

INTERNATIONAL BEST PRACTICES IN CUSTODIAL SENTENCES AND THE NIGERIAN CORRECTIONAL SERVICE ACT 2019*

Abstract

This paper examines the Nigerian Correctional Service Act (NCS) 2019 which was enacted to salvage the ailing Nigerian Prisons System established under the repealed Prison Act, 2004. Highlighting key innovations under the Act, this paper discusses the extent of its compliance with international best practices codified in legal frame works such as: United Nations Standard Minimum Rules for the Treatment of Prisoners (The Mandela Rules), The United Nations Standard Minimum Rules for the Treatment of Female Offenders (The Bangkok Rules), United Nations Standard Minimum Rules for Non-Custodial Measures (The Tokyo Rules) and other human rights instruments. Comparing the Act with Kenya's Prison Act and some legislation on non-custodial sentencing, it identifies areas of similarities and dissimilarities in both jurisdictions. Noting gaps in the NCS Act, this paper concludes and makes recommendations which includes: the need to revisit the Act to address gaps in section 12(8), address other form of sexual assault against female inmates, make provisions for searches in line with international best practices and more judicial activism in the application of non-custodial measures provided under the Administration of Criminal Justice Act, 2015 and the NCS Act, 2019.

Key Words: “Nigerian Correctional Services Act 2019”, “Custodial Centre”, “Non-Custodial Sentences”, “International Best Practices”.

1 Introduction

The Nigerian Correctional Services Act (NCS) 2019 is a child of necessity born to salvage the ailing Nigerian Prisons System established by the repealed Prison Act, 2004. Correctional facilities prior to the enactment of the NCS Act were flawed with a lot of short-comings that inhibited reformation and rehabilitation of inmates. Examples include: poor funding, congestion, inadequate medical care, food supplies and water, health hazard, environmental degradation,

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dilapidated facilities, increase inmate mortality rate, corruption, failure of the repealed Prison Act to address the objectives of establishing prisons and rehabilitating inmates etc.¹ Furthermore, by placing emphasis on punishment and retribution, the repealed Prison Act churned out recidivist which impacted negatively on victims and the society at large.² Other than these, the repealed Prison Act was archaic,³ and failed to recognize restorative and rehabilitative non-custodial sentences⁴ applied in other climes.

It is against this back ground that various Non-Governmental Organizations and stake holders pushed for the enactment of a new legal framework to govern the administration of correctional facilities and provide non-custodial measures in line with international best practices. To this effect, a bill known as the Correctional Service Bill was presented and read in January 2008 on the floor of the upper chamber by former Senator Victor Ndoma-Egba of the sixth assembly. This bill lingered for 11 years⁵ until it was signed into law on the 14th of August, 2019 by President Muhammadu Buhari. Apart from this introduction, Part two gives an overview of the NCS Act and considers innovation under the Act. Part three discusses compliance of Act with international best practices. Part four gives a complementary analysis of the Act with the Kenyan Prison Act and some legislation on non-custodial sentencing. It also identifies gaps in the NCS Act. Part five concludes and makes recommendations.

2 An Overview of the Nigerian Correctional Services Act, 2019

The Act is divided into Custodial Service and Non-Custodial Service with objectives of complying with international human right standards and good correctional practices, implementing non-custodial measures, promoting reformation, rehabilitation and re-integration of offenders, and establishing institutional, systematic and sustainable mechanisms to address the high number of persons awaiting trial.⁶

Among other roles, the Custodial Service has the mandate to take into custody and control persons legally interned in safe, secure and humane conditions.⁷ It also has the mandate to convey persons remanded to and from courts in motorized formations and identify the existence

¹ T Osondi & W Obiozor 'Language and Graffiti of Exceptional Individuals: Pedagogical strategies in West Africa', *African Journal of Criminology and Justice Studies*, 2008, p. 41.; Z Ogundipe & O Adepoju 'Prison Reforms System and Inmate's Welfare in Nigeria' *Arts and Social Sciences Journal*, 2016, p.36.

² *Ibid.*

³ The repealed Prison Act was outdated considering that it was passed in 1972 during the then military regime. Prison infrastructures and facilities in place were geared towards achieving punitive and tortuous goal of incarceration.

⁴ Z Ogundipe & O Adepoju (n 1).

⁵ The Nation, 'Correctional Service Act: Cure or Placebo?' *The Nation Newspaper* (27 August, 2019) < <https://thenationonline.net/correctional-service-act-cure-or-placebo/>> accessed 12 February, 2020. The Act repealed the Prison Act Cap P29, LFN, 2004, renamed prisons as correctional facilities and changed the Nigerian Prisons Service to Nigerian Correctional Service.

⁶ Nigerian Correctional Service Act, 2019 S. 1 < <https://placng.org/wp/wp-content/uploads/2019/08/Nigerian-Correctional-Service-Act-2019.pdf>> accessed February 17, 2020.

⁷ U Edafe, 'The Metamorphosis from the Nigerian Prison Service to Nigerian Correctional Service: Its Implication and the Way Forward' *International Journal of Management, Social Sciences, Peace and Conflict Studies* vol.2(3), 2019s< <https://www.ijmsspcs.com/index.php/IJMSSPCS/article/download/46/48>> accessed 17 April, 2020.

as well as causes of anti-social behaviors of inmates.⁸ The custodial service also has the mandate to conduct risk and needs assessment aimed at developing appropriate correctional treatment methods for reformation, rehabilitation and reintegration of inmates and also implement reformation and rehabilitation programmes to enhance the reintegration of inmates back into the society.⁹

The Act mandates the Non-Custodial Service to administer non-custodial measures such as: community service, probation, parole, restorative justice and other measures ordered by the court of competent jurisdiction. The Act also establishes the National and State Committee on Non-Custodial Measures and empowers these bodies to monitor and coordinate the implementation and application of non-custodial measures.¹⁰

2.1 Innovations under the Nigerian Correctional Services Act, 2019

To start with, the NCS Act gave a new perspective to imprisonment. The Act changes the name of prisons to correctional facilities with the aim of promoting rehabilitation and integration of inmates and providing custodial and non-custodial services.¹¹ More so, the Act reiterates the Minister's power to declare any public building with requisite facilities as a custodial centre.¹² As an improvement on section 2(1) and (2) of the repealed Prison Act, the NCS Act requires every building declared as a custodial centre to have sleeping accommodation which shall meet all requirement of health with consideration given among other things to adequate floor space, water, sanitation amenities, lighting and ventilation.

In addition, the Act addresses cases of mentally ill people and persons with sever bodily injury under section 13(3)(b)(i). It categorically prohibits the Superintendent from admitting to a custodial facility mentally unstable persons and persons with severe bodily injury. This is an innovation as against what was obtainable under the old regime where the lunacy law permits incarceration of mentally ill persons as civil lunatics.¹³

Furthermore, the Act provides innovation on the rehabilitation and reformation of juvenile offenders. It provides for the establishment of borstal training institutions in all states of

⁸ *Ibid.*

⁹ *Ibid.*

¹⁰ Nigerian Correctional Service Act, 2019 s 38(1).

¹¹ Nigerian Correctional Services Act, 2019 s 1.

¹² Nigerian Correctional Services Act, 2019 s. 9(1).

¹³ Under the old regime families who find it difficult to handle relatives with mental health issues at home transfer the responsibility to the prisons where they are received as civil lunatics. They are jailed in asylums within prisons and not administered medical treatment. See Amnesty International, 'Nigeria: Prisoner's Rights Systematically Flouted' (2008) < <https://www.amnesty.org/download/Documents/52000/afr440012008eng.pdf> > accessed 13 March, 2020; A H Westbrook, 'Mental Health Legislation and Involuntary Commitment in Nigeria: A Call for Reform' (2011)10(2) *Washington University Global Studies Law Review* < https://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=1022&context=law_globalstudies > accessed 13th March, 2020.

the federation.¹⁴ This is an improvement on the old regime where there were only three borstal homes in Kaduna, Abeokuta and Ilorin¹⁵ in Nigeria.

A very commendable innovation under the Act is the attempt to address some plights of female inmates. One of such plights is the incarceration of female and male inmates in same facility thereby exposing them to so many vices including sexual harassment and abuse from their male counterpart. Section 34(1) of the Act resolves this by mandating the provision of separate facilities for female inmates in all states of the federation. More so, section 34(2) requires the Correctional Service to provide all necessary facilities to address special, medical and nutritional needs of female inmates including pregnant women, nursing mothers and babies in custody. The Act also mandates the provision of crèche in every female custodial centre, conducting pregnancy test and DNA analysis, offering prenatal and antenatal health care as well as sanitary provisions for female inmates.¹⁶ These innovations were not provided under the repealed Prison Act.

Another innovation introduced by the Act relates to the establishment of institutional, systematic and sustainable mechanisms to address the high number of persons awaiting trial¹⁷ and ensure speedy disposal of awaiting trial cases.¹⁸

Furthermore, the Act attempts to address overcrowding as it put in place measures for monitoring and reporting overcrowding of custodial centres.¹⁹ It also provides sanctions for non-compliance.²⁰ As a precautionary measure against overcrowding in custodial centres, the Act provides for the power of the State Controller of Correctional Service and Superintendent to reject intake of inmates where it is apparent that the Correctional Centre is filled to capacity. It also provides sanction for non-compliance.²¹ The Act also decentralized the prison visitors board and expanded their functions²² and membership.²³ This is an improvement on the repealed Prison

¹⁴ Correctional Services Act, 2019 s 35(1).

¹⁵ J Onyekwere, 'Prison Reforms Act and the Burden of Amendment' *The Guardian Newspaper* (03 July 2018) < <https://guardian.ng/features/prison-reforms-act-and-burden-of-amendment/>> accessed 14th March, 2020.

¹⁶ Correctional Services Act, s.34(4) 2019.

¹⁷ Correctional Services Act, 2019 s. 2.

¹⁸ Correctional Services Act, 2019 s. 10(j).

¹⁹ Correctional Services Act, 2019 s.12(4). This section mandates the State Controller to notify the Chief Judge of the State, the Attorney-General of the State; Prerogative of Mercy Committee, State Criminal Justice Committee and any other relevant body within a period not exceeding one week in a situation where a custodial centre has exceeded its capacity.

²⁰ Correctional Services Act, s 12(7) 2019 provides sanctions for where the Controller of the Correctional Service fails to notify the relevant bodies when a custodial centre exceeds full capacity within the stipulated time frame.

²¹ Correctional Services Act, 2019 s 12(12).

²² Section 22 of the Nigerian Correctional Services Act provides monitoring and supervisory functions of Visitors of Custodial Centre. These functions are: inspection of wards, cells, yard and other apartments or divisions of the custodial centre; receive complaint of inmates, inspect journals, registers and books of custodial centre and conditions of treatment of inmates, and call the Superintendent's attention to any irregularity in the administration of the custodial centre or structural defects which may require urgent attention.

²³ Section 21(1)(b) Correctional Services Act, 2019 expanded the members of the visitors board to include key stakeholders, legislators, reputable members of the society, non-governmental organization, Chief Justice of Nigeria and other Justices of the Supreme Court, the President of the Court of Appeal and other Justices of the Court of Appeal, the Chief Judge and other Judges of the Federal High Court, the Chairperson and other Council members of the National Human Rights Commission, the Director General of Legal Aid Council of Nigeria, the President and other executive members of the Nigerian Bar Association, the Chief Judge and other Judges of the High Court of a

Act where the membership of the board was limited and their functions not well stated.²⁴ The NCS Act also established the Custodial Centre Visiting Committee and constituted it.²⁵

More so, in a bid to ensure integrated data for custodial centre, the Act requires the Correctional Service to take certain steps such as: obtaining inmate's personal information,²⁶ information on reason and recommendation for committal, information on appeal, relevant report of conviction or sentence, relevant information that aids in administering the sentence or committal, victim's information as well as the transcript of any comment made by the sentencing court concerning serving the sentence.²⁷ Section 13(2) of the Act requires the provision of a centralized database management system for the Correctional Service.

In addition, the Act provides mandatory educational and vocational skill training programmes, modern farming training techniques and animal husbandry for inmates in every facility.²⁸ Furthermore, it requires the Correctional Service to establish and run in designated custodial centres, industrial centres equipped with modern facilities for the enhancement of vocational skill training for inmates aimed at facilitating their reintegration into society.²⁹ The Act also introduced the issuance of certificate of good behavior to a discharged inmate who demonstrated good conduct, including those who have acquired training through formal and informal education aimed at facilitating their reintegration. It frowns at discriminating persons issued with the certificate on grounds of his custodial sentence.³⁰

Also, as an innovation, the Act empowers the Chief Judge to commute death sentence to life imprisonment where after ten (10) years the sentence of death is not executed.³¹

Furthermore, expressing zero tolerance for torture, inhumane and degrading treatment, sexual and non-sexual violence and bullying against inmates, the Act mandates the Correctional Service to take adequate steps to prevent these vices. Also, the Correctional Service is required

State and the Federal Capital Territory, the Grand Khadi and other Judges of the Sharia Court of Appeal and the President and other judges of Customary Court of Appeal exercising jurisdiction in the State and the Federal Capital Territory, Magistrate and District Court Judges and Area Court and Customary Court Judges. The section also provides for legislative oversight visitors.

²⁴ The Repealed Prison Act, 2004 s 11(1). It consisted members of the board as the Chief Justice of Nigeria and other Judges of the Supreme Court , President and other justices of the Court Appeal, the Chief Judge and other Judges of the High Court of each state, the Grand Kadi , the Acting Grand Kadi and other Judges of the Sharia Court of Appeal, Magistrates, District Judges, Alkali and Presidents of Area Courts and Justices of Peace, persons appointed by the Minister after consultation with state authority and persons authorized by the Comptroller-General to be voluntary visitors.

²⁵ Correctional Services Act, 2019 s 21(1)(c). empowers the minister in consultation with the state authority to set up a Custodial Centre Visiting Committee which shall consist of reputable members of the society and non-governmental organizations as well as voluntary visitors who shall be appointed by the Controller-General and consist of retired correctional officers with good track records.

²⁶ Person's offence, biometrics, personal history, risk and needs assessment and the person's psychological, mental, health status and criminal antecedents.

²⁷ Correctional Services Act, 2019 s 13(1).

²⁸ Correctional Services Act, 2019 Sections 10(h) and 14.

²⁹ Correctional Services Act, 2019 s 14(2).

³⁰ Correctional Services Act, 2019 s 14(5) and (6).

³¹ Nigerian Correctional Services Act, 2019 s 12(2)(c).

to provide effective procedure for preventing, identifying early warning sign, detect occurrence, punish perpetrators, protect and treat affected victims.³²

The Act also prohibits inmate's slavery or servitude. It prohibits inmates from carrying out labour of afflictive nature or for the personal benefit of any correctional officer.³³ More so, as an improvement on the repealed Prison Act, the Act mandates the Correctional Service to put in place health care services that promotes, protects the physical as well as the mental health of inmates, prevent and treats diseases.³⁴ To this effect, the Correctional Service is mandated to establish a health centre and deploy at least one medical doctor in all custodial centres.³⁵

Finally, in line with the Administration of Criminal Justice Act (ACJA) 2015, the Act provides non-custodial measure such as: probation, parole, community service, restorative justice measures and other non-custodial measures applied by a court of competent jurisdiction. It also provides mechanism for monitoring and supervising these measures.³⁶ Section 43 of the Act requires the Controller-General to provide a platform for restorative justice measures which includes: victim-offender mediation; family group conferencing, community mediation and any other mediation activity involving victim, offenders and community representatives (where applicable).

3 Compliance with International Best Practices

International best practices are provided in legal frame works such as: the United Nations Standard Minimum Rules for the Treatment of Prisoners (The Mandela Rules),³⁷ The UN Standard Minimum Rules for the Treatment of Female Offenders (The Bangkok Rules),³⁸ Universal Declaration of Human Right (UDHR),³⁹ International Covenant on Civil and Political Rights, 1966 (ICCPR),⁴⁰ Standard Minimum Rules for the Treatment of Prisoners,⁴¹

³² Correctional Services Act, 2019 s 14(8)(a)-(c).

³³ Correctional Services Act, 2019 s 15(1).

³⁴ Correctional Services Act, 2019 s 23(1).

³⁵ Correctional Services Act, 2019 s 23(4).

³⁶ Correctional Services Act, 2019 ss 37(1) , 37(5), 40, 41 and 42.

³⁷ United Nations Resolution 70/175 adopted by the General Assembly on the 17 December 2015 < <https://cdn.penalreform.org/wp-content/uploads/2015/12/PRI-Mandela-Rules-resolution-booklet-REPRINT-DEC16-WEB.pdf>> accessed 2 April, 2020.

³⁸ United Nations General Assembly, Resolution 2010/16 of 22 July, 2020 < <https://www.ohchr.org/Documents/ProfessionalInterest/BangkokRules.pdf>> accessed 2 April, 2020.

³⁹ It enshrines key principles of equality before the law, the presumption of innocence, the right to a fair and public hearing by an independent and impartial tribunal, defence as well as the right to be tried without undue delay. See Resolution 217 A (III). United Nations Declaration of Human Right, 1948 < <https://www.jus.uio.no/lm/en/pdf/un.universal.declaration.of.human.rights.1948.portrait.letter.pdf>> accessed 28 March, 2020.

⁴⁰ Resolution 2200 A (XXI), annex, International Covenant on Civil and Political Right, 1966 < <https://treaties.un.org/doc/publication/unts/volume%20999/volume-999-i-14668-english.pdf>> accessed 28 March, 2020. Article 14 states that everyone charged with a criminal offence shall be entitled to be tried in his or her presence and to defend himself or herself in person or through legal assistance of his or her own or assigned to him

Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment,⁴² United Nations Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment,⁴³ the United Nations Standard Minimum Rules for Non-Custodial Measures (The Tokyo Rules).⁴⁴ These legal frameworks codify rules and guidelines that regulate the treatment of incarcerated persons and provide for non-custodial measures. The extent to which the NCS Act complies with these frameworks is considered as follows:

3.1 International Standards against Torture, Cruel, inhumane treatment or Punishment

These standards are provided under article 5 of the UDHR,⁴⁵ article 7 of the ICCPR⁴⁶ as well as article 16(1) of the Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment,⁴⁷ Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment⁴⁸ and particularly Rule 1 of the Mandela Rules. By these, all prisoners shall be treated with respect due to their inherent dignity and value as human beings. The Mandela Rules particularly protects and prohibits any prisoner from being subjected to torture and other cruel, inhumane or degrading treatment or punishment. It further requires states to ensure the safety and security of prisoners, staff, service providers and visitors at all times.

Complying with these standards the NCS Act frowns against torture, inhumane and degrading treatment against inmates and provides preventive measures in section 14(8)(a)-(c).

3.2 International Standard on Documentation of Inmates

Rules 6-10 of Mandela Rule provides for prisoner file management. It requires a standardized prisoner file management system in electronic database records or registration book for prisons. While it requires a mandatory valid commitment order before incarceration, it also provides for

or her where the interests of justice so require, in a fair and public hearing by a competent, independent and impartial tribunal established by law.

⁴¹ Resolution 663 C (XXIV) of 31 July 1957, enables untried prisoner, for the purposes of his or her defence, shall be allowed to receive visits from his or her legal adviser.

⁴² Resolution 43/173, annex. Principle 11 states that a detained person shall have the right to defend himself or herself or to be assisted by counsel as prescribed by law.

⁴³ General Assembly Resolution 39/46 of 10 December, 1984 <

<https://www.ohchr.org/Documents/ProfessionalInterest/cat.pdf>> accessed January 2, 2020.

⁴⁴ United Nations Standard Minimum Rules for Non-Custodial Measures (The Tokyo Rules) adopted by General Assembly resolution 45/110 of 14 December 1990 < <https://www.un.org/ruleoflaw/files/UNITED~2.PDF>> accessed 2 January, 2020. It provides alternatives to incarceration.

Others are African Charter on Human and Peoples Right etc.

⁴⁵ It provides that no one shall be subjected to torture or cruel, inhumane, degrading treatment or punishment.

⁴⁶ Also re-iterated the provisions under the UDHR that no one shall be subjected to torture or to cruel, inhumane or degrading treatment or punishment.

⁴⁷ It provides that each state party shall undertake to prevent in any territory under its jurisdiction acts of cruel, inhumane or degrading treatment or punishment ...

⁴⁸ General Assembly Resolution 43/173 (9 December 1988) <

https://www.tjsl.edu/slomansonb/10.3_DetentionImprisonment.pdf> accessed 2 April, 2020. See Principle 1 and 6

mandatory information to be entered in the prisoner's file management system upon admission⁴⁹ and during incarceration.⁵⁰ It requires confidentiality and states conditions for accessing these information.⁵¹

Complying with these provisions, section 13 of the NCS Act, provides for documentation and confidentiality of information of admitted inmates in the centralized data base management system of the Correctional Service. Furthermore, the Act requires the Superintendent to document details of inmates rejected on the basis of severe body injury, mental instability or under age.⁵²

3.3 International Standards for the Categorization of Inmates in Separate Institutions or Parts of Institutions

Rule 11 of the Mandela Rules provides for categorization of prisoners. By this rule, consideration should be given to the sex, age, criminal record, legal reason for detention and the necessities of an inmate's treatment in keeping them in separate institutions or part of institutions. As such, male and female inmates are to be detained as far as possible in separate institutions or separate place for women in an institution that receives both men and women. More so, untried prisoners are to be separated from convicted prisoners, persons imprisoned for debt and other civil prisoners are to be separated from persons imprisoned for criminal offence and young prisoners are to be separated from adults.⁵³ These standards are also reflected under Rules 40 and 41 of Bangkok Rules.⁵⁴

Laudably the NCS Act reflects some of these best practices. Section 34(1) of the Act mandates the provision of separate facilities for female inmates in all states of the federation. Furthermore, section 35(1)-(3) of the Act requires the Correctional Service to establish male and female borstal training institutions for juvenile in states of the federation and prohibits keeping young offenders in adult's custodial facilities. However, the Act did not provide for the separation of unconvicted inmates from convicted ones as well as debtors and civil prisoners from persons incarcerated for offences.

⁴⁹ Such information are: Information about the inmate's identity and gender, reason for commitment, date, place and time of arrest; day and date of admission, release as well as date of transfer; any complaint of injuries as well as complaint of prior ill-treatment; inventory of inmate's personal property; name of family member including children's age, custody and location as well as emergency contact of next of kin. See Rule 7 of Mandela Rule.

⁵⁰ Such information are: information on judicial process, date of court hearing and legal representation; initial assessment and classification report; information relating to behavior and discipline; request and complaints including allegation of torture or other cruel, inhuman and degrading treatment or punishment, information on disciplinary sanctions and information on the circumstances and causes of any injuries or death and, in the cause of the later, the destination of the remains. See Rule 8 of Mandela Rules.

⁵¹ Rule 9 of Mandela Rules.

⁵² Correctional Services Act, 2019 s 13(4).

⁵³ Rule 11 (a)-(d) of Mandela Rule.

⁵⁴ It requires prison administrators to develop and implement classification methods addressing gender-specific needs and circumstances of women prisoners to ensure appropriate individualized planning and implementation towards their early rehabilitation, treatment and re-integration into society. Rule 41 also provides for gender-sensitive risk assessment and classification of prisoners which shall take into account things provided under Rule 41(a)-(d).

3.4 International Standard for the provision of Prenatal, Postnatal and Child Care Facilities in Female Custodial Centres.

Rule 28 of Mandela Rules requires States to provide special accommodation for necessary prenatal and post-natal treatment. Also, arrangements are to be made where practicable for children to be born in hospital outside the prison. Bangkok Rules also provides for pregnant and breastfeeding women prisoners⁵⁵ and encourages breastfeeding unless for specific health reasons. Furthermore, Rule 42(2) requires regime in a prison to be flexible enough to respond to needs of pregnant women, nursing mothers and children.⁵⁶ The prison regime should also provide child care facilities or arrangement so as to enable female inmates participate in prison activities.⁵⁷

Complying with these standards, section 34(2) - (4) of the Act provides for medical and nutritional needs of female inmates which include pregnant women and nursing mothers. More so, the Act made provision for babies in custody, crèche, sanitary provision as well as prenatal and antenatal health care.⁵⁸

3.5 International Standard for the Protection of Female Inmates from Sexual Abuse and Harassment

Rule 31 of Bangkok Rules requires states to develop and implements clear policies and regulations on the conduct of prison staff aimed at providing maximum protection for women prisoners from any gender based physical or verbal violence, abuse and sexual harassment. Complying with this provision, the NCS Act seeks to protect female inmates against sexual abuse. It requires an investigation to be conducted including a DNA Analysis to determine the culpability of an inmate's pregnancy and the prosecution of such person.⁵⁹ Though the Act seeks to protect female inmates from unwanted pregnancy while incarcerated, it however did not address other forms of sexual harassment such as rape which is prevalent in custodial centres.

3.6 International Standard Protecting Children in Prisons

Rule 49-52 of Bangkok Rules provides best practices on this. Rule 49 requires states to consider a child's interest in allowing him/her stay with an incarcerated mother. Rule 50 advocates for maximum opportunities and adequate bonding time for women prisoners incarcerated with their children.

More so, states are required to provide health care services and monitor the development of children living with others in prison. They are to ensure that a good upbringing environment similar to children outside incarceration is provided.⁶⁰ In addition, Rule 52 provides that the decision as to when a child is to be separated from his/her mother shall be based on individual assessment and the best interest of the child within the scope of relevant national laws. It also requires states to take cognizance of the child's sensitivity, provide alternative care arrangement,

⁵⁵ See Rule 48 of Bangkok Rule. It requires pregnant or breastfeeding women prisoners to receive advice on their health and diet under a programme to be drawn up and monitored by a qualified health practitioner. Adequate food and a healthy environment should be provided as well as opportunities for regular exercise.

⁵⁶ Rule 29(1)(a) of Mandela rules also reflects this provision.

⁵⁷ *Ibid.*

⁵⁸ *Ibid.*

⁵⁹ Correctional Services Act, 2019 s 34(5).

⁶⁰ Rule 51(1) & (2) of Bangkok Rules.

and provide adequate opportunity and facility for mother and child bonding before taking the child away from the mother.⁶¹ Mandela Rules also made some protective provision for children born in prisons similar to Bangkok Rules.⁶²

The NCS Act did not comply fully with best practices in this regard. However, section 34(6) of the Act provides for the removal of babies beyond 18 months from custodial facilities. It requires them to be handed over to the families of the inmates or designated welfare centres in the absence of families.

3.7 International Standard on the Provision of Health Care Services

Rules 24-35 of Mandela Rules provides Health Care Services. Rule 25 requires every prison to have in place health care service responsible for evaluating, promoting and improving the physical and mental health of prisoners. Furthermore, Mandela Rules requires the prison's healthcare to have sufficient qualified personnel acting in full clinical independence with expertise in psychology and psychiatry. Rule 27 provides for prompt medical attention for prisoners in urgent cases and requires prisoners who need specialized treatment or surgery to be transferred to a civil hospital or specialized institutions. Bangkok Rules also provides for health care services as seen under Rules 6-18.⁶³

Complying with some of these rules, sections 23 and 24 of the NCS Act requires the provision of healthcare services in custodial centre. The Act mandates the Correctional Service to establish a health centre and deploy at least one medical doctor in all main custodial centres.⁶⁴ A health practitioner is mandated to inspect the custodial centre daily and advise the Superintendent, State Controller of Correctional Service or Controller –General on things provided under section 23 (2)(a)-(d). These relate to the quality and quantity of food, hygiene, sanitation, lighting, ventilation and cleanliness of inmates' clothing and bedding. Also, in compliance with international best practices, section 25 of the Act provides for the removal of sick inmates to the hospital and provides precautionary measures to guide against their escape.

3.8 International Standards on Accommodation of Inmates

Rule 13 of Mandela Rules requires all accommodation provided for prisoners to meet requirements of health taking cognizance of the climatic condition, cubic content of air, minimum floor space, lighting, heating and ventilation. Rule 14 requires the windows to be large enough to enable the prisoners to read or work by natural light and allow fresh air whether or not there is artificial ventilation. Rule 5 of Bangkok rule requires accommodation for female prisoners to have facilities and materials required to meet their specific hygiene needs including sanitary towels, free and regular running water.

⁶¹ See Rule 52(1), (2) and (3).

⁶² Rule 28 of Mandela Rules requires nations to make arrangement where practicable for children to be born in a hospital outside the prison. If a child is born in prison, this fact shall not be mentioned in the birth certificate. Also Rule 29 provides that the decision to allow a child to stay with his or her parent in prison shall be based on the interests of the child concerned. The Rule also requires states to provide child specific health care services including health screenings, as well as monitor the development of children by specialist. The Rule further provides that children living with parent shall never be treated as prisoners.

⁶³ It provides for medical screening upon entry for women prisoners. It also provides gender specific health care, mental health care, HIV prevention, treatment, care and support, provision of substance abuse programmes, suicide and self-harm prevention and preventive health-care services for women prisoners.

⁶⁴ Correctional Services Act, 2019 s 23(4).

In compliance, section 9(1)(b) of the NCS Act requires every building declared as a custodial centre to have sleeping accommodation that meet all requirements of health with consideration given to adequate floor space, water and sanitation amenities, lighting and ventilation.

3.9 International Standard on Searches

Rule 50-52 of Mandela Rules address searches of Prisoners and Cells. It requires searches to be conducted in a respectful manner inherent to human dignity and privacy. It prohibits using searches to harass, intimidate or unnecessarily intrude a prisoner's privacy and requires intrusive searches including strip and body cavity searches to be carried out only if absolutely necessary. It encourages Prison administrations to develop and use appropriate alternatives to intrusive searches and where there is need for intrusive searches, it should be conducted in private by trained staff of the same sex as the prisoner. It also provides for body cavity searches and requires it to be conducted only by qualified health care professionals. Rule 19 of Bangkok Rule makes similar provision on searching female inmates and children.

Perusing the NCS Act, there is no provision on searching inmates. However, the Prison Regulations of 1955⁶⁵ and Nigerian Prisons Service Standing Orders (Revised Edition), 2011⁶⁶ address searches of inmates. Section 3 of the Prison Regulations provides that prisoners on admission shall be searched by persons of their own sex, apart from other prisoners. Similarly, Nigerian Prisons Service Standing Orders (Revised Edition), 2011⁶⁷ requires two officers to be present during searches of prisoners.⁶⁸ It prohibits carrying out search in the presence of another prisoner and mandates female prisoners to be searched by female officials only.⁶⁹ Other than these provisions on searches, other standards are not reflected under our laws.

3.10 International Standard on the provision of vocational training and Skills for Inmates

Noting that incarceration should be aimed at reducing recidivism and reintegration of an inmate in a society, Rule 4(2) of Mandela Rules requires prison administration to offer education, vocational training, work, other forms of assistance which is remedial, moral, health based, spiritual based and sports- based.

⁶⁵ Prisons Regulation, 1955 < <http://policehumanrightsresources.org/wp-content/uploads/2016/03/Prisons-Act-Nigeria.pdf>> accessed April 4, 2020. Note that the Second Schedule of the NCS Act saves the Prisons Regulation, 1955, (a regulation made under the repealed Prison Act) as seen in section 45 of the NCS Act.

⁶⁵ *Ibid.*

⁶⁶ Nigerian Prisons Service Standing Orders (Revised Edition), 2011 < <http://www.prawa.org/wp-content/uploads/2013/01/NIGERIAN-PRISONS-STANDING-ORDER.pdf>> accessed April 4, 2020. Also note that the Second Schedule of the NCS Act saves the Nigerian Prisons Service Standing Orders (Revised Edition), 2011.

⁶⁷ *Ibid.*

⁶⁸ Nigerian Prisons Service Standing Orders (Revised Edition) 2011 s 17.

⁶⁹ *Ibid.* s 17 (b) provides for the search of prisoner at a time he/she is deprived of his civilian clothes prior to taking his/her bath. The prisoner is required to be searched in the presence of two officers out of sight of other prisoners. Also the cloth of the civilian should be searched thoroughly before storing.

Laudably this standard is reflected in section 14 of the NCS Act which requires the Correctional Service to provide opportunities for education, vocational training as well as training in modern farming technique and animal husbandry for inmates. It further requires designated custodial centres to establish and run industrial centres equipped with modern facilities for enhancement of vocational skill training for inmates.

3.11 International Standard on Non-Custodial Sentencing

United Nations Standard Minimum Rules for Non-Custodial Measures (The Tokyo Rules) provides exhaustive standards on non-custodial measures. Examples of such measures are: admonition, reprimand and warning, conditional discharge, status penalties, economic sanctions and monetary penalties such as fines and day-fines, confiscation or expropriation order, restitution, compensation order, suspended or deferred sentence, probation and judicial supervision, community service order, referral to an attendance centre, house arrest, furlough and half-ways houses, work or education release, parole, remission, pardon etc.⁷⁰

Furthermore, the Tokyo rules makes provision for the supervision, duration, conditions, treatment process, discipline and breach of condition of these non-custodial measures. Other than Tokyo Rules, the Bangkok Rules⁷¹ provides similar non-custodial measures for women and juvenile female offenders as well as factors judicial authorities should consider in administering non-custodial measures.

The NCS Act dedicates part II of the Act to the Nigerian Non-Custodial Service and its administration. In line with ACJA, 2015, the NCS Act provides some non-custodial measures such as: community service, probation, parole, restorative justice measures and any other non-custodial measure assigned to the Correctional Service by a court of competent jurisdiction.⁷² Laudably, the Act accords to international standards by providing non-custodial measures, however these measures are yet to gain full integration into the Nigerian criminal justice system.

4 Complementary Analysis of the Nigerian Correctional Services Act, 2019 with Kenya's Prison Act and Legislations on Non-Custodial Sentencing

This aspect considers Prison Act,⁷³ the principal legal frame work for incarcerated persons in Kenya. It also considers some legislation on non-custodial sentences and its application in Kenya. The rationale for choosing this country is premised on the fact that it is an African country which borrowed its prison establishment and practices from British colonial penal philosophy that emphasized retribution and incapacitation of offenders with cruel and inhumane penalties similar with Nigeria. However, in line with international best practices particularly Mandela Rules, Kenya criminal justice system places emphasis on rehabilitation of inmates.

⁷⁰ Rule 8 and 9 of Tokyo Rules provides for these non-custodial measures as sentencing disposition and post sentencing disposition.

⁷¹ Rules 57-65.

⁷² Nigerian Correctional Services Act, 2019 s 37(1) These measures can be administered at pre-trial, trial, during imprisonment and post-imprisonment. E.g. Restorative Justice Measures provided by section 43(3) of the Nigerian Correctional Services Act, 2019.

⁷³ Prison Act Cap No 90, (Revised Edition 2017) <

<http://kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=CAP.%2090>> accessed 7 April, 2020.

Areas of similarities and dissimilarities of the Kenyan Prison service⁷⁴ with the NCS Act are given consideration.

To start with, both the Kenyan Prison Act as well as the NCS Act classifies prisons and prisoners.⁷⁵ Also, both provisions empower the minister to declare any building, enclosure or place as a prison (in Kenya) or as a custodial centre (in Nigeria) by order/notice.⁷⁶ Both provisions also establish temporary prisons (under the Kenyan Prison Act) and temporary detention (under the NCS Act).⁷⁷

More so, both legislations make provision for a medical officer/ health practitioner at every health centre that shall be responsible for the health and examination of inmates at all times.⁷⁸ Furthermore, both legislations require female inmates to be kept in separate facilities.⁷⁹ As it relates to young offenders, the NCS Act provides for male and female borstal training institution for juvenile and young offenders and the Kenyan Prison Act provides the Youth Corrective Training Centres.⁸⁰ In Kenya, the Borstal Institution Act, Cap No 92⁸¹ provides legal backing for the establishment, committal and administration of borstal institution. In Nigeria, the Children and Young Persons Act,⁸² as well as NCS Act⁸³ provide legal backing for the establishment of borstal institutions in all the states of the federation.

Also, both legislations take cognizance of the mental health of inmates, provide for the removal of sick inmates and persons of unsound mind.⁸⁴ Both legislations also provide security measures for prisoners/inmates in prison/custodial centres.⁸⁵ In addition, both legislations provide for prisoners' labour,⁸⁶ record, confidentiality and the maintenance of an integrated biometric.⁸⁷ Both legislations make provision for the release of inmates to parole and⁸⁸ probation⁸⁹ as non-custodial measures.

⁷⁴ The Kenyan Prison service is regulated by the Prison Service Act Cap. 90, the Borstal Act Cap. 92 as well as Community Service Orders (CSO) under the Department of Probation and Aftercare Services. See P Kimani, 'Administration of the Kenya Prisons Organization' No 98 *Resource Material Series*, 2006, p. 84.

⁷⁵ Nigerian Correctional Services Act, 2019 and Kenyan Prison Act ss 9 and 24 respectively.

⁷⁶ Kenya Prison Act s 24 and Nigerian Correctional Services Act, 2019 s 9.

⁷⁷ ss 25 and 9(2)(b) of Kenyan Prison Act and Nigerian Correctional Services Act, 2019 respectively.

⁷⁸ Kenyan Prison Act and the Nigerian Correctional Services Act, 2019 ss 29 and 23(4).

⁷⁹ Kenyan Prison Act s 36 and Nigerian Correctional Services Act, 2019 s 34(1).

⁸⁰ See Nigerian Correctional Services Act, 2019, s 35(2) of the and the Kenyan Prison Act s 66 .

⁸¹ Borstal Institution Act, Cap No 92 (Revised 2012) <

<http://kenyalaw.org:8181/exist/kenyalex/actview.xml?actid=CAP.%2092>> accessed 9 April, 2020.

⁸² ss 249(1)(d) and 250(4) of the Child Right Act, 2003 < <https://www.refworld.org/pdfid/5568201f4.pdf>> accessed 9 April, 2020.

⁸³ Nigerian Correctional Services Act, 2019 s 35(2).

⁸⁴ Kenyan Prison Act, s 38 of the and the NCS Act, 2019, s 24.

⁸⁵ The Nigerian Correctional Services Act, 2019 ss 24 and 25 and the Kenyan Prison Act ss 38, 39 and 40.

⁸⁶ Nigerian Correctional Services Act, 2019 s 15.

⁸⁷ Nigerian Correctional Services Act, 2019 s 13.and The Kenyan Prison Act s 70A(2) .

⁸⁸ Kenyan Prison Act s 49 and The Nigerian Correctional Services Act, 2019 ss 37(1)(c) and 40(1).

⁸⁹ The Nigerian Correctional Services Act, 2019 ss 31(1)(b) and 41. It should be noted that other than these measures there are: community service, after care service, fines, plea bargaining, compensation and forfeiture regulated in Kenya by legal frame works such as: Community Services Order Act (Revised Edition) 2018, Probation

Also, both legislations prohibit and criminalize certain actions such as: introduction of some articles in custodial centres,⁹⁰ possession of articles supplied to a correctional facility or correctional officer for discharge of duty without satisfactory explanation,⁹¹ inciting and abetting a prison officer's desertion of duty, mutiny and sedition⁹² as well as harboring prisoners⁹³

Having seen the similarities in these provisions, consideration is given to notable dissimilarities between the Kenyan Prison Act and the NCS Act. To start with, as it relates to the duration an infant can remain with his/her mother in prison/custodial centre, while Kenya permits an infant to remain with the mother until he/ she turns 4, in Nigeria an infant is permitted to remain with the mother for 18months.⁹⁴

While the Kenyan Prison Act provides a lee way for the custody of persons under arrest,⁹⁵ the NCS Act appalls it. Owing to the high number of persons awaiting trial, the NCS Act dissuades the detention of persons awaiting trial in a bid to encourage speedy trial.⁹⁶ Furthermore, while the Kenyan Prison Act provides for prisoners as witnesses,⁹⁷ there is no equivalent provision under the NCS Act but under the Nigerian Prison Service Standing Order, 2011 which regulates situations where inmates are called upon to give evidence in court.⁹⁸

In addition, as it relates to the classification of prisoners, the Kenyan Prison Act provides for special category of prisoners known as prisoners detained for terrorist activities and requires them to be kept apart.⁹⁹ There is no similar provision under the NCS Act. Also, the Kenyan Prison Act made provision for removal of leper prisoners to leper settlement;¹⁰⁰ this has no similar provision under the NCS Act.

More so, the Kenyan Prison Act in section 44 provides for employment of unconvicted prisoners. This has no comparable provision under the NCS Act. However, the Nigerian Prison Service Standing Order, 2011 makes provision for employment of prisoners¹⁰¹

Furthermore, the Kenyan Prison Act provides for the maintenance of certain prisoners from private sources.¹⁰² Though not provided under the NCS Act this is reflected under the

of Offenders Act, Cap 64, 2012, Criminal Procedure Code, Cap 75, Laws of Kenya, Borstal Institutions Act, Cap 92 Laws of Kenya, 2009, Victim Protection Act No 17 of 2014 etc.

⁹⁰ Nigerian Correctional Services Act, 2019 s 29(1)(a) and The Kenyan Prison Act s 59.

⁹¹ The Nigerian Correctional Services Act, 2019 s 29(1)(d) and The Kenyan Prison Act s 62.

⁹² The Nigerian Correctional Services Act, 2019 s 29 (1) (e) and (f) and Kenyan Prison Act s 63.

⁹³ The Nigerian Correctional Services Act, 2019 s 29 (1)(g) and The Kenyan Prison Act s 64.

⁹⁴ The Kenyan Prison Act s 30(4) and The Nigerian Correctional Services Act, 2019 s 34(6).

⁹⁵ The Kenyan Prison Act s 32.

⁹⁶ The Nigerian Correctional Services Act, 2019 s 18. However, the Nigerian Prison Service Standing Order, 2011 provides elaborately for awaiting trial inmates in ss 236, 238, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 251, 255, 256, 257, 290, 409.

⁹⁷ The Kenyan Prison Act s 33.

⁹⁸ The Nigerian Prison Service Standing Order, 2011 s 142.

⁹⁹ The Kenyan Prison Act s 36A.

¹⁰⁰ The Kenyan Prison Act s 40.

¹⁰¹ E.g. The Nigerian Prison Service Standing Order provides for Employment of Prisoners in Kitchen s 284.

¹⁰² The Kenyan Prison Act s 35.

Nigerian Prison Service Standing Order, 2011 which provides for self-feeding of unconvicted prisoners in prison.¹⁰³

Conclusively, there are other provisions reflected under the Kenyan Prison Act with no equivalent provision under the NCS Act, but under the Nigerian Prison Service Standing Order, 2011. Notable provisions include: Remission of sentence¹⁰⁴ and punishment.¹⁰⁵ It is observed that before a prisoner is punished under the Kenyan Prison Act, he will be required to put up a defence and examined medically before his defence.¹⁰⁶ This however has no equivalent provision under the NCS Act and the Nigerian Prison Services Standing Order, 2011.

5 Gaps in the Nigerian Correctional Services Act, 2019

The NCS Act introduces transformative innovations which if properly implemented will improve correction and reintegration of convicted persons and also breathe life into the provisions of the Administration of Criminal Justice Act, 2015 on non-custodial sentencing.¹⁰⁷ However, there are noticeable gaps owing to manifest flaws of the Act.

To start with, vivid gap is seen in section 12(8) of the Act. It empowers the State Controller of Correctional Service in conjunction with the Correctional Centre Superintendent to reject intakes of convicted persons where it exceeds the capacity of a Correctional Centre but did not state what/ or where these rejected convicts should be kept. This conspicuous gap has agitated some reaction from writers who wonder if such convicts will be released into the society particularly where they committed heinous crimes.¹⁰⁸

More so, while it is laudable that section 34(4) of the Act provides for prosecution of an officer who impregnates a female inmate, it did not address the age long issue of sexual assault and rape of female inmates in custodial centres. Commenting on this issue, the UNODC noted that female inmates are susceptible to sexual abuse and humiliation by law enforcement officials, prison officers and some male counterpart in prisons.¹⁰⁹ Abuses of this nature range from humiliation such as (verbal abuse, improper touching during pat-down searches, frequent and unnecessary searching and spying on prisoners during showers and in living areas) rape which can be in form of forcing female inmates to render some form of sexual services in exchange for access to goods and privileges or enjoy basic human rights.¹¹⁰ In a bid to address these issues,

¹⁰³The Nigerian Prison Service Standing Order, 2011 s 237.

¹⁰⁴ Provided under s 46 of the Kenyan Prison Act and s 84-93 of the Nigerian Prison Service Standing Order, 2011.

¹⁰⁵ The Kenyan Prison Act s 52 and The Nigerian Prison Service Standing Order, 2011 ss 162, 189, 349, 358, 359, 377.

¹⁰⁶ The Kenyan Prison Act s 53 and 54

¹⁰⁷U Edate ; ‘The Metamorphosis from the Nigerian Prison Service to Nigerian Correctional Service: Its Implication and the Way Forward’ *International Journal of Management, Social Sciences, Peace and Conflict Studies* (2019) vol.2(3) < <https://www.ijmsspcs.com/index.php/IJMSSPCS/article/download/46/48>> accessed 17 April, 2020.

¹⁰⁸ *Ibid*; The Nation (n 5).

¹⁰⁹ UNODC, *Handbook on Women and Imprisonment* (2nd edn, Criminal Justice Handbook Series 2014) < https://www.unodc.org/documents/justice-and-prison-reform/women_and_imprisonment_-_2nd_edition.pdf> accessed 17 April, 2020.

¹¹⁰ *Ibid*

there is need for the Act to provide stringent sanctions on rape and other sexual abuse of female inmates.

In addition, the requirement for searches of prisoners and cells provided under Rules 50-52 of Mandela Rules as well as Rule 19 of Bangkok Rules is not reflected under the NCS Act. In a bid to comply with international standards, the Act should reflect best practices in this area.

Laudable provisions under section 9(1)(b) of the NCS Act which conforms with international best practices on the accommodation of inmates is unachievable in the light of current dilapidated and archaic state of most correctional centres in Nigeria. Writers have expressed skepticism on the effectiveness of this provision in the absence of new structures that complies with the provision of the Act.¹¹¹

Furthermore, section 34(6) of the Act which provides for the withdrawal of a child less than 2 years i.e 18 months from an incarcerated mother raises some concerns. This is a reproduction of the repealed Prison Act which might not be in the best interest of a child. This paper argues that a period less than 2 years is too short to be in the best interest of a child. On this, some clue can be borrowed from Kenya which provides a period of 4 years before a child can be separated from his/her incarcerated mother except alternative arrangement for the proper care of the child outside prison is made earlier than 4 years. There is need to revisit the provision of the Act to provide a longer period of time for a child to remain with the mother.

In addition, there is also skepticism on the effective application of non-custodial measures in Nigeria owing to poor attitude of record keeping and tracing of absconding persons.¹¹² This concern was not addressed by the NCS Act, 2019. More so, the lethargic judicial attitude in applying non-custodial measures introduced to the Nigerian criminal justice system by ACJA, 2015 and emphasized by the NCS Act is worrisome. This is different from Kenya where there is robust application of non-custodial sentences as seen in litany of cases such as: *Republic v ISO*,¹¹³ *Republic v F L*,¹¹⁴ *Republic v Emily Jepyator Ngetich*,¹¹⁵ *Republic v Florence Chelagat*,¹¹⁶ *Salimini Amir v Republic*¹¹⁷ etc.

¹¹¹ U Edefe (n 107).

¹¹² *Ibid.*

¹¹³ (2018) EKLK. The court convicted Iso a minor for the offence of murder and sentenced him to serve 3 years' probation with mandatory terms to be observed. Failure in observing these mandatory terms shall lead to the reversal of the non-custodial sentence.

¹¹⁴ (2017) EKLK. The court convicted the accused for the offence of manslaughter for killing her son and one other. Considering the circumstance of the case, the fact that the accused has been of good behavior but for the unfortunate incident and also bearing in mind the care giving responsibility of the accused to her remaining surviving 5 children and her husband, the court sentenced the accused to three years' probation with the condition that the family together with the probation officer identifies a professional counselor to walk them through the journey of healing and restoration.

¹¹⁵ (2017) EKLK. The court sentenced the accused who was charged with manslaughter to probation for 1 year on the basis that she had been in custody for 3 years awaiting trial, has care giving responsibility as a mother of three and has received the forgiveness of the deceased family and neighbors.

¹¹⁶ (2017) EKLK. The court reversed the sentence of 3 years imprisonment imposed on the appellant for the offence of child stealing contrary to 174(1)(B) of the Penal Code to the sentence of community service bearing in mind the circumstances of the case and the fact that the appellant was a first offender and has served 2 years of the jail term.

¹¹⁷ (2017) EKLK. The court stressed the need for the use of non-custodial sentence for minor offences such as being drunk and disorderly contrary to section 53(1) of the Taite Taveta Alcoholic Drink Control and Licensing Act, 2016.

In conclusion, there is also skepticism on the effective implementation of the NCS Act in want of proper funding.¹¹⁸ While the Act contains so many innovative provisions, these can only be actualized if well-funded. Funding is required not only for building new structures but for the development of human resources considering that poor funding of the erstwhile Nigerian Prison Service affected its efficiency.¹¹⁹ Where the Act does not provide for adequate funding of the correctional centres, it will likely suffer the fate of its predecessor i.e. the repealed Prison Act.

6 Conclusion and Recommendations

By enacting the NCS Act, it signifies Nigeria's zeal to depart from a punitive approach of dealing with incarcerated persons to a restorative approach in line with international best practices applicable in other climes. However, the effort should go beyond enacting a new legislation. There is a need to retrain and re-orient custodial centre officials. The reforms will yield little or no result where there is no attitudinal change among custodial centres officials, members of the society and government.

This paper considered the NCS Act stating innovations in the Act. It examined the extent of compliance with international best practices highlighting areas of partial compliance and non-compliance. Complementarily, it considered the provision of the Act with the Kenyan Prison system noting areas of similarities and dissimilarities. Having highlighted gaps and criticism of the NCS Act, this paper recommends the following:

- a. The need to revisit the Act and address the gap in section 12(8) of the Act by providing for the destination of rejected inmates by the State Comptroller of Correctional Centres where the centre has exceeded its capacity.
- b. The need to revisit the Act and address other form of sexual assault such as rape which female inmates are exposed to from their male counterpart and custodial centre officials.
- c. The need for the Act to reflect international best practices on searches of inmates.
- d. The need to build new custodial centres in line with the provisions of the Act that conforms to international best practices and renovates the present dilapidated buildings. This will require immense funding.
- e. The need to revisit the provision of the Act to provide a longer time for children to live with incarcerated mother and the need to provide alternative provision for these children considering their best interest and individual circumstances before withdrawing them from their mother.
- f. The need for guidelines and policies on proper record keeping and adequate tracing. This will encourage the application of non-custodial sentencing in Nigeria.

The court set aside the sentence of 3 months imprisonment imposed on the appellant on the basis that it was too harsh, severe and manifestly excessive and noted that a non-custodial sentence would have been appropriate in a case as this.

¹¹⁸U Edefe (n 107).

¹¹⁹J Onyekachi , 'Problems and Prospects of Administration of Nigerian Prison: Need for Proper Rehabilitation of the Inmates of Nigerian Prisons'(2016)5(4) *Journal of Tourism and Hospitality* < <https://www.longdom.org/open-access/problems-and-prospects-of-administration-of-nigerian-prison-need-forproper-rehabilitation-of-the-inmates-in-nigeria-prisons-2167-0269-1000228.pdf>> accessed 18 April, 2020.

- g. The need for more judicial activism in the application of non-custodial sentences in Nigeria in accordance with the provision of the ACJA, 2015 and NCS Act, 2019.