



# Rethinking Justice: The Role of Community Sentencing in Nigeria's Criminal Justice Reform

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## Abstract

Sentencing remains a pivotal phase in the administration of criminal justice, during which the court pronounces appropriate sanctions on individuals convicted after a due legal process. Traditionally, custodial sentences, predominantly imprisonment, have served as the primary response of the criminal justice system to criminal behaviour in Nigeria. However, evolving societal dynamics, increasing inaccessibility to justice, and the complex realities of crime causation necessitate a paradigm shift in penal policy. Highlighting contemporary issues in the administration of justice in Nigeria's criminal justice system, this paper interrogates the role of community sentencing as a viable alternative in Nigeria's criminal justice reform efforts. Community sentencing, encompassing measures such as community service, probation, and parole, offers a restorative approach that seeks to address the underlying factors of criminal behaviour rather than rely solely on incarceration. Recognising that not all offences warrant deprivation of liberty, this paper critically examines how community-based sanctions can promote more proportionate, humane, and effective justice outcomes. This study adopts a desk-based approach to analyse theoretical and empirical discourses, juxtaposing them with real-time issues in the Nigerian criminal justice system to advocate for the broader institutionalisation of community-based sentencing. Ultimately, it argues that rethinking justice through community-oriented sanctions can significantly contribute to reducing recidivism, alleviating prison overcrowding, and fostering a more responsive and equitable criminal justice system.

**Keywords:** Sentencing, Community-based sentencing, Criminal justice, Restorative, Recidivism

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## Introduction

The justice system in Nigeria is founded on a tripartite legal framework comprising Islamic law (Sharia), English common law, and customary law. This structure is a remnant of the nation's colonial history and reflects its multicultural populace (Olonisakin, Ogunleye & Adebayo, 2016). The British colonial authority introduced the formal justice system based on an adversarial court system that emphasises the punishment of offenders, often through imprisonment. As the foundation of law enforcement and social order, the criminal justice system (CJS) of any country ensures that the rights of all citizens are protected and that justice is administered equitably. According to Alemika (2014), Alemika & Chukwuma (2005), and Gabbay (2005), justice, equality, efficacy, and efficiency are essential values linked to a functional CJS. These principles uphold public safety, procedural integrity, proportionality of offence and punishment, and constitutionalism. Criminal

justice fundamentally involves determining whether an accused individual is guilty or innocent and then administering the proportional punishment or compensation where needed. However, significant structural and operational issues persist in Nigeria, despite several legal reforms, including the 2015 passage of the Administration of Criminal Justice Act (ACJA) and the Nigerian Correctional Service Act (NCSA) of 2019.

The high prevalence of awaiting trial inmates in Nigerian prisons is one of the most urgent issues. As of April 2025, 66.7% of prisoners in Nigerian prisons are awaiting trial (World Prison Brief, 2025). This alarming number is indicative of longstanding issues, including a shortage of judges, lengthy court proceedings, widespread corruption, and limited access to legal assistance. Due to these institutional shortcomings, the criminal justice system is highly overburdened.



Nigeria's jails are in terrible shape, devoid of basic facilities, and do not adhere to international human rights standards, according to Amnesty International (2021). In addition to increasing the chance of recidivism and violating inmates' fundamental rights, prison overcrowding also hinders the rehabilitation of criminals.

The detention of people for non-violent, minor offences like loitering, traffic infractions, and petty theft, all of which may not necessarily call for long-term jailing, puts a burden on Nigeria's prison system. An antiquated conception of justice that prioritises punishment above the rehabilitation and treatment of offenders is reflected in the punitive approach taken to such offences. The issue of prison overcrowding in Nigeria has frequently been discussed in academic writing and public debates. For instance, Ohazulike and Chikwendu (2023) note that a persistent problem resulting from rising incarceration rates is prison overpopulation. Notably, overcrowding is not merely an issue of space; it reveals a greater inadequacy in the criminal justice system's ability to manage its population humanely. A 2009 analysis by Amnesty International found that 65 per cent of Nigeria's 47,000 inmates had never been found guilty of a crime, with many spending up to ten years in pre-trial detention. The Nigerian Correctional Service Annual Report (2016) similarly revealed that 62.6% (89,404) of 142,848 inmates were awaiting trial. In 2015, that figure stood at 63%. These statistics expose a deeply inefficient system that fails to distinguish between minor infractions and serious crimes.

Considering these realities, there is growing momentum for justice reform rooted in restorative justice principles. Community-based sentencing, also known as non-custodial sentencing, has emerged as a compelling alternative. This approach involves judicial sanctions that do not require incarceration but are carried out within the community under supervision. Community-based sentencing mechanisms may include probation, restitution, community service, curfews, rehabilitative programs, or fines. A community service order, for instance, requires an offender to

perform unpaid labour that benefits society, allowing them to "pay back" the community rather than endure imprisonment.

In addition to addressing the root causes of criminal behaviour, community-based sentencing encourages offender accountability, enables restitution channels, and facilitates the process of reintegrating criminals into society. Most importantly, it provides an appropriate reaction to non-violent and petty offenders, easing the burden on jails while maintaining public safety. Notwithstanding these benefits, community-based penalties are still not widely used in Nigeria. An evaluation of the state, efficacy, and obstacles to implementing non-custodial measures in Nigeria is necessary.

Thus, the purpose of this study is to investigate whether community-based sentencing, particularly for minor and non-violent offences, can serve as a practical, compassionate, and rehabilitative alternative to incarceration. This study examines how non-custodial options can help declutter jail facilities, enhance the delivery of justice, and promote a more equitable criminal justice system. The study also assesses how community-based sentencing can be used as a tool to reduce recidivism and facilitate the successful reintegration of convicts into society. The following research questions are attempted to be addressed to do this:

- i. What are the current practices of community-based sentencing in Nigeria, and how effective are they?
- iii. How can community-based sentencing contribute to reducing prison congestion and improving justice delivery?
- ii. What are the major challenges hindering the implementation of community-based sentencing in Nigeria?

### **Conceptual Clarifications**

#### **Criminal Justice System (CJS)**

In Nigeria, the administration of justice and the enforcement of the law are centred on the criminal justice system. Order is upheld, conflicts



are resolved, and this system punishes criminals. Nigeria's legal system is pluralistic, including Islamic (Sharia) law, English common law, and customary law. This diversity reflects the nation's diverse ethnic and religious composition, as well as its colonial past (Alemika, 2014; Adebayo, 2020). This combination broadens the system's cultural reach, but it also makes it more difficult to understand and apply justice.

The adversarial formal legal system, which was largely inherited from British colonial authority, involves both parties presenting their cases before a judge or magistrate decides the issue. In most criminal cases, the default course of action is punishment, particularly incarceration (Onyekwere, 2021). Sharia law, primarily used in northern Nigeria, addresses both civil and criminal cases involving Muslims. However, customary law remains in use in rural and traditional communities, especially in southern Nigeria (Olonisakin, Ogunleye, & Adebayo, 2017).

According to Alemika and Chukwuma (2005), a robust criminal justice system should ideally exemplify efficiency, fairness, equity, and transparency. But these principles are often compromised in reality. There are still major issues in the criminal justice system, even after significant reforms, such as the 2015 passage of the Administration of Criminal Justice Act (ACJA), which aimed to introduce more humane practices into the CJS and reduce the number of awaiting-trial inmates. The number of inmates detained in prisons without conviction is arguably the most concerning problem. According to data from the National Bureau of Statistics (2022), more than 70% of prisoners in Nigerian jails are awaiting trial. This staggering statistic highlights the system's dysfunction in providing prompt justice. According to Amnesty International (2021) and Okereke & Ekong (2023), many of these people wind up serving years in prison for relatively minor offences, which is frequently longer than the maximum term for the crime they are charged with.

This over-reliance on imprisonment has also resulted in severe overcrowding in Nigerian

prisons. As noted by Haney (2006), the term "overcrowding" refers not only to the number of inmates but also to the extent to which conditions have deteriorated due to the system being designed to hold fewer inmates than it currently holds. Facilities are overstretched, basic human needs are not met, and rehabilitation is almost non-existent. Such conditions not only violate human rights but also increase the risk of recidivism, as ex-inmates find it difficult to reintegrate into society.

### **Sentencing**

The concept of sentencing originates from ancient legal traditions, where punishment was often retributive, as seen in the principle of *lex talionis*, "an eye for an eye," which was used in early Mesopotamian and biblical laws. In modern times, especially with the rise of organised states and codified legal systems, sentencing has developed into a more structured process influenced by various theories of punishment, including retribution, deterrence, rehabilitation, and incapacitation (Roberts, 2008). The term "sentencing" is frequently used interchangeably with "judgment." However, "judgment" has a broader meaning than "sentence." According to Black's Law Dictionary, a sentence is a judgment formally pronounced by a court after finding a criminal defendant guilty, or the punishment imposed on a person found guilty of a criminal offence.

In contrast, judgment is defined as a court's final determination of the rights and obligations of the parties in a case (Black's Law Dictionary, 2004). A sentence is also described as a definite disposition order issued by a court or other competent tribunal against a person standing trial, following a criminal trial and the finding of guilt. It has been stated that a sentence is the pronouncement or judgment by the court upon an accused person after conviction in a criminal prosecution, imposing a punishment to be inflicted (Airapetean, A.2022)

In criminal justice, sentencing is a fundamental process representing the point at which the court determines and imposes a penalty on a person who has been found guilty of committing a criminal



offence. It is the formal judgment pronounced by a judge or magistrate, signifying the legal consequence of the offender's conduct as defined by law (Ashworth, 2010). Sentences can be broadly classified into custodial and non-custodial types. Each type serves a different purpose and is applied depending on the nature and gravity of the offence, the circumstances of the offender, and the legal framework.

### **Custodial Sentences**

In this scenario, the criminal is given a prison sentence. In Nigeria, it is the most widely utilised type of sentence, especially for transgressions ranging from violent felonies to thievery. Custodial punishment is designed to incapacitate the offender and serve as a deterrent, but in fact, it often leads to congestion, bad prison conditions, and inadequate rehabilitation (Amnesty International, 2021; NBS, 2022).

### **Non-Custodial Sentences**

These alternatives to incarceration include community service, probation, fines, restitution, and suspended sentences. Since they are considered more rehabilitative and less disruptive to the offender's life, non-custodial sentences are typically applied to minors or first-time offenders. In some cases, judges may issue non-custodial sentences under Section 453 of the Administration of Criminal Justice Act (ACJA, 2015). For instance, offenders can avoid the harmful consequences of incarceration while making a good contribution to society through community service (Awopeju & Adebayo, 2020).

### **Capital Punishment**

Though controversial and increasingly rare globally, capital punishment (death penalty) is still legally available in Nigeria for offences such as murder, armed robbery, and treason. Its relevance is heavily debated, especially regarding human rights and wrongful convictions (Odinkalu, 2017).

### **Suspended Sentences and Conditional Discharges**

These are sentences that are not immediately enforced, provided the offender meets certain conditions, such as good behaviour or community

supervision. These types aim to deter without subjecting the offender to imprisonment. Because of the over-reliance on custodial sentencing in Nigeria, offenders convicted of petty theft or traffic offences frequently serve time in prison, which exposes them to hardened criminals and worsens their socio-economic prospects upon release (Alemika et al., 2005). This is especially true for rehabilitation and restitution.

### **Probation**

The idea of probation dates back to the 19th century in the United States, and Boston shoemaker John Augustus is frequently referred to as the "father of probation." Augustus favoured rehabilitation over punishment and argued for the release of criminals under monitoring. His work established the foundation for official probationary procedures, which were subsequently implemented in other countries worldwide (Phelps, 2017). A type of criminal punishment known as probation spares an offender from incarceration and instead permits them to live in the community under supervision. Individuals who have been convicted of crimes are typically granted probation, which allows them to live outside of prison under specific guidelines established by the court. Among the primary goals of probation are the offender's rehabilitation, the prevention of future criminal activity, and the reduction of prison overcrowding (Porporino, 2018).

In Nigeria, probation was introduced into the statute books in 1945 with the enactment of the Criminal Procedure Act (CPA), which made provisions for the probation of both juvenile and adult offenders. The Nigerian probation service was established to supervise offenders, particularly juveniles, and facilitate their reintegration into society. However, the system has faced challenges, including inadequate funding, lack of trained personnel, and societal stigmatisation of offenders (Alemika, 2014). Probation can be categorised into several types, each tailored to the offender's risk level and the nature of the offence.

**Standard Probation:** This type of probation involves ongoing supervision and requires the



offender to adhere to specific rules, such as maintaining employment, avoiding criminal activities, and attending regular meetings with a probation officer. In addition to any mandatory requirements, such as community service and alcohol or drug treatment, offenders under regular supervision are expected to report to an officer on a biweekly or quarterly basis.

**Intensive Probation Supervision (IPS):** Designed for high-risk offenders, IPS includes more frequent interactions with probation officials, higher compliance, and sometimes electronic monitoring. Studies have demonstrated that IPS can be beneficial in reducing recidivism when accompanied by rehabilitative programs (e.g., Turner & Petersilia, 1992). Violent offenders, senior gang members, repeat offenders, and sexual offenders are frequently placed on this kind of probation. Probationers may be subject to unexpected home or workplace visits, surveillance, the use of electronic monitoring or satellite tracking, and some jurisdictions require offenders under such supervision to give up their Fourth Amendment rights against search and seizure.

**Unsupervised Probation:** Under this arrangement, the offender is not required to report to a probation officer but must still comply with the conditions set forth by the court. If they fail to do so, probation may be revoked, and the original sentence may be imposed. Probationers are free to attend their places of employment, education, or worship; they may be asked to meet with an officer at the beginning, near the end, or not at all. If the terms are not fulfilled, an officer may petition to revoke probation.

**Shock Probation:** This strategy involves a brief jail sentence followed by probation; the goal of the initial jail term is to "shock" the offender and deter future criminal activity. Shock probation is only applicable for a brief period, ranging from 30 to 120 days, following the initial sentence.

Restorative Justice.

The origins of restorative justice can be found in indigenous justice traditions practised in many

traditional communities worldwide, including those in Africa, New Zealand (Māori), Canada (First Nations), and North America (Native American tribes), as noted by Braithwaite (2017). In these cultures, justice was viewed as a shared concern, and disagreements and wrongs were resolved through discussion, healing, and reconciliation, rather than punishment. Nwolise (2005) stated that the Igbo and Yoruba peoples in Africa, particularly in Nigeria, have traditionally settled disputes with family or community elders, emphasising reconciliation and restitution over retaliation. Global acknowledgement of restorative justice increased in the 1990s. Subsequently, International organisations and several states started incorporating restorative ideas into their legislative frameworks and correctional procedures. In appropriate criminal cases, member states are required to implement restorative justice, as per the 2002/12 resolution of the UN Economic and Social Council (UNODC, 2006).

The United Nations Office on Drugs and Crime (UNODC, 2006) defines restorative justice as a process in which parties involved in a particular offence jointly decide how to address the aftermath and future ramifications of the offence. The philosophy and practice of restorative justice places a strong emphasis on using inclusive procedures that involve victims, offenders, and the community to mend the harm caused by criminal behaviour. In contrast to the conventional punitive approach, which prioritises punishment, restorative justice aims to meaningfully hold offenders accountable while also attending to the needs of those who have been injured (Zehr, 2002). At the centre of restorative justice frameworks are three principles proposed by Zehr: restoration, accountability, and involvement. An alternative to offender-centred sanctions and punishment, restorative conferencing aims to balance the needs of all parties involved (victim, offender, and community). This promotes healing from traumatic stress and accountability for offending behaviour while resulting in restorative agreements.



Restorative justice has garnered attention in Nigeria, particularly as a potential solution to the shortcomings of the traditional criminal justice system, including overcrowding of prisons, lengthy pre-trial detentions, and the absence of victim participation in the legal system (Ajayi, 2011). The Administration of Criminal Justice Act (ACJA) 2015 indicates a move towards restorative principles, with mechanisms for alternative dispute settlement and non-custodial punishment.

### **Theoretical framework**

**This paper will utilise two theories:** Reintegrative Shaming Theory and Restorative Justice Theory.

#### **Reintegrative Shaming Theory**

John Braithwaite proposed Reintegrative Shaming Theory in his groundbreaking work, *Crime, Shame and Reintegration* (1989). The theory builds upon the role of shame in social control and emphasises the distinction between stigmatising shaming and reintegrative shaming. Stigmatising shames the offender as a bad person and isolates them from the community, often leading to further deviance. In contrast, reintegrative shaming disapproves of the wrongdoing but still respects and supports the offender as a person, encouraging them to rejoin the community. The theory of reintegrative shaming argues that the importance of social disapproval has been generally underestimated by institutions of criminal justice, as well as criminological theory. It argues that to understand crime rates, we need to examine the degree to which offending is shamed and whether that shaming is reintegrative or stigmatising.

Reintegrative shaming is defined by Braithwaite (1989) as disapproval that is respectful of the individual, is terminated by forgiveness, does not label the individual as evil, and does not result in condemnation becoming a master status trait. The theory predicts that reintegrative shaming will lead to a decrease in offending, while stigmatising shaming is not respectful of the individual, is not terminated by forgiveness, labels the individual as evil, and allows them to achieve a master status

trait. RST predicts that this latter type of shaming leads to higher levels of offending (Braithwaite, 1989; Makkai & Braithwaite, 1994). Reintegrative shaming is more likely to be used effectively in societies with strong interpersonal relationships and communal values. This makes the theory particularly relevant to Nigeria, where extended families and community networks play a central role in social life. Empirical studies support the theory's assertion that reintegrative approaches are more effective in reducing recidivism than punitive models (Harris, 2006; Hay, 2001).

The use of reintegrative shaming is clearly evident in the context of community punishment. In place of jail time, a judge may order community service or probation, indicating that the offender's actions were wrong but that they can be changed. Criminals are not ostracised but are held accountable. They are allowed to mend fences and rebuild community trust. Offenders who experienced reintegrative shaming had a considerably lower likelihood of reoffending than those who faced traditional criminal proceedings, according to research from Australia's Reintegrative Shaming Experiments (RISE) (Sherman & Strang, 2007). In Nigeria, where the prison system is overcrowded and frequently fails to rehabilitate inmates, the reintegrative shaming principle can help restore the offender's social identity and lessen the stigma that usually comes with incarceration. According to Okoro (2019), community sentencing facilitates successful reintegration by allowing this process to take place within the social fabric that offenders are familiar with.

#### **Restorative Justice Theory**

The old retributive justice system was criticised by restorative justice theory. Although it had its origins in the 1970s, Howard Zehr's writings, particularly his landmark book *Changing Lenses: A New Focus for Crime and Justice* (1990), were primarily responsible for its rise to scholarly prominence. Most people consider Zehr to be one of the leading advocates of restorative justice. His work reframed criminal behaviour as a harm to people and relationships, rather than just a legal



infraction. A view of justice known as restorative justice places a strong emphasis on making amends for the harm caused by criminal activity. As stated by Bergseth and Bouffard (2007), restorative justice aims to bring together the people most affected by the criminal act: the victim, the offender, and community members in a non-adversarial process to encourage offender accountability and meet the needs of the victims to repair the harms resulting from the crime. Practices and programs reflecting restorative purposes will respond to crime by identifying and taking steps to repair damage, involving all stakeholders, and changing the traditional relationship between communities and government in responding to crime.

Restorative justice has been empirically linked to reduced recidivism, increased victim satisfaction, and stronger community cohesion (Strang et al., 2006). According to John Braithwaite (2002), one of the foundational values of restorative justice is reintegration, a concept that complements community-based sentencing, which keeps offenders within their social environment rather than isolating them in prisons. In Nigeria, where the criminal justice system is overworked and mainly fails to rehabilitate criminals (Amnesty International, 2021; NBS, 2022), restorative justice provides a workable substitute. Because it considers the victim's needs as well as the offender's circumstances, community-based sentencing, which includes community service, probation, and restitution, embodies restorative principles. It promotes a type of justice that aligns more closely with African culture, where peacemaking and reconciliation are valued above punitive actions (Okafor, 2006).

Despite having different theoretical underpinnings, Restorative Justice Theory and Reintegrative Shaming Theory work together to provide a strong case for the use of community-based sentencing in criminal justice reforms. Their tenets work well together and offer a strong theoretical foundation for supporting non-custodial measures when compared side by side. This is especially true in a setting like Nigeria, where overcrowding, delays, and a misalignment

between punishment and rehabilitation beset the legal system.

Restorative Justice Theory emphasises healing rather than retribution. It shifts the focus from punitive justice to restoring the balance between offenders, victims, and society. This theory emphasises the importance of repairing harm caused by crime through community involvement, offender accountability, and victim engagement. In the Nigerian context, where many offences are minor and non-violent, restorative justice offers a pathway that aligns more naturally with traditional communal values and avoids the adverse consequences of incarceration, such as social alienation and recidivism. On the other hand, Reintegrative Shaming Theory emphasises the efficacy of social processes in regulating criminal behaviour. It distinguishes between reintegrative shaming, which condemns the conduct but accepts the perpetrator's return to society, and stigmatising shaming, which permanently identifies the offender. Because incarceration isolates people and promotes stigmatisation, this distinction is especially potent in explaining why it frequently fails to rehabilitate. Community-based sentencing, on the other hand, permits controlled reintegration, allowing offenders to make constructive contributions to society and re-establish their social ties.

Combining the two theories yields a comprehensive framework for highlighting the benefits of community-based sentencing. The moral guidance and philosophical underpinnings are provided by restorative justice theory, which emphasises healing, relationships, and accountability. In turn, Reintegrative Shaming Theory provides a sociological framework for healing through community-based justice, condemning the transgression without placing blame on the individual. The synthesis of both theories in practice supports the need for reform in Nigeria's sentencing policies. Minor offenders who receive community service or probation instead of jail time can accept responsibility for their actions, make amends, and maintain their social standing, which lessens the strain on



prisons and guarantees that justice is carried out more effectively.

### **Methodology**

This study adopts a desk-based qualitative research approach to explore the role of community-based sentencing in Nigeria's criminal justice reform. It relies on the analysis of secondary data, including academic literature, legal statutes, media reports, and empirical studies relevant to community-based sentencing practices. Emphasis was placed on literature examining community-based sentences such as probation, parole, and community service as viable alternatives to traditional sentencing. The findings were organised to reflect theoretical foundations, current realities, and practical challenges in Nigeria.

### **Literature Review**

Academic literature has extensively criticised Nigeria's criminal justice system, focusing on its inefficiencies and excessive dependence on incarceration. Alemika and Chukwuma (2005) claim that the system is inherently biased in favour of punitive measures and places little emphasis on restorative justice or rehabilitation. According to this researcher, a justice system that regularly falls short of meeting the demands of both victims and offenders is the result of complex procedures, outdated penal rules, and inadequate legal counsel. Similarly, Gabbay (2005) underlined that the efficiency of a criminal justice system is evaluated not only by how it punishes crime but also by how it restores social peace and defends human dignity.

A significant flaw in Nigeria's system is the excessive use of custodial punishment. Nigerian prisons frequently fall short of international human rights standards and are overcrowded, according to Amnesty International (2021). The National Bureau of Statistics (2022) reports that over 70% of prisoners in Nigerian prisons are awaiting trial, a statistic that highlights the structural inefficiencies and delays in the justice system. This researcher contends that excessive incarceration, particularly for relatively minor offences, leads to more criminalisation rather than rehabilitation.

In the UK, community-based sentencing was created to serve as an intermediate penalty that balances punitive and rehabilitative objectives, and it includes electronic monitoring, community service orders, and probation. Skelton and Batley (2008) noted that restorative justice principles have gained traction as an alternative to traditional punitive systems in South Africa, especially for juvenile and non-violent offenders. These scholars argue that community-based sanctions facilitate the reintegration of offenders into society, reduce recidivism, and uphold the rights of victims. The global shift toward non-custodial measures has yielded important insights, particularly in countries such as the UK and South Africa.

The Nigerian government has attempted reform of its criminal justice system on multiple occasions. To address some of the structural problems ailing the legal system, the Nigerian Correctional Service Act 2019 and the Administration of Criminal Justice Act (ACJA) 2015 were passed into law. According to Okocha (2020), the goal of these legislative frameworks is to encourage community service, parole, probation, and other non-custodial methods. Nevertheless, despite their potential, these reforms have not yet been widely implemented. Adebayo (2021) asserts that obstacles, including inadequate infrastructure, limited understanding, and opposition from key stakeholders, continue to hinder the effective implementation of community-based sentencing in Nigeria.

Despite the contributions, a notable gap remains in the research on the local efficacy and societal perception of community-based sentencing in Nigeria. Most previous studies either adopt comparative viewpoints or concentrate on the general dysfunctions of the justice system without situating their findings within Nigeria's particular legal and sociopolitical realities. This study aims to fill that gap by investigating how community-based sentencing can be operationalised in Nigeria to address prison overcrowding, encourage rehabilitation, and guarantee justice for all parties involved in minor and non-violent offences.

History of the Criminal Justice System in Nigeria



The primary responsibility of the CJS in Nigeria is to administer justice in accordance with due process and the rule of law. The CJS is focused on determining the guilt or innocence of suspects, as well as ensuring that the punishment allocated is both fair and suitable for the offence committed by the offender (Aver & Ojienon, 2024). The CJS comprises a range of governmental institutions responsible for enforcing laws that ensure peace, order, and tranquillity within the country. These institutions include the Police, the court systems, and correctional institutions (Aver et al, 2024). According to Olaposi (2021), Nigeria's CJS can be traced to pre-colonial times, when the different ethnic groups had their own customary laws and institutions to regulate conduct and address criminal offences. These laws were mainly unwritten and simple. However, in the Muslim North, written laws existed under the Maliki School.

After the British occupied Nigeria and Lagos became a crown colony, indigenous laws continued to be implemented in the protectorate. The criminal code was established in 1904 by the British upon their takeover of Northern Nigeria, which ultimately led to the unification of Nigeria in 1914. This unification resulted in three separate Criminal Justice Systems. The English Criminal Law, introduced in Lagos, was implemented in the North, alongside indigenous legal customs that remained in the South. Such legal diversity created inconsistencies across the regions. To address the issue, the British extended the Criminal Code to all Nigerians in 1916. However, this extension led to conflicts with the existing Islamic Law. In 1916, the British sought to establish uniformity by extending the Criminal Code nationwide, which sparked conflicts with Islamic Law, particularly regarding punishment and the legal effect of provocation. Subsequent amendments attempted to curtail the jurisdiction of native courts, but legal ambiguities persisted. While some judgments affirmed the autonomy of native courts, others limited their sentencing powers under the Criminal Code. This inconsistency led to the 1958 adoption of the Penal Code and its application to the old Northern region of Nigeria (Udechukwu, 2023). Upon

independence in 1960, Nigeria continued to operate with both the Criminal Code, rooted in English Common Law, and the Penal Code, which reflects the values and beliefs of Muslims, both of which underwent reforms to reflect evolving societal standards (Udechukwu, 2023).

### **Community-based Sentencing in Nigeria: Current Practices**

As prison populations all over the world continue to grow, coupled with the rehabilitative benefits of community-based sentencing, community-based sentencing has become a widely implemented sentencing component in many criminal justice systems. Community-based sentences encompass a diverse range of criminal justice approaches, including suspended sentences, probation, mandatory community service, and mandatory treatment or training programmes, among others (Yukhnenko, Wolf, Blackwood, & Fazel, 2019). Several jurisdictions, including the United States, the United Kingdom, Australia, and Spain, have implemented and progressively expanded community-based sentencing measures (Agarwal, 2019). While community-based sentencing may be implemented in various forms across different countries, it remains a popular alternative to custodial sentencing. In Belgium, according to McIvor, Beyens, Blay, and Boone (2010), following the formal recognition of community service as a standalone sentence, it gained popularity and was widely implemented in the country. In Spain, its use as a punishment for common offences, such as traffic infractions and minor domestic violence cases, contributed to its increasing popularity (McIvor et al., 2010).

Additionally, McIvor et al. (2010) note that the Netherlands saw a substantial doubling of community service orders from 2000 to 2008, partly driven by legislative reforms enacted in 2001. These reforms positioned community service as an alternative to imprisonment and fines, and increased its use as a sentencing option. Overall, the spread of community-based sentencing in these countries indicates a broader move towards restorative and rehabilitative justice approaches.

The major Trusts influenced the history of



Community-based service in African Countries. Zimbabwe recorded its first success in 1990 with the introduction of Community Service Orders. Uganda recorded the second success following a meeting held in Uganda, named "The Kampala Declaration" on Prison and Penal Reform in 1996, which reflected a shared concern about prison conditions (UN, 1996). The third meeting, held in Zimbabwe, was named "The Kadoma Declaration" on Community Service Orders of 1997. The fourth meeting, held in Burkina Faso, was named "The Ouagadougou Declaration" on Accelerating Penal and Prison Reform in 2002 (Penal Reform International, 2005). Members of the trusts signed a document which sets out a specific prison and sentencing reform agenda. The declaration was noted by the United Nations Commission on Crime Prevention and Criminal Justice and annexed to one of its resolutions (United Nations, 1996). The directive sets out a broad reform agenda, calling for improved prison conditions, reduced remands in custody, and increased professional opportunities for prison staff, as well as the development of Community service. Several recommendations were made. Petty offences should be dealt with according to customary practice. Community Service and other alternatives to imprisonment should be preferred to imprisonment. The public should be educated about the objectives of Community service and other alternatives to detention, as well as how they work (Kagaruki, 2015).

The mandate of the Nigerian Prison Services before the coming into force of the NCSA, 2019, was mainly custodial service. Under the NCSA 2019, the "Correctional Service" shall consist of Custodial Service and Non-Custodial Service (Edetalehn, Imoisi & Aidonojie, 2023). The Non-Custodial Service is responsible for administering non-custodial measures, which include community-based sentences. The ACJA, 2015, and the NCSA, 2019, provide several non-custodial sentences as alternatives to the defendant's incarceration. Some of which are: probation, Parole, suspended Sentence, and community sentence.

Nigeria's prisons face many issues, mainly caused by overcrowding, which results in prison

congestion, unsanitary conditions that cause disease outbreaks, a hardening of criminals, and other problems. Community sentences were introduced through the ACJA 2015 and the NCSA 2019 as a more humane approach to tackling these issues through their rehabilitative and reformatory methods for offenders. Recent events suggest that community-based sentencing is being implemented in Nigeria as an alternative approach to sentencing for minor offences. In 2024, the Justice of the Special Offences Court in Ikeja, Lagos, sentenced an 18-year-old man to one year of community service for possessing fraudulent documents printed from his messaging account (Ojo, 2024). The conviction followed a charge brought against him by the Economic and Financial Crimes Commission (EFCC). The Judge stated that the maximum penalty for the offence was two years' imprisonment, but reduced it to one year due to factors like the offender's efforts at restitution, his status as a first-time offender, and his young age (Ojo, 2024). Additionally, in an attempt to improve the application of non-custodial sentencing in Bauchi State, the Federal High Court in Bauchi sentenced three convicts, found with cannabis sativa weighing 150g, 200g, and 300g, respectively, to three weeks of community service. Their tasks included daily cleaning and sweeping of the Bauchi Custodial Centre premises for three weeks. (Bakaam, 2021). In 2024, a Magistrate court in Abeokuta, Ogun State, sentenced a teenager to two weeks of community service after he broke into a house and stole food, clothes, and some electrical gadgets. Accounts like these reveal the benefits of community-based sentencing (Sunday, 2024). Asangausung (2024) explains that community-based sentencing transfers the responsibility for corrections from institutions to local communities, which helps lower the operational costs of incarceration. Additionally, it alleviates prison overcrowding and supports offender rehabilitation. (Edetalehn et al., 2023). Empirical studies also reveal the extent to which community-based sentences aid in the rehabilitation of offenders. According to Mabara and Anurugwo (2024), in their research, parole services in Nigeria offer offenders a moderate level of support in being reintegrated



into society, albeit these services require critical reforms. Similarly, findings from Zubairu, Musa, & Wunti's (2023) study revealed that inmates and staff of the Bauchi Custodial Centre believed that the provision for community service, probation, and parole in the CJSA 2019 would undoubtedly go a long way in addressing the numerous challenges faced by custodial centres in Nigeria. Another study, conducted by Adikwu and Bununu (2024), also states that non-custodial sentences were highly effective in reducing crime rates in the Wukari Local Government area of Taraba State.

### **Challenges of Community-based Sentencing in Nigeria**

Efforts have been made to incorporate community-based justice programmes into Nigeria's sentencing policy, such as the ACJA 2015 and the NCSA 2019. Courts across the country have also incorporated community-based sentencing into their proceedings. In addition to setting standards for international best practices in criminal justice administration, these measures are vital for protecting the rights of all inmates (Okeke, Obianyo, & Ater, 2024). Despite legal reforms and judicial efforts, Nigerian prisons continue to face significant challenges. Edetalehn et al., (2023) identified several challenges in implementing community-based sentencing effectively in Nigeria. They observe that granting courts discretionary power under the ACJA 2015 to impose non-custodial sentences could lead to potential misuse of authority, inconsistent treatment of offenders and a loss of public confidence in the judicial system. Furthermore, Edetalehn et al. (2023) highlighted other challenges, including the absence of necessary facilities such as correctional homes and community service centres in many states, a lack of monitoring equipment to oversee offenders' activities, and a shortage of personnel required for proper supervision. (Edetalehn et al, 2023). Okeke et al. (2024) argue that legislative deficiencies pose a significant challenge to the effective implementation of community-based justice in Nigeria. The ACJA 2015 is the first law to introduce non-custodial measures, including parole, probation, community service, and

restorative justice. However, it fails to define these terms clearly. This creates ambiguity about what each sentence involves, which could lead to non-uniform sentencing practices. Additionally, Okeke et al. (2024) argue that the provisions regarding non-custodial services are not justiciable, as there is no specific agency assigned to oversee this section. They also criticise the Nigerian government's insufficient funding, which has led to poor infrastructure, inadequate training, and understaffed criminal justice and correctional facilities (Okeke et al., 2024). Additionally, the successful implementation of community-based programs in Nigeria faces challenges such as high caseloads for probation officers, which hinder adequate supervision and monitoring of offenders (Ezeanokwasa & Ngede, 2021). Probation and community service programs are typically managed by small agencies with limited staff, often comprising just one or two chief probation officers. These officers have to cover large areas and handle many cases, which makes it hard to supervise each person closely. They also lack sufficient training and resources, such as vehicles and proper facilities, making it more difficult to supervise offenders adequately. Additionally, poor coordination between courts, Police, and probation officers worsens the situation, leading to less oversight and failure to help offenders reform through their non-custodial programs. (Ezeanokwasa et al., 2021). Infrastructural deficits, including overcrowded facilities and insufficient resources, limit the capacity to oversee community-based sentencing and ensure proper supervision. Low levels of awareness among law enforcement and judicial officers in Nigeria lead to the continued reliance on custodial sentences (Onyuike, 2024). Without proactive and strategic implementation, measures put in place to enhance community-based sentencing practices in Nigeria will remain underutilised, increasing prison congestion and undermining efforts toward rehabilitation and reform (Onyuike, 2024). Addressing these systemic issues is crucial for the successful integration of community-based sentencing into Nigeria's criminal justice system.



## **Conclusion**

This paper highlights the current challenges facing Nigeria's criminal justice system, despite legal reforms such as the 2015 passage of the ACJA and the NCSA 2019. Focusing on how sentencing, as a criminal justice procedure, can address significant structural and procedural issues in Nigerian prisons, the paper examines the legal provisions of community-based sentencing approaches, such as parole, community service, and suspended sentences, and how they can contribute to effective justice delivery in Nigeria. By discussing the contemporary challenges faced by Nigeria's prisons and the benefits of community-based sentencing, supported by scholarly debates and empirical findings, the paper concludes that such approaches have great potential to resolve longstanding issues like prison overcrowding, lengthy court proceedings, pervasive corruption, and limited access to legal assistance within Nigeria's criminal justice system. However, challenges, including inadequate facilities and infrastructure, administrative constraints, and insufficient funding, hinder the successful implementation of community-based approaches, indicating that Nigeria still has a long way to go in ensuring that legal reforms are fully utilised.

## **Recommendations**

Beyond the legal provisions supporting community-based sentences, there is a need to tackle the institutional and structural challenges that hinder the successful implementation of legal reforms and obstruct judicial efforts to ensure effective justice through community-based sentencing in Nigeria. The following recommendations are therefore proposed:

1. To address the issues of inadequate facilities, such as correctional homes and community service centres, a lack of monitoring equipment, and a shortage of personnel to supervise offenders, the government should invest in establishing community service centres, probation offices, and correctional homes at both the state and local government levels. These facilities should be adequately equipped and tailored to accommodate non-custodial sentencing programs.

2. To broaden the adoption of non-custodial sentences in Nigeria, foster consistency in their implementation, and strengthen the legitimacy of non-custodial sentencing, there is a need for a review of the ACJA 2015 to provide clear operational definitions of all non-custodial measures. Supplementary regulations and guidelines can also be developed to enhance clarity and facilitate enforcement. Furthermore, legal practitioners and judges should be trained on the interpretation and application of sentencing laws.

3. To ensure better coordination between courts, Police, and probation officers, regular inter-agency meetings should be conducted, joint training sessions should also be introduced, and shared access to offender databases should be established to ensure stronger inter-agency collaboration and that roles are clearly understood within the CJS.

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