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APPRAISING THE APPLICATION OF PAROLE AS A NON-CUSTODIAL SENTENCE UNDER ACJA, 2015 IN NIGERIA: LESSONS FROM SOUTH AFRICA

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ABSTRACT

This article appraises the application of parole in Nigeria. It offers discussion on international legal frameworks for parole and, in particular, discusses penal provisions that provide for parole, while noting innovations provided by the Administration of Criminal Justice Act (ACJA) 2015, the Administration of Criminal Justice Laws of States, and the Nigerian Correctional Services Act, 2019. The article highlights the benefits, conditions and duties of a parole officer and the application of parole in Nigeria. Applying the doctrinal research method, this article discusses South Africa as a jurisdiction with robust judicial activism on parole and outlines lessons for Nigeria. It finds that South African courts robustly apply non-custodial sentences when compared to courts in Nigeria. Taking a cue from South Africa, the article provides lessons that Nigeria can learn from South Africa, which include: recognition of medical parole by Nigerian Laws and the introduction of a parole board to reduce the wide discretionary power of the Comptroller-General in recommending parole.

1. INTRODUCTION

In recent times, parole has gained international and domestic recognition as a non-custodial sentence, considering the numerous benefits it offers over continuous incarceration. In Nigeria, challenges facing most correctional facilities and diverse jail breaks necessitate the robust application of parole as a non-custodial sentence. This has been the crux of diverse discourse for instance, very recently, a foundation known as CLEEN foundation, held a two-day performance appraisal workshop on the legal framework of parole with diverse state holders such as: the Police Force, Correctional Service, Nigerian Bar Association, Media, Nigeria Legal Aid Council, Bauchi State Ministry of Justice, Immigration Service, Lawyers and some Civil Society Organisations.[1] Issue surrounding the need to utilise parole in decongesting Nigerian Custodial centres was discussed. This has become imperative because parole reflects a balance between punitive measures and the need for rehabilitation, recognising that the potential for reform and positive change exists within every individual.

This article appraises the application of parole as a type of non-custodial measure in Nigeria and compares its application with South Africa. Besides Part 1, which is the introduction and the historical development of parole, Part 2 clarifies concepts and discusses international and domestic legal frameworks for parole. Part 3 discusses parole as a non-custodial sentence, noting its terms, benefits, parole officers' duties, and the application of parole in Nigeria. Part 4 is a complementary analysis of the application of parole in South Africa and an outline of lessons Nigeria can learn from South Africa. Part 5 concludes the article.

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[1] CLEEN Foundation Justice Sector Reform, <https://cleen.org/2024/06/24/parole-critical-component-of-judicial-system-for-prison-decongestion-foundation/> accessed 8 November 2024

1.1 Historical Development of Parole

Historically, parole as a non-custodial sentencing developed from conditional pardon, apprenticeship by indenture, transportation of criminals from England to America and Australia, the ticket of leave system, the English and Irish experiences of the ticket of leave system and the reformatory works of the American Prison in the 19th Century.[2]

In 1597, the conditional pardon and transportation of criminals from England to America started. By this practice, rogues and convicted felons were banished beyond the sea so as to provide them the opportunity of employment. Convicted felons who had the physical ability to be employed in service were granted reprieves or pardons and a stay of execution by the King and were transported to America.[3] This practice continued till the 17th century under arrangements such as a contract of indenture or apprenticeship.

By this arrangement, transported felons who arrived in America were sold to the highest bidder and became the property of the master who purchased them. This gave the criminal a new status, which was no longer considered a criminal but an indentured servant.[4] With time, the Revolutionary War in America terminated the transportation of criminals, but England did not repeal its transportation law, but instead transported criminals to Australia, under a different condition that did not allow transported criminals to be an indentured servant but to remain as prisoners under the control of the Australian government.[5]

In 1790, the Australian government was empowered by a special enabling Act to remit sentences of transported prisoners.[6] Those prisoners whose conduct and work records indicated that they were worthy to receive an absolute pardon were discharged from servitude and, at first, given an absolute pardon, but subsequently a conditional pardon known as "ticket of leave."[7] In 1811, the ticket of leave, which had been hitherto given freely, became restricted, such that a prisoner was required to serve a specific period of time before being eligible to receive a ticket of leave.[8]

Similar to America, with time, Australia disallowed the importation of prisoners owing to protests by Australian free settlers/colonialists, as a result of which, Australia terminated the transportation system of prisoners in 1867.[9] At the time, England introduced the ticket of leave in the English criminal justice system through the English Penal Servitude Act of 1853. The ticket of leave system and its administration were later criticised in England for a lack of supervision of released prisoners, and its inability to reform prisoners. [10]

Subsequently, the ticket of leave system found its way to other jurisdictions such as Ireland, but this time around, various supervision mechanisms were put in place, and this boosted the confidence of the public in the system.[11]England and Ireland borrowed ideas of supervision of the ticket of leave system from Ireland, and this also boosted the confidence of

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2 Frederick A. Moran, *The Origin of Parole* (YB 1945) 71.
3 Ibid. 73
4 Ibid. 75
5 Ibid. 76
6 Ibid. 77
7 Ibid.
8 Ibid. 78
9 Ibid. 79-80
10 Ibid. 86
11 Ibid. 90

the public in the system.[12] In America, the ticket of leave system was unwelcome, rather, a reformative measure known as the Elmira Reformatory was introduced to the American Prisons.[13] One of the measures which the Elmira Reformatory introduced in America was parole, and subsequently, conditions and prerequisites for parole were introduced.[14] Having recorded success in America, England did not hesitate to enact its parole law, considering that it offered more reformatory benefits to prisoners.

In Nigeria, parole is a recent development in the Nigerian Criminal Justice System,[15] although it is not a new phenomenon to release inmates before the expiration of their imprisonment, considering that it is within the bounds of law for the president or the governors of states to pardon an incarcerated inmate.[16] Though the Constitution provided legal backing for pardon, it however did not provide requirements for the grant of presidential and governor's pardon, but based it on their discretion.[17] To accord with other climes, the Administration of Criminal Justice Act (ACJA) 2015, introduced Parole in the Nigerian Criminal Justice System and introduced factors that the court must consider before releasing an inmate on parole. Following the ACJA, 2015, some states through their Administration of Criminal Justice Laws (ACJLs) also codified and recognised parole as a non-custodial sentencing.

2. CLARIFICATION OF TERMS

a. Parole

Black's Law Dictionary[18] defines parole as the release of a prisoner from imprisonment before the full sentence has been served on the condition that the prisoner abides by certain rules during the balance of the sentence. It is usually granted for good behaviour on the condition that the parolee regularly reports to a supervising officer for a specified period.
Sangeetha K[19]defines parole as the release of a convict from imprisonment, after part of the sentence has been served by him upon certain conditions to be observed by him. He also described parole as a method of selectively and conditionally releasing offenders from jail before the expiration of their sentences for the purpose of assisting and controlling them during the period of transition from the prison environment to the community.

In this article, parole is defined as the release of an incarcerated inmate or prisoner based on set conditions before the expiration of his/her incarceration or prison term.

b. Parole Officer

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12 Ibid
13 Ibid. 93
14 Ibid.
15 D J Ayinde,'An Appraisal of the Legal Framework on Parole in Nigeria'(2022) 25 *Potchefstroom Elec LJ* 1. P 2
16 Constitution of the Federal Republic of Nigeria 1999. Section 175 and 212. Also, Chief Judges of states in Nigeria and of the Federal Capital Territory, Abuja have released inmates from prisons but this is limited to pre-trial detainees.
17 Ibid.
18 Garner, B. A *Black's Law Dictionary* (Thomson West Publishing Co: United States of America, 8th ed, 2004) p. 1149.
19 Sangeetha K, 'A Critical Analysis on Law Governing Parole in India' (2019) 2(9) *Scholars International Journal of Law, Crime and Justice* < https://saudijournals.com/media/articles/SIJLCJ_29_263-270_c.pdf> accessed 10 August 2024.

The Legal Dictionary[20] defines a Parole Officer as a law enforcement officer who supervises offenders who have been released from incarceration and, often, recommends sentencing in courts of law.

c. Parolee

Black's Law Dictionary[21] defines a Parolee as a prisoner who is released on parole.

d. Non-Custodial Sentencing

Black's Law Dictionary[22] defines non-custodial sentencing as a criminal sentence not requiring a prison term.

Similarly, Mann[23] defines non-custodial sentencing as sentences that do not include imprisonment but include discharge, fines, and community order. It is used basically for less serious offences based on considered factors such as an inmate's offending history and mitigating factors.

Having considered these definitions, this article defines non-custodial sentences or measures as sentences other than imprisonment that are applicable at three stages of legal proceedings, which are: the pre-trial stage, trial stage, and post-trial stage.

2.1. Legal Frameworks

Parole as a non-custodial measure is backed by international and domestic legal frameworks.

i. International Legal Frameworks

In the international sphere, parole is backed by the following legal frameworks.

a. *United Nations Standard Minimum Rules for Non-Custodial Measures (The Tokyo Rules)*[24]

Tokyo Rules provides a set of basic principles aimed at promoting the use of non-custodial measures. It provides sanctions and safeguards to persons sentenced to non-custodial sentences.[25]

Item (c) of Rule 9.2 of the Tokyo Rules provides for various forms of parole as one of the ways of post-sentencing dispositions available to a competent authority as alternatives in avoiding institutionalisation as well as assisting offenders in their early reintegration into society.

b. *United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)*[26]

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20 Lawyerment, 'Parole Officer' < https://dictionary.lawyerment.com/topic/parole_officer/> accessed 8 February 2024.

21 Ibid.

22 Garner, B. A *Black's Law Dictionary* (Thomson West Publishing Co: United States of America, 8th ed, 2004) p. 9.

23 Mann R 'Non-Custodial Sentencing' (2020) < https://www.researchgate.net/publication/338917500_POSTnote_613_Non-Custodial_Sentences> accessed 30 July 2024.

24 United Nations Digital Library 'United Nations Standard Minimum Rules for Non-Custodial Measures (The Tokyo Rules)' Resolution/Adoption by the General Assembly, 1990 .<https://digitallibrary.un.org/record/105347?ln=en#record-files-collapse-header>accessed 4 January 2024.

25 Penal Reform International *International Standard* <https://www.penalreform.org/issues/alternatives-to-imprisonment/international-standards//> accessed 4 January 2024.

The Rules provide a global standard that applies to female prisoners and offenders. It also supplements the United Nations Standard Minimum Rules for the Treatment of Prisoners (UNSMR) and the United Nations Standard Minimum Rules for Non-Custodial Measures (the Tokyo Rules). Bangkok rules provide Seventy (70) Rules that apply to women prisoners, women serving non-custodial sentences as well as juvenile females.[27]

Rule 63 of the Bangkok Rules recognises the harm of imprisonment to the social reintegration of women, as well as their children and other members of their families. It encourages prison authorities to make maximum possible use of post-sentencing dispositions such as early conditional release (parole) for women, especially women with caring responsibilities or with special support needs, in a bid to assist with their social reintegration to the maximum possible extent.

ii. Domestic Legal Frameworks

Parole is codified in Nigerian domestic laws. This paper will discuss the following laws because they explicitly provide for parole as a non-custodial measure in Nigeria.

a. *Administration of Criminal Justice Act, (ACJA) 2015*[28]

In line with international best practices, this legal framework shifted Nigeria's Administration of Criminal Justice System from a punitive approach to a restorative approach by taking cognisance of the needs of society, victims, and vulnerable persons. It provides for parole as a sentencing option available at the post-sentencing stage for prisoners in section 468.

b. Nigerian Correctional Services Act, 2019

The Act is divided into "Custodial Service" and "Non-Custodial Service."[29] This Act in section 37(1)(c) recognised parole by obligating the Nigerian Non-Custodial Service to administer non-custodial measures, which include parole.[30]

c. Administration of Criminal Justice Laws (ACJLs)

As of 2024, all the states of the federation, i.e., thirty-six (36) states, have enacted the ACJL.[31] Some states' ACJLs provide for parole, similar to ACJA, 2015. Some states,

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26 United Nations Office on Drugs and Crime 'United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (the Bangkok Rules)' <https://www.unodc.org/documents/justice-and-prison-reform/Bangkok_Rules_ENG_22032015.pdf> accessed 4 January 2024.

27 United Nations Office on Drugs and Crime, United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (the Bangkok Rules) <https://www.unodc.org/documents/justice-and-prison-reform/Bangkok_Rules_ENG_22032015.pdf> accessed 4 January 2024

28 Administration of Criminal Justice Act, 2015<https://www.policinglaw.info/assets/downloads/2015_Administration_of_Criminal_Justice_Act.pdf > accessed 4 January , 2024.

29 Nigerian Correctional Services Act, 2019< https://www.corrections.gov.ng/storage/report/NCoS_act_2019.pdf >accessed 5 February 2024. Section 1.

30 Ibid.

31 Partners West Africa Nigeria 'ACJL Tracker,' < https://www.partnersnigeria.org/acjl-tracker/ > accessed 5 January 2024; Adedeji Adekunle, 'An Overview of the Administration of Criminal Justice Act and Laws' (A Conference Proceeding at All Nigeria Judges Conference of the Superior Courts Organised by the National Judicial Institute 15th -19th November 2021 Abuja) <https://nji.gov.ng/wp-

however, do not recognise parole as a non-custodial measure. Examples of such states are: Lagos, Bayelsa, Anambra and Bayelsa.[32] Other states' ACJLs recognise parole, but consider it as a responsibility for the executive government to grant the prerogative of mercy and not for the court to determine and grant.

3. PAROLE AS A NON-CUSTODIAL SENTENCING

From the above-discussed international and domestic legal frameworks, parole is recognised both in the international and domestic sphere as a non-custodial measure. The ACJA, 2015, introduced some innovations by introducing parole in section 468 of the Act. It empowers the court to release inmates on parole, based on the recommendation of the Comptroller-General of the Nigerian Correctional Service.[33]It provides for conditions which the court is required to consider before releasing the prisoner on parole. It is important to state at this point that, prior to ACJA, 2015, inmates could be released before the expiration of their terms of imprisonment only where he/she is granted pardons by the governor of a state or by the president.

i. Terms and Conditions of Parole

ACJA, 2015 provides conditions for releasing inmates on parole, and these conditions are in sections 468(a) and (b). These conditions are:

a. The sentenced inmate serving his sentence in prison is of good behaviour
b. The inmate has served at least one-third of his prison term, where sentenced to a term of imprisonment for at least 15 years or where such is sentenced to life imprisonment.

Having met the above conditions, ACJA, 2015 empowers the court to suspend the prisoner's imprisonment and order the release of the prisoner from prison with or without conditions, after hearing the prosecution and the prisoner or his legal representative.[34] ACJA, 2015 requires that the released prisoner undergo a rehabilitation programme in a government facility or any other appropriate facility in a bid to enable him to properly reintegrate into society.[35]

ii. Benefits of Parole

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content/uploads/2021/12/An-Overview-of-the-Administration-of-Criminal-Justice-Act-and-Laws-by-Prof.-Adedeji-Adekunle-SAN.pdf > accessed 5 January 2024.

[32] Lagos State passed its Lagos State Administration of Criminal Justice Law in 2007, and this was reenacted in 2011, 2015 and recently amended in 2021 as the Administration of Criminal Justice (Amendment) Law (ACJL) of Lagos State, 2021. Parole as a non-custodial measure is not provided under this law. The Lagos state ACJL, 2015 only provides for non-custodial measures such as fines, probation, community service. The Bayelsa State Administration of Criminal Justice Law, also did not provide for parole as a non-custodial sentence, but for community service and probation as non-custodial sentence. Anambra State Administration of Criminal Justice Law, 2010 pre-date the ACJA,2015 and did not provide for parole, although it provides for other non-custodial measures such as fines, compensation, probation, and restitution.

[33] Ayinde D J, 'An Appraisal of the Legal Framework on Parole in Nigeria' (2022)25 *PER/PELJ* < https://www.google.com/search?client=opera&q=Ayinde+D+J%2C+'An+Appraisal+of+the+Legal+Framework+on+Parole+in+Nigeria'+(+2022)25+PER%2FPELJ&sourceid=opera&ie=UTF-8&oe=UTF-8#vhid=zephyr:0&vssid=atritem-https://www.ajol.info/index.php/pelj/article/view/236832/223797> accessed February 14, 2024.

[34] Section 468(b).

[35] Section 468(2).

Parole presents some benefits to society and the offender, considering that it allows the integration of low-risk prisoners a chance to be integrated back into the community. The following are some benefits of parole:

a. Parole reduces prison and jail populations- By releasing inmates with good behaviour on parole, it helps reduce the age-long issues of overpopulation, congestion and overcrowding in correctional facilities. These issues have elicited other problems such as poor sanitary conditions, inadequate medical treatment, inadequate feeding, etc.[36] Parole reduces overpopulation, overcrowding and other incidental problems of incarceration.[37]
b. It reduces taxpayers' expenses - Parole is beneficial to the government as well as the citizens, considering that it reduces the cost of incarcerating, feeding and providing other supplies for an offender whose remaining term of incarceration has been suspended. This reduces taxpayers' expenses, considering that the cost of parole supervision costs significantly less than the cost of incarceration. [38]
c. Restitution and community support - Parole enables offenders to make court-ordered restitution and establishes essential social ties. Also, community support programs aid in reintegrating the offender into society.[39] It also affords the prisoner an opportunity for reformation and affords the offender an opportunity for fresh start.[40]
d. Increased use of community services - Parole as a non-custodial measure facilitates the utilisation of community treatment programs, which helps in addressing underlying issues like addiction.[41]
e. Increased opportunity for rehabilitation and reformation - Parole encourages an inmate's good behaviour and cooperation with treatment programs, thereby leading to higher success rates in rehabilitation.[42]
f. Provision of structured, supported and supervised transition from the prison back to the community. By this, an inmate easily adjusts from a life of incarceration back into the community instead of returning to the community straight from prison without supervision or support.[43]

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36 Onyekachi, J. ' Problems and Prospects of Administration of Nigerian Prison: The Need for Proper Rehabilitation of the Inmates in Nigeria Prison' (2016) *Journal of Tourism and Hospitality* 5.4.< https://www.longdom.org/open-access/problems-and-prospects-of-administration-of-nigerian-prison-need-forproper-rehabilitation-of-the-inmates-in-nigeria-prisons-2167-0269-1000228.pdf> accessed 20 February 2024.

37 Javed M, 'Pros and Cons of Parole' SCRIBD < https://www.scribd.com/document/448373772/PROS-AND-CONS-OF-PAROLE> accessed 15 February, 2024

38 Ibid

39 Fahad H A, 'Advantages and Disadvantages of Probation and Parole: An In-Depth Analysis' < https://fahadhizam.com/advantages-disadvantages-probation-parole-depth-analysis-2/> accessed 15 February 2024.

40 David Ferris, 'Advantages and Disadvantages of Probation and Parole' < https://classroom.synonym.com/advantages-disadvantages-of-probation-parole-12084149.html> accessed 15 February 2024.

41 Ibid.

42 Ibid.

43 Adult Parole Board Victoria, ' Purpose and Benefits' < https://www.adultparoleboard.vic.gov.au/what-parole/purpose-and-benefits> accessed 15 February, 2024.

g. Parole enables a prisoner to remain in contact with their families and community, and helps them get involved in matters pertaining to their families.[44]

Having noted the above benefits of parole, some critics have identified some demerits of parole as follows:

a. Increased risks to society- Some released offenders might pose a risk to society, thus creating issues about public safety.[45]
b. Where parole is not properly supervised, it becomes difficult to detect its violation.[46]In such instances, parole will have no effect on the parolee, as the parole will only abridge the parolee's sentence with no rehabilitative effect on the parolee.[47]
c. Inequalities in the parole system-The decision-making process of parole has been criticised by some critics for its perceived potential bias and inconsistency.[48]
d. Reintegration hurdles- Parolees might find it difficult to re-enter society as a result of the stigma attached to their criminal records, thereby inhibiting them from finding employment, housing or building relationships.[49]

iii. Parole Officers and their Duties

Parole officers are professionals who work with parolees to assist them in re-integrating into society.[50] They are responsible for the supervision of prisoners on parole.[51]

Most jurisdictions provide for the duties or functions of parole officers; however, this paper observes that ACJA, 2015 did not provide for the duties of parole officers as it did for probation officers under section 455(1) of the Act.

The following are general functions or roles of parole officers:

a. Role as a Rehabilitative Agent- By this, the parole officer helps in rehabilitating parolees, and this involves social work and oriented practice by which they focus on the client's needs, including employment, housing, and counselling that help provide social and psychological support.[52]
b. Protecting the Community through their supervisory role- By controlling and monitoring released prisoners, parole officers focus on serving as a check on the prisoners' activities.

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44 Adhila M A, 'A Comparative Study of Probation and Parole' (2021) IPleaders < https://blog.ipleaders.in/comparative-study-probation-parole/> accessed 15 February 2024.

45 Fahad H A (n 39).

46 Ambika, 'Parole as a Modus Operandi of Reformation and Rehabilitation'(2023) 8(2) International Journal of Novel Research and Development <https://www.ijnrd.org/papers/IJNRD2302223.pdf> accessed 11th November, 2024

47 Ibid

48 Fahadhizam, 'Navigating the Grey: The Advantages and Disadvantages of Parole' (2024)< https://medium.com/@fahadhizam/navigating-the-grey-the-advantages-and-disadvantages-of-parole-eefb924a74ef> accessed November 11, 2024.

49 Ibid

50 Resources for Employers, 'Parole Officer Job Description' < https://resources.workable.com/parole-officer-job-description> accessed 16 February 2024.

51 Collins English Dictionary, 'Parole Officer'< https://www.collinsdictionary.com/dictionary/english/parole-officer> accessed 16 February 2024.

52 Zaiton H and Rafizah A H, 'The Roles and Challenges of Parole Officers in Reintegrating Prisoners into the Community under the Parole System' (2012) 36 *Procedia-Social and Behavioral Sciences.* 324-332

c. Parole officers help parolees re-enter society by providing them with information about resources such as job training or substance counselling.[53]
d. Parole officers meet regularly with the court and collaborate with other lawyers so as to give updates on the parolee they are in charge of.[54] They also collaborate with other law enforcement agencies in a bid to resolve cases that concern parolees who violate the terms of their release and recommend to the court on the right action to take, such as sending the parolee back to prison, placing the parolee on electronic monitoring or refer such to a treatment programme.[55]

iv. Application of Parole in Nigeria

The application of this measure is yet to gain full acceptance by courts, considering that there are hardly any pronouncements on this measure. In fact, the Supreme Court in *Rafiu v The People of Lagos State*[56] mentioned that there are no parole hearings in Nigeria that would make it easy for the Appellant to have a chance of release within seven years, counting the years of incarceration before the conviction. Prior to ACJA, 2015, there were pronouncements on the prerogative of mercy, under section 175 of the Constitution. In *Gozie Okeke v State*,[57] the Supreme Court ruled on where the power to recommend prerogative of mercy resides and held that issues concerning the recommendation of mercy for convicted persons are matters within the province of the committee on prerogative of mercy.

Also, in *Godwin Ofuadorho v The State*, [58] the Supreme Court ruled on when the court may recommend prerogative of mercy in capital punishment cases and recommended that the Governor of Delta State should exercise his prerogative of mercy and commute the death sentence of the Appellant to a term of 21 years imprisonment.

4. APPLICATION OF PAROLE IN SOUTH AFRICA

This aspect considers the application of parole as a non-custodial sentence in South Africa. The basis for choosing South Africa is premised on the fact that Nigeria and South Africa are both African countries that share historical relationships as former British colonies. More so, both borrowed their prison establishment and practices from British colonial penal philosophy that emphasised retribution and incapacitation of offenders with cruel and inhumane penalties.

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53 Learn.org, 'What are the Job Duties of a Parole Officer?' < Access.clarivate.com/login?app=s1m&referrer=s1m_stack1%3Fjournal%3Djal> accessed 17 February 2024.
54 Vuleta B, ' Probation and Parole Officer: Duties, Requirements and Job Prospects' (2022) < https://legaljobs.io/blog/probation-and-parole-officer> accessed 18 February 2024.
55 Ibid.
56 *Rafiu v The People of Lagos State* (2022) 4 NWLR (Pt. 1821) 525
57 *Gozie Okeke v State* (2003) 15 NWLR . p 29
58 *Godwin Ofuadorho v The State* (2019) 1 NWLR (Part 1654) p 538

Parole has been part of the South African penal system since South Africa became a union in 1910, and the introduction of the Prisons and Reformatories Act of 1911.[59] This Act established the Supervisory Councils, (which was replaced by the Prison Board in 1954) armed with the responsibility of advising the Governor-General on the release of prisoners on parole [60] In 1959, the Prisons and Reformatories Act 13 of 1911, was replaced by the Prison Act (Act 8 of 1959) and it introduced innovations such as the Release Board to replace the former Prison Board). With time, the Prison Act (Act 8 of 1959) was renamed as the Correctional Services Act 8 of 1959 leading to a significant change in the South African penal system considering that it introduced non-custodial correctional supervision, and emphasized the need to deal with some categories of offenders within the community rather than through incarceration.[61] Subsequently, another amendment to the Correctional Services Act 8 of 1959 introduced the National Advisory Council to replace the Advisory Release Board, and among other duties, this board had the function of placing offenders on correctional supervision, parole and day parole.[62]At the introduction of the Constitution of South Africa (108 of 1996), a new Correctional Services Act 111 of 1998 was introduced, which incorporated a modern, internationally accepted correctional system that was designed within the framework of the 1996 Constitution.[63] This new legal framework introduced features such as a new parole system, correctional supervision and parole board, community corrections, the correctional supervision and parole review board, etc.

Having considered a brief history of parole in South Africa, the legal frameworks for parole in South Africa are: The Correctional Services Act 8 of 1959,[64] Correctional Services Act 111 of 1998[65] (which is the primary piece of legislation governing parole) and the Criminal Procedure Act.[66]

The Correctional Services Act provides for different kinds of parole. Section 73(4) of the Correctional Services Act 111 of 1998 provides for a prisoner's placement under

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59 Francois C M Louw, *The Parole Process from a South African* Perspective (Master of Arts in the subject of Penology University of South Africa 2008) < https://uir.unisa.ac.za/bitstream/handle/10500/1320/dissertation.pdf> accessed February 23, 2024.

60 Section 48, Prisons and Reformatories Act 13 of 1911

61 Department of Correctional Services, *White Paper on Corrections in South Africa.* Pretoria: Commissioner of Correctional Services 2005; Plaatjies, M.F, *The Application of Restorative Justice in the South African Correctional System (*Unpublished MA Dissertation Pretoria, University of South Africa 2005)

62 Francois C M Louw, (n 53) p 29.

63 Department of Correctional Services (n 55) p 52.

64 Correctional Services Act, 1959 <https://uir.unisa.ac.za/bitstream/handle/10500/1320/dissertation.pdf> accessed 28 February 2024. Section 65(2) provides that a prisoner can be released on parole by the Governor- General or Minister. Section 68 (1) provides that a Commissioner may release a prisoner based on the recommendation of a prison board or on the authority of the Governor-General, or the Minister release a prisoner on parole. Note that this Act has gone through series of amendments over the years.

65 South African Government, Correctional Services Act 111 of 1998 < https://www.ohchr.org/sites/default/files/documents/issues/torture/cfi-report-hrc52/submissions/csos/submission-srtorture-hrc52-cso-LawyersForHumanRights-6.pdf > accessed 28 February 2024. Section 73(4) provides for a prisoner's placement under correctional supervision or on day parole or on parole prior to expiration of the prisoner's term of imprisonment. The early release is subject to the conditions of community corrections provided by the parole board or court.

66 Criminal Procedure Act 51 of 1977. It provides for correctional supervision, placement under correctional supervision in the discretion of the commissioner of correctional services or a parole board. Section 276 (1)(h) & (i)

correctional supervision or on day parole, parole, or medical parole before the expiration of his or her term of imprisonment.

Section 73(5) provides that a sentenced offender may be placed under correctional supervision, on day parole, parole or medical parole on a date determined by the Correctional Supervision and Parole Board or, in the case of an offender sentenced to life incarceration, on a date to be determined by the Minister.

Section 73(6)(a) of the Act[67] provides for parole for prisoners serving definite sentence, and provides that a sentenced offender serving a determinate sentence or cumulative sentences of more than 24 months may not be placed on day parole or parole until such sentenced offender has served either the stipulated non-parole period, or if no non-parole period was stipulated, half of the sentence, but day parole or parole must be considered whenever a sentenced offender has served 25 years of a sentence or cumulative sentences.[68] Note that an offender serving a determinate sentence or cumulative sentences of not more than 24 months may not be placed on parole or day parole until such offender has served either the stipulated non-parole period or, if no non-parole period was stipulated, a quarter of the sentence.[69]

By the provision of section 73(6)(b)(iv), a person sentenced to life incarceration may not be placed on day parole or parole until he or she has served at least 25 years of the sentence. Also, by the import of section 73(6)(c), a person that has been declared a habitual criminal may be detained in a correction centre for a period of 15 years and may not be placed on day parole or parole until after a period of at least seven years.

On factors to be considered before placing prisoners on parole, the Correctional Services B-Order, Chapter VI (1A)(19) provides for the following:

a. Nature of the crime
b. crime and background history
c. behaviour and reaction to treatment
d. medical, psychological and psychiatric considerations,
e. domestic circumstances and employment opportunities after placement
f. The interest of the community is not to be exposed to increased danger

The Court in *Walus v Minister of Justice and Correctional Services and Others*[70] reiterated these conditions.

The South African Courts have applied parole as a non-custodial measure in a litany of cases. This article considers some judicial pronouncements on this order. In *Walus v Minister of Justice and Correctional Services and Others* (supra), the applicant on the 10th of April 1993 was involved in the assassination of Mr. Hani, a highly respected political leader and freedom fighter in South Africa, which almost spurred a civil war in South Africa.

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67 Correctional Service Act, No 11< https://www.gov.za/sites/default/files/gcis_document/201409/a111-98.pdf > accessed March 3, 2024.

68 Correctional Services Amendment Act 7 of 2021 < https://www.ohchr.org/sites/default/files/documents/issues/torture/cfi-report-hrc52/submissions/csos/submission-srtorture-hrc52-cso-LawyersForHumanRights-6.pdf> accessed March 3, 2024.

69 Ibid. Section 6(a).

70 *Walus v Minister of Justice and Correctional Services and Others* (2022) ZACC 39B<https://www.saflii.org/za/cases/ZACC/2022/39.pdf > accessed 29 February 2024. p 9

Consequently, the applicant and one other were charged and convicted for murder and sentenced to death in 1993, and in 2000 their death sentences were commuted to life imprisonment. After 28 years, the applicant applied on several occasions to be placed on parole, but on several occasions was denied by the various Ministers responsible for Correctional services, even despite the Parole Board's recommendation. The Applicant continued to appeal and brought an action before the High Court which ordered his placement on parole, yet to the disapproval of the Minister at the time. In 2020, the applicant instituted an action at the Gauteng Division of the High Court, Pretoria and applied for parole again and was rejected by the Minister of Justice and Correctional Services, who opposed it vehemently. The applicant's further application for leave was dismissed by the Supreme Court, consequent upon which he appealed to the Constitutional Court of South Africa. The court upheld the appeal, dismissed the decision of the Gauteng Division of the High Court, Pretoria, dismissing the applicant's application and set aside the Minister's decision in 2020 rejecting the applicant's application for the review of his parole application. The court ordered the Minister to place the applicant on parole on terms and conditions it deemed appropriate and take all steps needed to ensure that the applicant is released on parole within ten (10) days from the date of the order and to pay costs to the applicant, which includes the cost of his counsel. A similar decision of the court was reached in *Smith v Minister of Justice and Correctional Services and Others,*[71] and *Liston Chologi and Chairperson: Correctional Supervision v Parole Board and Minister of Justice and Correctional Services.*[72]

In *Nnyadi Boitumelo Lydia Boshego v The Correctional Supervision and Parole Board: Kgosi Mampuru II & 3 Ors*[73] the Applicant was convicted on 22 counts for different offences which include fraud, corruption, racketeering and money laundering and was sentenced to 15 years imprisonment to run concurrently. The Applicant commenced her incarceration period at Kgosi Mampuru II Correctional Facility on the 30th of August 2018. On the 25th of May 2020, there was a Special Parole Dispensation announced by the President and the Committee who compiled the names of eligible offenders, advised that she qualified for the Special Parole Dispensation and submitted her Profile Report to the Parole Board. The Parole Board, however, disqualified her on the basis that the Committee erred in calculating the Applicant's Minimum Detention Period, as the Committee ought to have calculated 24 months from the Applicant's sentence period, which ought to expire on the 13th of February 2026. The Applicant, however, did her calculation of her Minimum Detention Period as 1st of March 2025, being half of her 15 years' incarceration period (after deducting the 24 months' sentence remission period). The Court ruled in favour of the Applicant, and noted that her calculation of her Minimum Detention period date was correct. The court held

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[71] *Smith v Minister of Justice and Correctional Services and Others* (21/35658)[2022]ZAGPJHC 60 (11 February 2022) < https://www.saflii.org/cgi-bin/disp.pl?file=za/cases/ZAGPJHC/2022/60.html&query=cases%20on%20parole> accessed 2 March 2024.

[72] *Liston Chologi and Chairperson: Correctional Supervision v Parole Board and Minister of Justice and Correctional Services* (048802/2022) ZAGPJHC 1003(12 December 2022) <https://www.saflii.org/cgi-bin/disp.pl?file=za/cases/ZAGPJHC/2022/1003.html&query=cases%20near%20on%20near%20parole> accessed 20 March 2024.

[73] *Nnyadi Boitumelo Lydia Boshego v The Correctional Supervision and Parole Board: Kgosi Mampuru II & 3 ors* (2023) ZAGPPHC 409: 40175/2021 (7 June 2023) < https://www.saflii.org/za/cases/ZAGPPHC/2023/409.html> accessed 3 March 2024.

that the Parole Board erred in its methodology of determining whether or not the Applicant was eligible for consideration of parole. The Court ordered the Parole Board to take steps to consider the Applicant for parole within 30days of granting the order.

In *Block, John Fikile v Upington Correctional Supervision and Parole Board & 4 Ors*,[74] however, the High Court held that the Applicant was not qualified for parole, considering that his minimum detention period of 26 May 2025 fell out of the Covid-19 remission period by 18 days. The Court however found that the applicant was qualified for special remission of sentence for highly meritorious service in accordance with section 80 of the Correctional Services Act which permits the Correctional Supervision and Parole Board to grant to a sentenced offender (except those serving life sentence) who acted meritoriously, special remission of sentence not exceeding two years.

The question of reoffending of an inmate placed on parole was answered in *Nandi Jacobs v The Minister of Justice and Correctional Services.* [75] The Appellant in this case instituted an action against the Minister of Justice and Correctional Services and claimed damages from the Minister for pain and suffering caused by one Ivan Botha, a convicted inmate who was released on parole. During the period of his parole, he attacked the Applicant and attempted to assault, rape and rob her. The Applicant's cause of action is predicated on the fact that the Minister failed to discharge his duty to protect the Applicant, considering that the Minister released the offender on parole despite his bad record. Also, the offender violated the parole conditions and was not reincarcerated. The matter was brought before the High Court which found that there was no discernible error in the exercise by the Parole Board in its discretion. In an appeal to the Supreme Court, the court found that the decision of the High Court cannot stand, and allowed the appeal considering that the parole board placed the offender on parole irrespective of glaring evidence as to the bad conduct of the offender considering that he was convicted for rape and indecent assault and a high-risk offender. Also, the Supreme Court faulted the measure of supervision of the offender by the Supervision Committee even though he is a high-risk offender.

Furthermore, the court in *Moodley v Minister of Justice and Correctional Services and Others*[76] had recourse to set aside the decision of the Parole Board which denied the Applicant's parole. The court observed that the Parole Board was biased towards the Applicant, whose legal representative was treated badly and prevented from providing meaningful assistance to his client during the hearing. The court set aside the decision of the Parole Board, noting the incompetence of the Board, and ordered that a different board be constituted by the first respondent to ensure that the applicant's entitlement to be released on parole.

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74 *Block, John Fikile v Upington Correctional Supervision and Parole Board & 4 Ors* (2023) 4 ALL SA 295 (NCK) (15 September 2023) < https://www.saflii.org/cgi-bin/disp.pl?file=za/cases/ZANCHC/2023/72.html&query=cases%20on%20parole> accessed 3 March 2024.

75 *Nandi Jacobs v The Minister of Justice and Correctional Services* (431/2020) [2021] ZASCA 151: 2022 (2) SACR 569 (SCA) (27 October 2021).

76 *Moodley v Minister of Justice and Correctional Services and Others* (21/53385) (2023) ZAGPJHC 1447 (December 2023) <https://www.saflii.org/cgi-bin/disp.pl?file=za/cases/ZAGPJHC/2023/1447.html&query=cases%20near%20on%20near%20parole> accessed 20 March 2024.

Having seen the above, it will be safe to state that courts in South Africa adequately utilise parole as a post-conviction non-custodial measure, thereby harnessing the benefits parole offers to the offender, society, and the government.

i. Lessons for Nigeria

The ACJA, 2015, has provided an enabling framework for courts to release inmates on parole. It is a judicial exercise that courts in Nigeria should be willing to carry out once an inmate meets the criteria and the Comptroller-General recommends it. South Africa provides a lesson which Nigeria can learn from as follows:

To start with, in South Africa, an inmate can be granted parole based on medical grounds as the Correctional Services B-Order, Chapter VI (1A) (19) requires courts, among others, to consider the medical, psychological psychiatric state of the convict when considering parole. In South Africa, an Inmate may be released if the inmate satisfies three conditions.[77] To start with, the parole board must establish that the inmate is suffering from a terminal disease, or he has been physically incapacitated by injury, sickness or disease, in that such inmates can no longer take care of himself/herself.[78] Secondly, the Board must be satisfied that the inmate is not likely to commit another offence.[79] Thirdly, the Board must be satisfied that a proper arrangement has been made to take care of the inmate once he is released from incarceration.[80] Nigeria should learn from these in incorporating medical parole.

Also, in South Africa, there are different bodies that determine the eligibility of an inmate's parole. This includes the parole board, the correctional supervision and parole board, and the court. These bodies play an oversight function on each other. In Nigeria, ACJA, 2015 empowers the court to consider a convict's eligibility for parole after the recommendation of the Comptroller General. Within the Nigerian context, it is only the Comptroller-General of the Nigerian Correctional Service who has the discretion to recommend an inmate for parole, provided the conditions are met. Within this context, the power of the Comptroller-General is wide and can be jeopardised considering that he/she decides whether or not an inmate is eligible for parole. Following the South African context, there is a need to have a board to determine the eligibility of inmates for parole, other than leaving it in the hands of a sole person, as this will reduce the likelihood of bias.

Furthermore, a grey area in the ACJA, 2015, on parole relates to the number of years an inmate is required to spend to be eligible for parole. ACJA, 2015 requires the inmate to have served not less than one-third of his term, in instances where the inmate is sentenced to a minimum of fifteen years imprisonment or where such is sentenced to life imprisonment. The one-third period of years of incarceration which an inmate is required to serve is the mandatory non-parole period. Though ACJA, 2015 provides a non-parole period for imprisonment of 15 years and above, and of life imprisonment, it is however, silent on the minimum period for inmates whose imprisonment is less than 15 years. In the absence of express provision regarding this, it can be implied that inmates whose incarceration is less

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77 Section 79(1) of the Correctional Service Act 111 of 1998 as amended.
78 Ibid. section 79(1)(a).
79 Ibid. section 79(1)(b).
80 Ibid. section 79 (1) (c).

than 15 years are either not eligible for parole, or that they are not required to serve up to one-third of their term to be eligible for parole. In the absence of express provision, this will lead to ambiguity. A clue can be taken from South Africa, where an inmate serving a definite, determinate or cumulative sentence of more than 24 months is required to serve the non-parole period or where such period is stipulated, such is required to serve half of the sentence to be entitled to parole.[81] It is also required that day parole or parole must be considered whenever a sentenced offender has served 25 years of a sentence or cumulative sentences.[82]

Also, as it relates to inmates sentenced to life imprisonment, ACJA, 2015 did not expressly provide the non-parole period. It only requires inmates sentenced to life imprisonment to serve at least one-third of their incarceration term before such can be eligible for recommendation on parole.[83]The section however, did not state how many years would equate to life imprisonment for the purpose of calculating one third of these years. On this, an author opined that life imprisonment equates to 20years imprisonment.[84] The author's opinion is in tandem with the Penal Code Act, which provides that in calculating fractions of the term of imprisonment, imprisonment for life shall be reckoned as equivalent to twenty years.[85] Lessons can be learnt from South Africa, where section 73(6)(b)(iv) of the Correctional Services Amendment Act, requires that a person sentenced to life incarceration must serve at least 25 years of the sentence before he/she will be eligible to be placed on day parole or parole.

Other provisions that Nigeria can incorporate following the South African system relate to habitual criminals, and the requirement that he/she serve at least seven years of his/her 15 years' incarceration, for the inmate to be eligible for parole.[86]

Lastly, ACJA, 2015 did not state the conditions that courts are required to fix to the parole of an inmate, thereby suggesting that the court has discretion to affix whatever conditions to the release of an inmate. This has raised concern from authors who opined that leaving this crucial function to the court may lead to abuse.[87] As such, even if ACJA, 2015 does not provide for exhaustive conditions, there will be a need to categorically state some conditions that will guide the court. In South Africa, section 52[88] provides general conditions relating to community corrections, which certain authorities, including courts, correctional supervision and the parole board, should stipulate. Some of which includes seeking employment, paying compensation or damages to victims, taking part in treatment, development and support programmes, refraining from committing criminal offence or visiting a particular place, refraining from using alcohol or illegal drugs, refraining from threatening a particular person or persons by word or actions, or any other appropriate condition suitable in the circumstance.

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81 Section 73(6)(a) of the Act.

82 Correctional Services Amendment Act 7 of 2021 < https://www.ohchr.org/sites/default/files/documents/issues/ torture/cfi-report-hrc52/submissions/csos/submission-srtorture-hrc52-cso-LawyersForHumanRights-6.pdf> accessed 3 March 2024.

83 Section 468(1)(b) of ACJA, 2015

84 Osamor, *Criminal Procedure Laws and Litigation Practices* 485

85 Section 70 of the Penal Code Act of 1960.

86 Section 73(6)(c).

87 D J Ayinde, (n 14) 16.

88 Correctional Services Amendment Act 7 of 2021 (n 76).

5. CONCLUSION

Parole as a non-custodial sentence has been recognised in the international and domestic sphere for its effective and beneficial role in the administration of criminal justice. There is no better time than now for the Nigerian courts to actively utilise this non-custodial measure, especially against the background of numerous jail breaks owing to the dilapidated state of most correctional facilities and the increasing cost of incarcerating offenders on the government. This article has extensively discussed the concept of parole, highlighted international and domestic legal frameworks for parole, and discussed its benefits. It also discussed terms and conditions and the application of parole in Nigeria. It observed that there are scanty judicial applications of parole, especially when compared with South Africa. It also identifies some shortcomings in the ACJA, 2015, as it relates to parole and provides lessons that Nigeria can learn from South Africa.