



THE LAW AND POLICY IN CRIMINAL JUSTICE SYSTEM AND SENTENCING IN NIGERIA

Leonard C. Opara Esq.

Lecturer and Acting Head of Department of International Law & Jurisprudence, Faculty of Law, Nigeria Police Academy, Wudil, kano State, Nigeria

ABSTRACT

This paper seeks to critically examine the law and policy in criminal Justice Administration and Sentencing in Nigeria since the return of constitutional democracy in 1999 and how it affect the convicts in criminal adjudication. The prospects and challenges faced in providing a quick dispensation of criminal justice administration by the agencies as well as the roles played by these institutions such as the Police, Prosecutions/Prosecutors, Courts, and prisons shall be highlighted. A look at the legislation for improving the nature and efficiency of the criminal justice system and sentencing in the state. This paper is primarily concerned with the sentencing decisions, mitigating and aggravating factors in Nigerian sentencing practice although it is acknowledged that sentencing does not exist in isolation from other parts of the process, especially the prosecution of offences, adjudication and the administration of sentences.

“Where ever there are people and laws, there are crimes and criminals.....” Emile Durkheim.

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1. INTRODUCTION

The Criminal Justice System in Nigeria commences with the commission of a crime and continues with subsequent interventions by the law enforcement agencies of the system that has the power to arrest, arraignment, trial, sentencing and punishment of the offender. A criminal trial involves the state, the society and the offender who commits the act. The process of determining whether the accused or defendant did the act or committed the omission alleged against him or her, if he or she did, depends on sentencing him/her for his/her wrongdoing or did. In some legislation, the word sentence and judgement are used interchangeable.

According to Prof .Yongcho he defined the criminal justice system as a method of crime control which represents the entire army of government institutions that function as the instrument of a society to enforce its standards of conduct necessary for the protection of the safety and freedom of individual citizens and for the maintenance of order.

Dr. Agbola has observed that task of the criminal justice system is performed through the means of detecting, apprehending, prosecuting, adjudicating and sanctioning those members of the society who violate its established rules and laws. In Nigeria, the criminal justice system is predicated on the notions that the suspect's or defendants (accused) dignity must be recognised and that generally the suspect or defendant/accused is considered innocent until proven guilty by a court of competent jurisdiction. Unfortunately, violations of these fundamental procedural rules have become rampant in our society Nigeria. Such violations obviously obstruct defendant's

human rights and most essentially threaten the very foundation of the Nigeria criminal justice system.

1.1. The Components of the Nigerian Criminal Justice System

They are four major components of the criminal justice system in Nigeria namely:

- a. The Police.
- b. The Prosecution.
- c. The trial Court(criminal court divisions)
- d. The correctional institutions which include the prisons, borstal homes, remand homes etc.

1.2. The Meaning of Sentencing/Punishment

Sentencing can be defined as “ the judicial determination of a legal sanction to be imposed on a person found guilty of an offence”, (Landdian Sentencing Commission, 1987) .Sentence is also the pronouncement by the court or judge upon the defendant after his conviction in criminal prosecution, imposing the punishment to be inflicted, usually in the form of a fine, incarceration or probation. It is one of the several ways which together comprise what is often referred to as criminal justice system; although some might argue that it is an overstatement to categorize such disparate functions as a system. According to A.B. Danbazau, Punishment connotes pains, deprivation or suffering of person on whom punishment is administered.

Sentencing means the prescription of a particular punishment by a court to someone convicted of a crime. Thus, after an accused person or defendant has pleaded guilty or has been found guilty during the trial or prosecution process, the presiding judge or magistrate then enters judgement of conviction and thereby sets a date aside for sentencing.

In Nigeria, those who have been previously convicted in criminal cases usually attract harsher sentences or punishment than first offenders. It is however sad to observe that the high level of corruption in the criminal justice system in Nigeria has led to summary miscarriages of criminal justice which in turn have brought about the presence of “innocent criminals” in our prisons according to (Ugwuoke, 1994)

Criminal prosecution aims at the conviction of the accused or the defendant. The conviction goes with sentencing to some form of punishment or sanctions pronounced by the trial court. Such sanctions could take any or a combination of many forms like prison, caution, fine, caning, haadi lashing, corporal or capital punishment, banishment, forfeiture etc. However, when a convict has served out the terms of his or her sentence or punishment, he or she becomes free and clean of any blame or iniquity which is attributable to the crime that led to his or her trial and conviction.

Sometimes the convict is not acceptable as having been cleaned by the society after they have served their punishment or sentence.

The stages of criminal justice are

- (i) Crime prevention and maintenance of order
- (ii) Detention and enforcement (including investigation)
- (iii) Adjudication
- (iv) Sentencing/disposition
- (v) Administration of sentences/dispositions.

Under our system of government the Police take principal responsibility of stage (i) and (ii) above. The police and the prosecutors, while the courts (particularly judicial officers for (iii) and (iv); and also courts, prisons and community corrections take charge of (V). These agencies all operate within rules which allow a significant amount of discretion to the officers involved in the administration of our criminal justice system.

One of the essential functions involved in justice system is to affirm and reinforce important societal values. Most people will refrain from serious anti-social behaviour because they identify with those societal values, especially respect for others and for the law; not because they are afraid of the punishment for transgressing. For those prepared to commit serious anti-social acts, the likelihood of being caught and punished seems to be a more likely deterrent than modifications to the amount of punishment.

The decision taken by the prosecution as to whether to proceed at all, what charges to lay, and in what form to lay the charges (sometimes the subject of plea bargaining can have a profound effect upon any sentencing outcomes which may be arrived at. The particular form the adjudication takes may place important restraints upon the sentencing decisions that can be reached.

In summary, the cases on which judges/magistrates pronounce sentence are dealing with only selected examples of all the behaviour that could be labelled "offending", and the selection may well be unrepresentative of the whole in terms of both the nature of the offences and the characteristics of the offenders. It follows that sentencing legislation and practice, while important together constitute only one aspect of society's response to criminal behaviour.

1.3. The Rationales and Goals of Sentencing

What should the sentencing system as a whole aim to do. The rationales of deterrence, incapacitation and rehabilitation pursue crime reduction goals through sentencing. Restitution is primarily aimed at making redress to victims of crime. Just deserts (retribution and denunciation on the other hand is a rationale for the imposition of a sentence appropriate to the wrong doing or offender. We must note that Nigeria's criminal justice system or process distinguishes between a man or woman who could not have prevented his criminal actions and the man or woman who could have. Our society and criminal process justify conviction and punishment by way of imprisonment for the responsible agent who could have prevented his actions. Truth, to tell, punishment by way of imprisonment or fine has always been an incident of responsibility. We should bear in mind that at the sentencing stage we are no longer entitled to invoke the presumption of innocence as a touch stone for evaluating the convict's disposal conditions. In addition, the state and society as a whole have an unyielding interest in protecting the community from threat of further crimes by those who ought to have prevented or controlled their actions.

1.4. Definitions

Mitigating factors in this paper will refer to those factors which when taken into consideration reduce the sentence which the offender gets at the conclusion of the trial. Aggravating factors also, will refer to those factors which enhance the punishment to be received by the offender or makes the mitigating factors inapplicable.

A legal practitioner scholar has argued in a paper that a greater skill is needed in pleading for mitigation than the skill required for the cross-examination according to him:

According to Prof. Ugwuoke mitigation in my view requires very great skill indeed even more so than cross examination if the mitigation is done extremely well it often leads to every favourable results to the lay clients but if it is done badly it many lead to a client being punished for more than he deserves....." (Ugwuoke, 1994)

Mitigating and aggravating factors serve as grounds for differentiating between sentences imposed on parties to offences. The point has to be made that sentencing involves a lot of discretion especially on the part of judges. Recognizing the above point, the English Court of Appeal in de Havilland's case made a very important observation relating to the subject of sentencing practice as a whole. It expressed its view thus:

"Apart from the statutory maxima and certain other statutory restrictions for example those on sentencing of young offenders and appropriate sentence is a matter for the discretion of the sentencing judge. It follows that decisions on sentencing are not binding authorities in the sense that decisions of the objective of this paper would have been achieved.

The Court of Appeal on points of substantive law is binding both on this court and on lower Courts. Indeed they could not be since the circumstances of the offence and of the offender present an almost infinite variety from case to case. As in any branch of the law which depends on judicial discretion, decisions on sentencing are no more than examples of how the court has dealt with a particular offence as such they may be useful as an aid to uniformity of sentence for a particular category of crime but they are not authoritative in the strict sense." Our Supreme Court has enormous powers to interfere in issues relating to sentences passed by lower courts. However, it has set itself criteria for interfering in State V (Adeyeye and Anor). These criteria are really not

original. It was merely restating old principles which had their roots in English cases⁷. These principles according to the Supreme Court can be briefly put under three headings:

1. That an Appeal Court should not interfere with a sentence which is the subject of an appeal merely because the judges of the court of Appeal might have passed a different sentence if they tried the case;
2. To consider the facts of the particular;
3. To review only a sentence which is manifestly excessive or inadequate^{7,8}

More importantly, it should be realized that courts may refuse to take cognizance of mitigating plea because (a) it may disbelieve it (b) it may regard the content as irrelevant or (c) regard the content as credible and relevant but as counter balanced by aggravating considerations or (d) be doubtful whether a more lenient or different disposal such as an individualized measure would be effective or (e) be afraid that leniency would be misunderstood by the public to an extent that would impair law enforcement as propounded by Prof. Adeyemi. From the above principles, the following are the mitigating and aggravating factors in Nigerian sentencing practice.

1.5. Mitigating Factors

Age. Two aspects of the age factor have gained the attention of the Nigerian law and practice. They are youth and old age. Firstly, there exist statutory provisions prohibiting the sentencing of a young offender to death. (Nigel Walker, 1985) For instance in *State V (Adeyeye and Anor)* both accused persons, one a youth and the other an adult were involved in armed robbery. While the Supreme Court confirmed the death sentence imposed on the adult, it ordered that the youth be detained at the Military Governor's pleasure because he was a fifteen (15) years old school boy.

Secondly, there exist also provisions restricting the imposition of imprisonment on children. Similarly, young persons can only be sentenced to imprisonment in cases where there is absence of less serious way they could be dealt with. (See Section 2 Children and Young Persons Act, 1946)

Apart from the above, Nigerian Courts have been 'soft' with youthful offenders for example, In *Commissioner of Police V Friday Idehen* where the defendant was sentenced to six months imprisonment with hard labour or in the alternative he was to pay a fine of one hundred naira (N100.00) for assault occasioning harm in the course of a flight. The fact that defendant had just left primary school the previous year was not disclosed to the trial magistrate. On appeal, a sentence of six strokes of the cane was substituted, the court observed thus:

“if the magistrate had taken account of his youth he would have been persuaded that the accused is an adolescent youth who needed correction rather than punishment.”

Furthermore, in *R V (State)* where a twelve years old was convicted of manslaughter resulting from provocation (he stabbed a twenty four years old woman who threw away his bail two times and later in the evening began beating him. The boy and his father were ordered to enter a bond in the sum of four hundred naira (N400.00) that the boy will not commit any offence whatsoever for a period of three years. Youthfulness could be combined with other mitigating factors like first offender status as was in the case of (Oyeneye) where the appellant was convicted of stealing a motor vehicle; the sentence was reduced from four years to two years.

1.6. Old Age

Nigerian courts have shown reluctance in allowing the law to run its full course in cases involving elderly people. There, sentences are often as in (State and 2 Ors, 1983) reduced considerably because it is thought that they no longer constitute threat to the society. Also there poor health and the reluctance of the courts in allowing them die in jail contributed in no small measure in the light sentence given in (State, 1970)); a manslaughter case where a 70 years old man recklessly shot and killed somebody on top of a palm tree on the grounds that he mistook him for a monkey, and also in (Akanbi) a case involving a 75 years old man who was convicted of stealing property valued at one hundred naira (N100.00) from the Nigerian Port Authority.

1.7. First Offender Status

It will appear from records that our courts are reluctant in fully punishing offenders who are committing a crime for the first time. This attitude is demonstrated by the Supreme Court in

Anfistah Uwfifcw V State. This was a case of causing death by dangerous driving. A sentence of three years imprisonment was considered severe because apart from the fact that the appellant was a learner driver who at the material time was under the control and guidance of a qualified driver, he was most importantly it would appear, a first offender, and his sentence was reduced to one year imprisonment.

Similarly, the court of appeal had to reduce the sentence imposed on participants in the civil disturbance that took place in Lafia town in (Saku and Ors)¹ NWLR 516 on the ground that the first offender statuses of the appellants were not adequately considered by the trial court. The first offender status could be combined with other mitigating factor to reduce a prison sentence. In Wilson Ebisua V COP LD/16CA/71 Lagos High Court unreported cited in Okonkwo & Nasih the appellant was convicted under Section 88 of the criminal code for behaving in a manner likely to cause a breach of peace and was sentence to a term of imprisonment without an option of fine. On appeal, the high court observed thus:

“There is no appeal on sentence but to sentence an accused who is a first offender to a term of imprisonment without the option of a fine or even a warning for merely uprooting the iron post on another’s land is to completely misconstrue the object of criminal imprisonment.”

The sentence was varied to a fine of one hundred naira or one month imprisonment with hard labour.

Furthermore, in (Olayinka, 1986) the appellant was sentence to nine months imprisonment upon conviction on a charge of simple assault which carried a maximum sentence of twelve months imprisonment. On appeal, the sentence was reduced to seventy naira (N70.00) fine or three months imprisonment.

Courts have also used the first offender status to differentiate in sentence awarded in cases where more than one offender is involved, for instance, in (Adudu and Gunni, 1983)WRNLR, 188 where the sentence of one them with previous conviction was upheld that of the first offender was reduced.

1.8. Provocation

Provocation is statutory regarded as a mitigating factor in Nigerian Law in the sense that when a plea of provocation succeeds; It reduces in cases of murder or culpable homicide punishable by death. The mandatory death sentence which follows conviction to terms of imprisonment the maximum of which is life imprisonment. It is of interest to note that in (Cyril) NMLR 125 life imprisonment has been interpreted as equivalent of twenty years imprisonment. The existence of provocation as a mitigating factor offers opportunities for our judges to reflect the distinctive culture of our people in their interpretation of provocative conducts. The view established in old cases decided during the colonial period has been the ‘station in life test’. It in effect divided the whole population into civilized and uncivilized literate and illiterate. The uncivilized who usually included farmers, fishermen, labourers etc. and who were supposed to be easily provoked by what would not provoke a civilized person. The accuracy of the psychological conclusion reached by the colonial (and more recently Nigerian) judges has never been tested. Opinions are now growing against the conclusion.

The following are some of the conducts that have been recognised by courts as provocative. Calling a Moslem a pagan or a dog especially by the wife; see (Okonkwo) NMLR 227 calling a husband amongst other things an eunuch and jesting at him; (Hoy/3CA/72) 2 All NLR 28 in the course of fighting pulling an adversary’s hair; see R V Shanawa V Sokoto N.A (WRNLR .188, 1960) 1 All NLR 262 attempting to prevent a person living in the same compound from leaving with a matchet after accusation of theft;(See Sections, 1970) All NLR 262 intervening in a fight and wounding an already unarmed man who was struggling to disarm his original assailant ; see Queen V Obaji Ogodo (1961) All NLR 700 wounding a brother in the course of a general fight see Takida V The State,(NMLR 125, 1965), slapping and throwing to the ground of a host after consuming his palm wine, see Queen V Nwite (Kasunmu and Omabegho), pulling of a husband’s private part in the course of a fight so as to prevent his exercising his marital rights;(See Rabinu Ruma V Daura Native Authority, 1960) or to cause him pain; see Okon Bassey V The Queen (State VOsunmilli Ewho, 1969)¹ All NLR 280 coming close to the appellant asking him for something

and subsequently dragging him a few yards; ([R V Shanawa & Sokoto Native Authority, 1962](#)) 1 NMLR 296 attack by a thief on appellants friend; ([Queen V Stephen Oji, 1961](#)) 1 All NLR 288 slapping of a co-worker to whom six naira (N6.00) was owed on demanding repayment; [The State V Mohammed \(1969\)](#) NMLR 296; gripping of the weaker person by the throat by the stronger one; [Regina V Onyemaizu \(1958\)](#) NRNL 93; beating of some members of a gang by a rival hunting gang; [State V Kirbiji and 4 Ors \(1965\)](#) NMLR 165; holding of a bicycle of a husband by the wife in an endeavour to prevent him returning to the market, attempting to remove his clothes, spitting on him, holding his penis and finally hitting him on the head with the broad side of the machet as a result of having spoken to a former woman lover whom the wife thought he had something to do with again; ([Queen V Jinobu, 1961](#)) ERLR, Vol. III, p.17 and lastly, trying to hit an elder brother with a hoe by a younger brother who had been warned by both the elder brother and their father to stop associating with the elder brother's wife; ([Okon Bassery V The Queen, 1963](#)) it must be added that the above list is not exhaustive.

When attempt was made to find rational explanation for the court's decision in regarding some conducts as provocative and others as non-provocative, one could not but conclude that they defied rationalisation. Professor Adeyemi in a small study spanning over few years, examined the disparity in sentencing in cases where provocation was pleaded with the view of finding out the reason. He concluded that:

"It is apparent therefore that one cannot adduce any convincing rational explanation for the sentencing disposition of the court and its judges.....it is seems however that the most plausible explanation may be found in judicial identity and characteristics rather than in the facts of the cases." ([Adu Yalwa and Ors V The State, 1970](#)) His English counterpart, Dr. Ashworth came to almost similar conclusion when he said:

"One of the disquieting results of this brief survey of sentencing in provocation cases is the frequency with which the actual sentence appears to be at variance with the declared principles....." ([The State V Mohammed, 1969](#))

2. HAVING BEEN IN CUSTODY FOR SOMETIME

Our courts in recognition of the delay which is at times inevitable if justice is to prevail reflect his recognition while sentencing so that an offender is not worse off for being detained in the course of his trial, especially when a prison sentence is to be imposed. In the [State V Celestine Udegbe \(Regina V Onyemaizu, 1958\)](#) 1 MSLR 645 where the accused person, after smoking what was suspected to be Indian hemp, inflicted a machet cut on his victim. The fact that he had been in custody for four years was reflected in the sentence he was eventually to serve.

Similarly, in ([State V Kirbiji and 4 Ors, 1965](#)) in *The Guardian*, November 25, 1988, p.15 the sentence was reduced from fifteen years to ten years because amongst other factors was the fact that he had been in detention for some time. Also in [COP V Oshinfulajo \(The Queen V Olewibe, 1959\)](#) 1 NCR 308 immediate imprisonment for eighteen months with hard labour was reduced to a fine of four hundred naira or nine months imprisonment, in order to reflect among other factors the fact that the appellant spent three months in prison before bail was granted to him.

3. THE CONDUCT OF THE OFFENDER AFTER THE COMMISSION OF THE OFFENCE

Courts in sentencing at times are moved by the conduct of the offender, for instance, in ([Abdu Dan Sarkin Norma V Zaira Native Authority, 1963](#)) where the accused was charged with causing death by dangerous driving. In sentencing him the court took into consideration the fact that he reported the accident to the relatives of the victim and later took him to the hospital after some persuasion though he died later. A fine of three hundred naira or in the alternative eighteen months imprisonment was imposed.

Similarly, where an accused person who was charged with cashing a cheque obtained on behalf of another person and spending the proceeds in [The State V Dennis Okafor \(See J. N. Aduba\)](#) 1 MSLR 583 The court took into account the fact that he had refunded part of the money. Also, rendering assistance to the court is appreciated and sometimes rewarded by reduction in sentence, for example, in [State \(1981\)](#) 2 PLR , 309 the assistance rendered by one of the appellants

helped in grounding the case against two of his colleagues in crime. The court reflected this by awarding him less punishment than his colleagues. His living a useful life after the commission of the offence was an added mitigating factor.

4. PLEA OF GUILTY

When an accused person pleads guilty, he not only saves time for the prosecution, he also saves time for the court and witnesses. This also leads to saving moving for the state as a whole. It has been insisted upon the court in *C.O.P V Oshifalujo Supra* that a plea of guilty should tell in favour of a convicted offender. Consequently, eighteen months imprisonment with hard labour was considerably reduced to reflect this factor.

5. LACK OF PREVALENCE

In *Onyilokwu V COP The State (1981) 2 NCR 49* where the offender was initially detained for causing hurt, and later, he unsuccessfully tried to escape and was additionally charged with escaping from lawful custody. Although he was later discharged and acquitted, the court expressed the view that three years imprisonment earlier imposed on him did not show adequate consideration not only for his first offender status, but also , for an offence which was not prevalent in the community.

Also in (*Kuge, 1978*) although the eleven count charge of fraudulent accounting in the Native Administration was a serious offence, the West African Court of Appeal was inclined to consider non-prevalence of the offence as a factor leading to the reduction of the sentence of seven years to four years imprisonment.

6. GOOD WORK RECORD

In (*State*) ENLR, 152 where the offender was convicted for causing death by dangerous driving. The fact that he had driven a motor vehicle for fourteen years without blemish stood him in good stead. A lenient sentence of three hundred naira fine or twelve months imprisonment with hard labour was thus imposed.

7. ILLITERACY/ BEING A GRADUATE TEACHER

The fact that one of the parties to an offence is an illiterate led the court in imposing a lighter sentence in (*Ogedazi and 2 Ors, 1983*) 2 All NLR 62. Similarly, being a graduate teacher in addition to being a first offender influenced the Appeal Court in reducing a sentence of seven years to two and half years imprisonment. (*1 MSLR 577, 1978*)

8. PLAYING A MINOR ROLE

In (*Enaharo, 1978*) NMLR,265 a treasonable felony case involving late Chief Obafemi Awolowo, the supreme court was quick to point out that it could not imagine a situation where a mere ‘lieutenant’ could receive a sentence of imprisonment far in excess of that received by the leader. It therefore reduced the sentence passed on Enaharo from twelve years to seven years imprisonment.

9. MEMBERSHIP OF THE SAME FAMILY

The court have shown that where parties involved in crime both as accused and victim are all members of one big family, it will be reluctant in imposing full sentence because of the fact that the hardship it will occasion will still fall on the same family. For example, in (*State, 1981*) where there was a long standing quarrel between the deceased woman V and D who were members of the same family. On the relevant day, V went to fetch fire in the premises where D lived and she was singing a song saying ‘my enemy is looking at me’, D thought the song referred to her and engaged V in a fight during which she gave her a hard blows in the lower abdomen. She died a few days later. In sentencing D to three years imprisonment with hard labour for manslaughter, the court said:

“The incident leading to these proceedings is unfortunate. But the woman is dead leaving her own children behind. I shall however take into consideration that the parties belong to the same family which in the circumstances have borne quite a lot.....(1 NCR 208)

Furthermore, in *(The State, 1981)* MSNLR 42, where a foreign wife of the deceased was charged with causing his death by reckless driving. The whole incident was caused by a domestic misunderstanding which is not uncommon among married couples. The behaviour of the deceased was rash in the sense that he wanted to stop a moving vehicle by jumping on the bonnet. He subsequently fell off as a result of the speed which the wife applied to the car. She could have slowed down but she did not because she was so annoyed with the husband who had taken out her car for drinking for many hours. In cautioning and discharging her, the court took into consideration her foreign background, her youth and the fact that she must have gone through nightmares in course of the trial.*(WACA)* pp. 191-196

10. AGGRAVATING FACTORS

10.1. Serious Nature of the Offence/Callousness Shown

Aggravating facts as mentioned earlier could either lead to the enhancement of the punishment or playing down of the mitigating factors in which case the offender will be deprived of the possibility of having a lighter sentence. Certain offences have been considered as serious in nature, for example, sexual offences especially when it involves children as victims. In *State V (Adegboye, 1965)* 2 All NLR 62., a three year prison sentence was imposed on the offender for inserting his finger into the vagina of a little girl aged nine years old, who was hawking groundnuts, and this was despite the first offender status of the offender. A taxi driver was sentenced to five years imprisonment with hard labour for raping a passenger so violently as to cause blessing.

Robbery with violence is also considered serious in nature. In *(Olanipekmi V The State, 1979)* (alias junta manta), during a robbery, D the leader ordered one of his followers to shoot a victim. He complied but the gun did not go off. In sentencing him to five years imprisonment with hard labour, the court said:

“society demands that such a man should be kept out of circulation for some time-the offence is a serious one.....”

Similarly, courts have taken very serious view of the offence of assault with intent to maim or disfigure. In *R V (Ozuloke)* where the appellant met a little girl aged about eight years who was related to him on a village road, he covered her eyes with his hand and stuffed bread into her mouth to stop her crying out and took her into a bush, he laid her out on the ground, stood on her hand, poured acid over her body and cut off her left ear, he forced her eyes open and poured acid into them. He later ran away leaving the little girl unconscious. A twenty year jail sentence was considered adequate; the offence was regarded as being most revolting.

Forgery of court processes, and stealing money entrusted in one’s case has all been considered as serious in nature by the courts.

10.2. Abuse of Position of Trust

It has been the view of the courts that persons in position of trust should under no circumstances abuse the position for selfish ends. In furtherance of this view, it has in cases involving persons in position of trust viewed their abuse of their position as aggravating factor. In *R V (Ben Ibeabuchi, 1967/68)* the high court judge enhanced the sentence of a fine of one hundred and twenty naira or six months imprisonment to a term of five years imprisonment with hard labour imposed on a senior police officer for receiving a bribe of one hundred naira (N100.00) for the purpose of sheltering offenders, thereby perverting justice.

In *State V (Ikpatt)* D a Principal Collector of Customs was convicted of stealing the sum of about two thousand and forty –five naira eighteen kobo (N2,045.18K) being proceeds of auction sales which he was supposed to pay into a bank account. His sentence of a fine of two hundred naira (N200.00) or six months imprisonment with hard labour was on appeal substituted with imprisonment for six months with hard labour. This, in the judge’s view was extremely lenient.

cases the fact that the victims were women, we suspect, seem to have weighed heavily against the reduction of the prison sentence imposed on the offenders.

10.8. Conclusion and Recommendation

This paper is essentially a study of the use of judicial discretion as it applies to sentencing in Nigeria in our criminal justice system. We have concentrated mainly on the mitigating and aggravating factors highlighted by our courts in the course of imposing sentences. We observed a lot of disparity in the conducts declared by our courts as being provocative thus capable of mitigating capital sentences. We found that there appears to be no rational criteria for the making of the decision whether a conduct is provocative or not.

It was also demonstrated that the mitigating factors are not mutually exclusive. They could not be combined together to produce desired results by the courts. As for the aggravating factors, while they may not lead to enhancement of sentences, they more often than not nullify the effect of mitigating factors present in favour of the offender.

In the absence of regular reports dealing specifically with sentencing issues what was observed in some cases was lack of coherence in the sentencing system as a whole. Our efforts in highlighting the aggravating and mitigating factors is an attempt to contribute no matter how modest to the awareness that sentencing of offenders should be studied and taken more seriously.

10.9. Recommendations

1. More efforts should be made by counsel to furnish the courts with relevant facts which could enable the judges to pass an appropriate sentence.
2. Judges should devote more time in reviewing and where necessary inquiring for relevant materials necessary before passing their sentence.
3. The number of years of imprisonment awarded should always appear so that anybody carrying out research on sentencing practice could appreciate the trend and the degree of the variation in sentencing.
4. Those responsible for reporting cases should endeavour to remember to always include aspects relating to "allocutus". Although some do include it at the moment, but it is at very irregular basis. It ought to be a regular feature.
5. It should be mandatory that judges should give reasons for the sentence imposed. This will make them advert to guiding principles and apply them. It will also make it more obvious when and how they step out of line.
6. Practice directions on sentencing should be laid down by the superior courts, more appropriately the Court of Appeal as the need arises especially with respect to prevalent offences.
7. Prosecuting counsel should, whenever necessary, emphasize the aggravating factors, show for example, that the offence is prevalent and urge a deterrent policy. There is also need to amend the law to give the prosecutor a right to appeal against sentence (which he does not have) and thus enable him to appeal against sentences which are wrong in principle.
8. Judges should be familiar with conditions in our prisons and should visit them from time to time. This will give them first-hand knowledge of the sentence involved.
9. Seminars should be organised from time to time for judges to deliberate on sentencing practices.
10. Statistics of reports of after effects of particular sentences should be kept. These may form the basis of useful discussion at seminars.
11. More sentencing options should be created. e.g., suspended sentence, partly suspended sentence, community service order, weekend imprisonment etc. At the moment, there appears to be overuse of imprisonment as a penal sanction and lastly;
12. Sentencing and Treatment of offenders should be taught both at the undergraduate and professional levels.

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