

Community-Based Non-Custodial Sentences Under the Cameroon Criminal Justice System and Its Effects on Prisoners' Rights

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Abstract

This paper examines the community-based non-custodial sentences introduced into Cameroon's criminal justice system by Law No. 2016/007 of 12 July 2016 and their effects on prisoners' rights. The reform established two types of alternative penalties—community service and reparatory sentences—designed to divert offenders from imprisonment and address the chronic overcrowding that has reduced Cameroon's prisons to conditions violating fundamental human rights. Through doctrinal legal analysis and examination of international human rights instruments, constitutional provisions, and legislative frameworks, the thesis argues that non-custodial sentences protect prisoners' rights both directly, by sparing offenders the harmful conditions of detention, and indirectly, by reducing population pressure that exacerbates rights violations for those who remain incarcerated. The analysis reveals, however, a profound gap between legislative provision and operational reality: implementing regulations remain undeveloped, administrative infrastructure unestablished, and judicial practice unchanged eight years after enactment. Despite compelling international recommendations from the Committee Against Torture and the African Commission on Human and Peoples' Rights urging greater use of alternatives to imprisonment, the promise of non-custodial sentencing remains substantially unfulfilled. The thesis concludes that realizing the potential of community-based sentences requires urgent development of implementing regulations, establishment of supervision mechanisms, and expansion of eligible offences beyond the current restrictive scope of seventy-eight out of approximately two hundred sixty Penal Code provisions.

Keywords: non-custodial sentences, prisoners' rights, criminal justice system, prison overcrowding, incarceration

1. Introduction

Globally, prison populations have grown steadily over the past decade. The main cause of the persistent increase in prison numbers is

associated to over-penalization and overuse of custodial sentences particularly imprisonment as a response to all offenses including non-arrestable and purely civil offenses.

Penitentiaries across Cameroon are overcrowded and this has led to acute human right violations in prisons. The issue of prison overcrowding in Cameroon prisons like in other criminal justice systems is alarming and this has led to the adoption of community-based non-custodial sentences in the 2016 Penal Code. Today, several criminal justice systems across the world overwhelmingly rely on community-based non-custodial measures as a viable panacea to the human rights violations behind bars and as an effective alternative to custodial sentences, particularly imprisonment¹. This paradigm shift reflects the growing recognition that incarceration in penal facilities though necessary for the most serious offences, often fails to achieve its key objectives of rehabilitation, deterrence and social reintegration. The criminal justice system which integrates the civil and criminal aspects of law is designed to safeguard the society, guarantee public peace and tranquility by protecting the general public from unruly conduct. In Cameroon, the criminal justice has for long concentrated exclusively on the punitive pattern of law, which emphasizes incarceration as a panacea for delivering justice to all offenders, including those charged for purely civil offenses while undermining alternatives to imprisonment. Over reliance on custodial sentences and imprisonment has contributed to chronic prison overcrowding, deplorable prison conditions, and inadequate rehabilitation and reintegration programs and a systematic violation of prisoners' rights. Against these backdrops, increased promotion and implementation of non-custodial sanctions offers a more practical pathway for reconciling crime control, social justice and human rights, including the rights of those incarcerated behind bars². The 1990 UN Standard Minimum Rules for Non-Custodial Measures reserves custodial sentences for the most serious offences and offenders who post a severe threat to society and to ensure a balance between the rights of

individual offenders, the victim and the community as a whole³.

Vis-à-vis the Cameroon context, non-custodial sanctions undertake profound importance due to the fact that, most prisons, including the Kondengui Central Prison in Yaounde, the New Bell Prison in Douala, the Bamenda Central Prison, the Maroua Central Prison, and the Buea Central prison operate beyond their official capacity and house inmates nearly twice their occupancy rates exposing detainees to poor sanitation, inadequate nutrition and limited access to healthcare. A significant portion of inmates held behind bars consist of pretrial detainees, majority of whom could be subjected to community-based non-custodial sentences without compromising legal parameters, justice and public security. Imprisonment as criminal justice disposition for punishing offenders has thus created multiple problems which undermine prisoners' rights⁴. The Cameroon prison system is characterized by severe overcrowding, congestion, poor living conditions, poor waste disposal, insufficient basic healthcare, nutrition and bedding facilities which has increased the spread of diseases and death of several inmates behind bars. The multitude of problems created by prison overcrowding not only affects prisoners but also affects penitentiary officers alike⁵. In some rampant cases, prison conditions are so extremely appalling to the extent that certain overcrowded prisons such as the Bamenda Central Prison, New Bell in Douala and Kondengui have created an avenue where inmates sleep in corridors, outside during the rainy season. This has created concerns about the effectiveness of incarceration which has become less of a corrective mechanism and more of a human right issue. In the wake of the COVID-19, the President of the Republic of Cameroon adopted a Presidential Decree⁶ as a response to overcrowding in prisons to commute and remit sentences and grant Presidential pardons to

¹ Jennings, W. *et al.* (2017). Penal Populism and the Public Thermostat: Crime, Public Punitiveness and Public Policy. *Governance*, 30. See also: Baker, E. (1995). From 'making bad people worse'.

² Bhuller, M., Dahl, G. B., Loken, K. V., & Mogstad, M. (2020). Incarceration, Recidivism and Employment. *Journal of Political Economy*, 128(4), pp. 1269-1324. See also Huttunen, K., Kaila, M., & Nix, E. (2020). The Crime Ladder: Estimating the Impact of Different Punishments on Defendant Outcomes.

³ Article 1.4 of UN General Assembly Resolution 45/110 of 14 December 1990 on the United Nations Standard Minimum Rules for Non-Custodial Measures.

⁴ Yekini, A. O. & Salisu, M. (2013). Probation as a Non-Custodial Measures in Nigeria: Making a Case for Adult Probation Service. *African Journal of Criminology and Justice Studies*, 7(1&2), pp. 101-117.

⁵ Grow, M. (2022). A Prosecutorial Duty to Seek Non-Custodial Sentencing. *The Georgetown Journal of Legal Ethics*, 35(805), pp. 805-824.

⁶ Presidential Decree No. 2020/193 of 15 April 2020 to Commute and Remit Sentences.

certain cohorts of inmates in order to avoid an imminent disaster which however failed to tackle the problem of prison overcrowding in Cameroon which is the paramount obstacle that undermine prisoners' rights behind bars. Non-custodial sentences serve not merely as sentencing options but as tools for addressing widespread human rights challenges in the criminal justice system.

Faced with serious cases of prison overcrowding and recidivism rates, quite a good number of countries have realized the imperativeness to derive community-based and other traditional methods of dealing with crime without resorting to incarceration. Thus, Community-based non-custodial measures are alternatives to incarceration that do not include the incarceration of offenders behind bars but rather allow them to remain in the community and serve their punishment under judicially imposed obligations and supervision.

With the persistent increase in prison populations and exacerbated violation of prisoners' rights behind bars globally, there exists a paradigm shift in several criminal justice systems towards reducing over reliance on custodial sentences in favor of community-based non-custodial sanctions. The United Nations through instruments such as the Minimum Standards for Non-Custodial Measures (Tokyo Rules 1990), United Nations Minimum Standards Rules for the Treatment of Prisoners (Nelson Mandela Rules 2015), the United Nations Rules for Women Offenders and Prisoners (Bangkok Rules) and the Cameroon government through instruments like the Penal Code, Criminal Procedure Code, and the Penitentiary Regulation has adopted and put in place numerous non-custodial measures from the pretrial, trial and post-trial stages to reduce prison overcrowding and improve prison conditions and prisoners' rights in the 2005 Criminal Procedure Code and the 2016 Penal Code. In the light of this development, community-based non-custodial sentences emphasis and focus on limiting prison populations, improving prison conditions for the few incarcerated behind bars and enhancing their rights. Thus, the incorporation and effective application of alternatives to imprisonment within the Cameroon criminal justice system is not merely a matter of penal policy but also a

pathway to protecting prisoners' rights and promoting public confidence in the justice system.

Cameroon is signatory to the United Nations and has integrated most of these non-custodial principles contained in the 1990 Standard Minimum Rules for Non-custodial Measures into their Penal Code and Criminal Procedure Code in order to improve the treatment of those in conflict with the law. They embody the values of proportionality, dignity, and restorative justice by ensuring that punishment is balanced with prospects for individual reform and collective responsibility. Notwithstanding the existence of provisions regulating alternatives to imprisonment in the Cameroon criminal code, they remain unexploited and underutilized which raises critical questions: what forms of community-based non-custodial sentences are recognized in Cameroon? What legal and institutional mechanism exist for their implementation? What challenges hinder their practical application? And lastly, how do they contribute to the protection of prisoners' rights. In the light of these questions, this research seeks to examine the nature, scope, the diverse community-based non-custodial measures and the challenges hindering the implementation of community-based non-custodial sentences in Cameroon.

2. The Nature of Non-Custodial Sentences

The concept of non-custodial sentences refers to any decision made by a competent authority to submit a person suspected of, accused of or sentenced for an offence to certain conditions and obligations that do not include imprisonment and such decision may be made at any stage of the administration of criminal justice. Community-based non-custodial sentences according to the Tokyo Rules apply to all person's subject to prosecution, trial or the execution of a sentence¹. Therefore, they can apply either to measures imposed on a convicted person as a penalty for an offence, or to suspects and defendants before their trial. This measure also covers part of the sentencing measure where a prison sentence may be served in the community and one which reduces the length of incarceration and substitute imprisonment with community supervision and probation service.

¹ Rule 2.1 of the United Nations Standard Minimum Rules for Non-Custodial Measures Adopted by UN GA Res 45/110 of 14 December 1990.

This measure is particularly encouraged at the pretrial stage as an exceptional measure in view of the suspects' right to be presumed innocent until proven guilty¹. Section 8(2) of the 2005 Cameroon Criminal Procedure Code holds that, "the presumption of innocence shall apply to every suspect, defendant and accused", thus granting courts wide powers to impose non-custodial measures at every stage of the criminal justice system having regard to the fact that the major essence of non-custodial sentences is to keep the offender at liberty while they serve that punishment in the community in order to enhance rehabilitation and cost effective reintegration.

2.1 The Prohibition of Discrimination

The UN Standard Minimum Rules for Non-Custodial Measures prohibits discrimination in the application of non-custodial sentences by stating that they "shall be applied without discrimination on the grounds of race, color, sex, age, language, religion, political or other opinion, national or social origin, property, birth or status"². The extent of this prohibition includes all aspects of international human right law which guarantees the rights of offenders and commands that the implementation of non-custodial measures should be void of discrimination of any kind. The Human Rights Committee under the ICCPR³ distinguishes treatment which may be perceived as being discriminatory by noting that "differentiation based on reasonable and objective criteria does not amount to prohibited discrimination" within the ambit of Section 26 of the ICCPR⁴. Since alternatives measures to incarceration have the possibility to focus on the individual offender's needs, the element of discretion involved in the decision-making may increase the risk of discrimination against a person or group and such differentiation may emanate from any discrimination that has currently been going on in that community. Irrespective of these hurdles, equality of treatment in the application of non-custodial sentences must be ensured.

As pointed out above, the restriction of discrimination does not imply that all differences in treatment are prohibited, but rather, only those that have no reasonable and objective justification to treat a person differently in view of their particular background and personal needs and problems.⁵ It is thus sacrosanct to consider the group to which the offender belongs such as children, women, elderly people and people with mental health problems, on which imprisonment may have a damaging effect and it may therefore not only be desirable but also necessary to make certain distinctions between offenders in order to meet their special needs.

2.2 Flexibility in Application

The Tokyo Rules while emphasizing the importance of flexibility and consistency in the implementation of non-custodial sentences. Rule 2.3 of the Rules promotes considerable flexibility in the development and use of community-based non-custodial sentences based on the foregoing criteria:

- the nature and gravity of the offence
- the personality and background of the offender
- the protection of society and
- the avoidance of unnecessary use of imprisonment.

According to the potential recognized by Rule 2.3, the fairness and justice and sentencing guidelines that establish the equivalences among the various types of non-custodial measures render the implementation of community sentences is much more flexible than pretrial detention and custodial sentences. The need for flexibility has further been anchored in the rules by stating that the "development of new non-custodial rules should be encouraged and closely monitored and their use systematically evaluated"⁶. The regular monitoring and systematic evaluation of community-based non-custodial sentences is particularly essential given the flexibility inherent in the community measures and the need to ascertain whether they

¹ Preamble of Law 96/6 of 18 January 1996 to establish the Cameroon Constitution as Amended and Section 8(1) of Law No 2005/007 of 27 July 2005 relating to the Cameroon Criminal Procedure Code.

² Rule 2.2 of the United Nations Standard Minimum Rules for Non-Custodial Measures Adopted by UN GA Res 45/110 of 14 December 1990.

³ Section 26 of the ICCPR Adopted by the UN GA Res 2200A (XXI) of 16 December 1966, and entered into force on 23 March 1976.

⁴ Communication No. 172/1974, S. W. M. Brocks V. the Netherlands (Views adopted on 9 April 1987), GAOR, A/42/40, P. 150, Para 13.

⁵ United Nations. (2003). *Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers*. UN Office of the High Commissioner for Human Rights.

⁶ Rule 2.4 of the United Nations Standard Minimum Rules for Non-Custodial Measures Adopted by UN GA Res 45/110 of 14 December 1990.

meet the objectives laid down in the Tokyo Rules¹. From a rational criminal justice policy viewpoint, new non-custodial measures may be added if accompanied by systematic evaluations enabling the authorities to establish their operational effectiveness. Lastly and recourse to Rule 2.5 of the Tokyo Rules, “consideration shall be given to dealing with offenders in the community avoiding as far as possible resort to formal proceedings or trial in court, in accordance with legal safeguards and the rule of law”, which is in line with Rule 2.6 of the Standard Minimum Rules for Non-Custodial Sentences which provides inter alia that “non-custodial measures should be used in accordance with the principle of minimum intervention”². It is thus acknowledged that a trial should be avoided especially if it will jeopardize the offender’s family and society relationship and thus, custodial sentences should only be considered as a last resort.

2.3 Conceptual and Theoretical Framework

Non-custodial sentences, or as they are also termed, ‘alternatives to imprisonment’, community sanctions, intermediate sanctions or task-sanctions, may be seen as any decision made by a competent authority to subject a person suspected of, accused of or sentenced for an offence to certain conditions and obligations that do not include imprisonment and such decision may be made at any stage of the administration of criminal justice. Therefore, non-custodial sentences refer to criminal sanctions imposed by a competent court that do not involve incarceration but are instead served within the community under specific legal conditions and supervision. According to the Tokyo Rules, these sanctions apply to all persons subject to prosecution, trial or the execution of a sentence³. Therefore, they can apply either to measures imposed on a convicted person as a penalty for an offence, or to suspects and defendants before their trial. This measure also covers part of the

sentencing measure where a prison sentence may be served in the community and one which reduces the length of incarceration and substitute imprisonment with community supervision and probation service. This measure is particularly encouraged at the pretrial stage as an exceptional measure in view of the suspects’ right to be presumed innocent until proven guilty⁴. According to the thirteenth Edition of the World Prison Brief, there are more than 10.77 million people held in penal institutions throughout the world⁵. Davis, A. thus stated that global prison populations presuppose that the position of incarceration must be urgently examined in relation to non-custodial sanctions because alternative to imprisonment can give way to recovery than recurrence⁶.

These measures include, but not limited to probation, discharges, house arrest, electronic monitoring, community service, conditional discharges and referral to treatment or rehabilitation programs. Within the Cameroonian context, these sentences are grounded in both statutory provisions such as Section 8(2) of the 2005 Cameroon Criminal Procedure Code⁷ holds that, “the presumption of innocence shall apply to every suspect, defendant and accused”, thus granting courts wide powers to impose non-custodial measures at every stage of the criminal justice system having regard to the fact that the major essence of non-custodial sentences is to keep the offender at liberty while they serve that punishment in the community in order to enhance rehabilitation and cost effective reintegration.

2.4 Custodial and Non-Custodial Sentences

Community-based non-custodial sentences include sanctions imposed by courts that do not involve incarceration and are served in the community. They allow greater community involvement in the rehabilitation and reintegration of offenders by subjecting them to serve their sentences in the community.

¹ Rule 2.3 of the United Nations Standard Minimum Rules for Non-Custodial Measures Adopted by UN GA Res 45/110 of 14 December 1990.

² Rule 2.6 of the United Nations Standard Minimum Rules for Non-Custodial Measures Adopted by UN GA Res 45/110 of 14 December 1990.

³ Rule 2.1 of the United Nations Standard Minimum Rules for Non-Custodial Measures Adopted by UN GA Res 45/110 of 14 December 1990.

⁴ Preamble of Law 96/6 of 18 January 1996 to establish the Cameroon Constitution as Amended and Section 8(1) of Law No 2005/007 of 27 July 2005 relating to the Cameroon Criminal Procedure Code.

⁵ Fair, H. & Walmsley, R. (2021). World Prison Population Brief. *Institute for Crime & Justice Policy Research: Thirteenth Edition*.

⁶ Davis, A. Y. (2011). *Are Prisons Obsolete?* New York: Seven Stories Press.

⁷ Adopted by Law No 2005/007 of 27 July 2005 relating to the Cameroon Criminal Procedure Code which came into force on 1 January 2007.

3. The Legal Standing of Non-Custodial Sanctions Under the Cameroon Criminal Justice System

The Cameroon criminal justice architecture and its elaborate adoption in the Penal Code and Criminal Procedure Code shape how community sanctions are conceptualized and applied. While domestic statutes under the Penal Code and Criminal Procedure Code contain a range of community-based mechanisms and dispositions that judicial officers to impose either as standalone sanctions or as alternatives to custodial sanctions including; community service, conditional release, probation, reparatory justice, fines, reparatory sentence, judicial supervision, preventive confinement, confinement in Borstal Institutions, implementation is influenced by robust institutional capacity, prosecutorial practices, and Magistrates' discretion, availability of resources for probation and community participation. Manifold international treaties including the UN Standard Minimum Rules for Non-Custodial Measures and the UN Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders equally provides community-based sanctions and guidelines on the implementation of alternatives to imprisonment which impose duties on states to improve prison conditions and prisoners' rights by reducing prison overcrowding, recidivism rates and advancing rehabilitation and social reintegration. Thus, alternatives to incarceration if properly resourced, regulated and implemented can be construed as tools to fulfill these obligations.

3.1 Community-Based Non-Custodial Sentences Under the Cameroon Penal Code and Criminal Procedure Code

The Cameroon Penal Code adopted in 2016¹ provides a wide legislative framework for alternatives to imprisonment, reflecting the principle that incarceration behind bars should only be employed as a measure of last resort. These alternatives measures intend to align domestic legislation with international human rights obligations which seeks to humanize criminal justice by protecting liberty and human

dignity, reduce over-reliance on incarceration and related rights violations, decongest prisons, and promote rehabilitation and social reintegration. The paramount alternative sanctions to imprisonment under the Cameroon Penal Code include fines, community service, reparatory sentence, judicial supervision, preventive confinement, suspended sentence and probation, which allow offenders to remain in the community and serve their sentences without incarcerating them behind bars.

3.1.1 Fines

Fines or financial penalty is the most traditionally and frequently applied non-custodial sanction by courts in Cameroon with the intention to reduce the number of persons sent to prison. Under the tenor of the Cameroon Penal Code, "fine shall mean a financial penalty by virtue of which a convict, natural person or corporate body, pays an amount of money, specified by law, into the Public Treasury"². This pecuniary penalty is imposed by magistrates or judges on certain cohorts of offenders assessed according to the seriousness of the offence. The imposition must fines must be within the ambit of the law and as such, Section 25-1(2) of Law No. 2016/007 of 12 July 2016 as amended by Law No. 2019/020 of 24 December 2019 relating to the Penal Code provides inter alia that "the amount of fine applicable to corporate bodies shall be five times that provided for natural person" and in the same dimension, "where a corporate body is guilty of an offence punishable with imprisonment only, the fine to be paid shall be from CFAF 1.000.000 (one million) to CFAF 500.000.000 (five million)"³. Fines are significant in limiting and preventing unnecessary recourse to incarceration, thus reducing prison numbers, safeguarding offenders from degrading prison conditions and enhancing their rights by allowing them to remain in the community and maintain social, family and professional ties. Certain crimes under the Penal Code emphasize on the imposition of fines or imprisonment or both fine and imprisonment depending on the seriousness of the offence. Notwithstanding, the practice of substituting default imprisonment in cases of non-payment of fines undermines the

¹ Law No. 2016/007 of 12 July 2016 as amended by Law No. 2019/020 of 24 December 2019 on the Cameroon Penal Code.

² Section 25-1(1) of Law No. 2016/007 of 12 July 2016 as amended by Law No. 2019/020 of 24 December 2019 on the Cameroon Penal Code.

³ Section 25-1(1) of Law No. 2016/007 of 12 July 2016 as amended by Law No. 2019/020 of 24 December 2019 on the Cameroon Penal Code.

rehabilitation and reintegration potential of financial penalties and risk increasing prison overcrowding, compounding prison conditions, undermining prisoners' rights and violating the principle of proportionality.

Courts impose financial penalties on certain offenders as an effective deterrent for economic and minor offences. The court imposes an economic sanction depending on the seriousness of the offence and the ability of the person to pay. Fines are usually calculated based on the severity of the offence and the offender's capacity to pay without necessarily resorting to imprisonment. The judicious use of fines for minor offences and on offenders that pose no threat to society can impact on the overall size of the prison population and reduce prison overcrowding. This approach aligns with international human rights standards and the principles of restorative justice and is regarded as a flexible sanction that deters the social and economic cost associated with imprisonment and upholds standardized prison conditions.

Under the Cameroon criminal justice system, fines are one of the key non-custodial measures used as an alternative to imprisonment. The imposition of fines by courts allows offenders to avoid incarceration by paying a determined monetary penalty to the state. In the light of the Cameroon Penal Code¹, Fines can be imposed either as an independent sanction or in conjunction with other penalties such as incarceration. The amount imposed as fine is determined by the nature of the offence, the circumstance surrounding the crime and the financial capability of the offender. For less severe crimes, fines are considered the most suitable or primary sanction, whereas for more serious offences, they may be accompanied by suspended or reduced prison sentence. In cases involving public order offences or violations of administrative regulations, fines are commonly imposed to avoid over-burdening the prison system with low-risk and minor offenders. Under the Cameroon Criminal Procedure Code, fines are imposed for minor offences such as defamation, contempt, petty theft, and traffic violations.

3.1.2 Community Service

Community service was graciously incorporated into the Cameroon criminal law as a socially constructive sanction. Community service orders encompass orders made by courts as an alternative to imprisonment, requiring offenders to perform unpaid work in the community for public or social benefit with the objective to retribute for the harm caused to society or achieve rehabilitation through work, skill building, rehabilitation and reintegration. Section 26(4) of Law No. 2016/007 of 12 July 2016 as amended holds that community service shall be free of charge. It is the exclusive prerogative of the court to impose a community service order which shall not be less than two hundred hours or more than two hundred and forty hours and shall not be suspended². The Penal Code succinctly holds that "community service shall mean a sentence passed for an offence punishable with imprisonment of less than two years or with fine only. Such sentence shall be executed for the benefit of a public corporation, a private corporation charged with a public service mission or an association entrusted with performing a community service"³. The judgment of the court imposing a community service order shall equally state the period of imprisonment that may be served by the offender in case of non-performance of community service and such period of imprisonment shall not be suspended⁴. This community-based non-custodial sanction embodies a restorative dimension by compelling the offender to make constructive contributions rather than sending them behind bars to waste their economic labour under incarceration. This unique sanction preserves liberty and human dignity, combats prison overcrowding and recidivism and encourages cost-effective rehabilitation and reintegration by allowing offenders to stay connected to their employment, family and friends. This community sanction aligns with international instruments like the 1990 United Nations Standard Minimum Rules for Non-Custodial Measures. Nevertheless, weak institutional framework, inadequate supervision personnel and probation officers as well as other

¹ Section 18 of Law No. 2016/007 of 12 July 2016 as Amended and Supplemented by Law No. 2019/020 of 24 December 2019 relating to the Cameroon Penal Code.

² Section 26(3) of Law No. 2016/007 of 12 July 2016 as amended by Law No. 2019/020 of 24 December 2019 on the Cameroon Penal Code.

³ Section 26 of Law No. 2016/007 of 12 July 2016 as amended by Law No. 2019/020 of 24 December 2019 on the Cameroon Penal Code.

⁴ Section 26(4) of Law No. 2016/007 of 12 July 2016 as amended by Law No. 2019/020 of 24 December 2019 on the Cameroon Penal Code.

limited supervision mechanisms limit the full effectiveness of this very important non-custodial measure in Cameroon. Again, void of adequate safeguards and legal guarantees, community service risk exploitation or degrading conditions which tend to violate the fundamental rights of the offenders.

3.1.3 Reparatory Sentence

The reparatory sentence is a relatively novel provision in the Cameroon Penal Code that introduces restorative justice into the Cameroonian criminal law. Pursuant to Section 26-1 of the 2016 Penal Code as amended, “reparatory sentence shall mean a sentence passed for offences punishable with imprisonment for not more than two (2) years or with fine only”. This measure entails the obligation imposed on the offender to indemnify the victim of the offence within the period and under the conditions laid down by the court.

Reparatory sentence as a form of community-based non-custodial punishment serves as a pathway to prisoners’ rights and provide an effective alternative to traditional incarceration. Community-based non-custodial sentences are rooted on reparatory justice that emphasizes the idea of repairing or restoring the harm caused by criminal behavior, often involving the offender’s engagement with the community and victim. Unlike imprisonment which focuses solely on punishing the offender, reparatory sentences aim to benefit both the victim of the offence and the general community, while holding offenders accountable for their actions without necessarily subjecting them to imprisonment in penal institutions. This form of community sanction has gained effectiveness in the legal framework of many criminal justice systems including that of Cameroon, as a more right-respecting sanction and a significant alternative to traditional incarceration, especially in addressing the needs of the parties involved.

A reparatory sentence as a community-based alternative to imprisonment typically involves three diverse components: community service, restitution and mediation. These measures focus on treating, educating, rehabilitating and reintegrating the offenders into society and repairing the harm caused by the criminal

conduct, rather than incarcerating and isolating the offender. Community service as a component of reparatory sentence requires offenders to contribute to society by engaging in unpaid community work that benefits the entire community. Community service which may take the form of cleaning public spaces or participating in the restoration of damaged property allows the offender to atone for their actions in a constructive manner, demonstrating accountability while fostering rehabilitation and reintegration into the society¹. Restitution is another crucial component of reparatory sentences where the offender is required to compensate the victim for the harm caused, usually in the form of financial payment, services or returning property illegally possessed. This in essence could involve repairing physical damage, paying for lost property, restituting property, or covering medical expenses resulting from the offender’s criminal conduct. Reparatory restitution is a community-based alternative to imprisonment directly addresses the needs of the victims, providing them with a tangible form of justice and closure, while also encouraging offenders to assume responsibility for their actions.² Reparatory sentences often also involve victim-offender mediation, where victims and offenders meet in a structured setting, facilitated by an independent mediator or third party, to discuss the impact of the offence. The mediation setting is a dialogue-oriented agenda which allows the victim to express their feelings and needs, while giving offenders the opportunity to apologize, atone for their offence and offer reparatory actions. Mediation enables offenders to understand the human consequences of their actions, thereby fostering empathy and accountability, which are key community measures to reduce recidivism and prison overcrowding and enhance rehabilitation and social reintegration³. Notwithstanding the adoption of this sanction in the 2016 Cameroon Penal Code, implementation has been sacrificed on the altar of custodial sentences such as imprisonment and thus, they are not or are loosely implemented.

3.1.4 Probation and Judicial Supervision

Probation is a widely adopted non-custodial measure which is implemented in many criminal

¹ Johnstone, G. (2011). *Restorative Justice: Ideas, Values and Debates* (2nd ed.). Routledge

² Zehr, H. (2002). *The Little Book of Restorative Justice*. Good Books.

³ Braithwaite, J. (2002). *Restorative Justice and Responsive Regulation*. Oxford University Press.

justice systems. Probation is a form of community-based supervised release which allows an offender to serve their sentence within the community under specific conditions, thus avoiding the traditional prison environment. This measure may also include releasing an offender into the community under supervision, typically by a probation officer, with certain conditions attached to the early release. This measure is broadly imposed on offenders who are deemed to pose a low risk to society, often for less serious crimes, first-time offenders or offenders who need rehabilitation, treatment or therapy rather than incarceration. Probation seeks to rehabilitate offenders while ensuring public safety, reducing prison overcrowding, diminishing the likelihood of recidivism through supervision, guidance and in some cases, therapy and treatment. Probation when adequately applied and supported with therapy and community service programs, can reduce prison overcrowding and recidivism rate, enhance rehabilitation and reintegration and uphold prisoners' rights. Courts grant probation as a judicial supervised alternative to imprisonment, allowing offenders to remain in society while adhering to a set of obligations such as regular meetings with a probation officer, participating in community service or attending treatment programs that are intended to enhance rehabilitation, reduce recidivism and facilitate reintegration into the society.¹

Under the Cameroon legal framework, probation is recognized as an alternative to imprisonment, intended to balance community safety with offenders' potential for reform. Therefore, probation as a community-based sanction not only reduces the strain on correctional facilities triggered by scarce resources, inadequate funding, overcrowding and high recidivism rates but also to address human right concerns, by fostering a community-based rehabilitative rather than prison punitive approach to justice² as incarceration is often associated with negative social, psychological and economic outcomes³. The main objectives of probation are to rehabilitate the offender, reduce prison overcrowding and promote community safety.

By reducing the rate of offenders incarcerated, probation reduces economic and social cost associated with incarceration. Probation programs often include access to education and vocational training, therapy, treatment from substance abuse, rehabilitation and reformation, counseling and support services to address underlying behavioral or drug related issues.

In Cameroon, as in many parts of the world, adequate supervised probation programs are gaining traction due to their advantages in enhancing the rights of offenders, reducing prison populations and promoting rehabilitation. More specifically, probation allows for a tailored approach, where conditions can be set based on the specific requirements of individual offenders, such as therapy, substance abuse treatment, vocational training and mental health counseling. The community-based programs adhere to human rights and rehabilitation theories, which emphasize that justice system, should prioritize measures that respect human rights and foster individual positive transformation rather than merely punishing them. Probation supports the restorative justice approach to criminal justice, which emphasizes repairing the harms caused by criminal conduct. Through community-based approaches such as community service, compensation or restitution, probation contributes to the offenders' understanding of the consequences of their actions, which is essential for reducing recidivism, prison overcrowding and upholding rehabilitation and reintegration.

While alternative measures to incarceration such as probation may offer distinguished advantages, its effective implementation in Cameroon, where the criminal justice system has for long suffered from insufficient funding, lack of personal, inadequate training of probation officers, resource scarcity and public perception of leniency, probation falls short to be a viable pathway to prisoner's rights. Again, Cameroon lacks a comprehensive and coherent national framework for alternative to imprisonment notably probation, which hinders offenders reintegration, resulting in inconsistencies in how

¹ Phelps, M. S. (2017). Mass Probation: "Towards a more Robust Theory of State Variation in Punishment". *Punishment and Society*, 19(1), pp. 53-73.

² Kengne, S. (2023). Human Rights and Criminal Procedure in Cameroon: An Analysis of the Cameroon Criminal Procedure Code. *Journal of Comparative Law*, 20(3), pp. 231-248.

³ Dissel, A. (2016). Community-Based Alternatives to Incarceration: An Overview of Probation and Community Service in Africa. *African Journal of Criminology*, 12(1), pp. 89-102.

probation is applied across different parts of the country¹. This qualifies the need to build a robust framework that ensures the tailoring of resources to empower judicial and penitentiary personnel to carry out rehabilitation effectively. These programs may also include accountability, effective supervision, and support services that address the underlying causes of criminal behavior and how community-based measures could adequately act as a panacea without recourse to incarceration. More so, investing in a supportive legal, judicial and administrative framework that supports probations and the adequate training of probation officers is essential to make community-based probation effective. In order to promote and enhance the rights of offenders, probation must be implemented in a manner that takes into consideration offenders' dignity, autonomy and the right to fair treatment.

Everything being equal, as the case in many civilized nations, community based probation when effectively implemented serves as a critical element of non-custodial sentences in Cameroon. Effective implementation of probation programs aligns with the rehabilitation and human right theories which supports offenders' right to rehabilitation, fair treatment, community inclusion and a chance to contribute positively to society, further underscoring the transformative potentials of alternatives to imprisonment.

4. Why Non-Custodial Sentences Matter for Prisoners' Rights in Cameroon

Why consider Non-Custodial Sentencing Measures? Escalating number of prisoners held behind bars around the world has led to severe overcrowding and conditions of detention that breach United Nations standards and other international human right standards which require that prisoners be treated with dignity and respect due their inherent rights as human beings. In the Republic of South Africa, the South African Law Commission² found that the absence of alternatives to imprisonment

contributed to the growing number of pretrial detainees in prison³. The African Commission on Human and Peoples Rights Special Rapporteur on Prisons and Detention Conditions in Africa observed that, there was increased use of imprisonment and the imposition of lengthier sentences and sparing use of non-custodial sentences as well as the reluctance of judges and magistrates to implement non-custodial measures even for petty offences greatly precipitated the growth in prison numbers⁴. The overuse of incarceration as a criminal sanction for almost all offences has resulted to increasing criminalization of innumerable social societal maladies such as mental illness, drug addiction, poverty and indebtedness. These are social maladies whose solutions are found in the community and incarcerating persons for breach of such social maladies entails detaining the solutions themselves. This disproportionately increases the prison population and as such, compounds the problem of overcrowding thereby by impinging prisoners' rights. The United Nations International Covenant on Civil and Political Rights inter alia restrict the incarceration of persons on grounds of their inability to fulfill a contractual obligation which perversely increases the prison population⁵. The benefits of alternatives to imprisonment can be maximized by giving courts wider powers to use cost-effective, recidivism-reducing sentencing and community sanctions rather than imprisonment. Non-custodial sentences inherently possess cost-benefit effects of crime prevention which are more promising than imprisonment which require weighing incommensurable values⁶.

4.1 Over-Penalization Lead to Recidivism

Recidivism refers to the return of an ex-offender to criminal behavior following conviction, diversion or punishment. In the prevailing rhetoric of tough on crime, the general public has a radical lack of concern for the population behind bars, their rehabilitative needs, their

¹ Ngange, M. (2022). Probation as a Means of Reducing Prison Overcrowding in Cameroon: Prospects and Challenges. *Journal of African Law*, 27(3), pp. 215-228.

² South African Law Commission. (1997). Pretrial Detention and Release Policy. Chapter 6 in Juvenile Justice; Issue paper 9, project 106.

³ Griffiths, C. T & Murdoch, D. J (2009). Strategies and Best Practices against Prison Overcrowding in Correctional Institutions; International Center for Criminal Law Reform and Criminal Justice Policy: Vancouver, British Columbia-Canada.

⁴ Special Rapporteur on Prisons and Conditions of Detention in Africa: African Commission on Human and Peoples Rights (2004) Report Mission to the Republic of South Africa.

⁵ Section 11 of the UN Covenant on Civil and Political Rights Adopted by the UN General Assembly in 1966.

⁶ Welsh, B. C. & David, P. F. (2000). Monetary Cost and Benefits of Crime Prevention Programs. *Journal of Crime and Justice*, 27. A Review of Research: University of Chicago Press.

conditions of detention and social reintegration tendencies¹. They contend that prison should be retributive in nature and the conditions of detention should be so harsh and uncomfortable that may prevent criminals from wanting to go back to crime. In the United Kingdom, there has been growing support for punishment that focus on custodial sentences such as imprisonment². Empirical evidence suggests that custodial sentences are less effective in crime prevention and in reducing recidivism³. The degree of recidivism varies and the factors that trigger an ex-offender to commit other crimes after being released from prison are seemingly unclear. A longitudinal study carried out by John and Steiner in 2018 demonstrated that recidivism rate for offenders who completed community service was 25% while those who were subjected to traditional sentences or imprisonment was 40%. These findings were in light with those illustrated by Waller and Wilkins wherein they concluded that community sentences can effectively lead to a reduction in recidivism and reoffending rates⁴. However, a number of concepts explain the motive why ex-convicts return to criminal behavior after being released from prison such as incorrigibility (failure to rehabilitate the prison), failure of a parole or probation program, peer pressure and other social provocations, economic hardship, mental health may also be a prediction of recidivism, and the failure of reacclimatize or support social reintegration.

Prospects of recidivism are heightened with declining prospects for employment and low earnings for the ex-offender in the long run⁵. Inadvertently, food insecurity, housing instability and reliance on public assistance are also associated with recidivism and prior incarceration⁶.

4.2 Human Right and Imprisonment

International human right law and national constitutions regard individual right to liberty as the most treasurable assets that pertains to all humans beings. National governments must validly justify if such right is to be taken away temporally or permanently and if no other measure could suffice. Though the restriction of liberty is inevitable in prison, prisoners are deprived of other rudimentary human rights and imprisonment impinges several rights. Often than not, prisoners are deprived of basic necessities necessary for human growth such as proper health care, feeding, clothing and other social amenities. Prisoners are incarcerated in overcrowded detention facilities which are not human right friendly and as such, prisoners are open to vulnerable diseases and are sadly not given proper health care. In the Indian Case of Sunil v. Delhi Administration, the Supreme Court of India unequivocally upheld that;

“Fundamental rights do not flee the person as he enters the prison although they may suffer shrinkage necessitated by incarceration”⁷.

The essence of the criminal justice system is to ensure that justice is administered fairly and the rights of accused persons, under trials and prisoners held behind bars are protected.

It is increasingly recognized that such conditions are inhuman and degrading and as such, denies prisoners their inherent rights as human beings. Most of these prisoners are minor offenders, non-violent and first time offenders, majority of who are under trials who could be better dealt with by subjecting them to non-custodial sentencing measures. Implementing appropriate alternatives to imprisonment would act as a panacea to overcrowding and as such, make

¹ Sabo, D., Kupers, T., & London, W. (2001). *Prison Masculinities*. Philadelphia: Temple University Press.

² Jennings, W. et al. (2017). Penal Populism and the Thermostat: Crime, Public Punitiveness and Public Policy. *Governance*, 30.

³ Chalfin, A., & McCrary, J. (2017). Criminal Deterrence: A Review of the Literature. *Journal of Economic Literature*, 55(1), pp. 5-48. See also, Loeffler, C. E., & Nagin, D. S. (2022). The Impact of Incarceration on Recidivism. *Annual Review of Criminology*, 5, pp. 133-152. See also Roodman, D. (2020). The Impact of Incarceration on Crime. arXiv Preprint arXiv: 2017.10268

⁴ Waller, I. & Wilkins, L. T. (2016). *Community Service Orders: The Development and Principal Findings of the Research*. Her Majesty's Stationary Office.

⁵ Apel, R. & Sweeten, G. (2010). The Impact of Incarceration on Employment during the Transition to Adulthood. *Journal of Social Problems*, 57(3), pp. 448-479. See also, Pettit, B. & Western, B. (2004). Mass Imprisonment and the Life course: Race and Class Inequality in U.S. Incarceration. *American Sociological Review*, 69, pp. 151-169.

⁶ Sugie, N. (2015). Chilling Effects: Diminished Political Participation among Partners of formerly Incarcerated Men. *Journal of Social Problem*, 62(4), pp. 550-571. See also, Harding, D., Morenoff, J., & Herbert, C. W (2013). Home is hard to find: Neighborhoods, Institutions and Residential Trajectories of Returning Prisoners. *The Annals of the American Academy of Political and Social Science*, 647(1), pp. 214-236.

⁷ Archana, C. & Showkat, A. W. (2021). Human Rights of Prisoners with Special Reference to Public Safety Act after the Abrogation of Article 370. *Ilkogretim Online – Elementary Education Online*, 20(5), pp. 7203-7213.

prisons easy to manage and human right friendly.

4.3 *The Cost of Running Prisons Is Too High*

Over-penalization instigates numerous poor physical, psychological and economic outcomes for prisoners, their families and places a huge burden on the broader community to feed a large prison population without any socio-economic benefits¹. The budget and runaway cost of running prisons is so exorbitant which diverts funds reserved for the running of socio-economic projects such as roads, water systems, education, and hospitals for the community wellbeing to run prisons. High prison a rate destabilizes entire communities, resulting to dissolution of former networks put in place to serve as barriers to neighborhood crime²³. Incarceration of prisoner has direct and indirect consequences on the community. Direct cost is incurred through the construction, management and administration of prisons as well as through the feeding, housing, providing health care, payment of prison officials and officials of the Ministry of Justice and those in charge of Penitentiary Administration. Consequential or indirect cost is borne by the society at large through taxes. Further, detention centers are incubators of transmissible diseases and other vulnerable diseases such as HIV/AIDS, Tuberculosis particularly when such prisons are above capacity and overcrowded. Upon release, such diseases are spread to the wider community which greatly affects the entire nation negatively.⁴ Non-custodial measures to imprisonment can divert deprivation of liberty in prisons and jail, reduce cost and minimize additional future crimes by putting the parties in a state of *restitutio in integrum*.

4.4 *Over Reliance on Imprisonment*

Officials of the criminal justice system should observe punishment options from the pretrial to the sentencing stage. Imprisonment to serve a jail term should not result to the prisoner losing he/her life in the process. Prisons are not human right friendly due to over-population in prisons which breeds problems such as food scarcity,

insufficient sleeping space amongst other issues which greatly affect prisoners. Worst still, a closer look at prisons indicate that most prisoners are disproportionately drawn from socially and economically backward as well as poorest and marginalized groups in the society void of employment and basic amenities which drive the community members into crime. Most of these prisoners are held in prisons for non-violent and trivial offences or as a result of their inability to pay fines or bail themselves. These categories of offenders could better be dealt with by adopting appropriate non-custodial sentencing measures such as community service. In order to curb the over-reliance on imprisonment, alternative sentencing measures should be the primary point of departure for petty offenders and offenders who do not post an actual danger to the society.

4.5 *Suitability of Non-Custodial Sentences in Limiting Prison Crisis*

Imprisonment as a criminal sanction deprives individuals suspected of having committed criminal offences of their liberty until their culpability is established. Imprisonment detains offenders temporally or permanently when their guilt is being established which restricts them from committing further crimes in the course of serving their jail term which in theory serves as a pathway to enable their reformation and rehabilitation and eventual reintegration into the society. The high rate of recidivism attests to the fact that imprisonment should be used only as a last resort. Many first-time offenders and non-violent offenders become hardened criminals and recidivist after being imprisoned. Prisons hardly reform nor rehabilitate offenders.

Albeit this, imprisonment is expensive, prisons are in crisis and does not sufficiently suit all offences since it inevitably infringes fundamental inherent human rights owned by the offender. Imprisonment should only be employed after ample consideration and as a last resort when all other alternative measures have been exhausted.

Non-custodial sentences are less expensive relative to imprisonment and infringe less and

¹ Wildeman, H. C., Wang, E., Matusko, N. & Jackson, J. (2014). A Heavy Burden: the Cardiovascular Health Consequences of having a Family Member Incarcerated. *American Journal of Public Health*, 104. See also, Massoglia, M. & Pridemore, W. A. (2015). Incarceration and Health. *Annual Review of Sociology*, 41(1), pp. 291-310.

² Drakulich, K., Crutchfield, R., Matsueda, R. & Rose, K. (2012). Instability, Informal Control and Criminogenic Situations: Community Effects of returning Prisoners. *Crime, Law and Social Change*, 57(5), pp. 493-519.

³ Clear, T. R. (2008). The Effects of High Imprisonment Rates on Communities. *Journal of Crime and Justice*, 37(1), pp. 97-132.

⁴ United Nations Office on Drugs and Crime, Handbook of Basic Principles and Promising Practices on Alternatives to Imprisonment, Criminal Justice Series Book, UN Publication, first edition (2007).

rarely trample on the inherent rights of the offender. Non-custodial sentences allow offenders to stay in the society and work to pay for their crimes through community service which helps to advance economic development and growth unlike imprisonment which deprives the society of productive labour. In every stage of the criminal justice system being it at the under trials, trial and sentencing stage, rationalized justification should be advanced before subjecting a prisoner to imprisonment lest as a last resort. In fact, alternative sanctions should be used widely in all the stages of the criminal justice system.

Imprisonment makes it very difficult for offenders to adjust to life after their release which increases the probability for recidivism thus compounding the problem of overcrowding. Imprisonment does not evidently incapacitate offenders except the fact that offenders are restrained from committing crimes while in prison. Relying on imprisonment as a measure to prevent crime is not an effective crime prevention mechanism. Even though incapacitated, ex-convicts are likely to go back to crime after release due to lack of basic means of survival. Conceptually, the implementation of alternative sentences should be broadened and not narrowed to particular classes of offenders or crimes.

5. Hindrances to the Implementation of Non-Custodial Sentences

Historically, overcrowded prisons, high recidivism, prolonged pretrial detention, limited rehabilitation and the social cost of imprisonment have for long stressed several justice systems and Cameroon has not been an exception. The Cameroon law makers recognizing the challenges associated with custodial sentences reformed the Penal Code in Law No. 2016/007 of 12 July 2016 which was also amended by Law No. 2019/020 of 24 December 2019 to introduce new alternatives to incarceration, notably community service, reparatory sentence. Notwithstanding, while the Penal Code and Criminal Procedure Code reflects progressive intent to limit the use of custodial sentences in favour of non-custodial sentences, the practical implementation of these community-based non-custodial sanctions has encountered fundamental obstacles. The gap between legal provision and judicial practice demonstrates that alternatives to imprisonment, though promising remain in a nascent and fragile stage and prisons continue to operate above

capacity. Challenges of regulatory clarity, capacity, institutional will, resource constraints, judicial culture, and social acceptance all work to undermine the effectiveness and consistency of community-based non-custodial sanctions. Despite the adoption of non-custodial sentences, the modalities required for its operationalization such as detailed implementation regulation, institutional guidelines, administrative infrastructure and personnel capacity remain wanting, underdeveloped and under resourced. Thus, the implementation phase remains critical. Unless the policy matches with practice and the law is accompanied by concrete regulation, trained actors and monitoring mechanisms, the anticipated merits of non-custodial sentences ranging from reducing prison overcrowding, enhancing rehabilitation, preserving social bond, reducing recidivism and improving prisoners' rights may remain in paper.

5.1 Legal/Regulatory Challenges

While Law No. 2016/007 of 12 July 2016 as amended by Law No. 2019/020 of 24 December 2024 to lay down the Cameroon Penal Code and Law No. 2005/007 of 27 July 2005 on the Criminal Procedure has formally set out some alternatives to imprisonment and some modalities of punishing offenders in the community, there is no particular text that fixes the modalities for the application of non-custodial sentences. Although the legislator in introducing alternatives to imprisonment in the Penal Code noted that a detailed implementing instrument shall be promulgated which has remained mere paper work. Void of the implementation guidelines, magistrates and judges often relapse to imprisonment. The chain for the implementation and operationalization of alternatives to imprisonment lack legal clarity thus rendering it redundant in application.

The lack of regulatory agenda equally undermines the categories of offenders that may be subjected to community sanctions. This limits the scope of offenders who might otherwise who could have benefited from less-severe sentences and community-based sanctions.

5.2 Institutional/Practical Challenges

Apart from judicial bodies, there is need for an entity to oversee the monitoring and implementation of alternative sentences. Ashworth underscores that community-based non-custodial sentences require robust institutional support, trained probation officers,

community projects and effective supervision mechanisms¹. Both in urban and rural areas in Cameroon, there is no organized structure, established body or official personnel designated to assign, monitor and implement non-custodial sentences. Penitentiary officers who might play this role however focus in incarcerating offenders behind bars rather than ensuring their rehabilitation and reformation in the community. Without such organs and personnel, courts are unable to enforce the obligations or supervise compliance.

Judges and Magistrates as well as prosecutors are trained to think only in the direction of incarceration, suspended sentences and fines and there is no recourse to community-based non-custodial sentences. This demonstrates that they lack training and familiarity with community sanctions in the light of applying, monitoring and ensuring compliance which explains why offenders are hardly subjected to community sanctions such as probation, community service, reparatory sentences and other non-custodial sentences adopted under the Cameroon legal system. The outcome has been the underutilization of non-custodial sentences and over reliance on custodial sentences even when the laws clearly permit for the implementation of non-custodial sentences in Cameroon. This demonstrates that though the law provides for non-custodial sentences, in practice, such sentences exist beautifully on paper only.

5.2.1 Inadequate Mechanisms to Monitor Compliance and Judicial Culture

Implementation and enforcement of non-custodial sentences reflect the underuse of non-custodial sentences in Cameroon. Once an alternative sentence is imposed, there must be follow up, checking that the offender pays reparation or performs the service or work assigned to him in the community by the judicial authority. Cameroon lacks consistent systems for monitoring compliance or enforcing alternative sanctions when an offender defaults to perform them. In the ordinary performance of non-custodial sentences for instance, failure to accomplish community service or probation usually calls for imprisonment in lieu, but in practice, cases of non-performance go unchecked if no monitoring occurs.

5.3 Resource/Financial Challenges

One of the major factors that affect or limit the implementation of non-custodial sentences is resource or financial hurdles. Deploying community sanctions requires staffs: for supervision, monitoring, coordination with community bodies, offices; for transportation. Both in urban and rural areas, there are inadequate trained personnel to implement, enforce and monitor non-custodial sentences or no budget allocation to oversee same. Community-based non-custodial sentences require supervisors, inspectors, social service officers and community liaison persons. Void of adequate funding and personnel these roles are under fulfilled and unrealized. Community non-custodial sentences are therefore said to be on paper but not in practice partly due to financial and human constraints.

Resource and personnel constraints cause delays in the criminal justice process which gives rise to high pretrial detention rates and prison overcrowding. Prisons exist above capacity and courts are overburdened with numerous cases as a result of the under exploitation. Magistrates and judges in Cameroon tend to favor custodial sentences simply because of logistics of alternative sanctions being extremely complex to administer. High pretrial detention rates, overcrowded prisons and backlog provide the motive for alternative sentences but disincentives provoked by inadequate monitoring and additional work push them away from alternative sentences. The overcrowded nature of these prisons requires non-custodial sentences but they are hardly implemented.

5.4 Social/Cultural Challenges

The socio-cultural challenges of alternatives to imprisonment are observed in the light of public perception and stigma. The society at large and victims of crime, including judicial personnel see non-custodial measures as too lenient or not punishment. Non-custodial sentences offer an avenue for the observation and respect of the rights of offenders but the community sees little social prestige in the measures and victims of crime believe justice requires incarceration or must be retributive nature. This societal perception can result in a political or social pressure on magistrates/judges to deliver custodial sentences. Equally, some society

¹ Ashworth, A. (2015). *Sentencing and Criminal Justice*, (6th ed.). Cambridge University Press.

members believe alternatives to imprisonment do not satisfy the moral aspect of punishment.

In another dimension, sanction reparation requires that the perpetrators repair material prejudice suffered by the victims. In several cases, victims of offences tend to doubt the ability of convicted persons to pay or may mistrust that reparation will be delivered. This explains the reasons why most victims prefer custodial sentences over community-based sanctions. In another dimension, identifying and valuing the damage, and enforcing payment, can be challenging in cases where the offender is impecunious.

5.5 Administrative impediments

Faintness on the part of the executive organ (the Ministry of Justice) such as mismanagement, misappropriation, little or no transparency and accountability on prison management, funding impairments.

Weaknesses on the part of prison officials/warders (torture of prisoners), inadequate training programs, low salaries.

6. Conclusion

In sum, community-based non-custodial sentences represent a pivotal reform in the Cameroon criminal justice system and penal policy, combining justice efficiency with human right protection without compromising the rights of inmates held behind bars. Notwithstanding, without immediate regulatory action, institutional commitment, victim/offender and community participation, community-based sanctions will remain beautiful dormant legal promise under the Penal Code without no implementation. A right-oriented implementation anchored in accountability, transparency, proportionality, community participation and sustained funding can transform the sanctions into a cornerstone of a human and modern criminal justice system.

7. Recommendations for Reforms

The adequate implementation of community-based non-custodial sentences holds significant promise for advancing and rebalancing the Cameroonian criminal justice system away from punishment in penitentiary facilities towards a right-centered rehabilitation and reintegration approach. Realizing the practical stakes of treating community sanctions as a pathway to prisoners' rights and employing imprisonment as a last resort is appropriate for upgrading

prison conditions and enhancing prisoners' rights. The promise depends on coherent and comprehensive law reform, strengthened institutions and political will to prioritize humane, effective and appropriate sanctions that protect prisoners' rights, promote public safety and individual dignity. The effective implementation of community sentences requires a multidimensional reform strategy that closes the gap between the legal text and its operational reality by matching policy with practice. The recommendations in this work are directed at the government of Cameroon, the Ministry of Justice, the Judiciary, Civil Society Organizations and developmental partners, with the aim of transforming community-based non-custodial sentences into a right-protective, rehabilitative and sustainable mechanism of criminal justice. The Decree or modalities for the implementation of non-custodial sentences may draw inspiration.

7.1 Legal Reforms

Law No. 2016/007 of 12 July 2016 as amended by Law No. 2019/020 of 24 December 2019 relating to the Cameroon Penal Code has introduced an elaborate number of alternative sentences to imprisonment including community service, reparatory sentences, probation and suspended sentences. Albeit the adoption of these diverse non-custodial sentences under the Penal Code and Criminal Procedure Code, their practical implementation remains largely theoretical, existing only on paper due to the absence of a clear implementing Decree guiding the procedures, supervisory organs, execution modalities and personnel in charge of implementation. The primary recommendation priority should be the adoption of a binding implementation Decree to effectively put into practice the community-based non-custodial sentences adopted under the 2016 Penal Code as amended. The implementing Decree should take into consideration and define the eligibility criteria for offenders and offences, establish procedures for obtaining consent, or allow judiciary supervised consent waivers in the public interest, establish modalities for court referrals, community placement and verification of completion, specify sanctions for non-performance or default and provide a detailed clarification of the role of implementing and supervisory organs and personnel. In adopting the implementing decree, the Cameroon legislator can draw from France's Decree No.

2010/355 of 1 April 2010 governing Community and the Zimbabwean model which provides clear guidance on how judicial authorities, probation services and local communities collaborate in the enforcement of community-based non-custodial sentences. This will limit over reliance on imprisonment and enhance the rehabilitation and reintegration of offenders in the community cost effectively.

7.2 Establishment of a National Probation and Corrections Service

The delays experienced in the effective implementation of community sanctions in Cameroon are relatively orchestrated by the lack of a robust institutional mechanism for implementation, supervision and follow-up. Apart from the Penitentiary Department in the Ministry of Justice, another independent or quasi organ in the guise of a National Probation and Community Correction Service should be put in place by the Ministry of Justice to oversee the implementation, supervision and follow-up of community sanctions with branches at the regional, divisional and sub-divisional levels to ensure releases at the pretrial, trial and post-trial stage of the criminal justice system. The National Probation and Community Correction Service will be charged with the supervision of offenders serving community sentences, liaise with other host institutions to guarantee the effective implementation of community service, probation and the observance of suspended sentences. Again, the organ will monitor progress and report to sentencing courts, facilitate post-sentence reformation, counseling and reintegration to prevent recidivism and lastly, to serve as a data collection and coordination hub between prisons, courts and local communities. In putting in place this organ, recourse can be drawn from the United Kingdom's National Probation Service and the South Africa's Department of Community Service which provides viable models that if adapted to the Cameroon context will yield great results and reduces the excessive use of imprisonment as a response to all offences and offenders. This Community-based Correctional service may start at the regional levels and later spread to divisions and sub-divisions.

7.3 Institutional Partnerships and Accreditation of Host Organizations

The effectiveness of community-based sentences is dependent on offenders' accessibility to

credible and structured community work placements. The Ministry of Justice should therefore create a National Probation and Community Correction Service which shall put in place a system of accreditation for host institutions, including councils, hospitals, schools, environmental agencies and Non-Governmental Organizations. The institutional and accreditation framework should focus on: clear eligibility criteria and supervision obligations; oversee training for supervisors; ensure liability and insurance provisions for workplace accidents and guarantee modest financial incentives or recognition for participating institutions. For instance, accredited local councils and associations in France have been successful in hosting several thousands of community service offenders each year under judicial supervision. Cameroon's Ministry of Justice under the Department of Penitentiary Administration can replicate this by partnering with both rural and urban councils and recruiting probation officers and enabling community engagement in rehabilitation and social and developmental projects.

7.4 Training and Sensitization of Judicial and Enforcement Actors

Statistics indicate that most Judges, Magistrates, Prosecutors, and Lawyers remain completely unfamiliar with the operational logic of community-based non-custodial and most judges and magistrates rarely contemplate community sanctions during sentencing. Judges and Magistrates continue to prefer subject offenders, including those charged for low-risk offences to custodial sentences, regular imprisonments tend to be viewed as the default sanction. To reverse this mindset, implementing community sanctions as contained under the 2016 Penal Code and guaranteeing continuous judicial training and sensitization should be institutionalized through the program of the National School of Administration and Magistracy, and at training seminars of the Bar both for Advocates-in-training and full Advocates. In such training programs, focus should be directed to: Legal basis and procedural steps for imposing community-based non-custodial sentences; imposing sentencing principles that emphasize on proportionality, rehabilitation and the protection of the rights of the offender; emphasizing the monitoring and enforcement mechanisms of community sanctions and imposing collaboration with

personnel in charge of probation and community bodies. Still in this dimension, judicial police officers and other law enforcement officers should be trained to enforce, support and not obstruct early releases at the pretrial stage and enhance the execution of sentences, ensuring that offenders are not arbitrarily held in custody due to bureaucratic confusion.

7.5 Community and Victim Participation

The success of the implementation and legitimacy of community-based non-custodial sentences depends largely on community participation and public trust. The public and victims of offences have often perceived community sanctions as lenient and prefer retributive sanctions like imprisonment. This public perception has greatly undermined the success of community sentences. The Ministry of Justice should thus collaborate with Civil Society Organizations and other stakeholders to launch community sensitization campaigns focused on revealing the value and significance of community sanctions for reducing prison overcrowding and budget on prisons, recidivism rates and promoting rehabilitation, reintegration and public safety. Reparatory sanction mechanisms should therefore be reinforced where victims and offenders participate in resolving the harm caused and restoring everlasting peace and public safety. This may also encompass putting in place clear channels for expressing restitution expectations, tracking compliance and receiving feedback. This better encourage reparatory sentences through victim and offender participation, a victim support fund could be created to facilitate reparations where offenders lack instantaneous financial capacity, with repayment arrangements supervised by the probation service, which must be put in place. This approach carefully aligns with the restorative justice principles in jurisdictions like Uganda, Kenya and South Africa where victims and offenders collectively participate and agree on restitution under judicial oversight.

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