

Capital Punishment; A Limitation to Alternative Sentencing Approach in Africa.

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ABSTRACT

Alternative Sentencing Approach for criminal punishment in the criminal justice system in Africa has been advocated for and hence there is adoption of such in most African countries. However, the adoption of this approach is limited due to the existence of capital punishment which is the punishment for capital offences. This research work takes a step in explaining what capital offences and capital punishment are. This research work examines prison sentencing and non custodial sentencing, with the advantages of the non-custodial sentencing. The Evolution of the non-custodial sentencing in Africa is estoled in this Paper. However, application of non-custodial sentencing at different stages of criminal trial is examined. Finally, the research work considers how capital punishment constitutes a bar or a limitation to the adoption of alternative sentencing in Africa.

Keywords: Africa, Alternative sentencing, Criminal punishment, and non-custodial.

1.0 INTRODUCTION

While some Countries of the World had adopted the abolition of Capital Punishment or simply put death Penalty, some other Countries are still using it as Punishment, especially for the Capital Offences. However, a new path that some Countries are treading with a view to providing Punishment for a convict, as against imprisonment is alternative sentencing measure, by trying not to keep Convicts in a confined place, called Prison. Invariably the usage of Community Service, probation are used instead of putting the Convicts in Prison.

This approach is aimed at providing efficiency and effectiveness in the Criminal Justice System, as it reduces the costs of maintaining the Prison, reduce congestion in the Prison, reduce the rate through which the ex – convicts are subsequently becoming hardened Criminals among others [Inter alia].

However, the effective adoption of the alternative sentencing is treated against the Offences on which it can be used for, especially in the light of the Offences that attract Death penalty of which the Adjudicator may not have the Power to bend.

2.0 Capital Offences.

Offences are generally classified under Common Laws as either; felonies or misdemeanor¹ usually this classification is often adopted by the Parliament when Offences are to be created by Legislation².

The Principal Felonies are Homicide [murder], Rape, Theft, Burglary, Robbery & Arson and a Misdemeanor are Offences not declared as Felony.

Importantly, especially in Nigeria, Offences are basically divided into three kinds by the Criminal Code Act³, namely: Felonies, Misdemeanors and simple Offences.

Capital Offences are therefore Offences that attract death penalty.

The following Offences are punishable by death under the Provision of the Criminal and Penal Code in Nigeria: Murder, Treason, Conspiracy to Treason, Treachery, fabricating false Evidence Leading to Conviction to death of an innocent Person, aiding a Child or a Lunatic to commit suicide and Armed Robbery⁴.

Crimes that are punishable by death are known as Capital Crimes, Capital Offences or Capital Felonies and they vary depending on the Jurisdiction but commonly includes serious Crimes against a person, such as Murder, Assassination, Mass Murder, aggravated rape, Terrorism, Aircraft hijacking, War Crimes, Crimes against Humanity, and Genocides, along with Crimes against the State such as attempting to overthrow Government, Treason, Espionage, Seduction and

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¹ Chris C. Wigwe, Introduction to Criminal Law in Nigeria, (Mountcrest University 2016), p.19.

² *Ibid.*

³ Criminal Code Act, Cap. C 39, Laws of the Federation of Nigeria (LFN), 2004.

⁴ Robbery and Firearms Decree, 1984.

Piracy. Also in some Cases, aggravated Robbery, Kidnapping, Drug Trafficking, Drug dealing and Drug Possession are Capital Crimes or enhancements⁵.

It is interesting to say that though majority of Countries had abolished Capital Punishments, but over half of the World's Population still live in Countries where death penalty is retained including; India, US, Indonesia, Pakistan, Bangladesh, Japan, Vietnam, Egypt, Nigeria, Ethiopia and DR Congo

3.0 Capital Punishment.

Capital Punishment is also called Death Penalty and this is simply the execution of an offender, sentenced to death after a conviction by a Court of Law, of a Criminal Offence⁶.

Capital Punishment for Murder, Treason, Arson, and Rape was widely employed in Ancient Greece under the Laws of Draco. The Romans also used it for a wide range of Offences⁷. The prevalence of Capital Punishment in Ancient times is different to ascertain precisely, but it seems likely that it was often avoided, sometimes by the alternative of banishment and sometimes by payment of Compensation. For example, it was Customary during Japan's Peaceful Heian Period [794- 1185] for the emperor to commute every Death Sentence and replace it with Deportation to a remote area, though executions were reinstated once Civil War broke out in the mid-11th Century⁸.

However early in the 21st Century, despite the movement towards abolition, many Countries have retained Capital Punishment and in fact some have extended its scope more than 30 Countries have made the Importation and Possession for sale of certain drugs a Capital Offence.

Iran, Singapore, Malaysia and the Philippines, Imposed a mandatory death sentence for the possession of relatively small number of Illegal Drugs.

While therefore some Counties of the world abolished the death penalty, very many are still operating the death Penalty for their stated Capital Offences.

The legality of Death penalty is reinforced by Section 33 of the Nigerian Constitution⁹, which provides;

“Every Person has a right to life, and no one shall be deprived intentionally of his Life, save in Execution of the sentence of a Court in respect with a Criminal Offence which he has been found guilty in Nigeria.”

Capital Punishment was formerly called Judicial Homicide and it is the State sentenced killing of a person as a punishment for actual or supposed misconduct, hence the sentence ordering that an Offender be punished in such a manner is known as a death sentence and the act of carrying out

⁵ Wikipedia article on Capital Punishment www.en.m.wikipedia.org < last accessed, 3rd Dec, 2024>.

⁶ Capital Punishment Law by Roger Hood, the Editors of Encyclopaedia Britannica, <https://www.britannica.com/topic/capital-punishment> last assessed < 1st Dec, 2024>.

⁷ *Ibid.*

⁸ *Ibid.*

⁹ Section 33 of the Constitution of the Federal Republic of Nigeria, 1999 as [Amended].

the sentence is known as Execution¹⁰. A Prisoner who has been sentenced to death and awaits Execution is condemned and he or she is commonly referred to as being “on death roll”.

It is interesting to say that though majority of Countries had abolished Capital Punishment but over half of the World’s Population still live in Countries where Death penalty is retained, including; India, US, Indonesia, Pakistan, Bangladesh, Japan, Vietnam, Egypt, Nigeria, Ethiopia, and DR Congo¹¹.

4.0 Prison Sentencing

Custody is the state of being imprisoned or detained, usually pending a trial. Also, custody means the taking care and the controlling of a thing or person for the purpose of inspection, preservation and security¹².

Constructive Custody is the custody given to a person (such as a parolee or probationer) whose freedom is under the control of a legal authority, and such person is not under a direct physical control¹³, while Penal Custody is the custody intended to punish a criminal offender¹⁴.

In contrast, a sentence is described in legalese as the punishment that a court might inflict after ruling on a criminal case. The final explicit act of a judge-ruled procedure is the sentence, which also serves as the symbolic central act associated with his role.

A convict may get a sentence that includes imprisonment, a fine, or other penalty. A sentence is the judicially determined legal punishment that must be administered to a defendant who may have been found guilty of an offense¹⁵. Statutes do specify the highest punishment which is imposable for respective offences and guidelines for sentencing do prescribe the lower and highest terms of imprisonment to giving to an offender, the trial court is left with discretion.

5.0 Non – Custodial Sentencing

Non-Custodial Sentencing developed owing to international recognition that imprisonment, though a legal sanction for an offender does not constitute a panacea for crime prevention, rehabilitation and reintegration of offenders. Most prison systems in many countries face challenges including but not limited to overcrowding, poor hygiene, sexual abuse, sexual and reproductive ill-health and outdated facilities. These challenges potentially impede the educational and vocational training of inmates and affect future adjustment to an ordinary life outside

¹⁰ Article on Capital Punishment, www.en.m.wikipedia.org <last accessed 3rd Dec. 2024>.

¹¹ *Ibid*.

¹² B.A Garner (ed). Black’s Law Dictionary, (8th edn Thomson West Publishing Co., 2004), p. 412.

¹³ *Ibid*, p.413.

¹⁴ *Ibid*, p. 412.

¹⁵ K.E. Oraegbunam, M.V.C. Ozioko, C, Osim, “Nature and Principle of Sentencing in Criminal Jurisprudence in Nigeria”.

incarceration. More so, the negative impact of long incarcerations on an inmate's family and work is another factor that led to the development of non-custodial sentencing.

The following statements sum up the Council of Europe's position on alternatives to incarceration: Penal policies should use imprisonment as a last resort; community sanctions must adhere to human rights (and not violate human dignity); community punishments should prioritize the interests of the victim of a crime as well as the offender's rehabilitation and integration; the implementation of alternatives to jail requires a working infrastructure.

International frameworks, such as the United Nations Basic Minimum Standards for Non-Custodial Measures, have non-custodial sentences codified in them (The Tokyo Rules)¹⁶, United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules)¹⁷, Declaration of Basic Principle of Justice for Victims of Crime and Abuse of Power¹⁸ and the United Nations Rules for the Treatment of Women Prisoners and the Non-Custodial Measures for Women Offenders (The Bangkok Rule)¹⁹.

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

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

The United Nations has created and promoted standards and norms since the middle of the 1950s to foster the development of criminal justice systems that adhere to essential human rights criteria. These rules and norms serve as a blueprint for how the criminal justice system should be organized. While being non-binding, they have considerably promoted the improvement of criminal justice systems and procedures. Countries employ these standards and norms to set the stage for and encourage in-depth analyses that could result in the necessary adjustments. Additionally, they have assisted nations in creating regional and sub-regional strategies. They outline best practices globally and internationally and help nations adopt them to meet their particular needs. The United

¹⁶ United Nations Standard Minimum Rules for Non-Custodial Measures (The Tokyo rules) Adopted by General Assembly resolution 45/110 of 14 December 1990.

¹⁷ United Nations Standard Minimum rules for the Administration of Juvenile Justice (The Beijing rules), Adopted by General Assembly resolution 40/33 of 29TH November, 1985.
<https://www.ohchc.org.Document/professionalIntrest/beijingrules.pdf> last accessed 28th December, 2024.

¹⁸ Declaration of basic Principles of Justice for Victims of Crime and Abuse of Power, Adopted by General Assembly resolution 40/34

¹⁹ United Nations Rules for the Treatment of Women Prisoners and Non- Custodial Measures for Women Offenders (The Bangkok Rules) < <https://www.ohchc.org.Document/ProfessionalIntrest/Bangkokrules.pdf> > accessed 28th December, 2024.

Nations Basic Minimum Standards for the Treatment of Prisoners are the oldest of these²⁰, which deals only with imprisonment. While the spectrum of tools has expanded to cover every part of the criminal justice system and crime prevention, imprisonment has remained a crucial component of standards and norms. These days, a wide range of topics are covered by standards and norms, including juvenile justice, how criminals are treated, international collaboration, good governance, victim protection, and violence against women.

In terms of alternatives to incarceration, the United Nations Basic Minimum Guidelines for Non-Custodial Measures (the Tokyo Rule), which were approved in 1986, are particularly significant²¹.

The goal of non-custodial measures in general and the Tokyo Rules in particular is to provide offenders with an effective alternative to incarceration while allowing the authorities to tailor the penalty to each offender's requirements in a way that is commensurate to the crime committed. The benefits of individualizing sentencing in this way are obvious; by allowing the criminal to remain at liberty, it also enables him or her to continue with work, education, and family responsibilities²².

The goal of non-custodial sentencing, also known as alternative sentencing, is to create punishments that can be carried out in the community rather than in jail, which is thought to be a dehumanizing and criminogenic environment. In addition to having a much higher likelihood of success, the community would also be responsible for and participating in the offender's punishment and rehabilitation. This is a more or less autonomous development simulated meditation on the prospect of providing alternatives to incarceration and the formation of a much more comprehensive and cohesive sentencing system, where both alternative punishments and traditional punishment have a role to play²³.

6.0 Advantages of Alternative Sentencing

Poor rehabilitative activities in prison, inadequacy of the re-integration and resettlement activities, poor conditions of living in prison, experience of torture, inhuman treatment and incarceration, absence of adequate mental and psychological treatment in prison, prison congestion, non-reformatory status of ex-inmate, threatens the position that the prison and hence imprisonment offers treatment and rehabilitation to offenders. These problems affect the cardinal motive behind the criminal justice system, hence 'alternative sentencing', which aids quick justice administration and the management of the criminal administration institution efficiently is encouraged. Alternative sentence is cost effective and more humane alternatives to custody²⁴.

²⁰ E.S.C Resolution 663C (XXIV) 13th July 1957 U.N. Doc. E/3048 (1957) and 2076 united (LXII) (1957).

²¹ United Nation Doc. A/RES/45/110.

²² See UN Doc. ST/CSDHA/22, Commentary on the United Nation Standard Minimum Rules for Non-Custodial Measures (The Tokoyo Rules).

²³ J. Junger-tas (1994): Alternatives to Prison Sentences, Experience and Development. RDC-MINISTRY OF JUSTICE, Kugler publication, New York, p.5.

²⁴ <https://blogs.ize.ac.uk/politocsandpolicy/alternatives-to-custody/> <Last accessed 29th December, 2024>.

In view of the aforementioned shortcomings, inadequacies and ineffectiveness about imprisonment, people are agitating for Non-custodial Sentencing. Under part 40 “Sentencing generally other than capital sentence”, Section 416 (2) (k) of the Administration of Criminal Justice Act, 2015 provides: Sentencing to a term of imprisonment shall apply only to those offenders who should be isolated from society and with whom other forms of punishment have failed or is likely to fail²⁵.

7.0 Evolution of Non-custodial Sentencing in Africa

Non-Custodial Sentencing which is also known as alternative sentencing, intermediate sanction, or community sanction had become widely spread throughout the western world in the last 20-25 years and by extension most of African countries are having its experience.

In Europe, a variety of intermediate punishments have been introduced and put into use since the 1970s. The Council of Europe has specifically embraced and supported this goal of expanding alternatives to jail. During the past 50 years, the Council of Europe has published numerous recommendations and resolutions that promote the adoption of non-incarceration options and establish a supranational normative framework.

One of the most significant advancements in sentencing practice over the past few decades has been the introduction of alternative punishments. It has required a whole different perspective on offenders, victims, the community, and sentence in general²⁶.

In line with a standard definition from the United State Department of Justice (1990), it is understood to mean a punishment option that is considered on a continuum to fall between traditional probation supervision and traditional incarceration²⁷.

The United States and England, two nations already struggling with an ever-increasing jail population and, in England’s case, a completely outmoded and insufficient prison system, implemented these new forms of penalties in the 1970s.

While many people attribute this search for novel sentence types to specific social developments and the high level of crime that goes along with them, others specifically point to shifting public perceptions of punishment and ongoing efforts to improve the humaneness of the criminal justice system, while still others simply see it as a solution to pressing (prison) issues.

It is important to note that though the usage of the non-custodial sentence in the criminal punishment had just been introduced and implemented in the Nigerian legal system, forms of non-custodial sentences or alternative punishment had at one time or the other found its place in

²⁵ Section 416 (2) (k) of the Administration of Criminal Justice Act (ACJA), 2015.

²⁶ J. Junger-tas (1994) Alternatives to Prison Sentences, Experience and Development. RDC-MINISTRY OF JUSTICE, Kugler Publications – Amsterdam New York, p.1.

²⁷ *Ibid*, p.11.

Nigeria. For instance, the punishment of whipping especially in the northern part of Nigeria happens to be an exhibition of Alternative sentencing.

Section 18, of Criminal Code, Laws of Osun State of Nigeria, Cap. 34-43, 2001, Vol. II expresses that whenever a male person who had not attain the age of seventeen in the opinion of the court should be found guilty of any offence, the court may through its discretion give an order that he should be wiped in addition to original substitution for any other punishment to which he is liable²⁸:

There is no question that, even before the Administration of Criminal Justice Act was created, probation had been included as an alternative to incarceration in the Nigerian penal code, namely in the Criminal Process Act. With the passage of the Criminal Process Act (CPA) in 1945, probation was first codified into Nigerian law. According to Sections 413 & 435-440 of the CPA, it was the first statute to provide for the probation of both juvenile and adult criminals (now repealed in 2004)²⁹, following the passage of this Act, various states adopted its provisions when they were formed in 1967. In addition to the provisions of the CPA, juvenile offenders were specifically provided for in the Children and Young Persons Act of 1946. In addition, in 2015, the Administration of Criminal Justice Act (ACJA) was enacted in the Federal Capital Territory of Abuja, wherein probation practice was encapsulated in Sections 453-459, which have been domesticated in the criminal laws of various Nigerian states.

According to Section 454 (1) & (2) of the ACJA³⁰, if a person is charged with an offense that is punishable by the court and the court determines that the charge is proven but that it is not necessary to impose any punishment due to the minor nature of the offense committed or the charged person's age, health, or mental condition, the court should only impose a nominal punishment. The court may without proceeding to conviction make an order either:

(a) Dismissing the charge; or

(b) Conditionally releasing the offender after he signs a recognizance, with or without sureties, promising to behave himself and to show up whenever necessary for a length of time not to exceed three years as may be stipulated in the order.

Those who have been sentenced to probation are released from custody if they behave well. Often, they must sign a bond or recognizance³¹, which includes some restrictions on their release; if they violate a restriction, the court may summon them for a new sentencing.

An offender on supervised probation must be kept under the watchful eye of a probation officer. Limitations on their personal freedom are part of probation, along with chances and support for them to deal with concerns and difficulties related to their criminal behavior. It can include

²⁸ Section 18, of Criminal Code, Laws of Osun State of Nigeria, cap, 34-43, 2001, vol. II

²⁹ Section 413, Section 453-440 of the Criminal Procedure Act, Cap, C41, Laws of the Federation of Nigeria (LFN), 2004.

³⁰ Section 454 (1) & (2), ACJA 2015.

³¹ S. 545(2), *Ibid*.

restitution by forcing the criminal to pay the victim compensation and/or agree to perform community service or other work that benefits the victim or both³².

As a form of punishment, probation offers the chance for rehabilitation and reintegration into society without the social and family upheaval that comes with incarceration. This is especially true when it comes to child monitoring. Our statutes have long had statutory provisions for probationary sentences, but unhappily, except from for juveniles, our judges and magistrates rarely apply them.

The Administration of Criminal Justice Act, 2015, on the other hand, is what gave the Nigerian Criminal Law System the incentive to first recognize, then implement, alternative sanctions, punishment, or sentencing. However, it has been the Administration of Criminal Justice Act, 2015, through Section 40 (1), which provided that the provisions of Section 401 shall apply to sentences of death, imprisonment, fine, and non-custodial, subject to the provisions of a Law relating to a specific offense or class of offenses and to the jurisdiction conferred on any court or on a person presiding over a court, had sparked the recognition and later realization of alternative sanctions, punishment, or sentencing in the Nigeria Criminal Legal System.

Additionally, Section 460 (1) states that the court may order the sentence imposed on the convict to be suspended, with or without conditions, disregarding the provisions of any other Law that establishes an offense. This means that the convict is not required to serve the sentence in accordance with the conditions of the suspension.

The Court may sentence the offender to conduct specified community service in his community or in any other community or location the Court directs, either with or without conditions, according to the subsection of Section 460.

The Administration of Criminal Justice Act, 2015 goes on to explain the rationale behind its provisions under Sections 460 (1) & 460 (2) through 460 (4), stating that: The court, in exercising its power under subsection (1) or (2) of this section, shall have regard to the need to:

- 3.0.Reduce prison congestion;
- 4.0.Rehabilitate prisoners by requiring them to perform productive work; and
- 5.0.Prevent convicts who commit minor offenses from mixing with hardened criminals.

It is important to note that the Administration of Criminal Justice Act, 2015 paved the way for further legal framework, which is the changing of the Nigerian Prisons Act Cap. P29, Laws of the Federation of Nigeria to the Nigerian Correctional Act, 2020, the new Act which provides for both Custodial and Non-Custodial services in the Nigerian Criminal Justice System.

To that end, alternative sanctions, sentences, or non-custodial sentencing have been recognized and implemented since 2015, following the passage of the Administration of Criminal Justice Act of 2015.

³² <http://www.scotborder.gov.uk/criminaljustice/nationalobjectives/cjstandards/htm/typesofprobationorder.html> last accessed on 30/12/2024.

8.0 Non – custodial Measures at Different Stages of Judicial Trial

Non-custodial measures may be used at any point in the legal process, including the pre-trial, trial, sentence, and post-sentencing phases. They consequently serve as crucial and adaptable tools for selecting the sanctions that are most likely to result in the offender's successful reintegration into society as a law-abiding citizen.

8.1 Non –custodial Measures at the Pre-trial Stage

The possibility of using non-custodial measures during the pretrial phase is permitted where it is appropriate and consistent with the applicable legal system, so the police, prosecution service, or other agencies handling criminal cases should have the authority to release the offender if they feel that doing so is not necessary for the protection of society, preventing crime, promoting respect for the law, and promoting the rights of victims. Each legal system must define a set of standards for judging whether a discharge is acceptable or whether a case should proceed. The prosecutor may impose suitable non-custodial measures in small cases.

The earliest non-custodial action that can be taken in the pre-trial stage is to release the offender before official action has been taken, however as can be seen in Rule 5.1 of the Tokyo Rules, this action is constrained by;

6.0.Societal protection;

7.0.Crime prevention;

8.0.Promotion of legal compliance; and

9.0.Victim rights.

Therefore, in all circumstances, the offender's personal interest in agreeing to the conditions that will be imposed must be assessed against these four other general interests that are at the core of society's values and are expressed in the relevant State's criminal legislation.

The criminal must go through the necessary processes if their personal interest in having the proceedings dismissed surpasses the four general interests.

Discharge is frequently utilized in many legal systems, whether it is technically recognized or not, as an efficient way to deal with particular sorts of offenses and offenders in accordance with the *principle of minimal intervention*³³. Since keeping juveniles out of the formal criminal justice system is believed to decrease their likelihood of getting more deeply involved in crime, it is seen to be a particularly suitable technique of dealing with juveniles.

The aforementioned particular requirements should, however, place certain restrictions on the authorities' discretionary power to dismiss cases. Such standards are necessary to inform decision-making by authorities and enable them to follow Rule 2.3 of the Tokyo Rules consistently, thereby promoting legal security in the concerned State.

³³ Rule 2.6 of the Tokyo Rules, 1990.

The use of non-custodial measures during the pre-trial stage should also be considered in light of Rule 6.1, which states that “pre-trial detention shall be used as a last resort in criminal proceedings, with due regard for the investigation of the alleged offence and for the protection of society and the victim”³⁴. Rule 6.2 encourages the use of alternatives to pretrial detention as soon as is practical.

In comparison to Rules 6.2 and 6.3 of the Tokyo Rules, basic international human rights law provides a more thorough regulation of the numerous safeguards connected to pre-trial detention.

8.2 Non –custodial Measures at the Trial and Sentencing Stage

When it comes to the sentencing phase, the Tokyo Rules offer a variety of non-custodial punishments that the judicial authorities may employ, but they must do so while taking into account the victim’s interests, the offender’s needs for rehabilitation, and the needs of society to be protected³⁵. The following are some possible case resolution methods for the sentencing authority³⁶:

- i. Verbal reprimands, warnings, and cautions; conditional discharge; status penalties; fines and day fines;
- ii. Economic sanctions and monetary penalties;
- iii. A community service order;
- iv. A confiscation or expropriation order;
- v. A victim’s restitution or compensation order;
- vi. A suspended or postponed sentence;
- vii. Probation and court oversight; referral to an attendance centre;
- viii. Any other mode of non-institutional treatment; or,
- ix. Some combination of these measures.

Similar to how the offender’s personal requirements and interests must be balanced against society’s interests at the pre-trial stage, the offender’s rehabilitation needs must be assessed against the need to protect society and the interests of the victim at the punishment stage.

The victim’s participation in the processes is also encouraged by Principle 6 (b) of the 1985 Declaration of Fundamental Principles of Justice for Victims of Crime and Abuse of Power, which was endorsed by the United Nations General Assembly. This principle states that “the views and concerns of victims should be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system, to facilitate the responsiveness of judicial and administrative processes to the needs of victims.” In fact, the victim’s involvement might increase the likelihood that they’ll receive restitution or compensation, which might be considered a punishment in and of itself and prevent the need for additional punishments.

³⁴ Rule 6.2, *Ibid.*

³⁵ Rules 8.1 and 8.2 of the Tokyo Rules, 1990.

³⁶ Rules 8.2 (a) to (m), *Ibid.*

As mentioned above, Rule 8.2's list of non-custodial measures, while not exhaustive, offers a wide variety of non-custodial measures to meet various situations and accomplish various goals. Young offenders, for instance, may benefit from verbal consequences like warning or scolding, which allow them to acknowledge their mistakes without being labeled as criminals.

Economic sanctions like fines and day-fines are frequently used, however those who have little money may find it difficult to pay them. By tying the fine amount to the offender's level of disposable money, day-fines can address this issue.

Community service has the advantage of placing demands on the offender while simultaneously delivering a helpful result in the shape of the work done for the community. It is viewed as a type of atonement that benefits the community rather than the specific victim.

Additionally, the offender may be subjected to a variety of supervision measures, all of which can, of course, be tailored to the needs of the particular criminal in order to aid in their reintegration into society. The requirement that offenders punished for drunk driving complete traffic instruction is an example of additional non-custodial sanctions that may be of interest. Additional options include enhancing penalties that were formerly incidental to a primary sentence, including the suspension of a driver's license or the seizure of illicit gains. Finally, it may be appropriate to combine custody and non-custodial measures.

8.3 Non– Custodial Measures at the Post Sentencing Stage

As a result, Rule 9.1 of the Tokyo Rules stipulates that the competent authority must have a variety of post-sentencing options available to it in order to prevent institutionalization. Rule 9.3 of the Tokyo Rules guarantees the right to request a review of decisions regarding post-sentencing disposition, with the exception of pardons. However, upon the offender's request, decisions about additional non-custodial measures must be subject to review by a court or other competent independent authority. The general rules on judicial review of non-custodial and help offenders reintegrate into society as soon as possible. This rule supports the use of non-custodial measures at the post-sentence stage. This guideline is based on the idea that shortening a person's sentence can lessen the likelihood that they would wind up in an institution and be unable to function in society after they are released. Giving offenders early release while submitting them to supervision as needed can therefore be advantageous. Rule 9.4 encourages the idea of transferring criminals as soon as feasible from an institution to a non-custodial program.

Post-sentencing dispositions include³⁷ work releases or educational furloughs; different types of parole; remission; and pardon. Several of these actions serve as alternatives to jail. Even though the offender spends his or her days working or receiving training outside of the jail, the prison administration continues to have power over him or her. The benefit of such a situation is that the person can make money, which can be saved or utilized to help with reintegration after release or to help fulfill family obligations. In a halfway house, the offender lives in "semi-freedom," readjusting to life in the community but still nominally under the control of the prison authorities.

³⁷ Rule 9.2 *Ibid.*

Measure judgments and their implementation are completely complied with by this rule. In this regard, it is recalled that the offender must be provided with clear information on the options for review and the application process in order to exercise the right to review effectively.

It is important to develop and effectively communicate to the inmates the requirements for early release or parole. Such standards also make it possible for inmates to work toward release while minimizing abuses of the competent authorities' discretionary power and letting them know the standards they must meet.

9.0 Capital Punishment as a Limitation to the Operation of the Alternative Sentencing

Having considered the new trend of awarding Punishment as it has been encouraged by many Countries of the World, which is alternative Sentencing and having seen some Countries embarking on such, but it has as well been seen that this alternative Sentencing approach has a limited usage at the instance of Capital Punishment.

Accordingly, Section 460 (1) of the Administration of Criminal Justice Act³⁸ provides;

“Notwithstanding the Provisions 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.”

From the foregoing it is evident that the Administration of Criminal Justice Act, 2015 is of the opinion that the Court can use discretion in using the alternative sentencing options, notwithstanding the Provisions of a Law creating a particular Offence.

Meanwhile the same Administration of Criminal Justice Act, is quick in providing that not all Offences can be approached with alternative sentencing.

Section 460 (3)³⁹ provides;

A Convict shall not be sentenced to suspended sentence or to community service for an offence involving the use of arms, offensive Weapon, Sexual offences or for an Offence which the Punishment exceeds Imprisonment for a term of three Years.

With the consideration of the immediate foregoing, Capital Punishment stemming from Capital Offences are not within the purview of the contemplation of the Administration of Criminal Justice Act, 2015, which alternative Sentencing should apply to.

With regards to Section 460 (1) of the Administration of Criminal Act, earlier on mentioned, the Court can go ahead using its discretion to use alternative Sentencing, when and if the Justice of the matter demands, even though the Penalty for respective Offence might have been spelt out by the Law creating such Offence in the Criminal Justice System, especially in Nigeria. But when a Country practices Capital Punishment or Death Penalty, such usage of discretion by Court to use

³⁸ Section 460 (1) of the ACJA, 2015.

³⁹ Section 460 (3) *Ibid*.

alternative sentencing is difficult, as this may go against the provision of the Constitution of such Country.

Section 33 (1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) provides;⁴⁰

“Every Person has a right to Life, and no one shall be deprived Internationally of his life, same in execution of the sentence of a Court in respect of a Criminal Offence of which he has been found guilty in Nigeria.”

With this exposition, it is clear that the adoption and the usage of alternative sentencing in the Criminal Punishment is limited, as long as it cannot be applied in all Offences. Hence the Countries that can fully enjoy this sentencing approach are Countries wherein there are Capital Offences and Capital Punishment.

10.0 Conclusion

As good as alternative sentencing approach in Criminal Justice System is in Africa especially, this which is being given credence to, by Section 1(1) of the ACJA, which provides;

“The Purpose of this Act is to ensure that the System of Administration of Criminal Justice in Nigeria promotes efficient management of Criminal Justice Institutions, speedy dispensation of Justice, protection of the Society from Crime and protection of the rights and interests of the Suspect, the defendant and the Victim.”

The Approach is limited in scope, as it cannot apply to all Offences, more so that there are Capital Offences which attract Capital Punishment or Death Penalty. If therefore the benefits of alternative Sentencing approach must be tapped to the fullest, then there must be an eradication of Capital Punishment in the respective Country.

⁴⁰ Section 33 (1) of the Constitution of the Federal Republic of Nigeria, 1999 (as Amended).

