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TITLE: SENTENCING PATTERNS OF NIGERIAN LOWER COURTS

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A B S T R A C T

The courts occupy a special position within the whole system of crime control and prevention. They determine who is guilty of a crime against the state, and what should be done to him. It is this function — the passing of a sentence — that is most significant in crime control and prevention. The sentence is the key instrument at the disposal of the court for the control and prevention of crime for those already convicted. This sentencing role of the court is carried out within the formal parameters of statutory law and influenced by informal considerations such as offender characteristics and attitude of the sentencer. The effective use of the sentence depends on the nature of the criminal laws and the general orientation and awareness of the administrators as to the effectiveness of alternative modes of disposition.

This study examines the modes of dispositions generally employed by Nigerian lower courts — Magistrate, Area and Customary courts. It is the finding of this study that the major form of sentencing used by these courts is imprisonment or fine with alternative of imprisonment. Rarely do they use other forms of correctional sentences

such as probation, conditional discharge, restitution and compensation. Presentence information — a major consideration for the passing of appropriate sentences — is apparently of little relevance to the judges. The judges themselves lack any discernible coherent orientation as to how different categories of offenders should be treated. The Area Court seem to be the most punitive of the three types of courts. Magistrates, perhaps, because of their greater concern for evidence discharge more often than the other courts.

It is the conclusion of this study that for the courts to effectively use the sentencing power a number of improvements should be made in their operation: the criminal laws need to be reviewed to have a correctional or remedial rather than their present retributive orientation; presentence information on the convicted offender should be made mandatory on the judge; judges should be given some training in social and behavioural sciences; and other kinds of personnel (e.g. Clerical/ Stenographic, Probation/Social Workers, Statisticians) should be attached to these courts.

CHAPTER 1

I N T R O D U C T I O N

THE CRIME PROBLEM

Since the end of the civil war Nigeria has been experiencing a rising wave of serious crimes. Police and daily newspaper reports attest to the fact that a "crime problem" exists.[1] Despite the limitations of official crime statistics, a comparison of police criminal statistics (as shown in Table 1.1 below) for the years 1965 and 1975, where data seem available, shows that the incidence of all types of crimes have doubled over. Without controlling for population growth, offences against persons for example, increased by nearly two hundred percent (200%) within this ten year period. Offences against property rose by 167%, while traffic offences went up by 355%!

Crime in Nigeria is not only increasing in its incidence, types and seriousness but it is also becoming more organized as a business enterprise.[2] Criminal groups have often threatened lives of individuals and communities with anonymous letters demanding specific sums

of money or notifying them of their intention to operate in their locality.[3]

Table 1.1

Comparative Table of True Cases of Crimes for the years 1965 and 1975

Offence-types	1965	1975	% Increase	% Decrease
Offences against persons	28,801	56,179	195.06	-
Offences against property	64,539	108,282	167.78	-
Other offences	11,974	16,502	137.82	-
Traffic Offences	16,810	59,826	355.90	-
T O T A L	122,124	240,789	197.17	-

Source: Annual Reports of the Nigerian Police 1965 and 1975. The most recent police report was for the year 1975 and their last before the outbreak of the civil war was for the year 1965.

The government as well as citizens have become apprehensive of the situation and have developed a number of response measures. The government has responded by enacting laws with heavy penalties for specific offences, for example, the Indian Hemp Decree of 1966; the Homicide by Reckless or Dangerous Driving Edict of 1968 of Western State of Nigeria; The Armed Robbery Decree of 1970. Citizens and private organizations have also developed a number of security measures to reduce the probability of criminal

victimization. Such response measures have, however, not dented the crime problem.

Other than the rising wave of crime, the Nigerian criminal justice system is saddled by two other problems. The courts are overcrowded to the extent that a significant number of accused persons spend unbelievably long periods in police detention and prisons awaiting trial to make a patent farce of the contention that an accused person is "innocent until proven guilty". In 1974 for example, 27.3% of the total prisoner population were those awaiting trial. This figure rose to 62.5% in 1975.

There is also the problem of misuse of police prosecution and judicial discretion. The police have the power to decide who should be prosecuted. Very often too, they are not only prosecutors but also "persecutors". The discretionary powers of the judges as to the terms of sentence has often resulted in wide sentence disparities.

The rising crime wave in Nigeria has also rendered the agencies of social control ineffective and virtually helpless. Two reasons can be given for this problematic state of affairs. Rapid social change fostered by the processes of industrialization, migration and urbanization has led to a decline in

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informal modes of social control. A number of studies have demonstrated the relationship between crime rates and the urbanization-industrialization process.[4] The processes have forced quite a large number of people to move from their locality where they are no longer under the surveillance of their kin groups. Migrants to urban areas now feel free to commit a number of acts (which they would not in their locality) when faced with economic hardships. There is also no more passive acceptance of one's situation in life. Attempts to change one's situation may result in the breaking of traditional norms. Given rapid urban growth and the consequent complexity and heterogeneity, social control functions have been passed on to specialist agencies of the police, the courts and prisons.

The second reason for the present situation can be attributed to material inadequacies and human insufficiencies in all the arms of the criminal justice system -- the police, the courts, the prisons and other correctional institutions. The Nigeria Police Force is understaffed both quantitatively and qualitatively. There are not enough policemen to police even the urban areas not to talk of the remote villages.

The few policemen on beat duties are ill-trained and poorly equipped to handle crime and criminals. Criminal groups seem even better equipped than the policemen. The courts too are understaffed. There are no probation and social welfare officers attached to them. The few judges are overworked resulting in long court delays. Compared to the lure of the private sector and business, not many lawyers are willing to take up judicial appointments. The Nigerian prisons are nothing more than places for the safe-keeping of those convicted by the courts or awaiting trial. They lack any educational and training facilities for imparting skills to inmates.

Given the present state of affairs (created by the factors enumerated above) we need to examine the functioning of our crime prevention, control and correction agencies. Such an exercise is not only herculian but requires an interdisciplinary approach. We will therefore limit our attention to the examination of the

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role of one arm of the criminal justice system -- the courts -- in crime control and prevention.

The courts occupy a unique position in crime control and prevention. First they have great powers over the lives of the people processed by them for it is they who decide whether a person should be convicted of an offence charged against him or not. Secondly, it is they who decide what should be done to the convicted offender. Thirdly, it is the duty of the courts to protect the innocent. Finally, the court is also the place where individuals can defend their rights against encroachments by other members of the community or the State.

The effectiveness of the courts in crime control and prevention depends on three things. First of all, the courts must be seen to be fair to all. A corrupt, unfair judicial system where a few well-to-do evade justice while others are sentenced to imprisonment brings about distrust, cynicism and disrespect for the law.[5] Secondly, the courts must be prompt in adjudication of cases brought before them. Speedy but fair trials demonstrates the State's concern for the individual's rights. Long court delays resulting in accused persons spending unbelievably long periods in jail

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"awaiting trial" is a denial of justice. Thirdly to be able to control and prevent crime, the courts must choose an appropriate sentence for every convicted offender. Inappropriate sentences can have adverse effects not only on the convicts but on society in general. Most often offenders are either sent to prison or given fines which they lack the means to pay. Failure to pay such fines results in imprisonment. Such categories of offenders go to prison because of their poverty.[6] While in prison they come in contact with other "hardened criminals" who pass on to them the techniques of their trade. The U.N.O. Secretariat's working paper to its 5th Congress on crime prevention and treatment of offenders aptly describes the effects of court sentences:

> The judicial system, rather than ensuring special prevention, may well foster criminogenic effects, not only through so-called "contamination", in prisons and other institutions, but also through the reactions of society to the released prisoner who is often stigmatized for life as a result of what may have been a first and often relatively minor offence.... Moreover, the impact of certain penal sanctions, particularly deprivation of liberty, may actually reduce the individual's capacity to readapt himself to free society.[7]

The sentence of the court is therefore important in crime prevention and control. Some types of sentences may

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in the long run aggravate the problem of crime while others may be oriented towards crime control. Court sentences, whatever may be their effects (negative or positive) are based on a supposedly well-defined penal theory. The criminal law, on which court sentences are based, aims at achieving certain objectives. The next section is therefore devoted to a brief review of these objectives and the principles that guide the courts as to what objective should be given weight in passing a sentence in any particular case before it.

AIMS OF SENTENCING

Criminal law sanctions are aimed at correcting the offender and making him conform. They also guide members in their everyday interactions as well as in their property relations. The sanctions of the criminal law, while aiming at correcting the offender, are at the same time punitive in nature. The laws stipulate what punishment is to be meted out to the convicted offender in relation to his offence. That the offender should be punished is based on the concept of "desert" and the old penal theory of making the punishment fit the crime committed. Over the years however penal thinking has moved from the idea of desert

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and making punishment fit the crime to that of humanitarian principles. Today such humanitarianism is submerged under the declared objective of rehabilitation. Because of these historical developments, it is difficult to pin down a particular court sentence to any one of the following principles or objectives: retribution, deterrence, public protection and rehabilitation.

Retribution:

The retributive ideology can be said to be based on the "norm of reciprocity" in human interaction; that people should be paid back in their own coins. It is also associated with Moses first law of an eye for an eye. Since it is part of human nature to retaliate, the offender should be punished because he deserves it. Punishment, therefore, is a kind of societal revenge on the erring member. It gratifies society's feelings of hatred and abhorrence of a particular act. According to Emile Durkheim, punishment repairs "the wounds made upon collective sentiments". It is through the criminal law that this feeling is

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formalized. The execution of such feeling is however removed from the individual members of society and transferred to the state. The judge represents the society in passing a retributive sentence. In passing such a sentence, the judge makes sure that the punishment given is not more or less than the offence committed.

Criticisms of the retributive idea has led to its decline in modern penal theory, although some writers argue that it is on the increase again.[8] Humanitarians argue that it is morally wrong to inflict pain on another; moreso two wrongs cannot make a right. Also behavioural science thinking has shifted the attention from the offence to the offender. The offender is considered to be "sick" and is in need of treatment rather than punishment. Thirdly, since the measurement of societal revulsion against an offence is problematic, it is difficult to determine what kind of sentence fits an offence. Finally, it is also contended that most offenders commit crime out of circumstances beyond their control; rarely do they make the type of calculation that classical thinkers are apt to point out.

Deterrence

Deterrence seems to be the most fundamental aim of

the criminal law. It is believed that the anticipation of punishment would deter those who lack strong inner prohibitions against committing crimes or those who weigh the costs and benefits of their proposed criminal acts. The law is therefore oriented towards the control of future behaviour of individuals and the public at large. The courts, in passing a sentence often make remarks to the effect that such a sentence is supposed to teach the offender a lesson. At the level of general deterrence, courts often point out that they are determined to wipe out a particular criminal behaviour prevalent in their area of jurisdiction and go on to impose heavy penalties on the offender. It is hoped that such an action would serve as a deterrent to others who are likely to take up the offender's course of action in the future.

Although the fear of punishment might make some members of society behave, in most cases people who conform do so as a result of their position in the hierarchy of things. The effectiveness of laws and sentences have been exaggerated. How can one explain the increase in the violation of laws all over the world as well as the accompanying rates of recividism? And what about the inapplicability of "deterrence"

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to a number of offences and offenders such as: traffic offences arising out of wrong calculations or mechanical faults; someone acting out of the heat of passion, provocation or under the influence of alcohol and drugs; offenders who act on the probability that their breaches may not be detected or if detected they are likely to escape the eventual punishment?

Public Protection

Some sanctions of the criminal law are aimed at protecting the public from activities of those who are regarded as threats to life and property. Sanctions such as execution, banishment, deportation and imprisonment permanently or temporarily incapacitate the offender against perpetrating criminal acts in the community. In modern times, imprisonment is the modal public-protection sentence. The public is at least, in the short run, protected by the removal of the offender from the free community. Thus, one finds the courts giving sentences of imprisonment of varying lengths depending on the statutory gravity of the offence, the characteristics of the offender and the perceived need for public protection from his activities. Those who are convicted for the second or third

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time, for example, are in some cases bound to be given longer sentences of imprisonment because it is thought that their first and second sentences have not really taught them any lesson and would not stop until kept out of the scene for a long period.

The achievement of this objective depends on rational and discriminate use of imprisonment. The court must make sure that imprisonment is the appropriate sentence for the particular offender before it. It also depends on the prison conditions in which the offender is confined. Prison conditions must be such that the offender can benefit from his long confinement. However, prison conditions actually aggravate criminality among a significant proportion of prison inmates.

Rehabilitation

Rehabilitation or socio-economic reformation of the offender is the most recent aim of criminal justice. Attention is focussed on the offender rather than his offence. Developed from the findings in behavioural and social science research, it is based on the notion that the offender has problems and society can help him adjust to his problems by giving him support in terms of certain

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provisions such as job-training, therapeutic counselling or even medical treatment. Court sentences in this respect are supposed to be non-punitive whether institutional or non-institutional.

Many writers have put up objections to the rehabilitation objective. First, there is the question of who needs the rehabilitation -- the individual or the society that habours conditions which lead to the violation of the criminal law? Secondly, rehabilitation is often used as a camouflage. People sentenced to rehabilitation programmes are often neglected in prisons which usually lack facilities to carry out the expected programmes. Thirdly, rehabilitation programmes often lead to deprivation of liberty and violation of human rights.[9]

Court sentences are based on some combinations of these objectives. Attempts, if any, to reconcile all these objectives in passing a sentence in a particular case often lead to disparate sentences.

SENTENCING STUDIES

As earlier stated, the major instrument of the court in crime control and prevention is the sentence. However, there is very little research on sentencing compared to

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other areas of the criminal justice system. More and varied attention has been paid to the examination of the effects of court sentences (e.g. imprisonment) on offenders than to the sentencing decision-making process itself.

Decision-making in courts over criminal cases is a very complex issue. It requires some caution since it touches on peoples lives. Quite a number of variables go into this decision-making. One of such variables is the law -- the provisions of the criminal code and the rules of procedure guiding the judges. Within some specified latitudes, judges are given wide discretionary powers as to sentencing, given the facts and circumstances of the case before them. Another is that findings of various research do indicate that the social background and the personality of the judges are related to sentencing patterns. Also, the socio-economic background of the offender is not left out in arriving at a sentence. A brief review of sentencing studies is therefore necessary to highlight major findings and conclusions.

Studies on the sentencing process have focussed on disparities in sentences between courts and within courts. These studies attempt to explain such observed disparities

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using the social background and personalities of the judges or the characteristics of the offender, his socio-economic status or the peculiarity of his case. Hood and Sparks classified these studies into three categories on the basis of the methods employed:[10]

1. Those that make crude comparison of proportions of offenders that receive different types of sentences among various courts.
2. Those that assume a random distribution of cases between courts and go on to compare their sentences using large samples.
3. Those that match cases between courts and compare the sentences between these.

One of the earliest studies on sentencing was by Shoham. He compared 1,105 sentences passed by eight judges in three district courts of Israel. He found wide variations in the sentences of these eight judges. Judge D was the most lenient with a general severity median of 30%, whereas Judge N was the most severe with a general severity median of 70%. Although Judge D seems lenient from the general picture, he is the most severe of the eight judges in property offences, with a median of 72%.

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Judge N who seems most severe on the whole, is most lenient in person offences with a severity median of only 10%. Sentences of Judges R,S, and G were close to the general average of 50% while the remaining five deviated widely from the general average. Shoham concludes that the "personal attitude of the trial judge and his individual sentencing habits have in fact marked influence on the severity of punishment... in great many cases this indefinable element may play a more important role in determining the type and severity of sentence than the nature of the offence and the personality of the offender."[11]

Using the same method as Shoham, Gaudet et. al.[12] examined the court records of a county court in New Jersey to determine differences in sentences among the six judges on rotation. They found wide differences in the sentencing tendencies of the judges. For example, in 57.7% of the cases, Judge 4 gave jail sentences compared to 33.6% of jail sentences given by Judge 2. And while Judge 6 gave 15.7% of his sentences in the form of suspended sentences, Judge 2 gave twice as much (33.8%). What determines the severity of a judge, according to them, is the "environment" in which the judge has been brought up before becoming an administrator of justice.

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Green's study[13] seems to be the most influential in sentencing research. He presents a "factual and theoretical perspective on the sentencing process by investigating.... factors which underlie variation in the gravity of penalties meted out to convicted offenders".[14] With a sample of 1,437 convictions extracted from the records of a Philadelphia court he examined the effects of legal factors (e.g. type of crime, prior criminal record etc.), legally irrelevant factors (e.g. sex, age, race, etc.) and factors in the criminal prosecution (e.g. personnel) on severity of penalties imposed by the judges. He found that legal factors seem to be the most important in accounting for disparities in court sentences. The gravity of the offence is significantly related to variation in sentences. There was also a marked variation in severity of sentences. Although there were variations in terms of sex, age and race (i.e. legally irrelevant factors) such variation are explicable in terms of differences in criminal behavioural patterns associated with sex, age and race. Sentencing disparities only exist in cases of intermediate gravity because the judges have different perceptions of the seriousness of such cases.

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In an attempt to provide a theoretical basis for explaining sentencing disparity, Hood[15] analyzed the sentences passed by magistrates on motoring offenders. The inquiry was one of sound methodology since, according to him, previous studies on sentencing lacked this quality. He chose a new strategy of sending the same eight hypothetical motoring offences to the magistrates to deliberate on and send in their sentences. By this method, the factors about the offence and offender were held constant. He also collected information about the magistrates background, their attitudes, views and perceptions regarding the motoring offender.

Hood found that it is in serious offences like driving while disqualified or while drunken and dangerous driving that there are large variations in penalties awarded. Disparities are also marked in offences that had special circumstances: for example, where serious accident occurred, proven deliberate intent, or where the offender had previous convictions. He concludes that the disparities "were due to lack of decision about the principles which should be used in deciding what weight should be given to various aggravating circumstances in 'out of the ordinary' cases".[16]

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The above studies come from England and the United States. Studies in sentencing in Nigeria have, however, been carried out by two legal scholars -- Milner (1972) and Adeyemi (1970, 1972). In his survey of Nigerian penal system Milner made a comparison of sentences passed by higher and lower courts in Northern Nigeria. He found that there are wide variations in sentences passed by four magistrate courts in Northern Nigeria in 1962 for 1,571 cases adjudicated by them. Fourty-five percent (45%) of the sentences were by imprisonment in Makurdi court compared to 18% in Ilorin. While 15% of the imprisonment sentences in Ilorin were of three months duration or less, in Jos 40% of the sentences of imprisonment were of this duration. Seventy-four percent (74%) of the sentences of the Ilorin court were by fines compared to 24% in Jos court. The same observation can be made in respect of the Area Courts.

Milner also made a comparison between Area courts and English type courts -- Magistrates and High Courts -- and between Moslem and non-Moslem Area Courts. He found that the rate of imprisonment in Area Courts is lower than the Magistrate and High Courts. The Area Courts also impose

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much shorter periods of imprisonment, but made more frequent use of fines. This is because a greater number of petty offences which are usually disposed by fines come before these Area courts. This differential may also be related to the fact that imposition of fine is closer to customary ideal than is imprisonment.

Variations were also found within moslem courts given their location within the region. Moslem courts located in the most northernly part of the region (Sokoto, Katsina, Kano, Borno) impose heavier penalties, even imprisonment sentences, than those in the southern part of the region. From these data, Milner concluded that the differences in the sentences réflect cultural and legal attitudes of the sentencers. Compared to English type courts, Area Courts encourage settlement of cases and are not concerned with authoritarian repression. But even within Area courts there are differences reflecting cultural or customary-law attitudes of the communities in which they are located.

Adeyemi has recently made investigation into the sentencing practices of some Nigerian courts.[18] In 52 cases taken from an adult court he found that the most heavily used dispositional method was imprisonment (about

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77% of the sample). Most of these were property offences. There was no discernible pattern of sentencing in the magistrate court studied, and the pronouncements in the magistrate's judgements were at variance with the sentences passed by him. In no single instance was probation used as a dispositional method. The magistrate rarely stated reasons for the sentences passed.

These facts about sentencing in Nigeria lure us into more of such studies since the sentence is the major instrument of the court in crime control and prevention. Effective use of the sentence requires that sentence administrators must know which type of sentence is most appropriate for every convicted offender and what results the sentence is expected to achieve. Such knowledge depends on a thorough mastery of the statutory provisions, and the type of training received by the sentencers. Lastly, the choice of an appropriate sentence also rests on adequate, available information about the offender.

Unlike the English and American studies cited above, our knowledge of the sentencing process in Nigeria is limited. There are quite a number of facts yet unknown about sentencing in Nigeria e.g. disparity between statute and practice, intra-court disparities, sentencing orientation

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of the different courts, etc. This study is therefore aimed at shedding more light on sentencing patterns and filling in some of the gaps, through the following research objectives:

a) To examine the statutory framework under which sentencing is made by the lower courts;

b) To find out the orientation or "philosophy", if any, of the administrators of justice regarding sentencing;

c) To identify sentencing patterns and practices of these courts;

d) To identify disparities or variations, if any, between types of courts -- magistrate, Area and Customary;

e) To explain any identified disparities;

f) And to suggest ways of improving sentencing by the courts.

SIGNIFICANCE OF THE STUDY

This study is significant in at least two ways. First, it is a contribution to knowledge in that it would add to the very small stock of data about Nigerian courts at present.

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It is hoped that it will not only shed more light on the findings of earlier researches cited above, but also fill in some missing gaps on sentencing in Nigeria.

Secondly, the study is significant at policy level. It is hoped that the findings of this study may help our criminal justice system in following an efficacious path. The findings should be of some use to our criminal justice administrators in terms of highlighting defects in record-keeping and in sentencing practices.

The next Chapter is devoted to a description of the methods by which these objectives were achieved.

NOTES

1. Crime is 'normal' in any society. But this must be distinguished from a 'crime-problem'. A 'crime-problem' exists when the occurrence of crime passes from the threshold of normality to abnormality, when State instruments for its control are rendered helpless, when greater proportion of the people live in fear of victimization. For a discussion on this see F. Odekunle (1977): "Managing Nigeria's Crime-Problem", paper delivered at the 1977/78 Senior Management Course of the Administrative Staff College of Nigeria (ASCON), Lagos.

2. A number of carefully planned bank robberies, pay-snatches and car thefts are sufficient evidence that crime in Nigeria is becoming more organized. See Chambliss (1975) "The Political-Economy of Crime: A Comparative Study of Nigeria and U.S.A.", in Taylor, Walton and Young (eds):

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Critical Criminology, 1975, p.171. Chambliss reports that "in at least Ibadan and Lagos, gangs of professional thieves operated with impunity. The gangs of thieves were well organized and included the use of beggars and young children as cover for theft activities". See also Odekunle, F. (1978): "Juvenile Delinquency and Adult Crime in Nigeria," paper presented at National Seminar on Social Problems, Social Disorganization and Criminality", Kano, 1978, for a discussion on "Crime as Business", pp.17-24.

3. As an example, see Sunday Times of August 20, 1978 p.11. In that report a criminal group (known as"the Gunmen Nigeria") who had earlier demanded ₦1,000 from a businessman in Umuahia, sent another letter to the businessman rebuking him for calling in the army and police to guard him instead of settling with them. They boasted that the police would not be any match to them when they decide to strike.

4. For example see W. Clifford, An Introduction to African Criminology, Oxford University Press, Nairobi, 1974. Chapter 3; Clinard and Abott, Crime in Developing Countries: A Comparative Perspective, John Wiley and Sons, New York 1973, Chapters 3-5.

5. While there are no detailed studies on discrimination in the administration of justice in Nigeria, belief about its pervasiveness is widespread. As an evidence to substantiate the point, see Daily Times of May 19, 1979, p.5. In that report, Justice K. Aroyewun noted that police and price control officials in Katsina are fond of arresting petty-traders; that for two years running, no richman has been brought before his court.

6. Between 1972-74, for example, 22% of the total prisoner population in Nigeria were those who were unable to pay their fines. See Nigerian Prisons Service Annual Report for 1967-74, Federal Ministry of Information, Lagos 1977 p.29.

7. United Nations, "Criminal Legislation, Judicial Procedures and other forms of Social Control in Prevention of Crime", Working Paper for United Nations 5th Congress on Prevention of Crime and Treatment of Offenders, Geneva, 1975 p.15. A/CONF.56/4.

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8. See Gerber and McAnany, "The philosophy of Punishment", in Johnston, Savitz and Wolfgang (eds): The Sociology of Punishment and Corrections, John Wiley and Sons, New York, 1970 pp.337-361.

9. For a critique of the rehabilitative movement see: Allen F., "Legal values and the Rehabilitative Ideal", in Radzinowicz and Wolfgang (eds): Crime and Justice Vol.II Basic Books Inc. New York 1971, pp.65-73; C.S. Lewis, "The Humanitarian Theory of Punishment", ibid. pp.43-48; N.N. Kittric, The Right to be different: Deviance and Enforced Therapy, The John Hopkins Press, Baltimore 1971 pp.372-408.

10. Hood and Sparks, Key Issues in Criminology, McGraw-Hill, New York 1970, Chapter 5.

11. S. Shoham, "Sentencing policy of criminal courts of Israel", in Journal of Criminal Law, Criminology and Police Science, Vol.50 1959 p.335.

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13. E. Green, Judicial Attitudes in Sentencing, MacMillan, London 1961.

14. Ibid. p.1.

15. R. Hood, Sentencing the Motoring Offender, Heineman Books, London 1970.

16. Ibid. p.48.

17. A. Milner, The Nigerian Penal System, Sweet and Maxwell London 1972, Chapter 4.

18. A.A. Adeyemi, "Scientific approach to sentencing", in T.O. Elias (ed): The Nigerian Magistrate and the Offender, Ethiope Publishing Co. Benin-City, 1972, pp.49-68; A.A. Adeyemi, "Sentences of Imprisonment: Objectives, Trends and Efficacy" in T.O. Elias (ed.): Prison System in Nigeria, Lagos University Bindery, 1970, pp.243-262.

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CHAPTER 2

METHODS OF INVESTIGATION

LOCATION AND SAMPLE

The data for this study are derived from criminal record books of the three types of lower courts operative in Nigeria -- Magistrate, Area and Customary courts. A greater proportion of all the criminal cases in the country are adjudicated by these lower courts annually.[1] It is here that one can discern meaningful sentencing patterns, if any. The Area and Customary courts were chosen from two different cultural areas of the country where they are well established. The Area Court was chosen from Zaria (Kaduna State) while the Customary Court was chosen from Oyo (Oyo State). The two towns are somewhat similar in many respects. Both are old traditional towns and seats of defunct traditional governments. Secondly, they seem to have characteristics of both urban and rural environments so that cases which can be found in each of these environments are represented in both types of courts.

Apart from the fact that University research should be focussed on problems of its locality, Zaria is chosen for proximity and convenience. Oyo seems to be the nearest

counterpart of Zaria in the Southern part of the country. Hence, the customary court was chosen from there. The third type of court -- the magistrate court -- is an English type court whose operation is largely uniform throughout the country so that it can actually be chosen from anywhere.[2] In this case, the magistrate court examined was chosen from Zaria.

The power of these courts very according to their grades. Effort was therefore made to choose courts of equivalent powers. An Upper Area Court and Chief Customary Court were chosen to correspond with the chosen Chief Magistrate Court.[3] The data collected from the Upper Area Court was however not sufficient because most of the cases handled by it are appeal cases from other lower Area Courts. This was supplemented by data from a Grade I Area Court.

The research study is limited to an examination of how five types of offences -- assault, theft, burglary, embezzlement and traffic[4] -- were disposed by these three courts for a specific period (1975-77). These five offences have been chosen because they appear to be the most common in this country and are those that are more often, than

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others, reported to the police.

The initial plan was to choose 50 cases of each of these offences from every court, giving a total sample of 750 cases. It was however difficult to get a sufficient number of cases for these offences within the specified period because a good number of cases suffer numerous adjournments. The time span was therefore extended to 1971. Even then the target of 750 cases could not be met because cases of embezzlement and burglary were relatively few compared to say theft or traffic. There was no single embezzlement case in the records of the Chief Customary Court between 1971 and 1977. This is rather strange given our common knowledge about the prevalence of embezzlement, fraud and burglary in the country. The police may wrongly charge cases of embezzlement and burglary as theft. In cases of embezzlement, it may well be that those involved are well-placed persons who know how to manipulate their way to prevent prosecution. And the low figures for burglary cases may well be due to the fact that burglary cases are less detectable and prosecutable than most offences.

Although the sample of 50 cases for each offence may be regarded as small, it is believed that one can discern the

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sentencing pattern and orientation of a court from 50 sentences on each type of offence.

On the whole, therefore, 510 cases were extracted from the records of the three courts surveyed. The breakdown is shown in Table 2.1 below:

Table 2.1

Distribution of Cases by Type of Court (%)

Offence Type	Court			
	Chief Magistrate	Upper Area/ Area	Chief Customary	Total (510)
Assault	22%	41%	37%	(138)
Theft	33%	31%	36%	(150)
Burglary	20%	40%	40%	(53)
Embezzlement	64%	36%	0%	(42)
Traffic	38%	23%	39%	(127)

The major dependent variable in this study is the type of sentence given by the court upon conviction. The term disposition would however be used to embrace both sentence and other types of decisions arrived at by the courts especially when the accused is not found guilty. Disposition takes the

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following forms: imprisonment, imprisonment and fine, fine only, fine with alternative of imprisonment in default of payment of the fine, caning, suspended sentence/probation, binding over, restitution or compensation, discharged,[5] compounding,[6] and any other combination allowed by law.

The type of sentence or any other decisions arrived at by the court is likely to depend on the following independent variables:

a) The criminal code and rules of procedure. These will vary from one system to another either between countries or within one country. In Nigeria, the criminal codes vary slightly between the Northern and Southern parts of the country. In an attempt to make the laws reflect Islamic legal values, the penal code as applicable to the Northern States was derived from Islamic countries such as Pakistan and Sudan.

b) The type of court -- Magistrate, Area, and Customary. Each of these courts operate within a particular cultural and legal value system. Magistrate courts administer English common law. Other than the English common law, Area Courts also administer the Sharia law, while the Customary courts also administer customary laws of the

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area they operate in as much as they are not repugnant to natural justice, equity and good conscience.

c) The type of offence -- assault, theft, burglary, embezzlement and traffic rule violations.

d) Whether offender was in custody or not at the time his case was tried i.e. whether granted bail or not.

e) Whether offender had a defence lawyer or not.

f) Offender characteristics such as age, sex and occupation.

g) The attitude of the judge. This is quite a difficult variable to measure and quantify. As shown in Chapter 1, quite a number of studies have shown that differences in sentences can be attributed to differences in the judges attitude towards different kinds of offences and offenders. Judges, no doubt, make a number of distinctions -- first offenders vs repeaters men with responsibility and no responsibility, cases with extenuating circumstances etc.

METHODS OF DATA COLLECTION

The mode of collecting data on the above variables consisted of reading through the adjudicated cases for the five offences in the criminal record books of the courts for

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the years 1971-77.[7] There was a format for recording information on the variables for each case (See appendix I).

Data from the court records were supplemented by information (through questionnaire) from judges not only in the courts whose records were examined but also other judges in Kaduna and Oyo States where these courts are located. The questionnaire focussed on some key issues related to their work, especially their sentencing orientation, their background, their views on crime, criminals and methods of offender-correction (See appendix II).

Two problems were confronted in the data collection process. The first relates to court records. There is no systematic method of record-keeping in these courts. It is quite difficult to trace a case from the date of its first hearing in court to the date of final disposition. One has to open back and forth the volumes to trace a case. Often the registrars forget to write the date of next hearing for an adjourned case; or the case disappears from the records after about two or three adjournments. The records also lack information on a number of variables of interest to the researcher e.g. information as to whether

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an accused was granted bail, type of bail and whether accused made use of bail granted, age, education, occupation of offender, whether offender paid his fine, etc.

The second problem relates to cooperation of the judges in responding to the questionnaire. Most were unwilling to fill the questionnaire so that the return rate was slightly below 50%. Of the fourty questionnaire given out, only seventeen were returned -- and these only after persistent calls and reminders. However, these problems are unlikely to affect the results of the research.

DATA ANALYSIS

A sample as large as 510 cannot be easily handled manually. Data on the 510 cases were therefore coded and punched on cards for computer reading. The results reported in subsequent chapters were obtained through the computer using the following sub-programs in the SPSS: frequencies, contigency tables and related measures of association,[8] and regression.[9]

As indicated earlier, the returns from judges were so small that it cannot be analyzed using the computer. However, relevant answers given by the judges to certain

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questions are cited occasionally to support findings and conclusions where applicable. The next Chapter is devoted to examination of the satutory framework under which the courts pass their sentences.

NOTES

1. A. Milner, The Nigerian Penal System, Sweet and Maxwell London, 1972, p.101.
2. Although Magistrate courts seem uniform throughout the country in terms of their personnel and procedural methods, the codes they administer slightly differ. Magistrate Courts in the Northern States apply the Northern penal code derived from Pakistan and Sudan, while those in Southern States apply the Nigerian Criminal code and the criminal procedure Act, an English model derived from Queensland.
3. The powers of the Upper Area Court are somewhat greater than those of the Chief Magistrate and Chief Customary Court because it is also a court of appeal.
4. Traffic cases involving loss of lives were excluded because of the complex nature of such cases.

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5. From a legal point of view discharge is not a sentence since the accused is not yet convicted. It merely indicates that the charge against the accused has not yet been proved. An accused may be discharged for a number of reasons: insufficient evidence and proof, wrongful charge, unnecessary prosecution delays, etc.
6. Compounding is also not a sentence. It indicates that the parties have agreed to settle out of court and the case is consequently terminated.
7. Three research assistants were employed for the data collection.
8. For all the contigency tables in this work two measures of association -- the chi-square and Cramer's V -- have been used to determine whether the relationship between two or more variables is significant. For the chi-square a relationship is significant at .05 level.
9. The regression program was meant to bring out key variables which predict sentencing patterns in these courts. The program was of limited value because most of the variables in this study are categorical data. Data on the criminal justice system being categorical in

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nature are more amenable to Goodman's log-linear analysis method than regression. Regression is more appropriate for interval scale data. Although effort was made to transform these categorical data to "dummy variables" it was less useful because of a large number of missing data on some of the variables. On the use of Goodman's log-linear method on criminal justice data see Burke and Turk: "Factors affecting post arrest dispositions: A model for Analysis", in Social Problems, Vol.22, No.3, 1975; Cohen and Kluegel: "Determinants of juvenile court dispositions: Ascriptive and Achieved factors in two Metropolitan Courts, in American Sociological Review, Vol.43, 1978 pp.162-176.

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CHAPTER 3

STATUTORY SENTENCING FRAMEWORK

In this chapter some background will be provided with regard to the courts and the laws these courts enforce. Since this is not a legal textbook and the investigator has no formal legal training, legal technicalities, procedures and citations would be avoided as much as possible. The concern is with a brief presentation of the jurisdiction and powers of these courts, and the examination of the laws as they relate to the five offences investigated. This is here referred to as the statutory sentencing framework. (See Tables 3.1 and 3.2)

JURISDICTION AND POWERS

Jurisdiction is concerned with whether or not a particular court has the power to try a particular case, while powers refer to the limits of punishment a court is allowed to impose by law.[1] The three courts under investigation have jurisdiction over the five offences -- assault, theft, burglary, embezzlement and traffic rule violations.

Table 3.1

Powers of the Courts

Magistrates	Area	Customary
	Upper Area: Unlimited except in homicide cases	Grade A: Unlimited except in homicide and similar cases
Chief Mag: 5yrs or ₦1,000 fine	Grade I: 5yrs or ₦1,000 fine	
Snr. Mag: 3yrs or ₦600 fine	Grade II: 3yrs or ₦600 fine	
Mag. I: 18 months or ₦400 fine		
Mag. II: 9 months or ₦200 fine.	Grade III: 9 months or ₦100 fine	Grade B: 1 yr or ₦200 fine
		Grade C: 6 months or ₦100 fine.

Magistrate Courts

The evolution of jurisdiction and powers of present day magistrate courts dates back to 1863 when English Law was introduced into this country.[2] The 1943 Magistrate Courts Ordinance No.24, as amended up to 1945, graded Magistrate Courts into three -- Magistrates Grade I, II and III. This Ordinance has been revised in subsequent years with more powers granted to magistrates. At present, there are 4 grades of magistrates -- Chief magistrates, Senior magistrates, Magistrates grade I and II. They are empowered to award the following sentences:

Chief Magistrate: (a) Imprisonment term not exceeding 5 years or a fine not exceeding ₦1000.

(b) Caning.

Senior Magistrate: (a) Imprisonment term not exceeding 3 years or a fine not exceeding ₦600.

(b) Caning.

Magistrate Grade I: (a) Imprisonment term not exceeding 18 months or a fine not exceeding ₦400

(b) Caning.

Magistrate Grade II: (a) Imprisonment term not exceeding 9 months or a fine not exceeding ₦200.

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Area and Customary Courts

The formal establishment of present day Area and Customary Courts dates back to 1900 (The Native Courts Proclamation of 1900). Since then, these courts have undergone remarkable changes both in terms of personnel as well as in their jurisdiction and powers.[3] When Nigeria was amalgamated in 1914, a uniform Native Courts system was introduced for the whole country. This was revised in 1918 and later amended in 1922. The Ordinances demarcated the powers and jurisdiction of these courts and the regulations governing them. Four grades of courts were created - Native Courts grades A, B, C, and D.

The 1956 Native Courts law of Northern Nigeria brought new changes in the organization of the Native Courts in that area. It provided for 5 grades of Native courts with wider powers instead of the initial 4 with lesser powers. This law was amended in 1959 to enable the Native courts administer the new Penal Code introduced in the Northern region. However, when the military assumed powers in 1966, they promulgated the Area Courts Edict of 1967 which superseded the previous law. This Edict brought into being the present Area Courts operating in all the Northern States. The Edict

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provides for four grades of Area Courts -- Upper Area Court, Area Courts Grade I, II and III.

In criminal matters the Area Courts are to Administer:

(a) The Penal Code Law, the criminal procedure code and any subsidiary legislation made thereunder;

(b) Any written law which the court may be authorised to enforce;

(c) All rules and orders made under the local Authority Law, and all rules,orders and bye-laws made by a Native Authority.

The following are the limits of the sentences each court is empowered to impose:

Upper Area Court: Unlimited except in homicide cases.

Area Court Grade I: Imprisonment for 5 years or a fine of ₦1,000.

Area Court Grade II: Imprisonment for 3 years or a fine of ₦600.

Area Court Grade III: Imprisonment for 9 months or a fine of ₦100.

The counterpart of the Area Court in some of the Southern states especially Western States is the Customary Court. The 1959 Customary Courts Law of Western Nigeria

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provided for three grades of Customary Courts -- Grades A, B, and C.[4] The Grade A Customary Court is to be presided by legal practitioners and also Grade B, if need be, but the latter Customary court judge must be literate in English. Grade C is to be manned by laymen versed in Customary law.

Customary Courts are to administer:

(a) the appropriate customary law in as much as it is not repugnant to natural justice, equity and good consdience and not in conflict with any written law;

(b) the provisions of any enactment of which jurisdiction is conferred on the courts by the enactment;

(c) the provisions of all rules and bye-laws made by a local government council.

The maximum fine and maximum imprisonment term to be imposed by a customary court other than Grade A are the following:

Customary Grade B: ₦200 fine or one year imprisonment

Customary Grade C: ₦100 fine or 6 months imprisonment

In criminal matters customary courts may promote reconciliation and encourage settlement in case of common assault or any other offence not amounting to a felony. They can also award compensation to an injured victim, subject to the fact that the victim, if he

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accepts compensation, will not put up any civil suit in respect of injury sustained by him.

The three courts have jurisdiction to try any of the five offences investigated. However, their powers are limited as to the length of imprisonment or the amount of fine they can impose. Punishment awarded by these courts would be less than those allowed by the law for these offences, since the powers of these courts are limited as to the amount of sentence they can pass. A Chief Magistrate for example is unlikely to sentence an offender to 14 years imprisonment for burglary as allowed by the law since the maximum sentence the court can impose is 5 years imprisonment. The court can only commit such an offender to a higher court for sentencing. Courts can however exceed the imprisonment terms allowed them in a case with multiple charges so that the sentences become cumulative.

. PENAL PROVISIONS FOR THE FIVE OFFENCES

As previously stated both Magistrate and Area/Customary courts are to enforce the provisions of the Penal Code, the Criminal Code or any other written law where empowered. What is the law in relation to each of the five offences investigated? This leads us to the examination of the

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relevant sections of the codes. It should be noted that the Northern Penal Code and the Criminal Code applicable to the Southern States have slight variations reflecting the local values of their areas.

Assault

A person who applies force to the person of another without his/her consent is said to have committed assault or criminal force. The codes create various kinds of assaults each with a corresponding scale of punishment. In the Northern Penal Code, simple assault not arising out of provocation carries a punishment of imprisonment "which may extend to one year or with fine or with both" (S.265-a). Punishment for assault occasioned by grievious hurt is greater -- imprisonment "which may extend to 3 years or with fine or with both" (S.265-b). Assaults on grave and sudden provocation carries on imprisonment term which may extend to three months or with a fine which may extend to ₦40 or with both (S.266). And assaults on public servants in lawful execution of their duties carries imprisonment term which may extend to 3 years or a fine or both.

The Penal provisions for assault in the Nigerian Criminal Code as applicable in the Southern states are

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Table 3.2

Penal Sanctions for the Five Offences

Offences	Sanctions	
	Northern States: Penal Code	Southern States: Nigeria Criminal Code
Assaults		
a. Simple Assault	1 year imprisonment or a fine or both.	1 year imprisonment
b. Assault occasioning harm	3 yrs imprisonment or fine or both.	3 years imprisonment
c. Assaults on public servants in lawful execution of their duties	3 yrs imprisonment or a fine or both.	3 years imprisonment
Stealing		
a. Simple Theft	5 yrs imprisonment or fine or both.	3 years imprisonment
b. Theft by Clerk or Servant	7 yrs imprisonment or fine or both.	7 years imprisonment
c. Theft from dwelling house, etc.	7 years imprisonment or fine or both.	7 years imprisonment
Burglary		
a. Housebreaking	2 yrs imprisonment and a fine.	
b. Housebreaking with intent to commit felony	14yrs imprisonment and a fine.	14 years imprisonment
c. Housebreaking by night with intent to commit felony	Life imprisonment or any less term and fine.	Life imprisonment

Table 3.2 (contd.)

Embezzlement		
a. Criminal breach of trust	7 years imprisonment or fine or both.	7 years imprisonment
b. Criminal breach of trust by Clerk or servant	10 years imprisonment and fine.	7 years imprisonment
c. Criminal breach of trust by public servant	14 years imprisonment and fine.	2 years imprisonment.
Traffic		
a. General traffic rule violation	₦100 fine - first offender/ ₦100 fine or 6 months or both for subsequent offence	₦100 fine - first offender/₦100 fine or 6 months or both for subsequent offence.
b. Reckless and dangerous driving.	2 years imprisonment or ₦400 fine or both.	6 months imprisonment or ₦200 fine or both.
c. Drunken driving, driving under influence of drug	2 years imprisonment or ₦400 fine or both.	6 months imprisonment or ₦200 fine or both; disqualification for 12 months.

similar to that of the Northern Penal Code, but their wording differ. Differences in language are, however, of great legal significance. For example compare the following provisions for simple assault in the Northern Penal Code and Nigerian Criminal Code:

Penal Code: Whoever assaults or uses criminal force to any person otherwise than on grave and sudden provocations given by that person shall be punished:

a. with imprisonment for a term which may extend to one year or with fine or with both (emphasis mine).

Criminal Code: Any person who unlawfully assaults another is guilty of a misdemeanour, and is liable, if no greater punishment is provided, to imprisonment for one year. (emphasis mine)

In the latter, the offender is liable to imprisonment for one year but in the former, the imprisonment may extent to one year. It is implied in the former that the term of imprisonment may or may not extent to one year. This is absent in the latter. Whether the offender can be fined, is not specified in the provision of the criminal code,

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compared to that of the penal code. Section 382 of the Criminal Procedure Act however confers a general power to inflict a fine instead of imprisonment even where the law, as in the criminal code, only refers to imprisonment. Lastly, the amount of fine (maximum or minimum) to be awarded for the offence is not stated in the provision of the Penal Code. The judge is left to use his discretion.[5]

Theft or Stealing

The general provision for stealing is 3 years imprisonment in the southern states and 5 years or a fine or both in the northern states. The punishment for stealing can be greater than these depending on the nature of the thing stolen and the circumstances of the act. In the Northern States stealing from a house, railway, bus, lorry etc. is punishable by a term of imprisonment which may extend to 7 years or with a fine or both (S.288). In some cases stealing of livestock -- cattle, goat, etc.-- carries a mandatory jail term of 21 years. In the Southern States, stealing of cattle, stealing from a house or public office, stealing by clerks, public servants, directors and officers of companies, stealing property whose value is ₦1,000 and above and stealing after previous convictions, each carries an imprisonment term of 7 years.

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Burglary or Housebreaking

Section 411 of the Nigerian Criminal Code as applicable in the South, states that any person who breaks and enters the dwelling house of another with intent to commit a felony or having committed the felony and breaks out of the house is liable to imprisonment for 14 years. If the offence is committed at night, the punishment is imprisonment for life.

In the Northern Penal Code, ordinary house-breaking carries imprisonment term which may extend to 2 years and also liable to a fine (S.353) or 3 years and also liable to a fine if by night. But housebreaking with intent to commit an offence punishable by imprisonment carries imprisonment term which may extend to 14 years and shall be liable to a fine (S.354). If the offence is committed at night the punishment is imprisonment for life or any less term and shall also be liable to a fine (S.356).

Embezzlement

The offence of embezzlement is often treated as criminal breach of trust or as stealing by special persons -- Clerks, Public servants, etc. -- or as fraud in Nigeria.[6] The punishment for embezzlement is 7 years imprisonment. The punishment can be greater for certain kinds of offenders.

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In the Northern Penal Code for example, servants and clerks shall be punished, if guilty, with imprisonment for a term which may extend to 10 years and shall also be liable to fine (S.314). If a public servant is involved, the term may extend to 14 years and shall be liable to fine (S.315).

Traffic

The general penalty for traffic rules violation in which no specific penal provision is stated is ₦100 fine as a first offender or ₦100 fine or 6 months imprisonment or both for a second and subsequent offence (Road Traffic Law Section 39, Northern Nigeria, 1963; Section 33, Western 1959). Reckless and dangerous driving is punishable by imprisonment term of 2 years or a fine of ₦400 or both (Northern) or imprisonment term of 6 months or a fine of ₦200 or both (Western). Drunken driving and driving under influence of drug is punishable by a term of imprisonment of 2 years or a fine of ₦400 or both (Northern) or ₦200 fine or imprisonment term of 6 months or both (Western). The offender is also liable to disqualification for 12 months if convicted under this section (S.19(2), Western).

SOME OBSERVATIONS ON THE PENAL PROVISIONS

Four observations can be made as to the statutory sentencing range for each of the five offences. Firstly,

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the range of sentences at the disposal of the courts is limited. The convicted offender can only be punished in two principal ways -- imprisonment or fine or both. The judge pays attention to the issue of determination of guilt. The onus of proof lies on the prosecution: that the offender actually committed the offence charged. Thus, a greater proportion of the court's time is spent on the question of guilt. Once proven, the judge goes on to impose a sentence of imprisonment, fine or both. Judges rarely look beyond sentences of imprisonment and/or fine, given the fact that they are not mandatorily required by law to impose other kinds of penalties on the convicted offender. It is here that the comments of L.O. Fadipe, a former magistrate and president of a Grade A customary court become relevant: "as far as..... magistrates are concerned, the punishment for any offence, no matter its nature, is either imposition of a fine or a term of imprisonment; and that for every offender no matter his antecedents."[7] What else could it be, given the fact that the laws provide for either a fine or imprisonment or both. If the courts could spend as much time investigating the antecedents of the offender, as they do on the issue of

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guilt, they can arrive at appropriate methods of correctional sentences for various categories of offenders. Unfortunately the law does not make any such provisions.

The second observation that can be made is that the laws give the judges wide discretionary powers. Other than stating the maximum, in some cases, the laws are loosely worded to give wide discretionary powers to the judge as to the length of imprisonment or amount of fine to be imposed on the convicted offender. The word 'may' in the Northern Penal Code is very discretionary. An offender found guilty of stealing can be given an imprisonment term which may extend to 5 years or a fine or both. The judge is left with the discretion to impose anything less than 5 years for a theft case. Such a situation may give rise to disparities in sentences between judges.

The third observation is that the minimum and maximum amount of fine to be imposed is not stated in these laws, other than in traffic offences. The amount of fine to be imposed is left to the judge, subject to the fact that it should not exceed the maximum fine the court is empowered to award. The option to impose a fine is not even stated in some cases, as in the Nigerian Criminal Code. The general

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power to impose fine is only given to the courts by Section 382 of the C.P.A., even where the law relating to the offence stated only imprisonment. This is a provision which a judge may and may not use.

The final observation that can be made in respect of the laws is that they are patently punitive rather than correctional. They have a deterrent and retributive orientation. How else can one account for the penalty of 14 years imprisonment for burglary or imprisonment for life if committed at night; or a 3-year jail sentence for assault occasioning harm? Even assault on great and sudden provocation carries an imprisonment term of 3 months or a fine of ₦40 or both! In what ways can a jail term solve a conflict between two neighbours which resulted in an assault charge? No doubt, the belief here is that it is a deterrent measure. The laws are neither aimed at rehabilitation of offenders nor at the resolution of conflict between parties. For example, the Magistrate Courts Law 1959 of Western Nigeria while empowering the courts to reconcile parties in a suit, simultaneously prohibits such when the offence is a felony (S.35).

The Northern Penal Code is even more punitive compared to their southern counterpart. While stealing carries the

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general punishment of 3 years in the South, in the North it is extended to 5 years. Reckless and dangerous driving is punishable by a jail term of 2 years or a fine of ₦400 or both in the North, but the punishment for this offence in the South is as low as 6 months imprisonment or a fine of ₦200 or both. Such disparity in law perhaps reflect the prevailing attitudes towards punishment in the two major areas of the country.

With the powers of the courts and the penal provision for the investigated offences stated, we are now in better position to examine the sentences in furtherance of the research objectives. Before we do that, however, the views of the judges as they relate to a number of issues on sentencing and correction of offenders should be examined. This is important because such views do significantly affect the sentences passed on those brought to court. The next chapter is therefore devoted to an examination of the orientation of the judges.

NOTES

1. See Richardson and Williams, The Criminal Procedure Code of Northern Nigeria, Sweet and Maxwell, London, 1963, p.4.

2. For a historical account of this evolution, See T. Elias, Groundwork of Nigeria Law, Routledge and Kegan Paul, London 1954.

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3. For a historical account of evolution of the Native Courts see Keay and Richardson, The Native and Customary Courts of Nigeria, Sweet and Maxwell, London, 1966.

4. At the time of writing a new Edict was promulgated, converting customary courts presided by legal practitioners into magistrate courts. See The Magistrates' Courts (Amendment) Edict, No.20, 1978, Oyo State of Nigeria.

5. Section 74 of the Northern Penal Code scaled the amount of fine to be awarded in relation to the length of imprisonment in default of payment as follows:

Fine	Length of Imprisonment
Fine not exceeding ₦1.0	Not exceeding 7 days
Exceeds ₦1.0 but not ₦2.0	14 days
Exceeds ₦2.0 but not ₦20.0	1 month
Exceeds ₦20.0 but not ₦60.0	2 months
Exceeds ₦60.0 but not ₦100.0	4 months
Exceeds ₦100.0 but not ₦200.0	6 months
Exceeds ₦200.0 but not ₦400.0	1 year
Exceeds ₦400.0	2 years.

6. See E.O. Fakayode, The Nigerian Criminal Code Companion, Ethiope Publishing Co. Benin-City, 1977, p.30.

7. L. Fadipe, "Sentencing processes, practices and attitudes as seen by a Magistrate and Customary Court Judge", in T.O. Elias (ed.): The Nigerian Magistrate and the Offender, Ethiope Publishing Co., Bening-City, 1972, p.45.

CHAPTER 4

ORIENTATION OF JUDGES

One of the variables that go into the sentencing equation noted earlier in the introductory chapter, is the "indefinable element" known as the judge's attitude. Judges attitude could be "measured" from various angles. It could refer to his personality which can be measured by the Esyneck Personality Inventory (as Hood attempted to do[1]). It could also refer to his views on a number of questions relating to crime, criminals and ways of handling both.

While there was no attempt to develop rigorous attitudinal test, a number of questions were put to the judges relating to crime causation, criminals, court procedures (e.g. bail) and decision-making (e.g. sentencing). The response to this inquiry was fairly low: slightly less than 50% questionnaire return-rate. Such a figure is perhaps low for the drawing of much meaningful generalizations to Nigerian judges' orientation. However, the answers given to these questions can, at least, still highlight what some Nigerian judges think about crime, criminals and their correction.

BACKGROUND OF THE JUDGES

The information collected on the background of the judges was related to their education, previous occupation before appointment to the bench, age and experience on the bench:

A greater proportion of the judges are within the age bracket of 30-40 years. In fact the mean age for the judges is 35 years. The youngest is 28 years and the oldest is 62 years.

In terms of education, virtually all the judges had gone through the kind of education relevant to the practice of law, whether English or Islamic. Ten of the judges hold a bachelor's degree in law, nine of these being magistrates and one a customary court president. Six hold diplomas or certificates in Islamic, Arabic or Sharia law from the Institute of Administration, Ahmadu Bello University. These are Area court judges. Only one judge, the president of a Grade B Customary Court has a secondary class four certificate.

The occupations of these judges prior to their appointment to the bench are related to judicial administration. Four were state counsels, six were either court registrars

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or court clerks, four were private legal practitioners and two were Arabic teachers.

In terms of adjudicating cases, the judges have varying lengths of experience. One judge has been on the bench for only six months at the time of the survey while another has had twenty-seven years experience on the bench. The mean length of experience of the judges is about five and half years.

VIEWS ON CRIME AND CRIMINALS

Four questions were put to the judges relating to crime and criminals. The first was what they consider to be the most singular cause of crime in Nigeria. The significance of the question is that it should relate to methods by which criminals should be dealt with. If judges hold certain views on crime causation, they must, almost certainly hold some views about the most appropriate correctional methods which would correspond with their views on causation. A greater proportion of the judges hold views that border on an indictment of the socio-economic order. Their responses seem to relate to the fact that the socio-economic order is in itself crime-generating. The following are representative of such views:

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Judge 1 (Magistrate): "Inflation - high standards of values which people want to meet but lack the means hence resorting to illegal means."

Judge 5 (Magistrate): "Attitude of the rich towards the poor - display of wealth at the face of the poor."

Judge 12 (Customary) and Judge 17 (Magistrate): "Poverty"

Judge 13 (Magistrate): "Social problems - unemployment".

There are however other minority views that put the blame on the individual. For example:

Judge 8 (Area): "Lack of home-training among the people."

Judge 3 (Magistrate): "Probably a natural cause of the offender."

The second question posed to the judges was whether in their view, the criminal is a sinner in the eyes of God. This question is morally, value-laden. Eleven of the judges agreed to the suggestion; two categorically disagreed, while the remaining four judges qualified their response that it depends on the type of crime. For example the rapist, the murderer are sinners to these four judges. In fact one judge even went further to state that they are not only sinners in the eyes of God but also in the eyes of

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man. The implication of this is that offenders will also be dealt with accordingly. Such judges are likely to pass retributive and deterrent rather than correctional sentences.

Thirteen of the judges subscribe to the view that some people become criminals through bad-up-bringing. Ten also felt that socio-economic hardship lure some people to crime. Only two believe in the theory of "born criminals".

Most of the judges have a moralistic view of crime. They are therefore likely to pass punitive sentences on convicted offenders most of the time. This view is supported by their response to the question of what they consider to be the three most serious crimes and the punishment they would recommend for these. Rape is considered by most to be a very serious crime that should be met with long terms of imprisonment sentence. The following are some of their responses:

	Offences (by seriousness)	Recommended Punishment
Judge 1 (Magistrate):	1. Sodomy	14 yrs imprisonment
	2. Rape	Life imprisonment
	3. -	-

.../62.

Judge 8 (Area):	1.	Theft	Cutting off the hands
	2.	Rape	Life imprisonment
	3.	Riot	Life imprisonment
Judge 3 (Customary):	1.	Hemp	6 months and 12 strokes
	2.	Car theft	10 years imprisonment
	3.	kidnapping	Life jail
Judge 13 (Magistrate):	1.	Rape	14 yrs imprisonment
	2.	Theft	Life imprisonment
	3.	Burglary	Life imprisonment

There seems to be no correspondence between their views on crime causation and their views on the most appropriate correctional methods of solving the problem. Some of the judges seem inconsistent. In some of the cases above, what they identify as the most serious gets a lesser punishment than the others. Judge 8 for example recommends mutilation for theft and life imprisonment for riot. Not a single judge considers embezzlement, fraud and such related offences as serious crime that deserves attention. The responses above also show that Nigerian judges rarely think of any disposition methods besides sentences of imprisonment. There is no indication that they have any reformatory orientation. It may well be

.../63.

argued that the offenders are sent to the prisons for reformation. But that argument depends on whether these judges are actually aware of what goes on in Nigeria prisons, what facilities exist in them and what programmes are available for the inmates. Very few of the Nigerian judges pay visit to the prisons.

BAIL

Fifteen of the judges disagreed with the suggestion that all offenders should be granted bail. Admittedly the law debars the granting of bail to some kinds of offenders e.g. those standing homicide trial and the mentally unfit. However, the rationale behind the judges' position is that some offenders are likely to jump bail and create difficulties in police investigation. The following are representative of the views as to why bail should not be granted to all offenders:

Judge 4 (Magistrate): "Some people commit offences because they think bail is automatic or they can be bailed. Nigerians fear imprisonment, so bail should not readily granted."

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Judge 12 (Customary): "Some criminals cannot be granted bail e.g. if a murderer is granted bail he may end his own life before trial if he knows he is guilty."

Judge 9 (Area): "Some offenders if granted bail will obstruct investigation or start to boast or even go as far as threatening the complainant."

One of the judges who agreed that all offenders should be granted bail is of the view that prisons in Nigeria are not properly organized to cater for those not yet convicted. People's businesses might be ruined if detained in custody when their cases have not been tried.

The following are the factors that the judges consider in granting of bail to the accused: seriousness of the offence; some guarantee that the accused if granted bail will appear to answer charges against him e.g. whether he is entrenched in society; the punishment for the offence. Most of the judges however agreed that if an accused's background is known he should be granted bail on his own recognition.

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The other judges are opposed to lawyers' appearance in these lower courts (Area and Customary) because these courts are manned mostly by laymen who are likely to be confused by lawyers. There is also the argument that lawyers lack knowledge of the laws and customs that most of these courts administer. However, it needs to be pointed out that there are lawyers who have knowledge of Islamic and Customary laws. Islamic and Customary laws are not the exclusive preserve of Area and Customary judges. In fact some lawyers are moslems and others being Nigerians trained in this country do not lack knowledge of customary laws. In any case, one wonders why lawyers cannot appear in Area Courts in criminal cases given the fact that these courts administer the penal code in criminal cases rather than any patent Islamic law. But judge 12 sees the matter differently:

"It does not make sense for a lawyer to appear in a court not manned by a lawyer. The truth is that the layman does not understand the legal technicalities which may be advanced in a lawyer's submission or arguments in court."

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SOME ISSUES IN SENTENCING

The judges were asked to rank five factors that they take into consideration in determining the type and severity of sentence, in their order of importance. The first factor which most of them take into consideration is the gravity of the offence. This is followed by whether the offender is a criminal repeater and then by whether the offence is very prevalent in their area of jurisdiction. None considers the background of the offender as very important in the choice of a sentence: none ranked it first and only one judge ranked it second. There is also evidence from the court records that social background inquiry is of little importance to the judges. In 45% of the cases taken from the three courts, the judges did not ask for information on the convicted offenders before passing their sentences. While a lot of time is spent proving the guilt of the accused, no time is spent on ascertaining the antecedents of the offender in order to arrive at an appropriate mode of disposition. Occasionally judges may ask the prosecuting police whether anything is known about the convicted offender before pronouncing his sentence. The information

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usually requested from the police is only about previous convictions which the police itself has no competence.

The second issue raised concerned the use of prisons. Most of the judges agreed that the prisons should be minimally used. Seven did not agree because they consider the prisons as serving a deterrent purpose. The following responses are noteworthy as to why prisons should not be minimally used:

Judge 6 (Area): "Because by putting the offenders in prison they will fear to repeat the same mistake when they are out."

Judge 2 (Area): "Minimizing imprisonment will not deter others. Fines does well in some other offences, but not in all."

Some judges however feel that imprisonment cannot help solve the problem of convicted offenders and it only goes on to aggravate it. The responses of two judges summarize the views of the others:

Judge 15 (Magistrate): "The prison merely corrupts and hardens inmates. It hardly reforms. It emboldens its occupants and gives them a couldn't-care any more attitude."

.../69.

Judge 11 (Magistrate): "It depends on what purpose offenders are being sent to prison. Prisons in Nigeria at moment lack facilities and personnel to cater for inmates."

These judges are aware of this fact but cannot help passing sentences of imprisonment. It seems that magistrates are more informed about the limited role of the prison in offender reformation than the Area Court judges; and this is reflected in their sentencing patterns. The Area Courts made more use of the sentence of imprisonment compared to the magistrate or customary court (see Chapter 5).

Asked as to what kind of offenders should be imprisoned, if prisons are to be minimally used, the judges included a wide range of offences -- stealing, robbery, rape, homicide, fraud and criminal repeaters. They were unable to specify what other kinds of corrective measures can be used and for what offences. Only one judge was able to specify that "probation, suspended sentences, execution of bonds for good behaviour and fines could equally be good measures."

That most of the judges do not think beyond imprisonment and fines is quite supported by the view of judge 9 (Area) who seem pessimistic about other corrective measures other than imprisonment:

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"preaching, lecturing or what? It depends. Throughout history all these have failed, but imprisonment and such like measures put fear in many minds and sometimes curtail greatly the commission of offences."

No doubt, such views are indicative of the limited knowledge of the judge as to the motivating forces towards commission of offences. Most offenders do not think about imprisonment at the stage of crime commission.

On the question of compensation, there is a divided opinion amongst the judges as to whether convicted offenders should be made to pay compensation to their victims instead of imposing fines or imprisonment sentences on such offenders. Those who agreed to the suggestion are of the view that the victim suffered from the acts of the offender and is therefore entitled to compensation. According to judge 8 (Area):

"There are offences where individuals are affected more than the public so their interests should prevail."

Those who disagreed are of the view that payment of compensation would encourage the repetition of criminal acts

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especially amongst the well-to-do, since they know that they would be asked to pay compensation to the victim. There are also others who feel that criminal cases would degenerate into civil matters, where victims battle for claims from their victimizers. Three responses seem representative of the views of the judges who disagreed with the idea of compensation:

Judge 10 (Area): "Some people because they are wealthy are likely to misuse their wealth in harrassing others knowing that they would only be made to pay compensation to the victim."

Judge 11 (Magistrate): "The offence and the law are considered from the state or community point of view and not individuals. The courts act on behalf of the State or community. It is left for the victim to take civil action against the victimizer."

Judge 12 (Customary): "Compensation should be paid only in cases which the law as it stands, makes provisions for such. It should however not be a general practice otherwise criminal

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matters may turn civil matters where one party will be fighting for claims or compensation from another."

The law is seen from the point of view of the State - protecting the interests of the State rather than the individuals who fall victims of criminal activities of others. At the same time, there is the argument that the criminal law and its sanctions are aimed at the protection of members of a society. One wonders how the interests of the members of a society are protected if they cannot be compensated for damages. It may well be that the individual is more interested in getting back his property stolen or damaged or "repairing" the bodily injury arising out of assault than a sentence of imprisonment or a fine that goes into the State's coffers.

Another issue raised related to sentencing was that of personal temperament. A Nigerian judge once asserted that "personal temperament determines how severe the trial judge or magistrate can be in particular cases and under particular circumstances".[3] The judge narrated how he was almost knocked down by a run-way driver. That morning he was presented with another driver charged with manslaughter.

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According to him, he was under "severe strain" as to what sentence he should pass. When these judges were asked whether the statement as well as the experience was true, ten judges agreed and six disagreed. The judges were also asked to narrate any kind of personal experience which affected their judgement in the court. Only two indicated such experience relating to traffic. One of the judges said that another driver hit his car. He reported to the police but ordered the case to be tried in another court. The second judge failed to state the circumstances of the case and what he did.

COURT RECORDS

Going through the record books of these courts, as stated in Chapter 2, one finds that most of the cases are difficult to trace because of their arrangement. Cases are recorded in a fat volume. The proceeding of one case is not finished before the next case and is consequently adjourned. One has to open back and forth the volumes to trace a case from its beginning to the end. It is quite cumbersome. Very often, one finds that the page and date references are inaccurate. Most of the judges disagreed with the suggestion that every case should have a file to

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make for easy reference, instead of the present practice of recording all cases in volumes. It is their view that if the filing method is adopted there would be cases of missing files or cases where contents of the files are tempered with -- practices that are almost impossible now.

Nearly all the judges agreed that it is a good thing for a judge to state the rationale for his sentence in every case he has disposed of in his recorded judgement. Unfortunately this is not so in practice. In 26% of the cases sampled in this survey, the judges did not state any rationale for the sentences they gave. Adeyemi also found that in 24% of the cases he sampled from an adult court, the judge did not state his sentencing aim.[4] The statement of reasons for which a particular sentence was given is very important for, at least, three reasons. A man should know why he is being given a particular punishment since that is what justice is all about. Secondly, it helps an appeal court to better understand the judge's sentence. And thirdly, it will help the judge to be consistent rather than arbitrary.

SUMMARY

From all that has been stated above, what conclusions can one reach about judges orientation in Nigeria? A major

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conclusion one can draw from the responses of the judges is that they lack any coherent and consistent orientation about crime causation, criminals and methods for their corrections. Given their views on crime causations, one would think that they would necessarily have a penal attitude that is consistent or reflective of such views. As will be shown later, and from their responses, this is not the case. Even those who attribute the crime-problem to the socio-economic order still recommend heavier penalties. On the whole the responses of these judges (especially Area Court judges), if at all they have any philosophy, indicate a retributive and deterrent philosophy. And the implication of this is that they are likely to pass retributive and deterrent, rather than correctional sentences most of the time. This is also buttressed by the fact that these judges do not consider the social background of the accused as an important factor in the determination of type and severity of a sentence.

The responses of these judges also demonstrate their limited knowledge in new developments in penal thinking, as well as of the contents of the codes.[5] Some of them do not make efforts to read journals in criminal law and

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criminology to acquaint themselves with recent developments in sentencing and correction of offenders. Neither do they master the provisions of the penal code which they can flexibly apply without necessarily imposing sentences of imprisonment or fines in all cases. In all the 510 cases sampled from the courts surveyed, none was disposed of by probation. It is unlikely that none of the offenders was qualified for probation. There are various sections of the codes and the procedure Acts which the judges can effectively use but do not, either because they do not devote attention to these codes to master their provisions or they have merely turned a blind eye to them.[6]

NOTES

1. See R. Hood, Sentencing the Motoring Offender, Heineman Books, London, 1972.

2. The law establishing the Area Courts prohibits legal representation in these courts. See Area Courts Edict of 1967.

3. F.O. Williams, "Sentencing processes, practices and attitudes as seen by an Appeal Court Judge", in T.O. Elias (ed): The Nigerian Magistrate and the Offender, Ethiope Publishing Co., Benin-City, 1972, p.36.

4. A.A. Adeyemi, "Scientific Approach to Sentencing", in T.O. Elias (ed): ibid. p.54.

5. This point has been earlier made by O. Fadipe and A.A. Adeyemi in T.O. Elias (ed): ibid, p.45. and p.61 respectively.

6. See O. Fadipe, "Sentencing processes, practices and attitudes as seen by a Magistrate and a Customary Judge", in T.O. Elias (ed.): ibid, p.45.

CHAPTER 5

SENTENCING PATTERNS OR PRACTICES

This chapter is limited to the issue of whether we can discern any sentencing pattern for these courts or whether these courts are merely engaged in their own individual sentencing practices. We need to distinguish the two words -- patterns and practices. We would regard as a "pattern" any coherent and consistent orientation of a court in the sentences passed for similar offences. How, for example, are property offences disposed off vis-a-vis person offences? Does a particular court or do all the courts send offenders to prison or impose fines for property offences than person offences? If we can discern such an orientation, then we can say that a sentencing pattern exists.

On the other hand, if we are unable to observe any of such orientation in a consistent fashion, we would conclude that the courts are merely engaged in their own sentencing practices. And the non-existence of a sentencing pattern is an indication of a lack of established principles which guide the judges as to how convicted offenders for each type of offence should be handled.

AREA COURTS

One hundred and sixty nine (169) cases were extracted from the two Area Courts. Table 5.1 below shows how the 169 cases were disposed off. Two major forms of sentences were used by the Area Courts -- sentences of imprisonment (29%) and sentences of fine with the alternative of imprisonment (23%).

Table 5.1

Modes of Disposition in Area Courts (%)

		%	N
a.	Sentences of:		
	Imprisonment	29.0	49
	Imprisonment and fine	2.4	4
	Fine only	15.4	26
	Fine with the alternative of imprisonment	23.0	39
	Caning	2.4	4
b.	Other forms of disposition:		
	Binding over	0.6	1
	Discharges, compounded, etc.	27.2	46
	T O T A L	100.0	169

A significant relationship exists between offence-type and sentence, if we classify the five offences into "person"

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(e.g. assault), "property" (e.g. theft, burglary, embezzlement) and traffic offences (see table 5.2 below). In the Area Courts property offenders are more likely to get imprisonment sentences without option of a fine, while traffic and person offenders are more likely to receive sentences of fine with the alternative of imprisonment.

Table 5.2

Offence-type and Sentence: Area Courts

Offence-type	Imprisonment	Fine or Imprisonment	Caning	Total (122)
Person	24%	74%	2%	(38)
Property	74%	21%	5%	(58)
Traffic	4%	96%	-	(26)

chi-square = 50.42, 4 degrees of freedom. Sig = .05
Cramer's V = 0.45

CUSTOMARY COURT

Table 5.3 below shows how the 176 cases taken from the customary court were disposed off. The major form of sentence passed by the court is fine with the alternative of imprisonment in default of payment of the fine (63%). A weak relationship exist between offence-type and sentence in

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this court (table 5.4 below). Property offenders are more likely to receive sentences of imprisonment compared to person and traffic offenders; while person and traffic offenders were mainly given sentences of fine with the alternative of imprisonment.

Table 5.3

Modes of Disposition in Customary Court

		%	N
a.	Sentences of:		
	Imprisonment	9.7	17
	Fine with alternative of imprisonment	63.1	111
b.	Other Forms of disposition:		
	Binding over	1.1	2
	Discharges, compounded, etc.	26.1	46
	T O T AL	100.0	176

Table 5.4

Offence-type and Sentence: Customary Court

Offence-type	Type of Sentence		
	Imprisonment	Fine or Imprisonment	Total (128)
Person	11.5%	88.5%	(26)
Property	24%	76%	(54)
Traffic	2%	98%	(48)

Chi-square = 10.75, 2 degrees of freedom. Sig = .05
Cramer's V = 0.29

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MAGISTRATE COURT

One hundred and sixty-five (165) cases were taken from the magistrate court. Table 5.5 below shows the modes of disposition of these cases in the magistrate court. Two major modes of disposition were employed by the magistrate court -- discharges and sentences of fine with the alternative of imprisonment. It is unlikely that an accused would be convicted in this magistrate court; but if convicted, the sentence is more likely to be a fine with the alternative of imprisonment. Of the 162 cases adjudicated by the court 54% were discharged and 35% were given sentences of fine with the alternative of imprisonment.

Table 5.5

Modes of Disposition in Magistrate Court

		%	N
a.	Sentences of:		
	Imprisonment	6.7	11
	Imprisonment and fine	1.9	3
	Fine only	1.9	3
	Fine with the alternative of imprisonment	35.2	57
b.	Other modes of disposition:		
	Binding over	0.6	1
	Discharges, compounded, etc.	53.7	87
	T O T A L	100.0	162*

*Three "improperly" completed cases excluded.

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Table 5.6 below indicates a strong relationship between offence-type and sentence in the magistrate court. Two striking points about the table are: (a) person and traffic offenders were given, majorly, sentences of fine with the alternative of imprisonment and (b) nearly all the sentences of imprisonment (other than one) are for property offences, reflecting a pattern similar to that observed in the Area and Customary courts.

Table 5.6

Offence-type and Sentence: Magistrate Court

Offence-type	Type of Sentence			
	Imprisonment	Fine or Imprisonment	Caning	Total(75)
Person	-	100%	-	(12)
Property	35%	62%	3%	(37)
Traffic	4%	96%	-	(26)

Chi-square = 14.62, 4 degrees of freedom. Sig = .05
Cramer's V = 0.31

In general the magistrate court disposed a majority of its cases by discharges, but where offenders are convicted, the major form of sentence passed by the court is fine with the alternative of imprisonment; the customary court also

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used fine with the alternative of imprisonment as its major form of sentence while the Area Court made more use of the sentences of imprisonment. In the three courts, property offenders are more likely to receive sentences of imprisonment. The major difference in the sentencing pattern of the courts is between magistrate and customary court on the one hand and Area courts on the other. Magistrate and customary courts made more frequent use of sentences of fine with the alternative of imprisonment, while Area courts made more frequent use of sentences of imprisonment.

Two types of sentences are therefore used by all the courts (see Tables 5.7 and 5.8). These are sentences of fine with the alternative of imprisonment (41%) and sentences of imprisonment (15%). Only in rare cases did the courts employ other disposition methods such as fines only, probation, suspended sentences, compensation or restitution. The five cases appearing under the category of "binding over" in table 5.7 were cases of assault where the judges found it expedient to bind the offenders over, perhaps given the nature of the relationship between particular offenders and their victims.

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Table 5.7

Modes of Disposition of Cases: All Courts

a. *Sentences of:*	%	N
Imprisonment	15.2	77
Imprisonment and fine	1.4	7
Fine only	5.7	29
Fine with alternative of imprisonment	40.8	207
Caning	1.0	5
b. Other forms of disposition:		
Binding over	1.0	5
Discharges, compounded, etc.	34.9	177
T O T A L	100.0	507*

*Three cases "improperly" completed excluded.

A significant relationship exist between offence-type and sentence (for all the courts). Property offenders received more of the sentences of imprisonment while person and traffic offenders were mainly given sentences of fine with the alternative of imprisonment (see Table 5.8)

Table 5.8

Offence-type and Sentence: All Courts

Offence-type	Type of Sentence			
	Imprisonment	Fine or Imprisonment	Caning	Total(325)
Person	16%	83%	1%	(76)
Property	46%	51%	3	(149)
Traffic	3%	97%	-	(100)

Chi-square = 69.02, 4 degrees of freedom. Sig = .05
Cramer's V = 0.33

CONCLUSIONS

We are now in a position to draw conclusions as to whether or not there is any discernible sentencing pattern in the courts. The above data indicate that two sentencing patterns are discernible. The first is that the three courts are oriented towards imprisonment sentences for property offences. Property offences account for 82% of the imprisonment sentences passed by the three courts. Other research findings seem to confirm this. Adeyemi found that in fifty-two cases sampled from an adult court, 80% of the sentences of imprisonment were for property offences.[1]

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Property offences dominate the crime scene in Nigeria.

Confronted with the problem of eradicating such offences in their area of jurisdiction, the courts go on to impose sentences of imprisonment with the hope that such a course will not only teach those concerned a lesson but will serve as a deterrent for others. It is also hoped that such a measure would keep the perpetrators of such crimes off the scene for a while. Milner suggested that "imprisonment is heavily used for stealing and associated offences, presumably on the basis that these are the offences which have caused so much concern in recent years and so are dealt with severely with the intention of deterring....."[2] It seems that, for property offences Nigerian courts are influenced by a deterrent philosophy. This is also confirmed by the survey of judges orientation in chapter 4. In a capitalist economy where marked disparity in property ownership exists, the laws are enforced in favour of owners of property since they also control the State.[3]

The second discernible pattern is in the general dispositional orientation of each type of court. In the disposition of their cases, the Area Courts seem to rely on sentences of imprisonment; the customary court seem to put

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emphasis on fine with the alternative of imprisonment while the magistrate court appears to discharge most of those brought before it, and gave sentences of fine with the alternative of imprisonment to most of those it convicts. The major difference is between magistrate and customary courts on one hand and Area courts on the other.

This pattern may well reflect the quality of personnel and procedure of each court. Magistrate courts and some Customary courts (like the one surveyed) are presided over by legally qualified personnel. These judges are more likely to pay attention to legal issues than the judges of Area courts. The high rate of discharges in the Magistrate court, for example, is attributable to the magistrate's greater concern for evidence to warrant conviction.

The attribution of differentials in sentencing pattern to type of court personnel and their sensitivity to technical-legal issues is buttressed by data on legal representation in the magistrate and customary courts (see tables 5.9 and 5.10). With a defence lawyer an accused stands an equal chance of being convicted or discharged in the magistrate court. In the customary court however, the probability of conviction with a defence lawyer is lower; and if convicted

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it is likely that the offender would be given a sentence of fine with the alternative of imprisonment (see table 5.9). On the whole only 23% of those who had lawyers were convicted while the rest (77%) were able to free themselves through the services of their lawyers. It is probable that an offender who is able to hire a defence lawyer would escape conviction. Unfortunately only few of those arraigned before these courts in Nigeria can afford to hire a lawyer. And in Area courts, legal representation is not allowed.

Table 5.9

Disposition of Cases with Legal Representation

Type of Court	Type of Disposition			
	Imprisonment	Fine or Imprisonment	Discharges and others	Total(35)
Magistrate	25%	25%	50%	(8)
Customary	4%	11%	85%	(27)

Chi-square = 5.09, with 2 degrees of freedom. Sig = .05.
Cramer's V = 0.38

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Table 5.10

Disposition of Cases without Legal Representation

Type of Court	Type of Disposition			
	Imprisonment	Fine or Imprisonment	Discharges and others	Total (302)
Magistrate	8%	38%	54%	(153)
Customary	11%	72%	17%	(149)

Chi-square = 48.23, 2 degrees of freedom. Sig = .05

Cramer's V = 0.40.

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NOTES

1. A.A. Adeyemi, "Scientific Approach to Sentencing", in Elias T.O. (ed.): The Nigerian Magistrate and the Offender, 1972 pp. 49-68.

2. A. Milner, The Nigerian Penal System, 1972, p.96.

3. Jacobs has demonstrated the hypothesis "that imprisonment for a violation of the property codes would be more likely in political systems where an unequal distribution of economic resources and power favored attempts by the affluent to influence legal outcomes". See Jacobs D., "Inequality and the legal order: An Ecological Test of the Conflict Model", in Social Problems, Vol.25, No.5 June 1978, pp.515-25. Wilson (1971) has also shown, by comparing police departments, that in affluent communities the police put greater emphasis on the solution of crimes against property. See Wilson J.Q., Varieties of Police Behavior, New York: Atheneum, 1971.

CHAPTER 6

DISPARITIES IN SENTENCING

Two criticisms have often been levelled against the courts in any discussion on sentencing. The first concerns the wide judicial discretion vested in the administrators of sentences. This discretion is aimed at enabling judges vary sentences in relation to the circumstances of the offence and/or the offender. A majority of the laws are consequently so framed that the judge has a wide option within the range of the sentence statutorily stipulated (see Chapter 3). The second issue, which is also related to the first, is the apparent lack of objectivity in the sentences passed by judges for apparently similar offences. The fact that judges are given wide discretionary powers, coupled with other subjective factors, brings about disparities in sentences for similar offences. This chapter is therefore concerned with the issue of disparities in sentences.

TYPE OF DISPARITIES

By sentence disparity we mean variations in sentences passed on offenders who have committed similar offences or

whose circumstances in the commission of the same type of offence do not differ remarkably. Theoretically sentences passed on two offenders convicted of similar offences should be the same. Variations can however occur given a number of objective factors present in one case and absent in the other. Such factors include the health status of the offender e.g. whether mentally ill; the prior record of the offender e.g. whether he is a repeater; and the immediate circumstances of the offence e.g. whether offence was victim-precipitated. However, it is believed that some variations in sentences meted out to convicted offenders are probably not due to such objective factors but "are the results of nothing more than the predilections of individual judges".[1]

Regardless of the reasons, three kinds of sentence disparities can be distinguished conceptually. We can compare the sentences of different courts for various offences to see how they diverge or converge -- that is disparity between courts. Secondly, we can compare sentences passed by one court for various offences to see how consistent or inconsistent the court has been in disposing off cases of similar nature -- that is disparity

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within a court. Thirdly, it is possible to examine the sentences of judges who sit in one court in rotation and see how the different judges sentence offenders. By that we should be able to determine a "lenient" and "wicked" judge in relation to the difference offences and offenders. We shall not be concerned with this last approach since judges do not sit in rotation in Nigerian lower courts, except that they are occasionally transferred from one court to the other when the need arises. The analyses here, therefore, are on disparities between courts and within courts.

DISPARITY BETWEEN COURTS

It was noted in Chapter 5 that as a general sentencing pattern, the magistrate court, other than its high rate of discharges, made frequent use of sentences of fine with the alternative of imprisonment just as the customary, while the Area courts made more use of sentences of imprisonment. An examination of the sentences passed by the three courts for the five offences also show variations (see Tables 6.1 - 6.6).

While the Magistrate court never gave a single sentence of imprisonment for assault, 17% of the imprisonment

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sentences of the Area courts, as well as of the Customary court, were for assault. The Area courts awarded a maximum of 36 months imprisonment for assault as compared to the Customary court's 12 months. It is only the Area courts that made use of the sentences of pure fines for assault. The Magistrate court gave all its convicted assault offenders sentences of fine with the alternative of imprisonment as compared to the Customary court's 40%. There is however little variation in the minimum of this form of sentence awarded by the three courts (see Table 6.1(b)).

Table 6.1

Inter-Court Variations in Sentences: Assaults

(a) Imprisonment Sentences:

Variations	Magistrate	Area	Customary
Maximum	-	36 months	12 months
Minimum	-	14 days	6 months
Range	-	35½ months	6 months

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(b) Sentences of fine with alternative of imprisonment*:

Variations	Magistrate	Area	Customary
Maximum	1 mth : ₦30	1 mth : ₦44	1 mth : ₦37.50
Minimum	1 mth : ₦ 8	1 mth : ₦10	1 mth : ₦10
Range	1 mth : ₦22	1 mth : ₦34	1 mth : ₦26.50

*Figures for this and similar tables were arrived at by dividing amount of fine by months of imprisonment awarded by the court for each offence, in default of payment of the fine.

Twenty-eight percent (28%) of the sentences of imprisonment in the magistrate court were for theft as compared to 53% of the Area court and 41% of the Customary court. The maximum sentences awarded for this offence in the three courts were: Magistrate - 36 months, Area courts - 60 months, and Customary courts 24 months. The range between the maximum and minimum vary from 58 months in the Area courts to 18 months in the Customary court. The Magistrate court passed only one sentence of fine amounting to ₦150, while the Area courts awarded three fines ranging between a maximum of ₦84 and a minimum of ₦5 (See Table 6.2). Very minimal variations however exist in sentences of fine with the alternative of imprisonment for theft offences awarded by the three courts.

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Table 6.2

Inter-Court Variations in Sentences: Theft

(a) Sentences of Imprisonment:

Variations	Magistrate	Area	Customary
Maximum	36 months	60 months	24 months
Minimum	3 months	2 months	6 months
Range	33 months	58 months	18 months

(b) Sentences of Fine with alternatives of imprisonment:

Variations	Magistrate	Area	Customary
Maximum	1 mth : ₦41.67	1 mth : ₦22	1 mth:₦26.67
Minimum	1 mth : ₦ 5	1 mth : ₦11	1 mth:₦10
Range	1 mth : ₦36.67	1 mth : ₦11	1 mth:₦16.67

Sixteen offenders were given sentences of imprisonment for burglary by the three courts. The maximum awarded ranged between 60 months in the Customary court to 12 months for both the Magistrate and the Area courts. Ten offenders on the other hand were given sentences of fine with the alternative of imprisonment (see Table 6.3). There is very little variation in this form of sentence between the courts

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when one relates the amount of fine to months of imprisonment in default of payment of the fine.

Table 6.3

Inter-Court Variations in Sentences: Burglary

(a) Sentences of Imprisonment:

Variations	Magistrate	Area	Customary
Maximum	12 months	12 months	60 months
Minimum	6 months	3 months	3 months
Range	6 months	9 months	57 months

(b) Sentences of Fine with alternative of imprisonment:

Variations	Magistrate	Area	Customary
Maximum	1 mth : ₦16.67	1 mth : ₦11.67	1 mth :₦20.83
Minimum	1 mth : ₦10	-	1 mth :₦13.10
Range	1 mth : ₦ 6.67	-	1 mth :₦ 7.73

The major form of sentence for traffic offences is fine with the alternative of imprisonment. Traffic offences account for 40% of sentences of fine with alternative of imprisonment passed by each of the courts. The range between the maximum and minimum for this form of sentence

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vary from one month : ₦45 in the Magistrate court to one month : ₦10 in the Area Court.

DISPARITY WITHIN COURTS

The disparity in sentences for the offences under investigation is not limited to between courts. It also exists within each court. That is to say there are variations in the sentences passed by each court for similar offences. Tables 6.4 - 6.6 show the maximum and minimum sentences awarded by each court for each offence.

In the Magistrate court, sentences of imprisonment range between 36 months and 3 months for theft offences; between 12 months and 6 months for burglary and between 24 months and 9 months for embezzlement. The Magistrate court passed only one sentence of fine for theft (₦150) and also one for burglary (₦20 fine plus 6 months imprisonment). Sentences of fine with alternative of imprisonment show minimal variations.

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Table 6.4

Sentencing Variations: Magistrate Court
(b) Sentences of Imprisonment (14 cases):

Variations	Theft	Burglary	Embezzlement	Traffic
Maximum	36 months	12 months	24 months	6 months
Minimum	3 months	6 months	9 months	-
Range	33 months	6 months	15 months	-

(b) Sentences of fine with alternative of imprisonment (57 cases):

Variations	Assault	Theft	Burglary	Embezzlement	Traffic
Maximum	1mth:₦30	1mth:₦41.67	1mth:₦16.67	1mth:₦25	1mth:₦50
Minimum	1mth:₦8	1mth:₦5	1mth:₦10	1mth:₦5	1mth:₦5
Range	1mth:₦22	1mth:₦36.67	1mth:₦ 6.67	1mth:₦20	1mth:₦45

The Area courts seem to have the greatest amount of sentencing disparity for each offence. Imprisonment sentences for assault range between 36 months and 14 days; between 60 months and 2 months for theft and between 36 months and one month for burglary. Area courts, however, made more use of fines than the Magistrate and Customary courts. The fines range between ₦84 and ₦5 for theft and between ₦300 and ₦50 for traffic offences.

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Table 6.5

Sentencing Variations: Area Courts

(a) Sentences of imprisonment (49) cases:

Variations	Assault	Theft	Burglary	Embezzlement	Traffic
Maximum	36 months	60 mths	12 mths	36 months	36 months
Minimum	14 days	2 mths	3 mths	1 month	-
Range	35½ mths	58 mths	9 mths	35 months	-

(b) Sentences of fines (28 cases):

Variations	Assault	Theft	Burglary	Embezzlement	Traffic
Maximum	₦64	₦84	₦30	₦20	₦300
Minimum	₦10	₦ 5	-	₦10	₦ 50
Range	₦54	₦79	-	₦10	₦250

(c) Sentences of fine with alternative of imprisonment (30 cases):

Variations	Assault	Theft	Burglary	Embezzlement	Traffic
Maximum	1mth:₦44	1mth:₦22	1mth:₦11.67	1mth:₦20	1mth:₦25
Minimum	1mth:₦10	1mth:₦11	-	1mth:₦18.33	1mth:₦15
Range	1mth:₦34	1mth:₦11	-	1mth:₦1.77	1mth:₦10

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Most of the sentences passed by the Customary court were in the form of fines with the alternative of imprisonment. There are very little differences in the sentences of this type awarded by the court to burglary as well as theft offenders. The greatest disparity is in assault and traffic offences.

Table 6.6

Sentencing Variations: Customary Court

(a) Sentences of imprisonment (17 cases)

Variations	Assault	Theft	Burglary	Traffic
Maximum	12 months	24 months	60 months	36 months
Minimum	6 months	6 months	3 months	-
Range	6 months	18 months	57 months	-

(b) Sentences of fine with alternative of imprisonment (110 cases):

Variations	Assault	Theft	Burglary	Traffic
Maximum	1mth:₦37.50	1mth:₦26.67	1mth:₦20.83	1mth:₦40
Minimum	1mth:₦10	1mth:₦10	1mth:₦13.10	1mth:₦10
Range	1mth:₦26.50	1mth:₦16.67	1mth:₦ 7.73	1mth:₦30

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EXPLANATION OF DISPARITIES

Various factors have been suggested by researchers to explain disparities observed in sentences passed for similar offences. Most researchers (e.g. Gaudet: 1933; Shoham: 1959, Green: 1961, Hood: 1970[2]) attribute the disparities between and within courts to differences in social backgrounds, attitudes and personalities of those who award the sentences. It has been observed that social backgrounds and penal attitudes of judges are significantly related to the sentences they award. While there was no attempt to develop rigorous attitudinal test, the survey of the views of the judges on certain issues in Chapter 4 shows that differences in penal orientations exist among these judges.

The judges have different views on crime causation, on the granting of bail, use of prisons etc. They also recommended different punishments for various offences which they regard as serious. Consequently differences in sentences are expected. The responses of the Area Court judges seem more striking: they seem to have a more "punitive" attitude than the others. And as noted in Chapter 5, there is a significant difference between the

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sentencing patterns of the magistrate and customary court on the one hand and the Area courts on the other. It was also suggested that such a difference may well reflect the quality of personnel and procedure of each court.

Table 6.7 below shows a significant relationship between court and sentences for property offences. A greater proportion (74%) of the sentences of the Area courts were in form of imprisonment while the magistrate and customary

Table 6.7

Court and Sentence: Property Offences

Court	Sentence			
	Imprisonment	Fine or Imprisonment	Caning	Total(149)
Magistrate	35%	62%	3%	(37)
Area	74%	21%	5%	(58)
Customary	24%	76%	-	(54)

Chi-square = 37.18 with 4 degrees of freedom. Sig = .05
Cramer's V = 0.35

courts passed a greater proportion of their sentences in form of fine with the alternative of imprisonment. Even for person offences there are slight variations in the

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degree to which each court made use of the same sentence. While the magistrate never gave a single sentence of imprisonment for person offence, 24% of the sentences of imprisonment in the Area courts and 12% in the customary court were for person offences. The type of court is therefore significant in explaining the observed inter-court disparities.

Court differences are also exhibited in sentencing patterns in relation to bail, information on the offenders, and legal representation. Table 6.8 below shows the relationship between court and sentence for those granted bail. The Magistrate and Customary courts awarded a greater proportion of their sentences (81.5% and 70% respectively) in form of fine with the alternative of imprisonment, while the Area courts awarded only 29% of this form of sentence, for those granted bail.

Table 6.8

Court and Sentence: Offenders granted bail

Court	Sentence		
	Imprisonment	Fine or Imprisonment	Total (64)
Magistrate	18.5%	81.5%	(27)
Area	71%	29%	(7)
Customary	30%	70%	(30)

Chi-square = 7.46. with 2 degrees of freedom.
Cramer's V = 0.34.

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The degree to which the judge of each type of court ask for information about the convicted offender before passing their sentences also vary. Only in 22% of the cases did the judges ask for information about the offenders before the pronouncement of their sentences. Of the one hundred and fourty-four cases where information about the offenders was sought, 53% are from the Area courts, 38% from the customary court and 9% was from the Magistrate court. It is ironical that the magistrate court rarely ask for information about the accused. This may well reflect the magistrate's obsession with legal matters than with "social factors" about the offender. Ironically too, the Area courts that readily ask for information about the offender is the most "punitive" of the three courts. The judge may well use information given on the convicted offender to "size" him up. Knowledge that the accused has once been convicted, has no visible or stable means of livelihood, of no fixed address, etc. can inform the judge about what type of person the accused is and how to "deal" with him. The Area courts account for a greater proportion (63%) of all the imprisonment sentences passed by all the courts.

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Table 6.9

Court and Pre-sentence Information

Court	Pre-sentence Information		
	Asked for Information	Did not ask for information	Total (341)
Magistrate	11%	89%	(103)
Area	86%	14%	(70)
Customary	26%	74%	(168)

Chi-square = 114.57, with 2 degrees of freedom. Sig = .05
Cramer's V = 0.58

Data on legal representation in the magistrate and customary courts also strengthen the point that sentencing differentials are partly attributable to type of court. It was noted in Chapter 5 that with a defence lawyer one stands an equal chance of being convicted or discharged in the magistrate court; and in the customary the probability of conviction is lower and if convicted the sentence is more likely to be fine with the alternative of imprisonment (see Tables 5.9 and 5.10, Chapter 5).

Other than court differences (especially differences between their presiding judges), offender characteristics have also been used to explain sentencing disparities.

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Some writers in an attempt to prove the point of discrimination in the administration of justice relate social background of offenders to sentences passed between and within courts. It is contended that lower socio-economic groups receive different forms of sentences from higher socio-economic groups, even for similar offences.[3] With the present data however, offender characteristics (such as sex, age, occupation) are not significantly related to sentencing patterns and therefore do not explain sentencing disparities between and within the three courts (see Tables 6.11 and 6.12 below) investigated. This finding is probably because most of the offenders sentenced in the three courts form a homogenous group:[4] nearly all are from lower strata occupations, and mostly males (95%). (See table 6.10). Perhaps the socioeconomic differential is much at play at the dispositional stage (i.e. discharge vs conviction) rather than at the sentencing stage. For example, having a defense lawyer is significant, especially in the customary court, in determining whether an offender will be convicted or discharged.

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Table 6.10

Occupation of Offenders: All Courts

Occupation	%	N
Farming, cattle rearing, etc.	12.4	31
Labourers, cooks, unemployed, housewives, etc.	18.5	46
Artisans - mechanics, drivers, goldsmiths, etc.	37.7	94
Clerical/uniformed-civil servants, security guards, army, police, etc.	12.4	31
Petty traders	16.9	42
Others	2.0	5
TOTAL	99.9	249*

*Information not available in the records on occupation in 51.2% (261) of the cases.

Table 6.11

Court and Sentence Controlling for Age

(a) 18-30 years Age Group:

Court	Sentence			
	Imprisonment	Fine or Imprisonment	Caning	Total (124)
Area	43%	56%	1%	(73)
Customary	23.5%	76.5%	-	(51)

Chi-square = 5.72, with 2 degrees of freedom. Sig =.05
Cramer's V = 0.21

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(b) 31 years and above:

Court	Sentence		
	Imprisonment	Fine or Imprisonment	Total (49)
Area	50%	50%	(22)
Customary	15%	85%	(27)

Chi-square = 5.51, with 1 degree freedom. Sig =.05
Phi = 0.38

Table 6.12

Court and Sentence Controlling for Occupation

(a) Farmers, Labourers, Unemployed, etc:

Court	Sentence			
	Imprisonment	Fine or Imprisonment	Caning	Total (52)
Magistrate	-	100%	-	(2)
Area	47.5%	45%	7.5%	(40)
Customary	20%	80%	-	(10)

Chi-square = 5.88, with 4 degrees of freedom. Sig = .05
Cramer's V = 0.24

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(b) Artisans:

Court	Sentence		
	Imprisonment	Fine or Imprisonment	Total (74)
Magistrate	-	100%	(4)
Area	18.5%	81.5%	(27)
Customary	5%	95%	(43)

Chi-square = 4.17, *with 2 degrees of freedom. Sig* = .05
Cramer's V = 0.24

(c) Clerical/Uniform:

Court	Sentence		
	Imprisonment	Fine or Imprisonment	Total (25)
Magistrate	25%	75%	(4)
Area	47%	53%	(17)
Customary	-	100%	(4)

Chi-square = 3.36, with 2 degrees of freedom. Sig = .05
Cramer's V = 0.37

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(d) Traders:

Court	Sentence		
	Imprisonment	Fine or Imprisonment	Total (19)
Magistrate	-	100%	(5)
Area	64%	36%	(11)
Customary	33%	67%	(3)

Chi-square = 5.8 with 2 degrees of freedom. Sig = .05
Cramer's V = 0.55

One measure that can bring about some consistency in sentencing is the way penal provisions are framed. Some laws make a categorization of offences and go on to give the type and range of sentences that can be given for each category of offences, stating the maximum and minimum terms of fines or imprisonment. The examination of the laws in relation to the five offences investigated (see Chapter 3) shows that the laws are so loosely worded and so discretionary as to engender disparities in sentences for similar offences. The judge has a wide range of choice as to type and amount of sentence to award in a particular case, depending on his/her "perceived" seriousness of the offence. In such a situation there is bound to be disparities in sentences

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not only between the courts but also within each court, for apparently similar offences.

Intra-court disparities are perhaps much more difficult to explain. Other than the statutory sentencing framework, transfers of judicial personnel may well account for some of the observed intra-court disparities. Usually judges are transferred from one court to the other when the need arises. Within the specified period of this investigation (1971-77) for example, four (4) judges presided over the magistrate court surveyed. Such changes can lead to inconsistencies in sentencing patterns within a court as each judge will have his/her own sentencing habits or behaviour.

Professional fraternity or sympathy between judges and lawyers (especially in the customary and magistrate courts) cannot be ruled out as a factor that may account for some of the intra-court disparities in sentences. As was noted, there is a significant relationship between legal representation and the outcome of a case especially in the customary court. Judges may want to sympathize with their lawyer colleagues appearing for accused persons by disposing their cases favourably so as not to jeopardize their colleagues' "daily-bread". One often hears remarks of these judges to

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the effect that the defense lawyer's plea was a mitigating factor in the award of a sentence. Two offenders charged for a similar offence are therefore likely to receive different sentences (or different amount of the same sentence) when one has a defense lawyer and the other does not. And the ability to hire a lawyer depends on one's educational and occupational status. These themselves are cues to the judge as to the accused's status in society and how he is to be treated.

NOTES

1. Institute of Judicial Administration, Disparity in Sentencing of Convicted Offenders, New York, 1954, as reported in Green, E., Judicial Attitudes in Sentencing, McMillan and Co., London, 1961, p.7.

2. See Gaudet et. al.: 1933, op. cit., Supra note 12 Chapter 1, Shoham: 1959, op. cit., Supra note 11 Chapter 1, Green: 1961, op. cit., Supra note 13, Chapter 1, Hood: 1970, op. cit., Supra note 15.

3. For a discussion of the relationship between offender characteristics and sentencing see: Burke and Turk, "Factors affecting post-arrest dispositions: A Model for analysis", in Social Problems, Vol.22 No.3 1975; Cohen and Kluegel: "Determinants of juvenile courts dispositions: Ascriptive and achieved factors in two metropolitan Courts", in American Sociological Review, Vol.43 April 1978 pp.162-176.; G. Green: Judicial Attitudes in Sentencing, McMillan and Co. London, 1961.

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4. The homogenous nature of those sentenced in these courts is in itself an index of discrimination in the administration of justice in Nigeria. Or how else can we explain the complete absence of the professional, managerial and other higher cadre occupational groups from the records of these courts? Our explanation lies in the fact that this group being privileged, has "privileged connections with the law enforcement agents so that they are hardly ever charged to court. Perhaps the "filtering" as to who should be "processed" takes place at the police stage.

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CHAPTER 7

SENTENCING IN NIGERIA: CONCLUSIONS AND DISCUSSION

In this chapter a summary of the research findings on sentencing in Nigeria and a discussion of the related issues are presented.

SUMMARY OF RESEARCH FINDINGS ON SENTENCING

On the basis of the present study, the following conclusions can be drawn about sentencing in Nigeria:

(i) The major forms of sentences readily used by Nigerian magistrates and judges are sentences of imprisonment or fines with the alternatives of imprisonment. Rarely do the judges use other forms of correctional sentences such as probation, conditional discharge, restitution, compensation.

(ii) There is a significant relationship between type of sentence and type of offence. Property offences (e.g. stealing, burglary, embezzlement, etc.) receive imprisonment sentences more frequently than do other types of offences. On the other hand person and traffic offences are more often than not disposed off by sentences of fine with the alternative of imprisonment.

(iii) The probability of the traffic offender being convicted is much higher than that of a person or property offender. Perhaps traffic violations are more easily proved by the police relative to the other offence types. If convicted, the traffic offender most probably will be given the sentence of fine with the alternative of imprisonment.

(iv) The courts seem to favour "middle-range" imprisonment sentences i.e. 3-12 months duration. It is only in offences of serious gravity that longer terms of imprisonment are imposed.

(iv) In sentences of fine with the alternative of imprisonment, the amounts of fine relative to the length of imprisonment are somewhat subjective.

(vi) The presence of a defence lawyer, to some extent, affects the outcome of the courts' decisions. With a defence lawyer the accused will probably be discharged; but even if convicted, he/she is more likely to be given the sentence of fine with the alternative of imprisonment.

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(vii) Social-demographic factors such as sex, occupation, age do not have any significant influence on the outcome of courts' decisions. It appears that judges do not take offenders background into consideration in deciding sentences. Perhaps the socio-economic differential is at play at the dispositional stage rather than at the sentencing stage.

(viii) In terms of degree of "punitiveness" of the sentences passed on the offenders the Area Courts seem the most punitive, and the Magistrate Court the least punitive. The Customary Court is somewhat in the middle of the continum. Area Courts pass more of imprisonment sentences than the other two courts, presumably on grounds of deterrence, retribution and protection. In fact there is a strong relationship between type of court and sentencing rationale.

DISCUSSION

It was noted in Chapter 1 that the literature on sentencing in Nigeria is scanty. Other than two legal scholars who have carried out empirical investigation, the writings on sentencing are nothing but a critique of the system. In spite of this shortcoming, two issues have

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emerged from both theoretical and empirical discussions on sentencing in Nigeria. These relate to the outdatedness of laws and sanctions and lack of rational guide to sentencing.

It is contended that the colonial laws Nigeria inherited from Britain are inappropriate and consequently, their penalties do not reflect the values of the people on whom they are administered. The laws do not take account of the cultural context of certain acts which they prohibit. Secondly, the types of sanctions allowed by these laws are so limited and standardized that they ignore the facts of social change, the vagaries of individual differences and, most crucially, costs and benefits of sentencing alternatives. Most of the acts now prohibited by these laws have been dealt with, in the past, in various ways. Milner notes that:

> For many offences of varying significance, particular sanctions were not laid down in advance but penalties depended on the circumstances and dictates of the individual case. The personal characteristics of the offender were often at the crux of decision... Yet there were instances of specified penalties following upon certain offences. Fixed fines might be exacted, especially for stealing; a death sentence was frequently obligatory for unlawful homicide....[1]

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Although there are various sections in the codes, the criminal procedure Act and the Criminal Procedure Code that permit judges to award other forms of sentences, most of the laws make provision for two forms of sentences -- fines and/or imprisonment. These therefore constitute the two major forms of sentences passed by Nigerian judges. Of the 335 offenders convicted in the three courts for the five offences investigated in the present study, 62% were given sentences of fine with the alternative of imprisonment, 25% were given imprisonment sentences and 9% fined. Only 4% were given other forms of sentences -- caning, binding over and settlement out of court. The general concensus both in the legal and non-legal circles is that a review of the codes is long over due. Such a review would entail a decriminalization of certain acts now prohibited by these codes (and thus reducing the burdens of the criminal justice system) as well as providing for a variety of sanctions for various categories of offences.

While the nature of the laws may perhaps dictate the present pattern of sentences, the administrators of these sentences cannot be totally absolved. Their training (whether English or Islamic law) leads to the mechanical

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or non-judicious application of these laws. It seems that those trained in English law (i.e. magistrates and presidents of some of the customary courts) do not readily use sentences of imprisonment as compared to those trained in Islamic law (Area courts). In the 162 cases adjudicated by the Magistrate court, only 9% were sentences of imprisonment. A greater proportion of the offenders (54%) were discharged while 37% were sentences of fine with the alternative of imprisonment. The customary court also disposed only 10% of its 176 cases by sentences of imprisonment while the greater proportion of the sentences (69%) were fines with alternative of imprisonment. On the other hand 31% of the cases adjudicated by the Area courts (169) were sentences of imprisonment while 38% were sentences of fine with the option of imprisonment. As a general sentencing orientation, the Area courts are more disposed towards imprisonment sentences (perhaps, reflecting the nature of Islamic socio-legal values), the customary court towards fine with alternative of imprisonment just as the magistrate court. The magistrate court however discharged more of its cases, an indication of the magistrate's concern for evidence to warrant conviction.

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The second issue about sentencing in Nigeria which has generated debate relates to lack of any consistent sentencing philosophy which guide the judges in the passing of sentences.[2] Consequently, their sentences are likely to be haphazard. According to the report of the National Conference on the Prison System: "in any criminal trial, we find our magistrates and judges paying the greatest detail to the facts establishing the guilt or innocence of the accused person whilst they just hand down their sentences in an off-the-cuff manner".[3] It seems therefore that the courts lack any direction in the sentencing process.

The lack of any consistent philosophy which serve as guide in sentencing for various categories of offences may well account for the variations in the sentences passed by the courts surveyed. Not only are there variations among the courts in the way they disposed off the five offences, but such variations also appeared within each of the courts investigated.

Related to the above is the issue of presentence information which could be of help to the judges in arriving at appropriate sentences. The judges do not make any inquiry

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as to the social backgrounds of the offenders they sentence. If at all they do, they merely ask the police whether anything is known about the offender, implying whether or not the offender had been convicted before. The judges' ratings of factors they consider in determining the type and severity of sentence clearly show that social background of the offender is of little importance in the passing of sentences. None of them ranked it first, and only one judge ranked it second. The records of the courts surveyed also show that the judges do not ask for any presentence information. Only in 22% of the cases did they ask for information about the offender. Going through the court records one rarely finds information about the socio-demographic characteristics of the offenders.

Presentence information is very valuable in the passing of an appropriate sentence. Such information can be given either by the police or other court officials such as probation officers, social welfare officers and social workers. Unfortunately Nigerian courts do not have such personnel who can gather presentence information (about the accused) that might be useful to the judge in passing an appropriate sentence.

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1. A. Milner, The Nigerian Penal System, 1972, p.32-33.

2. A.A. Adeyemi has noted that even the Supreme Court, whose decision should serve as guide to the lower courts, has contributed minimally to the development and formulation of penal policy in Nigeria because, much of the court's energies are devoted to the hearing of appeals. See A.A. Adeyemi, "The contribution of the court to the development of penal policy", in A.B. Kasumu (ed), The Supreme Court of Nigeria, Ibadan: Heineman, 1977, pp.133-177.

3. Report of the Conference on National Prison System, Lagos 1969, as quoted by A.Ademola in his opening address to the Conference on Nigerian Magistrate and the offender. See Elias T.O. (ed): The Nigerian Magistrate and the Offender, Benin City: Ethiope Publishing Co. 1972, p.1.

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CHAPTER 8

SUGGESTIONS FOR IMPROVING SENTENCING IN NIGERIAN COURTS

The rising wave of crime in Nigeria in recent years has generated considerable concern both in public and private circles. Individuals and private organizations have developed a number of security measures to ward off victimization (e.g. employment of security guards, dogs, extra locks, warning and scaring alarms, etc.) The government on its own part has responded to the situation through various piece-meal efforts (e.g. new laws and decrees, frequent checks and patrols, police warnings to the public through media organizations etc). The problem of effective crime control and prevention however must be seen from a totalistic point of view, rather than through piece-meal effort. Such an approach calls for the development of a new penal policy which should be part of the national planning policy. The policy should state in an unambiguous terms the ideals or objectives of the nation's criminal justice policy. This will clearly affect all arms of the criminal justice system. At present such a coherent policy

orientation in the area of crime control, just as in other areas, is lacking.

Consequently, it is suggested that there is need to draw up a new penal policy for the country; one which should take cognisance of the social changes that have taken place over the years. The ultimate aim of such a policy should be the prevention or reduction of criminal victimization.

While this may be the basic starting point in the issue of crime prevention and control, radical changes in the penal policy will ultimately depend on new leadership with the political will. However, efforts can be made to re-examine the present system. Suggestions for a re-examination should emanate from a critical analysis of the functioning of all the arms of the criminal justice system as well as on research findings on these. In fact a new penal policy should benefit from research findings on the operation of the old system. There is therefore need for more research work on all arms of the criminal justice system on the basis of which a new penal policy can be developed.

It was earlier stated that the sentence can be an effective instrument which the courts can use in crime prevention and control. Effective use of it however depends

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on the laws and the sanctions they make available, the sentencers themselves and their understanding of those they sentence. It is in these areas, therefore, that I intend to make some suggestions based on the findings of this study.

THE LAWS AND SANCTIONS

There is a general concensus both in legal and non-legal circles that the laws of this country are overdue for a review. Happily the federal government has set up a permanent Law Review Commission whose membership embrace both legal and non-legal (social science) experts. In the law review exercise, the Commission should pay attention to the suggestions stated below:

The need to decriminalize certain offences bordering on minor deviance, which members of the community are now willing to tolerate e.g. minor assaults, noise-making, idleness, wandering, etc. Traffic rule violations such as failure to insure, driving without licence, exceeding speed limit should be taken away from the ambit of the criminal law. Police should be empowered to handle such cases and impose fines without necessarily congesting the courts calendar. The amount of fines should

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be fixed. The Lagos State Government for example has already started operating such a system in area of traffic.[1] A sentence of imprisonment for such minor offences is in no way rehabilitative.

The variety of penal sanctions in the codes should be increased. Emphasis should be placed on individualization of punishment, instead of the present standardized sanctions of fine or imprisonment or both. Magistrates and judges should be given the power to pass sentences other than those stated by the law for a particular offence if such a sentence can effectively correct the offender. The range of sanctions should include the use of fines only for certain categories of offences and offenders; payment of compensation to victim without other punitive sanctions such as imprisonment or fine; restitution of property or thing stolen; community labour service by offenders; conditional discharge; suspended sentences; and probation. Guidelines for the award of these sentences should be stated clearly in the codes. These sentences should be the modal orientation of magistrates and judges and it is only when these are unsuitable that the judges should resort to the use of imprisonment.

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One of the reasons why inappropriate sentences may be awarded for certain categories of offenders is lack of information about the offenders. The codes should contain a provision that makes it mandatory for the judge to seek presentence information on the convicted offender before passing a sentence. This may require the judge postponing the pronouncement of the sentence, until such information about the convicts social antecedents have been made available to him for consideration.

Attempts should be made to "weight" offences in the codes. At present certain offences less harmful or dangerous to society carry more punitive terms than other more threatening offences. For example, rape which is less rampant and less threatening in most Nigerian communities carries an imprisonment term of 14 years while fraud or embezzlement which is more widespread carries only 7 years imprisonment. The codes should make a categorization of offences and offenders and the types of sentence that should be passed for each. The following could be an example:

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Offence Categories	Penal Sanctions
A. Minor Offences: e.g. assaults resulting in injuries, thefts whose value is below ₦100	Fines, restitution, compensation, suspended sentence, community service, probation.
B. Serious Offences; e.g. Thefts over ₦100, cheating, burglary, rape, breach of trust, driving causing death	Fines, suspended sentences, imprisonment not exceeding 2 years.
C. Very serious offences: e.g. Embezzlement, falsification of accounts, fraud, homicide, armed robbery	Restitution and/or imprisonment not more than 10 years and not less than 5 years.

. A first offender should not be given a sentence of imprisonment unless it is within category C. Also, a sentence of fine or option of imprisonment should not be passed. If a fine is suitable and considered sufficient to prevent future occurrence of an act it should be awarded without the option of imprisonment. The offender so fined should be made to pay the fine in instalments if he/she cannot pay it at once. There is no way by which we can weigh a term of imprisonment in monetary terms. Quite a large number of convicts languish in jails for inability to fines.

A section should be inserted in the codes that make

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it mandatory for every judge to state the reasons for every sentence passed. This should serve as a guide for future sentences. It will also aid the judge in being consistent in his/her sentences.

Lastly, the codes should be re-written in clear and simple language, demystified of legal jargon. Some offenders escape justice on legal-technical grounds while others are punished for acts which they have not committed. This arises out of technical framing of the laws.

COURT PERSONNEL

The responses of the judges to the questions put to them clearly indicate the narrowness of their training. Their training is limited to the application of the laws. They have little or no knowledge of those they "process" in their courts. It is here that training in the social and behavioural sciences become relevant. In fact it has been suggested that the task of the judge should be limited to application of the law in a particular case, and the determination of the guilt of the accused; that the issue of what type of sentence is suitable for the offender should be determined by social and behavioural scientists. Sentencing

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boards consisting of both judges and experts in area of social and behavioural sciences -- sociologists, social welfare and probation officers, social workers, psychologists and psychiatrists -- have therefore been suggested.[2] It would be the duty of such boards to consider the information about the offender already found guilty of an offence and award an appropriate corrective sentence.

There is dearth of such manpower in the country today. Consequently this may not be possible as of now. But the situation can be improved if judges can be made to attend courses in social and behavioural sciences organized by Nigerian universities. Alternatively, such courses should be part of legal training in the faculties of law in Nigerian universities and the Law School.[3] Such training would enable the judge to make an informed "guess" of the correctional needs of the offender given the presentence information before him.

The organization of conferences and seminars in which judges, lawyers and social/behavioural scientists present research papers on sentencing can go along way in educating Nigerian judges on more effective ways of using the sentence in crime control and prevention. Such conferences and

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seminars serve as a good forum for exchange of ideas and influences between judges as well as non-legal scholars such as criminologists.

There is also the need to increase the personnel of the courts. More judges should be appointed. To reduce the work load of the magistrate and Area/customary court judges, more clerical staff need be appointed. The staff should include stenographers and typists who should be able to take down court proceedings. This would improve the quality of the court records. At present the magistrate or Area/customary court judge plays the multifunctional role of an umpire, a recorder, a listener and a decision-maker. This affects the quality of what is recorded since he/she takes notes in longhand. The record books of these courts lack information on many variables of interest to decision-making and to researchers whose work will improve such decision-making. It is not possible for the judge to take down everything. Hence the need for adequately trained clerical staff as recorders of court proceedings.

In addition, each court should have a probation officer and social worker whose duties should include securing presentence information on the convicted offender that will

be used, eventually, to determine an appropriate sentence; ensuring instalmental payment of fines; supervision of those placed on probation, suspended sentence or conditional discharge; and the preparation of reports on the response of convicts to their sentences. The development of probation services in this country is long overdue.

The judges of the Area Courts are more likely to aggravate the "crime problem" by their indiscriminate use of the sentence of imprisonment. It is my humble suggestion that either the administration of the criminal law should be taken away from the jurisdiction of the Area Courts or that the judges should be given more training in area of corrections to enlighten them about the implications of the various penal measures.

Finally the sentence should be seen as an instrument for crime prevention and control rather than as a punitive instrument, as it is presently viewed. It should be seen as an instrument for correcting the offender. And if the offender is successfully rehabilitated through an appropriate sentence, society in the long run is protected from criminality. It was time judges, lawyers, the police,

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prison officials and citizens saw the sentence as a corrective instrument. The conventional punitive attitude should be abandoned for a remedial one.

NOTES

1. Two problems that are likely to arise out of this suggestion are police corruption and offenders refusal to pay his/her fine. Offenders who refuse to pay can immediately be charged to court both for the offence and contempt of constituted authority. Police corruption however, is part of a national ill which has defied solution given the nature of the system in operation.

2. N.S. Hayner, "Sentencing by an Administrative Board", in Law and Contemporary Problems, Vol.23, 1958.

3. A. Milner, The Nigerian Penal System, 1972 p.390.

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APPENDIX I

RESEARCH ON SENTENCING PRACTICES IN NIGERIA

COURT RECORDS FORMAT

1. Type of court:
   1. Magistrate
   2. Area
   3. Customary

2. Date of offender's first appearance in court .....

3. Type of offence:
   1. Assault
   2. Theft or stealing
   3. Burglary
   4. Traffic Offence
   5. Embezzlement or Breach of Trust involving civil servants and employees.

4. Was offender granted bail:
   1. Yes
   2. No
   9. Not known

5. If granted bail what kind of bail?
   1. Monetary bail
   2. Bail in own recognaisance
   3. Other (specify) .....

6. If granted monetary bail state the amount .....

7. Was offender able to make use of the bail granted him?
   1. Yes
   2. No
   3. Not known

8. If not granted bail state reason why bail was refused

.....

.....

9. Has the offender a private lawyer (magistrate and customary courts only):

   1. Yes
   2. No
   3. Not known

10. Age of offender (if known) .....

11. Sex of offender (if known)

   1. Male
   2. Female

12. Occupation of offender (if known) .....

13. What is the type of sentence passed on the offender?

   1. Imprisonment
      State length of imprisonment (in months) .....

   2. Imprisonment plus a fine
      State length of imprisonment .....
      State amount of fine .....

   2. Fine only
      State amount of fine.....

   4. Fine or alternative of imprisonment
      State amount of fine.....
      State length of imprisonment in default of the fine.....

   5. Caning
      State No. of strokes .....

   6. Binding over to be of good behaviour

   7. Probation/Suspended sentence

   8. Any other combination (specify).....

   9. Not known.

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14. Did the trial judge state the reason for the particular sentence passed on the offender or can it be inferred. If so, which of the following?

    1. To deter others (deterrence)
    2. To reform/correct offender (Reformation/ Rehabilitation)
    3. To teach him and others a lesson (Retribution)
    4. To protect the public/victim (protection)
    5. To compensate victim (compensation)
    8. Other (specify) .....
    9. Not stated

15. Date case was disposed off .....

16. Before passing the sentence did the trial judge ask for any information as to the character, age, education, employment, previous convictions, etc...

    1. Yes
    2. No
    9. Not known.

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APPENDIX II

RESEARCH ON SENTENCING IN NIGERIA COURTS

Dear Sir,

I am carrying out a research into the sentencing practices of our courts. The purpose of the research is to collect comprehensive data on Nigerian courts and it is a part of an M.Sc. thesis.

This interview schedule is supplementary to the data collected from court records. The following questions relate to problems that confront trial judges in the administration of justice. I would be much grateful if you could answer these questions. Your answers might be valuable in highlighting the problems confronting you and your colleagues elsewhere. Your answers are strictly confidential. Your cooperation would be highly appreciated.

Thank you.

Section A

1. In what type of court do you preside?

    1. Magistrate
    2. Area
    3. Customary

2. Briefly state your educational background .....

3. What was your occupation before you were appointed to this bench? .....

4. How old were you before you were appointed to the bench?

5. How long have you been trying cases? .....

Section B

6. What do you consider to be the most single cause of crime in Nigeria today?

7. In your opinion do you think a criminal offender is a sinner in the eyes of God?

   1. Yes
   2. No

8. Which of these view do you personally subscribe to:

   1. Some people are born criminals
   2. people become criminal through bad upbringing
   3. socio-economic hardships force people to be criminal.

9. Other than armed robbery and homicide what do you consider to be the three most serious crimes in Nigeria today and what punishment would you recommend for each.

Crimes	Recommended Punishment
a. A serious crime _____	_____
b. A more serious crime _____	_____
c. The most serious crime _____	_____

Section C

10. Do you agree or disagree that all kinds of offenders should be granted bail?

    1. agree
    2. disagree

    Can you give reasons for your answer _____

11. If you do not agree, what kinds of offenders should be denied bail? _____

12. If granting or refusing to grant a bail to an offender what is the most important thing that you take into consideration? _____

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13. Suppose an offender's social background is known -- for example he has a stable employment, he has a fixed residence and married with children -- should he be granted a non-monetary bail on his own recognaissance for such offences like violation of traffic rules, stealing, assault.

    1. Yes
    2. No

    If 'No' can you give your reasons _____

14. Should all accused persons be represented by lawyers?

    1. Yes
    2. No

15. Should lawyers be allowed in all types of courts in Nigeria?

    1. Yes
    2. No

    Can you give reasons for your answer _____

Section D

16. After you have found an offender guilty which of the following do you usually take into consideration, in their order of importance, in determining type and severity of sentence (put 1 against the most important, 2 against the second most important, 3 against the third etc.)

    ( ) What the legal code stipulates for the offence only.
    ( ) The severity of the offence
    ( ) Whether the crime is rampant in the area
    ( ) Whether the offender is or not a repeater
    ( ) Whether the offender is employed or not, his age, marital status, children, etc..

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17. In correcting offenders do you think the prisons should be **minimally** used?

    1. Yes
    2. No

    Give reasons for your answer _____

18. If yes, for what kinds of offences should offenders be imprisoned: _____

19. If prison is to be minimally used what other kinds of corrective measures would you recommend to be used frequently:

Kinds of Offences	Corrective Measures
(a) _____	_____
(b) _____	_____
(c) _____	_____
(d) _____	_____
(e) _____	_____

20. Instead of imposing fines or imprisonment on the convicted offender he should be made to pay compensation in cash or in kind to the victim. Do you agree with this statement

    1, Agree
    2. Disagree

    Give reasons for your answer _____

21. A Nigerian judge once asserted that "personal termperament determines how severe the trial judge or magistrate can be in particular cases and under particular circumstances". For example, having been almost knocked down by a runaway driver, he was presented that morning with another driver charged with dangerous driving causing death. According to him he was under "severe strain" as to the sentence he should pass on the accused.

    (a) Do you agree with the statement that personal temperament and experience some times determines how severe a trial judge can be in some cases?

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1. Agree
2. Disagree

(b) Have you ever had such experience as the one stated above?

1. Yes
2. No

(c) If yes can you briefly relate it? _____

Section E

22. It is said that the Criminal Procedure Act does not give sufficient directives or guidance on the questions of passing of sentences. From your experience is this assessment true?

1. True
2. Untrue

23. If 'True' can you give some particular example of such vague directives _____

_____

24. Do you agree with the suggestion that every case should have a file, instead of the present practice of recording all cases in a volume, so as to make for easy reference?

1. Agree
2. Disagree

Can you give reason for your answer _____

_____

25. Do you think there is need for periodic refresher training of judges in the act of sentencing in Nigeria.

1. There is the need
2. No need

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26. Do you think it is a good thing for every judge to state his sentence philosophy in every case he has disposed off in his judgement recordings?

By sentence philosophy is meant the guiding principle in passing of the sentence e.g. to protect public or victim, to reform offender, to teach him a lesson, etc.

1. It is a good thing
2. It is not very necessary

Give reasons for your answer _____

_____

We have now come to the end of the interview. Your cooperation is appreciated.

Thank you.

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