



Community Sentencing Approaches as Alternatives to Incarceration in Nigeria

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Abstract

The Nigerian correctional service is grappling with the issue of overcrowding which often makes the control of violence inside prison a difficult task. An overcrowded correctional centre creates a dangerous environment, health hazards and makes it impossible to deliver the defined minimum standards of detention and a near failure to reformation, rehabilitation and reintegration of offenders. Failure of penal institutions to fulfil their correctional obligations has called for action for the criminal justice agencies to make less use of incarceration, develop alternatives, limit pre-trial detention, and treat rather than punish offenders and ensure fairness for all. Incarceration has also shown to be counterproductive in the reduction of recidivism and reintegration of offenders. Reformers therefore seek to reduce penal populations and make increased use of alternatives that are aimed at rehabilitation and reintegration. This is a theoretical paper which examined community sentencing approaches as alternatives to incarceration. The rehabilitative and reparative theories provided theoretical anchorage. The paper showed that community sentencing approaches fulfils all statutory purposes of sentencing, rehabilitates offenders and prepare them for reintegration into the society. The paper concludes that community sentencing approaches are pivotal for the treatment of offenders, provide services to the community and reduce burden on the government and recommends that the Nigerian Correctional Service develop a positive attitude towards non-custodial sentencing and execute further reforms for community sentencing approaches.

Keywords: community sentencing, correctional institution, incarceration, offenders, non-custodial, rehabilitation, reintegration

Introduction

Imprisonment is one of the measures put in place to deal with criminality. It is instrumental in dealing with offenders who have violated the laws of a state. However, it has been argued in recent times that penal populism has led to over incarceration across many different jurisdictions around the world. Notably, the United Nations Standard Minimum Rules for

Noncustodial Measures also known as The Tokyo Rules (1990) suggests member nations to adopt alternatives to custodial measures like community sentencing. Similarly, (Agarwal, 2019) stated that the ground breaking Kampala Declaration on Prison Conditions in Africa also recommends that community sentences be preferred in comparison to traditional imprisonment. Reports by the World Prison Brief in 2017 showed that more than two and a half million people are held in penal institutions around the world as pre-trial detainees or remand inmates (Walmsley, 2017a), and in 2018, it was reported by the World Prison Brief that over 10.74 million people are held in penal institutions throughout the world, either as pre-trial detainees, remand inmates or having been convicted and sentenced. As such, the world inmate population total has increased by 24 per cent since the year 2000 (Walmsley, 2018). Therefore, Criminal justice systems around the world have to manage record numbers of people in correctional institutions.

The Nigerian Correctional Service Act signed into law in July 2019 by President Muhammadu Buhari renamed the country's prisons to the Nigerian Correctional Service. The purpose of this bill was to transform the correctional institutions constituting of the custodial service and the non-custodial services. According to Ezeala and Okorie (2025), custodial service stipulates that as inmates serve their jail sentences, a greater focus is placed on correctional services designed to prepare them for release from custody. The goal of non-custodial service is to lower the number of prisoners awaiting trial at the many correctional facilities across the nation and includes approaches such as parole, probation, community service, and restorative justice. The World Prison Brief Data (2018) reported that Nigerian Correctional Service has a capacity of housing only 50,153 inmates. However, as at 7 October 2019 it accommodated 73,818 inmates. In addition, the majority of persons in custody are held without bail or having been convicted by a court of law, as 50,968 out of the total prison inmates are pre-trial detainees while 22,850 have been convicted and are serving prison terms (Ibrahim, 2019).

Not only has the overuse of imprisonment been found to be ineffective, with limited safety, it has also led to significant human rights violations of many inmates, such as the poor treatment of detainees, inhumane conditions, and overcrowding. According to Mauer (2017), with only an exception of a few around the world, the conditions of confinement in correctional systems globally range from inadequacy to torturous experiences. In this regard, there are call for punitive sentencing systems and public policies that make imprisonment far

likelier. Roodman (2017) argued that research has shown that while imprisoning people temporarily stops them from committing crime outside prison, it does not reduce recidivism and may increase criminality after release, with the unintended consequence of making society less safe. Braimah (2017) also noted that more than 40% of those who leave jail reoffend and are incarcerated within three years of their release. Furthermore, Halter (2018) believes that raising jail rates has a little effect on crime reduction and implies substantial expenses. He noted also that increases in imprisonment rates have a negligible effect on crime rates, and each subsequent rise has a lesser effect on crime rates than prior ones.

In the light of the detrimental and counterproductive effects of increasing correctional populations, the international community has contended that while incarceration may be necessary in certain cases, especially those involving serious violent crimes, it is important for societies to consider implementing more meaningful, non-punitive alternative measures to imprisonment, at both the pre-trial and post-trial stages of the criminal justice process. Many scholars and human rights activists agree that the deprivation of liberty should be considered only as a sanction of last resort, and for as limited a length of time as needed.

In the United States for instance, community corrections are the most common criminal justice sanction used as many more people are on probation and parole than are incarcerated in correctional centres (Kaeble, 2024), and fines, community service, day reporting centres, probation, electronic monitoring, and other community programs attempts to address and respond to mass incarceration (Tonry, 2017). Community corrections can also keep people in their families and communities, provide many services at lower costs than incarceration, and hold justice involved individuals accountable while maintaining community safety (Ruhland, 2024).

Although advocates for longer sentences argue that incarceration provide greater deterrence, incapacitate offenders for extended periods and ensure justice for serious crimes, however, keeping people incarcerated strains prison capacity and comes with significant costs (Webster, 2024). That aside, Shepherd (2025) noted that evidence from other countries suggests community sentences can reduce reoffending and improve rehabilitation outcomes. Focusing on rehabilitation, advocates argue that it addresses the root causes of criminal behaviour, reduces reoffending, and allows offenders to remain in their communities under tailored conditions, while minimizing the harms of being in correctional institutions.

Objectives of the Paper

This is a theoretical paper that examined the sentencing approaches in Nigeria. It showed the merits of the non custodial sentencing over the custodial ones and advocated for the adoption of variants of the non custodial sentencing approaches with the view of addressing the congested correctional service centres in the country.

Theoretical Anchorage

The rehabilitation and reparation theories formed the theoretical framework of this paper. The concept of rehabilitation appeared in penology literature as early as the 19th century (1836-1838) with French penologist, J.M. Charles Lucas. This theory focuses on reforming the criminals and bringing the criminals back to society as good and law-abiding citizens. This theory is based on the Gandhian's principle "hate the sin, not the sinner". The rehabilitation theory is premised on the notion that punishment can prevent future crime by reforming the offender's behaviour. The idea of this theory is the change of the criminal, through the strategy for individualization. It depends on the humanistic rule that regardless of whether a wrongdoer perpetrates a wrongdoing, they are still humans. In this way, efforts should be made to change them during the time of detainment and transform their former law breaking behaviour. The central premise of this theory is discipline, reason being that discipline makes the criminal languish over their behaviour so they get an opportunity to be rehabilitated. Thus, from this view, community sentencing as alternatives to incarceration provides a second chance to the offenders to rehabilitate and reform themselves. Rehabilitation may involve education and vocational programmes, counselling, intervention programmes or skills training. The behavioural premise of this theory of punishment is that criminal behaviour is not a rational choice, but determined by social pressures, psychological difficulties, or situational problems of various kinds (Ashworth, 2007).

Although once dominant in penal discourse, the ideal of reform became discredited in the early 1970s, partly due to research results which suggested that penal measures intended to reform offenders were no more effective than punitive measures in preventing recidivism (Cullen & Gendreau, 2001). Also, rehabilitative approaches have been criticized for holding an overly deterministic view of behaviour, that places too much emphasis on social and cultural conditions, and too little on the ability of individuals to make decisions and choices. In spite of these short comings, this theory remains a key rationale within many penal systems,

justifying punishment which aims to address and reduce the risk and needs of individual offenders (Zedner, 2004).

Reparation in criminal justice on the other hand, can be traced back to the late 1800s (UNODCCP, 1999), and has been the subject of increased attention in recent years. This theory is based on the idea that crimes should be corrected by requiring that offenders make amends to victims to repair the wrong that they have done. The term reparations have been defined differently, but basically it refers to restoring justice, atoning and making amends for a wrong (Buti, 2008). As such, restitution and compensation to victims, their families or communities, is paramount to criminal justice. Proponents argue that restitution can be implemented at different points throughout the criminal justice process, as part of a sentence or as a sanction in itself. Not only does it offset some of the harm done to victims, it provides a socially constructive way for the offender to be held accountable, while offering the greatest possible scope for rehabilitation. Reparations are justified on several theoretical bases; the most common are justice, recognition, and reconciliation (Moffett, 2023). It can also serve as a measure to end ongoing breaches and to deter future ones, as a vehicle for reconciliation or to restore relations between the violator and injured parties, as well as a basis to repair or rehabilitate physical and psychological integrity and dignity (Ferstman, 2012). If there is no individual or identifiable victim is unwilling to participate, reparation can be made to the community, as a whole, through community service sanctions, or paying a fine into public funds. Critics of reparative approaches however have argued that defendants may suffer from a lack of procedural safeguards, failure of adherence to due process, and victims may feel burdened by responsibility for their offender's future and may feel pressured to offer forgiveness. However, proponents of restorative justice and the principle of reparation argued that such criticism is born of undue pessimism or an unwillingness to think beyond the conventions of the punishment paradigm (Zedner, 2004). At the same time, it has been advocated to develop noncustodial measures within the legal systems to reduce the use of imprisonment, and to rationalize criminal justice policies, taking into account the observance of human rights, the requirements of social justice and the rehabilitation needs of the offender.

Review of Relevant Literature

Community Sentencing

Community sentencing was first introduced in law in 1907 for the probation of offenders, and to allow judges and magistrates in contemporary times to choose the right mix of punishment, programmes and supervision, designed to punish, change, control and help the offender turn away from crime. According to Abdul Rahim et al. (2013), community sentencing is part of an array of alternative sanctions to imprisonment and refer to a form of noncustodial punishment for offenders to undertake unpaid work for a certain number of predetermined hours. Community sentencing may be used as a form of punishment in and of itself or as a condition of probation or as an alternative to restitution or payment of a fine.

Acheampong et al. (2022) conceptualize community sentence as work performed by an offender for a civic or non-profit group that is not compensated. They further stated that Community sentencing is not considered a penalty in the majority of courts worldwide, but rather a particular condition of probation or supervised release which enables the offender to see firsthand the immediate consequences of his or her offense. As such, the offender may comprehend the rationale for societal tolerance's limitations. Additionally, the offender is given constructive, proactive options for correcting the harm inflicted by his or her crime, which has the ability to enhance the offender's overall feeling of self-worth. Weinrath et al. (2021) see community sentencing as approach that usually require entirely separate wings of facilities, requiring individuals to adhere to strict daily routines while also allowing them freedom to roam across different areas of the wing.

Snider (2014) stated that community sentencing allows various types of work of social importance like cleaning, gardening, painting, teaching, among others that are assigned to the offenders according to their skills and suitability, and such sentences are usually meant to be given to first time offenders, convicted for less severe offences, instead of awarding a short term sentence or fine. The objective of community sentencing is to render services that are beneficial to the community and restore to the extent possible, the wrongs committed by the offender. Therefore, the nature of work should be such that it not only helps the society but also rehabilitates the offender by assisting in the acquisition of new skill sets (Agarwal, 2019). In community sentencing approaches, Sentences can include intensive punishment, tight restrictions on freedom, combined with a close focus on rehabilitation or making amends to the community or to victims, and are usually designed to punish, change, control and help the offender turn away from crime. Community sentencing holds offenders directly responsible

for the damage they have caused to the society (Hanser, 2013). It also directly provides the community with human resources, which would otherwise have remained unproductive for a long period of time due to incarceration. The Royal Borough of Greenwich (2019) stated that not only does community sentencing provide training, it helps the offenders acquire new skills through supervised work activities, it also aids in establishing within them a positive work attitude and sense of belongingness with the local community

Aims of Community Sentencing Approaches

According to The United Nations Standard Minimum Rules for Noncustodial Measures (The Tokyo Rules) and the Council of Europe's Recommendation on the European Rules on Community Sanctions and Measures (2017), community sentencing approaches are aimed at: avoiding unnecessary use of incarceration and the negative effects of imprisonment such as institutionalization, rationalize criminal justice policies, providing greater flexibility consistent with the requirements of social justice, the nature and gravity of the offence, the rehabilitative needs of the offender, and the protection of society. Community sentencing is also aimed at encouraging and enabling changes in people's lives, providing greater community involvement in the management of criminal justice, developing a sense of responsibility to the community, avoiding institutionalization by promoting early release and reintegration into society, and enhancing the prospects of social inclusion, reduce recidivism, and reduce costs.

The Tokyo Rules (1990) states that, judges need to consider the investigation of the alleged offence and the protection of society and the victim. Community sentencing also requires implementing measures or providing options that allow the offender and cases of pre-trial to remain in the community. The conditions should include measures such as engaging in particular conduct, leaving or entering specified places or districts, or meeting specified persons, remaining at a specific address or location, reporting on a daily or periodic basis to a court, the police or other authority, surrendering passports or other identification papers, accepting supervision by an agency appointed by the court, submitting to electronic monitoring, providing or securing financial or other forms of security and to attendance at trial or conduct pending trial (UNODC, 2006).

Community Sentencing Approaches

Community sentences are generally categorized into custodial and non-custodial sentencing approaches. Under a custodial community sentencing order, there is a presumption the offender will serve a term of full time imprisonment if a custodial community based order is revoked. However, there is no such presumption in a non-custodial order (Law Reform Commission, (2013). Community sentencing approaches include but are not limited to:

Probation: In criminal law, probation is a term of court ordered monitoring of an offender, often in place of incarceration. According to Glass (2016), probation maintains the criminal in the community but places restrictions and requirements on their freedom. Probation may include a variety of conditions, such as meeting with a probation officer on a regular basis, being placed under house arrest during certain hours of the day, submitting to random urine tests, remaining drug free, working, performing community service, and enrolling in substance abuse or mental health treatment (Acheampong et al., 2022). If an offender violates probation requirements, stricter monitoring may be put in place, and in cases of substantial breach, probation may be revoked and the offender may be ordered back to imprisonment. Offenders are often obliged to maintain lawful conduct and may be forced to abstain from firearm ownership, retain employment, engage in educational programs, adhere to curfews, reside in designated areas, respect probation officer directives, or not leave the county. Offenders on probation may also be issued with an electronic tag that alerts authorities on their movements.

Community Service Order: According to Kennefick and Guilfoyle (2022), a community service order is a sentencing option where the court orders an offender to perform a number of hours of unpaid work in the community of between 40-240 hours in place of incarceration. They further stated that this approach promotes social justice principles through tackling social exclusion, as well as promotes community solidarity through community participation and multi-agency responses at a macro level. An offender may be required to complete unpaid work directly through a community service order or as a condition of a bond or probation order. In the particular context of community supervision, it supports the person who has offended in constructing a pro-social identity (Durnescu et al., 2020).

Non-Association and Place Restriction Order: This order is targeted at elements that are central to group association and gang activity and are intended to limit an offender's opportunity to reoffend by limiting their association and exposure to people and situations

that can cause them to reoffend (Judicial Commission of New South Wales, 2024). Non-association orders can prohibit personal contact and communication such as post, telephone, facsimile, email or social media between specified people by any means, while place restriction orders prohibit offenders from entering specific places or districts for a specified term. McKendy and Ricciardelli (2022) noted that these special conditions places restrictions on social relationships and associations which can include general restrictions such as non-association with individuals involved in crime, or specific restrictions such as no contact with one's victim or co-accused.

Intensive Court Order: Under this sentencing approach, offenders serve in the community under the supervision of Corrective Services and adhere to conditions such: a minimum of 32 hours of community service work per month, participation in programs to address offending behaviour, and drug testing. Ringland (2012) stated that the conditions of this order may also require an offender to comply with a curfew, be subject to electronic monitoring, alcohol testing and random home visits. According to Law Reform Commission (2013), an intensive court order is an emerging rehabilitative focused sentencing option that generally allows an offender to serve a sentence of imprisonment in the community; so long they comply with conditions of intensive rehabilitation, supervision, and sometimes unpaid work.

Drug Treatment Order: The drug and alcohol treatment court allows a drug and alcohol treatment order as a sentencing option for people with drug or alcohol dependency who committed associated criminal offences. Offenders subject to a drug treatment order have restrictions placed on their freedom of movement and association. This order is intended to reduce the chances of a person re-offending by having them engage voluntarily in an integrated and intensive program to address their drug and alcohol dependency (County Court of Victoria, 2024). Generally, offenders must undergo drug treatment, attend regular meetings, and may have to submit to drug testing, among other conditions that promotes the rehabilitation of people through specialized, individually tailored treatment and supervision model.

Home Detention Order/Electronic Monitoring: Home detention is a community sentencing approach where an offender is confined to an approved residence for specified periods of time for the duration of the sentence of imprisonment. It is both a punitive and rehabilitation sentence that requires an offender to remain at a suitable and approved residence and be

monitored at all times. The sentence can address both the rehabilitation and reintegration needs of an offender, while placing restrictions on them such as being confined to a specific location, and special conditions such as electronic monitoring. Under electronic monitoring approach, the prison administration converts a custodial sentence into a 24/7 intensive supervision program sentence managed by the prison and probation services to identify and track the location of high risk offenders and offenders released on parole by utilizing electronic device. Monitoring devices such as GPS wrist and ankle monitors, cell-phones with biometric security systems, ignition interlock devices are used to transmit location data to monitoring stations (Alexander, 2018). Offenders can serve their custodial sentences at home under electronic monitoring which allow them to maintain ties to their family, job, and community, with the overall goal of promoting reintegration (Lappi-Seppälä, 2011).

Community Sentencing Approaches as Alternatives to Incarceration

Theorized forms of crime reduction include incapacitation of individual offenders to prevent further offences while in prison, punishing an offender in the hope of deterring their individual recidivism, and discouraging a wider population from committing crime through the prospect and expectation of punishment (Levitt and Kessler 1999). However, Engelen et al. (2016) argued that there are also mechanisms through which correctional institution is theorized to have criminogenic effects. Friehe and Miceli (2017) also noted that the impact of incarceration on crime reduction is theoretically ambiguous as there are many counter balancing effects through which prison can affect crime rates. Community sentencing, however, reduces the overall burden on the incarceration system through decongestion of the overcrowded prisons and contributes towards the shielding of first time offenders from interaction with hardened criminals. As such, community sentencing is beneficial over the system of open prisons, which is being readily embraced as an alternative to the rigorous custodial imprisonment regime (Hindustan Times, 2017).

Community sentencing provide a robust and credible alternative to custody, especially for those people who would otherwise serve a short prison sentence, thereby fulfilling all statutory purposes of sentencing. In the imposition of community and custodial sentences guideline, the Sentencing Council states that community orders can fulfil all of the purposes of sentencing. In particular, they can have the effect of restricting the offender's liberty while

providing punishment in the community, rehabilitation for the offender, and ensuring that they offender engages in reparative activities (Sentencing Council, 2017). Community sentencing as an alternative to incarceration help to enhance community projects and development as such that when offenders are made to serve in the community, development projects are completed within time, and governments are also relieved from hiring more people for a specific job in the community (Acheampong et al., 2022). Furthermore, community sentencing keep people with their families, in their neighbourhoods and jobs, and allow them to earn money, pay taxes, and contribute to their communities and offenders made to serve in the community become cautious in their actions

According to Cullen et al. (2011), being locked up in correctional institutions puts a label or stigma on offenders, mark them as unsuitable for reintegration into society, prevent offenders from acquiring useful skills in legitimate labour markets, and have psychologically destructive effects that prevents prisoners from returning to normal life when released. It also reduces access to or even destroys familial relationships and other sources of social support and integration, and generates a pro-crime environment where prisoner peer groups, and even prison officers, reinforce deviant identities and behaviours.

Similarly, Liu et al. (2020) maintained that incarceration has an adverse effect on crime. This is because the association between increased imprisonment rates and reduced crime rates is quite weak. However, community sentences on the other hand allow for maintenance of jobs, housing, family ties and childcare responsibilities, all of which are factors that reduce the risk of reoffending. Research has also suggested that community sentencing also address underlying factors which lead to offending, and repair harms caused by it (Centre for Justice Innovation, 2020). More so, the services of criminals may be a huge asset to governmental and non-profit organizations. Glass (2016) maintained that community service focuses on responsibility rather than punishment or rehabilitation, and emphasizes offenders' strengths, not their weaknesses, on their lack of insight, not their capacity for responsibility, on their susceptibility to social and psychological causes, not on their power to choose.

Community sentencing are also often tailored to the offenders such as women, drug addicts, and young adults. It is also useful in helping people with learning disabilities and so on, rather than the crime and increasingly used to rehabilitate the criminal, with reparative reasons not far off. They are nested within a coherent legislative framework that should include law

enforcement, crime prevention, public safety, individualized sanctions and measures, and the social reintegration of offenders.

Conclusion

Community sentencing approaches have proven to be effective in various jurisdictions around the world. Correctional institutions are overused and the objectives of imprisonment can be met more effectively in other ways using other alternatives to imprisonment such as community sentencing. Community sentencing approaches as alternatives to incarceration are imperative not only for the rehabilitation and reintegration of offenders back into the society upon their release, but also necessary for the avoidance of the labelling and stigmatization associated with incarceration, as well as deal with the dehumanizing state and nature of the environment where the human rights of inmates are being violated daily and undergo extreme harshness and sufferings in the correctional institutions. Also, with the decongestion of inmates in penal institutions, offenders can be utilized to provide services to the community and reduce the burden on the state. It is therefore essential that the criminal justice system adopt a positive attitude towards noncustodial approaches to criminal justice.

Recommendations

It is recommended that the criminal justice system in Nigeria should develop a positive attitude towards non-custodial sentencing. This will go a long way in decongesting our penal institutions that are already overcrowded with inmates, prevent unchecked outbursts of prison violence that frequently violate inmates' right to life, and subject them to malnutrition, unhygienic conditions, and lack of medical care and other inhumane conditions.

This paper also recommends that the government, policy makers and the criminal justice system legislate as well as execute further reforms for community sentencing approaches in such a way that it will enhance rehabilitation and reintegration of convicts. These authorities should also coordinate the release process of inmates, and ensure that inmates are suitably prepared for life in the community so that upon their release, they would be successfully reintegrated into the society of work and improve their socioeconomic wellbeing.

More so, this paper recommends that members of communities be sensitized rigorously about community sentencing approaches as alternative to incarceration and the importance of their acceptance. This will go a long way toward educating the public about alternatives to imprisonment as an integral part of the correctional process granted to the inmates as an

instrument of social rehabilitation and reintegration. Members of the society on the other hand, should provide support for offenders since they will be reintegrated back to society. The paper further recommended that correctional officers should be engaged in workshops and orientations on non-custodial means of punishment so they can be instrumental in integrating prisoners back into society, contribute to their wellbeing and the socioeconomic development of the communities. They should also be equipped with sophisticated technological gear to efficiently track criminals who may be subjected to electronic surveillance in order to limit their chances of fleeing and prevent them from reoffending.

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