

TITLE PAGE

**EXAMINATION OF THE CUSTODIAL AND NON-CUSTODIAL SENTENCING
OPTIONS IN NIGERIA**

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GOU/U21/LAW/410

**A LONG ESSAY SUBMITTED TO THE FACULTY OF LAW, GODFREY OKOYE
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AWARD OF THE DEGREE OF BACHELOR OF LAW (LL.B) OF GODFREY OKOYE
UNIVERSITY**

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JUNE 2026

DECLARATION

I, ENEH SOGIDECHUKWU FRANCES, hereby declare that this project is the result of my own original research work carried out under the supervision of my project supervisor. This work has been completed through my personal effort, study, and understanding of the subject matter, which reflects my independent academic contribution. Where the ideas, words, or materials of other authors have been used, they have been properly acknowledged and appropriately referenced in accordance with academic standards.

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CERTIFICATION

This is to certify that this long essay titled **AN EXAMINATION OF CUSTODIAL AND NON-CUSTODIAL SENTENCING OPTIONS IN NIGERIA** was carried out by Eneh Sogidechukwu Frances, under my supervision in partial fulfilment of the requirements of the award of Bachelor of Laws (L L B) degree in the Faculty of Law, Godfrey Okoye University.

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DATE

DEDICATION

Above all, I dedicate this project to Almighty God for his unwavering grace, wisdom, power and guidance that He showed me through the entire period of this study. He showed me that, truly I can do all things through Christ who strengthens me. I equally dedicate this work to my honorable supervisor, Mrs. Joy Nnani whose guiding hand, encouragement and contributions helped immensely in the completion of this project.

In particular, I dedicate this project to my respected parents, Dr. & Barr. Eneh, for their constant love, sacrifice, prayers, support and devotion to my education. Your encouragement and confidence in me has been an inspiration to me. I also dedicate this project to my siblings for the love, encouragement and support they have shown me through this academic journey.

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Constitution of the Federal Republic of Nigeria (1999) as amended 2023

Constitution of the Republic of South Africa 1996

Criminal Procedure Act Cap. C38, Laws of the Federation of Nigeria (LFN) 2004

Criminal Procedure Code Cap. C42, Laws of the Federation of Nigeria (LFN) 2004

Nigerian Correctional Service Act 2019

Penal Code Act Cap P3, Laws of the Federation of Nigeria 2004

Sentencing Act 2020 (UK)

LIST OF ABBREVIATIONS

ABU	Ahmadu Bello University Press
ACHPR	African Charter on Human and Peoples' Rights
ACJA	Administration of the Criminal Justice Act
ACJL	Administration of the Criminal Justice Laws
CA	Court of Appeal
CAP	Chapter
CC	Constitutional Courts
CR APP	Criminal Appeal Reports
CUP	Cambridge University Press
CFRN	Constitution of the Federal Republic of Nigeria
ED	Editor
FRN	Federal Republic of Nigeria
ICCPR	International Covenant on Civil and Political Rights
IBID	Ibidem
LCN	Law Care Database
LFN	Laws of the Federation of Nigeria
LPCLR	Law Pavilion Electronic Law Report
NCSA	Nigerian Correctional Service Act
NLR	Nigerian Law Report

NWLR	Nigerian Weekly Law Report
OUP	Oxford University Press
SA	South Africa
SC	Supreme Court
SACR	South African Criminal Law Reports
UK	United Kingdom

ABSTRACT

This research is an examination of custodial and non-custodial sentencing as a means of punishing offenders and rehabilitating them as well. There has been a growing concern about prison overcrowding, recidivism, and the effectiveness of incarceration as the predominant method of sentencing. The question is, has custodial sentencing been effective in the Administration of Criminal Justice in Nigeria, when considering the effect of non-custodial sentencing, which includes probation, community service, fines, and restorative justice initiatives. The study adopts a doctrinal research design, analyzing both primary and secondary sources. It found that while custodial sentencing performs certain roles like rendering the convict incapable of committing another crime by keeping him away from society, it also leads to prison congestion and poor rehabilitation, especially for first offenders. However, non-custodial sentencing facilitates offender reintegration into society. It is cost-effective in terms of correction and eases strain on the prison system, especially for petty offenders. The study finds that insisting on custodial sentencing alone does not aid the administration of the criminal justice system. It recommends the proper use of both methods of custodial and non-custodial sentencing for an efficient justice system in the country.

CHAPTER ONE:

INTRODUCTION

1.1 Background to the Study

Nigeria's sentencing process has seen many changes since its colonial past, which mainly involved stringent criminal policies, punishments, and the legal formulation of the country's criminal justice system.¹ The Nigerian criminal justice system in the colonial period had been introduced to uphold the rule of law and order through punitive and repressive measures such as incarceration and flogging.² The purpose of retribution is to show disgust by the general public towards the crime committed and also to punish the offender for his or her wrongful actions, whereas deterrence is meant to deter the offender from committing future crimes.³

The system of criminal justice, which was developed under British colonial rule in Nigeria, was essentially created as a tool for the maintenance of colonial rule and the repression of any form of dissent rather than being conceived as a way to rehabilitate criminals.⁴ Indeed, the concept of imprisonment was developed as part of a wider colonial strategy which emphasized the use of coercion, deterrence, and regulation, thus ensuring that the primary solution for criminal activity in colonial Nigeria was imprisonment.⁵ As prisons grew in number under colonial rule, a punitive system of penalty was encouraged, where imprisonment was used to control and regulate the indigenous population.⁶ While ideas of reform were eventually introduced into the discussion about penalty, in the execution of penal policy, punishment

¹ N Otu, 'Colonialism and the Criminal Justice System in Nigeria' (1999) 23(2) *International Journal of Comparative and Applied Criminal Justice* 293.

² V Saleh-Hanna and Chukwuma Ume, 'An Evolution of the Penal System: Criminal Justice in Nigeria' in Viviane Saleh-Hanna (ed), *Colonial Systems of Control* (University Press 2008) 163.

³ *Elizabeth v Federal Republic of Nigeria* (2021) LPELR-54632(CA).

⁴ T Falola and MM Heaton, *A History of Nigeria* (Cambridge University Press 2008) 111–113.

⁵ Viviane Saleh-Hanna (n2).

⁶ A Milner, 'The Nigerian Prison System' (1972) 12(4) *British Journal of Criminology* 389.

remained more important than reform, and this historical orientation left a deep institutional imprint on Nigerian criminal justice, one that has proved resistant to reform long after independence.⁷

The Constitution of the Federal Republic of Nigeria 1999 (as amended) guarantees the ‘right to the dignity of the human person’ under section 34⁸ and the ‘right to personal liberty’ under section 35.⁹ These constitutional guarantees impose substantive limitations on the manner in which the state may punish convicted offenders and provide a constitutional foundation for the argument that custodial sentences, when unnecessarily imposed or administered in degrading conditions, may constitute a violation of fundamental rights. The sentencing framework must therefore be evaluated not merely as a matter of policy but as a matter of constitutional obligation. The Nigerian criminal justice system operates mainly on the application of the Criminal Code Act Cap, C38 Laws of the Federation of Nigeria (LFN) 2004,¹⁰ which operates in the Southern states, and the Penal Code,¹¹ which operates in the Northern states. The laws provide the latitude for the court to impose various forms of sentencing depends on the nature and extent of the offences committed, as seen in Section 311(3) of the Administration of the Criminal Justice Act 2015.¹² The traditional forms of sentencing have been custodial, where the sentence of imprisonment operates as a deterrent and a form of punishment. However, the increasing number of correctional facilities has brought to the fore the challenges that face the

⁷ Rotimi Alemika, ‘Penal Policy, Prison Conditions and Prisoner Treatment in Nigeria’ in EEO Alemika and IN Chukwuma (eds), *Prisons and Penal Reform in Nigeria* (CLEEN Foundation 2001) 3–5.

⁸ The Constitution of the Federal Republic of Nigeria (1999) (as amended), s 34.

⁹ Ibid.

¹⁰ Criminal Code Act Cap, C38 Laws of the Federation of Nigeria (LFN) 2004 ‘the sentencing structure, as indicated in the Criminal Code Act, is primarily based on the term of imprisonment, fines, as well as in some serious cases, the death penalty. For instance, in section 319, any person convicted of the offense of murder shall be liable to the death penalty.’

¹¹ The Penal Code, Cap P3, Laws of the Federation of Nigeria 2004, s 55 describes the various forms of punishment that can be awarded under the Code, which include the death sentence, imprisonment, fines, confiscation of property, and corporal punishment, etc.

¹² The Administration of the Criminal Justice Act 2015, s 311(3) states that ‘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.’

administration of justice in Nigeria; for instance, in 2025, the Federal Government approved of the relocation of 29 outdated custodial centers as part of reforms modernize correctional facilities and improve inmate welfare.¹³

Against this backdrop, the global movement towards non-custodial sentencing gained significant international normative force with the adoption by the United Nations General Assembly of the Standard Minimum Rules for Non-custodial Measures, commonly known as the Tokyo Rules, in 1990.¹⁴ The Tokyo Rules enjoin member states to develop a wide range of non-custodial measures so as to reduce reliance on imprisonment while ensuring that public safety is maintained.¹⁵ The ACJA 2015 Act was crafted with the aim of improving the Criminal Justice System in Nigeria in line with global standards including those of the United Nations on speedy trials and humane punishment.¹⁶

The ACJA 2015 is described as an improved version of the CPA (Criminal Procedure Act) and CPC (Criminal Procedure Code), the previous criminal procedural laws that had operated in the country for some time after its independence.¹⁷ Section 1 of the Act expressly lists among its objectives the promotion of an efficient system of criminal justice administration and the protection of the rights and interests of defendants, victims and society.¹⁸ The Act sets out a broad menu of sentencing options available to the court upon conviction, encompassing both custodial and non-custodial alternatives.¹⁹ A Custodial sentence refers to a judicial sentence

¹³ Ngozika Onah, 'FG Approves Relocation of 29 Custodial Centres' (February 22, 2025) <https://telegraph.ng/news/2025/02/22/fg-approves-relocation-of-29-custodial-centres/?utm_source=> accessed 8 May 2026.

¹⁴ United Nations General Assembly, *United Nations Standard Minimum Rules for Non-Custodial Measures (The Tokyo Rules)*, GA Res 45/110, UN Doc A/RES/45/110 (14 December 1990) <<https://undocs.org/A/RES/45/110>> accessed 8 May 2026.

¹⁵ Ibid.

¹⁶ OE Ojukwu and CC Onyekwuluje, 'The Administration of Criminal Justice Act 2015: A New Dawn in Criminal Justice Administration in Nigeria' (2017) *Nnamdi Azikiwe University Journal of International Law and Jurisprudence*.

¹⁷ Ngozi J Udombana, 'Administration of Criminal Justice Act of Nigeria 2015': A Critique of Selected Legislative Expressions' (2020) *IALS Student Law Review*.

¹⁸ The Administration of the Criminal Justice Act 2015, s 1.

¹⁹ Ibid, s 415.

imposing a mandatory term in custody of a convict, often by way of either imprisonment or some other institution.²⁰ Non-custodial sentence refers to a sentence of the court handed down to an adjudged offender that does not involve a term of imprisonment. It is a sentence served outside the physical facility designated as a prison. The Administration of Criminal Justice Act 2015 considers non-custodial punishments as alternative punishments other than incarceration, which include probation²¹, community service²², fine²³, suspended sentence²⁴, and parole.²⁵

1.2 Statement of the Problem

The criminal justice system in Nigeria has, over the years, heavily relied on custodial sentences, with a focus on imprisonment as the main way of dealing with crime in the country. Although the main purpose of imprisonment is to punish, prevent, and protect society, overcrowding and overdependence on incarceration have made rehabilitation and reintegration goals of imprisonment largely ineffective in Nigeria.²⁶ The first challenge is the issue of overcrowding in some of the correctional facilities run by the Nigerian Correctional Service.²⁷ This overcrowding comes with its attendant problems of deplorable conditions of sanitation, hygiene, disease, and even death, among the inmates or detainees.²⁸ Something had to be done to keep the inmates alive, because only the living can stand trial or be prosecuted by the

²⁰ Bright E. Oniha, 'Non-Custodial Sentencing in Nigeria: Contemporary Incarceration Without Walls' (a paper presented at a Capacity Building Training/Workshop organised by The Edo State Administration of Criminal Justice Monitoring Committee and the Justice Sector Reform Team 2025). <<https://edojudiciary.gov.ng/wp-content/uploads/2025/07/non-custodial-sentencing-in-nigeria-contemporaryincarceration-without-walls>> accessed 8 May 2026.

²¹ The Administration of Criminal Justice Act 2015, s 453-459.

²² Ibid, s 460(2), 461-466.

²³ Ibid, s 454(1) (a).

²⁴ Ibid, s 460(1).

²⁵ Ibid, s 468.

²⁶ Tochukwu Onyike SAN, 'Challenges in the Nigerian Correctional Facilities and the Way Forward' (2024) IntechOpen <<https://www.intechopen.com>> accessed 8 May 2026.

²⁷ Dirisu Yakubu, 'Nigeria's Prisons under Strain, Over 50,000 Await Trial – Nigerian Correctional Service' *Punch Newspapers* (Abuja, 12 February 2026) <https://punchng.com/nigerias-prisons-under-strain-over-50000-await-trial-ncs/?utm_source> accessed 19 May 2026.

²⁸ David D. Ihua-Maduenyi, 'Understanding the Non-Custodial Sentencing Provisions in Nigerian Law' 15 April 2015 <<https://barristerng.com/understanding-the-non-custodial-sentencing-provisions-in-nigerian-law/>> accessed 17 March 2026.

courts.²⁹ For as OBADINA, Justice of the Court of Appeal, put it in *Chief Anthony Emeka Ani v. State*³⁰, ‘As it is only the living that can praise God, so it is only the living that can be tried, convicted and punished for an offence, no matter how heinous the offence may be.’³¹

The overcrowding problem is significantly compounded by the disproportionately large population of awaiting-trial inmates.³² Available data consistently show that persons remanded in custody pending the determination of their cases constitute the majority of inmates in Nigerian correctional facilities at any given time.³³ The prolonged detention of these inmates in the same facilities as convicted persons, under equally degrading conditions, constitutes not only a denial of the constitutional presumption of innocence but also an extrajudicial deprivation of liberty that the criminal justice system is ill-equipped to justify or remedy.³⁴ This is a deeply troubling state of affairs, since these individuals have not been found guilty of any offence.³⁵

The net result of the Prison Act is that Nigeria has been witnessing a succession of congestion in its aging prisons, inhumane treatment of prisoners, and lack of human and material resources. All this makes it evident that there has been failure to live up to the mandate, leaving behind a picture of inadequacy in comparison with international standards of criminal justice.³⁶ The

²⁹Bright E. Oniha, (n 20).

³⁰ (2001) 14 NWLR (Pt 747) 217 (CA).

³¹Ibid

³² Emmanuel Agbo, ‘Why Nigeria’s Prisons Remain Overcrowded Despite Reforms – Lawyer’ *Premium Times* (3 May 2025).

<<https://www.premiumtimesng.com/news/top-news/791971-interview-why-nigerias-prisons-remain-overcrowded-despite-reforms-lawyer.html>> accessed 19 May 2026.

³³ National Bureau of Statistics, *Nigerian Correctional Service Statistics (2017–Q2 2025)* (NBS 2026).

<https://www.tv360nigeria.com/nigerias-prison-population-rises-to-81710-lagos-records-highest-overcrowding-nbs/?utm_source=> accessed 19 May 2026.

³⁴ Ivo Takor, ‘Human Rights Of Awaiting Trial Inmates In Nigerian Prisons’: A Call For Action’ *National Record* (20 January 2025) <<https://www.nationalrecord.com.ng/human-rights-of-awaiting-trial-inmates-in-nigerian-prisons-a-call-for-action-by-ivo-takor/>> accessed 19 May 2026.

³⁵ Ivo Takor, ‘Human Rights Of Awaiting Trial Inmates In Nigerian Prisons’: A Call For Action’ *National Record* (20 January 2025) <<https://www.nationalrecord.com.ng/human-rights-of-awaiting-trial-inmates-in-nigerian-prisons-a-call-for-action-by-ivo-takor/>> accessed 19 May 2026.

³⁶ Okeke, Obianyo and Ater, ‘An Assessment of the Untapped Potentials of Non-Custodial Sentencing Provisions under the Nigerian Correctional Service Act 2019: Implications for the Rights of Inmates.’ <<https://journals.ezenwaohaetorc.org/index.php/AJLHR/article/viewFile/2857/2994>> accessed 7 March 2026.

delay in the administration of justice in Nigeria also affects the principle of the presumption of innocence and the administration of justice in Nigeria. A further dimension of the problem, and perhaps the most significant from the standpoint of this study, is the persistent underutilization of the non-custodial sentencing options that the Administration of Criminal Justice Act 2015 has made available. Notwithstanding the legislative recognition of probation, community service, fines, parole and suspended sentences as legitimate sentencing options, the courts at all levels continue to resort predominantly to custodial sentences.³⁷ This underutilization is attributable to several interconnected factors: inadequate judicial training on the non-custodial provisions of the ACJA 2015, the absence of institutional infrastructure to supervise non-custodial orders, public and prosecutorial pressure for custodial punishment, and the absence of formal sentencing guidelines that would actively encourage judges and magistrates to consider non-custodial alternatives.³⁸ The combined effect of these factors is a sentencing system that falls significantly short of the legislative vision of the ACJA 2015 and the Nigerian Correctional Service Act 2019 and that is, in practice, considerably less humane, efficient, and rehabilitative than the law permits and requires.

1.3 Research Questions

The following research questions guide this study:

- a.) What is the concept and nature of custodial and non-custodial sentencing in Nigeria's criminal justice system?
- b.) What provisions of the laws in Nigeria regulate custodial and non-custodial sentencing in Nigeria?

³⁷ Festus Okpoto Agbo, 'Sentencing Guidelines and Prison Congestion in Nigeria: Challenges and Prospects for Decongestion' (2022) 10(6) *Global Journal of Politics and Law Research*.

³⁸ Idemudia Edetalehn Oaihimire and Paul Atagamen Aidonojie, 'The Innovative Concept and Issues Concerning the Non-Custodial Sentence in Nigerian Criminal Justice System' (2023) 5(3) *Law Development Journal* 1.

c.) What are the structural challenges that non-custodial sentencing faces in Nigeria?

d.) What can be done to improve non-custodial sentencing in Nigeria?

1.4 Aim and Objectives of the Study

The aim of this study is to examine the custodial and non-custodial sentencing options in Nigeria with a view to evaluating their effectiveness in the administration of criminal justice in Nigeria.

In furtherance of the foregoing aim, the following are the objectives of this study:

1. Examine the concept and nature of custodial and non-custodial sentencing options in the Nigerian criminal justice system.
2. Analyze the legal regime on custodial and non-custodial sentencing options in Nigeria.
3. Evaluate the extent to which non-custodial sentencing options are utilized in the administration of criminal justice in Nigeria.
4. Propose recommendations that can improve the use and effectiveness of non-custodial sentencing options in Nigeria.

1.5 Scope and Limitations of the Study

The study covers the legal regime and practice of the custodial and non-custodial sentencing options in the Nigerian criminal justice system. Specifically, the study points to the legal aspects and regulations guiding the custodial and non-custodial justice system in Nigeria, with sentencing under the Administration of Criminal Justice Act 2015, the Nigerian Correctional Service Act 2019 and other relevant laws. The study focuses on the importance of the two sentencing options in the rehabilitation of criminal offenders and the decongestion of prison inmates in Nigeria. The geographical scope of this study is Nigeria. The study examines the sentencing framework at the federal level, focusing primarily on the Administration of

Criminal Justice Act 2015 and the Nigerian Correctional Service Act 2019, which are the Acts of general application. Where relevant, reference is made to state-level legislation, including the Administration of Criminal Justice Laws enacted by various states in the wake of the federal Act.

In terms of content, the study will be limited to the sentencing component of criminal proceedings, i.e., the period that begins after the pronouncement of guilt and ends at the imposition and execution of the sentence. In other words, the study will be concerned with both the substantive law of sentencing (types and conditions of available sentences) and their implementation. The subject matter will further include custodial sentencing, i.e., primarily the imposition and implementation of imprisonment and the death penalty, alongside all types of non-custodial punishments envisaged in the ACJA 2015 and NCSA 2019 such as probation, community service, fines, parole and suspended sentences.

Nevertheless, the study does not undertake a detailed review of the pre-trial or trial stages of criminal proceedings, save those aspects that have a direct bearing on the eventual sentence. Juvenile justice or military justice is excluded, since each has its own special regime, set forth in dedicated legislation. The field is too broad to consider jurisdictions one after another, and such a restriction, in this respect, seems justified. In addition, neither civil nor quasi-criminal proceedings fall within the purview of the present study.

Some limitations of this research include the insufficient amount of data and information regarding the implementation of the non-custodial sentencing options in Nigeria. Another limitation of this research can stem from the variance in how criminal justice administration laws in Nigeria are implemented in the various states. These limitations have affected this research in several ways. The unavailability of complete data regarding the pattern of sentencing and occupancy in correctional facilities makes it necessary for us to depend on

scholarly publications and other reports, which may themselves depend on incomplete data. Any statistics cited in the course of this research are thus indicative only. The variance in the practice of criminal justice administration in different states of Nigeria makes it possible that this research might not cover all issues involved.

1.6 Significance of the Study

This study is deemed important for several reasons. Firstly, this study provides a critical evaluation of custodial and non-custodial sentencing alternatives in Nigeria, particularly in relation to their effectiveness in achieving the objectives of punishment, rehabilitation, and decongesting prisons. Secondly, this study provides useful insights into the various challenges facing non-custodial sentencing alternatives, which may be useful for policymakers, judges, and correctional authorities in addressing issues concerning non-custodial sentencing alternatives.

From a theoretical standpoint, the study contributes to the ongoing debate on the appropriate philosophical basis for sentencing in Nigeria. By examining how the aims of punishment to wit: retribution, deterrence, rehabilitation and social protection are served, or not served, by the respective categories of sentence available under Nigerian law, the study helps to situate the sentencing debate within a principled theoretical framework. Moreover, through the analysis of non-custodial sentencing alternatives in Nigeria compared to other jurisdictions, this study provides useful insights into best practices that may be useful for improving the efficiency of the criminal justice system. Again, this study contributes to the existing body of knowledge concerning criminal justice and non-custodial sentencing alternatives in Nigeria, which may be useful for scholarly research on non-custodial sentencing alternatives and other aspects of Nigerian criminal law. The Nigerian legislature and law reform bodies, including the National Assembly and the Nigerian Law Reform Commission, will benefit from the study's recommendations for legislative reform. The Nigerian judiciary, particularly judges and

magistrates at the trial court levels who bear primary responsibility for sentencing decisions in the vast majority of criminal cases, legal practitioners, legal scholars and students of Criminal Law will benefit from the study's clarification of the law on custodial and non-custodial sentencing. Finally, and most importantly, the study will be beneficial to Nigerian public, particularly persons in conflict with the law who stand to benefit from any reforms that the study's recommendations may help to stimulate or sustain.

1.7 Research Methodology

The study adopts the doctrinal research design. Reliance for data was placed on both primary and secondary sources of data. The primary sources of data relied on include statutes, case law, and international instruments. The secondary sources of data relied on include relevant textbooks, peer-reviewed journal articles and internet-sourced materials. The data gathered were subjected to content analysis.

1.8 Literature Review

The literature on custodial and non-custodial sentencing laws in Nigeria focuses on the legal and practical implications of non-custodial sentences. For instance, it has been noted by various scholars that the ACJA 2015,³⁹ and the Nigeria Correctional Service Act, 2019,⁴⁰ which introduced non-custodial sentences, have ushered in a new era of progressive reforms in the law of sentencing, which is geared towards decongesting correctional facilities and rehabilitating criminal offenders.

For instance, Fayomi⁴¹ argues that while the Administration of the Criminal Justice Act (ACJA) 2015, has introduced non-custodial sentences, the effectiveness of the law is hindered

³⁹Administration of Criminal Justice Act 2015, s 2 sets out the objectives of the Act, including the promotion of efficient dispensation of justice and the protection of the rights of defendants, victims and society.

⁴⁰Nigerian Correctional Service Act 2019, s 3 provides for the objectives of the Nigerian Correctional Service, including the rehabilitation, reformation and social reintegration of inmates.

⁴¹T Fayomi, 'Alternative Sentencing and Prison Decongestion in Nigeria' (2022) *Obafemi Awolowo University Law Journal*. <<https://oaulj.oauife.edu.ng/index.php/oaulj/article/view/5z>> accessed 7 March 2026.

by ignorance of the law, the absence of institutional structures, and the absence of funds for the implementation of the law. Fayomi's contribution is significant because it situates the implementation gap not at the level of legislative inadequacy, since he acknowledges that the ACJA 2015 provides a sound legal basis for non-custodial sentencing, but at the level of institutional and financial failure. This diagnosis has important implications for reform: it suggests that the primary need is not further legislation but rather investment in the institutional capacity required to give the existing law practical effect. Under the doctrinal method of analysis, for instance, Edetalehn and Aidonoji⁴² argue that the effectiveness of non-custodial sentences such as probation, community services, and restitution holds a lot of promise for decongesting correctional facilities. Edetalehn and Aidonojie's analysis is notable for its methodological rigour: by adopting a doctrinal approach to the examination of the ACJA 2015, the authors demonstrate that the legal framework for non-custodial sentencing is more comprehensive than is generally appreciated in practice, and that many of the sentencing options available under the Act remain largely dormant. Their identification of probation and community service as particularly promising instruments of prison decongestion is well-founded and is supported by comparative experience from other jurisdictions.⁴³ A limitation of their work, however, is that it does not examine the constitutional framework within which sentencing takes place, nor does it assess the comparative effectiveness of custodial and non-custodial sentences in terms of recidivism reduction. The present study seeks to provide a more holistic appraisal that encompasses these dimensions.

⁴²D Edetalehn and J Aidonojie, 'Non-Custodial Sentencing in Nigeria: Prospects and Challenges' (2023) 3(1) *Run Law Journal* <<https://www.runlawjournals.com/index.php/runjjil/article/view/50>> accessed 7 March 2026.

⁴³Robert J Harris and T Wing Lo, 'Community Service: Its Use in Criminal Justice' (2002) 46(4) *International Journal of Offender Therapy and Comparative Criminology* 427, 427–444; Koichi Hamai and others (eds), *Probation Round the World: A Comparative Study* (Routledge 1995) 191–209; EC Spaans, 'Community Service in the Netherlands: Its Effects on Recidivism and Net-Widening' (1998) 8(1) *International Criminal Justice Review* 1–14.

Izevbuwa, Ngwoke & Mbano⁴⁴ argue that the limitation of the law and the various statutes governing non-custodial sentences is more glaring in Nigeria than in other jurisdictions such as Kenya and Canada. The present study builds upon Izevbuwa, Ngwoke and Mbano's comparative orientation while focusing more closely on the legal and institutional reforms that are achievable within the Nigerian constitutional and legislative framework. Further light is shed on the Nigerian experience by Bright E. Oniha, a judge, whose paper on non-custodial sentencing in Nigeria, presented at the Edo State Administration of Criminal Justice Monitoring Committee's capacity building workshop, provides a valuable judicial perspective on the operation and challenges of non-custodial sentencing under the ACJA 2015.⁴⁵ Justice Oniha's paper is significant because it identifies the institutional barriers of non-custodial sentencing from within which the judiciary itself lends authority to the finding that the implementation gap is a structural problem requiring both legislative and cultural intervention. The paper provides a judicial perspective on the operation of non-custodial sentencing under the ACJA 2015 and identifies institutional barriers to its implementation. The present study draws on this judicial perspective as part of its broader analysis of the challenges of non-custodial sentencing implementation in Nigeria.

Taken together, the reviewed literature establishes a clear scholarly consensus on three points: first, that the legislative framework for non-custodial sentencing in Nigeria has improved significantly with the enactment of the ACJA 2015 and the NCSA 2019; secondly, that a substantial implementation gap persists between the legislative aspiration and sentencing

⁴⁴ M Izevbuwa, C Ngwoke and J Mbano, 'The Implementation of Non-Custodial Sentencing in Nigeria' (2023) 3(1) *Criminal Law Journal* <<https://www.criminallawjournal.org/archives/2023.v3.i1.A.42>> accessed 7 March 2026.

⁴⁵ Oniha (n 20).

practice; and thirdly, that the gap is attributable primarily to institutional, financial and cultural factors rather than to legislative inadequacy.

CHAPTER TWO:

CONCEPTUAL AND THEORETICAL FRAMEWORK

2.1 Conceptual Framework

2.1.1 Sentencing

Sentencing is one of the most vital aspects of the administration of criminal justice, as it is the point at which the abstract rules of criminal law are crystallized and transformed into concrete consequences for offenders, and in the Nigerian context, this is subject to the provisions of relevant statutory laws, including the Criminal Code Act,⁴⁶ Penal Code Act,⁴⁷ and Administration of Criminal Justice Act 2015,⁴⁸ which all regulate the scope, nature, and limits of punishment for offenders. The foundation of sentencing is based on the doctrine of legality, which holds that no person shall be punished unless in accordance with a written law, and this was firmly established in *Aoko v. Fagbemi*,⁴⁹ whereby it was held that a conviction and sentencing must be based on a defined offense known to law.

It is very important to note that discretion exercised by the judiciary in the sentencing process is one of the aspects that gives a lot of power to the judiciary to make an appropriate decision regarding a criminal case in light of the seriousness of the crime, the situation under which the crime was committed, and the personal attributes of the accused, as stated in the Supreme Court in the case of *Kalu v State*,⁵⁰ which held that a sentence must be a balance between the gravity of the offense and the individuality of the accused.

Nevertheless, the role of the judiciary in arriving at a just decision in a criminal trial is not absolute and is subject to certain guiding principles and precedents, as highlighted in the case

⁴⁶ Cap C38 Laws of the Federation of Nigeria (LFN) 2004.

⁴⁷ Cap P3 LFN 2004.

⁴⁸ Administration of Criminal Justice Act 2015.

⁴⁹ (1961) 1 All NLR 400.

⁵⁰ (1998) 13 NWLR (Pt 583) 531.

of *Eze v State*,⁵¹ which emphasized the need to arrive at a decision based on the principle of proportionality, consistency, and fairness in arriving at a just decision in a criminal trial. Further, the process of sentencing in a criminal trial is guided by certain objectives, including retribution, deterrence, rehabilitation, incapacitation, and restitution, which need to be considered by the judiciary in arriving at a just decision in a criminal trial.⁵² The traditional approach to sentencing, over the years, has been largely punitive in nature, with imprisonment being the most widely used mode of punishment, inherited from the English common law, as seen in various literature on the subject, including Okonkwo's *Criminal Law in Nigeria*.⁵³ However, the efficacy of the traditional approach to sentencing has come under severe criticism, as it does not address the problem of recidivism, which in turn has resulted in overcrowding of our prisons, thereby leading to reforms with the aim of adopting a flexible approach, as seen in various literature on the subject.⁵⁴

Sentencing means no more than the imposition of the punishment prescribed by law on the defendant by the court.⁵⁵ There can therefore be no sentence without conviction. The court must pronounce a Sentence.⁵⁶ The terms 'sentencing' and 'sentence' are often used interchangeably to refer to the imposition or pronouncement or determination of the prescribed punishment, penalty or sanction on a convict by the court.⁵⁷ Sentencing is an integral component in the criminal justice system, and it begins once a defendant is legally convicted of a criminal offense. It is the judicial process whereby the appropriate punishment is determined and inflicted upon a criminal offender, in accordance with the law and the

⁵¹ (1985) 3 NWLR (Pt 13) 429.

⁵² Andrew Ashworth, *'Sentencing and Criminal Justice'* (6th edn, Cambridge University Press 2015).

⁵³ CO Okonkwo, *Criminal Law in Nigeria* (Spectrum Books 2007).

⁵⁴ O Nwankwo, *Criminal Justice in Nigeria* (Malthouse Press 2010).

⁵⁵ Andrew Ashworth and Jeremy Horder, *Principles of Criminal Law* (9th edn, Oxford University Press 2019) 441.

⁵⁶ *Asakitipi v State* (1993) 5 NWLR (Pt. 296) 641 at 657.

⁵⁷ *Usman v State* (2015) LPELR-40855(CA) at pp 40 - 41 Paras D – B, Habeeb Adewale Olumuyiwa Abiru, JCA, defined sentencing as 'the judicial determination of a legal sanction to be imposed on a person found guilty of an offence'.

circumstances and facts of the case.⁵⁸ According to the Legal Information Institute, sentencing is “the consequences of a criminal conviction, which may include imprisonment, fines, or other corrective measures, and which are determined by the court.”⁵⁹ This, therefore, shows the regulatory nature of sentencing, as it is not only a punitive measure against criminal activity but also a corrective one. According to the authoritative legal text, Black's Law Dictionary, a sentence has been defined as "the judgment pronounced by the court on the defendant after conviction, which declares the punishment to be inflicted."⁶⁰ The importance of the above definition lies in the fact that it highlights the binding nature of the sentence, which marks the culmination of a criminal court trial. Discretion is an essential aspect of sentencing because it requires the judge to take into consideration not only the principles of law that should be applied but also the unique facts and circumstances surrounding each individual case.⁶¹ It is a pronouncement of the judiciary, as defined in Black's Law Dictionary. In, *Okewu v FRN*,⁶² the Supreme Court held that sentencing discretion should be a judicial discretion and not an arbitrary one. The Supreme Court further pointed out that appellate courts shall intervene where sentencing is clearly excessive or improper. Sentencing involves an elaborate process of evaluating the circumstances that serve to increase or reduce the severity of the case by the court so that the punishment handed down is appropriate to the crime committed and the person committing it.⁶³ In determining sentence, the court considers factors such as the gravity of the offence, the character of the offender, previous convictions, remorse, and the need for deterrence, rehabilitation, or retribution.⁶⁴ In the administration of justice, the judge carefully

⁵⁸ Nicola Padfield, *Text and Materials on Sentencing* (2nd edn, Cambridge University Press 2005) 3–5.

⁵⁹ Legal Information Institute, ‘Sentencing’ <<https://www.law.cornell.edu/wex/sentencing>> accessed 21 March 2026.

⁶⁰ Bryan A Garner, *Black's Law Dictionary* (11th edn, Thomson Reuters 2019).

⁶¹ *Omilade v State* (2020) LCN/15476(CA).

⁶² (2012) 9 NWLR (Pt 1306) 321 (SC).

⁶³ *R v Sargeant* (1974) 60 Cr App R 74 (CA).

⁶⁴ Administration of Criminal Justice Act 2015, s 311.

analyzes and thinks through each case, ensuring that justice is served judiciously, not mechanically or thoughtlessly.

Allocutus can be defined as the right provided to the person who has been convicted to make a statement before the court before passing the judgment.⁶⁵ Allocutus is the process by which the convicted individual is allowed to say something in his/her defense and also give any mitigating circumstances that may reduce his/her sentence.⁶⁶ Moreover, it is the process whereby the judge not only considers the factual circumstances but also the statement made by the individual when passing the judgment.⁶⁷ Allocutus is a formal statement made to the court by the defendant who had been found guilty before being sentenced.⁶⁸ It is the formal way of questioning by the court of the defendant to see if he has any legal reason for withholding judgment against him after the case is concluded. In the Supreme Court case of *Nweke Francis v. FRN*,⁶⁹ the Supreme Court held that “Allocutus, as defined in Earl Jowitt: The Dictionary of English Law, is what the convict has to say why the court should not proceed to sentence him, that is, what the convict shows ‘why the sentence should not be passed.’” The allocutus is pleaded by the convict and not by his counsel. This means that it is the convict who must plead the case as to why the penalty that ought to have been imposed for the offense should not be imposed.⁷⁰ A passionately delivered allocutus, by the convict, in a manner devoid of unnecessary drama, is capable of softening the judge’s heart for a much more lenient sentence.

Sentencing in Nigeria is a process that finds its roots in pre-colonial times where the administration of justice was done by the people among themselves based on customary laws.⁷¹

⁶⁵ *Oladipupo v State* (1993) 6 NWLR (Pt 298) 131.

⁶⁶ Criminal Procedure Act, cap C41 Laws of the Federation of Nigeria 2004, s 247.

⁶⁷ Administration of Criminal Justice Act 2015, s 310 and 311.

⁶⁸ George Nnamani, *Criminal Law in Nigeria; Offences and Defences* (Chenglo Limited, Independence Layout, Enugu 2024).

⁶⁹ [2020] LPELR-49687 (CA).

⁷⁰ George Nnamani, *Criminal Law in Nigeria; Offences and Defences* (Chenglo Limited, Independence Layout, Enugu 2024).

⁷¹ Leonard C Opara, ‘The Law and Policy in Criminal Justice System and Sentencing in Nigeria’ (2014) 4(7) *International Journal of Asian Social Science* 646.

Sentencing, in previous time, had been carried out in such a way that would servethee to bring about restitution, reconciliation, deterrence, and peace in the community.⁷² With the coming of the British colonialists, the English process of administering justice became an integral part of Nigeria. This resulted in the introduction of codified laws for committing crimes and their punishments. After independence, the evolution of sentencing practices in Nigeria has continued through precedents in law and academic writing.⁷³

The goals of sentencing under the Criminal Law of Nigeria include deterrence, retribution, rehabilitation, incapacitation, and restorative justice, which are used as guides in the selection of a suitable sentence for an offender.⁷⁴ Deterrence is an objective that uses the fear of punishment to prevent individuals from engaging in criminal activity.⁷⁵ Retribution involves ensuring that the punishment meted out corresponds to the gravity of the crime committed and also conveys the societal disapproval of criminal conduct.⁷⁶ Rehabilitation assumes that offenders can be reformed by means of educating, treating, training, and counseling them, which will reduce their rate of reoffending and facilitate their social rehabilitation.⁷⁷ Incapacitation is achieved by restraining the liberty of offenders such that they cannot commit further crimes as they serve their sentences.⁷⁸ Restorative justice is concerned with repairing the damages done by criminals to their victims and the community in order to restore harmony between all parties involved.⁷⁹ There are some sentencing principles in criminal law in Nigeria

⁷² Andrew Ashworth, *Sentencing and Criminal Justice* (6th edn, Cambridge University Press 2015) 16–25.

⁷³ Akingbehin Emmanuel Olugbenga, ‘Observance of Sentencing Principles and Objectives in Criminal Justice Dispensation in Nigeria: A Critical Evaluation’ (2021) *Achievers University Law Journal* 98.

⁷⁴ Alfred M Tijah, ‘Articulating Sentencing Guidelines to Structure Judicial Sentencing Discretion in Nigeria’ (2021) 11(1) *University of Ibadan Law Journal* 159.

⁷⁵ National Institute of Justice, ‘Five Things about Deterrence’ (NIJ, 2023).

<<https://nij.ojp.gov/topics/articles/five-things-about-deterrence>> accessed 21 May 2026.

⁷⁶ Andrew Ashworth and Jeremy Horder, *Principles of Criminal Law* (9th edn, Oxford University Press 2019) 19–22.

⁷⁷ Francis T Cullen and Karen E Gilbert, *Reaffirming Rehabilitation* (Anderson Publishing 2013) 15.

⁷⁸ David D Ihua-Maduenyi, ‘Understanding Non-Custodial Sentencing Provisions in Nigerian Law’ (BarristerNG, 2020) <<https://barristerng.com/understanding-the-non-custodial-chapter-provisions-in-nigerian-law/>> accessed 21 May 2026.

⁷⁹ Ifeanyi A Onuigbo and Ezechi C Nkolo, ‘The Necessity of Non-Custodial Sentencing and Restorative Justice in Nigeria’ (2024) 8(2) *African Journal of Law and Human Rights* 171–176.

that have been defined by judicial practice to ensure that there is consistency and justice in sentencing. Among these principles, one of the most basic is the principle of legality, which stipulates that sentencing should be carried out in strict conformity with law to avoid the imposition of arbitrary and unknown punishments.⁸⁰ Also related to the principle of legality is the principle of proportionality, which insists that there should be harmony between punishment and the crime committed, in that the punishment must correspond with seriousness of the offence and the culpability of the offender.⁸¹ The other crucial aspect is individualization of sentencing where the court takes into account the specificities associated with the perpetrator of the crime as well as the offence before passing judgment.⁸² Individualization of sentencing gives the judge an opportunity to take into account various mitigating and aggravating circumstances in a bid to achieve fairness in his sentence.⁸³ According to this principle, similar offences carried out in similar conditions should be subject to similar sentences, thereby promoting predictability and public confidence in the justice system.⁸⁴ Notably, such discretion is not limitless since the power to impose such sentences should be used in accordance with the law, and for the purposes of attaining all goals of sentencing.⁸⁵

2.1.2 Custodial Sentencing

Custodial sentencing is defined as an instance in criminal law whereby an offender's liberty is denied as a consequence of being held in prison or any correctional facility for a period of time

⁸⁰ Aniedi J Ikpong, 'Assessing the Principle of Legality in Nigerian Criminal Jurisprudence' (2024) *Journal of Law, Policy and Globalization*

<https://www.iiste.org/Journals/index.php/JLPG/article/view/35582?utm_source= accessed 21 May 2026.

⁸¹ Marie Manikis, 'The Principle of Proportionality in Sentencing' (2021) 59 *Osgoode Hall Law Journal* 1–20. <https://digitalcommons.osgoode.yorku.ca/ohlj/vol59/iss3/2/?utm_source= accessed 21 May 2026.

⁸² Alfred M Tijah (n 71).

⁸³ Sentencing Guidelines in Nigeria: Principles and Trends (2025) Appylaw <https://appylaw.com/2025/01/08/sentencing-guidelines-in-nigeria-principles-and-trends/?utm_source= accessed 21 May 2026.

⁸⁴ Alfred M Tijah (n 71).

⁸⁵ Sentencing Guidelines: Principles, Practice and Procedure (Nigerian Judicial Institute) <https://nji.gov.ng/assets/publication/sentencing-guideline-2.pdf?utm_source= accessed 21 May 2021.

as determined by an a competent court.⁸⁶ Custodial sentencing is founded on the traditional purposes of punishment, including retribution, deterrence, incapacitation, rehabilitation, and denunciation.⁸⁷ Custodial sentencing is viewed as one of the most severe punishments, considering the fact that it infringes upon the freedoms of the offender by restricting his or her ability to move around freely, associate with other individuals, enjoy private life, etc.⁸⁸

Custodial sentencing denotes a penalty imposed on offenders involving deprivation of their liberty and detention in a penal establishment. As 'custodial' suggests, the sentence requires the suspension of an individual's liberty and the assumption of responsibility over the individual by another body or institution.⁸⁹ There are several objectives of custodial sentencing in the criminal justice process, and these include punishment, deterrence, incapacitation, rehabilitation, and denunciation.⁹⁰ Incarceration is the most frequent custodial sentence, and this simply means that the convict will move his/her place of residence from the area of residence to a new place known as prison, or in more modern terms, custodial center. He/she shall reside at the new abode until the expiration of the term of imprisonment.⁹¹ The most common type of custodial sanction is imprisonment.⁹²

Imprisonment refers to the detention of the offender within a legal correctional facility for a certain length of time or for life.⁹³ It has been termed a typical punishment because it meets all the purposes of punishing and deterring offenders from repeating their criminal acts and it has been approved by the Nigerian courts as a legitimate means of punishing offenders and

⁸⁶ Andrew Ashworth and Julian Roberts, *Sentencing and Criminal Justice* (7th edn, Cambridge University Press 2013) 87.

⁸⁷ HLA Hart, *Punishment and Responsibility* (2nd edn, Oxford University Press 2008) 1–5.

⁸⁸ Nigel Walker, *Why Punish?* (Oxford University Press 1991) 89.

⁸⁹ *Ibid.*

⁹⁰ Andrew Ashworth and Rory Kelly, *Sentencing and Criminal Justice* (7th edn, Hart Publishing 2021) 14.

⁹¹ *Ibid.*

⁹² Dirk van Zyl Smit, 'Taking Life Imprisonment Seriously in National and International Law' *Kluwer Law International* (2002) 3.

⁹³ Francis T Cullen and Karen E Gilbert, *Reaffirming Rehabilitation* (Anderson Publishing 1982) 28.

ensuring the protection of society.⁹⁴ The harshness of imprisonment is caused by the fact that it entails deprivation of liberty and strict state control over the offenders.⁹⁵ The emotional impact of imprisonment often includes trauma, stigma, job loss, alienation from one's family, and dependence on an institution.⁹⁶ There can also be psychological impacts from long imprisonment, including mental illness and social exclusion. It is quite commonsensical to assume that since incarceration is humiliating as well as unpleasant, it acts as a deterrent not only to the individual who is being incarcerated but also to others.⁹⁷ The theory propounded by Becker⁹⁸ formalizes this idea. He states that an individual commits an offense when the expected utility of the crime outweighs the utility obtained from legitimate uses of the individual's time and efforts.

Custodial sentencing normally comes in different categories which includes; short custodial sentencing, long custodial sentencing, life imprisonment, and preventive custody depending on the nature of law in each jurisdiction as well as the offence committed.⁹⁹ The courts have discretionary powers in determining custodial sentencing in consideration of certain elements like the gravity of the offence, criminal record of the offender, aggravating or mitigating factors, and necessity to protect the interest of the public.¹⁰⁰ In Nigeria, the laws guiding custodial sentencing include the Criminal Code Act, Penal Code Act, Administration of Criminal Justice Act 2015, and other penal laws providing for imprisonment of offenders. According to the case of *Veen v The Queen*,¹⁰¹ it was decided by the High Court of Australia

⁹⁴ *Ali v FRN* (2016) LPELR-40472(CA).

⁹⁵ Erving Goffman, *Asylums: Essays on the Social Situation of Mental Patients and Other Inmates*, *Anchor Books* (1961) 6.

⁹⁶ Gresham Sykes, *The Society of Captives* (Princeton University Press 1958) 63.

⁹⁷ Susan Easton and Christine Piper, *Sentencing and Punishment: The Quest for Justice* (4th edn, Oxford University Press 2016) 102.

⁹⁸ GS Becker, 'Crime and Punishment: An Economic Approach' [1968] (76) *Journal of Political Economy* 176.

⁹⁹ Susan Easton and Christine Piper, *Sentencing and Punishment: The Quest for Justice* (4th edn, Oxford University Press 2016) 102.

¹⁰⁰ *R v Sargeant* (n 61).

¹⁰¹ (No 2) (1988) 164 CLR 465.

that protection of society could serve as justification for the imposition of lengthy custodial sentences particularly in cases where there is a probability of criminal behavior reoccurring. In the same way, severe jail sentences have been imposed by the courts of Nigeria due to acts of violence. Modern approaches to sentencing are inclined towards viewing incarceration as a means of last resort, especially where less serious and non-violent crimes are committed.¹⁰² Issues pertaining to custodial sentencing have been accentuated in light of the crowded prisons, long periods of pretrial detention, inadequacy of correctional facilities, and difficulties in rehabilitating offenders.¹⁰³ The enactment of the Nigerian Correctional Service Act 2019 shows efforts to improve the practice of custodial sentencing through the introduction of measures that encourage rehabilitation and reformation. Critics claim that imprisonment tends not to change offenders for the better but rather introduces them to more hardened criminals, thus making recidivism more likely.¹⁰⁴ Modern discussions about custodial sentencing go beyond punishment to issues of correctional efficiency and human rights protection.¹⁰⁵

2.1.3 Non-Custodial Sentencing

The days of custodial sentences such as; imposition of terms of imprisonment and the likes, are waning and in many jurisdictions have now been limited only to very serious offences.¹⁰⁶ The situation has become such that for misdemeanors, simple offences and non-life-threatening offences, the imposition of non-custodial sentencing in contemporary times, has gained worldwide approval and implementation.¹⁰⁷ In Black's Law Dictionary, the term "non-custodial" simply is, not taking place while a person is in custody.¹⁰⁸ In relation to sentencing,

¹⁰² Penal Reform International, *Alternatives to Imprisonment* (PRI 2016) 4.

¹⁰³ Ayuk A Ayuk, 'Prison Congestion and the Administration of Criminal Justice in Nigeria' (2020) 8(2) *Nnamdi Azikiwe University Journal of International Law and Jurisprudence* 56.

¹⁰⁴ Chineyemba Lydia Isioma, 'Custodial Sentencing and Committal of Juvenile Delinquents in Borstal Institutions in Nigeria' (2023) 26(3) *African Journal for the Psychological Studies of Social Issues*.

¹⁰⁵ Yemi Akinseye-George, *Crime Control and the Administration of Criminal Justice in Nigeria* (LexisNexis 2011) 214.

¹⁰⁶ Bright E. Oniha (n 20).

¹⁰⁷ *Ibid.*

¹⁰⁸ Bryan A Garner, *Black's Law Dictionary* (11th edn, Thomson Reuters 2019) 1152.

it defined a non-custodial sentence as, a criminal sentence (such as probation) not requiring prison time.¹⁰⁹ In other words, the sentence is served outside the physical facility designated as a prison.

Non-custodial sentencing refers to an approach used as an alternative to jail incarceration, where the offender stays at liberty but under the control of the court.¹¹⁰ The fundamental principle behind such sentences is not necessarily punishment but rehabilitation. This is based on the notion that there are some offenders who can be reformed without being incarcerated.¹¹¹ Non-custodial sentencing is mostly used when the crimes committed by the defendants are not too grave, and when imprisonment is not seen as appropriate for such cases.¹¹² The contemporary system encourages non-custodial sentencing in place of imprisonment for the purpose of decongesting prisons and rehabilitating the offenders.¹¹³ This system aims at transforming the offender while maintaining the relationship he has with his society and family.¹¹⁴ Community corrections give more opportunities for rehabilitation than custodial sentences. In the Netherlands for instance, prisons are now being shut down due to declining prison population or lack of prisoners and rate of incarceration. Many of these empty prisons have now been converted to schools, hotels or cultural centres.¹¹⁵ Similar trend exists in Sweden, Germany, Liechtenstein, Bulgaria, the Czech Republic, Romania, the Baltic States and many other countries.¹¹⁶ Apart from incarceration, the judge may also decide on giving the convict a non-custodial sentence that can come from a variety of non-custodial sentences

¹⁰⁹ Oniha (n 20).

¹¹⁰ Onuigbo IA and Nkolo EC, 'The Necessity of Non-Custodial Sentencing and Restorative Justice in the Administration of Criminal Justice System in Nigeria' (2024) 8(2) *African Journal of Law and Human Rights* 171.

¹¹¹ Onuigbo IA and Nkolo EC, 'The Necessity of Non-Custodial Sentencing and Restorative Justice in the Administration of Criminal Justice System in Nigeria' (2024) 8(2) *African Journal of Law and Human Rights* 171.

¹¹² Andrew Ashworth and Rory Kelly (n 84).

¹¹³ Administration of Criminal Justice Act 2015, s 453-460.

¹¹⁴ Onuigbo 1A and Nkolo EC (n 107).

¹¹⁵ Bright E. Oniha (n 20).

¹¹⁶ Ibid.

that can be imposed by a court on a criminal offender.¹¹⁷ Other penalties are imposed on the offender, which include, but are not limited to probation, parole, community service, restitution, suspended sentences, fines, and rehabilitation programs.

i. Fine

Fine is the penalty which involves the imposition of payment of a particular amount of money as a consequence of the offence committed by the offender in the court of law.¹¹⁸ Fine is imposed by the courts: as the only form of punishment; along with imprisonment; or in lieu of imprisonment if the offender does not pay.¹¹⁹ It is provide for under Section 420 of the Administration of the Criminal Justice Act 2015. It is especially appropriate for regulatory offenses, traffic offenses, and petty offenses. The alternative of fine has its own merits. For one thing, the system is very economical because it does not take much cost to implement, and at the same time produces revenues that can help reduce the cost of running the system.¹²⁰ Aside from that, imposition of fine does not tarnish the reputation of the offender or deprive him of his job.¹²¹ Moreover, in cases when the offense is committed by a business entity such as a corporation, imposition of fine becomes appropriate.¹²² Nevertheless, there are some demerits associated with imposition of fine as well. The payment of the fine could be made by friends or relatives of the offender. The over-use of fine could result in inequality, whereby rich

¹¹⁷ Nidirect Government Services, 'Non-custodial Sentences' <<https://www.nidirect.gov.uk/article/non-custodial-sentences>> accessed 26 May 2026.

¹¹⁸ Bright Edokwe, 'Non-Custodial Punishment in Nigeria' December 20, 2021 < https://barristerng.com/non-custodial-punishment-in-nigeria/?utm_source> accessed 26 May 2026.

¹¹⁹ Ibid.

¹²⁰ Onuigbo IA and Nkolo EC, 'The Necessity of Non-Custodial Sentencing and Restorative Justice in the Administration of Criminal Justice System in Nigeria' (2024) 8(2) *African Journal of Law and Human Rights* 171.

¹²¹ Ibid.

¹²² Ibid.

offenders would be able to pay up while less privileged offenders would get imprisonments upon default.¹²³

ii. Probation

Probation can be defined as an alternative form of incarceration that is based on an imprisonment, suspended upon a condition where the offender continues to live in the community while being supervised to meet certain conditions set by the court.¹²⁴ As opposed to imprisonment, probation does not involve isolating offenders from society. A judicial decree that permits a convicted offender to be placed under supervision within the community rather than incarcerated because of the necessity to serve time in prison.¹²⁵ Probation, therefore, means the provision of a tailor-made program whereby an offender who still has a chance of reform is granted an opportunity to do so without the harshness of being behind bars.¹²⁶ One of the positive aspects of probation is that it ensures that the offender is not stigmatized by society as an ex-convict and facilitates his rehabilitation back into society and, on the economic front, the government stands to gain from probation since it is more economical as compared to imprisonment.¹²⁷ In *Re Bowler*, the Appeal Court ruled that the offender ought to have been put on probation based on the ground that the offender was of good character, a diligent and faithful employee who had stooped to only one instance of dishonesty. Sections 453 to 459 of the ACJA relate to probation.

¹²³ Idemudia Edetalehn Oaihimire and Paul Atagamen Aidonojie, 'The Innovative Concept and Issues Concerning the Non-Custodial Sentence in Nigerian Criminal Justice System' (2023) 5(3) *Law Development Journal* 358 <<https://jurnal.unissula.ac.id/index.php/ldj/article/view/26640>> accessed 26 May 2026.

¹²⁴ Bright E. Oniha (n 20).

¹²⁵ Idemudia Edetalehn Oaihimire and Paul Atagamen Aidonojie, (n 120).

¹²⁶ Onuigbo IA and Nkolo EC (n 117).

¹²⁷ Ibid.

iii. Community Service

Community service refers to a sentence whereby a person who has been found guilty of committing a crime can be made to do community work that is unpaid. The offender works for the good of the community, rather than being incarcerated in prison.¹²⁸ Community service sentencing is based on restorative justice concepts and seeks to repair any harm done while allowing the offender to stay in society. It is provided for under Section 460 (1&2) of the Administration of Criminal Justice Act 2015. The Act restricts its scope of application to minor crimes, especially cases where there is no need for incarceration, and the offender is neither habitual nor violent.¹²⁹ Thus, community service is not a punishment on its own but rather an institutionalized form of punishment meant to be constructive and punitive.¹³⁰

iv. Parole

Parole can be defined as the form of post-trial correction where the convicted person is released from prison custody prior to serving out the entire period of his/her imprisonment, under certain conditions, which serves to facilitate the reintroduction of such offenders back into the mainstream of society.¹³¹ The modern discourse on criminal justice clearly describes parole as a process that involves the conditional discharge of inmates who have been rehabilitated, well-behaved, and have little potential risk of re-offending in the society.¹³² Parole is provided for under the Nigeria Correctional Service Act 2019 in Nigeria as a non-custodial approach to corrections in addition to incarceration.¹³³

¹²⁸ United Nations Standard Minimum Rules for Non-Custodial Measures (The Tokyo Rules) UNGA Res 45/110 (14 December 1990).

¹²⁹ Idemudia Edetalehn Oaihimire and Paul Atagamen Aidonojie (n 120).

¹³⁰ Onuigbo IA and Nkolo EC (n 117).

¹³¹ United Nations Standard Minimum Rules for Non-Custodial Measures (The Tokyo Rules) UNGA Res 45/110 (14 December 1990).

¹³² UK Parliament, 'Parole: Release from Prison' (UK Parliament Briefing Paper, 2024)

<[https://researchbriefings.files.parliament.uk/documents/CBP-10332/CBP-10332.pdf#:~:text=Clause%2024\(1\)%20would%20broaden%20the,supervision](https://researchbriefings.files.parliament.uk/documents/CBP-10332/CBP-10332.pdf#:~:text=Clause%2024(1)%20would%20broaden%20the,supervision)> accessed 26 May 2026.

¹³³ Nigeria Correctional Service Act 2019, s 40.

v. Restitution and Rehabilitation Programs

The essence of the restitution punishment, which is a non-custodial sentence imposed by the courts, is the restoration of loss of property, funds, or other valuables suffered by the victim due to the criminal activities of the person.¹³⁴ In the laws of Nigeria on criminal justice, it is recognized that restitution is a sentencing power available to the courts and it must not be confused with fines since it is focused more on the victim than the state.¹³⁵

2.2 Theoretical Framework

2.2.1 Retributive Theory

The retributive theory suggests that the perpetrator should receive punishment that matches the seriousness of the crime committed and retribution views the act of punishment as just in itself, not as something that brings social gains in the future.¹³⁶ It may be represented by the “just desert” which implies that punishment can be justified because the offender deserved it and not because of future benefits such as deterring others from offending or rehabilitating offenders.¹³⁷ The theory of retribution has a role to play within the context of society, in so far as it allows condemning acts of criminality and expressing societal values. One of the key proponents of retributivism is Kant¹³⁸, who saw it as an ethical obligation and, the reason why punishment is needed, according to Kant, is not to deter people from committing a crime but rather that criminals deserve to suffer for what they did. Hegel¹³⁹ made another significant contribution to the theory of retribution, suggesting that punishment should be viewed as the negative of crime, thus correcting an illegality caused by the offender. Retributivism finds its application in

¹³⁴ United Nations Office on Drugs and Crime, Handbook on Restorative Justice Programmes (UN 2006).

¹³⁵ Idemudia Edetalehn Oaihimire and Paul Atagamen Aidonojie (n 120).

¹³⁶ John Cottingham, 'Varieties of Retribution' (1979) 29(2) *The Philosophical Quarterly* 238, 238–246.

¹³⁷ Dirk van Zyl Smit (n 89).

¹³⁸ I. Kant, *The Metaphysics of Morals* (Cambridge University Press 1996) 313- 317.

¹³⁹ GWF Hegel, *Elements of the Philosophy of Right* (1821).

practical criminal justice processes by way of punishment, mandatory minimum sentence laws, and proportional sentencing policies.

The Nigerian criminal law demonstrates retribution in the form of statutes contained in the Criminal Code Act and Penal Code, which provide for penalties in accordance with the severity of the crime committed.¹⁴⁰ The concept of retribution is most visible in cases of murder, rape, and robbery, which attract severe imprisonment. In *Okonkwo v. State*,¹⁴¹ the Court of Appeal ruled that the sentencing should take into account the seriousness of the crime and the necessity of demonstrating disapproval in society. According to H.L.A. Hart,¹⁴² the doctrine of retribution supports the morality of punishment since it means that only those found guilty will be punished without any arbitrariness. Michael Moore¹⁴³ advocates for retributivism since moral misconduct creates an obligation for punishment, and not punishing offenders is injustice in itself.

2.2.2 Deterrence Theory

This theory is an example of utilitarian punishment that suggests that criminal punishments should be justifiable due to their ability to prevent future criminal activity through dissuading offenders and the population from criminal activity.¹⁴⁴ Thus, this theory is focused exclusively on future implications of punishment without considering whether a certain action committed in the past was morally bad or not.¹⁴⁵ Since the theory believes that people behave rationally while assessing the cost and benefit of the decisions made by them, the fear of punishment will help them make different choices.¹⁴⁶ In *Odunlami v Nigerian Navy*¹⁴⁷, where the Court of

¹⁴⁰ Cap C38 LFN 2004; Cap P3 LFN 2004.

¹⁴¹ (1998) 8 NWLR (Pt 561) 210 (CA).

¹⁴² HLA Hart, *Punishment and Responsibility* (Oxford University Press 1968), 9-10.

¹⁴³ Michael Moore, *Placing Blame: A Theory of Criminal Law* (Oxford University Press 1997) 204- 210.

¹⁴⁴ Cesare Beccaria, *On Crimes and Punishments* (Create Space Independent Publishing Platform 2009).

¹⁴⁵ Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation: A New Edition* (Oxford University Press 2023) 178.

¹⁴⁶ Andrew Ashworth, *Principles of Criminal Law* (Oxford University Press 2023) 24-29.

¹⁴⁷ (2013) 12 NWLR (Pt 1367) 20.

Appeal commented on the significance of sentencing and further held that the imposition of proper sentences for the offence amounts to deterrence for others. There are two types of deterrence; one of them refers to discouraging people from performing criminal activities, while the other one focuses on preventing offenders from repeating their actions.¹⁴⁸ Deterrence theory has been strongly linked with classical utilitarianism, especially with regards to Beccaria¹⁴⁹ and Bentham's¹⁵⁰ contributions that maintained the principle that there should be more social gain from punishment rather than loss. The main principles according to Beccaria are that punishment must be inevitable, prompt, and proportional because otherwise it will fail to act as a deterrent measure against criminal behavior. According to Bentham's view, man's actions were motivated by his need for pleasure and avoidance of pain. Consequently, punishment acted as an effective deterrent against criminal activity.

In deterrence theory, the fear of being punished may serve as a means to deter people from engaging in criminal activities through the prevention of such behavior. Though deterring people is possible with the use of punishment, deterrence will only be effective if there is a great probability of punishment rather than a greater degree of punishment. Thus, improving the certainty of punishment will result in better outcomes for deterring crime.

2.2.3 Reformative and Rehabilitative Theories

This theory is built on the concept that criminal behavior can be a result of social, psychological, financial, or environmental conditions, and that criminals can be reformed through corrections.¹⁵¹ As opposed to the retributive theory that is based on retaliation and the deterrence theory which aims at preventing crimes through the threat of punishment, the

¹⁴⁸ Mark C Stafford and Mark Warr, 'A Reconceptualization of General and Specific Deterrence' (1993) 30 *Journal of Research in Crime and Delinquency* 123.

¹⁴⁹ Cesare Beccaria (n 141).

¹⁵⁰ Jeremy Bentham (n 142).

¹⁵¹ James McGuire, *The Cambridge Handbook of Forensic Psychology* (Cambridge University Press 2010), ch 3.8 'Rehabilitation of Offenders'

reformatory theory stresses on behavioral modification, moral regeneration, and social rehabilitation, and as such, the theory sees criminals as people who can be reformed through education, job training, counseling, psychiatric treatment, probation, parole, and other correctional measures.¹⁵² In this regard, the perspective holds that punishment should be personalized in order to treat the underlying causes of criminal behavior and aid in rehabilitating the offender back into society. According to the ruling in the case of *Omoregie v State*,¹⁵³ there should be a balance between punishment and rehabilitation in sentencing. Cesare Lombroso¹⁵⁴, one of the early criminologists associated with rehabilitative thought, believed that criminal behavior is generally a result of biological and/or environmental factors and therefore requires rehabilitation rather than punishment.

Theorists like Edwin Sutherland¹⁵⁵ have argued that criminals learn the art of committing crimes through socialization; similarly, they can also be reformed by positive socialization and corrective measures. The purpose of rehabilitation is to prevent the offender from committing crimes again by treating the causes of such criminal activity and giving offenders useful skills.¹⁵⁶ Since this happens through effective rehabilitation programs, there are fewer chances of committing crimes again. This is because, when one rehabilitates too much, the effect of fear of punishment diminishes.¹⁵⁷ Modern crime prevention and correctional administration according to scholars like Yemi Akinseye-George¹⁵⁸ should be focused on restorative and

¹⁵² Dada DD Ihua-Maduenyi, 'Understanding the Non-Custodial Sentencing Provisions in Nigerian Law' *BarristerNG* (2020) <<https://barristerng.com/understanding-the-non-custodial-sentencing-provisions-in-nigerian-law/>> accessed 26 May 2026.

¹⁵³ (2018) LPELR-45106 (CA).

¹⁵⁴ Cesare Lombroso, *Crime: Its Causes and Remedies* (Little Brown & Co 1911) 365.

¹⁵⁵ Edwin H Sutherland, *Principles of Criminology* (4th edn, JB Lippincott 1947) 5.

¹⁵⁶ EO Akingbehin, 'Imprisonment as a Penal Policy': Quest for The Deinstitutionalization of Nigeria's Penal System' (2019) *University of Maiduguri Law Journal* 222.

¹⁵⁷ Ibid.

¹⁵⁸ Yemi Akinseye-George, *Crime Control and Criminal Justice Administration in Nigeria* (Princeton Publishing 2019) 214.

reformatory means for purposes of sustainable crime prevention as well as decongestion of correctional institutions.

2.2.4 Restorative Theory

Restorative theory of criminal justice, popularly known as restorative justice, is an emerging form of theory of punishment, which mainly involves the rehabilitation and compensation of damage caused by criminal activities instead of punishing the offender.¹⁵⁹ In contrast to retributive theory, which considers criminal acts to be offences against the state that need to be punished, restorative justice considers criminal acts to be an offence against people who must be restored through reconciliation and restoration. The restorative theory of criminal justice makes offenders, victims, and the community as key participants of the judicial process and the core of the restorative theory of criminal justice is to restore relationships and bring about social harmony.¹⁶⁰ Restorative justice can be traced to ancient and indigenous justice processes where conflicts were solved through reconciliation, compensation, and community participation.¹⁶¹ The justice process in Africa was restorative in nature, involving confession, apologies, compensation, and reconciliation.¹⁶²

Howard Zehr,¹⁶³ who is considered as the founder of restorative justice, explains restorative justice as the process wherein parties affected by the crime are involved in determining and dealing with harm, needs, and obligations. In the same way, John Braithwaite¹⁶⁴ defines restorative justice as the process where all the parties involved in an offense collectively deal with the consequences of the offense and its impact on the future. For Tony Marshall,¹⁶⁵

¹⁵⁹ Howard Zehr, *The Little Book of Restorative Justice* (Good Books 2002, United States of America) 10.

¹⁶⁰ Tony F Marshall, *Restorative Justice: An Overview* (Home Office Research, Development and Statistics Directorate 1999) 5.

¹⁶¹ BR Akinbola, 'Restorative Justice and Its Reflections in the Administration of Justice under Nigerian Customary Law' (2016) *University of Ibadan Institutional Repository* <<http://ir.library.ui.edu.ng/handle/123456789/4978>> accessed 26 May 2026.

¹⁶² Ibid.

¹⁶³ Howard Zehr (n 154).

¹⁶⁴ John Braithwaite, *Crime, Shame and Reintegration* (Cambridge University Press 1989) 100.

¹⁶⁵ Tony F Marshall (n 155).

restorative justice is as a process where all the parties involved in a particular offense collectively address how to deal with the consequences of the offense and its future impacts. According to criticism, there is also the possibility that restorative justice may not be suitable for dealing with violence or crimes in which there are major power imbalances.¹⁶⁶ The restorative theory reflects a progressive and humane philosophy in the field of criminal justice where healing is sought between victims, offenders, and communities, unlike the punitive philosophies of crime and punishment, restorative justice is all about healing.¹⁶⁷

¹⁶⁶ HLA Hart (n 139).

¹⁶⁷ Theo Gavrielides, *Restorative Justice Theory and Practice* (Routledge 2007 United Kingdom) 45.

CHAPTER THREE

LEGAL FRAMEWORK FOR NON-CUSTODIAL AND CUSTODIAL SENTENCING OPTIONS IN NIGERIA

3.1 The Constitution of the Federal Republic of Nigeria (1999) as amended

According to Section 1(1) of the the Nigerian constitution¹⁶⁸ which is the supreme law of the land, provides the framework within which criminal justice administration is carried out. Despite the fact that the constitution does not have any specific provision on non-custodial sentencing, the general provisions in the constitution are sufficient enough to give constitutional underpinning to non-custodial sentencing.

Norrie¹⁶⁹ believes that in modern times, criminal justice has evolved from being wholly retributivist in its approach to sentencing into adopting models that take into account rehabilitation, restoration, and reintegration of offenders back into society. In the same line of reasoning, Ashworth¹⁷⁰ has argued that in modern sentencing, there is the need to strike a balance between punishment and rehabilitation, especially when dealing with offenders who are not violent.

In the same vein, the aforementioned perspectives asserts that for Nigeria's criminal justice system to successfully correct offenders through the process of sentencing, it would need to move beyond the sole reliance on imprisonment as a corrective strategy. They need to focus more on how to reform the offender, instead of placing him behind bars with every tendency to still repeat the offence, if released. Constitutional supremacy is among the key constitutional bases of non-custodial sentencing. The Constitution in its section 1(1) provides that: 'This

¹⁶⁸ The Constitution of the Federal Republic of Nigeria 1999 (as amended).

¹⁶⁹ Alan Norrie, *Crime, Reason and History* (4th edn, Cambridge University Press 2014) 379.

¹⁷⁰ Andrew Ashworth, *Sentencing and Criminal Justice* (6th edn, Cambridge University Press 2015) 89.

Constitution is supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria.’¹⁷¹

In addition, section 1(3) states that ‘if there is an inconsistency between the Constitution and other laws, the Constitution takes priority and the other law shall be declared void insofar as the inconsistency exists.’¹⁷²

According to Nwabueze,¹⁷³ constitutional supremacy serves as the basis of constitutionalism since it guarantees that all government authorities act in accordance with the Constitution. In a similar vein, Ben Nwabueze asserts that constitutional supremacy underpins constitutionalism by guarding against the arbitrary use of governmental power and holding authorities accountable to the Constitution.¹⁷⁴ This principle is evident in *Attorney-General of Abia State v. Attorney-General of the Federation*,¹⁷⁵ where the court upheld the supremacy of the Constitution and reiterated that all legislation gets its legitimacy from the Constitution.

The importance of constitutional supremacy in relation to non-custodial sentencing is the fact that all laws that have been developed to aid in the administration of criminal justice, including the Administration of Criminal Justice Act 2015 and the Nigeria Correctional Service Act 2019, which have their foundation in the Constitution. As such, the legality of non-custodial sentencing must adhere to constitutional demands since the essence of non-custodial sentencing entails respect for human rights and rehabilitation.

Another critical constitutional justification for non-custodial sentencing is provided in section 34(1) of the Constitution concerning the right to the dignity of the human person. According to this subsection, ‘any form of torture, inhuman treatment, and degrading treatment of human

¹⁷¹ CFRN 1999 (as amended), s 1(1).

¹⁷² Ibid, s 1(3).

¹⁷³ Ben Nwabueze, *Constitutional Democracy in Africa* (Spectrum Books Ltd, Ibadan 2003) 41.

¹⁷⁴ Ibid.

¹⁷⁵ (2002) 6 NWLR (Pt 763) 264.

beings is prohibited.’ As posited by Aiyedun and Adebayo,¹⁷⁶ respect for human dignity entails the adoption of punishment in criminal justice administration systems that take into consideration, the ability of offenders to be reformed rather than punishment alone. Likewise, Oaihimire and Aidonojie¹⁷⁷ that pointed out that the philosophy behind non-custodial sentencing acknowledges that offenders retain their fundamental human rights despite committing crimes. These sentiments are convincing, and even though detention is legal, under the law as one of the forms of punishment, the harshness of overcrowded prisons in Nigeria shows that the state has not lived up to its responsibility as provided for in the constitution by ensuring the protection of human dignity. The overcrowding of prisons infringes not only the domestic but also the international human rights conventions, such as the ICCPR (International Covenant on Civil and Political Rights) and the ACHPR (African Charter on Human and Peoples' Rights). Therefore, a non-custodial sentence serves as a means through which one can receive a punishment without facing the various social and psychological impacts of being in prison.

The other aspect is the ‘right to personal liberty’, according to section 35 of the Constitution¹⁷⁸, which also pushes the notion of non-custodial sentencing. Freedom is among the most fundamental rights that are enshrined in the Constitution and the core of all democratic nations. Freedom grants an individual a right to conduct their life without undue state interference. Thus, for any deprivation of liberty to occur, there should be legal justification. It is considered that such constitutional rights justify the application of non-custodial sentencing in the context of situations when the objectives of sentencing can be reached without the offender being

¹⁷⁶ OA Aiyedun and AA Adebayo, ‘Human Rights and Penal Reform in Nigeria’ (2018) 9(2) *Nigerian Journal of Legal Studies* 112.

¹⁷⁷ Idemudia Edetalehn Oaihimire and Paul Atagamen Aidonojie, ‘The Innovative Concept and Issues Concerning the Non-Custodial Sentence in Nigerian Criminal Justice System’ (2023) 5(3) *Law Development Journal*.

¹⁷⁸ CFRN s 35.

deprived of their liberty. According to Ashworth,¹⁷⁹ imprisonment is among the most invasive forms of state action and should thus only be used where less intrusive punishments have proved ineffective. According to Tonry,¹⁸⁰ an over-reliance on incarceration often has more social cost than benefit, especially for low-risk offenders. The above view is based on the belief that imprisonment should be used as a measure of last resort, especially when alternative forms of punishment can serve the sentencing purposes. In addition, section 36¹⁸¹ of the Constitution provides for the ‘right to a fair hearing’. According to Okeke,¹⁸² the right to fair hearing goes beyond determining guilt and includes procedural fairness in sentencing proceedings. As such, judges have to take into consideration all the mitigating and aggravating factors before sentencing offenders to punishment.

It can thus be said that an approach to sentencing that tends to favor imprisonment of offenders without taking other forms of punishment into consideration violates the purpose of individualized punishment. Non-custodial sentencing can be seen as being fair because it enables the courts to impose punishment that is proportionate to the circumstances of the particular offender and his or her offence. In such instances, people will develop more trust in the administration of criminal justice than when the sentencing is mechanical and uniform in nature. Even though there is no specific mention of non-custodial sentencing in the constitution, there are many provisions of the constitution that justify the adoption of the principle. Constitutional supremacy, respect for human dignity, personal liberty, and fair hearing are sufficient grounds for adopting the principles of non-custodial sentencing.

¹⁷⁹ Andrew Ashworth, *Sentencing and Criminal Justice* (6th edn, Cambridge University Press 2015) 102.

¹⁸⁰ Michael Tonry, *Sentencing Matters* (Oxford University Press 1996) 67.

¹⁸¹ CFRN s 36.

¹⁸² G N Okeke, *Constitutional Law and Practice in Nigeria* (2nd edn, SNAAP Press 2018) 233.

3.2 Non-Custodial Sentencing under Administration of Criminal Justice Act (ACJA)

2015

The adoption of non-custodial sentencing through the Administration of Criminal Justice Act (ACJA) of 2015 is indicative of the paradigm shift from a punitive-oriented criminal justice administration system to a more rehabilitative and restorative system in Nigeria. Before the passing of the Administration of Criminal Justice Act (ACJA), the main legislation governing crimes and punishment in Nigeria was the Criminal Procedure Act¹⁸³ and Criminal Procedure Code¹⁸⁴, both of which favoured custody over other forms of punishment for criminals. According to the doctrines of Yunus,¹⁸⁵ the criminal justice system in Nigeria before the enactment of the ACJA was inefficient and lacked trust due to its heavy dependence on custodial sentencing.

As such, the importance of history and context here is that the problem being addressed through the passage of the ACJA was the inherent inefficiencies of the criminal justice system before it. Globally, the trend towards non-custodial methods is consistent with the United Nations Standard Minimum Rules for Non-custodial Measures (Tokyo Rules).¹⁸⁶ These rules suggest that states should pursue alternative forms of sentencing to alleviate prison overcrowding and facilitate the rehabilitation of offenders. It is clear that this global normative standard supports the reform-oriented approach espoused by the ACJA. This global standard conformity is one of the strongest indicators of the gradual adoption of global trends in Nigeria.

¹⁸³ Cap C41 LFN 2004.

¹⁸⁴ Cap C42 LFN 2004.

¹⁸⁵ Abdulqayum K Yunus, 'Ten Years of ACJA: Evaluating the Impact of the Administration of Criminal Justice Act 2015 in Nigeria' (SSRN, 2025).

¹⁸⁶ United Nations Standard Minimum Rules for Non-custodial Measures (Tokyo Rules) UNGA Res 45/110 (1990) <<https://www.ohchr.org/en/instruments-mechanisms/instruments/united-nations-standard-minimum-rules-non-custodial-measures>> accessed 16 June 2026.

Probation is among the most organized types of non-custodial sentences as per the ACJA 2015. According to Part 44 of the Act, the court, in accordance with Section 454¹⁸⁷ can supervise an offender rather than send him/her to prison, especially when the court takes into consideration certain factors such as the offender's age, character, antecedents, health condition, and minor nature of the offence. According to Omodanisi,¹⁸⁸ probation is among the sentencing practices reflecting the idea that rehabilitation should take place in society instead of within prison walls. In this regard, Bivens¹⁸⁹ defines probation as a community-based form of punishment that combines surveillance and rehabilitation. The two perspectives seem to agree that probation involves the process of reintroducing the offenders to society, rather than punishing them.

Probation officers have the responsibility of supervising the offender and providing him with the necessary advice as well as reporting their compliance to the court. According to Omodanisi,¹⁹⁰ probation officers serve as bridges between the offender and the criminal justice system. It is safe to consider Probation as one of the most innovative alternatives to custodial sentencing under the ACJA 2015 in that, it tailors justice by putting into consideration the offender's social standing. Although, it should also be stressed that its effectiveness greatly depends on institutional capacity, particularly the number and competence of probation officers.

The ACJA also provides for the use of suspended sentences, whereby the court can impose custodial sentences but suspend their implementation either conditionally or unconditionally.¹⁹¹ The idea here is to deter the criminal from engaging in further criminal

¹⁸⁷ Administration of the Criminal Justice Act 2015, s 454.

¹⁸⁸ Kemi Beatrice Omodanisi, 'Evaluating the Application of Probation as a Non-Custodial Sentence under the ACJA 2015: Lessons from Kenya' (2025) 69(2) *Journal of African Law* 307–322.

¹⁸⁹ N Davis Bivens, 'Probation' in WR Miller (ed), *The Social History of Crime and Punishment in America* (Sage 2012).

¹⁹⁰ Omodanisi (n 182).

¹⁹¹ Administration of Criminal Justice Act 2015, s 460.

activity without being sent to jail, especially when he shows signs of having the capacity for reform. Ayinde¹⁹² argues that while the use of suspended sentences is an innovation, there is no clear statute to govern how such sentences are enforced, as well as the consequences in case the suspended sentence is breached. This makes it a matter of considerable judicial discretion, resulting in potential inconsistencies in implementation. The use of suspended sentences is necessary but needs to be well governed to avoid inconsistencies.

It should be acknowledged that community service, as stipulated under Section 460¹⁹³, is perhaps the most obvious manifestation of the government's efforts to make Nigerian sentencing policies restorative rather than merely retributive in their essence.¹ In the context of requiring the guilty person to participate in some voluntary activities, community service enables an offender to contribute something to his/her social community while being punished for the committed act, which in its turn allows the offender to maintain economic and social ties despite having been sentenced for an offence.

As Shajobi-Ibikunle and Adenyuma¹⁹⁴ note, the main motivation for adopting the policy of community service in Nigeria consisted in solving the problem of overcrowded prisons and inefficient sentencing practices that often led to failure to impose proper punishment on minor crimes. At the same time, Shajobi-Ibikunle and Adenyuma define community service in the framework of restorative justice, where sentencing is understood as something aimed at healing a wrong rather than imposing punishment as the end result. This argument is quite reasonable. This framework of restorative justice provides one of the best theoretical reasons for community service under the ACJA. But, at the same time, the Nigerian setting presents another issue for discussion: restorative justice requires certain levels of institutionally

¹⁹² Dare Joseph Ayinde, 'Towards an Effective Use of Suspended Sentence in Nigeria: Lessons from South Africa' (2023) 3(1) *Redeemer's University Nigeria Journal of Jurisprudence and International Law* 1.

¹⁹³ ACJA 2015, s 460.

¹⁹⁴ Gloria Shajobi-Ibikunle and Gabriel Adenyuma, 'An Appraisal of Community Service as a Non-Custodial Sanction under the ACJA' (2019) *KIU Law Journal* 105–122.

coordinated efforts and social relations that have not yet formed sufficiently well within the criminal justice system of Nigeria. Thus, the benefits of the theory may prove themselves difficult to implement without such strong administrative infrastructure.

The ACJA also defines the terms under which community service can be imposed on offenders. Individuals who committed sexual offences, armed crimes, or were sentenced for committing crimes punished with imprisonment for more than three years are not eligible for the community service.¹⁹⁵ Implementation of this kind of community service should be overseen by Community Service Centres, mentioned in Section 461.¹⁹⁶ Proportionality is ensured by in this section, which sets certain limits on the duration of community service and daily work performed by the offender. With respect to its implications, community service appears be the most productive non-custodial penalty in accordance with ACJA, since punishment becomes an asset to the society as opposed to cases where punishment serves as a loss to society when prisoners are incarcerated without providing anything in exchange. Nevertheless, there are some drawbacks attached to community service sanctions since the effectiveness of such a form of punishment is conditional upon consistency, acceptability, and availability of financial resources. Detention in rehabilitation or correctional centers is another form of non-custodial sanction that the ACJA of 2015 recognizes. According to section 467¹⁹⁷ of this Act, the court may direct the use of this sanction when the behavior of the offender can be attributed to factors like social, psychological, or health issues. This shows how therapy is being applied as part of the criminal justice process in Nigeria, with an emphasis on behavioral change and correction rather than punishment.

¹⁹⁵ ACJA 2015, s 406(3).

¹⁹⁶ ACJA 2015, s 461–462.

¹⁹⁷ ACJA 2015, s 467.

Andrews and Bonta¹⁹⁸ point out that successful corrections require addressing ‘criminogenic needs’ such as addiction and psychological problems rather than using incarceration alone. Rotman¹⁹⁹ also observes that rehabilitation is one of the central principles of contemporary corrections, especially where incarceration cannot meet the objectives of correction. This concept is important in the context of Nigeria due to the nature of offenses that tend to be motivated by economic or psychological reasons, but its implementation will depend on whether such correctional centers have capacity for therapeutic treatment of offenders.

The other important non-custodial method in ACJA is Parole. Section 468²⁰⁰ provides for the conditional release of the offender before the expiry of the sentence. The objective of parole is to enable the reintegration of the offender into society and avoid future offences. According to Bottoms²⁰¹, parole is seen as a method for structured reintegration that links custodial measures to total freedom from supervisory control through continuous surveillance. Parole, just like others, goes beyond imprisonment as a corrective measure and ensures that the offenders exhibit responsible behavior while incarcerated, but in the case of Nigeria, this might not achieve the intended objective due to the absence of effective supervisory frameworks. If the supervisory frameworks are solid and guaranteed, then these measures will blend it smoothly.

3.3 Non-Custodial Sentencing under the Administration of Criminal Justice Laws of Various States.

Since the passing of the ACJA, some states have domesticated the provisions of the Act by enacting the Administration of Criminal Justice Laws (ACJLs). These states include; Lagos, Ekiti, Ondo, Kaduna, Kano, Rivers, Delta, Anambra, Oyo, and Imo. While the provisions

¹⁹⁸ Don Andrews and James Bonta, *The Psychology of Criminal Conduct* (6th edn, Routledge 2017).

¹⁹⁹ Edgardo Rotman, ‘The Failure of Reform: United States, 1865–1965’ (1986) 3 *Crime and Justice* 267.

²⁰⁰ ACJA, s 468.

²⁰¹ Anthony Bottoms, ‘The Philosophy and Politics of Punishment and Sentencing’ (1995) 25 *Crime and Justice* 17.

differ, their aim is still similar, which is to minimize the use of imprisonment and promote restorative justice.

i. Non-Custodial Sentencing under the Administration of Criminal Justice Laws of Lagos State.

One of the most progressive initiatives in reforming the criminal justice process in sub-national areas in Nigeria is the Administration of Criminal Justice Law of Lagos State, especially because of its marked deviation from being solely oriented towards punishment and its focus on efficiency, proportionality, and rehabilitation. As pointed out by scholars like Alemika and Chukwuma,²⁰² Lagos State has been at the forefront in reforming its criminal justice process through innovations meant to alleviate prison overcrowding and improve case management in the process. What characterizes this law is its explicit move away from punishment-based sentencing towards an insistence on proportionate sentencing. One of the major provisions in the Law is the establishment of non-custodial sentencing alternatives such as community service, probation, restitution, and compensation. Moreover, as argued by Alemika,²⁰³ such sentencing options become imperative in places where there is already prison overcrowding. This is even more relevant in a state like Lagos. Interestingly, the Lagos ACJL supports restorative justice by providing courts with a provision of imposing community service orders and victim-oriented measures. The Law also makes provisions for probation schemes, case management, plea bargaining, compensation and rehabilitation limitations on remand period, and better cooperation between criminal justice agencies. The organizational capacity and implementation are still significant obstacles. Although the Lagos ACJL is viewed as an advanced framework for the criminal justice system with some progressive characteristics, it

²⁰² AGL Alemika and IC Chukwuma, *Criminal Justice and Police Reform in Nigeria* (CLEEN Foundation 2005).

²⁰³ Ibid.

cannot be effective without proper judicial performance and enforcement by institutions. This model can be considered among the most reformist in the country.

ii. Non-custodial Sentencing under the Administration of Criminal Justice Law of Rivers State.

The Administration of Criminal Justice Law of Rivers State mirrors the general post-2015 trend in Nigeria regarding criminal justice process efficiency and leniency in penalties via non-custodial sentencing reforms. As suggested by Bolaji Owasanoye,²⁰⁴ ACJL changes in Nigeria are motivated less by ideological concerns and more by an immediate need to reduce congestion in correctional facilities and enhance the performance of justice delivery outcomes. In a same vein, Ernest Ojukwu²⁰⁵ sees state ACJLs as ‘pragmatic justice engineering’ aimed at correcting existing flaws associated with procedural delays and over-incarceration. The Administration of Criminal Justice Law of Rivers State should be regarded as a pragmatic tool of reform, rather than an innovative doctrine. One of the key innovations made by the law concerns the option of imposing community service sentences instead of incarceration on the defendants in case of petty offenses. The Law makes it possible for qualified offenders to stay within the community in a supervised environment, thus reducing the chances of exposing young offenders to criminal behavior. This would increase the likelihood of their social rehabilitation.

²⁰⁴ Bolaji Owasanoye, ‘Decongesting Nigerian Correctional Centres through Legal Reform’ (2018) *Nigerian Institute of Advanced Legal Studies Working Paper*.

²⁰⁵ Ernest Ojukwu, *Alternative Dispute Resolution and Criminal Justice Reform in Nigeria* (Lagos University Press 2017).

iii. Non- Custodial Sentencing under the Administration of the Criminal Justice Laws of Oyo State 2016.

Another distinguishing feature of the Administration of Criminal Justice Law of Oyo State²⁰⁶ relates to the degree of attention that the legislation provides regarding the issue of probation and alternative measures to custody. It should be stressed that the existence of a whole Part that discusses this topic shows that there was an intentional effort to consider rehabilitation as one of the main goals of sentencing. What should be noted about the Oyo State ACJL is that, unlike other ACJLs that recognize non-custodial sanctions, the Oyo State ACJL contains clear provisions concerning how these sanctions will be managed and under what conditions they can be applied. In other words, this legislation is a perfect example of moving from punishment-centered sentencing into balancing accountability and reintegration of offenders.

Another groundbreaking provision contained within section 442²⁰⁷ of the ACJL is that the court is at liberty to discharge the offender without conviction when imprisonment is not seen as necessary. This entails that not all offenders pose the same danger to the public. Section 442²⁰⁸ takes into account one significant aspect, which is that a first-time offender who committed the crime because of some unusual circumstance does not necessarily have to suffer from the repercussions of his actions, such as being incarcerated and having a criminal record. The discretion accorded to the court when deciding in this regard could take into account aspects like the nature of the accused, including his/her character, background, age, health, and state of mind, as well as how the offense transpired. Norval Morris²⁰⁹ contends that sentencing should revolve around the chances for rehabilitation of the offender more than the seriousness of the crime committed. These characteristics makes the ACJL of Oyo State different from

²⁰⁶ Administration of the Criminal Justice Law of Oyo State 2016.

²⁰⁷ Administration of Criminal Justice Law of Oyo State 2016, s 442.

²⁰⁸ Ibid.

²⁰⁹ Norval Morris, *The Future of Imprisonment* (University of Chicago Press 1974) 59–63.

previous criminal justice systems in that it regards probation as a form of rehabilitation rather than simply an alternative to prison.

iv. Non-Custodial Sentencing under the Administration of Criminal Justice Laws of Anambra State 2010 (as amended 2022).

The Administration of Criminal Justice Law of Anambra State²¹⁰ includes various provisions concerning the use of alternative sentencing approaches, which are quite analogous to those set forth in the Administration of Criminal Justice Act 2015. The ACJL of Anambra State²¹¹ provides for community service to be used as an alternative punishment for certain offenders. Courts can order probation in situations where imprisonment becomes unnecessary. The ACJL²¹² also makes provisions for restitution and compensation orders, which serve as methods for considering the interests of victims. In addition, the law promotes consideration of the facts related to the commission of the offense as well as the circumstances of the offenders prior to making custodial judgments. The Administration of Criminal Justice Law of Anambra State encourages a sentencing model for rehabilitation through community service, probation, restitution, and compensation as opposed to incarceration. According to NOPRIN Foundation, Anambra State was one of the first states in Nigeria to reform its penal code in relation to the ACJL, thus influencing the path that the subsequent legislation on criminal justice in other Nigerian states would take.²¹³ As Andrew Ashworth²¹⁴ emphasizes, non-custodial penalties work well with regard to offenders who commit petty crimes since they prevent offenders from social disintegration and stigmatization related to serving their sentence while at the same time guaranteeing offender's responsibility. Ashworth's opinion on this

²¹⁰ The Administration of Criminal Justice Laws of Anambra State 2010 (as amended 2022).

²¹¹ Ibid.

²¹² Ibid.

²¹³ NOPRIN Foundation, *Report of Review of the Anambra State Administration of Criminal Justice Law* (2018) 5.

²¹⁴ Andrew Ashworth, *Sentencing and Criminal Justice* (6th edn, Cambridge University Press 2015) 325–330.

matter is solid because imprisonment of offenders in petty crimes results in greater social disruption than any correction can be achieved through incarceration.

v. Non-Custodial Sentencing under the Administration of the Criminal Justice Laws of Ekiti State 2014.

The Administration of Criminal Justice Law of Ekiti State, though adopting a moderately flexible sentencing system and without creating an elaborate and separate non-custodial sentencing scheme, contains alternative sanctions against which judges have discretion. Courts may use monetary sanctions, restitution, compensation, and suspended sentences where appropriate, especially in small crimes and first-time offender's cases.²¹⁵ This strategy is meaningful since it represents the realistic philosophy of sentencing where the principle of proportionality is considered before any form of imprisonment.

One of the essential elements of the Ekiti State sentencing system is judicial discretion in deciding whether custody sentences are required or not. This coincides with the sentencing philosophy of Cyrus Tata²¹⁶ where he says that contemporary sentencing involves structured judicial discretion rather than mandatory statutory imposition. The above-mentioned view is understood to mean that, if sentencing is not sensitive to the circumstances of each individual crime, then there may be legal justice with social injustice. The Ekiti State ACJL can be described as a "discretion-led reform model," which suggests that the success of the justice system depends largely upon judicial discretion as opposed to well-developed statutory provisions. Flexibility is the strong point, while the drawback lies in the fact that it demands judicial discretion in favour of non-custodial sentencing.

²¹⁵ Administration of Criminal Justice Law of Ekiti State 2014 (as amended 2022).

²¹⁶ Cyrus Tata, *Sentencing: A Study in the Sociology of Punishment* (Palgrave Macmillan 2019).

3.4 Non-Custodial Sentences under Nigerian Correctional Service Act 2019

The passage into law of the Nigerian Correctional Service Act in 2019 marked a paradigmatic change in the criminal justice thinking of Nigeria from a predominantly punitive, incarcerator-based policy framework to an alternative correctional approach emphasizing rehabilitation, reform, and reintegration of offenders. It is through the Act that non-custodial sentencing is provided as an essential element of the Nigerian corrective system. With Part II, the Nigerian Non-Custodial Service becomes established in order to enforce the provision of community service, probation, parole, restorative justice, among other sentencing options as alternatives to imprisonment, through court orders. This is in line with section 37(1)²¹⁷ of the Act. This form of legislation can be said to support the sentiments held by Francis T. Cullen²¹⁸, who contends that correctional services ought to adopt evidence-based rehabilitation as opposed to too much confinement, which is more likely to prove ineffective in curbing re-offending. The perspective adopted by Francis T. Cullen proves effective in the Nigerian scenario because prisons are usually overstretched and do not have the capacity to rehabilitate effectively. The legislators were right in identifying that confining criminals without solving the problems that led to criminal activities is a failure for everyone. One of the non-custodial forms of punishment recognized under the act includes community service. Community service involves making the offender do some unpaid labor that serves the interests of the community as punishment, while still retaining the offender in society. Unlike in incarceration, where the offender is stripped off his social connections, community service allows him to maintain family and work relations while at the same time doing something good in compensation for his actions.

²¹⁷ Nigerian Correctional Service Act 2019, s 37(1).

²¹⁸ Francis T Cullen and Cheryl Lero Jonson, *Correctional Theory: Context and Consequences* (2nd edn, SAGE Publications 2017) 48.

Community service is legalized under the Nigerian correctional act through section 42²¹⁹ of the Nigerian Correctional Services Act 2019. According to this section, the Controller General can appoint community service supervisors who ensure that the community service order is adhered to. Community service is theoretically justified by the work of Fergus McNeill,²²⁰ who asserts that there is a strong correlation between the success of rehabilitating offenders and the maintenance of positive social relationships as well as participation in community activities.² According to McNeill,²²¹ rehabilitation programs tend to be successful and result in long-lasting changes in behaviour when offenders maintain their connection with social structures that promote responsible citizenship. Therefore, the theoretical justification of community service lies in the fact that the sanction involves both punishment and maintaining offenders' integration into society while taking responsibility for their actions.

Community service seems to be one of the most realistic developments incorporated into the Nigerian Correctional Service Act 2019. Contrary to the incarceration of offenders, which only puts them under negative social influence without tackling the root cause of their crime, community service involves both punishment and social engagement. While the offender experiences restrictions in terms of liberty due to the obligatory performance of certain duties, the community gets services at the same time. The other aspect of the Act that deserves mention is that of probation being recognised as one of the options for sentencing. The Act provides under section 41²²² that the Non-Custodial Service may prepare the pre-sentence report and supervise the offenders under probation. Rob Canton²²³ underscores the importance of probation, stating that it helps courts in dealing with offences in an educational way, using guidance and assistance instead of punishment. According to Canton, the concept of probation

²¹⁹ Nigerian Correctional Service Act 2019, s 42.

²²⁰ Fergus McNeill, *Offender Supervision in Theory, Research and Practice* (Willan Publishing 2009) 61–69.

²²¹ Ibid.

²²² Nigerian Correctional Service Act, s 41.

²²³ Rob Canton, *Probation: Working with Offenders* (Routledge 2011) 24–31.

aims at reforming offenders while letting them participate in society productively. What is found most laudable in relation to the inclusion of probation in Nigeria's correctional scheme is its ability to facilitate individualized sentencing. It makes much sense when the court knows about the offender's history and the offender's prospects of him committing any future crimes.

One of the most creative elements included in the Nigerian Correctional Service Act is the inclusion of concepts of restorative justice. The Act gives power to the Nigerian Correctional Services to conduct restorative justice programs for purposes of achieving reconciliation and offender accountability.²²⁴ This is quite a departure from conventional criminal justice systems where crime is viewed only as an offense against the state. According to Howard Zehr,²²⁵ a crime should be viewed more as the violation of persons and communities, as opposed to a breach of legal statutes. In his view, there is a need for healing of the harm done through victim-offender reconciliation involving victims, offenders, and the affected community. It is especially important in the Nigerian correctional system for restorative justice to be adopted since it represents principles that have always been valued by many African mechanisms of conflict resolution. Restorative justice is a more complex solution to dealing with crimes since it takes into account both the interests of the victims and the responsibility of the offenders. However, the use of such programs cannot become universal, as sometimes harsher punishments are required for some kinds of crimes in order to meet public demands for justice. In order to make these steps work effectively, the Act has established the National Committee on Non-Custodial Measures.²²⁶ Such actions prove that there is a legislative understanding of the need to coordinate institutions in the field of criminal justice reform and to keep developing policy.

²²⁴ Nigerian Correctional Service Act 2019, s 43.

²²⁵ Howard Zehr, *The Little Book of Restorative Justice* (Good Books 2015) 20–25.

²²⁶ National Correctional Service Act, 2019, s 38.

3.5 Legal Regime for Custodial Sentencing in Nigeria

Custodial sentencing serves as the juncture where criminal liability culminates into state-sanctioned deprivation of liberty. This practice is rationalized on several grounds, including retribution, deterrence, rehabilitation, and incapacitation. Andrew Ashworth²²⁷ stated that Sentencing is value-laden a reflection of the way our society sees wrongdoing. However, in Nigeria, there seems to be a conflict amongst some sentencing rationales, particularly when faced with problems like prison overcrowding and delayed court hearings.

Custodial sentencing entails incarceration as a result of conviction for an offense. But this would not be the entire picture because this process involves more than just a judicial order to detain someone. In the Court of Appeal decision of the case of *FRN v Iweka*,²²⁸ there was an affirmation of the imposition of imprisonment for drug trafficking pursuant to NDLEA Act. It found that whenever a particular statute provides for imprisonment, courts must impose it regardless of their sentencing discretion. Punishment can be justifiable based on the utilitarian doctrine, according to Bentham²²⁹, if it leads to better social welfare than harm. Constitutional criminal procedure provisions for custodial sentencing have a foundation in the 1999 Constitution (amended)²³⁰, where personal freedom is guaranteed but can be lawfully deprived through judicial processes. The constitutional provisions allow for the deprivation of personal freedom in form of detention after conviction, as specified in section 35(1).²³¹ This means that the imposition of punishment through incarceration is not the default option, as it can only occur after a fair hearing and upon the order of a court. The right to fair hearing is also provided in section 36²³² and the prohibition of torture is specified in section 34.²³³ These constitutional

²²⁷ Andrew Ashworth, *Sentencing and Criminal Justice* (6th edn, CUP 2015).

²²⁸ (2010) JELR 47823 (CA).

²²⁹ Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation: A New Edition* (Oxford University Press 2023) 178.

²³⁰ CFRN 1999 (as amended).

²³¹ CFRN 1999 (as amended), s 35.

²³² *Ibid*, s 36.

²³³ *Ibid*, s 34.

provisions show clearly that the Nigerian legal system does not see imprisonment as an end by itself, but as a much regulated form of punishment that has to be done within the bounds of the law. It goes without saying that the fact that an individual's freedom can only be taken away following due process underscores the importance attached to personal freedom and the need to protect individuals against any form of government oppression. In addition, the constitutional ban on torture and degrading treatment could have more effect on the administration of custodial sentences. Although incarceration entails deprivation of freedom, it does not mean the deprivation of one's humanity. Indeed, however, issues like overcrowding, lack of facilities, and living conditions in prisons may bring to mind the question whether the goals of custodial sentences are truly being met.

Some scholars such as Okonkwo and Naish²³⁴ posit that the constitutional provisions on criminal procedure are meant to guard against any form of arbitrary punishment or imposition of penalty. However, there seems to be a gap between these constitutional stipulations and reality at custodial institutions, especially the crowded ones. Custodial sentencing in Nigeria is founded largely on two pieces of legislation: the Criminal Code Act²³⁵ and the Penal Code Act.²³⁶ These two acts prescribe imprisonment as a form of punishment for a variety of crimes. In doing so, however, the legislation shows an established practice of using incarceration as the main method of dealing with crime. Recent laws such as the Terrorism (Prevention) Act and the Cybercrimes (Prohibition, Prevention, etc.) Act also mandate stiff custodial sentences for new offenses.

²³⁴ CE Okonkwo and ME Naish, *Criminal Law in Nigeria* (Spectrum Law 2008).

²³⁵ Cap C38, Laws of the Federation of Nigeria (LFN) 2004.

²³⁶ Cap P3, Laws of the Federation of Nigeria (LFN) 2004.

The use of imprisonment in the Nigerian criminal justice system reveals that punishment continues to serve certain social purposes, particularly deterring others from committing similar crimes and protecting society. According to David Garland,²³⁷ contemporary penal systems often rely heavily on imprisonment as a means of controlling crime despite the doubts expressed regarding its social efficiency and efficacy in rehabilitation. Custodial sentencing is regulated by statutory criminal law, which imposes penalties for criminal acts through criminal laws. The two major statutes include the Criminal Code Act²³⁸ for Southern Nigeria and the Penal Code Act²³⁹ for most of the Northern States. Custodial penalties under the Criminal Code include penalties for such offences as theft, assault, robbery, rape, and murder. The Penal Code has also established penalties for offences against persons, property, state security, and public peace. Besides, many other Federal statutes impose custodial penalties for specific offences, such as terrorism, money laundering, kidnapping, cybercrimes, and human trafficking. They outline various criminal acts that attract prison terms. Section 416 of the ACJA²⁴⁰ has been established to promote harmony between sentencing discretion and procedural justice. The same section provides that, in accordance with the law, the court is empowered to impose custodial sentences, but most importantly, it mandates consideration of sentencing factors. Section 416(2)²⁴¹ obligates the court to take into account the purpose of sentencing and the personal circumstance of the offender. The trend in most developed countries is towards individualized sentencing, which has received considerable attention from many legal scholars, including Von Hirsch,²⁴² who proposes that sentencing shall reflect culpability and harm.

²³⁷ David Garland, *The Culture of Control: Crime and Social Order in Contemporary Society* (Oxford University Press 2001).

²³⁸ Cap C38 Laws of the Federation of Nigeria (LFN) 2004.

²³⁹ Cap P3 LFN 2004.

²⁴⁰ ACJA 2015, s 416.

²⁴¹ ACJA 2015, s 416(2).

²⁴² Andrew von Hirsch, *Censure and Sanctions* (Clarendon Press 1993).

In addition, the ACJA discourages imposition of maximum penalties on first-time offenders. Also, section 416(2)(f)²⁴³ of the ACJA compels the court to take into consideration the antecedents, character, and conduct of an offender before sentencing. This clause is undoubtedly one of the most forward-looking components of the ACJA because it takes into account the fact that offenders can be quite heterogeneous. Two people might have committed one offense, but their motivations, backgrounds, level of remorse, and possibilities for rehabilitation are likely to vary substantially. The introduction of such requirements makes sentencing fairer and allows avoiding the excessive harshness that sometimes results from considering only the character of the offense. The ACJA has normative superiority, although its effectiveness would largely depend on the institutions. The appellate jurisdiction provided for in section 416(2)(c)²⁴⁴ contributes immensely to sentencing consistency by enabling courts to review any manifestly excessive or inadequate sentences. Furthermore, sentencing in Nigeria can only be done by judges but in accordance with certain rules established by law and the constitution. There is a unanimous agreement among Nigerian appellate courts that there should not be an arbitrary exercise of sentencing discretion. Sentencing discretion, in other words, should be exercised in a judicial way.

Sometimes, in order to determine what penalty to impose, the judge will be required to consider both aggravating and mitigating circumstances. Aggravating circumstances could include the use of force or weapon, the history of prior convictions, misuse of official power, or vulnerability of the offender. At the same time, mitigating factors could be the absence of criminal intent, the fact that the offender did show regret for his actions, or the offender was too young or too old at the moment of commission. Duff²⁴⁵ suggests that the process of

²⁴³ ACJA 2015, s 416(2)(f).

²⁴⁴ Ibid, s 416(2)(c).

²⁴⁵ Antony Duff, *Punishment, Communication, and Community* (Oxford University Press 2001).

sentencing should not be concerned only with punishment but should also include condemning the person by way of rational justification to the offender and society. However, an excessively strict sentencing regime may result in sentences that are formally legitimate but substantively unjust as a consequence of not considering individual factors. However, discretionary power should also not be such that the sentences become arbitrary in nature.

3.6 Custodial Sentencing under the Criminal Code

The Criminal Code Act that deals with custodial sentences, has its roots in chapter four which is all about the punishments. The particular section that is crucial here is section 17,²⁴⁶ which allows for a number of penalties to be used against the offenders. These include death penalties, imprisonment, caning, fines and forfeitures. This means that imprisonment can be viewed as an officially recognised type of punishment within the Nigerian criminal justice system.

It is clear that the above section embodies the legality in criminal law. Modern day literature has shown that legality is not only concerned with the definition of the offences, but also the punishment for those offences. For example, the legality in terms of criminal punishment needs to provide for predictability, publicity and control.²⁴⁷

The Criminal Code also categorizes criminal liability in terms of whether an offence is a felony, a misdemeanor, or a simple offence.²⁴⁸ Such categorization is not only descriptive; it also impacts the sentencing process since it conveys information about the degree of criminal conduct that is expected to warrant different types and intensities of punishment.

Felonies represent the most serious type of criminal offence, involving crimes such as murder, manslaughter, armed robbery, rape, kidnapping, and treason. Felonies typically carry a sentence of imprisonment due to the understanding that such crimes are an affront to both

²⁴⁶ Cap C38, Laws of the Federation of Nigeria 2004, s 17.

²⁴⁷ Lindsay Farmer, *Making the Modern Criminal Law* (Oxford University Press 2016).

²⁴⁸ Cap C38, Laws of the Federation of Nigeria 2004, s 3-4.

individual safety and state stability. David Garland,²⁴⁹ in describing modern penal practices, notes that crimes that threaten the political order are seen to require ‘penal severity’ due to their political nature and the need for strong state action. Similarly, Alessandro Corda²⁵⁰ notes that even though incarceration may not be very effective as a method for handling crime, it nonetheless remains prevalent since it is symbolic of state authority and condemnation.

The classification of felonies as seen in Nigeria is indeed reasonable when taking into account the possible social impacts of criminal violence. At the same time, the focus on custodial sentencing in cases involving felonies may sometimes result in the neglecting of the importance of developing sound sentencing rationale. The seriousness of an offence is taken for granted, although it has to be justified by the judge in every single instance.

On the one hand, misdemeanours represent a middle ground between felonies and simple crimes and are sentenced with less harsh sentences such as short periods of custodial imprisonment. On the other hand, simple crimes are usually penalized by means of imposition of fines or minor prison terms. What matters most, however, is that in the context of the Nigerian legal system there is a problem of sentencing culture which results in the easy availability of custodial sentences for even the lowest criminalities. Another important aspect of criminal legislation in Nigeria is the seriousness of the punishment in custodial terms for offences committed against persons. These offences range from murder, rape, assault, unlawful imprisonment, abduction, and causing grievous harm.²⁵¹ This approach is based on the principle of imposing the harshest penalty that a government could impose in respect of offences touching on personal liberty and the physical well-being of a person.

²⁴⁹ David Garland, *The Culture of Control: Crime and Social Order in Contemporary Society* (Oxford University Press 2001).

²⁵⁰ Alessandro Corda, *Prisoner Reentry and Social Reintegration* (Routledge 2020).

²⁵¹ Cap C38, Laws of the Federation of Nigeria 2004, s 306-371.

According to Section 364 of the Criminal Code, unlawful imprisonment can be punishable by a maximum of ten years imprisonment. This section shows how seriously the legal system takes the issue of personal liberty.

The implications of these clauses go further than simply providing protection by law because they symbolize the underlying message that the body's freedom of movement is of great significance. Consequently, when the court imposes harsh penalties through long-term imprisonments for committing crimes like unlawful restraint, this is done not only as a punishment but also as an indication that the violation of an individual's rights by restraining his body amounts to an assault on dignity and freedom of choice.

Even though the Criminal Code places due emphasis on protecting liberty and physical freedom from restraint, there remains a necessity for the court to go beyond harshness as a routine reaction. Rather, it should provide explanations for why that level of punishment is deemed fit in any particular instance. Furthermore, custodial sentencing is widely employed in dealing with property crimes such as theft,²⁵² robbery,²⁵³ burglary,²⁵⁴ fraud,²⁵⁵ receiving stolen property,²⁵⁶ and malicious damage²⁵⁷ in the Criminal Code. This shows the intention of the legislature to safeguard not only property rights of individuals but also to secure economic stability and order within society.

It should be noted that among property crimes, robbery carries the most stringent custodial sentences when it involves any form of physical attack or use of a weapon by the accused. The reason behind the imposition of harsher sentences on such forms of property crimes can be

²⁵² Ibid, s 383.

²⁵³ Ibid, s 401.

²⁵⁴ Ibid, s 411.

²⁵⁵ Ibid, s 419.

²⁵⁶ Ibid, s 427.

²⁵⁷ Ibid, s 451.

associated with the presence of double harm done to the victims of property crimes, the deprivation of their property and an act of violent intrusion into their personal space.

The Nigerian criminal justice system does not consider property crimes as economic conflicts, but rather as forms of conduct capable of undermining social and economic order. The significance of such a stance in terms of a developing economy where confidence in property rights becomes critical to social order should be highlighted.

One distinguishing feature of the Criminal Code is that it tends to rely heavily on imprisonment as a means of punishment. This trend continues regardless of whether one is considering violent or property crimes.

3.7 Custodial Sentencing under the Penal Code

The Penal Code Act is still the primary piece of legislation that governs criminal responsibility in Northern Nigeria. The Penal Code was introduced back in 1960 and was revised to take into account the peculiarities of the domestic law and socio-cultural environment of the area. As opposed to the flexible models of punishment, which are usually applied in criminal trials, the Penal Code employs a rigid system of punishments, whereby offenses are paired with corresponding sentences. In particular, section 68²⁵⁸ of the Penal Code stipulates that punishments provided by the Code may include death, imprisonment, forfeiture, fine, whipping, and compensation. The classification of offences shows that there was an effort made to institutionalize the principle of proportionality in sentencing. Unlike modern guidelines for sentencing found in other jurisdictions, the principle of proportionality in sentencing under the Penal Code is achieved mostly due to statutory classifications.

The downside of this approach is that, while predictability is introduced, judicial discretion becomes restricted. As it has been shown in the literature devoted to Nigerian criminal law,

²⁵⁸ Cap P3, Laws of the Federation of Nigeria 2004, s 68.

sentencing guidelines favour legal certainty over justice.²⁵⁹ The Penal Code punishes offenses against the person with its most stringent custodial punishments due to the importance attached to the lives of individuals and their bodies. Such offenses include murder, culpable homicide not amounting to death, grievous hurt, assault, and criminal force. Culpable homicide punishable with death may be sentenced either to the death penalty or life imprisonment, depending on the circumstances of each particular case.²⁶⁰ In a similar vein, grievous hurt attracts a prison sentence of seven years or even more.²⁶¹ Assaults that amount to serious injury to persons attract custodial sentences as well.²⁶²

The philosophical rationale behind these custodial sentences is the need to safeguard life and body, which are legal interests in themselves. It is found that there is an emphasis on social protection through the sentencing scheme under the penal code. It is not just the fact that the offense has caused injury to a particular person. It goes further than that to show protection of public peace and security. Moreover, custodial sentences have been applied extensively in respect to property crimes, which account for a considerable percentage of criminal proceedings in Northern Nigeria. Such offenses include theft, criminal breach of trust, cheating, robbery, misappropriation, and receipt of stolen property.

In many instances, the degree of punishment depends on the monetary value of the stolen property and the way in which the offense was conducted. For instance, an imprisonment will be imposed on an offender where there is dishonest conversion of any property entrusted to the offender; hence, the offense constitutes criminal breach of trust.

A defining feature of the Nigerian Penal Code is the prominence that offences affecting the State's authority and the functioning of its public administration are given in it. It is evident in

²⁵⁹ CE Okonkwo and ME Naish, *Criminal Law in Nigeria* (Spectrum Law 2008).

²⁶⁰ Cap P3, Laws of the Federation of Nigeria 2004, s 220–222.

²⁶¹ Cap P3, LFN 2004, s 240–247.

²⁶² Cap P3, LFN 2004, ss 262–264.

Nigerian criminal law that offences such as treason, sedition, illegal possession of firearms, and acts which may jeopardize the national security of the country play a significant role in the context of the Penal Code.²⁶³ According to Ibrahim Aliyu²⁶⁴, this is because of the post-colonial penal system, where issues of state consolidation and stability were central.

The punishments prescribed for treason and other such offences in the Penal Code are among the most stringent. These punishments include lengthy prison sentences, and, in some instances, even capital punishment. In addition to this, Yusuf Olaolu Ali²⁶⁵ mentions that the severity of penalties imposed for political offences is due to the perceived threats to institutional existence faced by the state. In relation to robbery offenses, imprisonment for life or even death will be imposed on offenders, particularly when the offense involves violence or use of weapons. This is informed by the fact that the offense is both property crime and violent offense. The nature of this system points to a state-based philosophy of criminal justice, whereby crimes that threaten the state itself are perceived to be of higher moral value than regular crimes. The danger with such a system is that it fails to address the question of proportionality, especially in cases where what is considered to be sedition or a threat to national security is indistinguishable from political activity.

An important element that distinguishes the Penal Code Act from other codes is the codification of the punishment associated with offences. As such, the punishment process under the act is more predictable than in discretionary processes. On the other hand, one important element of the Penal Code Act is the tendency toward custodial sentences as a form of sentencing. Although this increases the predictability and deterrent elements, it can stifle the development of non-custodial sentence

²⁶³ AO Okonkwo and CO Naish, *Criminal Law in Nigeria* (2nd edn, Spectrum Law Publishing 2010).

²⁶⁴ Ibrahim H Aliyu, 'The Nigerian Criminal Justice System and State Security' (2018) 12(2) *Journal of Law and Policy Studies* 45.

²⁶⁵ Yusuf O Ali, *Criminal Justice and Constitutional Order in Nigeria* (ILBS 2016).

CHAPTER FOUR

BENEFITS AND CHALLENGES OF SENTENCING OPTIONS IN NIGERIA

4.1 Benefits of Sentencing Options in Nigeria

4.1.1 Promotion of Justice and Fairness

The first major advantage of keeping multiple sentencing alternatives in the Nigerian criminal justice system is that these sentencing alternatives foster the administration of justice and fairness in the imposition of criminal sanctions.²⁶⁶ Justice in the context of sentencing calls for punishment that takes into account not only the crime itself but also the context under which it was committed. All criminal offenses are unique in terms of seriousness, modus operandi, social impact and the level of damage they inflict upon the victims.²⁶⁷ Similarly, the offenders themselves are different when it comes to their age, background, criminal record, mental state, culpability, and capacity for rehabilitation. The justice in sentencing requires an element of flexibility, allowing the courts to differentiate between different offenders and their crimes.²⁶⁸ Thus, alternatives like imprisonment, fines, probation, restitution, suspended sentences, and community service give courts a tool for tailoring the punishment to each specific case. This flexibility contributes to proportionality, which is one of the key principles of the criminal justice administration.²⁶⁹ In *Abubakar v State*,²⁷⁰ the Court decided that first-time offenders must be shown mercy whenever necessary. These multiple sentencing choices let courts hand out punishments that really fit each specific situation.

²⁶⁶ M L Friedland, *A Place Apart: Judicial Independence and Accountability in Canada* (Canadian Judicial Council 1995) 147.

²⁶⁷ Nigel Walker (n 85).

²⁶⁸ Julian V Roberts, *Public Opinion and Sentencing Policy* (Willan Publishing 2002) 84.

²⁶⁹ Richard S Frase, *Just Sentencing: Principles and Procedures for a Workable System* (OUP 2013) 77.

²⁷⁰ (2013) LPELR-20342 (CA).

Judges should decide what makes sense for both the crime and the person who committed it, rather than everyone getting the same ‘half-baked’ sentence. This way, the punishment is fair and matches the wrongdoing, which keeps justice in balance. Fairness is super important in a criminal justice system. So a plethora of sentencing options allows judges to deliver justice that's sensitive to people's individual stories while still keeping them accountable for what they did wrong.

4.1.2 Protection of the Victim's Interest

Another key strength of diverse sentencing regimes in the criminal justice system is the ability of these regimes to serve the interests of victims of crime. The traditional approach to criminal processes is focused on the offender and State nexus wherein the State bears the responsibility of prosecuting and punishing crimes.²⁷¹ It has been noted that this offender-State paradigm has often come under criticism due to its displacement of the victim from the process of criminal justice.²⁷² In particular, victimologists note that the offender-State paradigm neglects the physical, psychological and economic losses incurred by victims as well as their justice expectations.²⁷³ The contemporary approach to criminal justice involves victim-centered strategies aimed at taking into account the interests of those individuals who are the direct victims of the crime.²⁷⁴ One example of such victim-centered strategies is the emergence of principles of restorative justice where the emphasis is made not on the punishment of offenders but on restoring the losses resulting from crime. As Howard Zehr²⁷⁵ states, crime is first of all the violation of people and therefore it should be addressed both by restoration and punishment. These allow courts to order wrongdoers to pay victims back for losses from the crime. This

²⁷¹ Andrew Sanders and Richard Young, *Criminal Justice* (4th edn, OUP 2010) 29.

²⁷² Jo-Anne Wemmers, *Victims in the Criminal Justice System* (Kugler Publications 1996) 7.

²⁷³ Andrew Karmen, *Crime Victims: An Introduction to Victimology* (10th edn, Cengage 2018) 21.

²⁷⁴ Kathleen Daly, 'The Limits of Restorative Justice' in Dennis Sullivan and Larry Tifft (eds), *Handbook of Restorative Justice* (Routledge 2006) 134.

²⁷⁵ Howard Zehr (n 154).

shows that justice isn't complete until the damage to victims is addressed and, if possible, fixed too. When the system cares about both punishing bad actions and making things right for those harmed, it builds trust. Victims see that the process is focused on more than just punishment; it's also about fixing the mess crimes cause to them.

4.1.3 Achievement of the Objective of Punishment

Another advantage of having a wide range of sentencing options is that they help in meeting the various purposes of punishment that exist within criminal jurisprudence.²⁷⁶ There are several purposes which are served by the process of punishment, namely retribution, deterrence, incapacitation, rehabilitation, and restoration. Because these purposes are different and require varying treatment, a single sentencing option cannot adequately meet all of them in each case.²⁷⁷ Therefore, it becomes necessary for the sentencing procedure to provide for different sanctions to meet the larger goals of criminal justice.

Sentencing options help in determining the severity of punishment in accordance with the level of wrongdoing involved in the crime committed by an offender.²⁷⁸ The other goal of punishment is deterrence which involves deterring individuals from committing crimes. Imprisonment works great for restricting dangerous criminals, but paying back the damage is a better fit for, a case of first-timers. They would do better on probation or community service instead of jail time. This mix of choices lets judges pick what fits each situation best. It makes the system work better, matching up punishments with the exact needs of every unique case. Having a range of consequences really helps aim for justice in the roundest way possible.

²⁷⁶ Wayne R LaFave, *Criminal Law* (6th edn, West Academic Publishing 2017) 35.

²⁷⁷ H L A Hart (n 84).

²⁷⁸ Richard S Frase, *Just Sentencing: Principles and Procedures for a Workable System* (Oxford University Press 2013) 77.

4.1.4 Maintenance of Proportionality in Punishment

Another benefit of having varied sentencing choices is that it allows the court to achieve a certain level of alignment between the sentence and the culpability of the offender. The concept of proportionality means that the punishment for an offense must match the seriousness of that particular crime and the level of culpability of the offender.²⁷⁹ As different crimes vary greatly in terms of their nature, circumstances, and impact on society, it would not be reasonable to impose similar punishments on the offenders.²⁸⁰

Moreover, the idea of proportionality makes it possible to ensure the legitimacy of the criminal justice process as it allows handing out penalties that would reflect how society perceives the seriousness of the offense committed.²⁸¹ In *Akinyemi v. The State*,²⁸² the Court of Appeal deliberated on the impact of inconsistency in sentencing which is likely to affect the credibility of the judicial process. Proportionality can be regarded as one of the most reliable measures of justice since it ensures proper punishment for offenders while excluding arbitrariness. It would, therefore, be extremely unfair to treat all offenders with the same form of punishment. Different forms of sentencing options offer judges the ability to tailor punishments according to the severity of the crime. Proportionality is one of the best ways to gauge justice within a legal system.

4.1.5 Strengthening of Public Confidence in the Justice System

It is easier to earn the trust of the people in the judicial system in cases where sentencing processes are considered to be fair and reasonable to consider all the facts of the case.²⁸³ By offering the judiciary various options for sentencing, the law allows the judges to issue the right

²⁷⁹ Richard S Frase (n 274).

²⁸⁰ K S Chukkol, *The Law of Crimes in Nigeria* (ABU Press 1988) 41.

²⁸¹ Julian V Roberts (n 265).

²⁸² (2000) 6 NWLR (Pt. 660) 205.

²⁸³ Ibid (n 265).

punishment according to the nature of the crime. In cases where sentencing is perceived as reasonable and justified by the facts of the case, the members of the public will be able to view the process of the criminal justice process as being legitimate.²⁸⁴ However, in some cases, where the sentences issued are too hard or too lenient, the process of sentencing will end up creating distrust in the system.²⁸⁵ Sentencing flexibility is an important way through which public confidence is encouraged. The judges have a higher capability of delivering a just ruling if there are alternative sentences available. Such an approach reduces public displeasure and makes the judicial system more acceptable.

4.1.6 Re-enforcement of the Deterrent function of Criminal Law

Deterrence is meant to act as a disincentive for the potential criminals as well as those already convicted to indulge in any crime by showing that criminal behavior will be punished.²⁸⁶ The flexibility of different forms of punishments provides courts with an opportunity to administer proper sanctions that will make the process of punishing more effective. Moreover, sentencing provides grounds for both general and specific deterrence. The concept of general deterrence involves dissuading the members of the community from indulging in any crime, whereas specific deterrence involves preventing the convicted criminals from committing crime again.²⁸⁷ Having diverse sentencing choices will enable courts to apply punishment in such a way as to reduce the probability of offending in the future in specific situations. The use of appropriate sentencing shows society's condemnation of crime and acts as a deterrent for future offenses.

²⁸⁴ Tom R Tyler, *Why People Obey the Law* (Princeton University Press 2006) 163.

²⁸⁵ David Beetham, *The Legitimation of Power* (2nd edn, Palgrave Macmillan 2013) 28.

²⁸⁶ Johannes Andenaes, *Punishment and Deterrence* (University of Michigan Press 1974) 7.

²⁸⁷ Michael Tonry (n 174).

4.1.7 Efficiency in Dealing with Heinous Criminal Acts

Among some of the best aspects of custodial sentencing is that it can deal effectively with serious crimes and violent offenses. Terrorism, kidnapping, armed robbery, murder, and rape all are very serious crimes and threaten society's security and stability.²⁸⁸ In these types of cases, imprisonment is probably the most suitable form of punishment as it serves both as an appropriate punishment for the crime committed and as protection against any future criminal activity.²⁸⁹ It has been observed that in cases where the offenders are a danger to society, custodial sentences provide vital protection which other forms of punishment cannot offer. In some cases, it is only through custodial sentencing that society can be protected from criminals. Due to the high levels of sophistication of crime nowadays, custodial sentencing will remain very significant.

4.1.8 Enhancing Opportunities for Reform and Behavioral Change for Offenders

The modern philosophy of corrections accepts that incarceration must enable prisoners to gain education, vocational skills, and behavioral assistance that will make their return into the society easier.²⁹⁰ Moreover, research indicates that rehabilitation programs, especially when they include educational and vocational assistance, can decrease the rate of recidivism.²⁹¹ Thus, where the correctional facility is properly financed and run, imprisonment can become a way of personal transformation instead of mere imprisonment

4.1.9 Custodial Sentencing as a Means to Achieve National Security and Stability

While there is growing appreciation of non-custodial sentencing regimes, imprisonment continues to be significant in facilitating national security and social stability. In nations

²⁸⁸ M T Ladan, *Internal Security Management in Nigeria: Law, Practice and Policies* (ABU Press 2021) 114.

²⁸⁹ Mirko Bagaric, *Punishment and Sentencing: A Rational Approach* (Cavendish Publishing 2001) 187.

²⁹⁰ Fergus McNeill, *Reimagining Rehabilitation: Beyond the Individual* (Policy Press 2016) 22.

²⁹¹ Davis LM and others, 'How Effective is Correctional Education, and Where Do We Go from Here?' (2014) RAND Corporation Research Report 31.

struggling against problems such as terrorism, insurgency, kidnaping, violent extremism and organized crime, imprisonment is used to incapacitate offenders whose actions present a threat to public safety and national stability.²⁹² Through imprisoning them, it ensures the protection of lives, properties, and state institutions.

Moreover, imprisonment upholds the authority of the State by showing its ability to enforce criminal law and uphold the rule of law. Criminal punishment, especially imprisonment, signifies the disapproval of society to criminal actions and demonstrates the resolve of the State to uphold public order.²⁹³ In this way, incarceration plays not just the role of punishment but that of symbolism since it indicates that any severe violation of the law attracts serious punishment. Finally, the deterrence power of imprisonment makes it relevant even today. While there is no agreement among scholars on how far imprisonment can deter criminal actions, the threat of being stripped of one's freedom, reputation, and economic prospects acts as an inhibitor to criminals.²⁹⁴ As such, incarceration is still a very significant element in crime prevention efforts.

There are also other chances associated with the use of custodial sentencing. During the time spent in jail, officials can carry out an assessment of criminals, find out risk factors related to criminality, and develop an intervention strategy that will help address the detected issues. Moreover, new advancements in the field of correctional administration, criminology, and offender management have great potential for enhancing the effectiveness of custodial facilities. It is clear that future trends in the sphere of custodial sentencing will go far beyond punishing individuals for their wrongdoings alone. Thus, the possibility to send offenders to prison makes it easier for courts to satisfy expectations of citizens and ensure the necessary

²⁹² M T Ladan (n 284)

²⁹³ Anthony Duff (n 238).

²⁹⁴ Daniel S Nagin, 'Deterrence in the Twenty-First Century' (2013) 42 *Crime and Justice* 199, 221.

level of punishment. Otherwise, the inability of the court to address criminal activity might cause the judicial system to be regarded as impotent with regard to crime.

4.1.10 Advocacy for Rehabilitation, Reintegration, and Behavioral Reform

One of the main advantages of non-custodial sentencing relates to its emphasis on rehabilitation. Contemporary theories on penology hold that proper punishment involves not only retribution but also behavior change.²⁹⁵ The theory of desistance by Farrall and Maruna²⁹⁶ stresses the significance of ‘social capital’ and identity change in avoiding re-offending, suggesting that successful reintegration into family and social networks helps achieve this goal better. Likewise, Bottoms²⁹⁷ pointed out that continued social contacts and legitimate status (including work and family duties) are crucial elements that reduce recidivism rates. Non-custodial sentencing serves as an instrument that enables offenders to be immersed into positive social contexts that encourage behavioral change, rather than subjecting them to criminogenic influence of imprisonment. One of the greatest aspects of the criminal justice system is the ability of the system to actually transform the offender into someone who will not engage in any further criminal activity, which should be the utmost goal.

4.1.11 Non-Congestion of Correctional Centers and Improved Efficiency in Penal Policy

Non-custodial penalties can be used to tackle structural inefficiencies within correctional facilities administration, especially those of prison overcrowding that continues to be a common problem in the Nigerian penal system. According to Coyle²⁹⁸, prisons that are congested cannot serve any purposeful rehabilitative function, since such prisons tend to become places characterized by violence and poverty. The fact that non-custodial sanctions

²⁹⁵ Nils Christie, *Crime Control as Industry* (3rd edn, Routledge 2000).

²⁹⁶ Stephen Farrall and Shadd Maruna, ‘Desistance and the Future of Criminal Justice’ (2004) 4 *Theoretical Criminology* 7.

²⁹⁷ Anthony Bottoms, Stephen Farrall and Loraine Gelsthorpe, ‘Desistance from Crime’ in Michael Tonry (ed), *Crime and Justice: A Review of Research* (University of Chicago Press 2004).

²⁹⁸ Andrew Coyle, *Prisons in Context* (2nd edn, Routledge 2005).

remove minor or non-violent offenders from imprisonment means that they can increase efficiency and ensure that prison is used only for offenders who present a danger to society and need to be incarcerated. This is consistent with the “selective incapacitation” approach in criminology.²⁹⁹

On the level of policy implementation, this increases the efficiency of the criminal justice system as a whole. There is reduced strain on the correctional institutions in terms of management, and better quality conditions can be provided at custodial facilities. Furthermore, a prison system that is not overcrowded has a greater likelihood of meeting human rights standards.

4.1.12 The Progress of Restorative Justice and Social Reconciliation

Non-custodial sentencing also conforms to the framework of restorative justice, which considers crime as an act of harm caused to individuals and their relationships, rather than as the breaking of laws. The key ideas proposed by Zehr³⁰⁰ in his works about restorative justice are the concepts of harm repair and inclusion of victims, offenders, and community members in this process. Compensation, mediation, and community work are typical non-custodial sentences that reflect these notions and at the same time resolve the issue of offender accountability and victim harm. According to Shapland³⁰¹ the use of restorative approaches to crime also increases victim satisfaction with the process of justice. Thus, by asking the offender to make amends, the justice process becomes not only practically effective but also a way to create some accountability for one's actions. Naturally, victims will feel much better about the process if the offender actively tries to fix their mistake.

²⁹⁹ Franklin E Zimring and Gordon Hawkins, *Incapacitation: Penal Confinement and the Restraint of Crime* (Oxford University Press 1995).

³⁰⁰ Howard Zehr, *Changing Lenses: A New Focus for Crime and Justice* (Herald Press 2015).

³⁰¹ Joanna Shapland et al, *Restorative Justice in Practice: Evaluating What Works for Victims and Offenders* (Routledge 2011).

From a wider perspective, restorative justice allows us to restore social harmony and reconciliation between the guilty person and the rest of society. By focusing on non-custodial methods of punishment, we avoid further damaging the social bond. This is probably one of the most revolutionary aspects of the Criminal Justice System.

4.1.13 Human Dignity, Social, and Economic Stability

One more key benefit of non-custodial sentencing is that such form of punishment is consistent with respect for human dignity and socio-economic stability. On the human rights account, custodial sentences involve considerable restriction on the liberty of an offender and poor living standards due to limited resources of correctional institutions.³⁰² On the socio-economic level, the work by Western and Pettit³⁰³ on mass incarceration shows that incarceration involves ‘negative spillover effects’ on families and communities, including income reduction, familial instability, and generational disadvantage. In contrast, non-custodial punishment enables offenders to keep working and fulfilling their duties to the family, thus alleviating the financial load on families and avoiding government spending on imprisonment.

Offenders do not cease to provide an economic input into both the household economy and the economy of the country as a whole by continuing to work. As a result, they are less of a financial burden to the government since they will have to support themselves.

4.2 Challenges of Sentencing Options in Nigeria

With the introduction of the ACJA 2015 and related state laws in Nigeria, the administration of criminal justice through sentencing has become more flexible as there are now more possibilities for sentencing apart from jail time, such as probation, community service, suspended sentences, restitution, and parole. Such reforms have reflected the worldwide trend

³⁰² David Garland (n 230).

³⁰³ Bruce Western and Becky Pettit, ‘Incarceration & Social Inequality’ (2010) 124 *Daedalus* 8.

in penology towards rehabilitation. Yet, even though these measures enjoy normative status within the legal statutes, they lack enforcement because of various challenges of an institutional, socio-economic, and cultural nature.

4.2.1 The Over-dependence on Custodial Sentencing

One of the key problems of the country's sentencing system is the dominance of imprisonment as the main tool of punishment. Even though there are other measures of punishment provided for by the law, studies show that imprisonment continues to be the common understanding of punishment. This is because of the “penal populist” approach that associates severity of punishment with imprisonment rather than its efficiency in preventing crime.³⁰⁴ According to Ashworth and Zedner,³⁰⁵ sentencing systems can become 'custody-centric' when the institutional culture emphasizes retribution rather than proportionality and rehabilitation. Such a situation is prevalent in Nigeria. While it is true that there is a number of options other than prison for punishment in the existing legal framework in Nigeria, these types of punishment are never used by the judges, since in Nigeria the process of justice making is largely characterized by punitive culture which views imprisonment as the supreme kind of punishment.

4.2.2 Weak and Underdeveloped Structures for Non-Custodial Penalties

The success of alternative sentencing programs depends on the institutional capability of probation services, supervision system, and community corrections structures. This is not the case in Nigeria as these structures lack capacity and have poor distribution in different areas.³⁰⁶ Cavadino and Dignan³⁰⁷ stress that for alternative sentencing programs to be successful there must be a strong administrative apparatus, else the courts fall back on custodial sentences due

³⁰⁴ John Pratt, *Penal Populism* (Routledge 2007).

³⁰⁵ Andrew Ashworth and Lucia Zedner, *Preventive Justice* (Oxford University Press 2014).

³⁰⁶ Loraine Gelsthorpe and Rod Morgan, *Handbook of Probation* (Routledge 2007).

³⁰⁷ Michael Cavadino and James Dignan, *The Penal System: An Introduction* (Sage 2013).

to issues of enforceability. The fact that many Nigerian states lack adequately staffed probation services and community service programs hinders the use of alternative sentencing.

Consequently, judges avoid issuing sentences that cannot be enforced effectively.

4.2.3 Funding challenges and logistic problems

Resource availability is fundamental for implementing non-custodial sentencing programs because they require regular funding for supervision, tracking offenders, running rehabilitation programs, and coordination of the process. This condition is not fulfilled by low-resource criminal justice systems, including those in Nigeria.

According to McNeill³⁰⁸, the implementation of community sanctions without sufficient resources makes them ineffective and turns them into “symbolic punishments” that should replace incarceration. Even though the legal provisions in Nigeria allow for the use of probation as an alternative to incarceration, the effective use of the practice has not been realized due to the lack of appropriate facilities and organizational infrastructure and, this means that the non-existence of an appropriate probationary system has prevented probation from being used effectively as an alternative to imprisonment in Nigeria.³⁰⁹ There are limited chances of success within the community service programs due to inadequate organization, insufficient placements and non-existent monitoring measures. Funding problems pose major challenges to the enforcement of non-custodial sentences in Nigeria.

4.2.4 Judicial Reluctance and a Conservative Sentencing Culture

Judicial personnel still consider imprisonment as the only method of deterrence and moral condemnation that exists.³¹⁰ The phenomenon of penal conservatism as described by Bottoms³¹¹ is one in which judicial personnel favor well-known punishments because of their

³⁰⁸ Fergus McNeill, *Community Sanctions and Social Justice* (Routledge 2012).

³⁰⁹ AO Yekini and M Salisu, ‘Probation as a Non-Custodial Measure in Nigeria: Making a Case for Adult Probation Service’ (2013) 7(1) *African Journal of Criminology and Justice Studies* 101.

³¹⁰ Nicola Lacey, *The Prisoners’ Dilemma* (Cambridge University Press 2008).

³¹¹ Anthony Bottoms, ‘The Philosophy and Politics of Punishment and Sentencing’ (1995) 20 *Crime and Justice*.

certainty and enforceability. For the people of Nigeria, issues regarding the absence of supervisory mechanisms and the ability to enforce the penalty are additional causes of judicial caution. Some judicial officers view non-custodial sentences as being ineffective as measures of deterrence or measures of making sure that a lawbreaker complies with his or her obligations. This means that despite alternatives being available to prison sentences, judicial officers prefer imposing sentences of incarceration.

4.2.5 Negative Public Perception and Issues of Legitimacy

Public perception is a major factor in how sentences are made. Non-custodial punishments are wrongly considered as being too soft or lacking especially for more serious crimes such as corruption or violence.³¹² This supports Tyler's³¹³ legitimacy theory because he contends that people's trust in criminal justice systems relies greatly on perceived punishment and its severity. In cases where non-custodial sentences are seen as being "soft justice," then the judiciary avoids the implementation of such sentences due to possible damage to reputation or perception of leniency.

Negative public sentiment may indirectly influence judicial decisions, causing judges to choose custodial sentences over non-custodial sentences for fear of public backlash and losing their credibility. The legitimacy of non-custodial sentences is therefore undermined by a lack of trust in its ability to dispense justice and prevent future offenses.

4.2.6 Corruption and Abuse of Discretion

Corruption and undue influence constitute further threats to the fairness of sentencing determinations. Although judicial discretion constitutes an integral part of sentencing, it should be carried out within the boundaries of legality and ethics. In *Abiola v. The State*³¹⁴, the court pointed out that corruption can lead to discrimination among offenders, thus resulting in a lack

³¹² Julian Roberts and Loretta Stalans, *Public Opinion, Crime and Criminal Justice* (Routledge 2000).

³¹³ Tom R Tyler, *Why People Obey the Law* (Princeton University Press 2006).

³¹⁴ [2018] 6 NWLR (Pt. 1597) 345.

of justice. Where the oversight mechanisms are not strong enough, the danger may arise that non-custodial sentencing will be applied unequally or on the basis of non-legal criteria. Foucault's³¹⁵ study of penal systems proves that the lack of control over discretionary power inevitably leads to the creation of inequality in the process of punishment. The problem of unequal treatment of offenders who possess connections or are rich still exists in Nigeria, as non-custodial measures are more often used in their cases.

The principles of principled discretionary sentencing were clearly stated in Nigerian cases. In the case of *Sule v State*,³¹⁶ the court determined that the sentencing procedure should take into account the level of harm caused by the offence, the circumstances of the individual and justice.¹⁷ While sentencing should ideally be governed by law and judicial discretion, there may be fears that external influences, including bribery, pressure, or other improper influence, could potentially affect the process of sentencing in some cases.

4.3 Comparative and Jurisprudential Analysis of Sentencing Options in the United Kingdom and South Africa

The principle of sentencing in both the United Kingdom and South Africa is based on the contemporary mixed theory of penal law, where the aims of retributive, deterrent, rehabilitative, reparative, and protective sentencing are emphasized.³¹⁷ In both systems, the idea of imposing penalties in a purely punitive way has been replaced by a more developed concept that encompasses the ideas of proportionality and the prevention of further crime along with social rehabilitation of the offenders.³¹⁸ While similar in their approach, there are differences in jurisprudence in how each system achieves its sentencing goals.

³¹⁵ Michel Foucault, *Discipline and Punish* (Vintage 1995).

³¹⁶ (2018) LPELR (SC).

³¹⁷ Andrew Ashworth and Jeremy Horder, *Principles of Criminal Law* (9th edn, OUP 2019) 421.

³¹⁸ Sentencing Act 2020 (UK), s 57.

An important commonality in both jurisdictions is the realization that the sentence of incarceration should be regarded only as a last resort, especially in cases of minor crimes. Hence, both systems have introduced an array of non-custodial sentencing alternatives that include such methods as the imposition of fines, suspensions, community service, and other kinds of measures that do not involve incarceration.³¹⁹ This trend is becoming increasingly prevalent across comparative criminal justice systems due to the rising focus on restorative justice goals.

Sentencing in the UK is extremely regulated by statutory frameworks and guideline principles, specifically through the Sentencing Act 2020³²⁰ and Sentencing Council guidelines. These frameworks limit judicial discretion considerably by providing sentencing ranges, categorization of offences, and specific thresholds for imposing custodial sentences.³²¹ This results in the application of a clear principle of sentencing consistency in which similar offences result in similar outcomes in various courts. Therefore, the sentencing practice of the UK may be referred to as one based on guidelines and positivism, in which judges use their discretion within specific boundaries.³²²

On the contrary, the South African constitution-driven sentencing model uses constitutional principles such as dignity, equality, and freedom from cruel, inhumane, and degrading treatment as guiding principles.³²³ Despite being provided with sentencing guidelines in statutes like the Criminal Procedure Act 51 of 1977 and various minimum sentencing legislation, South African courts are allowed considerable discretion to depart from those guidelines where substantial and compelling circumstances can justify such departure.³²⁴ As a

³¹⁹ Criminal Procedure Act 51 of 1977 (South Africa); Sentencing Act 2020 (UK), ss 200–230.

³²⁰ Sentencing Act 2020 (UK).

³²¹ Sentencing Council, *Imposition of Community and Custodial Sentences Guideline* (2025).

³²² Andrew Ashworth, *Sentencing and Criminal Justice* (6th edn, CUP 2015).

³²³ Constitution of the Republic of South Africa 1996, s 10.

³²⁴ *S v Malgas* 2001 (1) SACR 469 (SCA).

result, sentencing in South Africa relies on values-based considerations in which judges consider sentencing according to individual constitutional principles.

Further, there is the difference regarding the jurisprudential base of the logic behind sentencing. In the UK, sentencing jurisprudence is mainly rule-driven and structured due to the presence of appellate bodies and Sentencing Council, responsible for the coherence, consistency, and clarity of the sentencing decision-making process.³²⁵ As a result, judicial reasoning will be predominantly guided by precedent and sentencing guidelines, minimizing disparity between similar decisions. In South Africa, conversely, there is a strong influence of the constitutional interpretation on the sentencing process due to such cases as *S v. Makwanyane* and *S v. Dodo*.³²⁶ As a result, the rights-based approach to sentencing prevails, with the major influence of moral and constitutional considerations on the sentencing process. Furthermore, there is a trend of increased reliance on non-custodial sentencing for the purpose of correctional policy in both jurisdictions. Thus, in the UK, there are well-developed community orders that involve various types of sanctions including unpaid work, rehabilitation programmes, curfews, and treatment requirements. South Africa also applies corrections supervision and community sanctions to serve its purposes of correction and punishment of criminal behavior. However, unlike the UK, this aspect of sentencing in South Africa depends much on the administrative capacity. Nevertheless, both systems subscribe to the notion of jurisprudence that punishment should be proportional, individualized, and aimed at rehabilitation where necessary. In addition, both systems acknowledge the inefficiency and undesirability of imprisoning low-risk offenders, due to high costs and poor social outcomes.

³²⁵ Sentencing Council (UK), Annual Report (2025).

³²⁶ 1995 (3) SA 391 (CC); 2001 (3) SA 382 (CC).

4.3.1 Sentencing options in the United Kingdom

Sentence structures in England and Wales are mainly determined by the Sentencing Act 2020 and the guidelines issued by the Sentencing Council. The aim of such regulations is to make sure that sentencing satisfies a number of purposes such as; punishment, deterrence, rehabilitation, protection of the public, and compensation, in an efficient manner.³²⁷ The types of sentencing available include modern ideas about the fact that punishment must fit the crime committed, together with the offender's individual characteristics.

It consists of absolute and conditional discharges. Absolute discharge involves imposition of conviction, even when punishment for the crime committed is considered unnecessary as a result of the offense being minor or some characteristic features of the offender.³²⁸ Conditional discharge involves conviction without imposing a penalty, conditional upon no further offense being committed within a certain period of time. Such sanctions are based on the idea that not all criminal acts warrant punishment.³²⁹

Fines have remained one of the most common penalties in England and Wales since they are mainly used for summary offences and minor crimes.³³⁰ In this respect, courts are supposed to take into account the severity of the crime committed and the financial standing of the offender.³³¹ Hence, the use of fines ensures that the punishment will be commensurate with the crime. The imposition of community orders has become one of the key elements of modern sentencing policy. The community order may consist of the imposition of community work obligations, curfew orders, various treatments, rehabilitative activities, and the electronic monitoring of the offenders. Another example of the penalty is a suspended sentence order which implies the imposition of a custodial sentence but suspends its execution for some period

³²⁷ Andrew Ashworth and Rory Kelly, *Sentencing and Criminal Justice* (7th edn, Bloomsbury 2021) 73–98.

³²⁸ Sentencing Act 2020, s 79–80.

³²⁹ Ashworth and Kelly (n 323) 284–286.

³³⁰ Sentencing Act 2020, s 125–164.

³³¹ Julian Roberts, *Sentencing Guidelines: Exploring the English Model* (Oxford University Press 2013) 56–59.

of time. Under such circumstances, the offender stays in the community with certain conditions set for him or her and will serve the prison sentence in case of violation of the conditions or the commission of a new crime.³³² Suspension sentences represent the integration of both punishment and rehabilitation through keeping prison as the penalty, yet giving the criminals a chance to reform.³³³ Where non-custodial sentences are inadequate to address the gravity of an offence, custody sentences can be imposed. However, modern research has questioned the efficacy of short-term prison sentences, especially regarding rehabilitation and recidivism, thus encouraging policymakers to advocate for more use of community-based options when appropriate.³³⁴

In the most serious offences, including murder, life sentences can be imposed. Even though the common understanding of life sentence implies serving life behind bars, most of the life sentences entail that offenders must serve the minimum period in prison after which they will be released depending on the evaluation of the danger they pose to the public.³³⁵ The release of an offender on parole is subjected to lifelong licensing requirements.

In some exceptional situations, courts may impose whole life orders where the offenders should spend their entire lives in prison. This form of sentencing applies to extremely serious crimes like multiple murders and acts of terrorism with loss of life. There are some unique sentencing principles of young offenders that emphasize welfare, rehabilitation, and reintegration. Juvenile courts can give a referral order, youth rehabilitation order, or detention and training order according to the gravity of the offense.³³⁶ The main purpose of such courts is not just punishment; rather, it is to address the social, educational, and behavioral aspects that result in

³³² Sentencing Act 2020, s 286–290.

³³³ David Ormerod and Karl Laird, *Smith, Hogan and Ormerod's Criminal Law* (17th edn, Oxford University Press 2024) 40–42.

³³⁴ Ministry of Justice, *The Evidence on Reoffending and Community Sentences* (2023).

³³⁵ Sentencing Act 2020, ch 6.

³³⁶ Sentencing Act 2020, pt 8.

criminal conduct.³³⁷ Lastly, there has been an increasing trend of implementing restorative justice in the sentencing process in England. Though it is not a sentence in its own right, restorative justice programs could be used alongside traditional sentences to provide a forum for offenders to talk to their victims. Restorative justice is consistent with conventional sentencing purposes as it helps offenders realize the consequences of their actions.³³⁸ In the age when people become more and more worried about victim participation and offender rehabilitation, restorative justice appears to be a valuable phenomenon which can add something to the usual approaches to sentencing.

4.3.2 Sentencing Options in South Africa

The system of sentencing in South Africa is regulated by the Constitution, the Criminal Procedure Act 51 of 1977, and case law. As opposed to the strictly punitive systems of sentencing, the South African approach strives to achieve a balanced position between the interests of society, the victim, and the offender while pursuing the goals of punishment, deterrence, rehabilitation, and retribution.³³⁹ The principles of dignity, equality, and proportionality enshrined in the constitution have a substantial influence on the exercise of discretion by judges. Judges in South Africa are entitled to use many methods of sentencing that include cautions and discharges, fines, community service orders, correctional supervision, and imprisonment.³⁴⁰ In case of less severe crimes, non-custodial sentences are preferred since they allow offenders to continue living in the community and to be responsible for their actions. Correctional supervision is an important form of non-custodial sentencing that combines rehabilitation with rigorous control and community-based conditions.³⁴¹

³³⁷ Barry Goldson and John Muncie, *Youth Crime and Justice* (2nd edn, SAGE 2015) 221–240.

³³⁸ Gerry Johnstone, *Restorative Justice: Ideas, Values, Debates* (2nd edn, Routledge 2011) 45–68.

³³⁹ Constitution of the Republic of South Africa, 1996.

³⁴⁰ Criminal Procedure Act 51 of 1977 s 276.

³⁴¹ SS Terblanche, *Guide to Sentencing in South Africa* (3rd edn, LexisNexis 2016) 350–390.

In case of more serious crimes, custodial sentences, including life imprisonment for crimes like murder, rape, and some violent acts, may be imposed. In extreme cases, offenders may be pronounced habitual or dangerous criminals, which means that long-term or indeterminate imprisonment will follow.³⁴²

Restorative justice and rehabilitation play an important part in South Africa's sentencing practices, especially where child offenders are concerned. The Child Justice Act 75 of 2008 puts more value on reintegration and development than punishment since child offenders have greater potential for rehabilitation.³⁴³ In general, programs of restorative justice make offenders realize how much damage their conduct has done and help them repair the damage they have done to others.

It could be said that one of the strong points of the South African sentencing approach is flexibility. It enables the court to use its discretion to impose appropriate sentences based on different situations. However, achieving consistency in sentencing may prove challenging through such an approach. For this reason, South African sentencing practice still attempts to strike a balance between individualized justice, protection of citizens, and constitutional principles of human dignity and rehabilitation.

³⁴² Criminal Procedure Act 51 of 1977 s 286A–286B.

³⁴³ Ann Skelton and Julia Sloth-Nielsen, *Child Justice in South Africa* (Juta 2015) 180–205.

CHAPTER FIVE

SUMMARY, FINDINGS, RECOMMENDATIONS, AND CONCLUSION

5.1 Summary & Findings

Sentencing is one of the key features of criminal justice administration in the process of which sanctions are imposed on offenders following their conviction. There are several aims of sentencing, including punishment, deterrence, rehabilitation, incapacitation, restitution, and society's protection. Custodial sentencing entails sanctions that deprive offenders of their liberty in the form of imprisonment or incarceration in penal institutions. Custodial sentences were the most widely used type of punishment in Nigeria since they were believed to be efficient in punishing offenders, preventing crimes, and protecting society from offenders.³⁴⁴ However, non-custodial sentencing is an alternative sanctioning which does not entail the incarceration of offenders in penal institutions. It could include probation, community service, restitution, parole, suspended sentences, and other forms of restorative justice.

Non-custodial sentencing is aimed at providing a balance between punishment and rehabilitation of offender. Having a combination of custodial and non-custodial sentencing techniques is vital for ensuring that the goals of criminal justice are met. While incarceration is needed for certain crimes, the more frequent use of non-custodial sanctions will improve the efficiency of the criminal justice process in Nigeria. Moreover, it was also observed that even though custodial sentencing is required in cases of serious offenses and violent crimes, non-custodial sentencing presents a humane and economical way of dealing with minor offenders, first-time offenders, and non-violent offenders. In Nigeria, both custodial and non-custodial sentencing are governed by many statutory provisions. First and foremost, the primary law on this matter is the Administration of Criminal Justice Act (ACJA) 2015, which brought about

³⁴⁴ Nigel Walker (n 85).

many changes to ensure the modernization of the criminal justice administration process and to prevent the excessive use of incarceration.

It was noted that many non-custodial sentencing options such as community service, probation, restitution, parole, and suspended sentences are explicitly provided for in the ACJA 2015. Furthermore, the Nigerian Correctional Service Act 2019 enhanced the statutory framework of non-custodial sentencing through the establishment of the Non-Custodial Service Directorate that oversees offenders sentenced to non-custodial sentencing.³⁴⁵

Though non-custodial sentencing is legally provided for in Nigeria, the research discovered a number of structural impediments to its implementation. First, there is an inadequacy of the institutional capability to administer and supervise the non-custodial measures. There exists a lack of non-custodial service centres and supervision structures which could facilitate the implementation of non-custodial sentences.

Second, there is inadequate funding which hinders the implementation of non-custodial sentences.³⁴⁶ Agencies who bear the responsibility of the non-custodial sentences usually have inadequate financial capability. Thirdly, it was discovered that there is a lack of adequately trained personnel such as probation officers, correctional officers, prosecutors and judges who understand non-custodial sentencing measures.

Again, it was also observed that poor infrastructure, lack of collaboration among agencies, and administrative inadequacies impede the implementation of non-custodial sentencing programs in Nigeria. In addition, research also discovered that public opinion presents another significant barrier to the implementation of non-custodial sentencing measures. Many people perceive non-custodial measures as soft and ineffective methods of punishment. Therefore, despite the

³⁴⁵ Nigerian Correctional Service Act 2019, s 37–45.

³⁴⁶ Prisoners Rehabilitation and Welfare Action (PRAWA), *Report on Non-Custodial Measures in Nigeria* (2021) 19.

advantages that non-custodial measures offer, the implementation of non-custodial sentencing remains limited in the Nigerian criminal justice system.

It can be concluded that substantial improvements can be introduced to improve the efficacy of non-custodial sentences in Nigeria. Firstly, it is necessary to motivate the country's judicial officers to introduce non-custodial sanctions in cases of first time offenders, youth offenders, and offenders convicted for committing petty or non-violent offences. Such practice meets international standards regarding alternative punishments.

Secondly, it is essential to provide increased financing for the Nigerian Correctional Services, especially the Non-Custodial Services Directorate, in order to ensure effective supervision and monitoring of the offenders.

Thirdly, there is a necessity to establish additional non-custodial services centers and required infrastructure facilities in all the regions of the federation. It is evident that training programs and capacity building are needed to organize for the judges, magistrates, prosecutors, correctional officers and other individuals who are engaged in criminal justice administration. Furthermore, it is necessary to introduce the guidelines to help the judicial officers to identify the cases where custodial and non-custodial sanctions can be applied. These guidelines would ensure consistency, transparency and fairness in decision-making process.¹⁵

Lastly, it is important to conduct public enlightenment campaigns to inform citizens about the goals, advantages, and efficacy of non-custodial sentences.

5.2 Recommendations

It is important that there should be increased attention given to the imposition of non-custodial sentencing alternatives in the Nigerian criminal justice process. In order to achieve this, judicial officers should be encouraged to impose alternative sentences such as probation and community service to offenders who may be first-time offenders, offenders of petty crimes,

and those offenders whose crimes do not involve violence and are not grave enough for incarceration. This does not mean that jail sentences are unimportant as far as serious offenders are concerned.

It is important that the government should put in place institutional arrangements that would aid in the effective execution of non-custodial sentences in the country. The Non-Custodial Service Directorate of the Nigerian Correctional Services, for instance, needs to be supported with funds, manpower, and other resources to ensure that offenders imposed with community service sentences are supervised accordingly. The creation of more non-custodial service centers throughout Nigeria will also help.

Again, constant training and capacity-building programs must be put in place for the various actors in the administration of criminal justice, including the judges, magistrates, prosecutors, correctional officers, and many others. Training will increase the level of understanding of the legal framework relating to the imposition of non-custodial sentences. Consequently, confidence in the utilization of the alternative sanctions will be increased. Also, there is a need to develop sentencing guidelines. The existence of such guidelines will enable the judicial officers to identify which cases are deserving of custodial and non-custodial sanctions, respectively. Guidelines will enhance the efficiency, effectiveness, consistency, objectivity, and uniformity in the process of imposing sentences. This will be achieved by eliminating sentencing disparities as well as reducing unnecessary incarceration of offenders.

Lastly, the government should conduct sensitization exercises. Members of the public have continued to see the custodial sanctions as the most appropriate form of sentencing. In their view, non-custodial sanctions are lenient or ineffectual. As a result, the government and other bodies responsible for educating the public should conduct enlightenment programs to inform them of the purposes and advantages of non-custodial sentences in society.

5.3 Conclusion

Sentencing is arguably the single most important area of criminal justice administration since it defines the manner in which offenders are sanctioned. This research has revealed that although custodial sentencing plays an irreplaceable role in ensuring social order, the protection of society, and the punishment of offenders, its over-reliance has led to many problems in the Nigerian criminal justice system, including prison congestion, offender rehabilitation, and reintegration. It is evident from this study that the enactment of the ACJA 2015 has opened up new ways of sentencing through the use of alternative measures such as community service, probation, restitution, and parole. Non-custodial sentencing offers a better way forward than custodial sentences since it recognizes that effective sentencing involves not only punishment but also reform and compensation for the victims.

That said, it could be contended that the provision of non-custodial sentences is not enough. The effectiveness of these sentences cannot be realized without appropriate implementation and support, financial commitment, and a changing societal attitude towards punishment.

The way forward in terms of sentencing policy in Nigeria would entail finding a proper equilibrium between custodial sentencing and other forms of sentencing. A sentencing policy that involves imprisonment for serious criminals and appropriate alternatives for minor offenders is the one that will meet the aims of justice, lower the rate of re-offending, promote rehabilitation, and bring about humane criminal justice policies. The policy will not only serve the interests of offenders and their victims but will also serve the interests of justice in general.

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