

# RE-THINKING IMPRISONMENT AS AN APPROACH TO SENTENCING UNDER THE NIGERIAN AND ETHIOPIAN SYSTEMS: LESSONS FROM THE COVID-19 PANDEMIC

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## Abstract

*Imprisonment of offenders in the prisons or correctional centres as an approach to punishment in criminal justice system especially on petty or minor offences has been questioned across the world with the outbreak of COVID-19 pandemic which calls for social distancing. The questions bother on the sustainability of imprisonment as a preventive/deterrent approach in view of the fact that prisons or correctional centers have become hubs of infections. This is largely due to the fact that in most African countries, there is a high level of congestion, inadequate institutional facilities/services and failure of the courts to effectively discharge their functions. In Nigeria and Ethiopia for example, there are regulatory frameworks which encourage the use of community service sentencing and compulsory labour as alternative approaches to imprisonment. However, the extent of enforcement, effectiveness and adequacy of these regulatory frameworks in Nigeria and Ethiopia largely remain questionable. Using doctrinal and non-doctrinal methods, this paper critically investigates the effectiveness, adequacy and level of enforcement of community service sentencing and compulsory labour as alternative approaches to imprisonment in both jurisdictions with a view to exposing the flaws in both criminal justice regimes. This is inspired by the widely established flaws of imprisonment as a sentencing approach in view of increasing global pandemics such as COVID-19. This paper reveals the current state of criminal justice system in Nigeria and Ethiopia as ineffective. The findings show that imprisonment adopted as major approach to punishment and sentencing has not in any way reduce the rate of crimes. This imprisonment approach has also been revealed to be nonviable as same cannot be sustained in the wake of COVID-19 pandemic. The overall recommendations are calls for strengthening the community service sentencing in Nigeria and reform of the Ethiopian Criminal Code to include community service sentencing as non-custodial measures in reducing prison congestion during this outbreaks of infectious diseases such as COVID-19 pandemic.*

**Keywords:** Imprisonment, Prisons or correctional centres; Criminal Justice System; Community Service Sentencing; Regulatory framework; Offender

## INTRODUCTION

It is generally argued that in any society, crime is inevitable, and every country has a procedure of administering criminal justice. It is therefore clear that one of the cardinal objectives of criminal justice system is to protect the society and ensure that social boundaries that were set out by the law are not violated otherwise, any erring citizen will be punished. Instructively, the major tool used in accomplishing the objectives of criminal

justice system is punishment as the system of many jurisdictions, Nigeria and Ethiopia<sup>1</sup> inclusive are retributive<sup>2</sup> and utilitarian<sup>3</sup> in nature. Thus, punishment is a judicial visitation with a penalty, chastisement or castigation<sup>4</sup> upon the offender as stipulated by the statute creating the offence committed. One of the rationales behind punishment of offenders is to serve as atonement<sup>5</sup> for the offence committed against the victim and the society which is a fundamental way of expressing the society's disapproval of the criminal behaviour of the offender.

The justification of punishment under the utilitarian approach is to cumulatively reform the offender by teaching him/her a lesson and deterring other people of like minds from committing similar offence by way of either isolation or payment of a debt by the offender to the victims and society at large.<sup>6</sup> Thus, the goal of punishment in Nigeria and Ethiopia are diverse and judges or magistrates have discretion to choose the punishment type they believe appropriate in each case especially when the phrases such as "may/or is used in the statute creating the offence rather than 'shall'. In such situation, the judge is enjoined to either sentence the convict to imprisonment, fine or both or community service or compulsory labour etc.

However, in recent times; the evaluation of punishment adopted by way of imprisonment approach in administration of criminal justice globally, Nigeria and Ethiopia inclusive have brought to light the apologetic state of the system as the perception of the criminal justice system in Nigeria and Ethiopia is overwhelmingly bad.<sup>7</sup> Studies have shown that imprisonment of offenders in prisons or correctional centres are more terrible and capable of

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<sup>1</sup> See Article 1, Proclamation No. 414/2004, The Criminal Code of The Federal Democratic Republic of Ethiopia (Hereinafter refers to as "The Criminal Code") which provides for the "object and purpose" of criminal justice system. The nearest provision under the Nigerian criminal justice system is Section 1 of the Administration of Criminal Justice Act (ACJA), 2015.

<sup>2</sup> Although, retributive punishment is not expressly or implicitly listed as an approach to punishment in Ethiopian criminal justice system but most of time, the Ethiopian courts adopt proportionality in their punishment to evolve retributive in nature. See Yilma, Kassahun Molla and Robberts, V. Julian 'Out of Africa: Exploring the Ethiopian Sentencing Guidelines' (Criminal Law Forum, 2019)30:309-337. available at <https://www.doi.org/10.1007/s10609-019-09373-x> accessed March 12, 2020. See also, Article 3 of The Revised Ethiopian Federal Supreme Court Sentencing Guidelines, 2010.

<sup>3</sup> Sandra Jacobs, 'Natural Law, Poetic Justice and the Talionic Formulation' (2013) 14 Political Theology Journal 132. See also, Article 1, Proclamation No. 414/2004, The Criminal Code of The Federal Democratic Republic of Ethiopia (Hereinafter refers to as "The Criminal Code"); Edosa and Fenemigho, 'The Judiciary as an organ of government' (2014) An International Multidisciplinary Journal Ethiopia 92-101. It was emphasised in the study of Yelma and Robberts that "the utilitarian philosophy which focuses on prevention of crime, predominates in the punishment goals in Ethiopia". See Yilma, Kassahun Molla and Robberts, V. Julian 'Out of Africa: Exploring the Ethiopian Sentencing Guidelines' (Criminal Law Forum, 2019)30:309-337. available at <https://www.doi.org/10.1007/s10609-019-09373-x> accessed March 12, 2020.

<sup>4</sup> Hobhouse L. and Westermarck E. The Rationale of punishment: Monographs on Sociology (Vol. 1, University of London press, London, 2001)

<sup>5</sup> Immanuel Kant, 'The Retributive Theory of Punishment', available at <http://www.mrsbernasoni.com/cms/wpcontent/uploads/2014/01/The-Retributive-Theory-of-Punishment.pdf>, assessed on 17 July 2018.

<sup>6</sup> Umar Mohammed and Tata Umar, "Philosophical Analysis of the Theories of Punishment in the Context of Nigerian Educational System", 2015, Journal of Research & Method in Education, Vol.5, pg. 12-17

<sup>7</sup> See Amnesty International Report 2017/18, P.282- 286 available at <https://www.amnesty.org/download/Documents/POL1067002018ENGLISH.PDF>, assessed on 27<sup>th</sup> April 2018.

breeding the wrongs it is established for and meant to correct.<sup>8</sup> Study has also shown that Ethiopian criminal justice system lacks a number of common sanctions such as community service which undoubtedly contributes to high use of imprisonment.<sup>9</sup>

While in Nigeria, there is no scale of imprisonment as judges and magistrates adopt the imprisonment approach more often by relying on many factors such as crime rates, public opinion towards crime, population, economic factors, levels to which illicit drugs are used, penal principles which are in operation for crimes<sup>10</sup> etc. It is therefore not a surprise to have more offenders/inmates in prisons or correctional centres in both jurisdictions. In support of this position is the response of the respondents in an administered questionnaire by the author on the reasons for having congested prisons or correctional centres in Nigeria? Almost all the respondents representing 90% out of the total population of 200 in table 4 below hold the views that “laws governing the administration of criminal justice in Nigeria contribute to congestion of prison as the laws are not explicit in determining which category of offence(s) should warrant incarceration or imprisonment of inmates in the correctional centres”.<sup>11</sup> In another phase of the questionnaire, more than half of the respondents representing 65% in table 4 below expressed their view at two different intervals that “most of the sanctions or punishment in the penal laws either provided for imprisonment, fine or both and many judges use their discretions to adopt the imprisonment approach which leads to congestion of prisons or correctional centres in Nigeria”. Table 1 below has demonstrated types of offences committed in Nigeria to support the above assertion that the highest reported offences fall under imprisonment, fine or both after finding the offender guilty by the court.

Arguably, this paper posits some questions that beg for answers thus: (i) Is there a correlation between the rate of imprisonment and the level of crime in Nigeria and Ethiopia? (ii) What lessons have COVID-19 pandemic unruffled in the relation between the rate of imprisonment and level of crime in Nigeria and Ethiopia? (iii) How has COVID-19 impacted upon the approach to imprisonment in Nigeria and Ethiopia? In answering these questions, this paper examines the effectiveness and adequacy of the regulatory framework on punishment and sentencing. It also examines the extent of enforcement of community service sentencing and compulsory labour as alternative approaches to imprisonment under the Nigerian and Ethiopian criminal justice systems for the purpose of reducing congestion of prisons or correctional centres in terms of increasing global pandemic such as COVID-19. This examination is done with a view to exposing the flaws of imprisonment as a sentencing approach in both jurisdictions. Aside the fact that Nigeria is arguably the giant of Africa zoned within Western Africa Sub-region and Ethiopia from Eastern Africa Sub-region, the comparism is also premise on the fact that out of the African countries apart from South Africa, Ethiopia is arguably the country that has a comprehensive guidelines scheme which offers a workable example of how African countries have addressed the problem of structuring judicial discretion on punishment and sentencing.

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<sup>8</sup>Adeagbo, O. O., Asubiojo, B. O., Obadare, S. O., & Akindojutimi, B. F. (2016). Re-integration of prison inmates in Nigeria: Advocating for library support. *International Information & Library Review*, 48 (3), 169-175. See also Liebling, A. & Maruna, S. (2005). (eds.). *The effects of imprisonment*. Devon: Willan Publishing

<sup>9</sup>See Yilma, Kassahun Molla and Robberts, V. Julian ‘Out of Africa: Exploring the Ethiopian Sentencing Guidelines’ (Criminal Law Forum, 2019)30:309-337. available at <https://www.doi.org/10.1007/s10609-019-09373-x> accessed March 12, 2020.

<sup>10</sup>Berlatsky, N. (2010). *Imprisonment*. Detroit: Gale Cengage Learning. Bottoms, A., Rex, Sue & Robinson, G. (2004). (eds) *Alternative to prison: options for an insecure society*. Devon: Willan Publishing.

<sup>11</sup>Questionnaire administered to respondents in Bauchi, Enugun, Kwara, Lagos, Porthacourt and Kaduna dated 7/02/2019, 15/04/2019, 28/06/2019 and 6/09/2019 respectively.

Nigeria has also come up with new structuring of its criminal justice regimes in 2015 and 2019 respectively with the enactment of the Administration of Criminal Justice Act (ACJA) and the Nigerian Correctional Service Act (NCSA). Both jurisdictions have some similarities and their differences which can be shared by recommending them to both jurisdictions in reforming their criminal justice regimes that will serve as model for other countries in Africa.

**Table 1**  
**Prison Admission by Type of Offences**

N/o	Offences	YEAR 2013	YEAR 2014	YEAR 2015
1	Debt	646	934	152
2	Arson	699	808	227
3	Affray	1,012	864	596
4	Assault	8,982	7,657	3,307
5	Murder	7,172	8,560	2,658
6	Treason	431	358	153
7	Sedition	188	170	2
8	Abduction	1,689	1,349	347
9	Smuggling	636	540	221
10	Immigration	638	564	25
11	Stealing	50,436	46,876	12,991
12	Robbery	13,216	8,505	2,851
13	Armed Robbery	11,858	10,249	4,867
14	Sex Offences	5,797	4,436	1,621
15	Traffic Offences	3,088	1,806	449
16	Currency Offences	2,762	783	252
17	Indian Hemp Offences	4,353	7,060	1,763
18	Contempt of Court Offences	3,911	2,692	1,493
19	Unlawful Possession of Arms	2,716	2,613	1,198
20	Forgery and Altering	1,606	997	398
21	Escaping from Lawful Custody	508	456	52
22	Offences against Native Law and Custom	536	610	52
23	Unlawful Possession of Property	1,508	1,909	653
24	Economic Sabotage	692	91	18
25	Human Trafficking	222	315	40
26	Criminal Lunatic	31	61	32
27	Cultist/Peace	255	179	153
28	Breach of Peace	234	695	359
29	Other Offences	33,074	25,725	8,803
	Total	158,896	135,249	45,733

**Source:** Nigeria Watch Database. Available at <<http://www.nigeriawatch.org/media/html/>> (accessed 17 March 2019). See also Crime Statistics: Reported Offences, 2016. Available at <[www.nigerianstat.gov.ng](http://www.nigerianstat.gov.ng)> (accessed 19 March 2019); National Bureau of Statistics (NBS), 2019

## 1. METHOD

Doctrinal and non-doctrinal methods are adopted for this paper. The former involves critical analysis of the existing regulatory frameworks on criminal justice system in Nigeria and Ethiopia in order to identify the flaws in the area of punishment and sentencing approaches adopted. This paper places reliance on the primary and secondary sources of information. While the primary method involves a descriptive survey to collect data directly from the prisons or correctional centres, Judiciary, Legal Practitioners, Civil societies/NGOs and victims in form of questionnaire<sup>12</sup> in Nigeria. The author considers survey as appropriate because according to Babbie,<sup>13</sup> “survey is an excellent method for measuring the attitude and opinions of people within a large population”. Also, all the key informants or stakeholders were chosen because the author want representation in all the stakeholders in order to increase the authenticity of the study. This was carried out in the cities of Awka in Anambra, Bauchi in Bauchi, Asaba in Delta, Lagos in Lagos, Ilorin in Kwara, and Sokoto in Sokoto States which represent the six geo-political zones of Nigeria. Domestication of ACJA in Anambra, Delta, Kwara and Lagos States with non-domestication of the Act in Bauchi and Sokoto States<sup>14</sup> form one of the bases while the rates of arrest for commission of alleged crimes and imprisonment of inmates are reasonably higher in these States that composed of their zones.<sup>15</sup>

Although, the concept of criminal justice administration involves multiple stakeholders because it is very wide in scope, multi-stage purposive sampling techniques were adopted. Through the support of the research assistance,<sup>16</sup> the author administered questionnaires to 360 key informants or stakeholders in the six geo-political zones as shown in table 2 below. Sixty key informants in each State and a total of 200 key informants returned the questionnaires after careful consideration of ethical issues. The simple size of 200 key informants was considered appropriate for this study by relying on the informed notion of Cozby<sup>17</sup> that “where a population is less than 50,000, then 200 respondents will be appropriate”. This survey is limited to the study conducted in Nigeria although, preference could have been to cover other cities in the Federation. This however could not be done due to finance, space and limitation encountered during this COVID-19 pandemic. The secondary sources adopted are some statistical reports and data garnered from some studies published in Nigerian and Ethiopian criminal justice system websites. This is to enable the study to juxtapose the two jurisdictions and to facilitate the triangulation of the scattered primary and secondary data from the two jurisdictions including the questionnaire. The information derived through the questionnaires administered to the key informants/stakeholders in Nigeria and the reports and statistics garnered from Nigeria and Ethiopia were analysed by

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<sup>12</sup>Questionnaire was administered between February to June 2019 at Ilorin, Bauchi, Sokoto, Awka, Asaba, Delta and Lagos. February to April 2020 during COVID-19 Pandemic period, another questionnaire was administered in those States.

<sup>13</sup>Babbie, E.R. The practice of social research. Belmont. C.A.: Wadsworth Publishing Company, 2010

<sup>14</sup>The States that have enacted ACJIL for their respective States include Cross River, Ekiti, Anambra, Rivers, Enugu, Delta, Kaduna, Lagos, Akwa Ibom, Oyo, Kwara, Ondo and Federal Capital Territory (FCT-Abuja). See International Centre for Investigative Reporting. <<https://www.icirnigeria.org>>(accessed 11 May 2019).

<sup>15</sup> Source: Nigeria Watch Database. Available at <<http://www.nigeriawatch.org/media/html/>> (accessed 17 March 2019). See also Crime Statistics: Reported Offences, 2016. Available at <[www.nigerianstat.gov.ng](http://www.nigerianstat.gov.ng)> (accessed 19 March 2019); National Bureau of Statistics (NBS), 2019

<sup>16</sup> The author is grateful to all the research assistance who made this paper possible during COVID-19 pandemic period.

<sup>17</sup>Cozby, P.C. Research methods in the social sciences. Mountain View, California: Mayfield Publishing Company, 2004

using simple percentage to determine the adequacy or inadequacy of the regulatory framework for punishment and sentencing under the Nigerian and Ethiopian criminal justice system. These analyses serve as the basis of this study's findings and recommendations.

**Table 2**  
**Background Information of Participants**

Participants	Unit of Analysis	Occupation	Location	Age	Return of Questionnaire	Percentage
Key Informants 1-360	Judiciary, prisons or correctional Centres, Legal practitioners, Ministry of Justice, Nigeria Police, NGOs, Accused persons/Defendants, Convicts, Community leaders	Judges, Magistrates, Court Registrars, Prosecutors, prisons or correctional Officers, Legal practice, Federation of Women Lawyers, Nigerian Bar Association, Victims, Ex-convict, Community leaders	Awka (60), Bauchi (60), Asaba (60), Ilorin (60), Sokoto (60), Lagos (60)  Total 360	20≤65	Awka (30), Bauch (32), Asaba (30), Ilorin (42), Sokoto (28), Lagos (38)  Total 200	Awka 15 Bauchi 16 Asaba 15 Ilorin 21 Sokoto 14 Lagos 19  Total 100

## **2. CRITIQUE OF THE REGULATORY FRAMEWORK ON PUNISHMENT AND SENTENCING IN NIGERIAN AND ETHIOPIAN CRIMINAL JUSTICE SYSTEMS**

The development of the administration of criminal justice in Nigeria and Ethiopia was influenced by various developments. In Nigeria, the development ranges from the Constitutions, Nigerian Penal and Criminal Codes (PC and CC), Criminal Procedure Act and Codes (CPA and CPC); Administration of Criminal Justice Act or Law (ACJA or ACJL) and the Nigeria Correctional Service Act (NCSA). In Ethiopian, Criminal Code (CC); Criminal Procedure Code (CPC); Criminal Justice Policy and Supreme Court Sentencing Guidelines and the Federal Prisons Commission Establishment Proclamation were the regulatory frameworks. These regulatory frameworks addressed issues relating to punishment and sentencing approaches for the purpose of determining the sustainability of imprisonment as a preventive or deterrent approach. This section examines the challenges of imprisonment as a sentencing approach in terms of global pandemic such as COVID-19 and use the findings to determine the over all effectiveness of imprisonment as a sentencing method generally. This is done in order to interrogate the establishment of police force, court and prisons or correctional centres in Nigeria and Ethiopia. The purpose is to determine whether or not imprisonment approach achieves the primary objective of criminal justice system. Also, the purpose is to determine whether or not imprisonment approach accelerates the spread of COVID-19 in the prisons or correctional centres as this paper interrogates the challenges of social distancing as a means of limiting the spread of the virus. Instructively, an understanding of crime is crucial in grasping the need for a functional and effective criminal justice system in Nigeria and Ethiopia as no society is unaffected by crime or its consequences. While emphasising the need for an apt criminal justice system that will mitigate and control the effects of crime in both jurisdictions. For the purpose of punishment and sentencing with the court that has power to hear and determine any crime, recourse has to be made to the classification of crimes embedded in the statutes of both jurisdictions.

From the Nigerian perspective, classification of crime is made base on the severity of punishment meted on the offender. Crime may either be a felony,<sup>18</sup> misdemeanor<sup>19</sup> or simple offences.<sup>20</sup> By section 494 of the Administration of Criminal Justice Act (ACJA) in Nigeria, crime may be an indictable or non-indictable offence. That is to say, offences which on conviction attract “a term of imprisonment exceeding two years or imposition of a fine exceeding N400 Naira, not being an offence declared by the law creating it to be punishable in summary conviction” are indictable offences. While non-indictable offence is that offence that “is punishable with imprisonment of less than two years, a fine less than N400 Naira and it is punished by summary conviction”.

In Ethiopian perspective, crime which could take form of accusation<sup>21</sup> or complaint<sup>22</sup> has its punishment classified base on the severity of the crime which is either rigorous or simple imprisonment<sup>23</sup> or base on commission of petty offences.<sup>24</sup> By Article 106 of the Ethiopian Criminal Code, simple imprisonment is “a sentence applicable to crimes of a not very serious nature committed by persons who are not a serious danger to society”. Simple imprisonment may also extend for a period from ten days to three years or in some circumstances to five years imprisonment<sup>25</sup> while conviction for petty offences carries a day deprivation of liberty at minimum or three months deprivation at maximum.<sup>26</sup> While Article 108 of the Code defined rigorous imprisonment as “a sentence applicable only to crimes of a very grave nature committed by criminals who are particularly dangerous to society”. It is imprisonment for a period of one to twenty-five years, or it may be imprisonment for life”.<sup>27</sup> Instructively, from table 1 above and presentation in table 4 below, it becomes clear that 75% of the key informants confirmed that offenders were incarcerated in prisons or correctional centres for all the three classes of crimes by the Nigerian courts. Of particular concern are inmates at the prisons or correctional centres in table 1 that are convicted and imprisoned for offences of “sedition”,<sup>28</sup> “affray”,<sup>29</sup> “contempt of court”,<sup>30</sup> “breach of peace”<sup>31</sup> etc. which carry between three months and two years imprisonment. Table 1 is intandem with UN report where 57% representing 23, 400 people were said to be imprisoned for “minor offences”.<sup>32</sup> A similar situation in Ethiopia was shown in the study of Yilma and Robberts where imprisonment was

<sup>18</sup> According to section 3 of the Nigerian Criminal Code, felony is defined as “any offence which is declared by the law to be a felony, or is punishable without proof of previous conviction, with death or with imprisonment for three years or more”.

<sup>19</sup> By section 3 of the Criminal Code, misdemeanour is defined as “any offence, which is declared by law to be a misdemeanour, or is punishable by imprisonment for not less than six months, but less than three years”.

<sup>20</sup> Simple offences are defined under section 3 of the Criminal Code as “an offence, other than a felony and a misdemeanour is a simple offence”.

<sup>21</sup> See Article 211 of the Ethiopian Criminal Code and Article 11, Criminal Procedure Code of Ethiopia, Proclamation No. 185 of 1961

<sup>22</sup> See Article 212 of the Ethiopian Criminal Code and Article 13, Criminal Procedure Code of Ethiopia, Proclamation No. 185 of 1961.

<sup>23</sup> See Article 89 of the Ethiopian Criminal Code, 2004

<sup>24</sup> See generally Articles 746-775 of the Ethiopian Criminal Code, 2004

<sup>25</sup> See Article 106(1). Ibid

<sup>26</sup> See Articles 746 and 747 of the Ethiopian Criminal Code.

<sup>27</sup> See article 120. Ibid

<sup>28</sup> Offence of Sedition by Section 51 of the Criminal Code (Nigeria) carries two years imprisonment after conviction.

<sup>29</sup> Section 83 of the Nigerian Criminal Code carries one year imprisonment for the offence of “Affray”.

<sup>30</sup> Section 133 of the Criminal Code provides for three months imprisonment for “Contempt of court”.

<sup>31</sup> Section 70 of the Criminal Code provides one year imprisonment for the offence of “breach of peace”.

<sup>32</sup> See United Nations Office on Drugs and Crime (UNODC): “Access to Legal Aid in Criminal Justice Systems in Africa- Survey Report”, 2011. Available online at <https://www.unodc.org> dated 26 March 2022.

said to be the most frequently imposed punishment even in minor crimes.<sup>33</sup> This is evidenced in the case of *FEACC Prosecutor vs. Abinet Takele and others* where the accused was charged for abuse of power and he was convicted and sentenced to one year imprisonment with fine of 2000 Birr.<sup>34</sup>

Interestingly, in Nigeria and Ethiopia; the first regulatory framework for recognition of criminal justice system is the Constitution of the Federal Republic of Nigeria, 1999 (as altered) and the Constitution of the Federal Democratic Republic of Ethiopia, 1994. It is the *grund norm* from which all other legal instruments derive their flavour as it is supreme<sup>35</sup> as such, all criminal proceedings must be conducted in a manner that does not conflict with constitutional provisions. In Nigeria, issues relating to commission of crime, arrest, trial and conviction of the offenders have been adumbrated in many constitutional provisions.

For example section 33(1) of the Nigerian Constitution, 1999 gave an exception to right to life when it states that “...no one shall be deprive intentionally of his life, save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria”<sup>36</sup> Under the Ethiopian Constitution, Article 15 states that “...no person may be deprive of his life except as a punishment for a serious criminal offence determined by law”.<sup>37</sup> These provisions lay proper foundation for the administration of criminal justice from arrest, arraignment, trial and conviction, punishment or sentencing of the offender in both jurisdictions. In the same vein, Section 33(5) of the Nigerian Constitution and Article 17 of the Ethiopian Constitution both provided for right to personal liberty except on a charge of criminal offence.<sup>38</sup>

Surprisingly, there are three major actors that are saddled with the responsibilities of criminal justice system in Nigeria and Ethiopia and these are- the police/Ministry of Justice, the court/judiciary and the prisons or correctional services. In Nigeria, sections 214 and 215 of the 1999 Constitution established the Police Force with the responsibility of “maintaining law and order, prevention and detecting crime, conducting investigations, arrest, bail and search, execution of a warrant of arrest and protection of persons and property”. Similar provisions under the Ethiopian Constitution is Article 51(6) which empowered the Ethiopian Federal government to “establish and administer national defence and public security as well as a federal police force”.<sup>39</sup>

It is therefore argued that government is responsible for prevention, reduction and management of crime in any society as well as apt punishment of offenders whenever there is violation of the law. Unfortunately, commission of crimes or increase in the rate of crimes has an adverse effect on the economy<sup>40</sup> as reoccurrence of crime will results in insecurity,

<sup>33</sup>See Yilma, Kassahun Molla and Robberts, V. Julian ‘Out of Africa: Exploring the Ethiopian Sentencing Guidelines’ (Criminal Law Forum, 2019)30:309-337. available at <https://www.doi.org/10.1007/s10609-019-09373-x> accessed March 12, 2020.

<sup>34</sup> See United Nations Office on Drugs and Crime (UNODC):”Country Review Report of Ethiopia” 2010-2015. Available online at <https://www.unodc.org> dated 26 March 2022.

<sup>35</sup>See sections 1-3 of the Nigerian Constitution, 1999 (as altered) and Article 9(1) of the Ethiopian Constitution.

<sup>36</sup>Underlining is mine. In a similar scenario, see sections 33(2)(b), 35(1)(a)(b)(c) and 36 of the 1999 Constitution.

<sup>37</sup>Underlining is mine. Similar provisions where issues relating to crime are Articles 17, 19; 20; 22; 23; 28 and 29(7).

<sup>38</sup> See generally Chapter IV of the Nigerian Constitution and Articles 18 and 19 of the Ethiopian Constitution to mention a few.

<sup>39</sup>See also Article 55(7) of the Ethiopian Constitution, 1994

<sup>40</sup> Kevin Nwosu, “Criminal Justice Reforms in Nigeria: The Imperative of Fast Track Trials; Plea Bargains; Non-Custodial Options and Restorative Justice”. available at <http://docplayer.net/16475331-Criminal-justice->



poor investors' confidence and high rate of imprisonment which will result in the need for more correctional facilities. This is the situation in Nigeria and Ethiopia which causes overcrowding of prisons or correctional centres as the increase in commission of crimes warrant an increase in facilities in order to accommodate the ever-increasing number of offenders.<sup>41</sup> This adverse effect has an implication of devotion of more resources in building new infrastructure, prisons or correctional facilities; maintain; feeding and securing the inmates rather than devoting the resources on the advancement and development of the State and its citizens. This paper therefore posits that the possibility of crime causing a breakdown of law and order as well as the high costs incurred by the government as a result of crime affirms the need for community service sentencing approach of punishment in both jurisdictions. This position is intadem with the British Academy Report<sup>42</sup> and the study of Robert<sup>43</sup> which revealed some wealthier countries such as United States that have introduced mechanisms to restrict the use of custody as a sanction due to high economic and social cost on imprisonment of offenders.

Section 6 and Chapter VII of the Nigerian Constitution, 1999, Article 13 and Chapter NINE of the Ethiopian Constitution, 1994 gave room for the creation, structure; composition and powers of the courts including independent of the judiciary. These provisions delimit the original and appellate jurisdictions of the courts to hear and determine criminal matters. While sections 35(1)(4)(7) and 41(2)(a) of the Nigerian Constitution and Articles 17, 19(4) and 21(1) of the Ethiopian Constitution lay foundation for lawful custody of an arrested person in order to restrict his movement or liberty including deprivation of liberty of convicted prisoners/inmates for the execution of his/her sentence. These provisions show the establishment of prisons or correctional centres of inmates as the third leg of institutional framework for criminal justice system in both jurisdictions. Instructively, section 34(1)(a) of the Nigerian Constitution and Articles 18 and 21 of the Ethiopian Constitution provides for right to suitable confinement of prisoners/inmates in prisons or correctional centres that the minimum standards of treatment must be accorded the inmates. In other words, the dignity of the prisoners/inmates in prisons or correctional centres is guaranteed. These provisions are further coded under Article 5 of the African Charter (Ratification and Enforcement) Act (The African Charter Act) domesticated by both jurisdictions<sup>44</sup> which outlaw torture and inhuman or degrading treatment of the prisoners/inmates.

To this end, the government of Nigeria and Ethiopia were directed under section 17(3)(d)<sup>45</sup> and Article 41(4) of their respective Constitution to formulate policy in Nigeria towards ensuring that "there are adequate medical and health facilities for all persons" including the

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[reforms-in-nigeria-the-imperative-of-fast-track-trials-plea-bargains-non-custodial-options-and-restorative-justice.html](#) accessed on March 15, 2020, U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, "Ethiopia, Human Rights Report," (2017), p. 3, at: <https://www.state.gov/documents/organization/277243.pdf> accessed on March 15, 2022; See the ICPS World Prison Brief, Prison data, Ethiopia, available at: <http://www.prisonstudies.org/country/ethiopia> accessed on March 15, 2022.

<sup>41</sup> Ibid.

<sup>42</sup> See British Academy, A Presumption against Imprisonment. London: British Academy, 2014. Available online at <https://www.thebritishacademy.ac.uk/publications/presumption-against-imprisonment-social-order-social-values/> accessed on March 10, 2022

<sup>43</sup> Roberts, J.V. (2005) Reducing Prison Populations: Exploring Alternative Strategies. Reform. A Journal of National and International Law Reform, 86: 15–19.

<sup>44</sup> See for instance, Cap A9, Laws of the Federation of Nigeria, 2011.

<sup>45</sup> The provision of section 17(3)(d) of the Nigerian Constitution is *im pari* material with sections 9(1)(b), 30(3) and 23-25 of the Nigerian Correctional Services Act, 2019. Although, section 17(3)(d) falls within Chapter II which is "Fundamental Objectives and Directive Principles of State Policy" which is not ordinarily enforceable in the Nigerian Courts.

prisoners/inmates in correctional centres and “to allocate an ever-increasing resources to provide for the public health” including the prisoners in Ethiopia.<sup>46</sup> These provisions were enforced in Nigerian Court in the case of *Odafe and Others v. Attorney-General and Others*<sup>47</sup> where:

the court declared failure of the prison officials to provide medical attention and treatment for inmates who were tested positive for HIV/AIDS as unconstitutional as same violated the right against torture and a breach of Article 16 of the African Charter and section 8 of the old Prison Act.

However, it is saddening to hear from the findings of the author’s fieldwork where majority of the key informants representing 85% lamented about the state of the correctional centres in Nigeria as shown in table 4 that “there are lack of adequate medical health facilities and good hygiene in the prisons or correctional centres”. 60% of the key informants in another phase of the questionnaire administered by the author identified “Malaria, High blood pressure; Skin infections; Fever; Vomiting; Severe headaches and Joint pains as the major diseases in the correctional centres”.

Aside the constitutional provisions on punishment and sentencing of crime in Nigeria and Ethiopia which have similar provisions, there are other regulatory frameworks which have been enacted or formulated over the years in both jurisdictions. Below are the attempts with a view to drawing the differences. For example, Nigeria unlike Ethiopia operates dual legal system in the administration of criminal justice which accounts for the existence of two Codes and two procedural Codes/Act (Criminal Code and defunct Criminal Procedure Act<sup>48</sup> and Penal and defunct Criminal Procedure Codes<sup>49</sup>) while Ethiopia operates single Code with its procedural Code (Criminal Code and Criminal Procedure Code). The duality of the Codes calls for the enactment of the Code Laws for the thirty-six federating units in Nigeria. Of importance is also the consideration of whether or not the crime falls within the exclusive competence of the National Assembly<sup>50</sup> or Concurrent List<sup>51</sup> which will warrant the enactment by both the National Assembly and Houses of Assembly in Nigeria. In otherwords, there are Criminal Code and the Criminal Code Laws in the Southern parts of Nigeria and Penal Code and the Criminal Code Laws for the Northern parts of Nigeria. The advent of the duality of Codes is further premised on the division of the country into two. That is, the Northern and Southern parts of Nigeria. However, the operation of single Code and its Procedural Code in Ethiopia criminal justice system was as a result of replacement of the 1957 Penal Code with Criminal Code in 2004. Nonetheless, this operation by virtue of

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<sup>46</sup> See also Article 16(2) of the African Charter Act which Nigerian and Ethiopian government have domesticated.

<sup>47</sup> (2004) AHRLR 205.

<sup>48</sup> Criminal Procedure Act is no more applicable to the Southern parts of Nigeria that have domesticated the Administration of Criminal Justice Act, 2015. Example of those States in the Northern parts are Lagos, Oyo, Osun and Ondo States respectively.

<sup>49</sup> Criminal Procedure Act is no more applicable in the Northern parts of Nigeria that have domesticated the Administration of Criminal Justice Act, 2015. Example of those States in the Northern parts are Kwara, Niger and Kogi States respectively.

<sup>50</sup> Any crime committed within the items listed under Part I of the Second Schedule to the Constitution of the Federal Republic of Nigeria, 1999 are legislated under the “Exclusive Legislative List” of the National Assembly and by this, the laws regulating such crime will be federal laws.

<sup>51</sup> Any crime committed within the items listed under Part II of the Second Schedule to the Constitution of the Federal Republic of Nigeria, 1999 are legislated under the “Concurrent Legislative List” of both National Assembly and State Houses of Assembly and by this, the laws regulating such crime are to the “Extent of Federal and State Legislative Powers”.

Article 55(5) of the Ethiopian Constitution gives room for enactment of Regional/States Laws on criminal matters which have not been covered under the federal criminal Code. Unlike Nigeria, the Ethiopian Legislator has authorized the Ethiopian Federal Supreme Court to issue Sentencing Guidelines and this assignment has been reaffirmed by Article 88(4) of the Ethiopian Criminal Code to show that aside the adjudicatory power of the Federal Supreme Court of Ethiopia, it can also legislate by issuing Sentencing Guidelines which at present determines the imposition of sentencing in Ethiopia together with the Criminal Code.

In Nigerian perspective, Penal<sup>52</sup> and Criminal<sup>53</sup> Codes, are the major legal frameworks currently in force that generally regulate different types or classification of crimes and they provided for sanctions for respective crime. While before 2015 and 2019, Criminal Procedure Code<sup>54</sup> and Criminal Procedure Act<sup>55</sup> regulate the procedural aspect in the administration of criminal justice. The rationale for these provisions is due to duality of the Nigerian legal system. The Police Act,<sup>56</sup> Prison Act;<sup>57</sup> the Economic and Financial Crime Commission Act,<sup>58</sup> the Corrupt Practices and Other Related Offences Act;<sup>59</sup> the Money Laundering (Prohibition) Act;<sup>60</sup> the National Drug Law Enforcement Agency Act;<sup>61</sup> the Examination Malpractice Act;<sup>62</sup> the Shariah (Islamic) Penal Code<sup>63</sup> and the Child Rights Act<sup>64</sup> are some of the other

<sup>52</sup> Penal Code Act, 1960. The Penal Code is the substantive law on crime in the Northern region of Nigeria.

<sup>53</sup> Criminal Code Act, 1965. Cap C38 Laws of Federation 2004. It is applicable only in the Southern States.

<sup>54</sup> Cap 30 Laws of Northern Nigeria, 1963. It was enacted for the then Northern region government in 1963 to govern criminal proceedings in Northern Nigeria.

<sup>55</sup> Cap 43 Laws of Federation 1958 and the Criminal Procedure Laws of Southern States.

<sup>56</sup> Cap P19 Laws of Federation of Nigeria 2004. The Police Act first came into effect on 1 April 1943. The Act has subsequently been amended several times over the years. The most recent amendment was done in 2004. See H Umoru, "Bill to replace 75 years Old Police Act Scales Second Reading". Available at <<https://www.vanguardngr.com/2018/07/bill-to-replace-75-year-old-police-act-scales-second-reading/>> (accessed 20 August 2018). Section 4 of the Act gives general philosophy behind the establishment and existence of the Police are to prevent crime, apprehend criminals and prosecute the offenders

<sup>57</sup> Cap P29 Laws of the Federation of Nigeria 2004. The Prison Act provides for the organisation and administration of prisons in Nigeria and other matters ancillary thereto. It also sets the goal and orientation of the prison as custody and production of inmates on court order and their rehabilitation and reintegration into the society. The prison system in Nigeria is the institution at the end of the administration of criminal justice process.

<sup>58</sup> Cap E1 LFN 2004. The independent Corrupt Practices and Other Related Offences Commission Act outlined the manifestations of corruption in ss 8–26. They consist broadly of four criminal offences: gratification, fraud, bribery and counselling offences relating to corruption. The Economic and Financial Crimes Commission Establishment Act, on the other hand, has as its objective dealing with "the non-violent criminal and illicit activity committed with the objectives of earning wealth illegally". See generally s 46 of the Economic and Financial Crime Commission Act, 2004 (as amended).

<sup>59</sup> Cap C31, Laws of the Federation of Nigeria (LFN), 2011

<sup>60</sup> Cap 7 LFN, 2011

<sup>61</sup> Cap N30 LFN 2004

<sup>62</sup> Cap E15 LFN 2004

<sup>63</sup> Islamic law or Shari'ah legal system has been a part of the main sources of the Nigerian legal system until 1999 when its application was extended to criminal matters and the Shari'ah courts were vested with criminal jurisdiction in some Northern states of Nigeria. One of the States that adopted Shari'ah Law is Zamfara State. Shari'ah Courts Law of 1999 (Zamfara 1-1999) and Zamfara Penal Code were adopted in January 2000

<sup>64</sup> Child Rights Act, Cap C 50 Laws of the Federation of Nigeria 2004. This is a Federal Act which seeks to incorporate the contemporary principles, philosophy and standards of juvenile justice administration into the Nigerian legal system. It is equally seen as an attempt to provide a comprehensive uniform law on the protection of child rights nationwide. It also deals with children who are in conflict with the law. For example Section 208(1) provides: "In view of the varying special needs of children and the variety of measures available, a person who makes determination on the child offenders shall exercise such discretion, as he deems most appropriate in each case, at all stages of the proceedings and at the different levels of child justice administration, including investigation, prosecution, adjudication and the follow-up of dispositions." See also, section 223 of the Act.

specific laws that regulate crime and administration of criminal and juvenile justice in Nigeria. The punishment and sentencing from aforementioned provisions in exception of the Police and Prison Acts range from imprisonment either with minimum, maximum or life imprisonment; fines; death penalty; probation and parole. By section 223 of the Child Rights Act, judges are empowered to “dispose of cases when they are satisfied that an offence has been committed by a child by adopting alternatives to correctional or institutional placement”. In other words, diversionary measures must be considered. Studies have shown<sup>65</sup> that despite the retributive and utilitarian approaches to punishment and sentencing in aforesaid legal framework which is arguably posit to serve as improving the behaviour of the offenders, teaching the offender a lesson and deterring other potential people from committing similar offences; the rate at which crimes are committed in Nigeria is alarming and offenders are sent to prisons or correctional centres on a daily basis where these centres are now overcrowded.<sup>66</sup> Table 4 has confirmed this position when 150 of the key informants representing 75% in an administered questionnaire stated that “offences committed by the inmates that are in prisons or correctional centres are simple offences”. In another phase of the questionnaire, majority of the key informants representing 75% are of the views that “60% of the inmates in the prisons or correctional centres are sentenced for offences that are less than three years imprisonment” and these majority further hold the views in another interval of the administered questionnaire that “60% of the inmates are in prisons or correctional centers due to their inability to pay fines imposed on them by the courts”.

Interestingly in 2015 and 2019, the Administration of Criminal Justice Act (ACJA) and Nigerian Correctional Service Act<sup>67</sup> were enacted to replace the Criminal Procedure Code, Criminal Procedure Act and Prison Act. These Acts introduce new provisions for the purpose of improving access to justice. Some of these new provisions especially on punishment and sentencing approaches are the introduction of “plea bargain”,<sup>68</sup> “suspended sentence and community service”,<sup>69</sup> “remand time limit”<sup>70</sup> and “rejection of more intakes of inmates by the State Controller of Correctional Service in situations where the correctional centres are filled to capacities”.<sup>71</sup> From these innovative approaches to punishment and sentencing, the suspended sentence and community service stands out as this approach warrant a complete non-custodial measure as other approaches may warrant for partial imprisonment. “Remand

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<sup>65</sup> According to Obioha, “Nigeria’s prisons are ‘living hell’, with twenty to thirty inmates arriving at the prison daily. Thus, overcrowding the reformatory structure, which do not even exist in the true sense, and more regularly stretching the original carrying capacity of the facilities?” See Obioha Emeka E. Challenges and Reforms in Nigerian Prison System: *Journal of Social Science*, 2011 27(2). This was also evident in a report where the President Muhammadu Buhari lamented on the alarming rate of inmates in prisons when he states that “it was a national scandal that many prisons were overcrowded by 90 percent”. He further stressed the “need to put in place urgent new measures to speedily decongest the prisons across the country”. See Sunnewsonline, cited in O Tosin, “Time to reform Nigeria’s Criminal Justice System”. 2015 *Journal of Law and Criminal Justice American Research Institute for Policy Development*. Available at <<http://dx.doi.org/10.15640/jlcj.v3n2a7>> (accessed 10 January 2019). See also Jo-Anne Wemmers, “Restorative Justice for Victims of Crime: A Victim-oriented Approach to Restorative Justice”. 2002 *International Review of Victimology* 19: 43–59.

<sup>66</sup> See International Centre for Investigative Reporting. Available at <<https://www.icirnigeria.org>> (accessed 11 March 2019). See also National Bureau of Statistics, 2016. Available at <<https://www.nigerianstat.gov.ng>> (accessed 13 March 2019).

<sup>67</sup> The Nigerian Correctional Service Act was signed into law by the Federal government on August 14, 2019. 11 years after it was presented to the floor of the Senate. It repealed the old Prison Act and focus on correction, rehabilitation and reintegration of offenders.

<sup>68</sup> See Section 270 of the ACJA, 2015

<sup>69</sup> See Section 460, Ibid

<sup>70</sup> See Section 296, Ibid

<sup>71</sup> See Section 12(8) of the Nigerian Correctional Service Act, 2019

time limit”, “plea bargain” and “rejection of more intakes of inmates by the State Controller of Correctional Service in situations where the correctional centres are filled to capacities” as provided under the Acts also enhance decongestion of prisons or correctional centres. These innovations also avoid delays in the disposition of pending cases, reduce the cost of trial and appeal;<sup>72</sup> reduce imposition of imprisonment and overcrowding but it is not a complete approach to non-custodial measures.<sup>73</sup> For emphasis on community service as complete non-custodial measures, section 460(2)(3)(4) of Administration of Criminal Justice Act is apt and it provides:

- (2) The court may, with or without conditions, sentence the convict to perform specific service in his community or such community or place as the court may direct
- (3) A convict shall not be sentenced to suspended sentence or to community service for an offence involving the use of arms, offensive weapon, sexual offences or for an offence which the punishment exceeds imprisonment for a term of three years.
- (4) The court, in exercising its power under subsection (1) or (2) of this section shall have regard to the need to:
  - (a) reduce congestion in prisons;
  - (b) rehabilitate prisoners by making them to undertake productive work; and
  - (c) prevent convicts who commit simple offences from mixing with hardened criminals.

The implication of the above provisions is that, community service sentence is encouraged in order to enhance the administration of criminal justice, decongest prisons or correctional centres and it also boosts the economy of the country as the government will divert the funds of keeping the inmates by feeding, personnel and infrastructure to another social amenities that will benefit the generality of the populace. More importantly as studies<sup>74</sup> have shown that prisons or correctional centres have become:

centres of infection with diseases, stacking people; keeping opponents and enemies; as well as a sophisticated training ground for inmates and detainees to specialise in various criminal activities such as armed robbery, drug addiction, etc., partly as a result of congestion.<sup>75</sup>

To buttress the above is another report which shows that Nigerian Prisons are “congested, the inmates records poorly managed, feeding, health and other services for the inmates have

<sup>72</sup> See section 270(5)(b)(vii)–(viii) of the ACJA.

<sup>73</sup> See the cases of *Robert M Brady v United States* 397 US 742 (90 S Ct 1463, 25 L Ed 2d 747) and *Federal Republic of Nigeria v Igbinedion* (2014) All FWLR (Pt 734) 101 at 144–147. The implication of the former case is that, the Supreme Court of the United States allows a lesser sentence of 50 years’ imprisonment for the act of the defendant who was charged with kidnapping, which carries a punishment of death penalty and also the defendant opted for a lesser sentence for the hope of entering a correctional system. Also, it should be noted that the concept of plea bargaining is employed in high-profile official corruption and banking fraud cases. That is, it is employed in the trial of financial crimes in comparison to what is obtainable in other jurisdictions, such as the United States, as is evident in the case of *Robert M Brady v United States* cited above.

<sup>74</sup> Jewkes, Y. (ed.). (2008). *Prisons and punishment volume 1: The meaning of the prison*. London: SAGE Publications Ltd. See also, Sanda, A. A. (2007). *Prison decongestion: Our responsibility*. Ibadan: Spectrum Books Limited; Adeagbo, O. O., Asubiojo, B. O., Obadare, S. O., & Akindojutimi, B. F. (2016). Re-integration of prison inmates in Nigeria: Advocating for library support. *International Information & Library Review*, 48 (3), 169-175.

<sup>75</sup> Ibid

collapsed, recurring cases of indiscipline, rape and drug abuse have taken over the institutional roles of the prisons".<sup>76</sup> The enactment of ACJA indicates a paradigm shift from retributive criminal justice system to restorative criminal justice system particularly because it pays serious attention to the needs of the society, the victims, vulnerable persons and human dignity generally.<sup>77</sup> In the same vein, section 12(8) of the Nigerian Correctional Service Act empowered the State Controller of Correctional Service "to reject any intake of inmates when the correctional centres within his State is filled to capacities" and by section 12(10) the Controller-General of the Correctional Service after due notification to the Attorney-General of the Federation and Chief Justice of Nigeria to:

release inmates that are left with less than six months to the completion of their three years sentence, inmates that are sentenced for minor offences; those that are sentenced for civil cases and those inmates consider to be released by the Chief Judge or the Prerogative of Mercy Committee.

Similarly, sections 37 to 43 of the Nigerian Correctional Service Act provides for alternative sentencing measures which include parole, probation; community service; restorative justice measures and other non-custodial measures which are assigned by the courts. The Act also mandated the establishment of the National Committee on the implementation of non-custodial measures incorporated under the Act.

However, the implementation and enforcement of this laudable provisions have been impeded by many challenges. Examples abound as a statistics released by the Nigeria Prisons Service on 31<sup>st</sup> October 2014<sup>78</sup> gave a breakdown of the convicted prisoners that "total of 7, 992 representing 48% of the total convicts are serving short term imprisonment that is less than two years, 7, 413 representing 41% of the convicts are long term imprisonment of two years and above, 1, 588 representing 8% are condemned convicts (death row) while 551 representing 3% are lifers. The Penal Reform International confirmed the above position in its Global Prison Trends, 2021 that "Prison population increased as did overcrowding in short-term and pre-trial facilities in Nigeria and people are being sentenced to short prison terms for the violation of quarantines adding a heavy burden to congested prisons".<sup>79</sup>

Similarly, findings from the author's fieldwork in table 4 below revealed the responses of the key informants when majority of them representing 75% in an administered questionnaire confirmed with the author that "more than 60% of the inmates in the prisons or correctional centres are serving sentence of imprisonment that are less than three years". 75% of the key informants in another phase of the questionnaire also agreed with the author that "60% of the inmates are serving imprisonment because they are unable to pay fines imposed on them by the courts". The courts are enjoined under Section 420 of the Administration of Criminal Justice Act, 2015 to impose maximum of two years imprisonment in default of payment of

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<sup>76</sup> Akinnawo, E. O., & Akpunne, B. C. (2016). The Influence of gender on the level of drug consumption and psychological health of inmates of Lagos Medium Security Prisons. *International Journal of Gender and Development Issues (IJGDI)*, 1 (4), 196- 207.

<sup>77</sup> See the provisions of sections 8(1), 460(1)–(2), 468 and 314 of the Administration of Criminal Justice Act, 2015, among others.

<sup>78</sup> See Nigeria: World Prison Brief by Institute for Crime & Justice Policy Research 2020 <https://www.prisonstudies.org> See also, The Nigerian Prisons Service, (2014). The Nigerian Prison Statistics. [www.prisons.gov.ng](http://www.prisons.gov.ng). Accessed Nov. 3, 2015.

<sup>79</sup> Penal Reform International: Global Prison Trends 2021 available online at <https://www.cdn.penalreform.org> accessed February, 2022. See also, Nigeria: Covid-19 - Prisons Reopen in 28 States, FCT, Admits 9,900 Inmates', *allAfrica.com*, 20 August 2020, [allafrica.com/stories/202008200117.html](http://allafrica.com/stories/202008200117.html).

fine by the convict. Instructively, the position of the author is that, ordering “Community Service” could have been appropriate in this regards in as much as the convict is not dangerous to the society. This will go a long way to decongest prisons or correctional centres in Nigeria. The author’s position is intandem with the African Commission on Human and People’s Right’s “Principles on the Decriminalisation of Petty Offences in Africa” which was adopted in November, 2020 to simplify the 2017 version.<sup>80</sup>

In Ethiopian perspective, the major statutory framework aside the Constitution that has comprehensive provisions relating to punishment and sentencing is the Criminal Code which was enacted in 2004.<sup>81</sup> While Criminal Procedure Code Proclamation No.185 of 1961 regulates the procedural aspect of the criminal justice system in Ethiopia. The Criminal Code has the general and special parts governing the generic rules and principles applicable to all crimes under the general part<sup>82</sup> and the Code identifies crimes along with their sentencing ranges under the special part. Recourse is always made to the general part by the Ethiopian courts in arriving at any determination of sentencing on crimes that fall within the special part. Proclamation to Control Vagrancy No.384/2004, Prevention and Suppression of Terrorism Crimes Proclamation No 1176/2020; Corruption Crimes Proclamation No.881/2015 and Prevention and Suppression of Trafficking in Persons and Smuggling of Migrants Proclamation No 909/2015; Federal Police Commission Establishment Proclamation No 720/2011,<sup>83</sup> the Criminal Justice Policy, 2011,<sup>84</sup> Supreme Court Sentencing Guidelines, 2010,<sup>85</sup> Federal Prisons Commission Establishment Proclamation No 1174/2019 and Treatment of Federal Prisoners Council Ministers Regulations No.138/2007<sup>86</sup> are some of the regulatory frameworks that regulate crime and administration of criminal justice system

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<sup>80</sup> Ibid

<sup>81</sup> The Criminal Code of the Federal Democratic Republic of Ethiopia (Hereinafter refers to as “The Criminal Code) Proclamation No.414/2004. This repealed the Criminal Code of 1957 which was in force after the first modern penal Code of 1930. See Graven, J. “The Penal Code of the Empire of Ethiopia”, (1964) 1 J. Ethiopian L 267–298.

<sup>82</sup> See generally, Articles 82-86, 88; 90-120 and 179-189 of the Criminal Code, 2004.

<sup>83</sup> The Federal Police Force in Ethiopia has been created as far back as 1995 with the purpose of serving the public, ensuring the observance of human and democratic rights and by Articles 5, 6(1)(2)(3)(10) and 19(1) of the Proclamation, the Federal police is “to maintain the peaceful life and security of the people through prevention of crimes” and “to prevent any crime, investigate crime, execute orders and decisions of the courts, study the causes of crime and design the preventive methods” and “perform his activities in accordance with the criminal Procedure Code and the Constitution...”.

<sup>84</sup> The policy comprehensively covers all main features of administration of criminal justice in Ethiopia which among others include the prevention of crime, criminal investigation and prosecution, speedy and fair trial processes, independent role of the judiciary and it also enforces penalties imposed by the courts and any decision making process arrived at in the criminal justice system.

<sup>85</sup> The Supreme Court Sentencing Guidelines issued in 2010 established an orderly ranking punishment which grouped in relation to their relative severity in order for the courts to match offences which will be proportionate and commensurate with severity of the punishments. This is proportionality-based sentencing scheme with 39 penalty levels in the first table that ranges from one-day compulsory labour to death penalty while 23 penalty levels were made for fines. See generally Appendixes 1 and 2 and Article 6(3)(a)(b) of the Revised Sentencing Guidelines. (The levels are further subdivided in to different layers( *erkens*) depending on the gravity of the offence.)

<sup>86</sup> These Proclamation and Regulations provide for the organisation and administration of prisons in Ethiopia and other matters ancillary thereto. These regulatory frameworks regulate prison as an institution at the end of criminal justice system procedural processes. By Articles 5 and 6 of the Proclamation, Prison is also set “to admit upon judicial sentences or warrants and ward prisoners and provide them with reformatory and rehabilitative service in order to enable them make attitudinal and behavioural changes and become law abiding, peaceful and productive citizens”. Parts of the prison responsibilities are “taking prisoners to court, maintain prisoners’ health care, free medical treatment for the prisoners, food and shelter”. Prison also enforce judicial decisions.

in Ethiopia. The Code also provides for punishment and sentencing of petty offences which the Criminal Code criminalised.

Being a comprehensive Code, all other legislations mentioned above and guidelines on punishment and sentencing derive their legitimacy from the Ethiopian Constitution, 1994. For instance, Article 88(4) of the Criminal Code empowered the Ethiopian Federal Supreme Court to “issue manual relating to sentencing” as supplementary provisions. This leads to the formulation of the Federal Supreme Court Sentencing Guidelines in 2010 to be interpreted in line with the sentencing provisions under the Criminal Code.<sup>87</sup> The implication of this provision is that, by Article 88 of the Criminal Code, the Federal Supreme Court is saddled with the responsibility assigned to it by the Ethiopian House of Peoples’ Representatives to issue sentencing guidelines which must not conflict with the sentencing provisions in the Criminal Code.

By Articles 90-129, 157-168 of the Criminal Code, punishment and sentencing of crimes recognised under the Code ranges from pecuniary sentences, compulsory labour; imprisonment; death penalty;<sup>88</sup> cautions, reprimands, admonishment, coerced apologies, deprivation of civil rights<sup>89</sup> etc. These includes the separate class of measures and sanctions that the Code provides for children who are in conflict with the law. From all indications, The Code provides for principal and secondary punishments whereby the courts are roped with the power to convict the offender under the secondary punishment except with and subject to a principal punishment.<sup>90</sup> In order words, the general provisions of the law must be fulfilled before the secondary punishment can be applied by the court except if there is express direction by the court to that effect. Mostly, this type of punishment is allowed in minor crimes as provided under Article 89 of the Criminal Code. Article 112 also empower the court to give variation of condons of imprisonment. Secondary punishment can further be imposed on young offenders under Article 157 of the Code.

Instructively, it can be impliedly deduced that all the available approaches to punishment and sentencing may lead to imprisonment which has adverse effect of congesting the prisons. For instance, assuming that the court imposes fine against the convict, the question that will be ready to be answered is what will be the situation if the convict is unable to pay the fine imposed under Articles 93 and 94 of the Criminal Code? In such circumstance, Articles 95 and 96 have provided the answer that the court will impose either “conversion of fine into labour” or “conversion of fine into compulsory labour”. To this end, it can be argued that, such criminal or convict will not be taken to prisons and this could be a laudable approach of punishment and sentencing that decongest the prisons. However, the Code allows for discretionary power of the court to determine which approach to be adopted and this most of the time depends on the circumstances of each case. It will be interesting to examine Articles 103 and 104 of the Criminal Code which relates to “compulsory labour with deduction of wages to the benefit of the State” and “compulsory labour with restriction of personal liberty” as another alternative approach to imprisonment which may be adopted by the court to decongest prisons. For emphasis, these provisions are reproduced below for critical analysis. Article 103 provides:

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<sup>87</sup> See Article 4(9), The Revised Sentencing Guideline of the Ethiopian Federal Supreme Court.

<sup>88</sup> Pecuniary sentences, compulsory labour; imprisonment and death penalty fall within the principal punishment. See Articles 90-120 of the Criminal Code

<sup>89</sup> Cautions, reprimands, admonishment, coerced apologies, deprivation of civil rights are some of the secondary punishment. See Articles 121-153 of the Criminal Code

<sup>90</sup> See Article 121 of the Criminal Code.



- (1) Where the crime is of minor importance and is punishable with simple imprisonment for a term not exceeding six months, the Court may, if the criminal is healthy and is not a danger to society, sentence him to compulsory labour without any restriction of personal liberty subject however to supervision. This penalty may extend from one day to six months.
- (2) The criminal shall serve his sentence of compulsory labour at the place where he normally works or is employed or in a public establishment or on public works. An amount not exceeding one third of the criminal's wages or profits shall be deducted and forfeited to the State.
- (3) The amount to be deducted, the place where the sentence is to be served, and the period thereof and the nature of the supervision shall be stated in the judgment.

Article 104 provides:

- (1) Where the circumstances of the case show that it is proper or necessary so to do, especially where the criminal fails to discharge his obligation as specified under Article 103(1) above, or where, with a view to keeping the criminal away from unfavourable surroundings or undesirable company, it is expedient so to do, the Court may direct that compulsory labour shall be subject to restriction of personal liberty.
- (2) The nature and the duration of such restriction shall be determined by the Court according to the circumstances of the case. Such restriction may require the criminal to discharge the compulsory labour by remaining in a particular place of work, or with a particular employer, or in a particular establishment, or without leaving his residential area or a restricted area under the supervision of government officials.
- (3) If the criminal fails to comply with any such requirement, he shall be liable to simple imprisonment for a period equal to any unfinished period of the sentence of compulsory labour.

The Supreme Court Sentencing Guidelines, 2010 ushered in another laudable provisions for decongestion of prisons when the Guidelines provide for non-custodial sentencing options for levels 1-5 of the 39 penalty levels in the first list and 23 levels in the second list. The judges are enjoined to imposing alternatives to custody. The judges are also empowered to either adopt compulsory labour or imposition of fines. The fines from levels 1 to 23 of the fines range up to 1,000 EB to over 2,000,000 EB depending on the gravity of the offence. It should be noted that by Article 6(3)(a)(b) of the Revised Sentencing Guidelines, the last leg of the sentencing on the table which relates to penalties for deprivation of liberty, life imprisonment and death penalty are much slimmer imposed by the courts. However, as laudable as these Sentencing Guidelines are, they cannot take the place of the Criminal Code and the Constitution as provided in Article 4(9) of the Revised Sentencing Guideline that “The guideline shall be interpreted in line with the sentencing provisions in the Criminal Code”. The Guidelines serve as supplementary provisions to the Criminal Code and of course, they must also not be inconsistent with the provision of the Constitution otherwise, they will be declared null and void to the extent of their inconsistencies. The implication is that, these Guidelines are not enforceable like the provisions of the Criminal Code and the Constitution. Study of Simeneh shows that the ranking of some offences in the Guideline to be unprincipled and incompatible with the Criminal Code.<sup>91</sup> More importantly, the Guidelines need to be reformed as some provisions seem to amend the Criminal Code when the Supreme

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<sup>91</sup> See Simeneh Desta, “የፍርድ ቤቶች ለጥያቄ ያላቸው ጥያቄዎች ላይ የሚደረግ የፍርድ ቤቶች ስልጣን”, Ethiopian Press Agency (4 December 2018) at: <https://press.et/?p=1025#> cited in Yilma, Kassahun Molla and Robberts, V. Julian ‘Out of Africa: Exploring the Ethiopian Sentencing Guidelines’ (Criminal Law Forum, 2019)30:309-337. available at <https://www.doi.org/10.1007/s10609-019-09373-x> accessed March 12, 2020

Court has no jurisdiction to make such amendments. It has been noticed that some of the Guidelines have ranked some offences which are unprincipled and incompatible with the Criminal Code especially from the Guidelines' approach to ranking of the seriousness of offences.<sup>92</sup>

Similarly, the Criminal Justice Policy, 2011 is another laudable regulatory framework on crime, punishment and sentencing in Ethiopian criminal justice regime. The policy gives an enabling space for creating a procedure for the use of alternative to imprisonment approach to punishment and sentencing. This is to provide a fair and sustainable solution to crime.<sup>93</sup> Mostly, the policy is applicable to offences committed by juveniles, first time offenders and those offences that are punishable with simple imprisonment.<sup>94</sup> This category of offences may be referred to the out-of-court mechanism at any stage of the criminal justice process upon request by either the prosecutor, the accused person or by the court for a rapid and accessible criminal justice system.<sup>95</sup> However, it is saddened to observe that the policy is not a legislative enactment which is enforceable but rather it is the government's policy document that display the aims and focus of the government regarding how the administration of criminal justice should be. It is therefore argued that for this policy to be implemented and enforceable, there should be a separate law from the legislators or an amendment of the extant legal framework. In orderwords, the implication is that, there is need to have legislative amendments for the provisions of the Policy documents to be effective. It is therefore the contention in this paper that, all the regulatory frameworks in Ethiopia unlike in Nigerian perspective, work towards limitation of decongestion of prisons and not full implementation of non-custodial measures.

Interestingly, COVID-19 pandemic has exposed the effectiveness and enforcement of the above analysed regulatory framework to the extent that the Federal government of Nigeria and the Ethiopian government have complied with the World Health Organisation<sup>96</sup> to decongest the prisons or correctional centres in order to limit the spread of COVID-19. Limiting the spread of COVID-19 calls for physical distancing in overcrowded prisons or correctional centres in Nigeria and Ethiopia as it has been reported for instance in Nigeria that many inmates have tested positive for COVID-19.<sup>97</sup> In an attempt to decongest prisons or correctional centres, the Nigeria government has reduced the admission of inmates into the facilities due to the COVID-19 pandemic and further released 6,590 inmates from the correctional centres through the work of the Presidential Committees on the Decongestion of Correctional Centres and the Presidential Advisory Committee on Prerogative of Mercy.<sup>98</sup>

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<sup>92</sup> Article 556(2) of the Criminal Code readily comes to mind to show that the Sentencing Guidelines for common willful appears to have been ranked on arbitrary and unprincipled basis which may result on outcomes of sentencing that are unprincipled. There is no justification in the Guidelines to place the circumstances specified in the Criminal Code at different severity levels. See also Article 665 of the Criminal Code dealing with punishment on crime of theft which carries simple imprisonment or rigorous imprisonment not exceeding 5 years. However, the guideline specifies 8 levels of offence for theft, and it prescribes starting sentence point 20 for offence level 8, which means 4.5–5.5 years. This range thus exceeds the maximum sentence of five years specified by the Code and further violates Article 22(1) of the Ethiopian Constitution.

<sup>93</sup> See generally Section Four of the Policy which deals with the “improving the efficiency and fairness of the criminal justice process”.

<sup>94</sup> Ibid

<sup>95</sup> Ibid

<sup>96</sup> See COVID-19 Preparedness and Response in Places of Detention. Available at <https://www.peacekeeping.un.org> accessed May 10, 2020

<sup>97</sup> For instance, 17 inmates at Bauchi prisons or correctional centres have tested positive for COVID-19 on June 14, 2020. See <https://www.channelsTv.com.ng> watched live on June 14, 2020.

<sup>98</sup> See [www.dailytrust.com.ng](http://www.dailytrust.com.ng) accessed June 9, 2020.

While the Ethiopian government by April 2, 2020 has released and pardon 5, 600 prisoners in both the federal and regional prisons in order to help prevent spread of COVID-19.<sup>99</sup> This release covers those prisoners that were given a maximum sentence of three years for minor crimes and those who were about to be released from jail.<sup>100</sup> The case of *FEACC Prosecutor vs. Abinet Takele* (supra) is very apt in this regard.

The above urgent release of the inmates/prisoners for the purpose of decongesting prisons or correctional centres by the Nigerian and Ethiopian governments were done under the proclamation of the state of emergency as provided in section 305 of the Nigerian Constitution, 1999 and Article 93 of the Ethiopian Constitution, 1994. The release confirmed the position of the author that prisons and correctional centres in both jurisdictions under study are congested. Arguably, these proclamations have not been seen to bring forth the complete non-custodial measures in Nigeria and Ethiopia. The reason being that the release of the inmates has not been determined on the full trial and finding of guilt, discharge or upon completion of the jail term compared to processes that need to be met for prosecution and sentencing under section 460 of ACJA, 2015 and Articles 103 and 104 of the Ethiopian Criminal Code. Instructively, the release of prisoners by the Nigerian and Ethiopian governments is argued to be temporary, unprincipled and fails to correct the fundamental cause of prisons or correctional centres overcrowding with the frequently imposed and excessive reliance on imprisonment approach to punishment and sentencing without attempting other viable alternatives to imprisonment such as community service sentencing and compulsory labour.

### **3. CHALLENGES OF ENFORCEABILITY AND IMPLEMENTATION OF COMMUNITY SERVICE AND COMPULSORY LABOUR AS ALTERNATIVES TO IMPRISONMENT IN NIGERIA AND ETHIOPIA**

It has been emphasised in the previous section that the Nigerian and Ethiopian courts are most often inclined to adopting imprisonment over many alternative approaches to punishment and sentencing. In this regard, any offence categorised as simple, petty or minor offence in Nigeria or Ethiopia attracts fine or imprisonment.

#### **3.1 Challenges of enforceability and implementation of community service as alternative to imprisonment in Nigeria**

In Nigerian perspective as analysed in the previous section, one of the challenges of enforceability and implementation of community service sentence in Nigeria is lack of willingness on the part of the judges/magistrate. A typical example is a report that revealed a two weeks jail-term imposed by one of the judges at Ilorin, Kwara State judiciary against a man who made calls in courtroom.<sup>101</sup> This is a State out of the thirty-six States in Nigeria that has domesticated Administration of Criminal Justice Act which enjoined the court to impose community service sentence for an offence which attracts less than three years of imprisonment. Findings of the author in a fieldwork survey at table 3 also alluded to the

<sup>99</sup> See <https://www.cnn.com/africa> accessed May 2, 2020. See also Penal Reform International: Global Prison Trends 2021 available online at <https://www.cdn.penalreform.org> accessed February, 2022

<sup>100</sup> Ibid

<sup>101</sup> For making calls in courtroom, Justice Oyinloye sentences man to 2 weeks jail-term in Ilorin. Royal News <https://royalnews-calls-in-courtroom-justice-oyinloye-sentences-man-to-2weeks-jail-term-in-ilorin/>. Accessed January 14, 2020.

unwillingness of the court to adopt community service sentence where majority of the key informants representing 75% confirmed that “lack of willingness of the judges or magistrates to impose community service sentence contribute to overcrowding of correctional centres in Nigeria” especially those states of the federation that have domesticated the Administration of Criminal Justice Act.

Another challenge can be deduced from the classification of offences in Nigeria. For instance, stealing of an item irrespective of the heaviness or weight of the item will still be regarded as stealing or theft within the meaning of the offence under both Penal and Criminal Codes. A person who steals cellphone is equated with a person who steals a car or valuable item that worth more value of a cellphone. Both parties will be sentence for the same offence of stealing or theft.<sup>102</sup> The offence of stealing or theft is categorised under felony which attracts more than six months imprisonment which may also be with fine. This categorisation hinders the enforceability of community service sentence. For instance, as the law does not provide for community service sentence for any person that steal mobile phones because it is categorised as felony offence. This assertion gain credence with the request of the African Commission on Human and People’s Rights in 2018 where the commission produced guidelines to be followed by African States in order to decriminalise petty offences for the purpose of addressing prison overcrowding.<sup>103</sup> Also, in support of this position is a report that revealed the detention of “one Abdullahi Mohammed, a 49-year-old man who was forgotten in prison since 2013 for stealing a cellphone”.<sup>104</sup>

Nigeria is faced with another challenge of domestication of Administration of Criminal Justice Act (ACJA) and Nigerian Correctional Service Act (NCSA) as both Acts are Federal Acts which are only enforceable at the Fedral Capital Territory, Abuja and applied only by federal courts. The laudable provisions of ACJA and NCSA on decongestion of prisons or correctional centres in Nigeria through community service sentence can only be maximally achieved if both Acts are domesticated. The former is an enactment on criminal proceedings that are not within the exclusive legislative competence of the National Assembly which needs to be domesticated by all the thirty-six States of the Federation of Nigeria.<sup>105</sup> Also, the later Act is also a Federal Act which operates on inmates that are convicted for both States and Federal offences.

It is therefore the contention in this paper that an effective implementation of ACJA and NCSA will entail the domestication of ACJA by all the States and decentralization of the Nigerian Correctional Service. This suggestion will allow the country to address the congestion witnessed in correctional centres and to allow all the thirty-six States to effectively participate through the setting up of their correctional centres to manage offenders who commit States’ offences. This is in line with the findings of the author’s fieldwork in table 4 below where 85% of the key informants confirmed that “75% of the inmates in the correctional centres in Nigeria were convicted for States offences” ranging from assaults, stealing/theft; criminal trespass; contempt of court; loitering etc.<sup>106</sup> In another phase of the

<sup>102</sup> For emphasis, see Sections 383 and 390 of the Nigerian Crminal Code.

<sup>103</sup> See African Commission on Human and Peoples’ Rights, Principles on the Decriminalisation of Petty Offences in Africa, 2018

<sup>104</sup> Voice of Africa (VOA) News, Nigeria’s Prisons Set to Undergo Long-Awaiting Reforms dated August 24, 2019

<sup>105</sup> See ANafiu and T Oyesina, “ACJA 2015: So Far, Not Too Good”. Available at <<https://newtelegraphonline.com/2017/12/acja-2015-far-not-good/>> (accessed 25 April 2018).

<sup>106</sup> Author’s position/suggestion is in tandem with the proposal of the Federal Government in a webinar/virtual interactive session with the States Attorney-General and head of courts on June 4, 2020 that a policy will be

questionnaire administered by the author as shown in table 3, while 75% of the key informants strongly agreed with the author that “refusal of some states to domesticate ACJA hinder the enforceability of community service sentence in Nigeria” due to political will, majority of them in another interval representing 87.5% are of the view that “enactment of ACJL by all States of Federation will enhance the enforceability of community service sentence in criminal justice system”.

### **3.2 Challenges of Enforceability and Implementation of Compulsory Labour as Alternative to Imprisonment in Ethiopia**

It is pertinent to note that the implication of the provisions relating to compulsory labour partially enhances the decongestion of prisons to some extent as offenders or convicts will not be imprisoned. While Article 104 has given multiple alternatives for imprisonment of the convict more especially when the provision allows the convict to be subjected to restriction of his/her personal liberty. The phrase “in a particular establishment” denotes the possibility of imprisonment and Article 104(3) is very explicit by giving the court discretionary power to impose “imprisonment on the convict in a situation when he/she fails to comply with any of the requirements of the sentence of compulsory labour”. One may be surprised that Article 107 allows the court to substitute simple imprisonment for compulsory labour which to some extent may decongest the prisons, but this is only allowed whenever there is difficulty in executing the imprisonment which is very rare in Ethiopian criminal justice practice. In addition, compulsory labour as provided under the Ethiopian Criminal Code is misleading and cannot be equated with community service sentencing that is obtainable in Nigeria criminal justice regime.

However, in both jurisdictions, it is unfortunate that in practice, neither community service sentencing nor compulsory labour is imposed by the courts.<sup>107</sup> In support of this assertion is the study that has shown<sup>108</sup> and findings of author’s fieldwork in table 3 that has revealed that “there is lack of reliable personnel to be responsible for supervising the work order”. Also, there appears only limited awareness or unwillingness on the part of the judges to impose these alternative approaches to imprisonment in Nigeria. More importantly, 85% of the key informants in an administered questionnaire by the author strongly agreed with the author that “there is no clear procedure provided by ACJA which will encourage the judges from imposing these community service sentencing in Nigeria”.

It is not surprising why 62.5% of the key informants, as stated in table 3 below, confessed to the author in an administered questionnaire that “they are not familiar with community service sentence and 75% of them in another phase of the questionnaire rated the imposition of community service sentence poor. However, it has been revealed from the findings of the author’s fieldwork survey that the consequence of imposition of imprisonment all these while has not yielded any positive result of rehabilitation, reformation and reintegration of the convicts back to the society which are the major cardinal objectives of criminal justice

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formulated by the Federal government to decentralise correctional centres and limit the admission of inmates. See Daily Trust dated June 9, 2020. Available online at <https://www.dailytrust.com.ng/.fg-to-decentralise-correctional-centres-limit-admission-of-inmates.html> accessed June 9, 2020.

<sup>107</sup> See Yilma, Kassahun Molla and Robberts, V. Julian ‘Out of Africa: Exploring the Ethiopian Sentencing Guidelines’ (Criminal Law Forum, 2019)30:309-337. available at <https://www.doi.org/10.1007/s10609-019-09373-x> accessed March 12, 2020

<sup>108</sup> Ibid

system. The author's findings is also intandem with the studies of Abrifor et.al<sup>109</sup> and Wilson<sup>110</sup> when Abrifor et al. estimated the prevalence of recidivism in Nigeria prisons at 52.4% in 2010 and Wilson's study has documented that 81% of male criminal inmate offenders and 45% of female criminal inmate offenders were re-arrested within 36 months of discharge/release from the Nigerian prison custody in 2009. To the key informants representing 75% as shown in table 3, "Imposition of imprisonment by the courts has not reduced the rate of crimes in Nigeria" as 65% of them in another interval of the questionnaire strongly agreed with the author that "increase in the rate of crimes is due to non-rehabilitation of convicts in prisons or correctional centres". This position is also being witnessed under the Ethiopian criminal justice system where the Tigray Regional Correctional Administration report revealed that 98 out of 1931 inmates were those rearrested for another felony in 2018 and the correctional centres in Tigray were overcrowded due to the rising number of recidivists.<sup>111</sup>

The views of the key informants on the enforceability of community service sentence at different interval of the questionnaire are therefore very interesting. For instance, in table 3, almost all the key informants representing 90% hold the view that "Community service approach should be adopted in all crimes that carry imprisonment or option of fine". 90% of them also hold the view that "Community service sentence approach should be adopted in all crimes that carry less than three years of imprisonment". While 65% of them expressed the view that "enforcement and implementation of community service sentence in criminal cases will be more effective to rehabilitate/reform the convicts than being imprisoned in Correctional centres". However, 75% of them identified some factors that contribute to ineffective or non-enforceability of community service sentence thus:

Insufficient resources to support the implementation, Lack of capacity and personnel to supervise in the community; Lack of collaborative network between non-governmental organizations and government for implementation; Unwillingness of the Judges/Magistrates to adopt community service sentencing even for minor offences; Mandatory minimum sentencing; Pressure exerted for imprisonment of offenders by the public remain the primary instruments of punishment in Nigeria and Negative public perception by regarding prisoners/inmates as outcasts hinder efforts in enforcing community service sentencing.

Overall, this paper posits that the Nigerian community service sentencing as an alternative approach to imprisonment will be a viable approach to decongest prisons or correctional centres which will benefit the Nigerian and Ethiopian communities if fully adopted, implemented and enforced especially at period of disease outbreak such as this present COVID-19 pandemic. This approach to imprisonment will limit the spread of the virus as social or physical distancing could not be practicable in prisons or correctional centres which

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<sup>109</sup> Abrifor et.al, *Differences, Trend And Pattern Recidivism Among Inmates In Selected Nigerian Prisons*, European Scientific Journal(2010).

<sup>110</sup> Wilson H, (2009). CURBING RECIDIVISM IN OUR SOCIETY [http://www.pioneerng.com/article.php?title=Curbing\\_Recidivism\\_In\\_Our\\_Society&id=2765](http://www.pioneerng.com/article.php?title=Curbing_Recidivism_In_Our_Society&id=2765) (last visited December 20, 2012).

<sup>111</sup> Tigray Regional State Correctional Systems Administration. (2018). Regional correctional centers annual performance evaluation report (Unpublished report) cited in Zenawi z. et al. (2021) "Reintegration of returning citizens in the absence of formal transition programs: experiences from Ethiopia" Journal of Offender Route Rehabilitation, Routledge available online at <https://doi.org/10.1080/10509674.2021.1909199> accessed on March 20, 2022

have been reported to have been overcrowded.<sup>112</sup> Author's fieldwork survey is in tandem with this assertion where almost all the key informants representing 90% in table 3 hold the view that "enforcement of community service sentence will curtail the spread of COVID-19 in the correctional centres". In another phase of the questionnaire administered by the author, 75% of the key informants strongly agreed with the author that "enforcement of community service sentence enhances social distancing which is one of the major approaches of limiting the spread of COVID-19 pandemic".

**Table 3 : Attitude towards the Implementation/Enforceability of Community Service Sentence as an Alternative to Imprisonment in the Nigerian Criminal Justice System**

Perception of the Key Informants	Frequency	%	Perception of the Key Informants	Frequency	%
Are you familiar with community service sentence?			Which of these are advantages of community service sentencing over imprisonment?		
Yes	125	62.5	(a) Community service sentencing conforms with African tradition of dealing with offenders	07	3.5
No	75	37.5	(b) Community service sentencing heals the damage caused by crime within the community	10	5
Total	200	100	(c) Community service sentencing is a positive and cost-effective measure as against imprisonment	08	4
Enforcement and implementation of community service sentence in criminal cases will be more effective to rehabilitate/reform the convicts than being imprisoned in Correctional centres			(d) Community service sentencing enhance the economy as resources expended on imprisonment of inmates could be spent on improving the life of citizens such as building schools and infrastructure	10	5
(a) Strongly agree	70		(e) All of the above	165	82.5
(b) Agree	60	35	Total	200	100
(c) Disagree	35	30			
(d) Strongly disagree	25	17.5			
(e) Undecided	10	12.5			
Total	200	100			
Lack of willingness of the judges or magistrates to impose community service sentence contribute to overcrowding of correctional centers in Nigeria			Community service sentence approach should be adopted in all crimes that carry less than three years		
Yes	150	75	Yes	180	90
No	50	25	No	20	10
Total	200	100	Total	200	100
Community service approach should			Imposition of imprisonment by the		

<sup>112</sup> See World Prison Brief Data: Nigeria dated July 2018. See also VOA News, Nigeria's Prisons Set to Undergo Long-Awaiting Reforms dated August 24, 2019; the ICPS World Prison Brief, Prison data, Ethiopia, available at: [http:// www.prisonstudies.org/country/ethiopia](http://www.prisonstudies.org/country/ethiopia) accessed March 15, 2020.

be adopted in all crimes that carry imprisonment or option of fine			courts has not reduce the rate of crimes in Nigeria		
Yes	180	90	Yes	150	75
No	20	10	No	50	25
Total	200	100	Total	200	100
Factors that contributes to ineffective community service sentencing/increase in the imposition of imprisonment in Nigeria			If your answer to the question above is yes, do you agree that increase in the rate of crimes is due to non-rehabilitation of convicts in prisons/custodial cetres		
(a) Insufficient resources to support the implementation	10	5			
(b)Lack of capacity and personnel to supervise in the community	10	5	(a) Strongly agree	70	35
(c)Lack of collaborative network between non-governmental organizations and government for implementation	05	2.5	(b) Agree	60	30
(d) Unwillingness of the Judges/Magistrates to adopt community service sentencing even for minor offences	10	5	(c) Disagree	35	17.5
(e) Mandatory minimum sentencing	05	2.5	(d) Strongly disagree	25	12.5
(f) Pressure exerted for imprisonment of offenders by the public remain the primary instruments of punishment in Nigeria	05	2.5	(e) Undecided	10	5
(g) Negative public perception by regarding prisoners/inmates as outcasts hinder efforts in enforcing community service sentencing	05	2.5	Total	200	100
(h) All of the above	150	75			
Total	200	100	How will you rate the imposition of community service sentence process?		
			Good	45	22.5
			Poor	150	75
			Undecided	05	2.5
			Total	200	100
Designing and implementation of programmes which provide an opportunity for the convict to work the sentence off rather than being sent to prison can be adopted in enforcing community service sentence	70	35	Enforcement of community service sentence in criminal cases will boost Nigerian economy and enhance the welfare of citizens		
(a) Strongly Agree	80	40	Strongly agree	85	42.5
(b) Agree	20	10	Agree	70	35
(c) Strongly disagree	25	12.5	Undecided	05	2.5
(d) Disagree	05	2.5	Disagree	25	12.5
(e) Undecided	200	100	Strongly disagree	15	7.5
Total			Total	200	100



Enforcement of community service sentence will reduce overcrowding in the Nigerian correctional centres			Enforcement of community service sentence will curtail the spread of COVID-19 in the correctional centres		
Yes	150	75			
No	45	22.5	Yes	180	90
Undecided	05	2.5	No	20	10
Total	200	100	Total	200	100
Enforcement of community service sentence enhance social distancing which is the major approaches of limiting the spread of COVID-19 pandemic			COVID-19 pandemic creates awareness for the enforceability of community service sentence		
Yes	150	75	(a) Strongly Agree	70	35
No	45	22.5	(b) Agree	80	40
Undecided	05	2.5	(c) Strongly disagree	20	10
Total	200	100	(d) Disagree	25	12.5
			(e) Undecided	05	2.5
			Total	200	100
Enforcement of community service sentence is the only viable approach to complete non-custodial measures in compare to other approaches to punishment and sentencing			Enforcement of community service sentence by all the Nigerian Courts on minor cases during this period of COVID-19 pandemic should be encouraged		
(a) Strongly Agree	70	35			
(b) Agree	80	40	Yes	180	90
(c) Strongly disagree	20	10	No	20	10
(d) Disagree	25	12.5	Total	200	100
(e) Undecided	05	2.5			
Total	200	100			
Refusal of some states to domesticate ACJA hinder the enforceability of community service sentence in Nigeria			Enactment of ACJL by all States of Federation will enhance the enforceability of community service sentence in criminal justice system		
Strongly agree	70	35			
Agree	80	40	Strongly agree	85	42.5
Undecided	20	10	Agree	70	35
Disagree	25	12.5	Undecided	05	2.5
Strongly disagree	05	2.5	Disagree	25	12.5
Total	200	100	Strongly disagree	15	7.5
			Total	200	100

#### 4. CHALLENGES IN ADDRESSING THE NIGERIAN AND ETHIOPIAN PRISONS OR CORRECTIONAL CENTRES OVERCROWDING

Overcrowding in prisons or correctional centres all over the world, Nigeria and Ethiopia inclusive arises when the numbers of prisoners/inmates either awaiting trials, convicted or convicted but awaiting an appeal of their sentences are higher than the capacity of prisons or correctional centres to provide adequately and effectively for the physical and psychological needs of the prisoners/inmates. Arguably, overcrowding has become a major problem to the government as it leads to waste of public resources and to prisoners/inmates as it may threaten their rights to health, accommodation, health care and ventilation. It may also create conditions that places the inmates at high risk of contracting infectious diseases such as, COVID-19 pandemic due to poor hygiene, lack of staff supervision and poor medical

care. Author's fieldwork survey has confirmed this position where 85% of the key informants in table 4 hold the view that "there are lack of adequate medical health facilities and good hygiene in the prisons or correctional centres" and that "the identified common diseases in correctional centres give room for the spread of COVID-19". Reports on overcrowding are abounded in Nigeria and Ethiopia when the UN Special Rapporteur<sup>113</sup> reported that "the vast majority of detainees are held in detention awaiting trial or held without charge for lengthy periods, as long as 10 years" and according to Chirwa,<sup>114</sup> detention facilities in Ethiopia were found to be overcrowded where "some holding inmates more than twice their capacity". Chirwa's study further revealed that "in Regional Awasa Prisons in Ethiopia, more than 979 prisoners were being held in a facility with a capacity of 450 inmates" and "in Addis Ababa, nearly 70% of prison population was found not to have been sentenced, while in the Awasa prison, 87% of the prisoners were awaiting trial or sentencing". According to Egamberdi,<sup>115</sup> increase rate of infectious diseases and possible death in prisons or correctional centres due to overcrowding may also "have a significant impact on the levels of productivity, which in turn, affect the economy as the resources being expended on pretrial detainees could be more productively spent on building schools, health clinics and other critical infrastructure that would improve the quality of life of citizens". Instructively, overcrowding is a complex and multi-faceted issue which has many contributory factors all over the world. For example, in Nigeria and Ethiopia, some of the contributory factors are examined below:

**4.1 Non-existence or failure to utilize non-custodial measures** as an alternative to imprisonment contributes to overcrowding. Examples in Nigeria is the author's discussion of community service sentencing which ACJA has provided which is underutilized while in Ethiopia, there is absence of measures for adopting community service and the available partial measures under compulsory labour available under the Criminal Code is also underutilized. The findings from the author's fieldwork in Nigeria revealed the non-uniformity in the administration of criminal justice as almost 20 States of the federation are yet to domesticate ACJA in Nigeria while the old provisions of Criminal Procedure Code and Criminal Procedure Act which has no applicability of community service sentencing approach are still in operation in those States in question. In Ethiopia as well, many scholars such as Chirwa<sup>116</sup> have called for more usage of non-custodial measures such as diversion programs, provisions for bail, community service order among others in order to reduce prison overcrowding.

**4.2 Inadequate budgetary allocation, mismanagement and obsolete criminal procedure** create inefficiencies that result in poor case flow management and an overreliance on imprisonment which contribute to overcrowding in prisons or correctional centres in

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<sup>113</sup>Nowak, M. 2008. *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Addendum. Mission to Nigeria. 4 to 10 March.* <http://www.unhcr.org/refworld/pdfid/4785d5042.pdf> See also, 2007b. *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Mission to Nigeria. 4 to 10 March.* <http://www.unhcr.org/refworld/pdfid/4785d5042.pdf>

<sup>114</sup>Chirwa, V. M. 2004. *Report of the Mission of the Special Rapporteur on Prisons and Conditions of Detention in Africa to the Federal Democratic Republic of Ethiopia, 15-29 March 2004.* [http://www.arhpr.org/english/Mission\\_reports/ethiopia/Special%20Rap%20Prisons\\_Ethiopia.pdf](http://www.arhpr.org/english/Mission_reports/ethiopia/Special%20Rap%20Prisons_Ethiopia.pdf)

<sup>115</sup>Egamberdi, N. 2007. *HIV and Prisons in Sub-Saharan Africa: Opportunities for Action.* Vienna: United Nations Office on Drugs and Crime. [http://www.data.unaids.org/pub/Report/2007/hiv\\_prison\\_paper\\_en.pdf](http://www.data.unaids.org/pub/Report/2007/hiv_prison_paper_en.pdf)

<sup>116</sup> Chirwa, V. M. 2004. *Report of the Mission of the Special Rapporteur on Prisons and Conditions of Detention in Africa to the Federal Democratic Republic of Ethiopia, 15-29 March 2004.* [http://www.arhpr.org/english/Mission\\_reports/ethiopia/Special%20Rap%20Prisons\\_Ethiopia.pdf](http://www.arhpr.org/english/Mission_reports/ethiopia/Special%20Rap%20Prisons_Ethiopia.pdf)

Nigeria and Ethiopia. For example, feeding and basic necessities are inadequate and rehabilitative programmes are very few. Studies have shown that as at 2018, budgeted cost of feeding for an inmate was three hundred Naira (N300) per day which is equivalent to less than one US Dollar (less than 1 USD).<sup>117</sup> Inadequate data and ineffective case files management process for inmates especially those inmates that have been granted bails by the court has been documented. According to a report from the interview at Anambra prisons, a prison authority disclosed thus:

We do not have information regarding all the Awaiting Trial Persons that have been granted bail by the court because the information on their bail is not routinely provided by the court in all the cases, it is only endorsed in some of the Awaiting Trial Persons' warrants.<sup>118</sup>

Similarly, lack of comprehensive prison data for all those granted bail has also been documented as one of the notorious features of the prisons or correctional centres overcrowding in Nigeria and Ethiopia. For instance, a study carried out at Enugu Prisons in Nigeria buttress this position when the inmates in an administered questionnaire on the issue of whether or not they are aware of the bail granted by the court. The response goes thus:

45 of the Awaiting Trial Persons indicated that they had bail. Of this number, only 5 were among the 45 Awaiting Trial Persons whose prison records indicated that they had been granted bail. 20 out of them whose record indicated that they were on bail were not aware and the records of the remaining Awaiting Trial Persons did not show that they were on bail when they were in true sense granted bail by their respective courts.<sup>119</sup>

In a study conducted at Ethiopian Prisons by "the African Child Policy Forum",<sup>120</sup> limited resources are noticeable as the major problem in the Ethiopian prisons as it was revealed that "there are insufficient financial resources available for accommodation, health, education, services for counseling, qualified psychologist/psychiatrist and other services" as the prisoners are at the mercy of the NGOs. especially at the Addis Ababa and Jimma's Prisons in Ethiopia". The study further revealed that "lack of a complete and up to date record of detainees by relevant authorities has created a basic programming problem since intervention efforts by the government or other actors could not be properly designed without such information". It is therefore argued that management of prisons or correctional centres effectively will enhance the effective classification of inmates based on risk and needs in order to have a safe institutional environment and opportunity to treat those affected with the disease. This challenge is observed by many scholars<sup>121</sup> especially for juveniles who are confined in facilities with adults to be more at risk in addition to the risk of sexual assault and exploitation.

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<sup>117</sup> Francisca Anene and Laura Osayamwen, "Remembring the Forgotten: Benefits of Prison Education for Awaiting Trial Inmates in Nigeria. Pan-Commonwealth Forum, Edinburgh, 2019.

<sup>118</sup> Ibid. See also Premium Times Special Report: Inside Nigeria's Prisons where thousands languish for years without trial. Dated June 25, 2019.

<sup>119</sup> Otuu Fred and Shu Elvis, "Prevalent Diseases among Inmates in Three Federal Prisons in South-East Geographical Zone of Nigeria: A Peep into Environmental Factors" Journal of Environmental Science and Public Health, Volume 3, Issue 1, 2019.

<sup>120</sup> See the African Child Policy Forum, 2007 available at [www.africanchildforum.org](http://www.africanchildforum.org) or [www.africanchild.info](http://www.africanchild.info)

<sup>121</sup> See for instance, Sloth-Nielsen, J. 2008. "Children in African Prisons." In J. Sarkin, ed. *Human Rights in African Prisons*. Athens, Ohio: Ohio University Press. pp. 117-133.

**4.3 Inadequate personnel, poor institutions, decaying infrastructure and logistic support** are identified as some of the challenges facing the Nigerian and Ethiopian prisons or correctional centres. Prisons or correctional centres' facilities in both jurisdictions are antiquated and in need of replacements as all most of the facilities were built during the colonial eras. In an administered questionnaire by the author on the effectiveness of the three core institutions (Police/Ministry of Justice, Court and prisons or correctional centres) saddled with the responsibility of administration of criminal justice in Nigeria, majority of the key informants representing 50% rated police low followed by 25% that rated prisons or correctional centres low, Director of Public Prosecution (DPP) from the Ministry of Justice was rated 15% low while courts was rated 10% to be low. The African Child Policy Forum<sup>122</sup> in another interval of its study on the challenges of Ethiopian prisons revealed lack of adequate and qualified personnel in the administration of prisons in Ethiopia. It was revealed in its interview with a Psychologist who left Addis Ababa's prison that:

Personnel such as judges, prosecutors, police, prison officials, psychologists often complained about the inadequacy of their salaries with respect to the workload and the living standard and due to low salary scales, few individuals with the required qualification would be willing to join the institutions.

This is argued to be one of the major factors contributing to the low stimulus and lack of commitment on the part of the officials towards their careers.

**4.4 Refusal or stringent bail conditions and vulnerability of the poor inmates** are also some of the challenges as poor inmates may be at high risk of not able to afford bail conditions while some may be vulnerable to being confined for inability to pay for fine imposed by the court upon conviction. Table 4 shows the response of 75% of the key informants who confirm this assertion that 60% of the inmates are those that are unable to pay fines imposed on them by the courts.

Another example is the report which revealed that:

a large majority of respondents were not granted bail by the court and those that were granted bail could not perfect the bail condition because it was stringent, or they could not meet the conditions given by the court. Also, in the report, 32.5% of the respondents had bail granted while 67.5% of those that responded to the question were not granted bail. 81.4% of those granted bail could not perfect their bail and thus they continue to remain in prison custody despite the fact that they have been granted bail. Of this number, 67.7% indicated that they could not meet their conditions while 13.8% described their bail to be stringent.<sup>123</sup>

The study went further to reveal the situation in Kano Prisons thus:

In kano, 71.8% were able to meet with the bail conditions while the remaining 28.2% were unable to meet with the bail conditions. Examples of the stringent bail conditions include the following: N50,000 to N2million and one to two sureties in like sum depending on the nature of offences; the sureties must be resident and/or owned landed property within the area of jurisdiction of the court; sureties must be a civil servant not below salary of Grade

<sup>122</sup> See the African Child Policy Forum, 2007 available at [www.africanchildforum.org](http://www.africanchildforum.org) or [www.africanchild.info](http://www.africanchild.info)

<sup>123</sup> PRAWA and NPS Nigerian Prisons Survey Report, Volume 1 Summary: A Research on Pre-Trial Detention in Nigeria. Dated February 1, 2018.

level 13 or that a surety must deposit title documents of a landed property situated within the jurisdiction of the court or that one of the sureties must be ward or village head of the area where the accused reside. On the issue title documents most of the accused are from rural areas whose properties do not have a formal and verifiable title documents. Or the issue of village/ward head to be a surety, there is a recent order from the emirate council restraining traditional title holders from using their traditional title office to act as sureties.<sup>124</sup>

It was documented from the findings of Chirwa<sup>125</sup> in his study conducted at Ethiopia that

there is lengthy period of incarceration without bail of the detainees on the basis of incomplete investigations by the police and there is no limit on the number of extensions requested as persons being detained were without charge in Ethiopia.

The implication of these positions is that, these set of Awaiting Trial Persons grated bails that are still in Nigerian correctional centres and those without charges being proffered against them at Ethiopia prisons will overcrowd the prisons or correctional centres cells and will pose threat to the remaining inmates which may increase the spread of COVID-19 pandemic.

**4.5 Lockdown and Restriction of Movement Mechanisms for Preventing the Transmission of COVID-19 Pandemic** is another challenge for prisons or correctional centres overcrowding. The World Health Organization declared the COVID-19 outbreak as a pandemic on the 11<sup>th</sup> March 2020 and recommended for temporary lockdown and restriction of movement of people all over the world.<sup>126</sup> In compliance with this directive, Nigerian and Ethiopian government directed the closure of borders and impose lockdown and inter-state movement of persons within their respective country.<sup>127</sup> From the directive of the Nigerian government, the Chief Justice of Nigeria (CJN) ordered closure of judiciary in all the 36 States of the Federation and the Federal Capital Territory, Abuja on March 23 and April 8, 2020 vide a letter with reference numbers NJC/CIR/HOC/11/631 and NJC/CIR/HOC/11/656 addressed to all heads of courts, Federal and States Judiciaries tagged “Re: Preventive measures on the spread of Coronavirus (COVID-19) and the protection of Justices, Judges and Staff of Courts”.

In a similar vein, the Ethiopian Supreme Court on March 18, 2020 ordered a partial closure of the courts and this was extended again on June 6, 2020 in order to halt the spread of COVID-19 pandemic. This is aimed at maintaining the safety of judges, court workers and community coming to courts.<sup>128</sup> To this end, these directives and orders of the courts have

<sup>124</sup> Ibid

<sup>125</sup> Chirwa, V. M. 2004. *Report of the Mission of the Special Rapporteur on Prisons and Conditions of Detention in Africa to the Federal Democratic Republic of Ethiopia, 15-29 March 2004*. [http://www.arhpr.org/english/Mission\\_reports/ethopia/Special%20Rap%20Prisons\\_Ethopia.pdf](http://www.arhpr.org/english/Mission_reports/ethopia/Special%20Rap%20Prisons_Ethopia.pdf)

<sup>126</sup> See Update WHO recommendations for COVID-19 available online at <https://www.who.int> accessed April 20, 2020.

<sup>127</sup> Nigerian Federal Government made pronouncement for lockdown on April 1, 2020. See Authorities in Nigeria must uphold human rights in fight against COVID-19 available online at <https://www.amnesty.org> accessed April 20, 2020. In Ethiopia, the government has declared a state of emergency under Article 93 of the Constitution and has directed the closure of borders and restriction of movement on April 8, 2020. See Ethiopia declares state of emergency to fight coronavirus available at <https://www.aljazeera.com> accessed April 20, 2020.

<sup>128</sup> See Ethiopian Supreme Court Extends Partial Closure of Courts over COVID-19 available online at <https://www.apanews.net> accessed on June 2, 2020.

halted the court proceedings and overcrowded the prisons or correctional centres as all inmates in Nigeria and Ethiopia were locked up including those that are about to be released on bails and those that are awaiting judgements which probably might have been favourable to them for their discharge and acquittal. The author has not lose sight on the release of prisoners/inmates done by the Nigerian and Ethiopian governments under the guise of the Constitutional provision on the proclamation of the state of emergency. However, the release of the prisoners' has not been seen as panacea to decongestion of prisons or correctional centres comparing with the enforcement of non-custodial measures. The later measure of non-custodial model can be viewed as a model for rehabilitation, reformation and deterrence to others intending to commit such crimes. Whereas, the former measure of release done by Nigerian and Ethiopian governments may aggravate the tendency of the prisoners for being recidivists.

**Table 4: Perceptions of the Key Informants on the prisons or correctional centres Overcrowding**

Perception of the Key Informants	Frequency	%	Perception of the Key Informants	Frequency	%
The existing laws and policies dealing with the category of offenders that should be committed to prisons are not explicit?			Were you aware that major sentencing in the criminal justice system range from fine, imprisonment or both, death penalty, probation, parole and community service?		
Strongly Agree	120	60	Yes	130	65
Agree	60	30	No	70	35
Strongly disagree	08	4			
Disagree	07	3.5			
Undecided	05	2.5			
Total	200	100	Total	200	100
Do you know these categories of crimes?			If your answer in above question is yes, which of the punishment or sentencing approach from the above is often imposed by the court?		
Felony Offence					
Misdemeanour Offence			(a) Fine	40	20
Simple Offence			(b) Imprisonment	130	65
Yes	150	75	(c) Death penalty	15	7.5
No	50	25	(d) Community service	10	5
			(e) Others	05	2.5
Total	200	100	Total	200	100
Were you aware that Misdemeanour and simple offences carries sentence less than three years?			Which of these is the major cause(s) of prisons or correctional centres overcrowding?		
Yes	100	50	(a) Imprisonment	02	1
No	100	50	(b) Awaiting trials	03	1.5
			(c) Inability to pay fine imposed by the courts	05	2.5
Total	200	100	(d) Lack of awareness about	10	5

			community service sentence by the courts (e) All of the above Total	180 200	90 100
Were you aware that Felony offences carries punishment of three years above?			Which of the following is a complete approach of non-custodial measures?		
Yes	80	40	(a) plea bargain	10	5
No	120	60	(b) community service	185	92.5
			(c) remand time limit	05	2.5
			(d) rejection of more intakes of inmates by State Controller of Correctional Service when correctional centres reach maximum capacities	03	1.5
Total	200	100	Total	200	100
Category of offences committed by the inmates that are in prisons or correctional centres is			Category of inmates in correctional centres		
(a) Felony Offence	10	5	60% of inmates are unable to pay the fines imposed on them by the courts	150	75
(b) Misdemeanour Offence	10	5	40% are convicted for imprisonment	50	25
(c) Simple Offence	30	15	Total	200	100
(d) All of the above	150	75			
Total 200		100			
Inmates in prisons that are serving sentences are			Offences committed by the inmates that are in prisons or correctional centres reflect		
(a) 60% serving sentence that are less than three years imprisonment	150	75	(a) 75% of the offences are State offences	170	85
(b) 25% serving sentence that are more than three years imprisonment	30	15	(b) 20% of the offences are federal offences	25	12.5
(c) 10% are serving life imprisonment	15	7.5	(c) 5% of the offences are local offences	05	2.5
(d) 5% inmates are convicted for death penalty	5	2.5	Total	200	100
Total	200	100			

There are lack of adequate medical health facilities and good hygiene in the prisons or correctional centres			Common diseases in prisons or correctional centres are		
(a) Strongly agree	150	75	(a) Malaria	20	10
(b) Agree	30	15	(b) High blood pressure	05	2.5
(c) Disagree	15	7.5	(c) Skin infections	15	7.5
(d) Strongly disagree	5	2.5	(d) Fever	10	5
			(e) Vomiting,	10	5
			(f) Severe headaches	12	6
			(g) Joint pains	08	4
			(h) All of the above	120	60
Total	200	100	Total	200	100
Rate of effectiveness of institutions of criminal justice system from the lowest			The identified common diseases in correctional centres give room for the spread of COVID-19		
(a) Police	100	50	(a) Strongly agree	150	75
(b) Ministry of Justice	30	15	(b) Agree	30	15
(c) Court	20	10	(c) Disagree	15	7.5
(d) prisons or correctional centres	50	25	(d) Strongly disagree	5	2.5
Total	200	100	Total	200	100
Congestion in the correctional centres' cells can aggravate the spread of COVID-19			Lack of qualified medical personnel can engender the spread of COVID-19 in the correctional centres		
(a) Strongly agree	150	75	(a) Strongly agree	130	65
(b) Agree	30	15	(b) Agree	60	30
(c) Disagree	15	7.5	(c) Disagree	15	7.5
(d) Strongly disagree	5	2.5	(d) Strongly disagree	5	2.5
Total	200	100	Total	200	100

## 5. COVID-19 AND IMPRISONMENT OF INMATES IN NIGERIAN AND ETHIOPIAN PRISONS OR CORRECTIONAL CENTRES

By July 2018, an estimated 74,000 inmates were imprisoned in Nigerian correctional centres out of which 70% were awaiting trials<sup>129</sup> and 104,467 prisoners as at 2010 were in Ethiopian Prisons.<sup>130</sup> It has been reported that between 2013-2014, Ethiopia prisons was the second highest prisons population in Africa which housed at 127 prisoners per 100,000 population.<sup>131</sup> Instructively, the offences that warranted the imprisonment of the inmates in

<sup>129</sup> World Prison Brief Data: Nigeria dated July 2018. See also VOA News, Nigeria's Prisons Set to Undergo Long-Awaiting Reforms dated August 24, 2019.

<sup>130</sup> See the ICPS World Prison Brief, Prison data, Ethiopia, available at: <http://www.prisonstudies.org/country/ethiopia>.

<sup>131</sup> See the ICPS World Prison Brief, , Highest to Lowest - Prison Population Total, at: [http://www.prisonstudies.org/highest-to-lowest/prison-population-total?field\\_region\\_taxonomy\\_tid=15](http://www.prisonstudies.org/highest-to-lowest/prison-population-total?field_region_taxonomy_tid=15) accessed April 20, 2020.



both jurisdictions range from assaults, property and property related crimes which mostly carries one to less than three years imprisonment or an option of fines which the convicts were unable to pay. The regulatory framework examined in the previous section emphasizes the purpose of imprisonment of prisoners/inmates in prisons or correctional centres in Nigeria and Ethiopia which is to safeguard the society against crime and to reduce the rate of recidivism. The prisons or correctional centres are empowered to rehabilitate and reintegrate the prisoners/inmates into the society as law-abiding citizens during the period of their imprisonment.

However, the protracted nature of imprisonment and the resultant effect pose grave threats to reasonable standard of living for all the inmates and accelerate the spread of COVID-19 pandemic where the only available means of limiting the spread now are social and physical distancing. Instructively, it has been shown that reasonable standard of living for all inmates in the prisons or correctional centres entails the rights of inmates to suitable accommodation, feeding, potable water, good environmental hygiene, sewage disposal, clothing and toiletries etc. which flow from the right to adequate medical and health facilities.

From the Nigerian perspective, fieldwork by the author where majority of the key informants representing 78% in an administered questionnaire on the health condition of inmates at the Nigerian correctional centres revealed that “there are inadequate medical and health facilities in the correctional centres and poor hygiene and that there is no prompt medical attention in emergency cases”. To buttress this position is the report<sup>132</sup> that shows that in 2016, 1451, 1056 and 364 prisoners were reported sick at Ikoyi in Lagos, Kano Central in Kano and Enugu prisons in Enugu States respectively. This situation is similarly observed by the Human Rights Watch<sup>133</sup> where it was reported thus:

Nearly all the inmates described their cells that there is no enough room for all detainees to sit or lie down and that at night, detainees would sleep on their sides, packed one next to another. They further said, we were closed you couldn’t put one finger between one person and the next. Sleeping arrangement were like razorblades in a pack, once in position, no one would be able to move or roll over until the morning. Some inmates said, they developed sores on their bodies from restricted movement and sleeping or sitting on hard floors for prolonged periods.

Another report revealed the overcrowdings of the Nigerian prisons thus:

Kaduna Prison which has capacity for only 473 inmates, now has 1,480 prisoners; while Enugu Maximum Security Prison with capacity for 638, now has 2,077 prisoners. The Port Harcourt Maximum Security Prison has capacity for only 804 but currently has 4,576 locked up. Kirikiri Prison in Lagos has capacity for only 500 prisoners but now accommodates 1,601 prisoners.<sup>134</sup>

In support of these assertions is another response at another interval of the questionnaire administered by the author where 85% of the key informants alluded to the fact that “inmates suffer from malaria by describing symptoms that include high blood pressure, skin infections;

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<sup>132</sup> Amnesty International, Nigeria: Detained Protesters Denied Medical Care dated August 19, 2019

<sup>133</sup> Human Rights Watch interview, Maiduguri, June 21, 2019

<sup>134</sup> Amnesty International ‘Nigeria: Authorities must uphold human rights in fight to curb COVID-19’ (1 April 2020). Available at: <https://www.amnesty.org/en/latest/news/2020/04/nigeria-covid-19/> (accessed 28 April 2020).

fever, vomiting, severe headaches and joint pains". The study of Fred and Elvis corroborate the author's fieldwork where it was shown that:

Malaria was the most prevalent disease with 81.06%, 77.67% and 73.33% at Federal Prisons in Enugu, Ebonyi and Anambra States under study followed by cough and catarrh at 63.79%, 68.67% and 60.0% respectively. Diarrhea, rashes, headache; hypertension/high blood pressure and sore throat/tuberculosis were revealed to be 42.90%, 43.67% and 37.44%; 58.77%, 59.27% and 58.97%; 47.08%, 30.67% and 39.49%; 41.23%, 15.67% and 20.0%; 28.41%, 36.67% and 18.97% respectively.<sup>135</sup>

Recent statements by the Vice President Yemi Osinbajo and Minister of Interior Abdulrahman Dambazau confirm the above assertions when the former lamented over the deplorable state of the country's prisons and denigration of the cruel care of the inmates, while the later states thus "there is no room for prisoners and anybody who goes into that place as a human being is coming out as an animal".<sup>136</sup>

From the Ethiopian perspective, it has been reported by the US State Department in 2017 that Ethiopian prisons were "unhealthy, unsanitary and they remained harsh and life-threatening".<sup>137</sup> According to this US State Department report, it has also been revealed that "sleeping quarters at the Ethiopian prisons are grossly overcrowded" Further, "one of the prisons in Asella with capacity for 400 prisoners housed 3,000 prisoners".<sup>138</sup> This was confirmed by the Penal Reform International that as at 2011, "the number of detainees at the Ethiopian Prisons has been risen from 55,000 to 93,000."<sup>139</sup> According to a report, "61.9% of the prisoners at Kaliti Federal Prisons in Addis Ababa, Ethiopia was reported to have high levels of mental distress"<sup>140</sup> this was confirmed from the report to be as a result of "prisons' overcrowding, lack of privacy, lack of meaningful activity, inadequate health services especially mental health services in prison, lack of social support, dissatisfaction before and after imprisonment, status of prisons"<sup>141</sup> among others. A recent survey conducted by Beyen et al. on the health condition of prisoners at Ethiopia Prisons revealed that "almost 17 out of 20 representing 83.4% of the total population of sampled prisoners were victims of psychological distress, 7 of every 20 representing 36.1% of them were at risk of anxiety while 5% of them were current smokers".<sup>142</sup>

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<sup>135</sup> Otuu Fred and Shu Elvis, "Prevalent Diseases among Inmates in Three Federal Prisons in South-East Geographical Zone of Nigeria: A Peep into Environmental Factors" *Journal of Environmental Science and Public Health*, Volume 3, Issue 1, 2019.

<sup>136</sup> See the statement of Vice President Yemi Osinbajo and Abdulrahman Dambazau on the Nigerian Prison Service. *The Guardian Nigeria* on the condition of Nigeria's Prisons dated February 19, 2018.

<sup>137</sup> See U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, "Ethiopia, Human Rights Report," (2017), p. 3, at: <https://www.state.gov/documents/organization/277243.pdf>.

<sup>138</sup> Ibid

<sup>139</sup> Penal Reform International. *Global prison trends 2015; special focus pull-out section drugs and imprisonment*. 2015.

<sup>140</sup> World Health Organization. *ECOSOC meeting addressing noncommunicable diseases and mental health: major challenges to sustainable development in the 21st century*. World Health Organization; 2009. p. 1–32. See also, Ministry of Health of Ethiopia. *A report of the assessment of the mental health system in Ethiopia using the World Health Organization- Assessment Instrument for Mental Health System (WHO-AIMS)*, Addis Ababa, Ethiopia. 2006.

<sup>141</sup> Ibid

<sup>142</sup> Teresa Kisi Beyen, Abel Fikadu Dadi; Berihun Assefa Dachew; Niguse Yigzaw Muluneh; and Telake Azale Bisetegn; "More than Eight in Every Nineteen Inmates were living with Depression at Prisons of Northwest Amhara Regional State, Ethiopia, A Cross Sectional Study Design" *Journal of BMC Psychiatry* (2017) 17:31

Tuberculosis was reported to be another major disease in Ethiopian prisons as “the number exceeds 3,000 per 100,000 prisoners, 163 new smear positives per 100,000 persons and a prevalence of 579 per 100,000 population”.<sup>143</sup> Ethiopia was generally ranked “the 7<sup>th</sup> country in the whole world and 3<sup>rd</sup> highest African countries with tuberculosis disease in 2008”.<sup>144</sup> Arguably, this disease poses threat to both prisoners and the communities where the prisons situated as this disease often involves resilient tensions in the country. This position was confirmed in another survey that “out of 15, 495 suspected prisoners tested for tuberculosis in 13 Prisons in Ethiopia, 765 representing 4.9% of them had tuberculosis”.<sup>145</sup> In another survey at South, East and North Ethiopia prisons especially at Gamo Gofa, Hadiya; Bedele Woreda and North Gondar zones revealed the prevalence of tuberculosis disease where 8.9% out of 371, 19.4%; 1.83%; 21.9% out of 196; 8.0%; 10.4% out of 250; 8.9% and 12.3% out of 114 prisoners were tested positive for tuberculosis at different intervals.<sup>146</sup> A diagnosis report shows that tuberculosis disease can be easily contracted as “it spreads from person to person through air by droplet nuclei produced when a person with tuberculosis infection coughs, sneezes, talks or sings”.<sup>147</sup> Another diagnosis report also revealed that “congregation places such as overcrowded prisons, close living conditions, insufficient ventilation, insufficient laboratory capacity and diagnostic tools, interrupted supply of medicines, inadequate infection control measures, poor healthcare services, night sweating and length of imprisonment”<sup>148</sup> were identified among others as commonest risk factors of tuberculosis. Surmise the above with COVID-19, studies have shown that this virus can be contracted either through “direct contact with infected persons, contact with infected surfaces;

<sup>143</sup> See the Federal Democratic Republic of Ethiopia, “First Ethiopian National Population based Tuberculosis prevalence survey, Addis Ababa, Ethiopia,” 2011.

<sup>144</sup> See D.Masoud, G.Malgosia, E.Michael, R.Harnan, and Z.Andrey, “Guidelines for control of Tuberculosis in prisons: Tuberculosis coalition for Technical Assistance and International committee of the Red Cross,” 2009.

<sup>145</sup> S. Ali, A. Haileamlak, A.Wieseretal, “Prevalence of Pulmonary Tuberculosis among Prison Inmates in Ethiopia, a Cross- Sectional Study,” *PLoS ONE*, vol. 10, no. 12, Article ID e0144040, 2015 cited in Mucheye Gizachew Beza, Emirie Hunegnaw and Moges Tiruneh, “Prevalence and Associated Factors of Tuberculosis in Prisons Settings of East Gojjam Zone, Northwest Ethiopia” *Hindawi International Journal of Bacteriology*, 2017. See also, D.S. Abebe, G. Bjune, G. Ameni, D. Biffa and F. Abebe, “Prevalence of Pulmonary tuberculosis and Associated Risk Factors in Eastern Ethiopian Prisons”. *The International Journal of Tuberculosis and Lung Diseases*. Vol. 15, No. 5, 2011. 668-673

<sup>146</sup> D. S. Abebe, G. Bjune, G. Ameni, D. Biffa, and F. Abebe, “Prevalence of pulmonary tuberculosis and associated risk factors in Eastern Ethiopian prisons,” *The International Journal of Tuberculosis and Lung Disease*, vol. 15, no. 5, pp. 668–673, 2011. See also, Z. Zerdo, M. Girmay, W. Adane, and A. Gobena, “Prevalence of Pulmonary Tuberculosis and Associated Risk Factors in Prisons of Gamo Goffa Zone, South Ethiopia: A Cross-Sectional Study,” *American Journal of Health Research*, vol. 2, no. 5, pp. 291–297, 2014; T. G. Fuge and S. Y. Ayanto, “Prevalence of smear positive pulmonary tuberculosis and associated risk factors among prisoners in Hadiya Zone prison, Southern Ethiopia Infectious Diseases,” *BMC Research Notes*, vol. 9, no. 1, article no. 201, 2016; B. B. Winsa and A. E. Mohammed, “Investigation on Pulmonary Tuberculosis Among Bedele Woreda Prisoners, South- west Ethiopia,” *International Journal of Biomedical Science and Engineering*, vol. 3, no. 6, pp. 69–73, 2015; F. Biadlegne, A. C. Rodloff, and U. Sack, “A first insight into high prevalence of undiagnosed smear-negative pulmonary tuberculosis in Northern Ethiopian Prisons: Implications for greater investment and quality control,” *PLoS ONE*, vol. 9, no. 9, Article ID e106869, 2014; B. Moges, B. Amare, F. Asfaw et al., “Prevalence of smear positive pulmonary tuberculosis among prisoners in North Gondar Zone Prison, northwest Ethiopia,” *BMC Infectious Diseases*, vol. 12, article no. 352, 2012; Z. Addis, E. Adem, A. Alemu et al., “Prevalence of smear positive pulmonary tuberculosis in Gondar prisoners, North West Ethiopia,” *Asian Pacific Journal of Tropical Medicine*, vol. 8, no. 2, pp. 127–131, 2015; M. Beyene, A. Bemnet, A. Fanaye, M. Andargachew, T. Belay, and K. Afework, “High prevalence and poor treatment outcome of tuberculosis in North Gondar zone prison, North west Ethiopia,” *International Journal of Medicines and Medicines*, vol. 5, no. 9, pp. 425–429, 2013.

<sup>147</sup> See Department of Health, “National Tuberculosis Management Guideline, Republic of South Africa,” 2014.

<sup>148</sup> T. G. Fuge and S. Y. Ayanto, “Prevalence of smear positive pulmonary tuberculosis and associated risk factors among prisoners in Hadiya Zone prison, Southern Ethiopia Infectious Diseases,” *BMC Research Notes*, vol. 9, no. 1, article no. 201, 2016

respiratory droplets when an infected person coughs, sneezes or talks; air-borne transmission in poorly ventilated and non-sanitized spaces or through faecal contamination".<sup>149</sup> Studies have also shown that "COVID-19 virus survives longer and travel farther in the air of closed and poorly ventilated spaces like patients' bathrooms and doctors changing rooms"<sup>150</sup> etc. This shows that inmates are one of the groups that are most predisposed to COVID-19 infections and transmission due to closed and overcrowded nature of the cell units<sup>151</sup> at the Nigerian and Ethiopian prisons or correctional centres to wit COVID-19 can be contracted as social distancing which is a core mechanism for limiting the spread and preventing the transmission of COVID-19 is impracticable in these centres. More importantly, the diseases identified in Nigerian and Ethiopian prisons or correctional centres are some of the infections that can aggravate the spread of COVID-19 pandemic. More appalling is the response of respondents in an interview by the Human Rights Watch in Nigeria where 96% of them confirmed that "inmates excrete and urinate in their overcrowding cell units".<sup>152</sup> This is argued by the author that the situation exposes the inmates to the risk of transmission of the virus through contact with the faecal waste of infected inmate. This is in-tandem with the interview conducted by the International Centre for Investigative Reporting where some inmates at Kaduna Central Prisons, Kirikiri Minimum Prisons Lagos; Warri Prisons, Delta State and Kuje Prisons, Abuja lamented thus: "We have nothing to wash our toilet. All we use is ash to try and reduce the smell. I have not spent two weeks here without having one infection or the other".<sup>153</sup>

This analysis so far demonstrates that, despite all these efforts and developments in the administration of criminal justice in Nigeria, it continues to be unclear whether or not the enactments of the regulatory framework for reformation have been able to offer a panacea to the problems associated with punishment and sentencing approaches and this calls for re-think by evaluating the enforcement of community service sentence and addressing the overcrowding of the prisons or correctional centres in the next sections of this paper. This paper return to explore remedial actions in the concluding part.

## CONCLUSION/RECOMMENDATIONS

It has been revealed in this paper that the current state of criminal justice system in Nigeria and Ethiopia is not effective as the outbreak of COVID-19 has exposed the flaws in the system of both jurisdictions. Imprisonment as the major approach to punishment and sentencing adopted in Nigeria and Ethiopia has not in any way reduce the rate of crimes. Also, there is no iota of report in this paper that shows that those convicts that were imprisoned in the prisons or correctional centres in Nigeria and Ethiopia have been successfully reformed and reintegrated back into the society. Whereas, studies, reports and author's fieldwork survey are abounded on the challenges encountered in the imposition of

<sup>149</sup>See for instance, Worldometer 'SARS-CoV-2 Transmission' (16 April 2020) available at <https://www.worldometers.info/coronavirus/transmission/> (accessed 28 April 2020). See also Y Liu *et al* 'Aerodynamic analysis of SARS-CoV-2 in two Wuhan hospitals' (2020) *Nature* available at [https://www.nature.com/articles/s41586-020-2271-3\\_reference.pdf](https://www.nature.com/articles/s41586-020-2271-3_reference.pdf) (accessed 28 April 2020).

<sup>150</sup>Y Liu *et al* 'Aerodynamic analysis of SARS-CoV-2 in two Wuhan hospitals' (2020) *Nature* available at [https://www.nature.com/articles/s41586-020-2271-3\\_reference.pdf](https://www.nature.com/articles/s41586-020-2271-3_reference.pdf) (accessed 28 April 2020).

<sup>151</sup> Report has shown that in Nigeria, some prisons are 200 to 300 per cent over capacity. See Australian Government, Department of Foreign Affairs and Trade, DFAT Country Information Report: Nigeria dated March 9, 2018.

<sup>152</sup> Human Rights Watch interview, Maiduguri, June 21, 2019

<sup>153</sup>International Centre for Investigative Reporting, In Nigeria's Crowded Prisons, Inmates describe terrible feeding, sanitation. Dated July 9, 2019.

imprisonment of the convicts in both jurisdictions which calls for rethink of the administration of criminal justice. Therefore, this paper has questioned the imprisonment approach to punishment on how it can be sustained with this period of COVID-19 pandemic.

It is therefore recommended that the courts in both Nigeria and Ethiopia should rethink by changing from the imprisonment approach currently adopted to more reformative and rehabilitative approaches such as community service sentence that has the objective of not only reforming the convicts but also enhancing the economy and having the positive and cost-effective measure as against imprisonment. This position is in line with the studies of Davies et al., Redpath & Brandner who questioned the effectiveness of rehabilitation and deterrence approaches to punishment and sentencing that these approaches have high probability of convicts to re-offend after correctional rehabilitation.<sup>154</sup>

It is further recommended that community service sentence should be strengthened by domestication of ACJA by all the thirty-six States of the federation. This paper calls for proper guidelines and training of the stakeholders in the administration of criminal justice system in Nigeria in order to have full implementation of community service sentence. This assertion is in agreement with the views expressed by 75% of the Key informants in the administered questionnaire by the author as shown in table 3 above that “Designing and implementation of programmes which provide an opportunity for the convict to work the sentence off rather than being sent to prison can be adopted in enforcing community service sentence”. Further, this paper recommends allocation of funds and employments of adequate personnel to supervise community service sentence.

In Ethiopia, studies and reports have shown that imprisonment approach cannot also be sustained in the wake of COVID-19 pandemic and as such there is much agitation for viable approach such as community service sentence. This is evident from the report in the study conducted by Chirwa in Ethiopia<sup>155</sup> that “the Ethiopia government should explore the development of alternative sentences to incarceration, including community service and government should consider creating special small claims courts or courts to hear the cases of persons charged with minor offences”. It is the contention in this paper that had it been that the provision of compulsory labour in Ethiopian Criminal Code is adequately implemented and enforced, there will be likelihood of decongestion of prisons. This paper therefore calls for reform of the Ethiopian Criminal Code to include the community service sentence as same has been argued to be more viable for complete non-custodial measures in the administration of criminal justice system. In the interim, this paper recommends for the enforceability of compulsory labour pending the amendment of the Ethiopian Criminal Code.

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<sup>154</sup> Davis, C., Bahr, S., & Ward, C. (2013). The process of offender reintegration: Perceptions of what helps prisoners reenter society. *Criminology & Criminal Justice*, 13(4), 446–469.

<sup>155</sup> Chirwa, V. M. 2004. *Report of the Mission of the Special Rapporteur on Prisons and Conditions of Detention in Africa to the Federal Democratic Republic of Ethiopia, 15-29 March 2004*. [http://www.arhpr.org/english/Mission\\_reports/ethiopia/Special%20Rap%20\\_Prisons\\_Ethiopia.pdf](http://www.arhpr.org/english/Mission_reports/ethiopia/Special%20Rap%20_Prisons_Ethiopia.pdf)