

The Innovative concept and Issues Concerning the Non-Custodial Sentence in Nigerian Criminal Justice System

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Abstract. *It is apt to state that the challenges currently encountered in the Nigerian criminal justice system, is that the Nigerian correctional centers are densely populated with awaiting trial suspects and in a highly deplorable condition. In a renewed effort to attend to the Nigerian correctional centres' appalling state, the National Assembly enacted the Administration of Criminal Justice Act (ACJA) 2015 and the Nigerian Correctional Services Act (NCSA) 2019. These laws are meant to promote the efficient management of the criminal justice system and to address issues (such as a non-custodial sentence) that were not hitherto covered under the repealed Nigerian Prisons Act, in line with the internationally accepted standards. However, despite the innovation brought by these laws, there are some challenges affecting its smooth implementation. It is in this regard, that this study tends to embark on a hybrid method of study in ascertaining the relevance of non-custodial sentences in Nigeria's criminal justice system laws and its challenges. Questionnaires were sent to 327 of respondents, descriptive and analytical methods were used in analyzing the data generated. The study, therefore, found that the introduction of a non-custodian sentence has greatly enhanced the Nigerian criminal justice system. Although, there are several challenges (such as; the discretion of the judges, lack of facilities for the successful enforcement of non-custodial sentences, and corrupt practices) mitigating against its smooth implementation. It was therefore concluded and recommended that embracing non-custodial sentencing will reduce prison reception and minimize the enormous government resources in maintaining the prison infrastructure and the prisoners. In this regard, there is a need for a redress of the challenges mitigating the smooth application of non-custodian sentences in Nigeria's criminal Justice System.*

Keywords: *Criminal; Justice; Non-Custodial; System.*

1. Introduction

The criminal justice administration system refers to the collection of rules, principles, policies, and practices that guides the prescription, management, monitoring, trial, and punishment of crimes. It is a set of legal and social institutions for enforcing criminal law by a defined set of procedural rules and limitations.¹ It covers events that occur before, during, and after a criminal prosecution. Although different theories abound on the purpose of the criminal justice system, there exist five (5) primary and mostly recognized objectives of a justice system which include; (1) Retribution² (2) Deterrence³ (3) Rehabilitation⁴(4) Incapacitation⁵ , and (5) Restoration⁶ , i.e., restorative justice⁷. It must be noted that the criminal justice system is mainly retributive, it is primarily concerned with punishing and deterrence offenders.

It suffices to state that it is a natural inclination that an offender will deny his crime to avoid being punished, even where he is internally sorry.⁸ However, the more recent approach is that punishment is probably the least effective method of dealing with criminal behavior, especially in the face of scarce resources to maintain the disciplinary approach.

In Nigeria, there are three arms of the Criminal Justice System to wit; the Police, the Courts, and the Nigerian Prison Services (now the Nigerian Correctional Services). The Nigerian Correctional Service is within the exclusive jurisdiction of the Federal Government⁹. Therefore, no state government can own or control any correctional (prison¹⁰) center in Nigeria.¹¹

¹ Aliyu I. (2019). Decongestion of Nigerian Prison: An examination of the role of the Nigerian police in the application of the holding-charge procedure in relation to pre-trial detainees. *African Human Rights Law Journal*, 19(2), 1-16

²Badamasiuy, J. & Bello, M. (2013). An appraisal of administrative justice and good governance in Nigeria. *Journal of Politics & Law*, 6, 216-230

³ Hyden, G. (2015). Rethinking justice and institutions in African peacebuilding. *Third World Quarterly*, 36 (5), 1007-1022

⁴John, A., & Musa, A. (2014). Delay in the Administration of Criminal Justice in Nigeria: Issues from a Nigerian viewpoint. *J Law Pol Glob*, 26, 130-138

⁵ Ogunode S. A., (2015). Criminal Justice System in Nigeria: For the Rich or the Poor? (2015) 4(1) *Humanities and Social Sciences Review*, 28-42.

⁶ Oduntan, G., & Oduntan, G. (2017). Prescriptive strategies to combat corruption within the administration of justice sector in Nigeria. *Journal of Money Laundering Control*, 20 (1), 35-51

⁷ Michael, C. O. (2016). Communication of an interpreter and fair trial under Nigerian criminal justice system. *International Journal of Legal Discourse*, 1 (1), 213-233

⁸*Aderemi Aderounmu v Federal Republic of Nigeria* (2019) CA/L/782C/2018;*Ankpegher v State* (2018) LPELR-43906 (SC);S 135 of Evidence Act 2011. *State v Ajayi* (2016)LPELR -40663(SC).

⁹. Item 48 in Section 4 of the second scheduled to the 1999 Constitution of the Federal Republic of Nigeria (as Amended)

¹⁰ Eze M. C. (2010). Institutional reforms and the development of Nigeria prison services 1999-2007. *Journal of African studies and development*, Vol. 2(5), p. 21-34

¹¹ Ibid

The prison system in Nigeria became potent before the 1914 amalgamation of the Southern and Northern protectorates¹². Initially, the prisons were mere detention camps until the establishment of the Native Authority Prison¹³. The abolition of Native Authority Prison in 1968 and the subsequent unification of the prison services in Nigeria marked the beginning of Nigeria Prisons Services in Nigeria as a composite reality.

The mandate of the Nigerian Prison Services before the coming into force of the Nigerian Correctional Service Act (NCSA) 2019 was mainly custodial service. Under the Nigerian Correctional Service Act 2019¹⁴, the "Correctional Service" shall consist of Custodial Service and Non-Custodial Service¹⁵. The Non-Custodial Service is responsible for the administration of non-custodial measures. Although the administration and maintenance of the custodial and non-custodial centres in Nigeria lie within the ambit of the Federal Government of Nigeria, the reception of a person into the Custodial Centre's is not limited to the agencies/machinery of the Federal Government of Nigeria alone but of the State as well¹⁶. Therefore, it follows that the population and the length of Custody of the inmates per time are not determined per se by the authority of the Correctional Service but by other agencies/ apparatus of government both at the Federal and State level¹⁷.

However, despite the innovative custodial services brought by the Nigerian administrative justice system legal framework, several challenges mitigate its effectiveness. It is in this regard that this study tends to embark on an empirical study concerning the innovative custodial service provided by the Nigerian administrative justice system's legal framework, the challenges, and possible solutions.

2. Research Methods

The study adopts a hybrid method of research that include doctrinal and non-doctrinal method of research. The essence of the doctrinal is aimed at theorizing the innovative transformation of the Nigerian criminal justice system as it relates

¹²Egielewa P and Aidonojie PA (2021). Media and Law: An Assessment of the Effectiveness of the Freedom of Information Act by Journalists in Nigeria using Auchi, Edo State as a Case Study, *International Journal of Current Research in Humanities*, Vol. 25, 415-434.

¹³ Oromareghake P., Oluka N. L. & Adishi E., (2018). The Nigerian Police and Legitimacy Crises: A focus human rights abuses and Protection in Contemporary Nigeria. *Journal of Public Administration and Social Welfare Research*, 3(2), 25-37

¹⁴ Nigerian Correctional Service Act 2019, herein after referred to as the " Correctional Service"

¹⁵ Ibid Section1(2)

¹⁶ Okwendi J. S. & Nwankwoala R., (2014). The Role of Restorative Justice in Contemplating the Justice System and Restoring Community Values in Nigeria. *Asian Journal of Humanities and Social Sciences* 2(3), p. 127-141

¹⁷Ani C. C., (2011). Corruption in Criminal Justice Administration: The Role of the Legal Profession. *Nigerian Bar Journal*, Vol. 7(1), p. 102-183

www.oasdom.com/list of prisons and types in Nigeria. Accessed 19-09-2020

to non-custodial sentences. In this regard, primary (such as statutory and judicial authority) and secondary (such as scholarly pieces of literature) sources of material will be utilized. Furthermore, the study will also use or adopt a non-doctrinal method of research in ascertaining the challenges often encountered in the smooth application of non-custodial service and the possible solution. Concerning this, the authors also adopt a descriptive and analytical method of research in gathering data that are objective, Mathematical, statistical, and numerical for analysis. The data were collated through an online questionnaire survey sent to legal practitioners residing in various states in Nigeria. Using Lawyers as respondents is concerning the fact that they are well learned and very conversant with the Nigerian criminal justice system.

3. Result and Discussion

Provision of Non-Custodial Sentences in Nigerian Administration of Criminal Justice Laws

The ACJA, 2015, and the NCSA, 2019, provide several non-custodial sentences as alternatives to the defendant's incarceration. These non-custodial sentences are;

- i. Plea Bargaining.
- ii. Cost, Compensation, the award of Damages, and Restitution.
- iii. Probation.
- iv. Parole.
- v. Suspended Sentence.
- vi. Community Sentence and
- vii. Fines.

i. Plea Bargaining

As an integral part of Nigeria's criminal justice system, the plea bargain is copiously provided for in the Administration of Criminal Justice Act 2015.¹⁸ Under the Act, the prosecutor may receive and consider a plea bargain from the defendant charged with an offence either directly from the defendant or on his behalf or may offer a plea bargain to a defendant charged with an offence.¹⁹

The prosecutor may also enter into a plea bargaining with the defendant, with the consent of the victim or his representatives during or after the presentation

¹⁸ Section 270(1-18) of the Administration of Criminal Justice Act, 2015

¹⁹ Ibid section 270 1(a-b)

of the evidence of the prosecution but before the presentation of the evidence of the defence²⁰ subject to three conditions to wit;

- a) that the evidence of the prosecution is insufficient to prove the offence charged beyond a reasonable doubt;
- b) that the defendant has agreed to return the proceeds of the crime or make restitution to the victim or his representative, or
- c) That the defendant, in a case of conspiracy, has fully cooperated with the investigation and prosecution of the crime by providing relevant information for the successful prosecution of other offenders.²¹

By the Act, the prosecutor is only obliged to accept or make an offer for a plea bargain if it is in the interest of justice, public policy, public interest, and the need to prevent legal process abuse.²² The prosecutor and the defendant or his authorized representative may, before the plea, agree on the term of sentence, a plea of a guilty or lesser offence, or appropriate conviction.²³ Plea Bargain is only possible after the prosecution consults with the investigating police officer and the victim or his representative and with due regard to the nature of and circumstances relating to the offence, the defendant, and public interest.²⁴

It must be emphasized that a person who has been convicted and sentenced in a particular matter by a plea bargain shall not be charged or tried again on the same fact for a greater offence earlier charged to which he had pleaded to lesser offences.²⁵ Furthermore, an appeal will not be entertained against the judgment of the Court in a plea bargain to any other Court, for the trial Court is the Court of finality except where fraud is alleged.²⁶

ii. Cost, Compensation, Damages, and Restitution

The ACJA, 2015 makes provision for the Court in addition to sentencing or instead of any other penalty authorized by law, to order the convict to pay for cost²⁷ expenses²⁸, Compensation²⁹, or make restitution³⁰ to any victim of the

²⁰ Ibid section 270(2)

²¹ Ibid section 270 (2) a-c; Masajuwa F. & Aidonojie P. A., (2020). Sustainability of Plea Bargain in Nigeria Legal System: A Comparative Analysis of the Past and the Present. Nigeria Bar Association on Legal Practice Law Journal, 9(1), 97-116

²² Ibid section 270 (3)

²³ Ibid section 270 (3-4)

²⁴ Ibid section 270 (5)

²⁵ Idhiah S. E., (2016). A Synoptic Appraisal of the Practice and Procedure for Plea Bargaining under the Administration of Criminal Justice Act 2015. Africa Journal of Law and Criminology, 6(1), p. 12-24

²⁶ Adebayo A., (2018). A Review of Plea Bargain Concept in the Anti- Corruption War in Nigeria. Brawijaya Law Journal, p. 10-21; Aborisade R. & Oni S. F. (2020). Crimes of the Fighters’’: Sexual and Physical Female Arrestees. Women & Criminal Justice 30(4), 243-263; Aborisade R. A. & Oni S. F. (2020). Women’s Inhumanity towards Women?’’ Treatment of Female Crime Suspects by Female Officers of the Nigerian Police. Criminal Justice Ethics, 39(1), 54-73

²⁷ Section 322(1) ACJA 2015

²⁸ Ibid section 319(1)

²⁹ Ibid section 319(1)

³⁰ Ibid Section 321

crime for which an offender was convicted or to the victim's estate³¹. In this regard, a victim who has fulfilled the said expenses may not sentence to imprisonment, which reduces the overcrowded correctional centre.

iii. Probation

Probation³² supervision is a non-custodial sanction that can be traced to the 19th Century in the works of John Augustus of the United States of America. Presently it is one of the most utilized concepts or mechanisms in reducing prison congestion in the United States of America for minor crimes.

Both the ACJA and the NCSA 2019 recognize and embrace probation as one of the non-custodial measures to rehabilitate offenders or convicts³³. For a defendant to qualify for probation, The ACJA 2015 provides that the Court consider the character of the offender, his mental state of health, criminal record(s), age, and any other issue that needs to be considered. The Court may order probation without proceeding to conviction if the Court thinks it would be wasteful to inflict punishment or make an order for a reasonable sentence³⁴. An Order may, therefore, be made by the Court dismissing the charge or discharging the defendant on the condition of him entering into a recognizance, with or without sureties, to be of good behavior and to appear at any time during a such period not exceeding 3years as may be specified in the order³⁵. The Court may also require the defendant to pay damages or compensation to the victim (s) for his criminal activities.³⁶ Such payment can be made in person or by proxy³⁷. The probation order by the Court must not exceed three (3) years and can be altered or varied at the discretion of the Court at any time³⁸. If the convict fails to observe any of his recognizance conditions, the Court may issue a warrant for his arrest or a summons. Where the Court is convinced that the convict has failed to observe his recognizance's condition, based on the report of the probationer's office, the Court may convict and sentence³⁹ the defendant without further proof of his guilt.

³¹ Ibid section 321(a)

³² Ogbozor A., *from Hell to Hell, the Travails of Ex- prisoners in Nigeria*. (Paper presented at the 11th International Conference on Penal Abolition (ICOPA X1), held in Tasania, Australia 2006) 4-4; Olubiyi I. A., (2018). Nigerian Criminal Justice System: Prospects and Challenges of the Administration of Criminal Justice Act 2015. African Journal of Criminal Law and Jurisprudence, p. 79-86 .

³³ Section 453 of the ACJA defined a "probational order" as an order containing a condition specified in S.455 of this law.

³⁴ Ibid Section454(1)

³⁵ Ibid Section 454(2)

³⁶ Ibid section 454(3)

³⁷ Ibid section 454(3) b

³⁸ Ibid section 458(a)

³⁹ Ibid Section 459(2) (3)

iv. Parole

Parole is the release of a prisoner from imprisonment before the full sentence is served by the parolee, on the grounds of good behavior.⁴⁰ It is a period of discretionary/ conditional supervised release from prison.⁴¹ The parole system as a non-custodial measure can be traced to the 20th century when indeterminate sentencing dominated the American jurisprudence.⁴² The release of a prisoner by parole is not on a platter of gold but the parolee's request with compelling and valid reasons. As an integral part of our Criminal Justice system, Parole is copiously provided for by the Administration of Criminal Justice Act 2015⁴³ and the Nigerian Correctional Services Act 2019⁴⁴.

The Court may order the release or suspend a remaining inmate's term of imprisonment and sentence to a time in prison for at least 15 years or life-based on the Comptroller General of Correctional Facilities' recommendation that the inmate is of good behavior and has served at least one-third of his prison terms. This order suspends an inmate's remaining term of imprisonment and releases such from prison.⁴⁵ It is the Comptroller General of the Nigerian Correctional Service's responsibility to supervise, rehabilitate parolees, and take other steps to ensure the effective implementation of non-custodial measures.⁴⁶

V. Suspended Sentence and Community Service

The Court is empowered to suspend a sentence passed on a convict and order the convict to perform specified service in his/her community or such other community or place. The suspended sentencing /community service⁴⁷ is one of the non-custodian sanctions in the NCSA 2019 wholly embraced by the ACJA 2015⁴⁸. It is limited to non-capital offences.⁴⁹ It excludes offences involving the use of arms or offensive weapons and sexual offences. The foremost considerations in employing suspended sentencing/ community service by the

⁴⁰ Oromareghake P., Oluka N. L. & Adishi E., (2018). The Nigerian Police and Legitimacy Crises: A focus human rights abuses and Protection in Contemporary Nigeria. *Journal of Public Administration and Social Welfare Research*, 3(2), 25-37

⁴¹ Ojedokun U. A. & Aderino A. A., (2015). Highway Informal Policing in Kajola Local Government, Oyo State, Nigeria. *The Policing Journal*, 88(3), 251-262

⁴² Ladapo, O. A. (2011). Effective investigations, a pivot to efficient criminal justice administration: Challenges in Nigeria. *African Journal of Criminology and Justice Studies: AJCJS*, 5(1 & 2), 79-94

⁴³ Section 461 ACJA 2015

⁴⁴ Section 37 NCSA 2019

⁴⁵ Section 468 ACJA, 2015,

⁴⁶ Section 40 NCSA 2019.

⁴⁷ Black's Law Dictionary P. 297 defines community service as socially valuable work performed without pay. Community service is often required as part of a criminal sentence especially one that does not include incarceration.

⁴⁸ Section 460(1)-(2) ACJA

⁴⁹ Ibid Section 460(3)

Court are the nature of the crime, the offender's antecedents⁵⁰, the need to decongest the prison, and the possibility of rehabilitation outside the Correctional Centre.⁵¹ The Chief Judge of the State is empowered ⁵² by law to establish a community service centre in every state's judicial division. These community service centre shall be supervised by the registrars⁵³ of Courts in that judicial division to ensure the execution of a community service order made by any Judge in that state. The nature of the community service shall be environmental sanitation, assisting in the production of agricultural produce, construction of mining, and any other type of service, which in the opinion of the Court, would have a beneficial and reformatory effect on the character of the convict.⁵⁴ A defendant sentenced to community service cannot be sentenced to a term of imprisonment for the same offence⁵⁵. However, where there is a default or failure on the part of the defendant to perform his community service sentence to the Court's satisfaction, the defendant can be sentenced to a term of imprisonment for the remaining portion of his community service.⁵⁶ A community service order shall not exceed six months⁵⁷ of five (5) hours of daily work.⁵⁸ The Court has the power to reduce the community service's length up to 1/3 of the original sentence⁵⁹ but not to increase it. The Controller General of the Nigeria Correctional service's responsibility is to appoint supervisors to monitor those sentenced to community service and report cases of compliance and non-compliance to the Court⁶⁰.

vi. Fines

A fine is a penalty used instead of imprisonment or complementary to imprisonment. Its use as a non-custodial sentence is well captured in the ACJA.⁶¹ The Court is empowered to either allow time to pay a fine or direct that such fine is paid in installments, suspended, or even postponed. In any circumstance, the convict is released only subject to the convict giving security with or without sureties. A convict in default of the payment of a prescribed fine would have to serve a term of imprisonment upon being re-arrested.⁶²

⁵⁰ Ibid Section 461 (6)

⁵¹ Mackenzie D. L., *Sentencing and Correction in the 21st Century; Setting the stage for the future* (University of Maryland, college Park, MD 2001)

⁵² Section 461 (1) ACJA 2015

⁵³ Ibid Section 461(2)

⁵⁴ Ibid Section 461(4) a-c (5)

⁵⁵ Ibid Section 461(7)

⁵⁶ Ibid Section 463(1)

⁵⁷ Ibid Section 466(1)

⁵⁸ Ibid Section 462(1)

⁵⁹ Ibid Section 464(a) (b) & (c)

⁶⁰ Section 42(1) a-c NCSA 2019

⁶¹ Section 327.(1) a-e, (2-4) ACJA 2105

⁶² Ibid section 327(4)

viii. Restorative Justice

Under the Nigerian Correctional Services Act 2019, provisions for Restorative Justice Measures⁶³ as a non-custodial measure at the instance of the Controller General of Prisons (CGP) are provided for. The CGP shall provide the platform for (a) victim-offender mediation, (b) family group conferencing, (c) community mediation, and (d) any other mediation activity involving victims, offenders, and, where applicable, community representatives. In achieving this purpose, the Correctional Service shall liaise with the Court and other relevant agencies of government.⁶⁴ Restorative justice under the NCSA 2019 may occur (a) at the pre-trial stage, (b) at the trial stage, (c) during imprisonment, and (4) post-incarceration.⁶⁵ The implementation of these restorative justice measures shall be done by a supervisor appointed by the correctional service.⁶⁶

Issues and challenges of Non-Custodial Sentence in Nigerian Criminal Justice System

Having taken a critical examination of the non-custodial sentence in the Administration of Criminal Justice in Nigeria, it is evident that there are conspicuous gaps that need to be filled up if the much desired positive change in the administration of criminal justice in Nigeria is to be birthed. Some of the challenges that could mitigate against the smooth application of non-custodial sentence in Nigeria's criminal justice system is as follows;

1. The Court as Sole Driver of Non-custodial Sentence

In the application and enforcement of a non-custodial sentence, it is required that an application or suit must be instituted in a competent court with jurisdiction. Furthermore, all criminal litigation processes must be set on stage and after which the court has convicted the suspect before the court can choose or decide to apply a non-custodial sentence.

Concerning the above, it is apt to opine that during the above litigation process most suspect are still been kept in correctional centre. In this regard, it suffices to state that placing the court as a sole driver of non-custodial sentences will in essence affect or negate the intention and relevance of introducing non-custodial sentences in Nigeria's criminal justice system

2. Court Discretionary Power concerning Non-custodial Sentence

For example, Section 460(1)-(2) ACJA provides that notwithstanding the provision of any other law creating an offense, where the Court sees reason, the Court may order that the sentence imposed on the convict shall not be

⁶³ Section 43 (1) a-d, 2 & 3 NCSA 2019.

⁶⁴ Ibid Section 43(2)

⁶⁵ Ibid Section 43(3)

⁶⁶ Ibid Section 43(4)

required to serve the sentence by the condition of the suspension. Furthermore, it also stipulates that the Court may, with or without conditions, sentenced the convict to perform specified services in his community or such community or place as the court may direct.

Concerning the above, it suffices to state that giving the court discretionary power to determine a non-custodial sentence, may result in an abuse of power.

3. Lack of Facilities concerning Non-custodial Sentence

It must be noted that the reason for a non-effective and inadequate successful application and implementation of a non-custodial sentence in Nigeria, is a result of a lack of basic facilities that are required. In this regard, some of these facilities are;

- i. A limited number of correctional homes, and community service centres across the states of the federation.
- ii. Lack of identity/ biometric data of the population and a proper mapping system showing the various locations within the Country
- iii. Lack of monitoring devices available to the probation officer and the community service sentence officer to monitor the day-to-day activities of the defendants
- iv. Inadequate manpower or official to supervise the non-custodial sentence

4. Poor Utilisation of Few available Facilities

The few facilities made available by the government in Nigeria have not been maximally utilized. e.g. there is abundant evidence that Borstal Institutions⁶⁷ and remand centres meant for young offenders below the age of 21 years are mostly unused sixty years after the idea was first conceived.

5. Corrupt practices of officers or ministers of justice in the Nigerian criminal justice system

Presentation and Analysis of Data

It suffices to state that, the data obtained through the questionnaire sent to the respondents residing in the various state of Nigeria was collated and therefore analysed below:

⁶⁷ Borstal Institute Buea (2015). <<http://borstalinstitutebuea.yolasite.com/about-us.php>> accessed 10 May 2020;

Sample Size and Techniques

Concerning the sample size, the study sent a questionnaire to 327 legal practitioners residing in the various state of Nigeria. In selecting the respondents, a simple random sampling technique was adopted. A simple random sampling technique is said to be more potent in empirical legal research, given its plain and simple method of sampling⁶⁸. According to Oladele et al.⁶⁹, Majekudumi et al.⁷⁰ Aidonojie et al.⁷¹ identify in their studies identify some of the relevance of simple random sampling techniques as follows;

- i. That simple random sampling technique is devoid of complication because it is hassle-free
- ii. That is more reliable in selecting respondents from a heterogenous population like Nigeria
- iii. That the chances of being biased are minimal

⁶⁸ Aidonojie P. A., Odojor A. O., and Agbale O. P., (2021), The Legal Impact of Plea Bargain in Settlement of High Profile Financial Criminal Cases in Nigeria, *Sriwijaya Law Review*, Vol. 5(2), PP. 161-174; Aidonojie P. A., Anne O. O., and Oladele O. O., (2020), An Empirical Study of the Relevance and Legal Challenges of an E-contract of Agreement in Nigeria” *Cogito Multidisciplinary Research Journal*, Vol. 12(3), P. 181; Aidonojie P. A., Ikubanni O. O., Okoughae N. and Ayodeji A. O., (2021), The challenges and relevance of technology in administration of justice and human security in Nigeria: Amidst the Covid-19 pandemic, *Cogito Multidisciplinary Journal*, Vol. 13(3), PP. 149 – 170; Aidonojie P. A., Majekodunmi, T. A., Ikubanni, O. O. and Ibrahim N., (2022), The causes of the Rising incidence of domestic violence in Nigeria: Proposing Judicial Separation as a Panacea, *Jurnal Hukum UNISSULA*, Vol. 38(2), PP. 61-80; Aidonojie, P. A. and Odojor, A. O., (2021), Impact and Relevance of Modern Technological Legal Education Facilities amidst the Covid-19 Pandemic: A Case Study of Law Students of Edo University Iyamho, *KIU Journal of Humanities*, Vol. 5(4), PP 7-19; Aidonojie, P. A., Nwazi, J. and Ugiomo E., (2022), The Legality, Prospect, and Challenges of adopting Automated Personal Income Tax by States in Nigeria: A Facile Study of Edo State, *Cogito Multidisciplinary Journal*, Vol. 14(2), PP. 149 – 170

⁶⁹ Oladele, Odetokun Olukayode, Aidonojie, Paul Atagamen, Uzualu, James Emokhai, Ikubanni, Oluwaseye Oluwayomi and Oyedeji, Adefisayo Ifeoluwa, An Empirical Study of Criminalizing Minor Infractions of Tax Laws in Nigeria: The Need for Negotiated Punishments, *KIU Journal of Humanities*, Vol. 7, No. 2, (2022), 23-35

⁷⁰ Majekodunmi, T. A., Oluwaseun, J. A., Idahosa, M. E., Ikubanni, O. O. and Aidonojie, P. A., (2022), The causes of the Rising incidence of Terrorism occasioning Deprivation of the Right to Life in Nigeria, *KIU Journal of Humanities*, Vol. 7(2), PP. 5-19

⁷¹ Aidonojie, P.A., & Francis, E.C. (2022). Legal Issues Concerning Food Poisoning in Nigeria: The need for Judicial and Statutory Response. *Jurnal Media Hukum*, 29(1), 65-78; Aidonojie P. A., “The Societal and Legal Missing Link in Protecting a Girl Child against abuse before and Amidst the Covid-19 Pandemic in Nigeria” *Jurnal Hukum UNISSULA*, 38(1), 2022, 61-80; Aidonojie, P. A., Oaihimore, I. E. and Agbale, O. P., (2022), The Legal and Ethical Issues concerning Diagnosing and Treatment of Patients by Pharmacists in Nigeria, *Euromentor Journal*, Vol. 13(2), PP. 113-138; Aidonojie, P. A., Odojor, A. O., Ikubanni, O. O., Oyebade, A. A., Oyedeji, A. I. and Okoughae, N., (2022), The Challenges and Impact of Technological Advancement to the Legal Profession in Nigeria given the Covid-19 Pandemic, *KIU Journal of Humanities*, Vol. 6(4), PP. 5-19; Aidonojie, P. A., Okoughae N., Agbale, O. P., Idahosa, M. E., (2022), Supervisor and Supervisee Relationship: The Legal and Ethical Issues Concerning Academic Theft in Nigeria Tertiary Institution, *Euromentor Journal*, Vol. 13(1), PP. 113-138

Data Analysis

The data obtained from the questionnaire sent to the respondents (legal practitioners residing in Nigeria) is analysed below as follows;

Research Question One

What State do you reside in?

327 responses

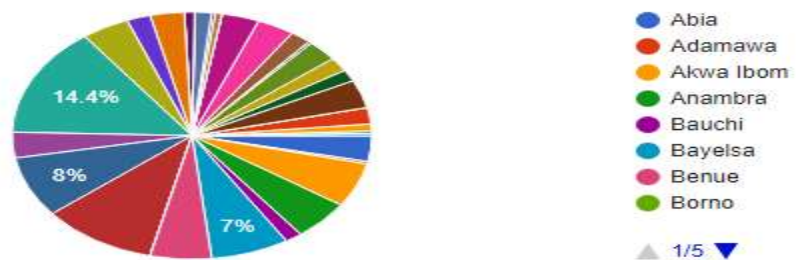


Figure 1: Identification of the various state in Nigeria reside by the respondents

S/N	States in Nigeria	Responses Respondents	of Percent
1	Abia	11	3.4%
2	Adamawa	1	0.3%
3	Akwa Ibom	19	5.8%
4	Anambra	17	5.2%
5	Bauchi	5	1.5%
6	Bayelsa	23	7%
7	Benue	18	5.5%
8	Borno	Nil	Nil
9	Cross River	34	10.4%
10	Delta	26	8%
11	Ebonyi	11	3.4%
12	Edo	47	14.4%
13	Ekiti	14	4.3%
14	Enugu	7	2.1%
15	(FCT) Abuja	10	3.1%
16	Gombe	Nil	Nil
17	Imo	3	0.9%

18	Jigawa	Nil	Nil
19	Kaduna	Nil	Nil
20	Kano	3	0.9
21	Katsina	Nil	Nil
22	Kebbi	Nil	Nil
23	Kogi	11	3.4%
24	Kwara	11	3.4%
25	Lagos	6	1.8%
26	Nassarawa	Nil	Nil
27	Niger	3	0.9%
28	Ogun	9	2.8%
29	Ondo	6	1.8%
30	Osun	5	1.5%
31	Oyo	12	3.7%
32	Plateau	Nil	Nil
33	Rivers	7	2.1%
34	Sokoto	3	0.9Nil
35	Taraba	Nil	Nil
36	Yobe	Nil	Nil
37	Zamfara	Nil	Nil
TOTAL		327	100%

Table 1: Valid responses identification of the states in Nigeria they reside

Figure 1 and Table 1 above are valid responses to the respondents' identification of the various states in Nigeria where they reside.

Research Question Two

What is your educational level?

327 responses



Figure 2: Identification of the various degree of the respondents in the practice of legal profession in Nigeria

Legal Professional Degree of Respondents	Response	Percent
Bachelor of Laws	44	13.5%
Barrister at Law	115	35.2%
Master of Laws	96	29.4%
Ph.D. in Law	72	22%
Others	Nil	Nil
Total	327	100%

Table 2: Valid identification of the various degree of the respondents in the practice of the legal profession in Nigeria

Figure 2 and Table 2 above are valid respondent responses in identifying the various level of their degree in the practice of the legal profession.

Research Question Three

Do you agree that the Administration of Criminal Justice Act (ACJA) 2015 and the Correctional Services Act (NCSA) 2019 has brought in innovation concerning non-custodial sentence in Nigeria?

326 responses

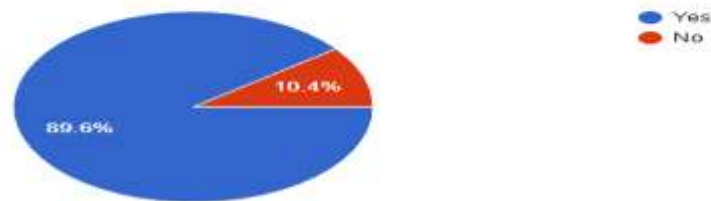


Figure 3: Respondents identifying whether ACJA 2015 and NCSA 2019 provide for a non-custodial sentence

Response	Response	Percent
Valid Yes	292	89.6%
Valid No	34	10,4%
Total	326	100%

Table 3: Valid respondents' identification of whether the ACJA 2015 and NCSA 2019 provide for non-custodial sentence

Figure 3 and Table 3 are valid respondents' responses in identifying if the Administration of Criminal Act 2015 and the Nigerian Correctional Services Act 2019 have brought in an innovative provision that provides for a non-custodial sentence.

Research Question Four

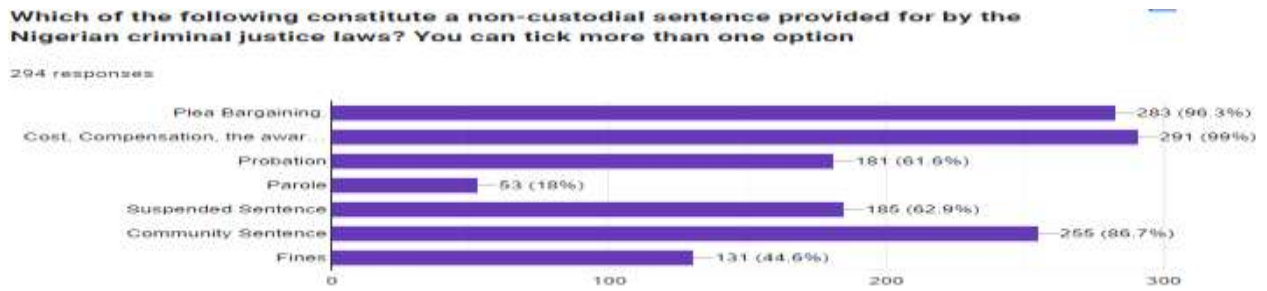


Figure 4: Cluster of responses of respondents identifying the various non-custodial in Nigeria's criminal justice law

Non-custodial sentence	Cluster responses	Percentage
Plea Bargaining.	283	96.3
Cost, Compensation, the award of Damages, and Restitution.	291	99
Probation.	181	61.1
Parole.	53	18
Suspended Sentence.	185	62.9
Community Sentence and	255	86.7
Fines.	131	44.6

Table 4: Valid Cluster of responses of respondents identifying the various non-custodial in Nigeria's criminal justice law

Figure 4 and Table 4 are valid respondents' clusters of responses identifying the various non-custodial sentence provided for by the Administration of Criminal Justice Act and the Nigeria Correctional Services Act.

Research Question Five

Do you agree that there are challenges mitigating against the smooth application and enforcement of non-custodial sentences in Nigeria?

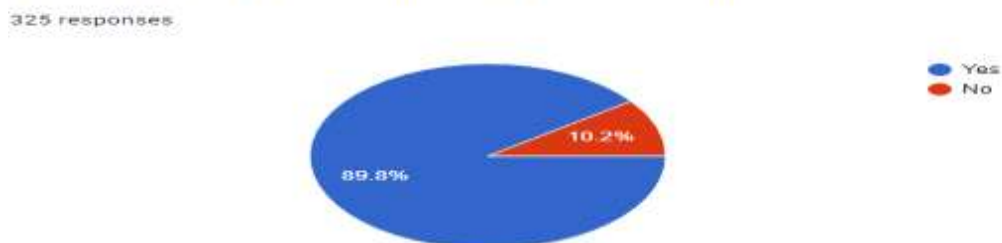


Figure 5: Respondents' confirmation of the challenges mitigating the successful application of non-custodial sentence

Response	Percent
Yes	89.8%
No	10.2%

Valid Yes	292	89.8%
Valid No	33	10.2%
Total	325	100%

Table 5: Valid respondents' confirmation of the challenges mitigating the successful application of non-custodial sentence

Figure 5 and Table 5 are respondents' confirmations of the challenges mitigating the successful application and implementation of non-custodial sentences in Nigeria's criminal justice system.

Research Question Six

Which of the following constitute the challenges mitigating against the smooth application and enforcement of a non-custodial sentence in Nigeria? You can tick more than one option

296 responses

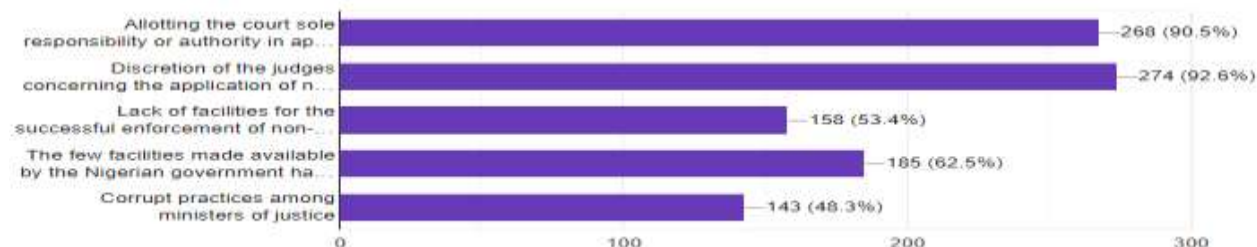


Figure 6: Identification of the challenges mitigating the application of non-custodial sentences in Nigeria

Challenges of non-custodial sentence implementation	Respondents	Percentage responses
Allotting the court sole responsibility or authority in applying a non-custodial sentence	268	90.5%
Discretion of the judges concerning the application of non-custodial sentence	274	92.6%
Lack of facilities for the successful enforcement of non-custodial sentences in Nigeria	158	53.4%
The few facilities made available by the Nigerian government have not been maximally utilized.	185	62.5%
Corrupt practices among ministers of justice	143	48.3%

Table 6: Valid cluster of identification of the challenges mitigating the application of non-custodial sentences in Nigeria

Figure 6 and Table 6 are respondents' clusters of responses identifying the various challenges that often mitigate the successful application and implementation of non-custodial services in Nigeria's criminal justice system.

Research Question Seven

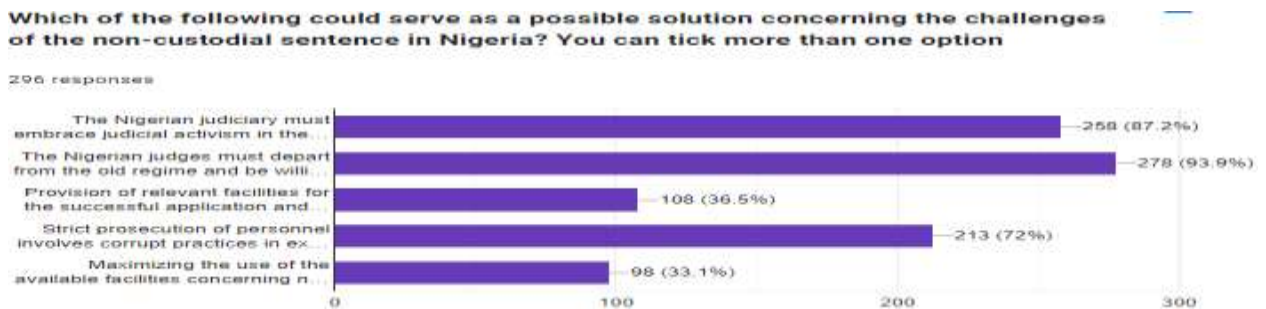


Figure 7: identification of possible remedies concerning the challenges of non-custodial sentence application in Nigeria

Remedies concerning the challenges of a non-custodial sentences in Nigeria	Cluster of Responses	Percentage
The Nigerian judiciary must embrace judicial activism in the application and enforcement of a non-custodial sentence	258	87.2%
The Nigerian judges must depart from the old regime and be willing to implement the provisions of the ACJ, 2015 and the Nigerian prison Act 2019, as it relates to non-custodial sentence	278	93.9%
Provision of relevant facilities for the successful application and enforcement of a non-custodial sentence	108	36.5%
Strict prosecution of personnel involves corrupt practices in exploiting non-custodial sentences processes	213	72%
Maximizing the use of the available facilities concerning non-custodial sentences in Nigeria	98	33.1%

Table 7: Valid cluster of possible remedies concerning the challenges of non-custodial sentence application in Nigeria

Figure 7 and Table 7 are a cluster of respondents' identifications of the possible remedy that could aid the smooth application and implementation of non-custodial sentences in Nigeria's criminal justice system.

Discussion of Findings

The data obtained via a questionnaire sent to the various respondents and analyse above in this study reveals that in table 1 and figure 1 above, the (327 of respondents) respondents are citizens or residing in Nigeria. Also, concerning the fact that the research focuses on legal issues as it relates to non-custodial

sentences, figure 2 and table 2 further reveal the fact that the researcher carefully selected their respondents from or within the legal profession. In this regard, as presented in figure 2 and table 2;

- i. 13.5% of respondents identified that they are holders Bachelor of Law (LLB) degree
- ii. 35.2% stated Barrister at Law (BL) degree
- iii. 29.4% stated Master of Laws (LLM) degree
- iv. 22% further identified that they are Ph.D. in Law degree holders

The essence of figures 1, 2, and tables 1, and 2 is to ensure persons who are to respond to the questionnaire are Nigerians who are well informed and learned in the criminal justice system of Nigeria. This is concerning the fact that persons who possess the qualities presented table 1 and 2 above will enable them to give an accurate and informed answer to the questionnaire.

However, in figure 3 and table 3, 89.6% of respondents were able to identify that the Administration of Criminal Justice Act 2015 and the Correctional Services Act 2019 have brought in various innovative sections that provide for a non-custodial sentence. In figure 4 and table 4 the respondents were able to identify the non-custodial sentence that has been provided to mitigate the overcrowded correctional centre of Nigeria. Some of the non-custodial sentences identified are as follows;

- i. 96.3% of respondents identify plea bargaining as one of the non-custodial sentences
- ii. 99% identify cost, compensation, the award of damages, and restitution.
- iii. 61.1% and 18% identify probation and parole respectively.
- iv. 62.9% and 86,7% stated suspended sentence and community sentence
- v. Furthermore, 44.6% identify Fines as also one of the non-custodial sentences introduce in Nigeria's criminal justice sentence

Although, the essence of the introduction of non-custodial sentences in Nigeria's criminal justice system is aimed at decongesting the Nigerian correctional centre and ensuring the essence of the justice system is attained. However, despite the relevance of non-custodial services to the Nigeria criminal justice system, in figure 5 and table 5, 89.8% identify that there are several challenges mitigating the smooth application or implementation of the innovative non-custodial services. Furthermore, in figure 6 and table 6 the respondents further identify some of the challenges as follows;

- i. 90.5% of the respondents stated that it is an error allotting the court sole responsibility or authority in applying a non-custodial sentence
- ii. 92.6% stated that giving discretionary power to the judges concerning the application of non-custodial sentences, could be a challenge
- iii. 53.4% stated that there is a lack of facilities for the successful enforcement of non-custodial sentences in Nigeria

- iv. 62.5% identify that the few facilities made available by the Nigerian government have not been maximally utilized.
- v. 48.3% of the respondents stated that corrupt practices among ministers of justice are also one of the challenges mitigating against non-custodial sentences in Nigeria's criminal justice system.

However, given the relevance of non-custodial services to the Nigeria criminal justice system, in figure 7 and table 7, the respondents were able to proffer possible solutions that could solve some of the challenges identified in table 6 as follows;

- i. 87.2% of the respondents stated that the Nigerian judiciary must embrace judicial activism in the application and enforcement of a non-custodial sentence
- ii. 93.9% identify that the Nigerian judges must depart from the old regime and be willing to implement the provisions of the ACJ, 2015 and the Nigerian prison Act 2019, as it relates to non-custodial sentence
- iii. 36.5% stated that there is a need for the provision of relevant facilities for the successful application and enforcement of a non-custodial sentence
- iv. 72% also stated that there should be a strict prosecution of personnel involved in corrupt practices in exploiting non-custodial sentences processes
- v. Furthermore, 33.1% of the respondents stated that maximizing the use of the available facilities concerning non-custodial sentences in Nigeria could aid in the successful application of non-custodial sentence

4. Conclusion

The ACJA, 2015 and the reforms in the NCSA, 2019, are two legislations that will go a long way in no small measure in improving the criminal Justice System if its innovative provisions are painstakingly followed on the one hand and if there is a synergy between the judiciary and the correctional services for its full implementation on the other hand. That there is an urgent need for a deliberate and concerted effort in building a national database where information concerning every citizen in Nigeria is preserved from birth to death. The existence of a biometric database of convicts will not only sway the judges into considering the non-custodial sentencing, but it will also encourage its sustenance as no judge wants its order/judgment flouted. No doubt, the provisions of the ACJA, 2015, and the reforms in the NCSA, 2019, puts the judiciary in the driver's seat in applying non-custodial sentences/measures in the administration of criminal justice in Nigeria. It follows, therefore, that the bench must embrace judicial activism. The Court must depart from the old regime and be willing to adopt and implement the provisions of the ACJ, 2015, notwithstanding the numerous challenges, especially in the face of prison congestion, rampart jailbreaks, and recidivism.

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