

NON-CUSTODIAL MEASURES

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Ja'afaru Ahmed Controller General Nigerian Correctional Service

Nigerian Correctional Service (NCoS) Appoints Officers in Charge of Non-Custodial Directorate across States and the Federal Capital Territory to Supervise Non-Custodial Service

On 20 March 2020, PRAWA met with the Officers from the Nigeria Correctional Service represented by the Deputy Controller-General of Corrections Human Resources, Mr. John Mrabure, Assistant Controller General, Tunde Ladipo and other officers to brief the Nigerian Correctional Service on the ROLAC sponsored project on Effective Implementation of Non-Custodial Measures in Nigeria.

The PRAWA Team consisted of the Executive Director, Dr. Uju Agomoh, Deputy Director Ms. Ogechi Ogu, FCT Project Coordinator, Ms. Cynthia Abazie Abang, and Programme Officers, Ms. Justina Laman and Mr. Micheal Iseyare.

Slated to run from February 2020 to December 2020, the project is to commence with a pilot programme in the Federal Capital Territory and will be implemented in partnership with the Nigerian Correctional Service, FCT Judiciary,

Administration of Criminal Justice Monitoring Committee, National Judicial Institute and other stakeholders at Federal and State levels. While briefing officers of the Nigerian Correctional Service, the Executive Director of PRAWA, Dr. Uju Agomoh noted that the project is geared towards improving the administration of criminal justice in Nigeria through increased utilization of the provisions on non-custodial measures contained in the Administration of Criminal Justice Act 2015 and the Nigerian Correctional Service Act 2019.

She further noted that the approach of the proposed intervention will include the development of resource materials which includes Operational Guidance Notes, review of the curriculum for the NCoS Training Institutions to reflect the content of the Standing Order and the NCS Act 2019; Development of Training Manuals and Trainers' Guide in consultation with the NCoS for the training of NCoS officials; Training of the NCoS officers and Judges and Magistrates; Sensitization and Advocacy in ROLAC focal states (FCT, Anambra, Lagos, Kano and Adamawa States).

In response, the Deputy Controller-General of Corrections in charge of Human Resources, Mr. John Mrabure noted that the NCoS had nominated the Deputy Controller of Corrections (Non-Custodial) of each state alongside thirty (30) officers as focal persons for the project intervention. They include the following: DCC Esan Patrick (Ado-Ekiti), DCC Abolarin Victoria (Ado-Ekiti), DCC Kalu Francis (Umuahia), DCC Lakitile Cyrus (Yola), DCC Udo Imaobong (Uyo), DCC Chukwukelu Patricia (Awka), DCC Kitsam Bala (Bauchi), DCC Nwaogu Eucharía (Yenegoa), DCC Agaba Tanko (Makurdi), DCC Garba Mati (Maiduguri), DCC Odey Bassey (Calabar), DCC Nwanze Eugene (Asaba), DCC Obilor George (Abakaliki), DCC Chukwu Clementina (Enugu), DCC Obayagbona Joy (Benin), DCC Moro Audu (Gombe), DCC Nwanegbo Nkechi (Owerri), DCC Musa Dauda (Dutse), DCC Ado Inuwa (Kaduna), DCC Garba Charanchi (Kano), DCC Abu YA'U (Katsina), DCC Mogaji Timothy (Minna), DCC Lawal Mato (Kebbi), DCC Abubakar Ashapa (Gusau), DCC Isiakpona Patience (Abeokuta), amongst others. Their schedule of duties include 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 NCoS. Some officers will also be selected to constitute the monitoring and evaluation Team for the pilot programme within the FCT to supervise offenders serving non-custodial sentences.

The effective implementation of non-custodial measures in Nigeria has been applauded as a novel intervention and the first of its kind in shifting focus from the reliance on custodial sentencing even for petty offences. This move has further been commended by stakeholders as a good innovation to deal with issues of reduction of number of persons in custody especially in this period of the COVID-19 pandemic.

Lessons from other Jurisdictions Examining the Operation and Practice of Non-Custodial Sentencing - A Case Study of the United Kingdom



The reliance on incarceration as a defunct practice even for simple and petty offences poses numerous challenges for the criminal justice system. This has escalated the number of awaiting trial inmates within custodial facilities and overcrowding of penitentiary institutions. Over the years, most countries across the globe realizing the demerits of placing emphasis on custodial sentencing have begun relying on non-custodial sentencing as a punitive measure for offenders especially in relation to simple and petty offences. When an accused person is charged to court and found guilty of an offence, the judge can in delivering judgment prescribe a non-custodial sentence depending on the individual in question (consider if such person is a habitual offender) and the gravity of the offence. This serves as an alternative to a prison sentence. Such accused persons once found guilty could be sentenced to pay a fine or undertake community service. Sometimes they will be supervised by a probation officer for a certain time.

Various kinds of non-custodial sentencing can be prescribed which include fines, community service order, probation order, a combination of probation and community service and conditional or absolute discharge. Non-custodial sentencing for young offenders include attendance center order, community responsibility order, reparation order and youth conference order.

The United Kingdom employs fines as the commonest punitive measure for simple offences or misdemeanors like breach of traffic laws, loitering, theft, etc. The sum to be paid by the accused person is set by the court taking into consideration the seriousness of the offence and the financial capacity of the offender.

The latter is important to discourage the frequent occurrence of defaults in payment subsequently leading to incarceration of offenders. Fines may also be prescribed for organizations in breach of the law besides from individuals. The maximum fine allowed in both Magistrates' courts and the Crown Court is unlimited (apart from offences sentenced in the magistrates' court which were committed before 12 March 2015, where the maximum fine allowed is £5,000).

A Community Service order is also another common non-custodial sentence prescribed by the courts. Community service sentences can be given for crimes such as damaging property, fraud, and assault however certain conditions must be in place to warrant a community service sentence. The court will ascertain if the accused person is a first-time offender, whether the accused person is more likely to stop committing crime if awarded a community service sentence as opposed to if they go to prison and if the accused person has mental health conditions capable of influencing behaviour. In a community service order, an offender must do unpaid work within the community as specified by the judge. The offender must be aged 16 years and above and must consent to the order. The order must be for at least 40 hours, not more than 240 hours and must be completed within one year. Hours worked must be as instructed failing which the offender may be returned to court.

Probation means an accused person who is serving a sentence but not within a custodial facility. An offender can be placed on probation on the basis of serving a community service sentence or being released from a custodial facility on license or parole. A probation order is usually given to an offender not below 10 years of age and such offender is supervised by a probation officer within the community for a certain duration. While on probation, an offender is mandated by the court to do one of the following: (i) undertake unpaid work (ii) complete an education or training course (iii) undertake rehabilitation for drug or alcohol abuse (iv) periodic meet with his supervisory officer to ascertain progress made in behavioural change. Supervision lasts between six months and three years. If the offender defaults in relation to any of the prescribed order by the court, such an individual could be asked to pay a fine, serve another sentence or be remanded within a custodial facility.

A combination order involves an award of a community service sentence alongside a probation order. The probation part of the order lasts between one and three years. Community service lasts between 40 and 100 hours, to be completed in one year. This sentence is usually awarded to offenders above 16 years. A combination order is awarded by the court in relation to certain offences which include public order breaches, criminal damage, drugs, possession of an offensive weapon in a public place, assault, harassment and causing grievous bodily injury as a result of offensive driving.

An absolute discharge connotes the unconditional release of an offender without any form of penalty. In awarding an absolute discharge sentence, the court considers that no further action needs to be taken nor penalty awarded as the experience is sufficient to serve as a deterrent for the offender. This sentence is mostly awarded for simple or petty offences. The implication is such that though the offender will receive a criminal record, the offender is not subject to probation and his record of discharge is held by the court for a duration of one year and subsequently removed. An absolute discharge is considered the most lenient sentence awarded by the court. On the other hand, a conditional discharge means an offender is released but kept under surveillance for a certain duration (not exceeding three years) and the offence registered on their criminal record. No further action is taken during this period until the offender is found guilty of another offence during this time. If so, the offender is liable to be sentenced for the original offence. If no offence is committed within the surveillance period, the record of discharge is automatically removed from the file.

COVID-19 Pandemic: Lockdown Regulations and emphasis on non-custodial sentencing



Governments all over the world in response to the COVID-19 pandemic have had to invoke provisions of existing Public health laws or rolled out new ones as part of measures to curb the spread of the pandemic. The Federal Government of Nigeria and Lagos State as well as some other states in Nigeria have also made regulations to tackle the pandemic. The penalties contained within these laws and regulations have been commendable given the emphasis on non-custodial sentencing especially in the face of rising cases of infections. The Lagos State Government enacted the Lagos

State infectious diseases (emergency prevention) regulations 2020 in March 2020 pursuant to the Quarantine Act and Public health law of Lagos State and specifically as a measure to tackle the COVID-19 pandemic. Section 17 of the Regulations stipulates a penalty for offenders ie a fine of One Hundred Thousand Naira (N100,000.00) or to any non-custodial sentence and if a corporate body, to a fine of Five Hundred Thousand Naira (N500,000).

Within the FCT, violators of lockdown regulations have also been made to undertake punitive measures involving non-custodial sentencing. No fewer than 20 violators of the lockdown order put in place by President Muhammadu Buhari to curb the spread of Coronavirus in the country were convicted in Abuja on 15 March by the mobile courts set up to try offenders. Some of the violators were fined between N2,000 and N5,000, while those whose vehicles were impounded were asked to come for it after the lockdown is lifted. Chairman of the Enforcement Team, Mr Ikharo Attah, also disclosed that persons, who engage in early morning fitness routine on major streets in the city will be arrested and made to appear before the mobile courts.

<https://www.vanguardngr.com/state-responses-to-COVID-19e/>

The Application of Gender in Non-Custodial Sentencing: Examining the 'Female Offender Strategy' within the United Kingdom

The central purpose of a criminal justice system is to deliver an efficient, effective, accountable and fair justice process to the offender. To attain this goal,

every institution within the criminal justice sector must take into cognisance the welfare and interest of an offender prior to awarding a sentence involving a remand in custody or in issuing a non-custodial sentence. This is important especially with vulnerable persons which find themselves in conflict with the law as offenders.

Women constitute over five percent of the overall prison population within the United Kingdom and are classified as vulnerable offenders. The Prison Reform Trust records that over 12,000 women are imprisoned yearly within the UK. This has disparaging effects in comparison with other categories of offenders. For one, vulnerability can drive offending behaviour and prevent individuals from breaking out from a cycle of offending. Again, prison sentence has done more harm than good in the case of women



offenders with the Prison Reform Trust recording that more than half of women offenders relapse to a cycle of recidivism. This is because most offenders experience chaotic lifestyles with a history of abuse leading to mental health issues and unstable lives. These events form the bedrock which exacerbate vulnerability and a subsequent offending and re-offending. Within the United Kingdom, Criminal Justice Institutions have undertaken steps to understand vulnerability in female offending and employ the 'female offending strategy' which seeks to investigate underlying causes of offending, existence of abuse or mental health challenges, medical and hormonal challenges, and other historical factors which could lead to crime in order to determine the best suitable sentence for the female offender.

Most courts in the United Kingdom have moved towards awarding non-custodial sentencing for female offenders (charged with non-capital offences) as a means to support women offenders in conflict with the law, promote effective rehabilitation and treat such offenders as individuals of value. This is due to the fact that female incarceration has profound effects where such women are primary careers within their families and communities. A reliance on this strategy could foster substantial benefits for victims, families, and wider society, as well as for female offenders themselves. Through the above strategy, the Government aims to prioritize its work in rehabilitating women offenders with an emphasis on three areas: (i) addressing vulnerability and root causes of offending (ii) adopting community-based solutions in sentencing, and (iii) making custody as a last resort as effective and decent as possible for those women who do have to be there.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/719819/female-offender-strategy.pdf

COVID-19 Lockdown: Funke Akindele and Husband breach lockdown regulations, Court Administers Non-Custodial Sentencing

Nollywood actress Funke Akindele and her husband AbdulRasheed Bello have been convicted and fined N100,000 each by an Ogba Magistrate Court for flouting the Lagos State Infectious Disease (Emergency Prevention) Regulation 2020. The couple was charged to court for breaching lockdown regulations imposed by the government to curb the spread of the coronavirus pandemic. The actress hosted a house party with over 20 invited guests at their Amen Estate residence to commemorate her husband's birthday thereby breaching Regulation 8(1)(a) & (b) and 17(1) of the Lagos State Infectious Disease (Emergency Prevention) Regulation 2020 and thereby committed an



punishable under Section 58 Public Health Law Cap P16 Vol.9 Laws of Lagos State, 2015.

The charge read as follows: 'that you, Funke Akindele and Abdul Rasheed Bello on the 4th day of April, 2020 at 9, Gbadamosi Close, Amen Estate, Ibeju Lekki in the Lagos Magisterial District gathered at the aforementioned address with over twenty persons contrary to the social distancing directives of the Governor of Lagos State made pursuant to the provisions of the Lagos State Infectious Disease (Emergency Prevention) Regulation 2020'. The couple pleaded guilty and asked for leniency being first time offenders. His Worship, Magistrate Y.O. Aje-Afunwa ordered the couple to each pay a N100,000 naira fine. The magistrate also held that the couple must serve 14 days community service and thereafter observe period of isolation. The community service sentence stipulated that the couple shall each visit 10 important public places within Lagos State to enlighten the public of the implications of non-compliance with provisions of the Regulations. Furthermore, the couple must submit the names of all attendees of the event to be placed on isolation and tested for the coronavirus. The move by the magistrate court has been applauded by the public given the reliance on non-custodial sentencing depicting a shift from the emphasis on incarceration and remand of offenders within penitentiary institutions.

Also, within the FCT, violators of lockdown regulations have also been made to undertake punitive measures involving non-custodial sentencing. No fewer than 20 violators of the lockdown order put in place by President

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<https://www.vanguardngr.com/2020/04/covid-19-lockdown-funke-akindele-husband-sentenced-to-community-service/>

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