a crime under secure control. It punishes suspects by depriving them of their liberty after they have been convicted of an offence. It keeps them from committing further crimes while they are in prison. The commonsense view of imprisonment is that because it is both humiliating and unpleasant to lose one's liberty, imprisonment acts as a deterrent both to the person being incarcerated and to others. Becker<sup>8</sup> gives formal expression to this idea. He posits that a person commits an offence if the subjective expected utility to him exceeds the utility he could get by using his time and resources in legitimate activity. It is suggested that imposing a prison sentence on persons engaging in criminal activity should reduce the frequency of such activity because it reduces its subjective expected utility.<sup>9</sup>

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<sup>1</sup>Jack B Weinstein, 'Some Difficulties in Devising Rules for Determining Truth in Judicial Trials' [1966] (66) (2) *Colombian Law Review* 223.

<sup>2</sup>Zoran Dimitrievski and others, 'Doubt in Favour of the Defendant: Guilty Beyond Reasonable Doubt' <<https://www.osce.org/mision-to-skopje/345461?download=true>> accessed 7 October 2023.

<sup>3</sup>MI Edokpayi, 'Suspended Sentence: Its Desirability in Nigeria' [2011] (2) <<http://nigerianlawguru.com/articles/criminal%20law%20procedure/suspended%20sentence,its%20desirability%20in%20nigeria.pdf>> accessed 25 November 2023.

<sup>4</sup>AG Karibi-Whyte, *Criminal Policy: Traditional and Modern Trends* (Nigeria Law Publications Ltd 1988)16-17.

<sup>5</sup>Udesen Jacob Idem and Nkokom Eyo Udofia, 'Sentencing and the ministraton of Criminal Justice in Nigeria' [2018] (4) (1) *Donnish Journal of Law and Conflict Resolution* 1.

<sup>6</sup> Karibi-Whyte (n 4).

<sup>7</sup> CFRN 1999, s 35(1)(a)-(b).

<sup>8</sup> GS Becker, 'Crime and Punishment: An Economic Approach' [1968] (76) *Journal of Political Economy* 176.

<sup>9</sup>Don Weatherburn, Sumitra Vignaendra and Andrew McGrath, 'The Specific Deterrent Effect of Custodial Penalties on Juvenile Reoffending' [2009] (1030-1046) (132) *New South Wales Crime and Justice Bulletin* 1.

## **2. Non-Custodial Sentencing in Nigeria**

Sentencing has been defined as the judgment that a court formally pronounces after finding a criminal defendant guilty.<sup>10</sup> Also it is defined as the pronouncement by the court, upon the accused person after his conviction in criminal prosecution, imposing the punishment to be inflicted.<sup>11</sup> Non-custodial sentence refers to the punishment given by a court of law that does not involve a prison term. There is an increasing clamour to use more of non-custodial sanctions and less of custodial sanction, which is imprisonment. As skepticism has grown with regard to the effectiveness of imprisonment, experts have tried to develop other useful measures to not only punish but also help offenders while keeping them within the community. This has gained the support of the United Nations.<sup>12</sup> The United Nations play a huge role in criminal justice systems to ensure that the latter meet fundamental human rights standards. It is in consequence of this role that the UN developed an instrument known as “the United Nations Standard Minimum Rules for Non-Custodial Measures” 1990, popularly referred to as the Tokyo Rules, to promote the use of non-custodial measures as well as minimum safeguards for persons subject to imprisonment alternatives.<sup>13</sup> Apart from the Tokyo Rules, there are some other United Nations instruments that are directly applicable to custodial alternatives.<sup>14</sup> As an alternative to imprisonment, the judge may choose to give a non-custodial sentence from a wide range of non-custodial sentences which a court may impose on an offender.<sup>15</sup> Apart from imprisonment, judicial systems typically have a range of non-custodial sentencing options at its disposal.<sup>16</sup> Worthy of note is that where conditions are attached to the non-custodial sanction imposed, and the offender fails to abide with the conditions or otherwise breach them, he will be liable to be resented.<sup>17</sup> Let us at this juncture have a closer look at some of these alternatives to imprisonment.

### **Fine**

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. The imposition of fine as an alternative to imprisonment has certain advantages. First, the system is economical in that it costs little to administer and it generates revenue which can be used to offset the cost of running the judicial system. This apart, fine neither stigmatises the offender nor cause him loss of employment. Equally, a fine may be imposed where imprisonment is impractical, such as when a company commits an offence or otherwise broke the law. However, there are potential demerits. The fine may be paid by the offender’s friends or family, thereby lessening the impact on the offender himself. Again, paying a fine may even be seen as preferable to altering the criminal behaviour. For instance, a company that pollutes the environment may calculate that it is cheaper to pay the fine for pollution than to stop the pollution or clean up its mess. Also there is the tendency of the fine having little or no impact on the offender especially when the fine is easily affordable. This leads to minimal deterrence against future offending. Where there is provision for fine as an alternative to imprisonment, it is advisable that fines be imposed. In Nigeria most laws providing criminal sanctions also provide for fine and for the discretionary powers of the court to impose fine in lieu of imprisonment. In imposing a sentence of fine, the court is to be guided by the fact that the offender has financial ability to pay the fine. It is consistently emphasised that fine imposed should be within the means of the offender to pay. But this does not mean that a rich man should be made to pay exorbitant fine or otherwise buy himself out of prison with a substantial fine because he is rich.<sup>18</sup> The Administration of Criminal Justice Act (hereinafter referred to as ACJA) in various provisions including sections 327, 422, 424, 434 and 437 confers wide discretion on the court to impose, vary or alternate a sentence of fine. However, the provision of section 17 of Economic and Financial Crimes Commission Act,<sup>19</sup> on retention of proceeds of a criminal conduct seems to be a better option compared to fine. It stipulates that for an offence under that section, the offender is liable on conviction to imprisonment for a term not less than three years or to fine equivalent of one hundred percent of the value of the proceeds of the economic or financial crime or to both such imprisonment and fine.<sup>20</sup>

### **Probation**

The philosophy behind probation as a non-custodial measure is the identification of certain group of offenders that could be rehabilitated and made better citizens by given them some form of specialized treatment. The basic purpose of probation is to provide a personalized programme offering an unhardened offender an opportunity to rehabilitate himself without institutional confinement. This is usually done under the supervision of a probation officer. The probation order is made particularly when the offender is unsuitable for custodial punishment either because he has shown an inclination not to repeat his criminal activities or the offence is not serious or dangerous to warrant incarceration.<sup>21</sup> One of the advantages of probation is that it saves the offender the societal stigmatisation of being labeled an ex-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

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<sup>10</sup>BA Garner (ed), *Black’s Law Dictionary* (7th edn, Thompson West 1999) 1367.

<sup>11</sup>B Osamor, *Fundamentals of Criminal Procedure in Nigeria* (Dee-Sage Ltd 2004) 376.

<sup>12</sup>UN Doc ST/CSDHA/22, Commentary on the United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules).

<sup>13</sup> The Tokyo Rules, Rule 1(1).

<sup>14</sup>These include the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power and the Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters.

<sup>15</sup>Nidirect Government Services, ‘Non-custodial Sentences’ <<https://www.nidirect.gov.uk/article/non-custodial-sentences>> accessed 27 July 2024.

<sup>16</sup>Aidan Sammons, ‘Punishment and Treatments for Offending’ <[http://www.psychotron.org.uk/newResources/criminological/A2\\_AQB\\_crim\\_nonCustodial.pdf](http://www.psychotron.org.uk/newResources/criminological/A2_AQB_crim_nonCustodial.pdf)> accessed 27 July 2024.

<sup>17</sup>Bartleby Research, ‘Advantages and Disadvantages of Non-custodial Sentences’ <<https://www.bartleby.com/essay/Advantages-and-Disadvantages-of-Noncustodial-Sentences-P3CWZG2ZVC>> accessed 27 July 2024.

<sup>18</sup> This was the opinion of court in the case of *R v Marwick* [1953] 37 CR App R 125.

<sup>19</sup> Cap E 1 LFN 2004.

<sup>20</sup> EFCC Act, s 17(2).

<sup>21</sup>Abubakri O Yekini, ‘Probation as a Non-custodial Measure in Nigeria: Making a Case for Adult Probation Service’ [2013] (7) (1-2) *African Journal of Criminology and Justice Studies* 106.

likely to be successful when the probation is tailored to the peculiar needs of the offender. The English Court of Appeal in the case of *R v O'keefe*<sup>22</sup> laid down the correct procedure to follow before considering probation. The extent the suspect's sentence will fail to protect the public either directly or indirectly by serving as an inadequate deterrent and the previous good character of the offender are relevant considerations. The above principles were demonstrated in the case of *Re Bowler*<sup>23</sup> where the Appeal Court held that the offender should have been on probation considering the fact that the defendant was of good character, a devoted and loyal employee who had sunk to a single act of dishonesty. Sections 453 - 459 of the ACJA provide for probation. 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 character, antecedents, age, health or mental condition of the defendant or the trivial nature of the offence and the mitigating circumstances under which the offence was committed.

### **Community Service**

Here offenders are required to perform, for a certain period, unpaid work for the community in which offence has been committed. Some of these works may include collection of trash in the park, sweeping or cleaning of public roads, toilets and old peoples' homes.<sup>24</sup> Community service also has the emotionally satisfying balance of making offenders put back into the community what they have taken out, as well as the potential to instill values such as discipline, a taste for hard work and a sense of personal dignity.<sup>25</sup> Apart from punishing offenders, it is also trying to rehabilitate them so they can learn from their mistakes. The ACJA under section 461 provides for community service. Section 461(4) of ACJA provides for the nature of community service that the court may order. These include (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 reformatory effect on the character of the convict. However, a convict shall not be sentenced 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.<sup>26</sup>

### **Compensation and Restitution**

Compensation requires the offender to do thing that directly compensates the victim of his crime. The offender may be required to return or replace stolen or damaged property, to compensate victims for physical injuries or for medical costs. This mode of sentence is given a boost by section 14(2) of the EFCC Act which provides that the Commission may compound any offence punishable under this Act by accepting such sums of money as it thinks fit, exceeding the maximum amount to which that person would have been liable if he had been convicted of that offence. Section 321 of the ACJA specifically provides for restitution and compensation as sentencing options. Often times, victims of crimes are neglected without any form of compensation even when the offender has been found guilty. The ACJA has addressed this by broadening the powers of the court to award costs, compensation and damages to victims of crime. By the provisions of section 319 of the ACJA, court may order a convict to pay compensation to any person injured by the offence, irrespective of any other fine or other punishment that is imposed on the defendant. In Britain, compensation or restitution as a type of sentence is governed by the Criminal Justice Act. The distinction between Nigerian municipal law and the English law is that the English law allows for confiscation of property or money even when an offender is not convicted, unless the suspect can prove that the property was legally acquired.<sup>27</sup> It is also in accord with legal practice that offenders who derive profits from their criminal activities deserve to have these properties or profits confiscated on the basis of the principle that people should not profit from their own wrong.<sup>28</sup> A related issue is plea bargain. There have been instances of plea bargain, restitution and confiscation of ill-gotten property in Nigeria, particularly in corruption and political cases.<sup>29</sup> In the case of *Federal Republic of Nigeria v Ajudua*,<sup>30</sup> the court confiscated some of the respondent's properties and went on to compensate the victim of the fraud. Courts are enjoined to order restitution and compensation in befitting circumstances, unless the offence is so grave that the offender has to be kept in confinement.

### **Suspended Sentence**

Suspended sentence is a prison sentence which is held suspended unless the offender commits another crime. If the offender reoffends, he is liable for the suspended imprisonment in addition to punishment for the new offence.<sup>31</sup> 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 does not break the conditions. A suspended sentence contains three elements, namely, the term of imprisonment,

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<sup>22</sup> [1969] 1 AER 426.

<sup>23</sup> [1972] 75 CR APP 275.

<sup>24</sup>The Administration of Criminal Justice Law (hereinafter referred to as ACJL) of Lagos State, s 347(3) provides for community service. It states that a community service order shall be in the nature of: (a) environmental sanitation; or (b) assisting in the care of children and the elderly in government approved homes; or (c) any other type of service which in the opinion of the court would have a beneficiary and salutary effect on the character of the offender. See also ACJL of Ekiti State, s 347(4) and ACJL of Cross River State, s 457.

<sup>25</sup>Stirling Online Research Repository, 'What Do the Public Really Feel About Non-custodial Sentencing' <[www.rethinking.org.uk](http://www.rethinking.org.uk)> accessed 29 July 2024.

<sup>26</sup> ACJA 2015, s 460(3).

<sup>27</sup>This however seem to have lifted the presumption of innocence enjoyed by suspects. In Nigeria, the presumption of innocence is a constitutionally guaranteed right under CFRN 1999, s 36.

<sup>28</sup> English Confiscation Act 1997, s 29.

<sup>29</sup>ACJA ss 270 and 321 for plea bargain and restitution respectively. On confiscation of ill-gotten property, see *FRN v Igbiniedion* [2014] LPELR -22760 (CA).

<sup>30</sup> [2006] 1 EFCLR 4.

<sup>31</sup>B Hussain, 'Social Reintegration of Offenders: The Role of the Probation Service in North West Frontier Province, Pakistan' (PhD thesis, The University of Hull 2009) 30.

the conditions on which it is suspended and the period for which the sentence is suspended. Thus for an offence bordering on assault, the offender may be given a sentence of two years imprisonment, and the said sentence suspended on the condition that the convict will keep the peace and will not commit any crime bordering on violence within a period of two years. If the offender breaks the imposed conditions during the period for which the sentence is suspended, he will have to serve the term of imprisonment originally imposed and also the punishment for the new offence he committed. Before now, suspended sentence has been alien to Nigerian laws.<sup>32</sup> A clear pointer is the Court of Appeal decision in the case of *Ekpo v State*.<sup>33</sup> In that case, the accused person was tried and convicted for rape of an underage girl. The trial court imposed a suspended sentence of three years. On appeal, it was held that suspended sentence was alien to Nigerian laws and in its place the Court of Appeal sentenced the accused to three years imprisonment. But now the ACJA under section 460 provides for suspended sentence. Thus suspended sentence can now be lawfully imposed on an offender. However, a convict shall not be sentenced to suspended sentence 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.<sup>34</sup>

### **Conditional Discharge**

A conditional discharge connotes that the suspect will neither be convicted nor acquitted for an offence charged, on the condition that he desists from committing another offence during the period pronounced by the court. It may be up to three years. The defendant will be liable to be sentenced for the original offence, if found guilty of committing another offence during the imposed period of time. An offender who otherwise would have been convicted, may be discharged conditionally having regard to his character, antecedents, age, health, mental condition, trivial nature of the offence or extenuating circumstances under which the offence was committed or other mitigating circumstances.<sup>35</sup>

### **Parole**

Parole is not really an alternative to imprisonment. Nevertheless, it is one of the mechanisms set in place to set offenders free from incarceration. Parole is a conditional release from prison during which a prisoner promises to abide by certain conditions set by the 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, given wide discretionary powers to determine those eligible for parole. In determining the eligibility of a serving convict for parole, the Parole Board may consider the length of time already served, the seriousness of the crime committed, general behavior during his time in prison and the inmate's prior criminal record. This enables the board to determine whether a prospective parolee will remain at liberty without violating the law and whether such release will not be injurious to the interest of the society at large. The safety of the public is always of paramount importance in all parole decisions. Section 465 of Administration of Criminal Justice Law (hereinafter referred to as ACJL) of Cross River State provides for parole. Also, the ACJA under section 468 provides for parole. However, it provides that 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.

## **3. Necessity of Non-custodial Punishment in the Administration of Criminal Justice**

The various forms and extent of non-custodial punishments in Nigeria has been x-rayed above. It is a truism that the nature of punishments and the philosophy behind them reflect the structure and the level of development of a society. They change and so do attitudes towards suspects as well as the resultant ways of dealing with them. The traditional approach to criminal justice administration supports the idea of retaliation or punishment for offenders. This approach is to guarantee public protection through the removal of criminals from the streets by way of imprisonment. Such was to ensure that there is a price to pay for crime committed thereby deterring others from committing crime. There are however several challenges associated with this approach. One of the major challenges of the retributive custodial form of sentencing is the creation of career criminals. It is a well known fact that 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, aside of the issues of overcrowding of prisons and inadequate facilities for the rehabilitation of offenders. Worse still, even the deterrent effect of this approach is questionable.<sup>36</sup> In the circumstances, it is imperative to devise non-custodial measures to deal with offenders, as most legal systems are faced with the problems of recidivism and prison congestion. This is as a result of the failure of the retributive and deterrence sentencing philosophies that have dominated global criminal justice theories for centuries. Contrary to the economic theory of crime, it is argued that imprisonment is dysfunctional and criminogenic, in that imprisonment increases the risk of familiarisation with and involvement in crime. There are three major variants of this argument. The first contends that prison is criminogenic because it provides an environment which reinforces deviant values and which is conducive to the acquisition of new criminal skills.<sup>37</sup> The second contends that prison is criminogenic because it stigmatises offenders. It is argued that social stigmatisation prompts those who are stigmatised to adopt the label of being criminals and behave in ways that are consistent with this label.<sup>38</sup> The

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<sup>32</sup> The ACJA and the ACJL of various States of the federation provide for suspended sentence.

<sup>33</sup> [1982] INCR 34.

<sup>34</sup> ACJA 2015, s 460(3).

<sup>35</sup> Gloria Shajobi-Ibikunle, 'Challenges of Imprisonment in the Nigeria Penal System: The Way Around' [2014] (2) (2) *American Journal of Humanities and Social Sciences* 101.

<sup>36</sup> Ugonna Ezekwem, 'Exploring Non-custodial Sentencing in Magistrate Courts'. Paper presented during the 2017 orientation course for newly appointed magistrates.

<sup>37</sup> G Sykes, *Society of Captives: A Study of a Maximum-Security Prison* (Princeton University Press 1958) 25-26.

<sup>38</sup> J Braithwaite, 'Crime, Shame and Reintegration' in Weatherburn, Vignaendra and McGrath (n 9).

third contends that prison increases the risk of reoffending because it reduces the offender's capacity on release to obtain income by legitimate means.<sup>39</sup>

It is common knowledge that not only does imprisonment rarely rehabilitate, but it tends to further criminalise individuals, leading to reoffending and a cycle of "release from prison" and "return to prison" which does nothing to reduce overcrowding in prisons or to build safer communities. Imprisonment is apparently not beneficial to offenders, to their families or to the community in the long run. However it may be, it is submitted that imprisonment cannot altogether be dispensed with. While subscribing to other forms of punishment which does not involve incarceration, a limited form of imprisonment is still necessary in certain cases. Controversies about the effectiveness or otherwise of imprisonment continue to resonate globally. Reservations abound about the futility in constantly recycling career criminals at public expense, for whom the occasional prison sentence was a mere occupational hazard. There is the need to break this cycle of crime. There is no point in putting offenders in a building, feed them, cater for them in the name of punishing them and finally let them out in worse conditions than they were when they entered the prison. Hence it is argued that prison is an expensive way of making bad people worse and hardening novices-in-crime into career criminals. It is argued that keeping petty or first-time offenders out of prison gives them second chance, provided that the offender demonstrated the capacity to change for the better. The goal of introducing alternatives to custodial punishment is not only to address the problem of overcrowding in prisons but to inject a fundamental change in penitentiary measures and engender a paradigm shift from punishment to restorative justice and reintegration. When accompanied by adequate support for offenders, it assists some of the most vulnerable members of society to lead a life without having to relapse back into crime.

#### **4. Restorative Justice as a Sine Qua Non for Effective Administration of Criminal Justice**

In the face of realities on the ground, recidivism, over-crowding in prisons among others, arguments abound in support of restorative justice. Restorative justice has been described as a process of using humane, non-punitive strategies to right wrongs and restore social harmony.<sup>40</sup> It has grown out of a belief that the traditional justice system has done little to involve the community in the process of dealing with crime. Restorative justice aims to promote accountability through reconciliation and reconnection to the community. In practice, it usually involves direct or indirect communication between victims and offenders, but can also involve financial restitution ordered by court. Restorative justice is re-integrative in nature. It gets law violators to show remorse, imbibe attitudinal change and make up for their criminal lifestyle as a way of restoring justice, law and order in the community. Restorative justice ensures that offenders are reconciled with their victims and community outside of the traditional criminal justice system. And this, by implication, reduces the population that goes into the prison yard. Those who break the law are made to feel regret and guilt about their criminal activities, but their self-respect and self-esteem are not damaged as they are constructively corrected by facilitators who share family or community ties with both the victim and the offender. The restorative justice approach gives the victim a greater sense of justice, as offenders are made to compensate the victim and make amends for the wrong they did, contrary to what is obtainable with 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 through rehabilitation of the offender, reparations to the victims and community, promotion of sense of responsibility by the offender acknowledging the harm he has done to the victims and the community.<sup>41</sup>

The necessity of adopting non-custodial punishments in the administration of criminal justice is resonating world over. Implementation of penal sanctions within the community, rather than through a process of isolation from it, offers in the long run a better protection for the society. Non-custodial sanctions which do not exist in the nation's penal statutes but which have been found useful in other jurisdictions are day fines, intensive supervision, tagging, house arrest, day reporting and boot camp among others.<sup>42</sup> These in conjunction with the non-custodial measures obtainable in Nigerian penal codes come in handy to better the lot of suspects and criminal defendants entangled in the web of criminality. Prior to the enactment of the Child's Rights Act in 2003, the Children and Young Persons Laws of the various States of the federation were essentially the laws regulating the administration of juvenile justice.<sup>43</sup> Judges were granted wide discretionary powers in sentencing resulting in offenders being sent to custodial institutions. Recognising the need for a change, the Child's Rights Act was enacted in 2003. It introduces the use of diversion, especially for minor offences, and specifically provides for four types of diversionary measures: supervision, guidance, restitution and compensation of victims. The ACJA too joined the bandwagon too.

#### **5. Conclusion and Recommendations**

The issue of the ideal criminal justice administration crops up every now and then. Practitioners and academics have over the ages argued on this point. The debate rages on, but one thing remains very crystal clear. And that is the fact that pro-custodial theories have failed to fly. From generation to generation resentment continues to grow against the popular belief fueling the idea that imprisonment of criminals as the only way out. Meanwhile pieces of evidence abound to the contrary. The woeful failure of this proposition abounds in every nook and cranny of the globe, overcrowding of prisons and the bogus budget spent to run prisons notwithstanding. The main purpose of the Administration of Criminal Justice Act includes promoting efficient management of the criminal justice system and its institutions as well as ensuring speedy dispensation of justice, protecting the society from crime, and equally protecting the rights and interests of the criminal defendants on the one hand and the

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<sup>39</sup>J Fagan and RB Freeman, 'Crime and Work' in M Tonry (ed), *Crime and Justice: A Review of Research* (Vol 25, University of Chicago Press 1999) 225.

<sup>40</sup>MU Nnam, 'Responding to the Problem of Prison Overcrowding in Nigeria Through Restorative Justice: A Challenge to the Traditional Criminal Justice System' [2016] (11) (2) *International Journal of Criminal Justice Sciences* 182.

<sup>41</sup>Ezekwem (n 36).

<sup>42</sup>Shajobi-Ibikunle (n 35).

<sup>43</sup>The Children and Young Persons Act 1943 was adopted by all the States of the federation as their respective Children and Young Persons Law. But since it is an adaption of the 1943 Act, it contains similar provisions with the CYPA 1943.

victims on the other hand. These indicate a paradigm shift from punishment as the major goal of criminal justice to restorative justice as a better alternative thereto. The ACJA paves the way for an enabling environment to address the needs of the society, the victims, vulnerable persons and human dignity. It intensively addresses the challenges of excessive resort to imprisonment and introduces better alternatives to imprisonment. The legal framework is now at the disposal of the judiciary, which is expected to put it to meaningful use. This paper recommends that the judiciary does the needful and make the efforts of the legislature worthwhile as far as the Administration of Criminal Justice is concerned. The ball is now in the court of the judiciary to hold the bull by the horn and put into full effect all the prescriptions and provisions of the Administration of Criminal Justice Act as well as the Administration of Criminal Justice Laws of the various States of the Federation respectively as the need arises. The ACJA at section 460(4) thereof has provided that the court in exercising its sentencing jurisdiction shall bear in mind the need to reduce congestion in prisons, rehabilitating prisoners by making them to undertake productive work and prevent convicts who commit simple offences from mixing with hardened criminals. These guidelines set by the ACJA have been largely ignored and discountenanced by some judges and magistrates, who by default readily commit criminal defendants to terms of imprisonment. The time is ripe to do the needful, if the Nigerian criminal justice system will meet international best standards.