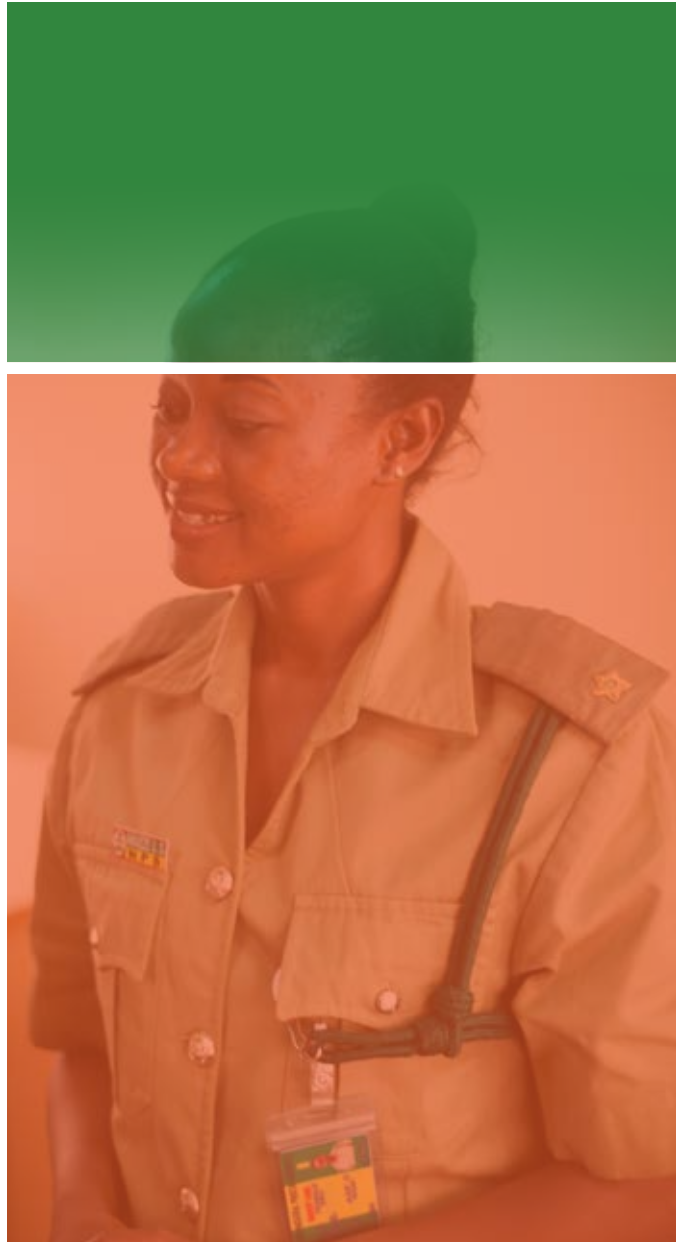

HOW TO GUIDE

RULE OF LAW AND ANTI-CORRUPTION IN NIGERIA

How to Implement Non-Custodial Measures in States in Nigeria



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WHAT IS THE ROLAC 'HOW TO' SERIES?

The guide is part of a series of products developed by ROLAC to communicate lessons learned from projects and pilots, to provide stakeholders with guidance on how to adapt and replicate the initiative in their own context.

The full series can be downloaded from www.justice-security.ng

WHO IS THIS 'HOW TO' GUIDE FOR?

Influencers, state and non-state stakeholders in the public procurement system (public procurement regulatory bodies, procuring entities, public procurement personnel, vendors, and civil society).

“ A non-custodial measure is an alternative to a prison sentence: when offenders are convicted by a court, they may be ordered to pay a fine or do community service. Sometimes, they are placed on probation, meaning they will be supervised for a time by a probation officer. ”

THE PROBLEM

- Courts in Nigeria routinely send offenders to prison, even for petty crimes. When fines are imposed, many poor offenders cannot afford to pay them and end up spending time in prison instead.
- This creates a problem of overcrowding in prisons. Prison facilities and staff are often stretched beyond their ability to cope, which can lead to unrest.
- Persons sent to prison for petty crimes are exposed to, and may be influenced by, more serious offenders in custodial centres, increasing the chances that they also become ‘hardened’ and are more likely to re-offend or commit other crimes.
- The recent Nigerian Correctional Services Act (NCSA) enables courts and correctional services to use non-custodial measures to deal with persons convicted of minor crimes. However, there is a lack of awareness of the system and how it works.
- There is insufficient capacity in the Nigerian Correctional Service (NCoS) and generally among criminal justice actors to administer non-custodial measures.

BACKGROUND

Prison overcrowding, poor quartering conditions, restive inmates, and a string of violent jailbreaks expose the serious inadequacies of Nigeria’s correctional system. The NCoS grapples with a prison population far above capacity and has insufficient resources to manage it. The official (2021) capacity of custodial centres was 50,153 inmates, whereas in 2022 there were 71,383 inmates in custody.

A driver of overcrowding in prisons is the focus on custodial sentences in most criminal legislation, encouraging courts to impose prison sentences, almost to the exclusion of other penal alternatives.

The Administration of Criminal Justice Act (ACJA) 2015 enables courts to use non-custodial punishments. Furthermore, the Nigerian Correctional Service Act 2019 established a directorate within the NCoS to supervise community sentences awarded by the courts. The COVID-19 pandemic led to concerns of outbreaks in the nation’s custodial centres and the NCoS temporarily shut

its doors to new prisoners. This made courts reluctant to impose prison sentences, requiring new approaches including non-custodial measures. However, funding and capacity to implement the system remains inadequate.

WHAT YOU CAN DO

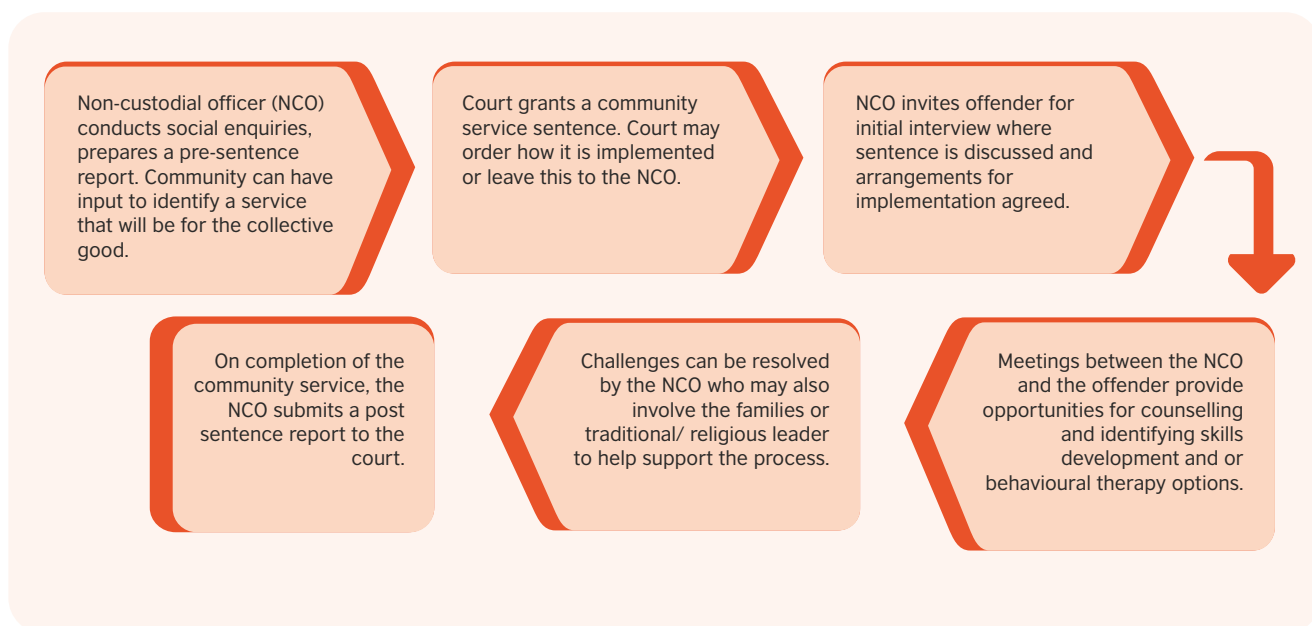
- Promote awareness about non-custodial measures. Urge courts to use alternatives to prison for minor offences.
- Build the capacity of judicial officers and correctional officers to implement non-custodial measures.
- Sensitise state and non-state stakeholders on the implementation of non-custodial measures.
- Support the NCoS by advocating for adequate funding and resources to build its capacity to implement non-custodial measures.
- Identify and promote networks of stakeholders to support the NCoS to implement non-custodial measures by offering themselves as placement agencies and other support services for offenders.



WHAT YOU CAN ACHIEVE

- More courts using non-custodial measures will prevent many offenders from serving time in prison, whilst still serving their debt to society. This alleviates congestion in custodial centres.
- Reduced prison congestion improves the welfare of detainees, as available resources are channelled to fewer inmates and more can access rehabilitative and recreational care. This can reduce inmate unrest due to poor welfare conditions.
- Enhancing NCoS capacity to implement non-custodial measures enhances the professionalism of staff. This can improve staff morale as they worry less about crowding and restiveness and there are fewer convicts to manage.
- Implementing non-custodial measures promotes restorative justice. When an offender undergoes rehabilitation; the victim gets an opportunity to be compensated for the harm suffered, and society benefits from the community service provided by the offender.

The chart below illustrates a typical community service order process.



HOW TO INSTITUTE NON-CUSTODIAL MEASURES

You can follow these steps to institute non-custodial measure in your state

STEP 1 Secure institutional buy-in from implementing agencies and other stakeholders

The State Ministry of Justice (MoJ) should lead the drive to apply non-custodial measures in sentencing. The first step is to engage the leadership of critical agencies (NCoS, the courts, social services, and welfare departments), and non-state actors (CSOs and lawyers' associations) to get their backing. The MoJ should ensure staff are trained on non-custodial sentencing and their role in successfully implementing them.

State MoJ engagement with the NCoS is essential to the successful implementation of non-custodial sentencing practices. Until the courts are satisfied that viable structures exist, they will be reluctant to impose non-custodial sentences. The NCoS has begun the process with the creation of non-custodial departments in its federal and state level structures. NCoS has also developed practical and training resources and trained several hundred correctional officers.

STEP 2 Establish mechanisms for the supervision of offenders who are sentenced to community service

Administrative structures must be in place for the effective supervision of offenders who serve a court-ordered community sentence. The NCoS established a Directorate for Non-Custodial Service to administer non-custodial measures. Deputy Controllers of Corrections have been appointed in all states to coordinate non-custodial services.

States may complement the NCoS non-custodial department by establishing support structures. Lagos has a Community Service Unit (CSU) in the Ministry of Justice. The CSU includes a cohort of community service officers who supervise court-ordered community sentences. The CSU and NCoS have the structure to take up hundreds of court-ordered community service sentences

in Lagos. In Adamawa, Deputy Chief Registrars have been appointed to oversee court-ordered community sentences in the state. However, states must ensure that their structures coordinate with the NCoS in the state.

STEP 3 Develop practical resources

Practical resources and guidance should be adopted or developed to promote consistent practice in managing offenders. These include subsidiary legislation such as standing orders, operational guidance notes, and operational manuals. The resources should outline the procedures for managing community service, probation, parole, and other non-custodial measures. The NCoS has developed many of these resources for its non-custodial officers.

Where state community service mechanisms exist, or where a state implements a diversion mechanism that leads to a community service sentence, practical resources are required for social workers deployed to supervise community corrections. In developing these resources, states may draw inspiration from the resources developed by the NCoS. State judiciaries need sentencing guidelines for when non-custodial sentences are appropriate and how to formulate them.

STEP 4 Build capacity

Once administrative structures, mechanisms, processes, and practical resources are in place, the capacity of correctional officers, designated social workers, and other stakeholders in the state should be developed to use these systems. Capacity building should include training, mentoring, and training of trainers. Training and mentoring provide supervisors of non-custodial measures a sustainable model for developing capacity. Workshops for prosecutors and defence attorneys create awareness of non-custodial measures and incentivise them to engage with them.

STEP 5 Develop and integrate a monitoring and evaluation framework

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A monitoring and evaluation (M&E) framework should be developed to measure the effectiveness of the non-custodial programme. This will measure the efficiency of systems deployed; capacity developed; extent of use of non-custodial measures by the courts; supervision of measures by correctional officers; compliance with standards or operational guides; and the overall impact on criminal justice administration and corrections. A state that deploys a community service unit or a judiciary that establishes a Community Service Centre as required by many Administration of Criminal Justice Laws, should implement an M&E framework under the supervision of a Registrar of the High Court.

STEP 6 Build a network of support

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Implementing non-custodial measures requires work placement opportunities, work tools, mentors, and social workers who can act as supervisors. These roles can be fulfilled by state or non-state actors, such as local government

councils, vocational training and skills centres, public parks, recreational centres, hospitals, and other public institutions. It is advisable to identify multiple stakeholders who can provide work placement opportunities to cater for varying demands. Potential partners may include civil society organisations that provide social services and vocational skills training.

STEP 7 Sustained awareness building

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It is important to increase public awareness about non-custodial measures. Radio discussion programmes help the public and parties in criminal cases to understand how offenders can be punished without imposing a custodial sentence. Increased awareness motivates courts to impose non-custodial punishments like community service orders and promote public acceptance and tolerance for offenders who perform community service in public places. It also provides additional impetus for policy-level engagements that ensure budgetary allocations for implementing non-custodial measures.



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IMPLEMENTING PARTNERS AND THEIR ROLES

Judicial officers (judges, magistrates, court registrars)

By law, sentencing is a judicial function, and only judges and magistrates may impose non-custodial sanctions against offenders. In doing so, they consult with the NCoS (or CSU as in the case of Lagos) and other officers to determine the appropriate non-custodial sentence in each case. This may include considering pre-sentence reports prepared by a non-custodial officer.

The Nigerian Correctional Service

NCoS correctional officers supervise offenders who are serving non-custodial punishments. These officers may develop pre-sentence social enquiry reports that guide judges and magistrates in making sentencing decisions. Correctional officers monitor and maintain records of offenders who are serving non-custodial sanctions, and guide offenders through rehabilitative programmes.

Ministry of Justice

This is the government arm that prosecutes offenders and may be consulted on the punishment to be awarded by a court. The ministry leads on policy development and execution, including on law and order. Lagos state developed proactive policies to promote restorative justice approaches to encourage the use of non-custodial sentences. Both the restorative justice centre and the CSU are located within the ministry, which is also responsible for securing funding.

LESSONS LEARNED

A multi-stakeholder approach is essential.

The effective implementation of non-custodial measures is only possible with the involvement of multiple actors who have a stake in keeping society safe. The judiciary, the correctional service, the police, the community, religious leaders, and psychologists (or other professionals in behavioural change) all need to get involved and be carried along with both the aim and practice of the process.

Courts are keen to impose non-custodial measures when they can be effectively supervised.

Some courts were hesitant to award community service sentences until they became aware that there were correctional officers who would supervise the offenders.

Civil society and other non-state actors

These can support non-custodial measures by offering themselves as work placement agencies for offenders who need a place to serve a court-ordered community service and provide capacity development and rehabilitation programmes that address anti-social behaviour and reduce re-offending.



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Before any roll out, practice resources must be made available, capacity building provided to key personnel, and supervising and oversight structures must be in place. Participating agencies must be made aware of measures in place and all the steps that have been taken to build confidence in them to engage the process immediately. This will sustain momentum.

Sentencing guidelines encourage the use of non-custodial measures.

Sentencing guidelines are essential if there is to be a move away from the usual prison terms and fines. Sentencing guidelines offer a safe path away by guiding courts on when they can apply a non-custodial measure.

Institutional buy-in and ownership is key to the success of non-custodial measures.

Lack of funding severely limits service delivery by a public institution but need not cripple reform where there is institutional buy-in and ownership. The NCoS rose above a lack of funding because it was able to mobilise its staff around a shared vision of reform and transforming correctional services. Whilst change may be encouraged by external actors, the motivation for change must come from within the institution itself.

IMPROVEMENTS

Reduced prison congestion

The welfare of correctional officers and inmates, and the need to decongest prisons underlies the adoption of non-custodial measures in Nigeria. Through non-custodial measures, courts are provided with an alternative to imprisonment. This was illustrated during the COVID-19 pandemic when more than 30,000 offenders were given non-custodial sentences. As more courts utilise non-custodial measures, fewer persons will serve prison terms.

Increased specialisation and professionalism

Correctional officers deployed to non-custodial services underwent specialised training on supervising offenders serving community service sentences, and on the preparation of pre and post sentencing reports. With fewer convicts to deal with, custodial officers can focus on improving inmate management.

Improved sentencing skills

Judicial officers trained on non-custodial measures now use them more widely, reducing the fixation on prison sentences. They are now commissioning pre-sentencing reports that lead to sentences that better fit the offender and the offence.



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From inception to date, 31,963 minor offenders have served sentences through non-custodial measures thus reducing the inmate population. ”

Haliru Nababa, Controller General, NCoS¹

¹ Non-custodial measures began to be supervised during the COVID-19 pandemic in April 2022. The Controller General provided this update on the number of court-ordered community service sentences the NCoS had supervised on January 3, 2021.

EVALUATION

A structured M&E framework is used to monitor achievement of objectives and measure outcomes. Indicators may include frequency of imposition of non-custodial sentences, types of sentences imposed, offender demographics, completed non-custodial sentence data; numbers of pre-sentence and supervision reports produced; and monthly reports by participating agencies.



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Table 1: Example M&E data – Number of non-custodial sentences handed down to convicted offenders in Nigeria as at February 13 2023

	Male	Female	Total
Community Service	94	4	98
Parole	6	0	6
Probation	5	1	6
Restorative Justice	10	3	13
Others	1	0	1
Grand Total	116	8	124

Source: Nigerian Correctional Service Website: https://www.corrections.gov.ng/non_cust_statistics_summary

RESOURCE REQUIREMENTS

Implementing non-custodial measures requires a dedicated budget, however, these need not be excessive. Potential costs include work tools for offenders for carrying out community service orders (e.g., tools for cleaning streets) and training for community service officers to supervise offenders efficiently and provide counselling. Correctional officers will incur expenses to visit and supervise offenders at their work placement centres. Where a state establishes a Community Service Unit as in Lagos, salaries and allowances will need to be paid to community service officers employed to supervise offenders. Some of these costs can be alleviated by assigning social workers from social welfare departments to provide counselling services or to supervise offenders, so the state does not need to hire new hands. The costs of developing practice resources, like manuals and guides, can be minimal if existing resources from other states and the NCoS are adapted.

POLICY DEVELOPMENT

A key instrument is an operational guide. The guide should describe the process from beginning to end, from when a court requests a pre-sentence report, to when a community service order is completed, and a post-sentence report is filed. It explains the correctional structures and their roles. The penal/criminal code laws may need to be reviewed and amended to provide for alternative forms of punishment for certain offences.

In Lagos state, a community service unit was established. Practice guides were developed for community service officers. Guidance was also developed for offenders and how to behave through the process of serving a non-custodial sentence.

At the federal level, guidelines were established such as Standing Orders on Non-Custodial Measures and an Operational Guidance Note was developed. Both have been adopted by the NCoS.

Find out more
Rule of Law and Anti-Corruption
(RoLAC) Programme
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www.justice-security.ng

The Rule of Law and Anti-Corruption (RoLAC) Programme is working to strengthen the application of law and curb corruption. We work at the federal level and in five focal states: Adamawa, Anambra, Edo, Kano and Lagos.

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