

## AN OVERVIEW OF THE LEGAL AND INSTITUTIONAL FRAMEWORK OF NON-CUSTODIAL SERVICE IN NIGERIA\*

### Abstract

*Non-custodial Service is novel in the history of corrections in Nigeria. It is that aspect of the correctional service that oversees and superintends the administration of non-custodial measures ordered by the courts. Non-custodial measures are sentences of court that do not consist of immediate incarceration. These measures include- probation, parole, community service and restorative justice. The Correctional Service Act, 2019 institutionalized non-custodial measures by establishing a separate institution to run and coordinate the management of persons sentenced to any of these alternative measures. This paper examined the legal and institutional framework of Non-custodial Service in Nigeria. The paper adopted doctrinal methodology. It was found that although there are cocktails of non-custodial measures in the law, custodian centres are still congested with inmates serving custodial sentences for minor offences and a greater percentage awaiting trial. It was discovered same was orchestrated by some legal and institutional bureaucracy and gaps. We recommend rejigging of the legal and institutional framework for effective implementation of non-custodial measures. The amendment of the law should reflect pre-trial diversions given that what is in the laws are post-sentencing measures. It is also recommended that necessary committees be set up and adequate fund released to run the scheme.*

**Keywords:** Non-custodial service, non-custodial measures, legal framework, institutional framework.

### 1. Introduction

Prior to the enactment of the extant law,<sup>1</sup> the mandate of the prisons was majorly custodial. The reason is not far-fetched; it is attributed to the traditional approach to criminal justice in Nigeria which centred on incarceration and has been the hallowed mode of addressing inmates' anti-social behaviour. Though not entirely recondite, evolvement of non-custodial measures in Nigerian law rekindles a paradigm shift from the traditional retributive punishment in justice administration to a reformative and humane approach to justice delivery. It was said elsewhere that entrenching non-custodial measures in the Nigeria penal laws re-echoes the traditional African communities' informal but efficacious ways of crime control in the society.<sup>2</sup> The Administration of Criminal Justice Law of Lagos State 2011<sup>3</sup> blazed the trail. It was followed by the Administration of Criminal Justice Act, 2015 and that of other States that domesticated the Act.<sup>4</sup> To drive the non-custodial institution is the Non-custodial Service. The Nigerian Correctional Service Act<sup>5</sup> while establishing non-custodial service empowered it to take responsibility for the administration of non-custodial measures including community service, probation, parole, and restorative justice measures.<sup>6</sup>

The purpose of non-custodial and restorative justice measures is to find effective alternatives to custodial sentence for offenders and to enable the authorities to adjust penal sanctions to the use of the

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<sup>1</sup> Nigerian Correctional Service Act, 2019.

<sup>2</sup> JO Ezeanokwasa, & EL Ngede 'Non-custodial Sanctions in Nigerian criminal Jurisprudence and their Applications during Sentencing: A Myth or Reality', (2021) 11 *Unizik Journal of Public and Private Law*, p. 2.

<sup>3</sup> Now Administration of Criminal Justice (Repeal and Re-enactment) Law, 2015

<sup>4</sup> Example is Ebonyi State Administration of Criminal Justice Law, 2019.

<sup>5</sup> Nigerian Correctional Service Act, 2019.

<sup>6</sup> The Act, Sections 40, 41, 42 & 43, *ibid*.

individual offender in a manner proportionate to the offence(s) committed.<sup>7</sup> The advantages of individualizing sentencing in this manner are evident, given that it permits the offender to remain at liberty, thereby also enabling him or her to continue work, studies and family life.<sup>8</sup> Its intendment is to reduce the number of persons that go into the custodian centres whether as convicts or awaiting trial persons; decongest the custodian centres while reducing recidivism. It is reasoned that the participation of the victim, offender and community in dispensation of justice will do the magic.<sup>9</sup> This measure benefits the victim as well as the offender<sup>10</sup> while fostering restoration, reparation, reintegration, and community participation in tackling crime, disputes, and related problems that affect them.<sup>11</sup> The object of this paper is to examine the legal and institutional framework of Nigerian Non-custodial Service in a bid to expose its gaps.

## **2. Legal Framework**

### **2.1 Constitution**

The constitution is the barometer with which the validity or otherwise of all statutes including the Nigerian Correctional Service Act, 2019 is measured such that any law, acts, and conducts which are hostile to its provisions are void to the extent of the inconsistency.<sup>12</sup> Hitherto, prisons was an item in the Exclusive Legislative List; however, by the fifth alteration to the Constitution, it was deleted from the Exclusive Legislative List and made an item in the Concurrent List.<sup>13</sup> What the National Assembly did was to delete the item *prisons* in the Exclusive Legislative List and re-designated it as *correctional service* in the Concurrent List.<sup>14</sup> The Second Schedule to the principal Act is altered in item 48, by deleting the word *prisons* and inserting as well after paragraph 10, a new paragraph “10A.” Specifically the new provision reads-The National Assembly may make laws for the Federation or any part thereof with respect to-

- (a) Correctional service and the establishment in any part of the Federation of correctional centres and custodial facilities; and
- (b) The establishment of any authority for the management of Federal correctional centres and custodian facilities in any part of the Federation.
- (2) A House of Assembly may make laws for the state with respect to-
  - (a) Correctional service and the establishment in that state of correctional centres and custodian facilities; and
  - (b) The establishment in that state of any authority for the management of state correctional centres and custodian facilities in any part of the state.

The Placing the correctional service in the Concurrent List meant that the States of the Federation can now run correctional service. Furthermore, the fact that the word *prisons* have been replaced with *correctional service* meant that the aim of custodial sentence now shifted from punishment to

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<sup>7</sup> Section 38(c) empowers the National Committee on Non-Custodial Measures to make recommendation on nature of non-custodial measure appropriate to the offender.

<sup>8</sup>Uju Agomoh, ‘Exploring Non-Custodial Measures and Restorative Justice in Sentencing: Purpose, Principles and Procedures’, being paper presented at All Nigeria Judges’ Conference of the Lower Courts, at National Judicial Institute, Abuja on 26<sup>th</sup> – 30<sup>th</sup>, 2018 Pp. 1- 25.

<sup>9</sup> Section 38(c) (no.5).

<sup>10</sup>Uju Agomoh, (no.8), pp. 1- 25.

<sup>11</sup> K Doolin, “But What Does It Mean?: Seeking Definitional Clarification,” *Journal of Criminal Law*,71, 432 in JJ Gabagambi, “A Comparative Analysis of Restorative Justice Practices in Africa,” published October, 2018 at <https://www.researchgate.net/publication/328288480>.

<sup>12</sup> Constitution of the Federal Republic of Nigeria 1999 (as amended), Section 1.

<sup>13</sup> Constitution of the Federal Republic of Nigeria, 1999 (Fifth Alteration) Act, (No. 15), 2023.

<sup>14</sup> Explanatory Memorandum to the Act..

corrections.<sup>15</sup>The big issue is whether the service is correctional indeed or just a mere name change obvious of the numbers of persons currently housed by the institution nationwide.<sup>16</sup> Igwe & Mgbolu argued that ‘It is germane to note that the treatment of the inmates of Nigerian Correctional Service does not lie in the change of nomenclature from prisons service to correctional service. It lies in the change of attitude of the government, correctional service staff, the public and other critical shareholders in the criminal justice delivery such as the police and court.’<sup>17</sup> Furthermore, the rate of recidivism appears as well to negate the fact that the service is correctional. In any case, the fact at the moment is that the constitution provided the legal framework for the administration and management of Nigerian Correctional Service which houses both the Custodial and Non-custodial Services.<sup>18</sup>Furthermore, Ebonyi State<sup>19</sup> has blazed the trail by being the first state in Nigeria to enacted law on correctional service in view of the deregulation by the constitution.

## 2.2 The Administration of Criminal Justice Act, 2015

While the ACJA, 2015 did not specifically establish the Nigerian Correctional Service, it has made some far-reaching provisions that touches on the Service particularly, Non-custodial Service. This is poignantly based on its avowed aim of decongesting the custodial service.<sup>20</sup> It is saying the obvious that the ACJA is the bedrock and foundation of the non-custodial measures driven by its purpose which is to ensure that the system of administration of criminal justice in Nigeria promoted efficient management of criminal justice institutions, speedy dispensation of justice, protection of the society from crime and protection of the rights and interests of the suspect, the defendants, and the victim.<sup>21</sup>A scrutiny of the Act shows that far-reaching provisions are in Sections 111, 453, 454, 455, 456, 457, 458, 460, 461, 462, 463, 464, 465, 466, 467, 468 and 469 respectively on non-custodial measures which triggered the establishment of an institution to man it by Correctional Service Act, 2019. The purpose of the Act is a departure from the definition of the character of crime which restricted its end product on punishment of offenders.<sup>22</sup> It rather encapsulates sufficiently the principle of non-custodial alternatives and restorative justice measures. In view of the many troubled waters of the retributive justice system, the Act orchestrated a shift from punishment inform of imprisonment to non-custodial and restorative justice measures.

It is now statutory that the court may instead of punishment of incarceration of an offender, order suspended sentence,<sup>23</sup> community service,<sup>24</sup> probation,<sup>25</sup> compensation,<sup>26</sup> restitution,<sup>27</sup> rehabilitation<sup>28</sup> and treatment.<sup>29</sup> One of the landmark milestone achieved by the Act, is the recognition of the plight of

<sup>15</sup> Nigerian Correctional Service Act, 2019, Section 10.

<sup>16</sup> Summary of inmate population by convict and awaiting trial persons as at 5<sup>th</sup> of February, 2024 is 77,623. Accessed at [corrections.gov.ng/statistics](https://corrections.gov.ng/statistics) summary on 12<sup>th</sup> day of February, 2024 at about 1:33am.

<sup>17</sup> IO Igwe & AK Mgbolu, ‘From Prisons to Correctional Centres: Wherein Lies the Treatment of the Inmates of Nigerian Correctional Services Facilities?’ (2020) 4(1), *African Journal of Law and Human Rights Review*, p. 36.

<sup>18</sup> Constitution of the Federal Republic of Nigeria, 1999 (Fifth Alteration) Act, (No. 15), 2023.

<sup>19</sup> Ebonyi State Correctional Service and Regulation Law, No.008, 2024.

<sup>20</sup> ACJA, 2015, Section 1(1).

<sup>21</sup> Ibid, Section 1 (1).

<sup>22</sup> EE Alobu, & J Inaku, ‘An Appraisal of the Principle of Restorative Justice in the Nigerian Criminal Justice System,’ (2018) 5 (12) *International Journal of Engineering Technologies and Management Research*, p. 142.

<sup>23</sup> Ibid, Section 461.

<sup>24</sup> Ibid, Section 460-466.

<sup>25</sup> Ibid, Sections 453-458.

<sup>26</sup> Ibid, Section 454 (3) (a).

<sup>27</sup> Ibid, Section 270 (2)(b), (5)(ix), (6)(b), 321, 341, 342, 401(g), 454(4).

<sup>28</sup> Ibid, Section 401, 467, 468(2).

<sup>29</sup> Ibid, Sections 298(2), 311(2), 319(1)(c), 401(c).

the victim of crime. It is now statutory that a victim of criminal offence is entitled to compensation<sup>30</sup> and restitution.<sup>31</sup>

### **2.3 Nigerian Correctional Service Act, 2019**

In order to engage an overhaul of the prisons system in line with international best practice,<sup>32</sup> the Correctional Service Act, 2019 was enacted. The Act repealed the hitherto Prisons Act<sup>33</sup> and enacted the Nigerian Correctional Service Act,<sup>34</sup> to address issues that were obviously lacking in the then Prisons Act, and further provide clear rules setting out the obligations and objectives of the service. The new Act seeks to modernize prisons now called correctional service by segmenting the service into custodial and non-custodial units;<sup>35</sup> undoubtedly introducing humane<sup>36</sup> conditions in the handling of offenders in custody and establishing a synergy between the service and other arms of the criminal justice system.<sup>37</sup> Part one relates to the custodial service and covers sections 9- 36. Part two is on the non-custodial service which is the primary thrust of this paper though other part of the service was touched tangentially for comprehensiveness. There are two schedules to the Act. The first schedule deals with issue of classification of custodial service created by the Act while the second schedule deals with savings and transitional provisions. It has been argued elsewhere that the examination of the Act reveals that it has more sections and more schedules written in simple diction for comprehension than the repealed Act, which had only 19 sections and one schedule written in complicated phraseology and without being sub-divided into parts.<sup>38</sup>

Principally part one, deals with issues *inter alia* establishment and classification of custodial service,<sup>39</sup> functions of custodial service,<sup>40</sup> functions of custodial centre visitor,<sup>41</sup> correctional officers reward fund,<sup>42</sup> staff training,<sup>43</sup> security of custodial centres,<sup>44</sup> power to make regulations and standing orders,<sup>45</sup> female inmates,<sup>46</sup> juvenile offenders<sup>47</sup> and legal action against the correctional service.<sup>48</sup> On the other hand, part two deals with the Non-Custodial Service and relates to sections 37- 44. It touches on issues such as Non-Custodial Service,<sup>49</sup> the functions of the National Committee on Non-Custodial

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<sup>30</sup>Ibid, Section 319(1)(a) of ACJA, 2015.

<sup>31</sup> Ibid, Section 321 ACJA, 2015.

<sup>32</sup> Correctional Service Act, 2019, Section 2.

<sup>33</sup> Cap. P. 29, Laws of Federation of Nigeria, 2004

<sup>34</sup> 2019.

<sup>35</sup> Correctional Service Act, 2019, Section 1(2)(a)(b).

<sup>36</sup> The Act, Section 10(b).

<sup>37</sup> The Act, Sections 21 & 22.

<sup>38</sup> H Longpoe, & W Longpoe, "Analysis of the Transformation from the Nigeria Prisons Service to the Nigerian Correctional Service," (2021) 3(3). *International Journal of Comparative Law and Legal Philosophy (IJOCLLEP)*. p.74.

<sup>39</sup> Correctional Service Act, 2019, Section 9.

<sup>40</sup> Ibid, Section 10.

<sup>41</sup> Ibid, Section 22.

<sup>42</sup> Ibid, Section 26.

<sup>43</sup> Ibid, Section 27.

<sup>44</sup> Ibid, Section 28.

<sup>45</sup> Ibid, Section 33.

<sup>46</sup> Ibid, Section 34.

<sup>47</sup> Ibid, Section 35.

<sup>48</sup> Ibid, Section 36.

<sup>49</sup> Ibid, Section 37.

Measures,<sup>50</sup> regulations and guidelines,<sup>51</sup> parole,<sup>52</sup> probation,<sup>53</sup> community service,<sup>54</sup> restorative justice measures,<sup>55</sup> and funding of non-custodial measures.<sup>56</sup>

Contrary to what was the position in the old law, the new Act in section 2 clearly stated one of the objectives of the service to include creating platform for implementation of non-custodial measures. By this the primary focus of the service is to ensure reformation, rehabilitation and reintegration of inmates and this can undoubtedly be savoured on the wings of non-custodial and restorative justice measures. In order to effectively execute the objectives of the Service the Controller-General shall create platform for interfacing with other criminal justice institutions for the purposes of administering the non-custodial measures in accordance with the provisions of the ACJA<sup>57</sup> and other relevant legislations and policies.<sup>58</sup> By section 37 of the Act,<sup>59</sup> the Nigerian Non-Custodial Service shall be responsible for the administration of non-custodial measures including: - community service, probation, parole, and restorative justice measures.

It is imperative to state that apart from the four non-custodial measures mentioned above, the Non-Custodial Service is empowered under the law to undertake any other non-custodial measures assigned to the correctional service by a court of competent jurisdiction.<sup>60</sup> For effective management of the non-custodial service, the President in conjunction with the National Assembly shall constitute National Committee on Non-Custodial Measures.<sup>61</sup> Furthermore, the Act empowered the Controller-General in consultation with the States and Federal Capital Territory and with the approval of the National Committee on Non-Custodial Measures to appoint State Committee on Non-custodial Measures.<sup>62</sup> Similarly, Section 43 heralds a shifted from the conservative nature of the retributive system by inclusion of restorative justice measures such as victim-offender mediation; family group conferencing; community mediation; and any other activity involving victims, offender and where applicable community representatives.

To ensure effective take-off of the non-custodial service, the Act establishes a special non-custodial fund to be administered by the National Committee on non-custodial measures into which there shall be paid such sums as may be provided by the government of the federation or a state for payment into the fund; sums as may be paid by way of contribution under or pursuant to the provisions of the Act, or any other enactment; all sums accruing to the Non-custodial Service by way of gifts, testamentary disposition, contributions from philanthropic persons or organizations; and 5% of all fines paid to the federal courts.<sup>63</sup>

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<sup>50</sup> Ibid, Section 38.

<sup>51</sup> Ibid, Section 39.

<sup>52</sup> Ibid, Section 40.

<sup>53</sup> Ibid, Section 41.

<sup>54</sup> Ibid, Section 42.

<sup>55</sup> Ibid, Section 43.

<sup>56</sup> Ibid, Section 44.

<sup>57</sup> 2015.

<sup>58</sup> Ibid, Section 4(1)(a)(b).

<sup>59</sup> Ibid.

<sup>60</sup> Ibid, Section 37(1)(e).

<sup>61</sup> Ibid, Section 37(2)(a)-(h).

<sup>62</sup> Ibid, Section 38(2).

<sup>63</sup> Ibid, Section 44.

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In nutshell, the structure of the Non-custodial Service is that the Directorate shall be headed by the Deputy Controller-General in charge of the Non-custodial Service who shall be answerable to the Controller-General of the Correctional Service. At the State command, an officer not less than the rank of a Deputy Controller of corrections shall be the head of the Non-custodial Service, who shall be answerable to the State Controller of Corrections. At State level, there shall be officers of superintendent cadre to be posted as local government non-custodial supervisors and link officers.<sup>64</sup>

### **2.4 Nigerian Correctional Service Standing Orders Non-Custodial, 2020**

Pursuant to the powers conferred on the Controller-General by Section 33(1)(a) and (b) of the Nigerian Correctional Service Act,<sup>65</sup> the then Controller-General of Corrections Ja' Afare Ahmed made Non-custodial Standing Orders gazetted in the Federal Republic of Nigeria Official Gazette No. 139 Volume 108 dated the 24<sup>th</sup> day of August, 2021. The Standing Order is about 253 sections numbered 1 -253 (B2869-2929) and divided into parts. The 252 sections of the Non-Custodial Standing Orders deals with the management and administration of the Nigerian Non-Custodial Service which comprises parole, probation, community service, restorative justice practices and/or any other non-custodial measure ordered by any court of competent jurisdiction upon conviction of the offender as an alternative to custodial sentence.

Alternatively persons who are serving a custodial sentence but have been granted parole by the court on the submission of the Controller-General of Corrections based on the recommendation of the parole board are covered by the Order. Similarly, persons who have completed their custodial sentence but require some aftercare support in the community to facilitate their full reintegration is also covered by the Orders. As it relates to persons who are participating in restorative justice sessions, both offenders (either in custody or in community) and victims, and may occur at different stages of the criminal justice delivery system are to benefit therefrom.<sup>66</sup>

## **3. Institutional Framework**

### **3.1 The Judiciary**

Suffice it to say, that reference to the judiciary is reference to the courts. Section 6 of the Constitution allotted the interpretative function of enactments including the constitution itself, to the judiciary.<sup>67</sup> It is often said that the judges are the courts.<sup>68</sup> In *Akintokun v LPDC*<sup>69</sup> his Lordship, IT Muhammad, JSC, adopted WJ Hughes' definition of court of law viz-“a permanently organized body, with independent judicial powers defined by law, meeting at a time and place fixed by law for judicial public administration of justice.”

The courts system in Nigeria is hierarchical and in the pyramid of criminal trial are Magistrates Courts, High Courts of both Federal and States. In criminal matters the courts' jurisdiction is evoked when a charge is preferred against the criminal defendant. A charge means a formal allegation made against a person who alleged to has committed an offence. The formal accusation in writing is what constitutes

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<sup>64</sup> Nigerian Correctional Service Standing Orders Non-Custodial (Revised Edition) 2020 p.B2876.

<sup>65</sup> 2019.

<sup>66</sup> Orders 1- 252 of Nigerian Correctional Service Standing Orders Non-Custodial (Revised Edition) 2020.

<sup>67</sup> Constitution of the Federal Republic of Nigeria 1999 (as amended), Section 6.

<sup>68</sup> *Usaman v State* (2010) 6 NWLR (Pt. 1191) 454 in Ogbuinya, *Guidelines to Interpretation of Nigerian Statutes*, (Snaap Press Nigeria Ltd., 2019) p. 32.

<sup>69</sup> *Akintokun v LPDC* (2014) 13 NWLR (Pt.1423) 118.

the charge against him.<sup>70</sup> The charge is taken to a court of competent jurisdiction and the defendant arraigned.<sup>71</sup> Arraignment is a very important initial step in the trial of a person on a criminal charge and where improperly done, any subsequent trial is a nullity, no matter the strength or cogency of the evidence adduced by the prosecution.<sup>72</sup> The plea of the defendant may be guilty or not guilty. If he pleads guilty, he will be summarily convicted upon facts stated before the court by the prosecution. If he pleads not guilty, the case goes into full trial wherein witness(s) will be called and evidence adduced to prove the charge.

In either scenario painted above, a sentence of court must be handed. Sentence is a definite disposition order issued by the court or other competent tribunal at the conclusion of a criminal trial subsequent to a finding of guilt against the accused person, the quantum of which may either be fixed by legislation or be fixed at the discretion of the court or tribunal.<sup>73</sup> Suffice to say that it is at the discretion of the court to give custodial or non-custodial sentence.<sup>74</sup> It is saying the obvious that it is only the court that can provoke the implementation of the provisions of ACJA and indeed other enactments or laws relating to non-custodial measures.<sup>75</sup> Thus the functionality of the Nigerian Non-custodial Service is dependent on whether the court as an institution orders sentence of non-custodial measures.

### 3.2 National Committee on Non-Custodial Measures

The Act in Section 37(2)<sup>76</sup> established National Committee on Non-custodial Measures. The members of the committee shall be appointed by the President and constituted by the National Assembly. It is the responsibility of the National Committee on non-custodial measures to establish technical committees on parole; probation, community service; restorative justice measures; and any other thing as may be determined by the National Committee on Non-custodial Measures.<sup>77</sup>

Furthermore, upon establishment, the National Committee on Non-custodial Measures shall undertake the coordination of the implementation of non-custodial measures with the judiciary and other relevant agencies. Secondly, monitor and propose measures for effective operation of non-custodial measures. Thirdly, receive and consider any complaint or view from offenders, victims and affected communities, and make recommendations, where possible, on the nature of non-custodial measures; and finally any other thing required for the proper implementation of the Act.<sup>78</sup>

### 3.3 The State Committee on Non-custodial Measures

The Controller-General shall in consultation with State and Federal Capital Territory Authority, and with the approval of the National Committee on non-custodial measures, appoint State Committees on Non-Custodial Measures.<sup>79</sup> The functions of the State and Federal Capital Territory Committees shall

<sup>70</sup>*Obijiaku v Obijiaku* (2022) 17 NWLR (Pt.1859) 377 SC; *Okoye v Commissioner of Police* (2015) 17 NWLR (Pt. 1488) 276.

<sup>71</sup>*Akinlolu v State* (2019) 5 NWLR (Pt.1665) 343 paras. F-G at 377; *Oyediran v R* (1967) NMLR 122.

<sup>71</sup>*Egube v FRN* (2020) 11 NWLR (Pt. 1734) 1.

<sup>72</sup>*Ibid.*

<sup>73</sup>AA Adeyemi, 'Administration of Justice in Nigeria: Sentencing Chapter 5, Law Development and Administration in Nigeria, Lagos,' 1990, vol. 1 p. 109 in Ekumankama, D.U, *Criminology and Penology: a Nigerian Perspective*, (New World Publishers Ltd; Plateau State, Nigeria, 2002) p.125.

<sup>74</sup> In *Yakubu v. F.R.N* where the court held that the sentence to be imposed upon conviction for an offence is at the discretion of the trial court.

<sup>75</sup> A community reading of Sections 401 & 416 of the ACJA, 2015 eloquently attests to this fact.

<sup>76</sup> Correctional Service Act, 2019

<sup>77</sup>*Ibid*, Section 37(5).

<sup>78</sup>*Ibid*, Section 38(1).

align with those of the National Committee on Non-Custodial Measures.<sup>80</sup>The Non-custodial Service in each state shall be superintended by an officer of at least the rank of Deputy Controller of Correctional Service who shall report to the State Controller of Correctional Service on all non-custodial activities and services in the State, including those implemented by State and Civil Society Organizations.<sup>81</sup>

In view of the above and in compliance with the provisions of the law, Deputy Controller-General of corrections in charge of Human Resources, Mr. John Mrabure announced the nomination of Deputy Controller of Corrections (Non-Custodial) of each State alongside thirty (30) officers as focal persons for the project intervention. Their schedules of duties includes oversight of non-custodial delivery in their respective states, membership of the state committee on non-custodial measures, assist in the selection and deployment of staff for the administration of non-custodial services in the state, maintain synergy with all stakeholders especially the judiciary in the administration of non-custodial service and perform any other duties as assigned by the Nigerian Correctional Service.<sup>82</sup>

### **3.4 The Controller-General**

Suffice to say that the Controller-General has the powers to superintend the management and administration of both the custodial and non-custodial service.<sup>83</sup> He is to administer non-custodial measures in line with provisions of ACJA and other relevant legislation and policies.<sup>84</sup> He is to deplore officers to the non-custodial institutions and centres and ensure reformation, rehabilitation and reintegration of offenders.<sup>85</sup> Subject to the approval of the National Committee on non-custodial measures, the Controller-General shall appoint State Committees on Non-custodial Measures.<sup>86</sup> In order to properly regulate the activities of the officers and inmates, the law empowered the Controller-General to make regulations prescribing the duties of the supervising officer for each of the non-custodial measures listed in section 43; and any other matter that is necessary for the proper implementation of the Act.<sup>87</sup> Furthermore, the Controller-General shall administer the parole process including: the appointment of members of the parole board; supervision of parolees; rehabilitation of the parolees; administration of the designated parole facilities; and undertake any other step for the proper implementation of this provision and other non-custodial measures.<sup>88</sup>

On the administration of community service, the Controller-General shall appoint supervisors to monitor those sentenced to community service; receive regular reports from supervisors including status of compliance with the court order; and report all cases of non-compliance submitted to him by the designated community service supervisors to the appropriate court for action.<sup>89</sup> It is to be noted that the report mentioned in subsection (1) (b) shall include reports on a number of completed community service.<sup>90</sup> As it relates to restorative justice measures, the Controller-General shall provide the platform for restorative justice measures including- victim-offender mediation; family group conferencing;

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<sup>80</sup>Ibid, Section 38(3).

<sup>81</sup>Ibid, Section 8(6).

<sup>82</sup> Nigerian Correctional Service (NCoS) Appoints Officers in Charge of Non-Custodial Directorate across States and the Federal Capital Territory to Supervise Non-Custodial Service [https://www.prawa.org>ENEWS-2\(1\).pdf](https://www.prawa.org>ENEWS-2(1).pdf).

<sup>83</sup>Nigerian Correctional Service Act, 2019, Section 4.

<sup>84</sup>Ibid, Section 4(1)(c).

<sup>85</sup>Ibid, Section 4(2).

<sup>86</sup>Ibid, Section 38(2).

<sup>87</sup> Ibid, Section 39(a)-(b).

<sup>88</sup> Ibid, Section 40.

<sup>89</sup>Ibid, Section 42(1).

<sup>90</sup>Ibid, Section 42(2).



community mediation; and any other mediation activity involving victims, offenders and where applicable, community representatives.<sup>91</sup>

### 3.5 Non-Custodial Officer

The scheme may employ the services of contract staff and volunteers where there are non-available officers from the Service. Officers may either be deployed from the Custodial Service or be recruited as new intakes. With respect to those deployed from the custodial service, there shall include welfare officers, psychologists or other officers that have shown commendable traits and attitudes relevant to the Non-custodial Service. Officers who are deployed to the Non-custodial Service shall undertake relevant specialized training courses. Such Officers to be deployed to the Non-custodial Services shall be from relevant fields such as social work, psychology, sociology, guidance and counselling, criminology and vocational skills.

The services to be rendered by the Non-custodial Officer shall include the following-

- (1) Assessment, planning and submission of pre-sentencing report and other documentation which may assist the court in determining the appropriate sentence to be awarded;
- (2) Supervision of those non-custodial sentence to ensure compliance with the terms and conditions awarded by the court of competent jurisdiction;
- (3) Facilitating and providing restorative justice sessions both in the community and in custody. With respect to those provided in custody, this shall be done at the request of the Welfare unit of the Custodial Centre;
- (4) Assessment, preparation and submission of pre-release report in conjunction with the Welfare unit of the custodial facility to the Superintendent in charge for aftercare, parole considerations etc.;
- (5) Undertake all activities aimed at facilitating the rehabilitation, reformation and reintegration of all targets of the non-custodial service;
- (6) Bringing to the attention of the relevant authority including the court, in charge of non-custodial measures at both the state and national levels, the parole board where applicable, any violations of the conditions on which the non-custodial order was granted for review and a variation of their order;
- (7) Any other activity as may be assigned by the Deputy Controller-General in charge of Non-custodial Service, or the Controller-General.

### 4. Gaps in the institutional and legal framework

Upon review of the existing legal and institutional framework certain legislative and institutional hiatus were revealed-

1. Unlike the initial 12 items in the Concurrent List which defined the scope of the federal and state powers; the newly added item 31 to wit- *to provide for the establishment of correctional centres by the Federal and State Governments* left the poser as to who does what and to what extent? It begs the question what would be the legislative, and administrative role of the federal and state governments; regards being heard to the fact that the existing infrastructure, human resources, security and every other resource for the administration of corrections are under the control of the federal government whereas the correctional centres are located in the states, the states make the criminal laws and most of the inmates are held for state offences at the expense of the federal government.
2. The issue of funding under the Act lacks meaningful strategy and/or clarity. The Constitution also failed to address the financial obligations of both the state and federal government; as a result an

<sup>91</sup> Ibid, Section 43.

- attempt to enforce the implementation by the federal government was greeted with resistance by state government. In May, 2023 the then Minister of Interior, Ogbeni Rauf Aregbesola muted that from 1<sup>st</sup> January, 2024 the Federal Government would stop feeding State offenders in custodial centres across the country; and to that end he advised State Governments to include the feeding of their inmates in their budgets till they could build their custodial centres. In his words-‘States which do not have correctional facilities would have to pay the Federal Government for the feeding and accommodation of their inmates.’ The State Governments faulted the position and argued that it can only be possible if the central government will be ready to yield more revenue to the States before talking about shifting the inmates’ responsibility, stressing that it could not be done by executive fiat but must follow negotiations and procedures.<sup>92</sup>
3. In view of the legislative hiatus mentioned in one and two above; about five years post enactment of the Act and two years amendment of the Constitution, it is not known to us any other State that enacted law creating Correctional Service save Ebonyi State,<sup>93</sup> though with no structure of their own save the federal facilities in Abakaliki Urban and Afikpo. Thus until the law is put in action by fully taking over the management and administration of its own correctional service, the Law by Ebonyi State House of Assembly is mere Legislative exercise.
  4. Non-custodial and restorative justice measures were not properly defined in the Correctional Service Act, 2019 and the Act did not factor in suspended sentence as a form of non-custodial measure even when section 460 of ACJA, 2015 provided for same.
  5. Section 12(8) which enjoins the Controller-General of Correctional Service in conjunction with the Superintendent to reject intakes of convicted persons where it exceeds its capacity is merely reactive and not proactive. Why should the Superintendent wait until the facility exceeds its limit? It is even questionable whether the correctional officer can rightly refuse to obey an order of competent court of record committing a person to custody by rejecting inmate for the mere fact that the facility has exceeded its limit. It begs the question where the inmate will remand? Furthermore, it suggests a nod in the continued use of custodial sentence by courts and/or no concrete plan to exploit non-custodial measures.
  6. There appears to be significant contradictions between the Nigerian Correctional Service Act, 2019 and ACJA, 2015 on non-custodial service. Under the former, the service is to undertake the management and administration of parole, community services and probation. It includes the power to appoint probation officers and supervisors of community service. However, under the latter, the power to appoint and make regulations for appointment of probation officers is assigned to the Chief Judge of the Federal High Court or the High Court of the FCT or National Industrial Court. Similarly, Community Service Centre is to be established by the Chief Judge to be headed by a Registrar assisted by suitable personnel to supervise the Community Service. That is at variance with the provisions of the Correctional Service Act which gave the same powers to the Controller-General of corrections. It is contended that the ACJA did not contemplate the parole board of the Controller-General; hence it constituted the court into a board. It is thus, argued that the provisions in Correctional Service Act, have the effect of robbing off the powers to appoint officers of the parole from the court, especially when it is a later law. It is to be resolved which law to apply.
  7. As against the position in other jurisdictions<sup>94</sup> non-custodial measures are only provided in the procedural laws, and not incorporated in the substantive penal laws like the criminal and penal codes. This made non-custodial measures discretionary in Nigeria. Few years back Kaduna State noticing

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<sup>92</sup> Prisoner’ feeding: States fault FG, seek new revenue formula reported in *Punch Newspaper* of 15<sup>th</sup> day of May, 2023. Accessed at [punch.com/prisoners-feeding-states-fault-fg-see-new-revenue-formula/](https://punch.com/prisoners-feeding-states-fault-fg-see-new-revenue-formula/) on 12<sup>th</sup> day of February, 2024 at 2:22am.

<sup>93</sup> Law No. 008, 2024-Ebonyi State Correctional Service and Regulation Law, 2024.

<sup>94</sup>In Canada, the Criminal Code in section 175 provided for alternative measures.

this gap amended its Penal Code to integrated non-custodial measures as a mandatory sentence of the court.<sup>95</sup>

8. By law, the court is constituted as the sole driver of non-custodial measures in Nigeria. This is because there are no pre-charge, post-charge and pre-sentence diversions in the laws as in other jurisdictions.
9. The Constitution did not make a clear statement on public private partnership in the management of correctional institutions albeit-non-custodial scheme in view of the fact that the Act envisaged keeping of inmates by civil organizations. The government alone cannot bear the financial cost.<sup>96</sup> Deregulation of the sector in this regards will save a lot of tax-payers' money being spent on maintaining inmates. It was reported that the regime of Major General Muhammadu Buhari (rtd) spent over 144 billion on feeding inmates in his eight years of governance. According to the appropriation bills analyzed by Punch Newspapers correspondent, the amount was spent on inmates' feeding across the country between 2015 and 2023. A breakdown of the money showed that 22.4bn was spent on inmates in 2023; 20.1 billion in 2022; 15.1 billion in 2021; 15.1 billion in 2020 and 15.3 billion in 2019. The regime also expended 15.3 billion in 2018; 16.6 billion in 2017; 18.7 billion in 2016 and 5.054 billion in 2015 respectively.<sup>97</sup>

## 5. Conclusion and Recommendations

In a secular society like Nigeria, the law becomes the compass with which all the institutions function. Thus where the law is inadequate to cover the field and/or overlapping, the function of such institution will be greatly hampered. Admittedly Sections 453-468 addressed the problem of extreme use of imprisonment as a disposal measure by providing alternatives to incarceration. The paper discovered that the custodian centres are congested. It is first attributed to the retributive and punitive culture of punishment which held sway in the criminal justice system. Furthermore, the law did not provide as it were pre-trial diversions as in other jurisdiction such as Canada and Kenya. More so, institutions that is saddled with the responsibility of ensuring effective implementation and monitoring of the scheme are not yet fully in place; while those set up are underfunded. With the cascading congestion in our correctional centres it becomes imperative that committees be established to herald the implementation of the Nigerian Non-Custodial scheme. Such intuitions are Administration of Criminal Justice Committee; Parole board, rehabilitation and community service centres.

In view of the above we suggest that-

1. There should be structured plan for the implementation of the devolution of the correctional service as provided in the amended constitution. There should be by law a streamlined administrative and financial obligations of both the federal and state governments to avoid hiccups and/or inconsistencies in policies and procedures. A perusal of the Ebonyi State Correctional Service law reveals overlapping provisions on administration which would have not been had the constitution fine-tuned the administrative boundaries of state and federal government.
2. Adequate fund be released for the implementation of the scheme in view of the enormous resources required to effectively implement non-custodial measures.
3. The Constitution should be amended to further incorporate public private partnership in the management of the scheme as in other jurisdictions and recently incorporated in the Ebonyi State Law No: 008, 2024. The trend all over the world is to make corrections self- financing. This approach

<sup>95</sup> Kaduna State Penal Code, 2017, Section 31(1)(g).

<sup>96</sup> It is said that the cost of feeding an inmate currently is #750.00 per meal and that is not contestable obvious of the inflation rate.

<sup>97</sup> Prisoner' feeding: States fault FG, seek new revenue formula reported in Punch Newspaper of 15<sup>th</sup> day of May, 2023. Accessed at [punch.com/prisoners-feeding-states-fault-fg-see-new-revenue-formula/](http://punch.com/prisoners-feeding-states-fault-fg-see-new-revenue-formula/) on 12<sup>th</sup> day of February, 2024 at 2:22am

provides adequate funds for effective rehabilitation, re-integration programme and at the same time remove avoidable financial burden from the shoulders of tax payers. The concept refers not to private ownership and control of an enterprise but to contract management, that is, private sector (or non-government) management of institutions which remain a public sector responsibility.

4. Relevant committees should be set up to oversee the implementation of non-custodial measures.
5. Pre-trial diversions should take the place of remand protocol provided in the ACJA, 2015.