# Synoptic Appraisal of the Nigerian Correctional Service ACT, 2019


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### Abstract

*The Nigerian government recently promulgated the Correctional Service Act, 2019 (Act) which repealed the hitherto existing Prisons Act, 2004. The repealed law had become outdated and no longer capable of driving forward the criminal justice sector hence the need to repeal it. Spurred by the desire to interrogate the nomenclatural change, this article, adopting the doctrinal methodology of research comparatively perused the Act to see what new it has introduced to the Nigerian criminal justice system. It found that the Act has divided the sector into two, Custodial and Non-Custodial Services; that it has for the first time in Nigerian history crisply provided objectives for the Correctional service; that has ample provision for the implementation of new sentencing paradigms introduced by the Administration of Criminal Justice Act, 2015 (ACJA). The article noted certain jurisprudential conflicts between the Act and the Constitution on one hand, and the Act and the ACJA on the other. The article recommended that the conflict between the Act and the ACJA be resolved in favour of the Act; and that Nigeria should abolish death sentence instead of directing Chief Judges to commute sentences of death to life imprisonment.*



**Key words:** corrections, criminal justice, custodial, non-custodial, rehabilitation



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## Introduction

On the 31st July, 2019, Nigeria enacted the Nigerian Correctional Service Act, 2019 (the Act) and it repealed Prisons Act[1] which hitherto had been in existence. The repealed Prisons Act had been in force since 1972, spanning a period of forty-seven years and consequently, had become outmoded in several respects[2]. For example, it had no clear discernible objectives[3] and was completely silent on the philosophy of reformation/rehabilitation which is the modern thrust of penal policy[4]. Additionally, it was structurally inadequate and merely dented the surface on matters relating to the welfare of inmates and staff of the prisons[5]. Above all, the repealed law did not contemplate non-custodial sentencing options such as probation, parole, community services and suspended sentence (now provided for by the Administration of Criminal Justice Act, 2015 (ACJA) which are the bedrock of modern penal policies on which the criminal justice of several countries is anchored.

Besides, cascading congestion in the ageing Nigerian prisons, inhuman treatment of convicts, poor and inadequate human and material resources (qualitatively and quantitatively), left the service battered with an unfulfilled obfuscated mandate. In these circumstances, the prisons were primarily concerned with containment that dehumanized and embittered inmates rather than productively engaging them. There was also the issue of lack of

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1 Cap P29 Laws of the Federation of Nigeria updated to 2010

2 Jombo Onyekachi, 'Problems and Prospects of Administration of Nigerian Prison: Need for Proper Rehabilitation of Inmates in Nigerian Prisons' 2016 *Journal of Tourism and Hospitality* 5:228. @ 5.

3 Vearumun Tarhule, *Corrections Under Nigerian Law* (Innovative Communications, 2014)

4 United Nations, 'United Nations Standard Minimum Rules for Non-Custodial Measures' adopted by the General Assembly "Resolution 45/110 of 14 December, 1990. Article 1.5 provides 'Member states shall develop non-custodial measures within their legal system to provide other options, thus reducing the use of imprisonment, and to rationalize criminal justice policies, taking into account the observances of human rights, the requirement of social justice, and the rehabilitation needs of the offender'

5 Vearumun Tarhule (n, 3)

symbiotic synergy between the arms of the criminal justice system that needed to be addressed[6] for the system to work cohesively.

It is against this substratum that the Act was promulgated with a mindset to address some of these noticeable loopholes. The extant law vouchsafed to modernize the prisons now called correctional centres by segmenting the service into custodial and non-custodial arms, and generally introducing humane conditions in the handling of offenders in custody and providing a synergy between the prisons and the other arms of the criminal justice system.

This article sets out, in the main, to minutely examine the Nigerian Correctional Service Act to see whether the paradigm shift is purely nomenclatural or that the provisions are subterranean enough to stimulate corrections in the Nigerian criminal justice system. In doing this, the article is divided into six parts. Part one is this introduction; Part two appraises the provisions of the Correctional Services Act; Part three scrutinizes the major provisions of the law viz a viz the repealed law; Part four assesses the Non-Custodial Service; Part five evaluates the implementational hurdles; while Part 6 makes recommendations for reform.

**Appraisal of the Provisions of Correctional Service Act, 2019**

The Act is divided into two parts; part one entitled 'Custodial Service' begins from sections 9 – 36, and Part two encapsulate 'Nigerian Non-Custodial Service' is covered by sections 37 – 47. There are two Schedules to the Act; the First Schedule distinctively sets out the classification of Custodial Centres created by the Act while the Second Schedule deals with Savings and Transitional provisions. Astonishingly, sections 1 – 8 dealing with Establishment of the Service, Objectives, Appointment and Removal of Controller General and Structure of Correctional Service is not under any Part but left dithering. Structurally, this is not good drafting and at the earliest opportunity, this should be revisited and those sections should come under Part 1 to be entitled, Establishment and Structure of Correctional Service. Consequently, the present Parts one and two

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6 EE Alemika, and EI Alemika, 'Penal Policy, Prison Conditions and Prisoners' Rights in Nigeria" in B Angwe and CJ Dakas (ed*) Readings in Human Rights* (Innovative Communications 2005) 108

should be renumbered Parts two and three respectively. This would be more intelligible to comprehend.

An examination of the Act reveals that it has more sections and more Schedules written in simple diction for comprehension than the repealed law which had only 19 sections and one schedule written in complicated phraseology and without being sub-divided into parts. To this extent therefore, the extant law is preferable. Given the structural arrangements of the Act, this article shall appraise it as arranged.

***Establishment and Structure of the Correctional Service***

Section 1 of the Act establishes the Nigerian Correctional Service and gives it the broad mandate to provide custodial and non-custodial services, and establishes the offices of the Controller-General, a minimum of eight Deputy Controllers-General and such other subordinate staff to the Controller General as may be necessary for the administration of the Service. One of the Deputy Controllers-General is to be specifically assigned the portfolio to oversee non-custodial correctional services[7]. The power to appoint the Controller-General is vested in the President who is to act on the recommendation of the 'Board' [8] subject to confirmation by the Senate,[9] provided that the recommendation must be from the pool of serving Assistant Controllers-General who have vast experience and evidence of quality leadership.[10]

The Controller-General is infused with powers to generally superintend the Correctional Service and to implement the Act and is to do this in accordance with the ACJA together with other relevant legislation and policies relating to non-custodial measures, and additionally create a platform for interfacing with the other arms of

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7 Nigerian Correctional Service Act, section 1 (3) (b)

8 Strangely this Board is not defined in section 46 (interpretation Section) or any other place in the Act. However, Since Prison share a common Board with all the parastatals in the interior Ministry, it is assumed to be the Customs, Immigration, and Prisons Board (CIP) that is being referred to. It would have been better and neater if this 'Board' was not left to speculation and assumptions.

9 Section 2 (1) of the Act

10 Section 2 (2) of the Act

the criminal justice institutions.[11] The tenure of the Controller-General is for a single term of five years and he shall not be removed during the subsistence of his term except on grounds of gross misconduct or ill-health or incapacity to perform his functions, and a recommendation is made by the Board to the President in that behalf and he accepts it.[12]

Also established for the Correctional Service is a vertical hierarchy with the Headquarters in Abuja, Zonal offices, State Commands, Custodial and Non-Custodial Centres and Training Institutes. The Act further creates the offices of Deputy Controllers-General[13] who are to oversee the various Directorates of the Services listed as: (i) Finance and Accounts, (ii) Inmates Training and Productivity, (iii) Human Resources, (iv) Works and Logistics, (v) Health and Welfare, (vi) Training and Staff development, (vii) Operations, and (viii) Non-Custodial Services.[14]

It is submitted that the provisions of the Act, as far as structure is concerned, are an improvement on the old legal regime which had provided nebulously for the office of the Comptroller-General and such other subordinate staff as is necessary to run the service[15]. Besides, several issues which had hitherto been left to the discretion of the Comptroller-General are now clearly spelt out. It is now clear how the Custodial Services are subdivided, and the Directorates which hitherto were the creation of the Comptroller-General are now the creation of statute with functions, appointing and removal process. These were issues that were left to conjecture in the repealed law. Importantly, the Act plainly directed the Controller-General to implement the ACJA and should create a platform of interfacing with other arms of the criminal justice system. This collaboration is necessary for the criminal justice arms to work harmoniously. This is a step in the right direction.

However, the provision that the Controller-General be nominated and appointed from the pool of Assistant Controllers –

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11 Ibid Section 4.
12 Ibid
13 To be appointed by the President acting on the recommendation of the Board.
14 Ibid section 8
15 Section 1 of the Prisons Act Cap P29 updated to 2010

General requires revisiting as it negates the command structure set out by the Act which created the offices of eight Deputy Controllers-General and ranked them immediately under the Controller-General. Ideally, it is from these Deputy Controllers-General that a successor to the Controller-General ought to emerge. To side-line Deputies and move to the Assistants which is the third category is likely to create rift in the not too distant future, except, it is the intention of the legislature (which is doubtful) that the Deputies be compulsorily retired.

***Provision of Objectives for the Service***

The repealed Prisons Act, and all prisons enactments before it,[16] had no objectives for the service. This led to a lot of arguments as to what exactly the service was set out to achieve with several writers[17] propounding several theories whilst the prisons itself professed to rehabilitation as its avowed objective. Elsewhere, it has been opined that:

> *…this lack of objectivity in the Nigerian Prisons Act has resulted to several theories being propounded as to the philosophical basis of imprisonment with the component arms of the criminal justice delivery system almost operating at cross purposes to the detriment of the inmates…*[18]

The Act has now put this to rest. Section 2 gives the objectives of the service as to (a) ensure compliance with international human rights standards and good correctional practices; (b) provide enabling platform for implementation of non-custodial measures; (c) enhance the focus on corrections and promotion of reformation, rehabilitation and reintegration of offenders and (d) establish institutional,

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16 Prisons Act Cap 366 Laws of the Federation of Nigeria, 1990, and the Prions Ordinance 1916

17 OL Ehonwa, *Behind the Wall* (Civil Liberties Organization 1996); EL Alemika & EI ALemika (n, 6 ) Vearumun Tarhule (n, 3)

18 Vearumun Tarhule (n, 3) 106

systematic and sustainable mechanisms to address the high number of persons awaiting trial.

Evidently, the primary focus of the service now is reformation, rehabilitation and reintegration. This avowed objective runs throughout the entire enactment. For example, the powers of the Controller-General are to ensure inmates' safety and humane custody,[19] 'reformation, rehabilitation and reintegration of offenders',[20] and 'supervise Non-Custodial Institutions and Centres'.[21] To accentuate its importance, the phrases 'reformation, rehabilitation and re-integration' and 'humane treatment' each appears five times in the Act. These apart, any building now declared to be Correctional Centre must have 'sleeping accommodation that meet all requirements of health with consideration given, among other things, to adequate floor space, water and sanitation amenities, lightening and ventilation',[22] inmates are now to be paid for work done while in the correctional centre,[23] and provisions for adequate feeding of inmates[24] and their care.[25] All these are indicators that the changes envisaged by the Act are not cosmetic but deep enough to ensure complete transformation of inmates anchored on the philosophy of rehabilitation and reformation. It is left to be seen how these would be implemented.

**Custodial Correctional Service**

Elaborate provisions have been made in the Act for custodial services which used to be traditionally the functions of the Prisons. To underscore the importance of custodial service, a total of 28 sections are dedicated to it (that is 8 sections more than the repealed Act). For brevity, the major provisions would be discussed under the following sub heads:

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19 Section 4 (2) (a) of the Act
20 Ibid section 4 (2) (b)
21 Ibid section 4(2) c)
22 Ibid proviso to section 8 (1) (b)
23 Ibid section 14 (4) (a)
24 Ibis section 30
25 Ibid section 32

***Establishment of Correctional Centres***

The Act empowers the Minister[26] to declare any Public building with adequate facilities in an appropriate location within Nigeria to be a Custodial Centre, and specify the area of landmass for which the Custodial Centre is established.[27] Sub-section 2 of the section goes further to provide that a building declared as a Custodial Centre under the section includes the grounds and building within its enclosure, and the detention centre for temporary detention which when declared by the Minister by order in the Federal Gazette to be part of the Custodial Centre. The categories of Custodial Centres established under the Act are as listed in the First Schedule.[28] The Minister is further given wide powers to, by a separate order in the federal Government Gazette, declare every Custodial Centre as a custodial centre of a particular category.[29]

This provision contrasts sharply with that under the repealed Prisons Act in a number of ways:

1. There is more guidance to the Minister under the extant law in exercising his powers of declaring a building a Custodial Centre, in that the place to be declared a Custodial Centre must: (i) be a public building,[30] (ii) have requisite facilities circumscribed by the provision to sleeping accommodation and shall meet all requirements of health with consideration given to adequate floor space, water and sanitation amenities, lightening and ventilation, and (iii) define the land mass for which the Custodial Centre is to cover. There are additional security concern issues like restricting the erecting of any other structure 100 metres to the

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26 Interpreted as the Minister Charged with the responsibility for the Nigerian Correctional Service (section 46 of the Act). It is curious why the Minister was not named specifically. Presently, the Correctional Service is under the Ministry of Interior whom it is presumed has the responsibility to execute this section. It would have been neater if the Minister was specifically so named.

27 Section 9 (1) (a) & (b) of the Act.

28 Ibid section 8 (5). These according to the First Schedule are: (i) Maximum Security Custodial Centre, (ii) Medium Security Custodial Centre, (iii) Open Custodial Centres, (iv) Farm Centres, (v) Satellite Custodial Centres, (vi) Borstal Institutions and (vii) female Custodial centres

29 Ibid section 8 (6)

30 Contrast this with the provision of section 3 (1) of the repealed Act which gave the Minister powers to declare any building or place in Nigeria as a Prison.

Custodial Centre[31]. The second condition of the premises having met the requirements of floor space and lightning, was not part of the repealed law.

2. Another significant departure is the listing of Correctional Centres and clearly describing their security levels. To this end, the maximum security Custodial Centre which, as the name implies, is the most secure Centre in Nigeria, has enhanced level of security including the usage of close Circuit Television, electric fencing, electronic scanners, high level technology reserved for high risk inmates of all classes; the Medium Security Custodial Centre is to have reasonable level of security reserved for inmates of all classes; Open Custodial Centres for the treatment of long term first offenders; Farm Centres for convicts with good conduct who have six months or less to serve; Satellite Custodial Facilities reserved for convicts serving three months imprisonment or less; awaiting trial persons charged for minor offences who are required to be presented in courts in locations without major custodial facilities; Borstal Institutions for the detention of juvenile offenders, and Female Custodial Facilities for all classes of female inmates.[32] By this provision and the First Schedule, the parapedicular pyramid of the Custodial Centres with their security levels and who should be held therein becomes easily implementable. These were issues that were completely absent in the repealed law leaving the then Prisons Service to do as they deemed fit.
3. Significantly, the Act has now for the first time in the history of Nigeria established by statute specific Custodial Centres for women. To compliment the provision under review, Section 34 (1) of the Act decrees Correctional Service to provide separate facilities for female inmates in all the States with necessary facilities addressing the special needs of women such as medical and nutritional needs including pregnant women, nursing mother and babies in custody. In other jurisdictions, Custodial Centres for Women (given their peculiar needs), were separate from

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31 Section 9 (3) of the Act

32 See generally the First Schedule to the Act

those of male convicts. The United States for example, as far back as 1873 established the Indiana Women's Prison as well as Framingham 1877, to mention but two.[33] Canada had a single correctional facility for women at Kingston, Ontario from 1934 - 1990 with five others built in 1990[34]. Nigeria has now joined these jurisdictions which have correctional facilities separately for women. Even though the repealed law was silent on this, there was at least one prison in Lagos that was reserved solely for women. Most other prisons had a section reserved for women. It is hoped that this provision would trigger the emergence of more facilities designed and built for female inmates to take care of their peculiar needs.

**Functions of Custodial Centres**

As with the Correctional Service generally, the Act has provided strong functions for the Custodial Service. These are:

(a) Taking custody of all persons legally interned;
(b) Providing secure and humane custody for inmates;
(c) Conveying remand persons to and from courts in motorised formation;
(d) Identifying the existence and causes of social behaviour of inmates;
(e) Conducting risks and need assessment aimed at developing appropriate correctional treatment methods for reformation, rehabilitation and reintegration;
(f) Implementing reformation and rehabilitation programmes to enhance the reintegration of inmates back into the society;
(g) Initiating behaviour modifications in inmates through the provision of medical, psychological, spiritual and counselling services for all offenders including violent extremists;
(h) Empowering inmates through the deployment of educational and vocational skills training programmes and facilitating incentives and income generation through Custodial Centres, farms and industries;

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33 Sue Titus Reid, *Criminal Justice Today*, 8th Ed 41.

34 Government of Canada, 'Correctional Service Canada'<https://www.csc-scc.gc.ca/women/002002 accessed 24th April, 2020

(i) Administering borstals and related Institutions;
(j) Providing support to facilitate the speedy disposal of cases of persons awaiting trial; and
(k) Performing other functions as may be required to further the general goals of the service.[35]

The first comment to make on this section is that, for the first time in the history of Nigeria, clear functions or philosophy is provided for Custodial Service. This provision was not in the Prison Ordinance, 1916, or the Prisons Decree No 9 of 1972.[36] Lack of vibrant objectives led many writers to criticize the law.[37] The insertion of this provision in the Act means that Nigerian Law is now at par with most jurisdictions that have similar provisions such as Germany[38] and Canada.[39] This development is salutary.

Secondly, there is gradually a synergetic approach to criminal justice administration in the country. For the provision under review is in symbiotic synchronization with section 401 (2) of ACJA which equally makes provision for objectives of sentencing. The function of taking custody of inmates and providing humane and secure environment is in consonance with the objective of restraint under the ACJA;[40] the third and fourth functions in the Act correspond with the objectives (a) and (c) of ACJA whilst functions (g) (h) and (i) agree with objectives (e) of the ACJA. It is thus clear that with this development, the Nigerian criminal justice system would work more

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35 Section 10 of the Act.

36 Rechristened severally as Prisons Act cap 366 Laws of the Federation of Nigeria, 1990, Prisons Act Cap P29 laws of the Federation of Nigeria, 2004, and Prisons Act Cap p29 Laws of the Federation of Nigeria updated to 20210

37 Alemika and Alemika (n, 6) 108, Chukwumerije, Prison Act Bill <www.senatorchukwumerije.net> accessed 19th April, 2020; Vearumun Tarhule (n3) 106

38 Sections 7, 9, 10, 11, 12, 13 & 14 of the German Prison Act, 1976 provides clear template of how treatment and rehabilitation of prisoners should be effected. It even makes provision for temporary leave from prison if this would be beneficial to the prisoner.

39 Section 3 Corrections and Conditional Release Act, 1992 Canada provides for example 'Carrying out sentences imposed by the courts through a humane custody and supervision of offenders; and assisting the rehabilitation of offenders and their reintegration into the community as law abiding citizen through the provision of programmes in penitentiaries and in the community'

40 Section 401 (2) b)

harmoniously to the benefit of not just the offender but the entire country.

Thirdly, the Act has squarely placed a duty on the Custodial Service vide function (c) to be conveying remand persons to and from court in a motorized formation. Conveying remand persons to and from court had been a controversial issue between the Prosecutors and the then Prison Service sometimes leading to inordinate delay much to the detriment of the offender. In *Edet Effiom v State*[41] the issue of whose duty it was to convey a person on remand to court arose. The Nigerian apex Court held that it was the notional duty of the prosecution.[42] Unfortunately, the failure to produce the offender to court on several times led the trial to last for six years, by which time the offender had degenerated to a bag of bones (to use the language of the apex court).[43] The provision in paragraph (c) has now laid this issue to rest by specifically placing the responsibility on the Custodial Service.

Finally, functions (j) and (k) are also necessary for the effective implementation of the ACJA. This is because, the ACJA has conferred certain responsibilities on the Correctional Service (including but not limited to) being a member of the Criminal Justice Monitoring Committee[44] whose main duty is to ensure quick dispensation of criminal justice and reducing congestion in Correctional Centres to the barest minimum.[45] Besides, by section 12 (4) of the Act, the Controller of a Correctional Centre within a named State is to notify the Chief Judge of the State and other relevant stakeholder if the facility has exceeded its capacity. To optimally implement the Act, therefore, this collaboration is *sin qua non*.

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41 (1995) I SCNJ 1

42 Ibid at 37 lines 8-15 per Onu JSC.

43 For fuller commentary on the case, see Vearumun Tarhule, 'Judicial Attitude to Trial Within a Reasonable Time' *University of Jos, Journal of Public and Private Law* (JPPL) Vol.7 2003 pp 178-184

44 Section 469 ACJA (the Controller-General of the Correctional Service is statutory member of this Committee

45 Section 470 (a) and (c) ACJA

***Power to Reject Inmates by the Controller of a Correctional Centre***

The Act gives the Controller of a Correctional Centre powers to reject inmates sent to the Centre in two broad ways; when the Centre has exceeded its inbuilt capacity and, when the proposed inmate has severe bodily injury, or is mentally unstable or is unconscious or is underage.[46] The reasonableness and attractiveness of these shall now be scrutinized.

Section 12 (8) of the Act infuses the State Controller of a Correctional Centre with power to refuse to admit inmates if the facility has exceeded its built capacity and he had notified the Chief Judge, the State Attorney General, the Prerogative of Mercy Committee and the State Criminal Justice Monitoring Committee in line with section 12 (4) of the Act and nothing has been done to decongest the centre.[47] This is a novel and strange provision that will in the long run, do more harm than good for three reasons: (a) it would lead to Chief Judges taking panicky measures to decongest the Prions thereby leading to recycling of offenders; (b) it may result to inmates being taken back to the Police detention facilities that are worse off than Correctional Centres; and (c) a close scrutiny of Correctional legislation in several countries did not reveal any jurisdiction where the Service is given such powers.[48] Given the additional powers of the Controller-General to effect inter-prison transfers contained in section 16 of the Act, section 12 (8) becomes unnecessary, a contradiction or at best, provides an alternative course of action. For purpose of clarity, section 16 is hereby set out in *extenso*:

> *16 (1) The Controller-General may, for security or administrative reasons, order in writing the transfer of any inmate, convicted or un-convicted, to a suitable Correctional Centre whether or not the Correctional Centre is named in the warrant or order of detention and such order by the officer shall be sufficient authority for such transfer.*

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46 Section 12 (10) of the Act

47 Section 18 of the Act has a similar provision. The reason for the duplication are not very clear.

48 Vearumun Tarhule (n, 3) 397.

> (2) The Correctional Centre shall ensure that any unconvicted inmate transferred in accordance with sub section (1) is produced in Court when required.
> (3) Where it appears to the Controller-General that:
> (a) the number of inmates is greater that the official Capacity of the Correctional Centre and that it is more convenient to transfer the excess number of inmates to another Correctional Centre, or
> (b) by reason of the outbreak of a disease within the correctional Centre or any other reason, it is desirable to provide for the temporary shelter and safe custody of any inmate, the Controller-General may, by order, direct that as many inmates as maybe stated in the order, be kept and detained in a building or place which is outside the Correctional Centre specified in the order and the building or place is deemed to form part of the Correctional Centre for the purpose of this Act until the revocation of the order.

Section 16 has resolved the problem by providing an alternative course of action. For studies have found that even though the Correctional Centres in the big cities are congested, those outside are not.[49] The problem, therefore, is how to proactively and optimally manage the available facilities and not the rejection of inmates. At any rate, going by the rules of construction of statutes, section 16 of the Act coming after section 12 (8) of the same Act has impliedly repealed the earlier provision (that is Section 12 (8).[50]

Turning to the provision of sub section (10) of section 12, the reasons for rejection appear well founded. For too long the Correctional Centres have become the dumping ground for lunatics, sometimes even without court orders. Furthermore, most times after

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[49] Human Rights Commission, National Prison Audit, 2009; OA Ogundipe, 'Decongestion of Courts and Prisons: The Way Forward' Paper presented at the Induction Course of Nigerian Judges and Khadis held at the National Judicial Institute Abuja, Vearumun Tarhule (n, 3) 201

[50] Every CRSReport, 'Statutory Interpretation: General Principles' <https://www.everycrsreport. com/report/97-589html> accessed 28th April, 2020.

ruinously injuring suspects, the police would then arraign them in courts and these would be shepherded into the Correctional Centres. The provision empowering the Correctional Centres to reject such cannot be faulted and is in sync with the Anti- Torture Act 2017.[51] Finally, the power to reject underage inmates is equally on solid foundation. To give more bite to this provision, section 35 of the Act mandates the Correctional Service to establish separate male and female borstal training institutions for juvenile offenders in all the states of the Federation for their treatment, including rehabilitation. When this is added to section 248 of the Child Rights Act, 2003 that established a panoply of Children's Centres which can properly take care of child truancy and deviancy, there is no reason why any child should be held in an adult facility to be contaminated. A community reading of all these enactments validates the provision of the Act and further orchestrates the collaboration now fast becoming part of the criminal justice sector.

**Care and Welfare of Inmates**

A community reading of the Act reveals a number of provisions aimed at enhancing the care and welfare of inmates in tandem with its avowed humane objective. These are:

(1) *Feeding and Dietary Needs of Inmates:*

The Act provides that Correctional Service be funded by Government through appropriation for the purpose of feeding inmates, [52] and the cost of feeding inmates be reviewed every five years from the date of last review[53]. There is also the additional requirement that inmates be provided with basic needs to meet the minimum standards for treatment including accommodation, feeding, portable water, hygiene, sewage disposal, clothing and toiletries.[54] Needless to add that the repealed Act had no similar provision, leaving such issues to Prison Regulations that provided that every prisoner shall be

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51 For details on the Anti-Torture Act, 2017, see Vearumun Tarhule and Yangien Ornguga, 'Curbing Incidences of Torture Through Legislation: Focus on the Nigerian Anti Torture Act, 2017' Vol. 8 No. 1 *Benue State University Law Journal* 2017/2018, 30 available on line at https://www.bsum.edu.ng/w3/lawJournalTOC .php.

52 Section 30 (1)

53 Ibid, section 30 (2)

54 Ibid Section 30 (3)

provided with plain and wholesome food and thereafter drew up a complicated scale of food for inmates.[55] Significantly, the Regulations were silent on the issue of review, leaving it to the whims of Prison Officials. All that is now changed and hopefully, the inmates would be better off for it.

(2) *Health of Inmates:*

The extant law directs the Correctional Service to put in place health care services for the promotion and protection of physical and mental health, prevention and treatment of diseases. In this direction, therefore, the health practitioner attached to the Correctional Centre shall daily inspect the Custodial Centre and advise the Superintendent, State Controller or Controller-General on the quality, quantity, preparation and service of food, hygiene and cleanliness of inmates and of the Custodial Centre, sanitation, lighting and ventilation of the Custodial Centre and cleanliness of inmates clothing and beddings,[56] which advice the superintendent should immediately take steps to remedy.[57]. There is also the charge on the Correctional Service to establish a health Centre and deploy a medical doctor to all main custodial centres and where this is not practicable, to have a medical doctor deployed to these centres from the civil service of the federation or State.[58] These steps, if implemented, will go a long way in addressing the quality of health of inmates.

The bureaucratically labyrinthic procedure of processing insane inmates under the repealed Act[59] has been significantly

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55 Section 22 of the Prisons Regulations

56 Section 23 (1) & (2) of the Act

57 Ibid, Section 23 (3)

58 Ibid, Section 23 (4) & (5)

59 Section 7 Prisons Act Cap P29 Laws of the Federation of Nigeria updated to 2010 provides that: Where it appears to the Superintendent of a prison that a prisoner undergoing a sentence of imprisonment or under a sentence of death is of unsound mind, he shall forthwith report the matter to the Minister who:(a) shall appoint two or more qualified medical practitioners (one of whom may be the medical officer of the prison) to inquire into the prisoner's soundness of mind; and (b) may if he thinks it necessary order the removal of the prisoner from the prison to another prison or hospital. (2) The medical practitioners appointed under subsection 1 of this section shall- (a) Forthwith examine the prisoner and inquire as to his soundness of mind; (b) give their opinion therein in a written report to the Comptroller-General, who shall forward the report to the minister; and (c) If they or a majority of them are of the opinion that the prisoner is of unsound mind, include a certificate to that effect….

shortened under the extant Act[60]. Under the present law, the report is made by the Superintendent to the State Controller of Correctional Service (not the President) who will appoint two or more health practitioners to examine the inmate within two weeks and submit their report to the State Controller who, if necessary, may order the inmate to be removed to another Custodial Centre or closest mental health centre or any other hospital for treatment and care.[61] This has reduced, to a considerable extent, the interminable complicated procedure under section 7 of the repealed Act.

(3) *Injury and Death of Inmates:*

The Act frowns at acts dehumanizing inmates and consequently, the Correctional Service is mandatorily required to take steps to prevent torture of inmates, prevention of inhuman and degrading treatment, and prevention of sexual and non-sexual violence including bullying.[62] Also to be avoided is injuring and causing death to inmates in the Correctional Centres. Where an inmate dies or suffers bodily injury, the matter must be investigated and the next of kin of the inmate informed. Where the investigation reveals that the death or injury was caused by negligence or unlawful action of a correction officer, the correction officer shall be suspended and handed over for prosecution, while his immediate supervising officer will be sanctioned. Not done, the Act mandates the Correctional Service to pay appropriate compensation to be determined by a panel of inquiry or a court of law to the victim or the family of the victim (whichever is applicable) and additionally, cover all costs and incidental expenditure associated with hospital and in the case of death, burial rites as may be determined by the court or panel of inquiry.[63] Even where an inmate is attempting to escape, or the correctional officer has reasonable grounds for believing that an inmate may cause him grievous bodily harm, he is not to use any

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60 Section 24 of the Act
61 Ibid, Section 24 (1) (2) & (3)
62 Ibid, Section 14 (8)
63 Ibid, section 32

firearm, teargas, or such other weapons on the inmate without first warning him that he is about to do so.[64] These provisions show that the Nigerian law is ready to protect the vulnerable, and that inmates are sent to prison as punishment and not for punishment.

*(4) Rehabilitation and After Care of Inmates*

The Act directs the Correctional service to provide opportunities for education, vocational training as well as training in modern farming techniques and animal husbandry.[65] Accordingly, the service is to establish and run in designated Correctional Centres, industrial centres equipped with modern facilities, administered for the purpose of generating income which should be shared between the inmates that participated in the project, sustainability of the enterprise, and the Federal government.[66] The Act commands the Correctional Service to assist inmates towards effective re-integration by providing funds for transportation of the discharged inmates to their place of abode, and to offer alternative support services as appropriate.[67] To avoid stigmatization of inmates that exhibited exemplary behaviour, the law empowers the Controller-General to recommend to the Board to issue a certificate of good behaviour to such inmate and upon the issuance of the certificate, the inmate is not to be discriminated on account of the custodial sentence.[68]

*(5) Commutation of Death Sentence to Life Imprisonment*

Another novel provision of the Act is section 12 (2) which is to the effect that where a person sentenced to death has exhausted all legal procedures for appeal and a period of ten year has elapsed without the execution of the sentence, the Chief Judge may commute the sentence of death to life imprisonment. The

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64 Ibid, section 20
65 Ibid, section 14 (1)
66 Ibid, section 14
67 Ibid, section 19
68 Ibid, section 14 (5) & (6)

issue of non-execution of inmates on death-row has been a recurring decimal in Nigeria.[69] The exact number of inmates on death-row in Nigeria is not certain as data on the official website[70] of the Service is embarrassingly silent on the issue. According to British Broadcasting Corporation, the number as at 11th October, 2018 was 2000;[71] ThisDay placed the number at 3000 as at 17th September, 2019;[72] whilst the spokesman of the Correctional Service put the figure at 2, 745 as at 18th December, 2019.[73] In the face of Nigeria's refusal to abolish death penalty, section 12 (2) becomes a handful tool to save those on death-row the dehumanizing agony of waiting endlessly for execution. If the State Governors cannot muster courage to implement the laws they enact, then a reprieve of this nature is salutary. However, salutary as this provision appears to be, it is not without constitutional and jurisprudential hurdles to cross as shall be demonstrated.

An examination of these reveal that this is the first time a substantive enactment has made comprehensive provisions on the welfare and after care of inmates in this country. Some of these were issues which, under the repealed Act, were left to the Prison Regulations and Standing Orders (subsidiary legislation) and consequently treated with levity. Apart from elevating these to substantive law, these are now more expansively provided with details, while new welfare packages are provided to assuage the plight of inmates. A holistic implementation would no doubt bring Nigerian Correctional Facilities at par with other climes, and the criminal justice administration would be better off.

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69 Amnesty International, 'Waiting for the Hangman' as far back as www.amnesty.org/en accessed 15/04/2020

70 www.prisons.gov.ng accessed on 28th April, 2020

71 BBC, 'Nigeria's 100 Year -Old Death- Row Inmate Seeking Pardon' says there were 2000 inmates on death-row in Nigeria as at 11/10/2018 www.bb.comnews-africa-45727057 accessed 28/4/2020

72 ThisDay on Line, '3000 Inmates on Death Row' <Thisdayoline,com>index.php> 2019/09/17 accessed 28/4/2020.

73 Francis Enobore (Public Relations Officer of Nigerian Correctional Service), '2,745 inmates on Death Row Difficult to Control' <tribuneonlineng.com/2745-inmates-on-death-row-difficult to Control> accessed on 28/4/2020

**Incentives to Correctional Officers**

The Act is not only concerned with the inmates but with those who manage them as well. In this direction, it has several incentives to deserving staff including compensation in the event of death. Apart from the Controller -General who is given security of tenure as already discussed, the Act establishes the Correctional Officers' Reward Fund into which shall be paid all fines, forfeitures inflicted on correctional officers for infraction of discipline under the Regulations and Standing Orders made pursuant to the Act.[74] The Reward fund shall be applied for (i) rewarding correctional officers for extra or special service such as gallantry, long meritorious service; (ii) providing comforts, conveniences and privileges for correctional officers which are not chargeable on the general revenue of the Federation; and (iii) paying any compassionate gratuity which may be granted pursuant to regulation made under sections 11 – 33 to the next of kin or, in his absence, to any member of the immediate family of the deceased correctional officer.[75] There is further the payment of hazard allowance for officers deployed to serve in high risk operations or difficult terrain to the tune of 50% of the basic salary of the officer applicable in cases of serious bodily injury, and 100% of the officer's basic salary applicable in the case of fatality and payable to officer's next of kin.[76] In the event of death of an officer on duty or one who suffers serious injury, his children shall be allowed to remain in school until after one year period with the possibility of a few months if the child is to complete the school year.[77]

There is further established for the Correction Service, Training Institutions, Command Schools and Colleges. Upon employment, every staff shall mandatorily undergo a six months training before deployment, and to this extent the Correctional Service should take steps to upgrade her training institutions to degree awarding establishmentss in penal administration and other related matters. Complimentarily, every staff is required by law, to

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74 Section 26 (1) of the Act.
75 Ibid, section 26 (2)
76 Ibid, section 26 (3)
77 Ibid, section 26 (4)

attend and complete, with satisfactory performance, all mandatory courses stipulated for career progression in the correctional service and while on this course, the staff on training shall be provided accommodation, feeding, paid transport allowance and paid such other allowances prescribed under the Public Service Rules.

These provisions would, no doubt, boost the morale of the staff of the Correctional Service and propel them to optimal performance. The provision of upgrading the Training Institute to a degree awarding institution is also welcome. In the interim, the Service would do well to go into partnership with any University with a view to running such programmes for it. On the whole, these incentives which are salutary had no place in the repealed enactment.

**Visitation and Inspection of Correctional Centres**

The Act has strengthened the number of official visitors to the Correctional Centres to consist of ex-officio who shall be appointed by the President and include: (i) the Chief Justice of Nigeria and other Justices of Supreme Court; (ii) the President of the Court of Appeal and other Justices of the Court of Appeal; (iii) the Chief Judge and other Judges of the Federal High Court; (iv) the Chairperson and other Council member of the National Human Rights Commission; (v) the Director-General of the Legal Aid Council; (vi) the President and other members of the Nigerian Bar Association; (vii) the Chief Judge and other Judges of the High Courts of a State and the Federal Capital Territory (viii) the Grand Khadi and other judges of the Sharia Court of Appeal and the President and other Judges of the Customary Court of Appeal exercising jurisdiction in the State and the Federal Capital Territory; (ix) Magistrates and other District Court Judges, Area Courts and Customary Court Judges; (x) Legislative Oversight visitors who shall be presiding Officers and members of the relevant committees of the National Assembly and State Houses of Assembly; (xi) Custodial Centre Visiting Committee which shall be set up by the Minister in consultation with State authorities and which consists of reputable members of society and non-governmental organisations; and (xii) voluntary visitors who shall be appointed by the Controller-

General and consists of retired correctional offices with good track records and other persons as the Correction Service may deem fit.[78]

The Act empowers the Custodial Centres Visitors the duty to (a) visit the Centres and inspect the wards, cells, yards, and other apartments; (b) receive the complaint, if any, from inmates; (c) inspect the journals, registers and books of the Custodial Centre and conditions of tenement of the inmates; and (iv)call the attention of the Superintendent to any irregularity in the administration of the Custodial Centre or structural defect which may require urgent attention. With particular refence to the Custodial Centre Visitation Committee, the Act requires it to visit the Centre at least once in a month between the hours of 9.00am and 3.00 pm.[79]

The extant law deviates from the repealed Act in two ways: first, it has bolstered the number of prison visitors by adding thereto, Human Rights Commission, Legal Aid Council, Nigerian Bar Association, Legislators and Correctional Centre Visitation Committee. These were not in the repealed law[80]. Secondly, the Act has specified functions for the retinue of visitors as spelt out above as opposed to the repealed law that left the functions to the Prisons Regulations and Standing Orders. The present arrangement is neater and tidier.

**Offences under the Act**

Section 29 of the Act makes it an offence for anyone who brings, throws or introduces into a Correctional Centre or gives or take, from an inmate, any alcohol beverage, tobacco, intoxicating or poisonous drug or prohibited article; procures or facilitates the communication with an inmate except as allowed by the Correctional policies; is found in possession of any article supplied to a Correctional Centre and fails to account satisfactorily for his possession of the article; directly or indirectly procures or attempts to procure an inmate to desert, abets or is accessory to desertion; directly or indirectly instigates or commands any mutiny, sedition or disobedience to lawful command of a senior correctional officer or

78 Section 21 of the Act
79 Ibid, section 22.
80 Section 11 of the Prisons Act, 2010

maliciously endeavours to seduce any correctional officer from his allegiance to duty; knowingly harbours in his house or knowingly employs any person under sentence of imprisonment who is at large; and interferes with an inmate working outside the Correctional Centre or allows such inmate to enter a house, yard or other premises except at the request of the correctional officer or other person in charge of the inmate to absent or neglect his work. The Act prescribes punishment ranging from ₦1,000,000 to ₦5,000,000 or in lieu thereof, a term of imprisonment ranging from 12 months to four years depending on the gravity of the offence.[81]

As far as offences are concerned, there is no remarkable difference between the repealed law[82] and the extant law save the thickening of the fines and durations of imprisonment. Meaningfully, however, these offences are necessary for the effective working of the Correctional Centres populated with seeming dangerous inmates. Anything that can fuel them to attack constituted authority or to mutiny must be countered, hence these offences.

**Power to Make Regulations and Standing Orders**

The power to make subsidiary legislation under the law is vested in the Controller-General who, upon consultation with specialized civil society groups for technical and advisory support, may make Regulations and Standing Orders or take any other administrative action as maybe necessary for the good order, discipline and welfare of staff and inmates of the Correctional Centres and for the implementation of the Act. It is instructive to note that the Regulations and Standing Orders made pursuant to the repealed Act have been saved under section 43 (3) read alongside paragraph 2 of the Second Schedule to the Act. This, however, does not stop the Controller-General from making or amending them as they are presently inadequate to cover the entire gamut of the law, especially as it relates to non-Custodial Service discussed hereinafter.

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81 Section 29 (2) of the Act.

82 Section 14 of the Prisons Act, 2010.

**Non-Custodial Services**

The Act in Part II establishes the Nigerian Non-Custodial Services and vests it with the responsibility of administering non-custodial services including community service, probation, parole, restorative justice measures and any other non-custodial measure assigned to the correctional service by the court.[83] The Act empowers the President to appoint the National Committee on Non-Custodial Measures to be constituted by the National Assembly with membership composing of: the Controller General, Deputy Controller-General in charge of the Non-Custodial Service, a retired High Court Judge, the Director of Social welfare, Federal Ministry responsible for Youth and Sports, the Inspector-General of Police or his Representative not below the rank of Commissioner, representatives from the Ministry of Interior not below the rank of Deputy Director, Ministry of Justice not below the rank of Deputy Director, Administration of Criminal Justice Monitoring Committee, and three representatives of Non-governmental organisations working in the relevant sector.[84] The Act empowers the Controller-General working in consultation with the States and Federal Capital Territory and with the approval of the National Committee on Non-Custodial Measures to appoint State Non-Custodial Measures Committees for the States.[85] Members of the National Committee on Non-Custodial measures shall serve for a term of four years renewable for a further term of four years and no more.[86]

The functions of the National Committee on Non-Custodial Measures shall include setting up a technical committee on Parole, Probation, Community Service, Restorative Justice and any other thing as may be determined by the Committee;[87] coordinate the implementation of non-custodial measures with the judiciary and other relevant agencies;[88] Monitor and propose ways for effective operation of non-custodial measures;[89]receive and consider any

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83 Section 37 (1) of the Act.
84 Ibid, Section 37 (2)
85 Ibid, Section 38 (2)
86 Ibid, Section 37 (4). There is no corresponding provision in respect of the State Committees.
87 Ibid, Section 37 (5)
88 Ibid, Section 38 (1) (a)
89 Ibid, Section 38 (1) (b)

complaint or view from the offenders, victims and affected communities, and make recommendations where possible on the nature of custodial measures;[90] and perform any other function for the proper implementation of the Act.[91] The same functions are applicable to the State committees.[92] The recommendations of the committee are to be made available to the Controller-General; Chairperson of the administration of Criminal Justice Monitoring Committee, the Minister of Justice, the Minster responsible for Social Welfare; and anybody as maybe determined by the National Committee on Non-Custodial Measures,[93] though what these persons are to do with the report is not clear.

The Controller-General is further authorised to make regulations prescribing duties for the supervising officers for each of the non-custodial measures.[94] It is the duty of the Controller-General to administer parole, including the appointment of members of the parole board, supervision and rehabilitation of parolees and administration of facilities designed for parole.[95] Relating to Probation, the service shall include production of pre-sentencing report, supervision of probation orders, production of pre-release report to facilitate registration of offenders, and provision of any other support service.[96] In the same spirit, the Controller-General shall supervise and monitor those sentenced to community service, receive regular reports form supervisors indicating a number of completed community service and status of compliance with court orders, report cases of non-complaisance.[97] Finally, the Controller-General is to provide the platform for restorative justice measures by facilitating victim-offender mediation; family -group conferencing; Community mediation, and any other mediation activity involving the victims, offenders, and where applicable community

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90 Ibid, section 38 (1) (c)
91 Ibid, section 38 (1) (d)
92 Ibid, section 38 (3)
93 Ibid, section 38 (4)
94 Ibid, section 39
95 Ibid, section 40
96 Ibid, section 41
97 Ibid, section 42

representatives.[98] The Act provides that restorative justice can occur at the pre-trial stage, at the trial stage, during imprisonment, and at post imprisonment[99]

The Act establishes the Special Non-Custodial Fund to be administered by the National Committee on Non-Custodial Measures into which there shall be paid, sums as provided by either the Government of the Federation or State; Such sums may be paid by way of contribution under the provisions of the Act or any other enactment; and all sums accruing to Non-Custodial Service by way of gifts, testamentary disposition, contribution from philanthropic persons or organisations.[100] However, how the fund is to be applied is not stated.

Before delving into the validation of the provisions on non-custodial corrections, suffice it to state that with the rising wave of crime, these are now useful tools to decongest prisons, avoid stigmatisation, encourage rehabilitation and reintegration of the offender and *a fortiori*, save the governments large sums of money it would otherwise have invested in building of custodial centres. The United States Bureau of Justice Statistics reveals that in 2016 alone, 3,673,100 and 874,800 offenders were sentenced to probation and Parole respectively.[101] As for suspended sentence, it has been adopted in several jurisdictions chiefly for the purpose of reducing prison congestions. In Australia for example, it has been argued that abolishing suspended sentences is likely to lead to drastic, costly and unmanageable increase in the prison population.[102] In England and Wales, it has been found that 13% of all adult sentences imposed in 2013 were suspended[103]. Considering the fact that the United Kingdom prison population stood at over 84,000 inmates in most months of that year[104], it means that suspended sentence played a

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98 Ibid, section 43 (1).

99 Ibid, section (43) (3)

100 Ibid, section 45.

101 Bureau of Justice Statistics, 'Number of Persons Supervised by U.S. Adult Correctional System, 1980 – 2016' https://www.bjs.gov/index accessed on 17/04/20

102 Smart Justice, 'Suspended Sentence' www.smartjustice.org.au/resource accessed 25/11/16

103 Ministry of Justice Analytical Series 2015 ibid p.1

104 See the Annual Report 2012 - 2013 of the HM Chief Inspector of Prisons For England and Wales <https:/www.justice.gov.uk/downloads/publications/corporate-report/hmi-prisons/hm-inspectorate-prisons-crime-report2012-13pdf> accessed 14/4/17

major role in keeping the prison population at a manageable level. It follows that the Nigeria presently grappling with the problem of congestion will benefit greatly from these measures. To this extent, therefore, inclusion of these in the Act is justified.

The first major observation is that the Act has failed to define the terms parole, probation, community service, restorative justice for which it has made provisions. Being new paradigms, it behoves on the Act to define them with certainty, despondently, this was left undone. To compound the problem, the ACJA which introduced these architypes for the first time equally failed to define them. Trying to define these terms in this article would bourgeon it unnecessarily. Elsewhere, these terms have been well defined and differentiated[105] and this article adopts those definitions.

Secondly, the Act is strangely silent on suspended sentence, yet it is provided under section 460 of the ACJA. The United Nations Office on Drugs and Crime (UNODC)[106] defines 'suspended or deferred sentence' as a situation 'where the sentence of imprisonment is pronounced, but its implementation suspended for a period on a condition or conditions set by the court'.[107] The question is: if the court sentences an offender to suspended sentence, how will he be treated. While it can be argued that the Correctional Services can supervise it using the omnibus provision of section 37 (1) (e) of the Act, which provides 'any other non-custodial measure assigned to the Correctional Service by a court of competent jurisdiction' it would still have been neater for it to be specifically mentioned as others.

Thirdly, there appears to be major contradictions between the Act and the ACJA in the following areas:

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105 Vearumun Tarhule, (n, 3) 345 for community service, 349 for probation, 360 for parole and 26 for restorative justice.

106 UNODC 'Handbook of Basic Principles and Promising Practices on Alternatives to Imprisonment' https://www.unodc.org/pdf/criminal_justice/ Handbook_of_basic _principles_ and_ promising_practices_on-alternatives_to_imprisonment> at 30/1/17 For details on the application of suspended sentence see Vearumun Tarhule,' Issues with Suspended Sentence under the Administration of Criminal Justice Act, 2015' *Kampala International University Law Journal* KIULJ Vol. 2 Issue 1, 2018 pp183 - 199

107 *Ibid* p.33

1. *Appointment and Regulation of Probation Officers.*
   Under the Act, the Non-Custodial Service is responsible for the administration of probation, Parole and Community services.[108] Administration include the power to appoint probation officers, supervisors of community service and so. However, under the ACJA, the power to appoint probation officers is assigned to the Chief Judge of the Federal High Court or the High Court of the Federal Capital Territory or National Industrial Court who shall make regulations for the appointment of Probation Officers.[109] There is also the Community Service Centre to be established by the Chief Judge[110] to be run by the Registrar to be assisted by suitable personnel to supervise the Community service which is at variance with the provisions of the Act.

2. *Appointment of Members of Parole Board*
   Under the Act, it is the responsibility of the Controller General to administer Parole and to appoint members of the Parole Board.[111] By contrast, section 468 of the ACJA dealing with parole, provides that the Comptroller-General may recommend to the court that a prisoner be admitted to parole and if the court sees reason in that behalf, may admit the prisoner to parole. Evidently, the ACJA did not contemplate a parole board hence it constituted the court into a Board. The power under the Act empowering the Controller-General to appoint a parole Board, therefore, stripes the courts of this role for there cannot be two parole hearings, one by the court and the other by the Parole Board.

The question to be resolved is which law to apply? It is tempting to answer this question in favour of the Act for two reasons, first, the Act is a substantive law whereas, the ACJA is an adjectival law, and secondly, the Correctional Service is better equipped to handle supervision of persons sentenced to either probation or

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108 Section 37 and 40 of the Act
109 Section 457 (2) ACJA
110 Section 461 ACJA
111 Section 40 (1) (a) of the Act.

community service, and additionally constitute a Parole Board. This is the practice worldwide.[112] Whatever be the case, it would be neater and better if these conflicts are resolved vide amendment of either or both laws.

**Implementational Problems**

Aside the issues of definition and conflicts already identified, Constitutional hurdles and others extrinsic to the Act are now discussed.

1. *Constitutional Hurdles*

   Corrections under the Constitution of the Federal Republic of Nigeria, 1999 (as amended) is item 48 on the Exclusive Legislative List in the Second Schedule. The implication of this is that it is the National Assembly that has power to make laws regulating it as it has rightly done. On the other hand, Criminal law is within the residuary power of the state to legislate on. The States in their wisdom have made laws prescribing the ultimate punishment, death for a variety of offences[113] and the courts have given flesh and blood to these provisions.[114] Having tried, convicted and sentenced an offender to death, under a State law, the Act, a federal law, made by a body that has no powers to legislate on criminal matters is altering that law by directing that the sentence be commuted by the Chief Judge who equally did not make the law. This will create serious constitutional crisis. The better option is for the Federal Government to altogether abolish the death penalty in line with Resolutions of the United Nations and not to sneak through the backdoor as has been done in this case.

2. *Funding*

   Another teething challenge that will pose great threat to the actualization of the Act is the issue of funding. Under the repealed law, the Prisons had continually decried the issue of

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112 Vearumun Tarhule, 'Parole under the Administration of Criminal Justice Act, 2015: A Review' *Benue State University Law Journal* Vol.7 No 1 2016 p302

113 For example, The Penal Code, Laws of Benue State, 2004 Section 221

114 Onuoha Kalu v State (1988) 13 NWLR (pt 583)531; State v Abeda (2012) 5 BNLR 70

lack of funds, stultifying their efforts. The Act requires even more funds to implement the lofty ideas of providing rehabilitation facilities such as industries; feeding of inmates; giving them decent accommodation, recruitment of probation officers and other categories of staff, and funding of the various committees set up by the Act. The National Assembly that passed the law must be alive to their responsibilities by appropriating adequate funds for the realisation of the objectives of the Act.

**Conclusion**

This article has appraised the Act and found that the change in name from 'Prisons' to 'Corrections' is not accidental or nomenclatural but deep enough to move the Correctional Service and the Criminal justice system forward. The Article notes in particular, the subdivision of the Service into two, Custodial and Non-Custodial and finds this to be in tandem with current penological practices all over the world. The Non-Custodial Services have been found to have the ability to reduce congestion in custodial centres. Equally noted are areas of convergences and divergences between the Act and the repealed law. Finally, constitutional hurdle and funding together with certain conflicts with the ACJA were identified as likely to dimple the smooth operation of the Act. The article recommends that:

1. At the earliest attempt at amendment, parole, probation, community service, restorative Justice should be defined in the Act with clarity so that no one is left in doubt as to their meaning and import. Furthermore, suspended sentence should be expressly added to the list of non-custodial facsimiles in section 37 of the Act. In the same vein, 'Board' and 'Minister' frequently used in the Act should be defined.
2. The ACJA should be amended in line with the provision of the Act for a seamless operation of the non-custodial services. The Judiciary should concern itself with sentencing while the Correctional Service focuses on the execution of the sentence of courts.
3. Nigeria should toe the line of the majority of countries that abolish death sentence, instead of creating unnecessary

constitutional predicaments as done by the Act which has provided that Chief Judges (who did not enact the Criminal Statutes) should alter same by commuting death row inmates to life imprisonment. This, if done, would amount to judicial rascality or at best judicial legislation authorised by a body that has no powers covering the subject matter.

4. Enough funds should be appropriated for the Correctional Service to implement the lofty provisions of the Act.