

# **AN EXAMINATION OF THE PROBLEMS OF THE ADOPTION OF ALTERNATIVE SENTENCING IN NIGERIA**

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## **ABSTRACT**

Nigeria, through the Administration of Criminal Justice Act, 2015 and the Nigerian Correctional Service Act, 2019, as legal frameworks had joined other countries of the world in adopting alternative sentencing option for criminal punishment. This paper therefore takes a cursory look at the problems which are being faced with the adoption or implementation of such option. The study attempts the consideration of the advantages of the alternative sentencing over the erstwhile custodial sentencing. The paper thereby concludes, despite the good tidings and the advantages of the application of alternative measures, as punishment for crime in the administration of criminal justice system in Nigeria, there appears to be inefficiency and ineffectiveness of the alternative sentencing option and the problems are identified as, persuasive ignorance about alternative sentencing, non-familiarity with the legal or legislative framework of alternative measure by the key players in the administration of criminal justice, absence of the institutional framework stipulated by the legal framework, inadequacy of fund, among others. The study therefore recommends the rigorous and aggressive awareness of the programme to people, putting much elucidation on the legal framework for the adjudicators and other categories of the people for the adoption of alternative sentencing options, the establishment of institutional framework for the accommodation of the measure and the provision of adequate finance to be able to put up effective and efficient adoption of the alternative sentencing measures, among others.

## **1.0 INTRODUCTION**

Alternative sentencing which is a form of criminal punishment for a convict, after such could have been adjudged guilty of a criminal offence, is gradually becoming popular after the imprisonment sentencing has been recognized not to be yardstick for the prevention of crime, rehabilitation and then the re-integration of the offenders. Alternative sentencing is noted to be effective and efficient, especially as it prevents prison congestion, correction of poor rehabilitation, poor conditions of living, among others as noted with imprisonment. However, in the adoption of the Alternative Sentencing, taking a look at the problem that may be encountered, which can affect the efficient and effective adoption and implementation is necessary.

## **2.0 PRISON SENTENCING**

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Custody is the state of being imprisoned or detained, usually pending a trial. Also custody means the taking care and the controlling of a thing or person for the purpose of inspection, preservation and security.<sup>1</sup>

Constructive Custody is the custody given to a person (such as a parolee or probationer) whose freedom is under the control of a legal authority, and such person is not under a direct physical control,<sup>2</sup> while Penal Custody is the custody intended to punish a criminal offender.<sup>3</sup> In contrast, a sentence is described in legalese as the punishment that a court might inflict after ruling on a criminal case. The final explicit act of a judge-ruled procedure is the sentence, which also serves as the symbolic central act associated with his role.

A convict may get a sentence that includes imprisonment, a fine, or other penalty. A sentence is the judicially determined legal punishment that must be administered to a defendant who may have been found guilty of an offense.<sup>4</sup> Statutes do specify the highest punishment which is imposable for respective offences and guidelines for sentencing do prescribe the lower and highest terms of imprisonment to giving to an offender, but the trial court is left with discretion.

### **3.0 NON-CUSTODIAL SENTENCING**

Non-Custodial Sentencing developed owing to international recognition that imprisonment, though a legal sanction for an offender does not constitute a panacea for crime prevention, rehabilitation and reintegration of offenders. Most prison systems in many countries face challenges including but not limited to overcrowding, poor hygiene, sexual abuse, sexual and reproductive ill-health and outdated facilities. These challenges potentially impede the educational and vocational training of inmates and affect future adjustment to an ordinary life outside incarceration. More so, the negative impact of long incarcerations on an inmate's family and work is another factor that led to the development of non-custodial sentencing.

The following statements sum up the Council of Europe's position on alternatives to incarceration: Penal policies should use imprisonment as a last resort; community sanctions must adhere to human rights (and not violate human dignity); community punishments should prioritize the interests of the victim of a crime as well as the offender's rehabilitation and integration; the implementation of alternatives to jail requires a working infrastructure. International frameworks, such as the United Nations Basic Minimum Standards for Non-Custodial Measures, have non-custodial sentences codified in them (The Tokyo Rules),<sup>5</sup> United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The

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<sup>1</sup> B. Garner (ed), *Black's Law Dictionary*, Eighth Edition (2004), Law Prose Inc., 412

<sup>2</sup> Ibid, p.413

<sup>3</sup> Ibid, p.412

<sup>4</sup> K.E. Oraegbunam, M.V.C. Ozioko, C. Osim, "Nature and Principles of Sentencing in Criminal Jurisprudence in Nigeria", (2019) 7 (3) *International Journal of Innovative Legal and Political Studies*, 31.

<sup>5</sup> United Nations Standard Minimum Rules for Non-Custodial Measures (The Tokyo Rules) Adopted by General Assembly resolution 45/10 of 14 December 1990 <Adopted by General Assembly Resolution 45/110 of 14 December 1990> accessed 2 January, 2020.

Beijing Rules),<sup>6</sup> Declaration of Basic Principle of Justice for Victims of Crime and Abuse of Power<sup>7</sup> and the United Nations Rules for the Treatment of Women Prisoners and the Non-Custodial Measures for Women Offenders (The Bangkok Rule).<sup>8</sup>

A non-incarcerate sentence, also known as an alternative sentence, is one that a court of law imposes and does not include a jail or prison sentence. Non-Custodial Sentences can take many different forms, such as community service requirements, probation requirements, parole requirements, requirements for drug testing and treatment, etc.

It is hardly surprise that the major United Nations treaties carefully restrict the circumstances under which imprisonment is permissible given that imprisonment is a restriction, if not an infringement, of the prisoner's fundamental human rights. Of these multinational agreements, the International Covenant on Civil and Political Rights (ICCPR) is arguably the most significant. There are more stringent restrictions that apply to particular types of potential inmates in other multilateral documents, such as the United Nations Convention on the Rights of the Child.

The United Nations has created and promoted standards and norms since the middle of the 1950s to foster the development of criminal justice systems that adhere to essential human rights criteria. These rules and norms serve as a blueprint for how the criminal justice system should be organized. While being non-binding, they have considerably promoted the improvement of criminal justice systems and procedures. Countries employ these standards and norms to set the stage for and encourage in-depth analyses that could result in the necessary adjustments. Additionally, they have assisted nations in creating regional and sub-regional strategies. They *outline best practices* globally and internationally and help nations adopt them to meet their particular needs. The United Nations Basic Minimum Standards for the Treatment of Prisoners are the oldest of these,<sup>9</sup> which deals only with imprisonment. While the spectrum of tools has expanded to cover every part of the criminal justice system and crime prevention, imprisonment has remained a crucial component of standards and norms. These days, a wide range of topics are covered by standards and norms, including juvenile justice, how criminals are treated, international collaboration, good governance, victim protection, and violence against women. In terms of alternatives to incarceration, the United Nations Basic Minimum Guidelines for Non-Custodial Measures (the Tokyo Rule), which were approved in 1986, are particularly significant.<sup>10</sup>

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<sup>2</sup> United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), Adopted by General Assembly resolution 40/33 of 29 November 1985 <<https://www.ohchc.org.Document/ProfessionalInterest/beijingrules.pdf>> accessed 2 January, 2020.

<sup>3</sup> Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, Adopted By General Assembly Evolution 40/34 of 29 November 1985 <<https://www.un.org/en/genocideprevention/documents/atrocitycrimes/Doc.29declaration%20victims%20crime%20abuse%20of%20power.pdf>> accessed 2 January, 2020

<sup>4</sup> United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (the Bangkok Rules) < <https://www.ohchc.org.Document/ProfessionalInterest/Bangkokrules.pdf> > accessed 2 January, 2020

<sup>9</sup> E.S.C. Resolution 663C(XXIV) of 31 July 1957 U.N. Doc. E/3048 (1957) and 2076 united(LXII)(1957)

<sup>10</sup> United Nation Doc. A/RES/45/110

The goal of non-custodial measures in general and the Tokyo Rules in particular is to provide offenders with an effective alternative to incarceration while allowing the authorities to tailor the penalty to each offender's requirements in a way that is commensurate to the crime committed. The benefits of individualizing sentencing in this way are obvious; by allowing the criminal to remain at liberty, it also enables him or her to continue with work, education, and family responsibilities.<sup>11</sup>

The goal of non-custodial sentencing, also known as alternative sentencing, is to create punishments that can be carried out in the community rather than in jail, which is thought to be a dehumanizing and criminogenic environment. In addition to having a much higher likelihood of success, the community would also be responsible for and participating in the offender's punishment and rehabilitation. This is a more or less autonomous development simulated meditation on the prospect of providing alternatives to incarceration and the formation of a much more comprehensive and cohesive sentencing system, where both alternative punishments and traditional punishment have a role to play.<sup>12</sup>

### **3.0 ADVANTAGES OF ALTERNATIVE SENTENCING**

Poor rehabilitative activities in prison, inadequacy of the re-integration and resettlement activities, poor conditions of living in prison, experience of torture, inhuman treatment and incarceration, absence of adequate mental and psychological treatment in prison, prison congestion, non-reformatory status of ex-inmate, threatens the position that the prison and hence imprisonment offers treatment and rehabilitation to offenders. These problems affect the cardinal motive behind the criminal justice system, hence 'alternative sentencing', which aids quick justice administration and the management of the criminal administration institution efficiently is encouraged. Alternative sentence is cost effective and more humane alternatives to custody.<sup>13</sup>

In view of the aforementioned shortcomings, inadequacies and ineffectiveness about imprisonment, people are agitating for Non-custodial Sentencing. Under part 40 "Sentencing generally other than capital sentence", Section 416 (2) (k) of the Administration of Criminal Justice Act, 2015 provides:

Sentencing to a term of imprisonment shall apply only to those offenders who should be isolated from society and with whom other forms of punishment have failed or is likely to fail.<sup>14</sup>

### **4.0 PROBLEMS OF ALTERNATIVE SENTENCING**

Despite the improvement which non-custodial measure or alternative sentencing has brought to the Administration of Criminal Justice System in Nigeria, it has however been laced with many challenges which need to be addressed, in order that the application and hence the

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<sup>11</sup> See UN doc. ST/CSDHA/22, *Commentary on the United Nation Standard Minimum Rules for Non-Custodial Measures (the Tokyo Rules)* (hereinafter referred to as Commentary), p.2

<sup>12</sup> J. Junger-tas (1994): *Alternatives to Prison Sentences, Experience and Development*. RDC-MINISTRY OF JUSTICE, Kugler Publications, New York, p. 5

<sup>13</sup> <https://blogs.ize.ac.uk/politocsandpolicy/alternatives-to-custody/> Last Accessed 5<sup>th</sup> August, 2019.

<sup>14</sup> Section 416 (2) (k) of the Administration of Criminal Justice Act, 2015

adoption of non-custodial measure be effective and efficient in the Administration of Criminal Justice in Nigeria. The Challenges are as discussed below:

#### **4.1 Pervasive ignorance about non-custodial sentencing**

Much has not been done in the area of education of the people of Nigeria about the program of non-custodial measure. This lack of adequate awareness affects the general acceptability of the program. The level of awareness, even among the adjudicatory officers is so low that few adjudicatory officers that are familiar with the program do not know and hence cannot apply appropriate types of the non-custodial measure. Enough education and information had not been passed by the Nigerian Government to the populace concerning the program.

Of utmost importance is the place accorded the involvement of community leaders and members of the community as far as the adoption and sustenance of alternatives to imprisonment is concerned. Hence if proper orientation and awareness are given to those community leaders and members of the community, the better the chances of successful application and hence adoption of the non-custodial measures in the Administration of Criminal Justice in Nigeria.

#### **4.2 Non-familiarity with the Legal or Legislative Framework of Non-custodial Measure by the Key Players in the Administration of Criminal Justice**

Most of the concerned personnel in the Administration of Criminal Justice, like the Judges, Magistrates and even the non-custodial officers of the Correctional Service are not familiar with the provisions of the requisite law i.e., Administration of Criminal Justice Act, 2015, Administration of Criminal Justice law of various States of the Federation and the Nigerian Correctional Service Act, 2019. In line with a Latin maxim *Nemo Dat Quo non Habet* meaning what you do not have, you cannot give it out. So, if the so-called key players in the administration of criminal justice do not know the provisions of these requisite law, then they may not be able to appreciate and hence apply the principle.

#### **4.3 Absence of the Institutional Framework Stipulated by the Legal Framework**

According to the relevant legal framework, a community service center is required to be established in every Judicial Division<sup>270</sup>. It should be said that the provision referred to above is also prescribed by the Administration of Criminal Justice law of the States of the Federation. In the Course of this research, it was found that virtually none of the States of the Federation have built or established community centres.

Courts are therefore been constrained in ordering community service to always be done in the respective courts' premises. Institutional framework is simply the creation of the Administrative structure for the implementation of the non-custodial measure order, as this gives impetus to what is called and known as supervisory mechanism. For instance, the authority that sees to the release of convict into the community has the responsibility of putting in place mechanisms to ensure compliance with the conditions set and also protect victims of crime.

Currently, non-custodial sentences like Probation and Community Service are not effectively utilized, in Nigeria, because the appropriate facilities and logistics to maintain and monitor

them are not available. The Probation and community service orders in Nigeria are facing supervisory problems and other obstacles like lack of vehicles to move around, uncoordinated link among courts, Police and other probation officers, hence the implementation of non-custodial sanctions generally is yet to be effective in Nigeria.

#### **4.4 Inadequacy of Fund**

This can be summarily put as budgetary or financial challenge. Even though non-custodial measure will have an attendant effect of reducing cost of maintaining inmates at the correctional centres, but to embark on community service, money must be expended or spent. In as much as money or finance had never been released by the Government of Nigeria with a view to embarking and carrying on this non-custodial measure, there is a problem inadequacy of finance or money has effect and hence bearing in the following areas:

- a. Shortage of the non-custodial officers of the Correction: For the non-custodial sentencing adoption to be effective and efficient, non-custodial staff of the Correctional services should be available at each and every court of the Federation. The few non-custodial officers that have been on ground can only be found in the Courts of some big cities in each State of the Federation, this thus prevents the adjudicators who sit at other different locations from observing and adopting non-custodial measures, because should such orders be given, there will not be non-custodial officers to implement. Hence this leads to limited coverage of the non-custodial officers and hence the application or adaptation of non-custodial measure is threatened.
- b. No implements for convicts to work with: Community service orders have been consistently given by the Nigerian Courts without the required implements tools to work with, by the convict who is under community service order. Many a times, non-governmental organizations and personal persons are the ones responsible for the little that can be seen around.
- c. Construction of community service centres and the purchase of other facilities for the use of community service. The responsibility of building community service centres and the purchase of vehicles to monitor the execution of community service work is on the Government of the Federal Republic of Nigeria, which shortage of fund had affected in the negative.
- d. Training and organization of workshop for the Adjudicatory personnel like Judges and Magistrates and then the non-custodial officers of the Nigerian Correctional Service, is so important. In fact, these key players should have both domestic and international training, especially at some countries of the world in which this program had been a huge success, but unfortunately Nigerian government had been handicapped. In view of the fact that adequate training and awareness had not been given to the Adjudicators who are key players in the application of non-custodial measure, the attitude of our courts show preference to custodial measure, even in glaring situations where the circumstances of the case, conduct and criminal antecedents of the defendant warrant the application of non-custodial measure.

#### **4.5 Non-compliance with the International Standards and Conditions**

There have been some prescriptions and conditions put up by the United Nations Standard Minimum Rules for Non-custodial measures (The Tokyo Rules) 1990 and some other relevant international laws which Nigeria as a country had not been observing, concerning the use of non-custodial measure. Among these are:

- There is prohibition for non-custodial measures where it involves medical or psychological experimentation on, or undue risk of physical or mental injury to, the offender. This is according to Rule 3.8 of Tokyo Rules, 1990.<sup>15</sup> At any rate, non-custodial measure may not of course violate the legally binding rules existing in international human rights law, such as the right to freedom from inhuman or degrading treatment or punishment. The implementation and hence the development of non-custodial measure should at any rate respect the rights and freedoms of the offenders, which is a requirement highlighted by Rule 3.9, in which the dignity of the offender subject to non-custodial must be protected at all times.
- Now, in the adoption and implementation of non-custodial measure, the offender's right cannot be restricted more than how it could have been authorized by the competent authority that rendered the original decision.<sup>16</sup> This rule is authorized by the principle of legality, in which any interference with a person's right must be based on law, and no further restrictions can be imposed without a decision taken by a duly authorized authority, acting in accordance with the law.

It must be stressed that Nigeria had not been seen, observing these International Standards and Conditions, hence the ineffectiveness of the adoption and application of the program.

- While non-custodial measure is in operation, the offender's right to privacy shall be respected, as shall be the right to privacy of the offender's Family.<sup>17</sup>
- Right to dignity is respected, as well as the right to privacy. Hence the offender's personal records shall be kept strictly confidential and closed to third parties.<sup>18</sup> Access to such record must be limited to personalities that are directly involved or concerned with the disposition of the offender's case or other duly authorized persons.

#### **4.6 Lack of Inter Service Cooperation or Synergy among the Adjudicators, Prosecutors and the Non-custodial Officers**

The role and responsibility of correctional service officers, who usually act as non-custodial officers are not only done after non-custodial orders are given by the court, but also the non-custodial officers can function through the giving of advice to courts before non-custodial orders are given, thereby assisting courts in knowing the appropriate non-custodial measure to be given. It is not all the time or in all situations that the Court could have given the non-custodial order before the non-custodial unit of the Correctional center would be of known to it. In fact, the role of non-custodial officers in the way of advice or suggestion to the court with regards to the nature of non-custodial measure and whether to give non-custodial in certain respects cannot be over emphasized.

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<sup>15</sup> Rule 3.8 of the "United National Standard Minimum Rules for Non-custodial measure" (Tokyo Rules) 1990

<sup>16</sup> Rule 3.10 of the Tokyo Rules, 1990

<sup>17</sup> Rule 3.11 of the Tokyo Rules, 1990

<sup>18</sup> Rule 3.12 of the Tokyo Rules, 1990

Hence the non-custodial officers, in line with the operation of non-custodial program can be of assistance, in the pre-trial, trial and post-trial stages of the proceedings of the court. In the area of Parole, Probation, Community Service the non-custodial officers can be of useful indication for the Adjudicators to be able to know the appropriate non-custodial order to be given. Meanwhile the Police prosecutors are also involved and can be of assistance in the area of plea bargaining, which is an aspect of Restorative Justice Model. Though in all, the Adjudicator has overriding power and authority on the proper way to go.

For instance, he has to make pronouncement on plea bargaining and the conditions for plea bargaining provided in Section 270 (1) of the Administration of Criminal Justice Act, 2015. For example, in the cases of the Federal Republic of Nigeria v. Ran-yaks Nigeria limited<sup>19</sup> and in Federal Republic of Nigeria v. Michael Ogun,<sup>20</sup> however the Courts is not bound to impose the sentence agreed upon in the plea bargaining agreement by the parties.

It must be stressed that; the lack of this synergy had constituted a problem for the smooth running of the alternative sentencing.

The expected synergy or inter-services cooperation among the judicial officers, Police prosecution and the non-custodial officers is vital and important for the effective use of the non-custodial or alternative sentences. It is important to say that non-custodial options can be employed at different stages of the judicial process and they are as follows:

- At the pre-trial stage
- At the trial and sentencing stage
- At the post-trial sentencing stage

#### **4.7 Limitation in the Scope of the Application**

As good as the application of non-custodial measure is, it had been seen that it has limit of coverage, as it cannot be used for all offences. Section 460 (3) of Administration of Criminal Justice Act, 2015 provides<sup>21</sup> that for offenses involving the use of weapons, offensive weapons, sexual offenses, or offenses for which the punishment surpasses imprisonment for a length of three years, a criminal cannot get a suspended sentence or community service.

Meanwhile from this research it was discovered that the use of non-custodial measure as it has been allowed under the Administration of Criminal Justice Act, 2015 and Criminal Justice law of the various states of the Federation is made possible with the use of the discretionary powers of the courts in pronouncing sentences. Hence when a Statute prescribes a sentence for an offence, the court may have discretion to pronounce a lesser sentence with consideration of some factors, Aderemi DSC, as he then was, held:<sup>22</sup>

Where the sentence prescribed upon conviction in a criminal charge is a term of years of imprisonment, of the convict, whether he is first offender

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<sup>19</sup> Suit No: FHC/MKD/CR/33/2010

<sup>20</sup> Suit No: FHC/HC/CR/15/14

<sup>21</sup> Section 460 (3) of the Administration of Criminal Justice Act, 2015

<sup>22</sup> Tanko v. State 2009 LPELR 3136 (SC)

etc. can be taken into consideration by the trial Judge in passing the Sentence on the convict indeed, the trial Judge in my view has the discretion to employ these factors to reduce the years of sentence.

But this discretion is not absolute, because it has limitation. Some of these limitations are:

**Mandatory Sentence:** With mandatory sentence, the penalty suggested must be imposed regardless of any circumstances. That is, where and when a Statute prescribes a mandatory sentence for a particular offence, court cannot pronounce a lesser sentence to that effect. For instance, offences like murder, armed robbery and treason in Nigeria are capital offences and hence attract mandatory death sentences and no court has any discretion to pronounce a lesser sentence or to order on-custodial sentence.

The Supreme Court of the country ruled in in *Amoshina v. The State*<sup>23</sup> stated that if a statute were to expressly prescribe a required punishment, the courts would not have the authority to impose a sentence that was less than mandatory since doing so would be an exercise of discretion.

In *Isang v. State*<sup>24</sup> it was held that when sentencing wording in a statute is clear and required, it is a combined principle of criminology and criminology that a court of law lacks discretion to impose a sentence. It must impose the precise and required penalty outlined in the Statute. A court of law, however, has the authority to impose a sentence that it deems appropriate given the facts of the case when sentencing language is general and does not specify a required term cap.

**Minimum and Maximum Sentence:** If the law that creates an offence prescribes a minimum punishment for an offence, the discretion of the court is hereby limited. These minimum punishments are mandatory and hence court cannot pronounce a sentence lesser than that which is already prescribed by the law. The same goes for maximum punishment.

**Capital Offences:** Capital Offences ordinarily carry corporal punishment and this is not within the discretionary power of Court to alter.

So, not being able to be used on some offences as stated from the foregoing constitute a challenge or limitation for the application of non-custodial measure in the Administration of Criminal Justice in Nigeria. However legislative framework can be put across to correct this, thus making all offences to be subjected to non-custodial sentencing.

## 5.0 CONCLUSION

This work is the first comprehensive study on the challenges of non-custodial sentencing in the Administration of Criminal Justice in Nigeria. The study examined the evolution of non-custodial sentencing in Nigeria, the origin of non-custodial sentence and the advantages of non-custodial sentence, the nature of non-custodial sentencing, forms of non-custodial

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<sup>23</sup> (2011) Vol.6 pt 11, MJSC, p. 1 at 18 para D-E

<sup>24</sup> (1996) 9 NWLR pt. 473 Pg. 458 & 471

measures like probation, parole, community service, plea bargaining with the provisions of Administration of Criminal Justice Act, 2015 on them. It is interesting to know that the study considered the application of the non-custodial measure by the Courts generally in Nigeria, in which the decisions of both lower Courts and higher Courts with regards to community service and plea bargaining were considered at the three major stages of Criminal trial, viz; pre-trial, trial and post-trial stages. The opinions and perceptions of some stake holders in the Administration of Criminal Justice with regards to the application of non-custodial sentencing were gathered.

Despite the good tidings and the advantages of the application of non-custodial measures, as punishment for crime in the administration criminal justice in Nigeria, through decongestion of prison, reduction of recidivism, rehabilitation of the offenders and the paying back to the community or society, there appears to be inefficiency and ineffectiveness in the application of the programmes, in the light of many challenges. These inefficiency and in effectiveness were discovered to be caused by; pervasive ignorance about non-custodial sentencing, non-familiarity with the legal or legislative frame work of non-custodial measure by the key players in the administration of criminal justice, absence of the institutional frame work stipulated by the legal frame work, inadequacy of fund, non-compliance with the international standards and conditions, lack of inter service corporation or synergy among the adjudicators, prosecutors and non-custodial officers and limitation in the scope of the application of the non-custodial sentencing itself. In order to make the application of non-custodial sentencing effective and efficient, those factors that constitute the challenges of the application should be tackled. Solving these challenges will make the administration of criminal justice system in Nigeria to be improved.

## **6.0 RECOMMENDATIONS**

Many overreaching and inter-dependent recommendations emerge from this cross-cutting study to, suggest the way forward to overcome the plethora of challenges facing the application of non-custodial sentencing in the Administration of Criminal Justice in Nigeria. These recommendations are examined as follows:

1. The first major step in fighting the challenges of the application of non-custodial measure in the Administration of Criminal Justice in Niger is the rigorous and aggressive putting up of the awareness of the program to the people. Training and workshops, with orientation on the meaning, the use and the advantages of the adoption or usage of the non-custodial measure as it had been legislated and encouraged by the international organizations and the developed countries of the World should be massively organized and put in place. As long as the proper orientation and education are being conducted on the Nigerian populace, the efficiency and effectiveness of the non-custodial measures would be guaranteed. Community leaders and the general populace can contribute effectively to the adoption and maintenance of alternatives to incarceration. Community members can support community-based alternatives to incarceration in a variety of ways without jeopardizing offenders' rights. As far as the execution of such sentences is concerned, community leaders have the ability to persuade or encourage members of the public

to accept and support offenders and law breakers who serve their terms in their midst.<sup>25</sup>

2. The second step is the Elucidation on the existence of the Legal framework, on the application and hence adoption of the non-custodial measure to the Adjudicators and other categories of people and or application of the non-custodial measure or alternative sentencing. Adequate seminars and workshops are to continuously be organized for the Judges, Magistrates, prosecutors and the non-custodial officers of the correctional service on the need to adhere to the provisions of the Administration of Criminal Justice Act, 2015, Administration of Criminal Justice Law of various states of the Federation and the provisions of the Nigerian Correctional Service Act, 2019 as they touch on the non-custodial measures or alternative to prisons. More importantly when the Judicial officers are educated and well equipped on the legal framework up on which the non-custodial measure is premised, then there will be much more application of the measure and more so, the various forms of the measure will a long way bring more efficiency and effectiveness of the non-custodial measure and hence will have overall effect of improving the Administration of Criminal Justice System in Nigeria.
3. Creation or establishment of the institutional framework or Administrative structure for the implementation of whatever alternative measures ordered by the Courts. As part of the Administrative structure is supervision mechanism. The authority that oversees the release of the offender into the community has the responsibility of putting in place mechanisms to ensure compliance with the conditions set and also protect victims of crime.  
Section 461(1) of the Administration of Criminal Justice Act, 2015, stipulates that there should be an establishment of community service centre in every judicial division to be headed by a Registrar who shall be responsible for overseeing the execution of community service orders in every division. If this provision is being followed then the adoption and application of non-custodial measure will be efficient and effective.
4. Another step towards averting the challenges of non-custodial sentencing in the Administration of criminal Justice is provision of adequate finance and financing by the Government, both at the Federal level and State level. Even though alternative to prison measure is cost effective, as there would not be any need to provide foods and feeding for the convict, but it however has budgetary or financial backup to be put in place. If the necessary budgetary or financial obligation of the government is observed, then the shortage of staff, especially the non-custodial officers will be arrested. Non-custodial officers of the correctional service, in line with the provision of Administration of Criminal Justice Act, 2015 and Nigerian Correctional Service Act, 2019 should be at every court in Nigeria, but they are being found in those courts of big cities and this leads to limited coverage of the non-custodial sentencing. Also lack of fund affects the provisions of the implements or tools with which the offenders will be using to carry out the community service. Meanwhile the inadequacy of workshops and training for the key players and observers of non-custodial measures due to lack of fund had been experienced. In effect, if adequate

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<sup>25</sup> UNODC, 2007

finance is provided, the non-custodial sentencing shall be much more effective, efficient and adequate.

5. It is equally suggested that, there should be collaboration among the judicial officers, the prosecutors and the non-custodial officers of the Correctional Services. If the necessary synergy and inter-services cooperation are encouraged by this group of people concerned in the implementation of non-custodial measure, then there will be an effective and efficient use of non-custodial sentencing. The role of the non-custodial officers in the advice with regards to whether or not non-custodial should be used and the nature of non-custodial, given to Court is of great importance in the application of non-custodial sentencing. Also, the police prosecutors are indeed needed when plea bargaining is to be used in Court. This inter-services cooperation in no small measure contributes to the effectiveness of non-custodial measure, in the Administration of Criminal Justice in Nigeria.
6. Another step that can be taken to correct the challenges of successfully applying the non-custodial measure is the observance of the international standards and conditions. Nigeria should take a serious study of the dictates and the prescriptions of the international standards and conditions stipulated by the international organizations, which some countries of the world followed, and their implementation of the non-custodial measure had been with a huge success. Study should be taken on Kenya, Uganda, America, UK, and Canada.
7. Much is to be done, with regards to the legal framework by passing or amending the administration of Criminal Justice Act, to accommodate much more offences to be treated with non-custodial sentencing.

Finally, as to the problem or challenge that is seen as limitation of the application of the non-custodial sentencing, which is seen in a way of mandatory sentence that do not allow the court or the judicial officers to apply discretion through which non-custodial measure order can be given, the solution to this is with regards to legal framework. If capital punishment or capital offences are taken away from our Administration of Criminal Justice System, then the offences that attract mandatory sentences may no longer have mandatory sentences. Meanwhile if the abolition of capital punishment which some countries of the world had welcome are now being practiced is allowed in Nigeria, then all offences can be approached with non-custodial punishment, as there may not be any mandatory sentence.

Of importance is Section 460 (3) of Administration of Criminal Justice Act, 2015 which provides, “A convict shall not be sentenced to suspended sentence or to community service for an offence involving the use of arms, offensive weapon, sexual offences or for an offence which the punishment exceeds imprisonment for a term of three years.”

In essence this restriction or limitation is by legal framework, but if the appropriate legislative procedures are done and the narratives are changed then, non-custodial sentencing can be applied for all offences. Hence with this regard, the non-custodial sentencing will be much more effective and even the custodial section of the Correctional Service will not be in operation again.