
**PROBATION AS A NON-CUSTODIAL MEASURE IN NIGERIA:
MAKING A CASE FOR ADULT PROBATION SERVICE**

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ABSTRACT

Imprisonment as a disposition method has created a lot of problems not only in Nigeria criminal justice system but also, in most countries. It is now believed that imprisonment no longer serves the purpose for which it was meant to serve- deterrence. The offenders wrong the state and yet the state is responsible for their welfare while in prison. In 2012, over N50 billion (about \$312,500,000) (Appropriation Act 2012) was budgeted for prison and yet the prison sub-culture makes inmate come out more hardened. This paper seeks to appraise the law and practice of probation as a non-custodial disposition method in Nigeria. It is noted that while the law allows for the use of probation, there were no adequate institutional facilities to drive it; its application is rather restricted to juvenile offenders and a whole lot of other issues are impeding its success. Meaningful recommendations are offered at the end of the paper.

Key words: probation, imprisonment, penal philosophy, alternative disposition methods

I INTRODUCTION

We cannot incarcerate people as we keep lager beer in the cellar. We must utilize the time of their confinement for resocialization or rehabilitation efforts...(Mueller:1962)

Quite a number of States have now realized that it is imperative to device non-custodial measures in dealing with offenders as most legal systems are now faced

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with the problem of recidivism and prison congestion. This is as a result of the failure of the retributive and deterrence sentencing philosophies that have dominated the global criminal justice sector prior to the 20th century (Wilson and Herrnstein (1986:494).

One of the non-custodial measures that States now have recourse to is Probation. By probation, offenders are given individual treatment because crime is seen as a manifestation of a social disorder. Such an offender needs help and support (UNICRI, 1998:6). This is in contrast to the traditional principle of punishment fitting the crime. Probation gives the offender a second chance and ensures that he undergoes a supervision process that will make him live a functional life subsequently (Hussain, 2009:1).

In Nigeria, probation is provided in the statute books. However, the sentencers have willfully or negligently refused to apply it. Rather, Nigerian courts are more at home sending offenders to prison or in some cases awarding fines (Nwankwo, 2008:20). Just recently, the Chief Judge of Lagos State (the commercial capital of Nigeria) urged magistrates in the state to explore community service sentence as alternative to imprisonment. This is in response to the action of Jadesola Adeyemi (Mrs) who sentenced about 162 persons to jail over simple offences (The Punch, July 8, 2013). The Nigerian Prison Service was reported to have said that there are no fewer than 53,100 inmates in prisons across the country. Out of this figure, 47,200 were standing trial as at June 20, 2012 (The Punch, August 6, 2012). This figure would not have been as high as this (with its attendant consequences) if we had given effect to the non-custodial provisions in the various statutes.

II CONCEPTUAL CLARIFICATION

The word 'Probation' is derived from the Latin verb '*probare*' which means 'a period of proving or trial (Petersilia, 1997:156). According to Edokpayi (2011:2), 'probation is a noun, which can mean any one of the following:

- (1) A time or period of training and testing in which a person's fitness, for work or membership in a social group is tested to determine the person's suitability for the job or position; or
- (2) A fixed trial period in which a student is given time to try to improve on or redeem his bad grades or conduct; or
- (3) The act of suspending the sentence of a person convicted of a criminal offence and granting that person provisional freedom on the promise of good behavior; or a discharge for a person from commitment as an insane person on 'condition of continued sanity and of being recommitted upon the reappearance of insanity'.

Black's Law Dictionary (2009: 1322) defines probation as 'a court-imposed criminal sentence subject to slated conditions, releases a convicted person into the community instead of sending the criminal to jail or prison'. This definition is very similar with what is offered by the American Correctional Association. According to the Association, probation is 'a court-ordered disposition alternative through which an adjudicated offender is placed under the control, supervision

and care of a probation staff member in lieu of imprisonment, so long as the probationer meets certain standards of contact' (cited by Petersillia, 149).

In the US case of *Frad v. Kelly* (302 U.S. 312, 58 S.Ct. 188, 1937), probation is defined as 'a system of tutelage under the supervision and control of the court which has jurisdiction over the convicted defendant, has the record of his conviction and sentence, the records and reports as to his compliance with the conditions of his probation, and the aid of the local probation officer, under whose supervision the defendant is placed'.

From all the definitions given above, it is clear that probation is a non-custodial measure whereby an offender is rehabilitated, rather than punished, by undergoing some compulsory treatment and supervision processes aimed at reforming him.

III PROBATION AND OTHER CONCEPTS

a. Probation and Parole

Probation, more often than not, is used interchangeably with Parole. However, there exists a line of distinction between the two concepts. Parole is a conditional release from actual confinement under sentence of imprisonment, contingent upon future conduct with respect to terms of parole, and the parolee is subject to future confinement for the unserved portion of sentence in the event that he violates provisions of parole (Cruz *et al*, 1977:95). Probation orders on the other hand, usually take place before conviction. The orders require the offender to attend supervision programs instead of imprisonment.

Khilman (2004:58) argues that the distinguishing factor between probation and parole is that a probationer is not usually put in correctional institution and does not serve any part of his sentence in such institution. However, this position may not hold water today in line with the modern trends in Probation. For instance, in Shock Probation, an offender may be placed in a correctional institution for a short period before being placed under supervision by a probation officer. (UNICRI, 115; Kamal, 2004:66).

By and large, while it is indisputable that probation and parole are two different non-custodial measures, the fact remains that probationers and parolees are usually supervised by the Probation officers.

b. Probation and suspended sentence-

Suspended sentence has been described by Hussain (2009:83) as 'prison sentences held suspended unless the offender committed a crime. If they re-offend, the offender is liable to the suspended sentence of imprisonment plus punishment for the new offence'.

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An offender may be given a suspended sentence simpliciter without supervision. He is released at large with the only condition that he should not re-offend. Hence, on that point, suspended sentence differs a bit, technically speaking, with probation once an offender is not required to undergo supervision.

However, in practice, judges would normally combine a suspended order with a probation order. In such a case, the offender's initial sentence may be invoked where he fails to meet the conditions of the probation (Petersilia,163; Evans, 2006:1-2).

c. Probation and Community Service

McGagh (2007:1) defines community service as 'a sanction available to the court that requires a convicted offender to perform unpaid work for the benefit of the community as a direct alternative to custody'. Community service like probation is a non-custodial sanction. An offender sentenced to a community service is usually supervised by probation officers (or community service supervisors) or other officers assigned by the court.

Unlike a probationer, an offender sentenced to carry out a community service only requires supervision for the task assigned. Counseling and other serious supervisions carried out on probationers do not usually apply to such offender (McGagh, 2007:5).

Today, community service is becoming an integral part of probation. In some countries, it is called community probation, community justice model (Evans, 2006:5) and even somewhere, the probation department is now named community justice department (ICJIA, 2005:9). This is also closely similar to the concept of restorative probation where the victims (including the community) are given a key role to play by the probation officers in determining how best to rehabilitate the offender. Sanctions usually include restitution and community service. Evans (2005:5) has identified such programs in New Zealand, Australia, Canada, the United Kingdom and the United States.

IV HISTORY

Probation as a concept is of recent origin. It could be traced back to the 19th century in the United State of America when one John Augustus at Boston, a cobbler, stood bail for a drunkard in 1841. The drunkard was ordered to return to court after three weeks for sentencing. The drunkard, while under Augustus' supervision was taught the art of shoe making and started to show signs of reform (Wallace, 1974: 949; Cruz et al, 1977:89).

The offender returned to court as a sober man, accompanied by Augustus. It was a surprise to everyone present as his appearance and demeanour have changed. Within the following year, it was on record that Augustus had supervised close to 2000 offenders (NYDP).

Augustus soon became an institution whose works later constitute a large percentage of the practice of probation globally. His successful practice gained so much recognition that in 1878, the first probation statute in the United States was passed after the death of Augustus (Edopkayi, 2011:4). He first used the term 'probation' for his method of treatment of offenders (Petersilia, 156).

In England, the earliest form of probation service has been traced to the work of police court missionaries founded in 1876 by the Church of England Temperance Society (CETS) (Hussain, 62). The CET appointed missionary workers whose responsibility was to bail offenders and placed them under the supervision of the society. The missionary workers were to reclaim the lives and souls of the offenders (Mathieson, 1992:143, cited by Hussain, 63)

Other sources account that probation developed in its own way among the civil law countries in the 19th century as well. Van Kalmthout and Derks (2000:95) conclude that its emergence was influenced by the Franco-Belgian concepts of suspended imprisonment, where a prisoner is placed on a probationary period during which he must comply with some stipulated conditions.

After the successful work of Augustus, Massachusetts gave a statutory recognition to the service by enacting the first probation law in United States in 1878. Other states in the US followed suit. In England, the country had its first probation law in 1878 when the parliament passed the Probation of Offenders Act of that year (Tulett, 1990:121). Since then, a number of countries have adopted legislations providing legal and institutional framework for probation services.

From the 19th century, probation had been recognized and adopted as a way of solving problems of recidivism and prison congestion generally. However, it suffered a major setback in the early 70's with the emergence of the 'nothing works' movement. Prominent among the works that cast doubt about the efficacy of probation as a disposition method was the work of Martinson (1974) in the United States (Mackenzie, 2001:8). Martinson was believed to have proved that probation does not work as a disposition method, although, he later refuted this claim. Martinson's 1975 work shifted the focus of policy makers generally away from rehabilitation to deterrence (Hussain 79).

Probation's effectiveness as a penal philosophy was assured once again by the work of some Canadian researchers which was later known as the 'what works' literature. These researchers were able to show that some treatment programs if well administered would reduce re-offending (Mackenzie, 2001 25-26). Hence, there is a paradigm shift from 'nothing works' to 'what works'. Therefore, it is believed that probation would achieve the desired result if the right treatment were offered to the right offenders. It is this research that has sustained and improved probation services today.

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In Nigeria, probation was not part of the non-custodial disposition method in traditional criminal justice system. In fact, it is unknown as a concept before the arrival of the colonialists. The various forms of punishment include capital execution, flogging, whipping, tying, lacerating wounds, banishment, castration or emasculation, suspension and expulsion of membership, excommunication, razing down the house of the offender, selling into slavery among others (Balogun, 2009: 47-48).

Probation was first introduced into the statute books in 1945 when the Criminal Procedure Act (CPA) was enacted. The CPA was the first statute to make provisions for probation of offenders both juvenile and adults (Sections 413 & 435-440). Subsequent to this Act, various states adopted the provisions of the Act when States were first created in 1967. (see for instance, CPL of Lagos State). Apart from the provisions of the CPA, probations of juvenile offenders was also specifically provided for the Children and Young Persons Law, in 1946.

It should be clearly stated that in practice, the service was only available to juvenile offenders. Probation of juvenile offenders started in 1948 when the Boys Remand Home was established in central Lagos (HDI, 2004:65). Today, there are several Remand homes and Approved Schools across the country from where probation services are being rendered to juvenile offenders.

III PHILOSOPHY OF PROBATION

From the Mosaic Law to the Code of Hammurabi and down the 17th century, retribution has been the predominant penal theory applied by those in power. Retributionists see punishment as a reward for a crime committed. Once a person commits a crime, then he should be made to face whatever consequence that has been prescribed for that offence. (Banks, 2009:104; Greenawalt 1983 347)

Retribution as a punishment is also modeled to follow *lex talionis* doctrine – i.e ‘en eye for an eye’, ‘a tooth for a tooth’. The State is not interested in deterring the offender or other offenders or to rehabilitate him, rather, he is given what he deserves by the commission of that offence. (Wilson and Herrnstein, 1986:497; Danbazau, 2007:302-304)

The indiscriminate execution of offenders in England led some theorists like Beccaria to provide alternative to the retribution policy. Beccaria believes that punishment needs be known to offenders and the State must be swift in carrying out punishment (Danbazau, 305-307). He seriously advocated that punishment should fit the crime. This means that the amount of punishment should be commensurate with whatever advantage (Hussain, 30).

Bentham took this theory further with the introduction of the concept of hedonistic calculus. He is of the opinion that every human being, being a rational person must have weighed the pain and punishment attached to a crime before

venturing into it (Bronsteen *et al*, 2010:1055-1057). Hence, to make crime less attractive, the punishment (pain) must be a bit higher than the pleasure to be derived. By this, punishment will deter both the offender and the general populace from committing offence. (Bakare, 2011) This theory highlights the concept of tariff or graduation of punishment. The more serious the offence, the higher the punishment (Bronsteen 2010:1057). Both Beccaria and Bentham were said to be the forerunners of the deterrence school of thought.

The emergence of the deterrence school of thought led to the increased usage of imprisonment as a penal philosophy as it was then the only fashionable and humane means of punishing offenders (Hussaini, 40). Over the years, the prison system became overcrowded and developed its own sub-culture.

It soon became known that imprisonment was no longer serving the purpose for which it was founded as many people became hardened criminals in prisons and would always find their way back to prison after their release (Ogbozor *et al.*, 2006: 4-5). Hence, there was the need for a paradigm shift.

Sharing a similar thought with the deterrence school is the rehabilitation school of thought. According to Banks (2009:116), 'rehabilitationist theory regards crime as the symptom of a social disease and sees the aim of rehabilitation as curing that disease through treatment'. This school believes that the aim of the criminal justice system should be to rehabilitate and not to punish offenders. It is said that an accused person might have been lure into committing a crime not of his own motion but by some biological, economical and socio-political factors. The State itself might even have been a contributory agent leading people to commit crime and must share part of the responsibility.(Danbazau, 310-311).

Rehabilitating offenders by giving them required treatment rather than imprisonment underscores the whole essence of probation. Right from the works of Augustus and the missionary workers of the CETS, it has been discovered that some offenders could be better dealt with outside the walls of the prison.

Therefore, the philosophy of probation as a non-custodial measure is the identification of certain group of offenders that could be rehabilitated and made better citizens by given them some form of specialized treatment. This treatment could be attendance at required training sessions (e.g for drug offenders), participation in community-based rehabilitative programs, reporting at various points, intense supervision of the offender with the aid of electronic devices and so on.

The basic purpose of probation is to provide an individualized program offering a young or unhardened offender an opportunity to rehabilitate himself without institutional confinement, under the tutelage of a probation official and under the continuing power of the court to impose institutional punishment for his original

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offense in the event that he abuse such opportunity, and courts have a wide discretion to accomplish such purpose. (Cruz et al, 94)

IV THE GLOBAL PRACTICE

Although, probation started from the activities of individual philanthropists in the US and later, England, its importance is now given recognition by the international community as evidenced in the United Nations Standard Minimum Rules for Non-Custodial Measures (The Tokyo Rules), 1998 (UNICRI, 1).

It is the considered opinion of most correctional authorities as well, that probation is one of the most effective and economical tools which is available for the care, treatment and rehabilitation of certain adult and juvenile offenders against the law (Petersilia, 150; Cruz *et al*,96).

Probation service is not uniform all over the world. There are differences in terms of its administration and practice. As a non- custodial measure, it has been identified as an integral part of the criminal justice system in the common-law, Nordic Western European and Asian countries. It is an emerging concept in African, Central and Eastern European countries and is yet to be adopted in most Latin America and Arab world countries (UNICRI, 4).

While the tasks carried out by probation service largely remain the same, they are called different names in different jurisdictions. In Belgium for instance, the House of Justice is the name given to the probation department and the probation officers are called Judicial Assistants (Beyens and Roosen, 2013:60). In Victoria as well as some jurisdictions in Australia, probation orders and community service orders were abolished and replaced by a single order called a Community Based Order (Figgis, 17). In the United States, probation service is administered by both federal and state government probation departments and according to Petersilia (1997:149), probation officers supervise two-thirds of all correctional clientele n the United States.

Generally, before passing a probation order, the court would have considered a 'social inquiry report' on the offender. This will assist the court in determining whether or not the ends of justice and the best interest of the public as well as that of the defendant will be served by placing such an offender on probation (Bochel, 1976:193).

Usually, a probation officer is appointed by the court to supervise the offender and to ensure that he is complying with the conditions of the probation. Some of these conditions may include (Figgis, 1998):

- i. Attending drug or alcohol abuse counseling.
- ii. Residence at a nominated rehabilitation centre.
- iii. Payment of compensation to the victim.
- iv. Directions as to employment and place of residence.
- v. Restrictions on associates, contact with nominated persons, and movement

Recent scholarship has shown that the role of probation in many jurisdictions has gone beyond 'advising, assisting and befriending' offenders. Series of specialized treatment and intense monitoring are now in use. Probation services now involve more of controlling and monitoring offenders to mitigate the risk of having offenders in the community and also to ensure that better results are achieved in reducing re-offending rate. Some of the new programs now being used in many jurisdictions include: cognitive behavioral therapy, intense supervision programs (electronic monitoring), restorative probation, sex offender treatment programs, Vocational education programs, Community employment programs (Mackenzie, 27; ICJIA, 15; NIJ, 1998)

V. NIGERIAN SITUATION

Punishment in traditional Nigerian society serves five major functions. They are retribution, reformation, deterrence, compensatory and reconciliatory. (Oduwole, 2011; Balogun, 2009; Igwe, 2011).

The Yoruba people of the southwestern part of Nigeria for instance, placed emphasis on deterrence philosophy. An adage says "*elese kan ko ni lo lalai jiya*", meaning "no offender shall go unpunished" (Balogun, 2009:45). Hence, emphasis is placed on crime detection and punishment. While heinous crimes attract death penalty, social crimes generally attract corporal punishment like flogging, whipping, tying, banishment, castration or emasculation, etc (Ajisafe, 1946:35). Imprisonment was also in use before the advent of colonial masters but for serious offences. Every King has a detention centre in his palace.

Reconciliation and restitution was also widely used to settle minor criminal offences in pre-colonial era. For theft, adultery and some sundry offences, the offending party may be asked to pay fine to the victim (Odewole, 1128).

Nigeria was colonized by Britain. By 1863, the English common laws, including common law of crimes were introduced in Nigeria (Ajomo and Okagbue, 1991:25). The colonial masters abolished customary criminal justice system, especially in the southern part of the country and enacted in 1906, a Criminal Code which was modeled after the Sir James Fitzstephen's English Criminal Code (1878) that was never passed by the English parliament (Nwankwo, 2008:28). The Criminal Code was a reflection of the Bentham's panopticon penitentiary system. Hence, virtually all crimes are punished with a term of imprisonment.

Probation first appeared in the Nigeria Criminal Justice system in 1945 when the colonial government enacted the CPA. As stated earlier on, it was not until 1948

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when the Boys remand home was established in Lagos, that probation in fact, practiced.

The legal framework for probation as a non-custodial measure was created in a number of statutes. Apart from the CPA which applies all over Nigeria, every state has her own counterpart Criminal Procedure Law which contains similar provisions with those in the CPA.

The CPA provides that where the charge against an offender is proved, the court may place such an offender on probation having regards to the character, antecedents, age, health, or mental condition of the offender, or to the trivial nature of the offence or to the extenuating circumstances under which the offence was committed. The probation period is expected not to exceed three years. (s.435)

The Act has clearly spelt out the duties required of a probation officer as follows (s.438):

- (a) to visit or receive reports on the person under supervision at such reasonable intervals as may be specified in the probation order or subject thereto as the probation officer may think fit;
- (b) to see that the offender observes the conditions of his recognizance;
- (c) to report to the court as to the offender's behavior;
- (d) to advise, assist, and befriend the offender and when necessary to endeavor to find him suitable employment.

After committing an offender to probationary supervision, the court is still seized of the matter. In this regard, the court:

- (a) may at any time if it appears to it upon the application of the probation officer that it is expedient that the terms or conditions of the recognizance should be varied summon the person bound by the recognizance to appear before it and if he fails to show cause why such variation should not be made to vary the terms of the recognizance by extending or diminishing the duration thereof, so, however, that it shall not exceed three years from the date of the original order, or by altering the conditions thereof or by inserting additional conditions; or
- (b) may on application being made by the probation officer, and on being satisfied that the conduct of the person bound by the recognizance has been such as to make it unnecessary that he be any longer under supervision, discharge the recognizance (s. 439)

Other laws in Nigeria like the Child Right Act, 2003, Probation of Offenders Law, (which is applicable in the Northern States) and the Administration of Criminal Justice Law of Lagos State (ACJL), 2011 also empower courts to release an accused person on probation.

Lastly, a bill is currently before the National Assembly titled 'An Act to Make Provision for the Probation of Offenders and for Other Matters Connected Therewith'. ([SB. 429], 2010). The Bill which contained seventeen sections was sponsored by Senator Hosea Ehinlanwo. The Bill has a number of similar provisions with the Criminal Procedure Laws/Act. For instance s.3(3) provides that 'before making a probation order under subsection (1) or (2), the court shall explain to the offender in ordinary language the effect of the order and that, if he fails in any respect to comply therewith or commits another offence, he will be liable to be sentenced for the original offence, and the court shall not make a probation order unless the offender expresses his willingness to comply with the provisions of the order'

HOW PROBATION IS PRACTICED IN NIGERIA

At present, probation services are only available for juvenile offenders in Nigeria. None of such services are available anywhere in Nigeria for adult offenders (Asuni, 1979).

Probation of juvenile offenders is administered by the Ministries of Youth and Social Development of the various States in Nigeria (HDI, 37-38). The Ministry employs social workers from whom probation officers are appointed and dispatched to various Remand Homes and Approved Schools in various States. In Lagos State for instance, there are about 230 social workers in the service of the State (www.lagosstate.gov.ng/pagemenus.php?p=122&k=41). From among these social workers, probation officers are appointed to provide counseling services to juvenile offenders in Remand Homes and Approved Schools in the State (HDI, 74). Some are also assigned to the Juvenile Courts. (A personal visit of this author to the Juvenile court, Ikeja reveals that there are 2 probation officers stationed in that court, with offices next to the court room).

In Lagos State, there are two Juvenile Courts, one sitting at Ikeja and the other at Yaba. There are two Remand Homes (Girls Remand Home, Idiaraba and Boys Remand Home, Oregun) and three approved schools (Girls Approved Home, Idiaraba; Boys Approved Schools Isheri; and Intermediate Boys approved School, Birrel Avenue Yaba, all in central part of Lagos, Nigeria). Similar institutions are in other states as well.

The Remand homes are institutions where juvenile offenders are detained pending when investigations and/or trial are concluded. They also house children who are beyond parental control. Such children are usually remanded by the Magistrate for a period of 3 months where the child is supposed to be counseled and taken care of by probation officers before he or she is eventually released (NOUN, 2010:50).

Children who are in conflict with the law are usually sent to Approved Schools usually for a period not exceeding 3 years. Some of the activities in the Approved

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schools include counseling, Education and vocational training, discipline and punishment. Some of the children in the Approved schools may be allowed to attend vocational or formal education outside the school but they would be housed in the School (NOUN, 2010:62).

In all these, probation officers are expected to play key roles in the juvenile justice system. They prepare social enquiry report for both children beyond parental control and those in conflict with the law before the presiding magistrate decides on the appropriate order to make. They also monitor the activities of the children both while in remand/Approved Schools and subsequently (HDI, 37).

In an interview conducted for probation officers in Lagos state, the officers were of the view that they prefer to retain a juvenile in remand home while carrying out their investigations. They reasoned that their investigations would be hampered when the child remains in the home environment they would not be able to obtain a true picture of the home background and circumstances of the offence which might involve parental neglect or instigation, etc (NOUN 2010,56).

Various researches carried out on the juvenile justice system in Nigeria show that probation services have been working well. This is not to say, there are no challenges. Indeed, the social welfare departments in various states are faced with immense challenges. Some of the challenges identified include; inadequate number of probation officers who more often than not are called upon to offer other social works; heavy caseloads on the limited officers; lack of proper monitoring of probation orders; corruption on the part of probation officers; poor remuneration and many more. (Asuni, 1979; Okagbue , (n.d); Alemika and Chukwuma, 2001; NOUN, 2010)

With respect to adult probation, it appears that our judges are not disposed to the usage of probation orders. More often than not, the courts usually close their eyes to alternative disposition methods generally. In an interview conducted by Nwankwo (2008:40), a magistrate expressed pessimism for community based sentences including probation due to the fact that no probation officers were sent to the magistrates courts (Nwankwo, 2008:72). He stressed that even where the order is made, there would be no body to supervise it. The magistrate was also of the view that probation officers may collude with offenders and at the end of the day; offenders would always have a field day.

Recent research carried out by Tanimu (2010:143) has shown that a typical 'convict in Nigerian prisons is a semi-literate male, in the prime of his youth (18-29 years)'. He also showed most convicts are unemployed/self-employed and are convicted of property related crime. This result confirms that Probation would have been better employed to rehabilitate these offenders than imprisonment as certain extenuating factors are responsible for their conducts. However, no one seems to be looking towards that direction.

Of all the non-institutional disposition methods, the courts seem to favor the imposition of fines. In the majority of cases, the closest to probation, that courts resort to when dealing with minor offences (particularly with first offenders) is binding-over and conditional discharges. (Owoade, 1990: 123-124).

In fact, the Supreme Court of Nigeria has had course to set aside a decision of a lower court that sought to suspend a sentence passed on an offender in view of the fact that the judge lower court had no such power. In *State v Hassan Audu* ([1972] NSCC 436), a Sokoto State High Court found a man guilty of rape of a girl of 9 years. The trial court sentenced the man to a term of imprisonment but suspended same because the man gave an undertaking to marry the girl before the expiration of the sentence. The girl's parents were also willing to offer the girl in marriage to the man. On appeal to the Supreme Court, Elias CJN held as follows:

Accordingly, we think that the High Court at Sokoto acted in excess of its jurisdiction by importing idea of suspended sentence for which there is no provision in the applicable law. We must, therefore, allow this appeal. The appeal is hereby allowed and the order suspending the sentence is set aside. The sentence of 3 years' Imprisonment Imposed on the respondent by M. Muhammad, J. at the Sokoto high Court on June 29, 1971, is hereby confirmed without the qualification of suspension.

According to Fadipo, (1972: 41) 'this is a sad commentary for our criminal justice system considering that judges and magistrates in Nigeria have a wide discretion in the area of sentencing.

VI CONSLUSION/RECOMMENDATION

I will conclude this paper with the position of the government of Nigeria its self which is expressed thus:

Nigeria has the statutory provisions for probationary sentences, but the administrators of justice hardly ever employ such provisions. Yet evidence shows that on the basis of the statutorily stipulated criteria for probationary sentences, about 40% offenders presently sent to prison should have qualified for such sentences. This situation ... may be explained by the colonial heritage and training of our justice administrators, their belief in deference, and their tendency to take the path of least resistance; i.e. imprisonment and/or fine (cited by Ahire, 1990:327)

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It is a notorious fact that imprisonment of offenders in Nigeria does not to a large extent, serve as deterrence to convicted or prospective criminals (Alabi and Alabi, 2011: 235-238). Although the prison is supposed to be a correctional institution for rehabilitation as preparatory to the re-absorption of convicts into the society, experience has shown that inmates especially first offenders, more often than not come out hardened from their interactions and condemned criminals. Nigerian prisons are 'human cages' with no facilities for correction, reformation and sound vocational training (Ogbozor *et al.*, 2006: 4-5).

From the foregoing, it is imperative that there is a need to close the gap between theory and practice. While the laws provide for probation as a non-custodial measure, its application is only limited to juvenile offenders. Therefore, it is highly recommended that the government need to start a comprehensive regulatory framework to supervise probation services to all offenders. A probation department should be established in all local government offices and courts. This will make the service more available to the magistrates and also enhance proper supervision of offenders.

There is also the need to amend our laws on probation to remain the modern trends in probation services across the globe as highlighted above. Probation services have gone beyond 'advise, assist, and befriend' as stipulated in our statutes. It suggested that cognitive behavioral therapy, community-based probation and restorative probation should be provided for.

Religious institutions may also be brought into probation supervision. Since most offenders would belong to one religious organization or the other, the religious heads may be of assistance in monitoring the behavior of the offender and may be in a better position to easily detect any non-compliance as they have a closer interaction and point of contact with offenders.

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