



## Research Article

Received: 28-12-2025

Accepted: 23-01-2026

Published: 14-02-2026

## Non-Custodial Sentencing in Nigeria: Evaluating the Implementation and Impact of the Administration of Criminal Justice Act 2015

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**Abstract:** This article critically examines the concept, legal foundation, and practical implementation of non-custodial sentencing in Nigeria, with particular focus on the Administration of Criminal Justice Act (ACJA) 2015 and its complementary framework under the Nigerian Correctional Service Act 2019. It interrogates the extent to which these legislative reforms have transformed Nigeria's traditionally incarceration-driven penal system and evaluates their effectiveness in addressing chronic prison congestion, prolonged pre-trial detention, and systemic inefficiencies within the criminal justice process. The study traces the historical development of non-custodial measures in Nigeria, highlighting earlier statutory provisions that permitted alternatives to imprisonment, and situates the ACJA reforms within broader global trends that increasingly prioritize rehabilitation over retribution.

Through doctrinal analysis of statutory provisions, judicial decisions, and scholarly commentary, the article assesses key non-custodial measures such as probation, suspended sentences, community service, and parole. It further identifies institutional, structural, and attitudinal challenges that hinder effective implementation, including judicial conservatism, inadequate monitoring mechanisms, limited awareness among stakeholders, insufficient funding, and weak inter-agency coordination. The paper argues that while the statutory framework is progressive and aligned with modern penal philosophy, its transformative potential remains constrained by practical enforcement gaps.

Ultimately, the article contends that properly implemented non-custodial sentencing offers a viable pathway for reducing prison overcrowding, safeguarding constitutional rights, minimizing recidivism, conserving public resources, and fostering restorative justice. It concludes that strengthening institutional capacity, enhancing judicial training, improving data-driven evaluation, and expanding public awareness are essential steps toward realizing the full rehabilitative and reformatory objectives of Nigeria's criminal justice reforms.

**Keywords:** *Non-custodial sentencing; Administration of Criminal Justice Act 2015; Nigerian Correctional Service Act 2019;*

### 1. Introduction

“When punishment eclipses rehabilitation, justice becomes a burden rather than a cure.” Nigeria's criminal justice system has long been beset by diverse challenges of prison congestion, prolonged pre-trial detention, and punitive over-reliance on incarceration. As of

recent years, Correctional centres remain dangerously overcrowded, with awaiting-trial inmates constituting a significant proportion of the prison population. This reality undermines both inherent human rights and the constitutional guarantee of fair hearing,

and places immense burden on government resources. **The Administration of Criminal Justice Act (ACJA) 2015** was however enacted to address these systemic inefficiencies, including the overuse of imprisonment, through the introduction of non-custodial sentencing options. However, the practical implementation and impact of these innovations are still evolving (Oniha, n.d.).

### What Is Non-Custodial Sentencing

In Black's Law Dictionary, "non-custodial" means "not taking place while a person is in custody." In sentencing, a non-custodial sentence is a criminal sentence (like probation) that doesn't require prison time. Essentially, the sentence is served outside of a prison, and it's one of several sentencing options a judge can use after a criminal trial. This concept has been referred to as "incarceration without walls" or "imprisonment without walls." (Black, n.d.)

### Historical Revisionism Of Non-Custodial Sentencing In Nigeria

Non-custodial sentencing is neither novel nor alien to Nigeria's criminal justice system, as elements of it have long existed within criminal procedure legislation. **The Criminal Procedure Act (CPA) in S.389** provided for alternatives such as fines (which could be enforced through distress), S.402 provided for deportation and **S. 435** provided for probation, . Also, **S.378 provides that:** the Governor could, by notice in the State Gazette, stipulate that certain Chiefs could not be imprisoned without prior gubernatorial consent, allowing the Governor discretion to impose a fine in place of the court's sentence. Furthermore, section 419, prohibits the imprisonment of children. Likewise, a young person may avoid incarceration if suitable alternatives such as probation, fines, corporal punishment, or other measures can be applied effectively but its impact was historically constrained by limited statutory scope and weak implementation (Criminal Procedure Act [CPA], 2004).

However, The enactment of the Administration of Criminal Justice Act (ACJA) 2015, coupled with the exigencies of the COVID-19 pandemic in 2020, marked a significant shift toward more robust recognition and application of non-custodial sentencing which further strengthened by the enactment of the Nigerian Correctional Service Act, 2019. During the pandemic, restrictive prison admission policies compelled stakeholders to prioritise non-custodial measures, such as fines and community service, for all but the most serious offences, thereby bringing renewed attention to existing sentencing alternatives (Oniha, n.d.).

This engagement therefore seeks to advance discourse on expanding the practical implementation of non-custodial sentencing, with the ultimate objective of empowering judicial officers to reduce prison congestion and render the expansion of custodial facilities increasingly unnecessary.

### 2. Global Incarceration Dynamics

Globally, the dominance of custodial sentencing is steadily declining, with imprisonment increasingly reserved for grave offences. Ergo, for minor, non-violent, and non-life-threatening offences, non-custodial sanctions now enjoy widespread acceptance and application. Consequently, This shift has led to declining incarceration rates in several countries, including the Netherlands, Sweden, Germany, and others, resulting in the closure or repurposing of prisons. Although some jurisdictions have experienced contrary pressures, the overall global trend favours reduced reliance on imprisonment.

In contrast, Nigeria has moved in the opposite direction. On 17 March 2023, presidential assent was given to a constitutional amendment transferring correctional centres from the Exclusive to the Concurrent Legislative List, thereby empowering states to establish additional custodial facilities, despite the existence of 241 correctional

centres nationwide as of 2023 (Constitution of the Federal Republic of Nigeria, 2023).

### 3. Regulatory Structure Governing Non-Custodial Sentencing In Nigeria

The cornerstone legislation governing non-custodial sentencing in Nigeria comprises **the Administration of Criminal Justice Act, 2015 (ACJA) and the Nigerian Correctional Service Act, 2019 (NSCA)**. In practice, a meaningful discussion of non-custodial sentencing under the ACJA cannot be undertaken in isolation from the NSCA, as the two statutes are interdependent. **The ACJA** establishes the legal framework for alternative sentencing measures, while the NSCA provides the institutional structure, operational guidelines, and mechanisms necessary for the effective implementation and administration of these non-custodial options. Together, they form an integrated legislative and operational regime for managing offenders outside traditional custodial settings (Oniha, n.d.).

### 4. Categories Of Non-Custodial Sentencing Measures

**The Administration of Criminal Justice Act (ACJA), 2015** provides for a variety of non-custodial sanctions. These encompass probation, suspended sentences, community services, parole, fines, deportation, payment of costs, compensation and damages, seizure, restitution, forfeiture, and disposition of property. The following discussion will examine some of these measures in summary detail.

#### Probation

Probation is a judicially ordered period of supervised correction that allows an offender to remain in the community under specified conditions rather than serving a full prison term, serving as a means to reduce prison overcrowding. In certain instances, probation may follow the completion of a designated period of incarceration.

**S.454** of the Act virtually provided for that when it reads "*Where a defendant is charged*

*before a court with an offence punishable by law and the court thinks that the charge is proved but is of the opinion that having regard to:*

- (a) The character, antecedents, age, health or mental condition, of the defendant charged;
- (b) The trivial nature of the offence; or
- (c) The extenuating circumstances under which the offence was committed:

It is inexpedient to inflict a punishment or any order than a nominal punishment or that it is expedient to release the defendant on probation, the court may, without proceeding to conviction, make an order specified in subsection 2 of this section. The orders referred to are, (a) an order dismissing the charge or

(b) discharging the defendant conditionally on his entering into a recognisance with or without surety to be of good behaviour and to appear at any time during such period not exceeding three years as may be specified in that order.

**S.455** further stipulates that, where directed by the court, a recognizance must include a condition requiring the defendant to remain under the supervision of a person of the same sex, known as a probation officer. This indicates that the probation officer is formally appointed by the court, and their supervision forms part of the conditions of the probation order. However, the court's discretion in appointing a probation officer is regulated by the provisions of section **457(2)** which provides that "*the Chief Judge of the Federal High Court, or of the High court of the Federal Capital Territory, Abuja or the President of the National Industrial Court shall make regulations with respect to the appointment of probation officers, including designation of persons of good character as probation officers from which list, a court within the district or division of the probation officer resides may make its appointment under section 455*"

#### Suspended Sentence;

**S.460(1)** provides that "*Notwithstanding the provision of any other law creating an offence, where the court sees reason, the court may order that the sentence it imposed on the convict be, with or without conditions, suspended, in which case, the convict shall not be required to serve the sentence in accordance with the conditions of the suspension*".

This is not known to Nigeria law before as seen in cases held before the enactment of ACJA. In **NYA v. EDEM (NYA v. EDEM, 2005)**, The Court of Appeal held that "In criminal law, suspended sentence means in effect that the defendant is not required at the time sentence is imposed to serve the sentence and also that suspended sentence is not part of Nigerian law, and has no application whatsoever under Nigeria's criminal justice system". Also, in **STATE v AUDU (STATE v. AUDU, 1972)**, The apex Court, per Elias, C.J.N. (as he then was) at Pp. 4-5, paras. F-B, held that the principle of suspended sentence does not apply to criminal law and practice in Nigeria. According to His Lordship:

...Of the various types of punishment provided for in Section 68 of the Penal Code, there is none for a suspended sentence of imprisonment, although there is provision for imprisonment simpliciter.

This is however not short to limitation as **S.460(3)** provides that "*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 3 years*".

### Community Services

**S.460(2)** provides that "*the court may, with or without conditions, sentence the convict to perform specified service in his community or such community or place as the court may direct*".

It is clear from the provision that community service may be imposed conditionally or

unconditionally and is not strictly limited to the convict's immediate locality. However, it is in practice directed that it should be carried out as close as possible to the convict's residence to allow the community to effectively supervise the activities as provided in **S.461(5)of the Act**.

The limitation to offences which order of community service can be made is same as cited earlier for suspended sentence.

Nature of community service;

**S.461(4)** provides natures which community service could be when it provides that: "Where the court has made an order committing the convict to render community service, the community service shall be in the nature of: (a) environmental sanitation, including cutting grasses, washing drainages, cleaning the environment and washing public places;

(b) assisting in the production of agricultural produce, construction, or mining; and

(c) any other type of service which in the opinion of the court would have a beneficial and reformative effect on the character of the convict.

Factors to be considered in imposing community service;

**S.461(6)** provides that: "Before passing a community service order, the court shall consider the circumstances, character, antecedents of the convict and other factors that may be brought to its attention by the Registrar of the Community Service Centre".

**S.461(7)** provides "A convict sentenced to community service shall not at the same time be sentenced to a term of imprisonment for the same offence, but may, in default of performing his community service diligently and to the satisfaction of the court, be sentenced to a term of imprisonment for the remaining part of his community service to which he is in default or neglect."

**S.416(8)** provides "Upon sentence to community service, a convict shall be

required to produce a guarantor who shall undertake to produce the convict if the he absconds from community service."

**S.416(9)** The guarantor shall be a relation of the convict or any other responsible person of adequate means or substance who shall produce the convict when required by the court, failing which the guarantor shall be liable to a fine of N100,000.00 or more as the circumstances of each case may require.

What can easily be gleaned from these provisions is that, a convict sentenced to community service cannot simultaneously be sentenced to imprisonment for the same offence; however, failure to perform the service diligently allows the court to impose imprisonment for the uncompleted portion. Upon sentencing, the convict is required to present a guarantor, typically a relative or a responsible person of sufficient means, who undertakes to ensure the convict appears for community service. Should the guarantor fail to produce the convict when required, they may be held liable to a fine of at least N100,000, or more depending on the circumstances of the case.

### **PAROLE;**

Parole is a post-conviction mechanism that allows a prisoner to be released prior to serving the full duration of their sentence.

The ACJA provides for this under **section 468** that:

Where the Comptroller- General of Prisons makes a report to the Court recommending a prisoner:

- (a) Sentenced and serving his sentence in prison is of good behaviour; and
- (b) Has served at least one third of his prison term, if he is sentenced to imprisonment for a term of at least fifteen years or where he is sentenced to life imprisonment, the court may, after hearing the prosecution and the prisoner or his legal representative, order that the remaining term of his imprisonment be suspended, with or without conditions, as the

court considers fit and the prisoner shall be released from prison on the order.

(2) A prisoner released under subsection (1) of this section shall undergo a rehabilitation programme in a government facility or any other appropriate facility to enable him to be properly reintegrated to the society.

(3) The Comptroller-General of Prisons shall make adequate arrangement, including budgetary provision, for the facility.

### **NON-CUSTODIAL SENTENCING UNDER (NCSA), 2019; (NCSA, 2019)**

**S.1(2)** of the Act provides that "The correctional service shall consist of;

- (a) Custodial service, and
- (b) Non-custodial service.

Non-custodial service connotes part II of the Act which ranges from **S.37-44**.

**S.46** defined a Non-Custodial Service to be aspect of the Nigerian Correctional Service that serves as an alternative to going to a custodial Centre. The responsibilities of the Nigerian Non-Custodial Service, as set out in Part II, **Section 37(1) of the Act**, include administering non-custodial sentences imposed by the courts. These measures encompass: (a) community service, (b) probation, (c) parole, (d) restorative justice initiatives, and (e) any other non-custodial sentence assigned by a court of competent jurisdiction.

To ensure effective implementation, the Act establishes the National Committee on Non-Custodial Measures, which is tasked with:

- (a) Coordinating the application of non-custodial measures with the judiciary and other relevant agencies;
- (b) Monitoring and recommending improvements for the effective operation of such measures;
- (c) Receiving and considering feedback or complaints from offenders, victims, and affected communities, and advising on appropriate non-custodial interventions; and

(d) Performing any other functions necessary for the proper execution of the Act.

**S.37(5)** further empowered The National Committee to establish Technical Committees focusing on specific non-custodial measures, including: (a) parole, (b) probation, (c) community service, (d) restorative justice measures, and any other matters deemed necessary.

Additionally, the Controller-General, in consultation with the State and Federal Capital Territory authorities and with the approval of the National Committee on Non-Custodial Measures, is authorized to appoint State Committees on Non-Custodial Measures to oversee implementation at the state level.

### **5. Importance Of Non-Custodial Sentencing;**

Nigeria government has grown increasingly concerned about overcrowding in correctional centres, which gives rise to severe problems, including poor sanitation, disease, and even inmate mortality. This underscores the practical necessity of maintaining inmate welfare to ensure the functioning of the criminal justice system. **S. 460(4) of the (ACJA)2015**, provides that the court shall have regards to the need to;

- (a) reduce congestion in prison
- (b) rehabilitate prisoners by making them to undertake productive work
- (c) prevent convict who committed simple offences from mixing with hardened criminals.

In this context, non-custodial sentencing has become a valuable tool for reducing prison congestion, avoiding the social stigma of incarceration, promoting rehabilitation and reintegration of offenders, and saving government resources that would otherwise be spent on constructing and maintaining custodial facilities. Other advantages include;

**5.1. Promoting Reintegration and Social Inclusion** whereby offenders are allowed to remain in their communities while serving their sentence. This facilitates reintegration

into society, helping offenders maintain family ties, employment, and social support networks and reduces the social stigma often associated with incarceration.

**5.2. Encouraging Restorative Justice** where offenders are actively involved in repairing the harm caused to victims or the community. Thereby promoting accountability, reconciliation, and healing, rather than purely punitive outcomes and aligns with modern penal philosophy emphasizing restoration over retribution.

**5.3. Reducing Recidivism:** non-custodial sentencing lowers the likelihood of reoffending as studies have shown that offenders serving non-custodial sentences often have better long-term outcomes compared to those imprisoned for minor offences.

**5.4. Cost-Effectiveness:** whereby saving the government substantial costs that would otherwise be spent on building, staffing, and maintaining correctional facilities. Community-based sentences are cheaper to administer and can free up resources for serious offenders who require incarceration.

**5.5. Upholding Human Rights and Constitutional Guarantees:** Custodial sentences should be a last resort under **Section 35 of the Constitution of the Federal Republic of Nigeria, 1999**, which protects personal liberty. Non-custodial sentencing ensures that minor or first-time offenders are not deprived of their liberty unnecessarily, supporting international human rights principles.

**5.6. Reducing Prison Violence and Improves Safety:** Keeping minor offenders out of prison reduces overcrowding, which in turn minimizes the risk of violence, riots, or disease spread inside correctional centres. It also prevents minor offenders from being exposed to hardened criminals, which can have criminogenic effects.

**5.7. Providing Opportunities for Skill Development:** Measures such as probation or

community service can be structured to include vocational training, education, or life skills development. This enhances the offenders' employability and promotes productive engagement, reducing dependence on crime.

**5.8. Facilitation of Faster Justice:** Non-custodial measures often allow courts to resolve cases more efficiently, especially for minor offences, reducing backlog in the judicial system.

## 6. Judicial Application And Challenges;

Despite the clear statutory provisions, courts have been cautious and reluctant in embracing non-custodial sentences across Nigeria. While ACJA 2015 gives judges wide discretion, the absence of comprehensive national sentencing guidelines means that judges often fall back on traditional custodial approaches, contributing to continued congestion. A research assessment suggests that only a small percentage of eligible detainees benefit from non-custodial alternatives, reflecting judicial conservatism and weak monitoring mechanisms (Obi, 2017). Several challenges have appeared to hinder the effective implementation of non-custodial sentencing in Nigeria which include:

**6.1. Judicial Conservatism and Reluctance:** Many judges remain hesitant to impose non-custodial sentences due to perceived leniency, public opinion, or lack of familiarity with the provisions. Traditional reliance on imprisonment as the default punishment persists, limiting the adoption of alternative measures.

**6.2. Limited Awareness and Training:** Some judicial officers, magistrates, and court staff lack adequate training on the procedures, supervision requirements, and benefits of non-custodial sentencing. This knowledge gap results in inconsistent application across jurisdictions. As noted by one of reputable constitutional lawyer, Prof. A.O. Sambo, he once applied to a court for a suspended sentence on behalf of a defendant, only to discover that the court was unaware that such

provisions existed under the law (Sambo, personal communication, n.d.), highlighting a practical gap in awareness even among judicial officers.

**6.3. Inadequate Probation and Monitoring Structures:** Effective supervision of probationers and community service participants requires functioning probation offices and local committees, which are under-resourced in many states. Without proper monitoring, the enforcement of non-custodial measures becomes weak.

**6.4. Public Perception and Pressure:** Courts sometimes face societal and media pressure to impose custodial sentences, especially in cases perceived as serious, even when the law allows for non-custodial alternatives. This undermines judicial discretion in applying rehabilitative measures.

**6.5. Resource Constraints:** Although non-custodial sentencing is intended to be cost-effective, its implementation still requires budgetary allocations for probation officers, community service supervision, and rehabilitative facilities. Many state governments have not fully funded these structures, impeding operational effectiveness.

**6.6. Fragmented Enforcement at State Level:** While the National Committee on Non-Custodial Measures provides oversight, differences in capacity, coordination, and commitment at the state level create disparities in sentencing practices, limiting uniformity and consistency.

**6.7. Restrictive Eligibility for Certain Offences: S.460(3) and 461(6-7) of the ACJA** exclude offenders involved in armed robbery, sexual offences, or crimes punishable by more than three years' imprisonment from non-custodial sentencing. This limitation, while necessary, restricts the applicability of non-custodial measures, particularly in reducing overall prison congestion.

**6.8. Data and Evaluation Gaps:** The absence of robust record-keeping and empirical

evaluation mechanisms makes it difficult for courts to track outcomes, assess recidivism rates, or fine-tune the implementation of non-custodial measures.

## 7. Recommendations

In light of the foregoing, the following recommendations are proposed to enhance the effectiveness, consistency, and impact of alternative sentencing measures:

7.1. Regular training programs should be organized for judges, magistrates, court staff, and legal practitioners to ensure they are fully conversant with the provisions and procedures for non-custodial sentencing.

7.2. Strengthening Probation and Monitoring Systems by providing adequate budgetary allocations for the appointment, training, and supervision of probation officers at both the federal and state levels.

7.3. Public Awareness and Sensitization

7.4. Resource Allocation and Infrastructure

7.5. Data Collection and Monitoring

7.6. Expanding Scope and Flexibility.

## 8. Conclusion

Non-custodial sentencing represents a critical reform in Nigeria's criminal justice system, designed to reduce prison congestion, uphold human rights, and promote rehabilitation and social reintegration. Measures such as probation, suspended sentences, community service, and parole provide alternatives to imprisonment, particularly for minor, non-violent, or first-time offenders, while supporting restorative justice and reducing recidivism.

Despite its statutory foundation, the practical implementation of non-custodial sentencing faces challenges including judicial conservatism, limited awareness and training, inadequate monitoring structures, public pressure, resource constraints, fragmented state-level enforcement, and restricted

eligibility for certain offences. Addressing these issues requires judicial training, strengthened probation and monitoring systems, adequate resource allocation, public sensitization, data-driven evaluation, and expanded flexibility in sentencing.

When effectively applied, non-custodial sentencing can alleviate prison overcrowding, reduce government expenditure on custodial facilities, prevent the criminogenic effects of mixing minor offenders with hardened criminals, and facilitate faster, more humane, and rehabilitative justice. Ultimately, it offers a pathway for Nigeria to align its criminal justice system with global best practices, ensuring justice is both fair and constructive.

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