Thesis
By
HILARY AGEVA
UBWA

DEPARTMENT OF SOCIOLOGY
FACULTY OF ARTS AND SOCIAL SCIENCES
AHMADU BELLO UNIVERSITY ZARIA, NIGERIA

SENTENCING PATTERNS AND PRACTICES IN NIGERIAN LOVER COURTS

FEBRUARY 1993

SENTENCING PATTERNS AND PRACTICES IN NIGERIAN LOWER COURTS

BY

HILARY AGEVA UBWA

A DISSERTATION SUBMITTED TO THE POSTGRADUATE SCHOOL AHMADU BELLO UNIVERSITY, ZARIA IN PARTIAL FULFILMENT OF THE REQUIREMENTS FOR THE AWARD OF DOCTOR OF PHILOSOPHY IN SOCIOLOGY WITH SPECIALIZATION IN CRIMINOLOGY.

DEPARTMENT OF SOCIOLOGY
FACULTY OF ARTS AND SOCIAL SCIENCES
AHMADU BELLO UNIVERSITY
ZARIA, NIGERIA

FEBRUARY, 1993

CERTIFICATION

This dissertation entiled "sentencing Patterns and Practices in Nigerian Lower Courts" by Hilary Ageva Ubwa, meets the regulations governing the award of the Degree of Doctor of Philosophy (Sociology) of Ahmadu Bello University and is approved for its contribution to knowledge and literary presentation.

Dr. P. T. Ahire
Chairman, Supervisory Committee

Date: 16-12-93

Member, Supervisory Committee

Date: 16/12/93

Prof. Ebow Mensah
Head of Department

Date: 16/12/93

Dean, Postgraduate School

Date: 6/12/95

TABLE OF CONTENTS

DECLARATION

I hereby declare that this thesis is a product of my own research work and that it has not been submitted elsewhere for the award of any degree. All sources of information have been duly acknowledged by means of reference.

Hilary Ageva Ubwa

February, 1993

DEDICATED TO:

Ahemba (Mother) and children

Tavershima

Avershima

Terhide

Orfega

ACKNOWLEDGEMENTS

I am persuaded that the researching and writing of a dissertation can hardly be a single persons endeavour. Many individuals and organisations have assisted me in various ways at different stages of this study. It therefore becomes very difficult to enumerate and thank all of them. I will however, extend my appreciation to a few whose contribution I consider to be highly consequential to the progress of my dissertation.

I would like to extend my sincere appreciation to Dr. P. T. Ahire, for his suggestions on some earlier formulation of the thesis. Above all, I am particularly indebted to Dr. Ahire, my principal thesis supervisor, who has been prepared to assist me out of my endless problems, he guided my research study and made comments and suggestions at every stage of the dissertation.

My second debt of gratitude is to Professor R. Durel for going over some of the work, and whose advice and encouragement have been invaluable in the course of this work. Furthermore, my third debt of gratitude is Professor E. Mensah for going over the work, and I profited from his comments and criricisms. Also I thank Dr. J. Hellandendu for the proof-reading of the statistical analysis.

I am grateful to my wife and children who were able to put up with my long hours of absence from home, and thank them for their understanding.

I would like to thank dozens of learned persons, magistrates and judges, court members and other members of the courts who assisted me on different issues connected with this study.

This research upon which this thesis is based was partially funded by a grant from the Ahmadu Bello University, Zaria; and Council for the Development of Economic and Social Research in Africa.

ABSTRACT

This study examines the problem of sentencing patterns and practices in Nigerian lower courts. Sentencing is defined here as the formalized procedures by which the courts impose sanctions on those offenders found criminally liable either through an admission of guilt or through adjudication. Patterns in this study refers to any coherent and consistent sentencing philosophy which guide magistrates and judges in sentencing passed for similar offences.

For the purpose of this study, we have examined four theoretical perspectives: the structural functionalist, the social interactionalist, the labelling, and the marxist perspectives as they relate to sentencing practices. The structural functionalist perspective which addresses the issues of sentencing practices was adopted. This study prefers the structural functionalist perspective over the other theoretical perspectives because it explores the complex nature of the sentencing process as applicable to the Nigerian society.

In an attempt to find out the problem of sentencing patterns and practices in Nigerian lower courts; eight hundred criminal cases were extracted from the records of offenders in the Magistrates and Area Courts in four research centres:

Kaduna, Kano, Jos, and Makurdi. Analysis of the data collected was carried out by crosstabulation of the variables.

It was found that two sentencing patterns exist in Magistrates and Area Courts. These courts are oriented toward imprisonment, imprisonment or fine sentences for property offences than for person and traffic offences. Furthermore, Area Courts imposed more custodial sentences than Magistrates Courts. However, Magistrates Courts imposed more non-custodial sentences than Area Courts. It was found that bail was not granted to maiority of offenders. Also only a few offenders had legal representation as compared to those who had none.

LIST OF TABLES

CHAPTER ONE

1. SENTENCING PATTERNS AND PRACTICES

1.1 Introduction

Every society possesses a set of mechanisms for effecting social control in order to ensure predictable behaviour by its members. Such mechanisms of social control may be formal or informal. The latter exists in civil society and are operated by the family, peer groups, other social groups, neighbourhoods etc; while the former are operated by the state through its various agencies. The agency for official social control is the criminal justice system, comprising the police, the judiciary and the prison. The character and dynamics of these agencies provide a barometer for measuring the nature of social control in specific societies.

Despite their significance, the nature and operation of these agencies are scarcely studied and therefore little understood. In Nigeria in particular, little research results exist to shed light on the activities of the formal agencies of social control. This study is therefore an attempt to fill a part of this gap by critically analysing the character and dynamics of one component of the criminal justice system - judiciary and its sentencing practices.

The judiciary occupies a central and critical position within the criminal justice system. It is charged with the responsibility for interpreting and enforcing the law. Thus, the dynamics of the judiciary monitor the quality of social control and social justice available within a specific polity. Although this high lights the necessity to carefully study the operation of the judiciary, the sad reality is that its operations are little understood especially in developing societies like Nigeria.

One important aspect of the judiciary's functions, which is little understood, is its sentencing practices. The criminal code specifies the form in which justice should be meted out to convicted offenders. Today, it is characterised by what appear to be arbitrary penalties. Some criminals get unjustifiably harsh sentences; many receive grossly different sentences for essentially equivalent crimes; and a large number go unpunished. There is need to study sentencing patterns and practices in Nigerian lower courts.

1.2 RESEARCH PROBLEMS

The issue of the sentencing patterns and practices of Nigerian lower courts need to be analysed. Some convicted offenders are given

extraordinarily harsh sentences, while others committing similar offences get away with comparatively light sentences. The seemingly irrational sentences imposed in Nigerian lower courts give cause for great concern. This study examines the problem of sentencing patterns and practices in Nigerian lower courts.

It has been alleged that in Nigeria, it is becoming easy to determine in advance the direction "sentencing" would take once the "geography," politics and wealth of litigants were known in courts. For example, an aggrieved party in Kano could travel to file a suit in Borno State; while residents of Enugu could travel to Onitsha to do the same. In such cases, litigants are convinced that they could be denied "sympathy" in their judicial states but are assured of winning in the preferred courts.[1]

Sentencing is the final stage in the administration of criminal justice. It is the post-conviction of the criminal justice in which an offender is brought before the court for punishment. Sentencing is therefore a decision making process by virtue of which it is decided whether the offender is to be subjected to the custodial or non-custodial punishment. Sentencing thus deals with the legal consequences of guilt.

In Nigerian lower courts, the law provides magistrates and judges discretionary powers to determine the outcome of cases. However, most magistrates and judges do not always exercise the discretionary powers to the benefit of offenders and the society. Thus, the discretionary powers given to magistrates and judges have resulted to discrepancies between sentences passed by different courts sometimes even by the same courts for apparently similar offences. These discretionary powers seem to be illogical and unfair and it is very difficult to reconcile them. Fatayi (1970) observes:

> There are many instances of irrational sentences passed by various courts. Infact one of the main defects today of our criminal law is the incoherent, irrational and incredibly intricate variety of sentences legally pronounced in different courts exercising the same jurisdiction in respect of the same or similar offences. To some of us, the pronouncement of sentences is perhaps the most confused area of our criminal legislation. This is because penalties are not fixed by the legislature. On the contrary, statutory maxima are prescribed within which the judge or magistrate, depending on the limit of his jurisdiction, is free to roam in the exercise of discretion (Fatayi 1970:30).

Regarding the alleged discretionary power prevalent in Nigerian lower courts, Fadipe (1972) notes that the distinctive feature of the Nigerian penal system is the wide discretion exercised by

magistrates and judges. According to him:

> Our law gives magistrates very wide discretion ... But sad to say, a good many of our magistrates do not, as a rule, exercise that discretion in the best interest of the accused himself and the public. They do not bother themselves to perform the necessary exercise in passing sentences in order that justice must be done (Fadipe 1972:41).

In addition to this, discretion makes room for the operation of arbitrary sentencing which result to lack of consistency. It is argued that this is not in the interest of the magistrates and judges as some of them are labelled as being harsh or lenient. It may be true to say that class, education, link to local community, and temparament of magistrates and judges do have some influence upon sentencers in making sentencing decisions. According to the Nigerian National Paper on Crime Prevention and Treatment of Offenders:

> In a large part, probability of punishment, imprisonment, and of lengthy imprisonment.... are in a significant number of cases more a function of social, economic, and political status and influence than of the gravity of the offence or even of the stipulated sentence. It needs to be recognised that ability to obtain bail, use bail, and hire a defence attorney have great bearing on the probability of conviction,.... Also, as is usually the case, option of fine are virtually no option for the majority of convicts who

"coincidentally" have no means to pay.[2]

Another problem about the judicial approach to sentencing patterns and practices in Nigeria is that our magistrates and judges seem to confine themselves to a few penal aims, that is, to punish the offender, to achieve deterrence and retribution. If one goes through the criminal cases on criminal law, one will find that majority of the sentences are in the area of imprisonment, imprisonment and fine. Our magistrates and judges do not always avail the offenders the benefit of non-custodial sentences like binding over for good behaviour, suspended sentence, and probation. It is in the area of probation that the sentencing practices and attitudes of Nigerian lower courts are more confused. Although the courts have been given the discretion to put offenders on probation. However, the Nigerian lower courts hardly make use of probation. According to the Nigerian National Paper to the Sixth United Nations Congress:

> Nigeria has statutory provision for probationary sentences but administrators of justice hardly ever employ such provisions. Yet evidence shows that on the basis of the statutory stipulated criteria for probationary sentences, about 40% of offenders presently sent to prison should have qualified for such sentences.[3]

Another problem which relates to sentencing patterns and practices is the extent of long delays in trial process in Nigerian lower courts. It is alleged that court delays lead to increasing crime rate. Since most offenders are not tried in court. Some are granted bail, while others jump bail. Besides some offenders face the lengthy process of securing legal aid coupled with the growing numbers of complex cases in courts.

Furthermore, there is the allegation of widespread sentencing disparity in Nigerian lower courts. Sentencing disparity has reached a stage that there is disparity in a court as regards to sentences passed on particular offences. Besides, there is disparity between courts in relation to specific sentences on particular offences.

Another problem, is factors attributable to magistrates and judges, that most sentencers do not have the necessary training, most of them have diplomas and quranic education. Furthermore, they do not have enough experience on the bench to enable them pass sentences. As soon as criminal trial reach the conviction stage, sentences are just handed down in an arbitrary manner.

Commenting on the problem of sentencing patterns and practices in Nigerian lower courts Milner (1972)

notes that generally, the Area Courts imposed shorter sentences than the Magistrates Courts and High Courts. He also showed moslem courts located in the far northern parts of the region imposed heavier imprisonment sentences than their counterparts in the Southern part of the same region (Milner 1972:90-91).

Other small scale studies of sentencing practices conducted by Nigerians also indicate the same problem. For example, Adeyemi's (1972) study involved the analysis of the disposition of fifty-two criminal cases drawn from Magistrates Courts records in Lagos and Western States of Nigeria. He found some variations in sentencing practices, and noted that the most frequently used disposition was imprisonment, followed by the imposition of fine (Adeyemi 1972:52). In my view, Adeyemi's study is rather limited in the sense that he dealt with only a few criminal cases within the same geographical area. Also Best's (1979) study of sentencing practices in Nigerian lower courts involved the analysis of the dispositions of 620 criminal cases, selected from Area and Magistrates Courts in Jos, Plateau State. He found that the Area Court disposed its cases faster than the Magistrates Courts. He also indicated that the use of "imprisonment" and "fine" were higher in the Area Court than in the Magistrate

Court. He found some variations in sentences; and added that "disparities between the courts in sentencing were not very distinct in all aspects of sentencing" (Best 1979:46-50).

Owomero's (1980) study involved the examination of the sentencing pattern of dispositions in 510 criminal cases selected from Area, customary and Magistrates Courts in Oyo and Kaduna States. He found that the maior forms of sentences readily used by Nigerian Magistrates and judges were those of imprisonment or fines with the alternative of imprisonment. He also found variations in sentences, and explained these variations with reference to differences in the social backgrounds, attitudes and personalities of individual judges (Owomero 1980:92-103).

The problem of the sentencing pattern and practices is not confined to Nigerian lower courts. Gottfredson and Gottfredson (1987) reviewed the sentences imposed in over 7,000 criminal cases in a New Jersey court by six judges. They found a percentage variation in imprisonment ranging among judges from 34 percent to 58 percent. They also found that two judges tended to be consistently lenient compared to the other four judges (Gottfredson and Gottfredson 1987:149).

Patchett and Mcclean (1965) examined the problem of the sentencing pattern and practices of the juvenile courts in north England. They found widespread variations in the sentencing practices of these courts. The differences between urban and rural areas, which might be expected to be significant, were less marked than those between similar towns (Patchett and McClean 1965:699). Also Hogarth (1971) carried out a comprehensive study of sentencing pattern and practices of juvenile courts in 37 juvenile districts in Ontario. He found variations in sentences, and he notes that these differences appear too large to be explained solely in terms of the types of cases appearing before courts in different areas (Hogarth 1971:11).

Theoretically, sentencing passed on two convicted offenders for similar offences should be the same. However, there are problems in the sentencing patterns and practices of the courts. At this point we may ask, what are the sentencing objectives as they relate to sentencing patterns and practices?

1.2.1 Sentencing Objectives

The goals of sentencing are to achieve one or combination of the following purposes, retribution, deterrence, reformation, and incapacitation.

Nevertheless, the ultimate goal of sentencing is the correction of offenders, that is, to make him/her into a law abiding citizen and to reduce the criminal population in society. Accordingly, we will discuss the four sentencing goals in this study in order to show how they relate to sentencing practices.

Retribution is concerned essentially with making the punishment to fit the crime, exacting an "eye for an eye," and seeing that offenders get what they deserve. From the society's perspective, retribution is an expression of social condemnation that reinforces the values and norms that the offender has transgressed. The demand for retributivists is that the sentence imposed should punish the offender strictly in accordance with the degree of severity of the crime committed. Walker (1980) explains the various conditions that are associated with retribution. Firstly, the "pure retributivist" believes that the severity of penalties should match the offender's culpability. Secondly, the "limiting retributivist" does not insist that severity of the penalty should match the offender's culpability, but the penalty could be the minimum required to achieve other aims like deterrence. He argues that retributive punishment is penalty imposed in fulfillment of a requirement in a rule that should be

imposed on those who have infringed the rule (Walker 1980:25-42).

One aspect of retribution that relates to sentencing variation of courts is that its very logic calls for a scale of penalties which matches punishment with desert. It calls for justice and consistency. However, the problem arises in the calculation of culpability and how much punishment would match it. It is this difficulty of solving the penal equation that may lead to sentencing complexities.

In Nigerian lower courts, there is very little by way of statutory attempts to deal with the problem of matching sentencing with culpability and a great deal is left to the discretion of magistrates and judges. In a few instances the courts distinguish more serious form of an offence, and award maximum penalty. The law distinguishes between murder, manslaughter, infanticide and child destruction. Besides, there are general restriction on types of custodial sentences for offenders under 18 years of age and other lower age limits. Otherwise, it is left to the discretion of the magistrates and judges whether some feature of the case justifies him or her to impose a sentence of severity or leniency.

Another justification for punishment which has

implication for sentencing pattern and practices is deterrence. There are two types of deterrence. According to Newman, general deterrence is the threat of punishment which is directed to all members of a society and which seeks to restrain them from engaging in future criminal conduct. Specific deterrence is the preventive effect of the actual imposition of punishment on the offender, so that he does not repeat his crime (Newman 1978:52). In order to be effective deterrence measures must be certain, swift, uniform, and proportionate to the act committed. The function of deterrence is to prevent law-abiding citizens from turning to crime, and to discourage punished offenders from returning to crime.

However, some aspects of deterrence may lead to sentencing variation. These include the requirement that someone is always penalized for every offence so that respect for the law can be maintained. This may encourage punishing the innocent and unjust forms of law enforcement. Deterrence also has a central role to play in allocating a particular magnitude of penalties to convicted offenders. Deterrence is associated with the problem of sentencing patterns and practices in that even if there is no retributive need to incapacitate a particular offender by

imprisonment, he still might receive a long prison term to sound a message of warning to potential offenders.

Deterrence sometimes calls for harsh measures against offenders which may be retributively inappropriate and irrational. Rawls (1972) in his theory of justice objects to deterrent punishment by noting that:

> Each person possesses an inviolability founded on justice that even the welfare of society as a whole cannot override. For this reason, justice demands that the loss of freedom for some is made right by greater good shared by others. It does not allow that the sacrifices imposed on a few are out-weighed by the larger sum of advantages enjoyed by many (Rawls 1972:3).

In Nigeria, one of the formal strategies of crime control is deterrence. Very often the Federal Military Government adopts deterrence measures to deal with the crime problem. For example, setting up special tribunals to try people for miscellaneous offences, imposing stiff and mandatory sentences on offences like armed robbery, drug-trafficking, smuggling etc. since the objective of deterrence is to threaten and frighten offenders and non-offenders, it often makes examples out of people who may not deserve to be punished, and this may result into unjust form of punishment. For example, the penalty of death by firing squad for armed robbery in Nigeria

has not wiped out armed robbery. However, not all the armed robbery that are caught are punished. Sometimes some of the armed robbers who commit the same offence are tried in court and are given varying jail terms, others are set free by the courts, while a few of them are actually sentenced to death by firing squad.

In many instances, the subjective perception of the severity of sanction by actual or potential offenders may not correspond with the view of sentencers. Consequently the control of armed robbery may not come from the severity of sanctions (deterrence) but from improvement in the efficiency of the entire criminal justice system. For example, crime reporting, the capability of the police to arrest and prosecute offenders, and of the judiciary to punish offenders. Thus, it is the certainty not the severity of punishment that deters.

Reformation is another philosophy of punishment which has direct link to sentencing patterns and practices. The objective here is to encourage the offender to abstain from criminal behaviour in the future by selecting the most appropriate form of treatment for the offender. According to Kittrie and Susman (1979), reformation refers to efforts to change the offender through treatment. It seeks to provide the means for the prisoner to see the "error

of his ways" and subsequently alter his behaviour in light of such a reflection. It operates through isolating the offender in a socially neutral situation by exposing him to the values which society desires him to take on (Kittrie and Susman 1979:13).

However, there is some dissatisfaction with the reformative justification for various reasons including link to sentencing variations. It is argued that some offenders who commit similar offences are treated differently in keeping with their assumed reformative needs. Morris (1969) has criticized the reformative theory on the ground that criminals have the right to equal punishment under the law. Expressing his dissatisfaction with the theory Wang (1971) also states that reformative programmes are share myths because they do not work although judges continue to sentence offenders to long periods of incarceration on the assumption that they work. He notes further that many reformative programmes, where they do exist are coercive and demanding, and as a result, they only serve to increase offender's punishment, rather than reducing recidivism.[4]

The reformative justification further requires the individualization of disposition, which in turn implies wide discretion for the judge and other penal agencies that determine the appropriate disposition.

Thomas (1979) points out that the application to the same case of different criteria indicated by the choice between a tariff sentence (i.e fixed sentence) and individualization measures (i.e not subject to tariff sentence), may result in sentencing variation. When viewed in terms of the degree of intervention in the offender's life, the balance would vary between the two sentences. However, in one case the choice of an individualized measures may mean that a probation order is preferred to a substantially fixed sentence of imprisonment. In another case, it may result in the offender being subjected to an indefinite period of imprisonment (Thomas 1979:3-15).

In Nigeria, the idea of individualization and social readjustment, make probation a measure which is particularly attractive for dealing with offenders. However, the main developments in probation in Nigeria have not been seen until juvenile probation services were introduced in Lagos and Calabar in 1946. In the north, probation facilities were not available until the probation of offenders' Law was passed in 1957 to provide a basis for development (Milner 1972:190-192).

Although the judiciary tends to share a retributive interpretation of justice, magistrates and judges do impose varying sentences on convicted

offenders on the assumption that they may be reformed. The Federal Government has demonstrated through periodic statements, its commitment to the penal philosophy or reformation, the refusal of some government agencies to employ ex-offenders discourages other employers of labour from engaging the ex-offenders, which is antithetical to the government's penal philosophy.

The issue of sentencing patterns and practices also relate to the treatment of juvenile offenders. A juvenile offender is liable to an offence, if he or she is deemed to be sufficiently aware that the community disapproves of his action. Thus, juveniles of all ages are subject to welfare proceedings. The welfare procedure applies to juvenile in need of care and protection.

In the northern states of Nigeria, unlike the southern states, there are no provisions for the trial of juvenile offenders by special courts, and trial of juvenile offenders in the Nigerian lower courts is the common procedure. Juvenile offenders who are found to be in need of care and protection can be dealt with by committal to an Approved School, Remand Centre, The Borstal Training Institute. Thus, in appropriate circumstances, the magistrate and the judges may deal with juvenile offenders by means of

individualized measures.

Incapacitation is another justification for punishment which has implication for sentencing patterns and practices. According to newman (1978:249), incapacitation means preventing an offender from committing further criminal acts by keeping him/her out of circulation. The incapacitation goal of sentencing is to remove offenders from free circulation in the society, so that they will be physically restrained from committing crimes. The United states Model Sentencing Act specifies that confinement of the dangerous offender is necessary. Dangerous offenders, according to the Model Sentencing Act, are those involved with organized crime, or those who have committed a serious crime against a person and show a history of persistent assaultiveness.

Some magistrates and judges, maintain that restraint should be a major purpose of the penal sanction in order to protect the general welfare of society (Connolly 1975; Kaufman 1973). Ernest Van den Haag (1975) points out several flaws of incapacitation as a goal of sentencing. According to him, crime rates cannot be reduced through imprisonment because most crimes are not committed by persons with identifiable characteristics that could

lead to their detention for the purpose of decreased victimization. Thus, the majority of offenders are readily "replaceable" within the population. For example, confining one burglar's activities may simply provide additional opportunity for another burglar. Thus, the proportion of persons who engage in criminal conduct within society will not necessarily be reduced by restraining individuals found guilty of criminal behaviour through criminal sanctions. According to Miller, the predictability of criminal behaviour is an important requirement of incapacitation. However, empirical evidence demonstrates that there are no exact prediction devices for determining who will engage in future criminal behaviour. The unjustified incapacitation of offenders who may not engage in subsequent illegal activities is, therefore one criticism of the incapacitation (Ernest Van de Haag 1975; Miller et al 1975).

Thus, an essential component of incapacitation is the prediction of the offender's dangerousness and future criminality. It is here that issue of variation in sentencing patterns and practices of the magistrates and judges come in. In fulfilment of this sentencing objective, the length of sentence would have to reflect the magistrate's or judge's

subjective estimate of when the convicted offender will be a "good risk" for returning to society. Besides, incapacitation involves the inherent problem of predicting criminal behaviour, and overprediction of criminality may result in unfair imprisonment (Cohen 1984; Hirsch 1985).

In summary, as noted in the foregoing chapter, in all literature of sentencing patterns and practices, magistrates and judges have legal authority to impose sanctions upon those who breach norms specified by law. The courts must accept the responsibility of trying to achieve a proper balance between the legislature and judicial discretion in sentencing and struggle to develop procedures which, may bring justice to sentencing convicted offenders.

1.3 Statement of Research Objectives

In Nigeria, the magistrate and Area Courts try the majority of the criminal cases. These courts are the most important arm of judiciary that serve the majority of people and with which the people are most acquainted. These courts constitute the segment of the criminal justice system with specific responsibility for interpreting law and applying it to cases in order to determine guilt or innocence and suggesting appropriate sentences. It is hoped that

the efficient performance of these courts may clarify the position of law relating to different communities in Nigeria. It is for this reason that there is need to examine the sentencing patterns and practices of the Nigerian lower courts. The specific objectives of this study are therefore as follows:

(a) To examine the patterns of disposition of criminal cases in Nigerian lower courts.

(b) To identify sentencing pattern of cases in these courts.

1.4 Hypothesis

In Northern Nigerian lower courts, the Penal and the Criminal procedure Codes specify the form in which justice should be meted out to convicted offenders. However, the sentencing process is characterised by what appear to be arbitrary dispensation of justice. Some criminals receive harsh sentences, others get away with lenient sentences, while a large number go unpunished. It is on the basis of this problem that the following hypothesis are formulated.

1. There is a relationship between types of courts and type of sentences. Magistrates courts are more likely to be more lenient than Area Courts regardless of the types of offence.

2. There is a relationship between length of imprisonment and types of courts. Area Courts are more likely to impose shorter imprisonment sentences than Magistrates Courts.
3. offenders from low social status are given long sentences than offenders from high social status.
4. Offenders from low social status experience higher fines than offenders from higher social status.

1.5 Scope of Study

This study examines the problem of sentencing patterns and practices in Nigerian lower courts. A total of 800 criminal cases were extracted from the records of offenders in the Magistrates and Area Courts in four research Centres: Kaduna, Kano, Jos, and Makurdi. In addition to this, self-administered questionnaires were distributed to 38 magistrates and judges in the same research centres. The questionnaire is also part of the study being carried out to supplement information from official documents. The data collection for this study took place from May to December 1988.

1.6 Significance of the Study

It is hoped that this study will serve policy as well as practical and theoretical purposes. In terms of policy, the suggested penal policy should aim at the development of coherent sentencing process that depend on judicial ability to follow the principles which are laid down by higher courts. To understand sentencing policy the magistrates and judges must know what the legislature wishes to achieve by creating various sanctions. What alternative choices are open to them, and on what objectives they are based. What is expected of those who implement sentences and what they see as their role.

In terms of practical purposes, it is hoped that the study will aid in understanding the problem of sentencing patterns and practices in Nigerian lower courts. This in turn would be valuable for policy formulation on crime control in Nigeria. As already indicated in this chapter, studies on sentencing patterns and practices are very few in Nigeria (Milner 1972; Adeyemi 1972; Best 1979; Owomeno 1980). These studies are small scale and do not provide detailed analysis of the sentencing patterns and practices in Nigerian lower courts.

On the theoretical level, this study may be useful as a basis for subsequent studies in Nigeria.

As Nigeria society develops, there is need to conduct research into the administration of criminal justice in order to reveal the direction into which changes could take place. Besides, this study provides additional information for students of sociology/criminology and law.

1.7 Synopsis of the Remaining Chapters

Apart from this chapter, the rest of this work consists of five chapters. In chapter two, the structural functionalist, the social interactionalist, the labelling, and the Marxist conception of the criminal justice are reviewed. However, the structural functionalist perspective is preferred.

Chapter three focuses on the method of research in terms of sampling, variables and their measurement, techniques of data analysis, method of data presentation, interpretation and limitation of the study.

Chapter four traces the historical background of the lower courts in Nigeria, and northern Nigeria. It describes the composition and relative frequencies, percentages, and patterns of cases treated in Nigerian lower courts.

Chapter five aims on data presentation: analysis

of types, distribution, pattern, and cluster of disposition by courts, and socio-demographic characteristics of offenders.

Chapter six is devoted to the summary of the chapters, discussion, conclusion and recommendations.

NOTES

CHAPTER ONE

1. Examplary sentence (punishment) refers to sentence which serve the purpose of general deterrence, related strictly, to the facts of the offence and makes no allowance for any mitigating factors.

2. See "Crime and quality of life in Nigeria". Nigerian National Paper to the Sixth United Nations Congress pp.1-9.

3. According to the New Nigerian, between 1979 and 1983, it became very easy to determine in advance the direction "justice" would take once the "geography", politics and wealth of litigants were known. Judges' views substituted for the People's choice in the political process; and the courts became the leading hand-maiden of political swinders.

CHAPTER TWO

2 THEORETICAL PERSPECTIVES ON SENTENCING PRACTICES

The aim of this chapter is to examine the theoretical perspectives on criminal justice as they relate to sentencing practices. The chapter is divided into five sections. The first examines the structural functionalist perspective, the second is devoted to the social interactionalist perspective, the third examines the labelling perspective. While the fourth focuses on the marxist accounts of criminal justice as relate to sentencing practices. The intention is to analyse the four theoretical perspectives and select one for the study. The fifth section is devoted to review of the related literature on sentencing process.

2.1 Structural Functionalist Conception of Criminal Justice

"Structure" refers to ordered arrangements of components or traits of culture. While "Function" refers to the interconnection process of social life, the part the structure plays in accounting for the coherence and persistence of social whole (Becker et al 1957:240).

The structural functionalist perspective conceives of societies as self-contained systems

which consist of interlated and interdependent parts listed as cultural beliefs, family organization, and political and legal institutions, economic and technological organizations. Society is seen as a system composed of different subsystems which function to meet the needs of each other, and also of the larger system. Subsystems are viewed not in isolation from the entire society, but in terms of their relationship with the larger system. In order to survive, these subsystems have to attain the goals for which they are established. Within this view, societies are viewed as systems having definite structure or organization (Parsons 1964; Sills 1968).

According to functionalist perspective, all societies have normative control specifying appropriate and inappropriate behaviour, and individuals are rewarded or punished as they conform, or deviate from the normative rules. Thus the norms are seen as the blue prints for behaviour, setting limits within which individuals may seek alternative ways to achieve their goals. Such norms are also based on cultural values which are justified by moral standards, reasoning or aesthetic judgements. Within this view, it is impossible to imagine a normless society, because without norms behaviour would be unpredictable. The standard of conduct contained in

the norms give order to social relations. Individuals who conform are able to communicate easily with each other, and conforming behaviour is predictable. Interaction goes on smoothly if participants follow rules appropriate to the situation (Parsons and Shils 1952; Broom and Selznick 1961).

The functionalist perspective deals with factors that provide the fundamental guidelines within which the criminal justice may be understood. Within this view, crime is bound up with the fundamental conditions of social life, and by that it is useful. Durkheim (1933;1964) notes that crime is present not only in the majority of societies of one particular species, but in all societies. There is no society that is not confronted with the problem of criminality. Its form changes, the acts thus characterised are not the same every where, but every where, there have been men who have behaved in such a way as to draw upon themselves penal repression. In the first place crime is normal because a society exempt from it is utterly impossible. Crime consists of an act that offends certain collective sentiments. Thus, crime serves both functional, that is, reinforcing collective sentiments, and dysfunctional purposes, that is threating social solidarity.

Thus, where crime exists, collective sentiments are flexible to take on a new form, and crime sometimes helps to determine the form they will take. Furthermore, the criminal does not seriously endanger the structure of society by his distructive activities. Instead, the attitude of hostility toward the criminal has unique advantage of uniting all members of the community in the emotional solidarity of agression (Durkheim 1933; 1964).

The implication of this discourse is crime is an inevitable by product of development. It cannot be all together prevented, though it can be kept in check by a combination of benevolent social reform and a rationally organized and efficient criminal justice system.

The functionalist position asserts further that criminal law reflects those social values which transcend the immediate and narrow interests of individuals and groups; expressing the social consciousness of the whole society. The legal norms embodied in the criminal law are deemed to have emerged through social change in response to the needs and requirements essential to the well-being of the entire society.

Bredemeier (1962) notes that, the function of law is the orderly resolution of conflicts to avoid

disrupting productive cooperation. He argues further that, this task handled by courts is dependent upon three types of inputs. The first, the court needs an analysis of cause and effect relationship. That is, the past relationship between alleged act of the offender and the injury of the victim. This input comes from the adoptive system in return for an immediate out-put. The second, consists of the standard by which to measure the conflicting claims and the anticipated effects of a decision on the role of structure. This input comes from the political system in exchange for interpretation of the meaning of the abstract language of legislation. The third, consists of willingness on the part of potential litigants to use the court as a conflict resolving mechanism. This input comes from the pattern maintenance system and the court's immediate out-put is what is termed justice (Bredemeier 1962:73-88).

In the view of the functionalist perspective, the aim of the criminal proceeding is to determine whether the accused is innocent and still belongs to the group or whether he is guilty and should be put under the ban of criminal punishment. Within this view, the function of courts is seen as the legitimation of political authority interpretation of policy goals, chanelling of roles and expectations,

socialization and dispute processing (Griffith 1981:18). According to Shapiro (1981), the starting point in understanding the court role is trial process in which two litigants call upon a judge to resolve their dispute. He explains that the legitimacy of courts is based on the "social logic" of the trial, that is, on the consent of the disputants (Shapiro 1981:1).

Thus, a central problem of every organized community is how to ensure that its affairs are conducted according to the predetermined, and binding rules of general application, and not according to the arbitrary will of some individuals. In more specific terms, the problem is to ensure that disputes among members of the community or between any of them and the state are adjudicated impartially according to the law of the land. The mere existence of the rules is not enough to secure the rule of law if they are not observed in actual practice.

Within the functionalist formulations, the rule of law is the hallmark of democratic societies. The rule of law is perceived in terms of certainty that one is free from arrest unless charged with some recognized crime, and that an offender will be given a fair trial before the court. The rule of law is equated with equality before the law. Within this

view, the recognition of fundamental rights of individual formed an element in the rule of law. The other elements are concerned with the institution and with the procedures whereby these rights are given effect. Also it is recognized that judicial control of executive, as distinguished from judicial control of the legislature, is a central feature of the rule of law. Although the executive can build up procedures which may protect individual rights in certain cases more efficiently than the ordinary courts. Particular attention is directed to the conception of "fair hearing", both with regard to the circumstances in which it is demanded by the rule of law and to the minimum conditions of its existence (La fave 1962; Marsh 1961).

According to the structural functionalist perspective, the maintenance of the rule of law demands of the courts a duty to engage in a purposeful effort to try to distil principles of fairness and justice from the moral, ethical and other fundamental values of the society. It is not suggested that expedency or the judge's subjective notions of right or wrong should form the basis of judicial decisions. That would itself be a negation of the rule of law, which requires that justice be administered according to rule of law, and not

according to every one's whims. Theoretically, the judge is a neutral person between the litigants. The judge is required to interprete and apply the law without fear or favour. In this view, there is much anxiety about judicial discretion and sentencing practices.

Thus, within this conception, a criminal case is like a sporting event, a contest between the law-breaker and the state representing the interests of the people. The magistrate or the judge is deemed to be the impartial umpire who applies the rules of the game, using the criminal procedure code and the penal code. The magistrate or the judge decides the winner and loser of the game, after which the sentence is imposed on the loser, and this sentence is justified on grounds like deterrence, retribution, incapacitation, reformation etc. The sentence passed is seen as an expression of social values that serve to meet the needs of the society as a whole.

It is against this background that functionalist scholars conduct their discourse on sentencing practices. Thomas (1979) notes that where two or more offenders are involved in the same offence or a series of offences, a proper relationship should be established between the sentences passed on each offender. If their responsibility in the commission

of offences and all other relevant factors are distinguishable, the same sentence should be passed on each offender. A difference in the degree of culpability, should reflect in their sentence. In appropriate circumstances the sentencers may deal with one offender by means of individualized measures (Thomas 1979:64-65).

According to the functionalist position, sentencing is a complex issues, but harsh judges and lenient judges do not account entirely for sentence variation. Instead most judges are able to identify variation in their own sentencing practices when sentencing similar offenders (Patridge et al 1974:36-40).

According to Davis (1981), unchecked judicial discretion is likely to lead to arbitrary sentencing practices. Thus, Davis has sought to show that the checking of discretion provides a protection against arbitrariness. Like structuring, checking does not determine the amount of discretionary power, but instead it affects the manner in which discretion is exercised. Discretion is checked by administrative and judicial supervision and review of decision-making. The discretionary power of sentencers can be checked, by superior, their colleagues, legislators, and reviewing courts. Davis maintains nevertheless

that discretionary power is an indispensable tool for the individualization of justice. Without discretion, rigid laws and rules that cannot account for individual circumstance would promote injustice. A sufficient, but not excessive, amount of discretion makes possible creativity in the administration of justice. Appropriate boundaries of discretionary justice, however, must be maintained to ensure justice.

He contends further that discretionary power can be confined by statutory enactments and administrative rules that establish appropriate boundaries. The authority to construct and maintain appropriate boundaries of discretionary power rests with those who have the discretionary power; therefore, it is judical and criminal justice decision-makers who define these boundaries.

In Davis (1971) views, structuring discretionary power means controlling the manner in which discretion is exercised within designated boundaries. Structuring discretion does not change the amount of discretionary power, rather, it affects the use of discretion. The exercise of discretion can be structured through statutory enactments, administrative rules and orders. Controlling

discretionary power by structuring it results in the regulation and clarification of decision-making. Structuring discretionary power provides consistency in decision-making by requiring summarization of facts and explanation of choice (Davis 1981, 1971).

In this section, we have exposed the fundamental insights which the structural functionalist perspective provides towards the analysis of sentencing practices. The structural functionalists argue that where two or more offenders are involved in the same offence, and if their responsibility in the commission of offences and other relevant factors are distinguishable, the same sentence should be imposed on each offender. This study prefers the structural functionalist perspective over the other perspectives because it addresses sentencing practices.

2.2 The Social Interactionalist Perspective

The social interactonalist approach developed out of the general social phychological theory of symbolic interactionalism. The fundamental assumption of symbolic interaction is that participation in social system is a function of shared symbols. Individuals rely on these symbols for the expression of needs, values and expectations, as well as for the

development of personal identity. The significant aspects of this interaction that occurs between the individual and society is the confirmation of status and role. Beliefs and behaviours appropriate to age, sex, class, and other socially important positions are acquired through symbolic participation with individual groups (Cooley 1902; Lemert 1951).

Cooley (1902) deals with the role of the social structure and definitional process in the development of the self. He notes that social self is a "system of ideas, drawn from the communicative life, that the mind cherishes as its own". According to him, a person tends to become, for the time, his interpretation of what others think he is. Thus, if he perceives rejection from others he is likely to view himself negatively. Developing these ideas in an explanation of deviance, Lemert (1951) maintains that if deviant acts are severely sanctioned, they may be incorporated as part of the me of the individual and the integration of existing roles may be disrupted, and reorganization based on a deviant role may occur (Cooley 1902; Lemert 1951).

An additional dimension of the boundary maintaining function of deviance is provided by George Mead. He noted that the visibility of the deviance serves to reinforce the social solidarity of

the members of society by distinguishing between the virtuous and the transgressor. This solidarity depends upon the activity of defending the social system from the threat of the deviant (Mead 1918:586-92).

The central thesis of social interactionalist perspective is that it is not so much the criminal act as it is society's reaction to the act that further the development of criminal careers (Schrag 1974:707). Thus, by holding this view, this perspective has shifted attention from the act to the process through which the act is defined.

According to the interactionalist perspective, one area for the exploration of the interaction between law and behaviour concerns the legal treatment of criminal defendants. It is within this area that confrontation of legal authorities and various political and social groups become most evident. At each stage of the criminal trial and sentencing, legal authorities assess the defendants and the offence for evidence that official sanction is warranted. Such evaluation and interpretation may be guided by the popular stereotypes of criminality. Stereotypes not only shape public attitudes and behaviour toward criminals, but they also guide the very choice of individuals who are to be so defined

and process. Simmons (1965) notes that:

> This selection is not random, but rather is influenced by the popular images of deviance. Persons possessing characteristics associated with the stereotype of a particular deviation are more likely to be identified and punished (Simmons 1965:226).

Gaffman (1968) also observes that stereotypes become the "means for categorizing persons and the complement of attributes felt to be natural for members of each of these groups, the product of which allow us to deal with anticipated others without special attention" (Goffman 1968:2). Within this view, the idea of what constitutes criminality is deemed to be a product of wisdom among legal representatives developed in their daily interaction with offenders. At every stage of the judicial process from arrest through final conviction and sentencing, the official decision-making consists of characteristics relevant to the behaviour of offenders. While class or ethnic status may be relevant to these conceptions, they may not provide sufficient information for those charged with decision in the legal process.

To sum up, the social interactionalist perspective does not address sentencing practices per se. However, it argues that in each stage of the criminal trial and sentencing, legal authorities

assess the defendant and offence for evidence that official sanction is warranted. This perspective perceives deviance as the infraction of some agreed upon rules. It believes that deviant behaviour tends to reduce stability and survival is dysfunctional. Nevertheless, the assumption that deviance is dysfunctional to group goals raises the question of what are the group goals? In spite of this assertion, this perspective does not tell us who decides group goals. If the category of those who are termed deviants is not uniform, then, one cannot expect to find common factors of personality to account for their deviance behaviour.

2.3 The Labelling Perspective

Labelling is a general perspective on deviance that has been applied to crime and delinquency. This perspective assumes that people first violate a norm by chance or unexplained reasons. This initial act of deviance, called primary deviation sometimes elicits reactions from others. These reactions take the form of stereotyping and rejecting the deviant.

Swigert and Farrell (1976) note that those offenders who violate the law are treated more harshly by the courts if they fit the stereotype of a "normal primitive", an image of lower class and other minorities whose limited education, lack of job

skills, orientation to the present, possession of weapons, and immaturity are thought to predispose them to violence (Swigert and Farrell 1976, 1977).

Schur (1979) also argues that people who engage in socially disapproved behaviour are labelled as disvalued individuals. Their status as a deviant sometimes becomes a "master status"; that is, other aspects of their behaviour are submerged in a social identity as a deviant. The labelling perspective direct attention away from the causes of primary deviation, or rule breaking, and focuses instead on the people and institutions that have the power to label behaviour as deviant (Schur 1971, 1979). In addition to this, Schur (1969) points out that the process of rule breakers by institutions, like prison, keeps deviants at a distance from the rest of society. Deviant acts would occur even if there were no such institution, but the deviant acts,"nature, distribution, social meaning, and implications and ramifications are significantly influenced by patterns of social reaction" (Schur 1969:115).

The assumption of the labelling perspective is that people are major cause of continued deviant behaviour and that people who initially violate norms are treated by law makers, police, judges, magistrates, and others who have the power to affix

the label deviant.

Garfinkel (1956) observes that one way the labelling of deviant behaviour leads to secondary deviation is through the effects of the label on the self concept of the person who has been labelled. People who violate the law and are arrested by the police and tried in court and sentenced to imprison may have their conceptions of themselves altered and come to think of themselves as criminals or delinquents. Court appearance have been called "status degradation ceremonies", in which people accused of violating the criminal law are recast as unworthy persons. According to Schrag (1974), these people can reject other people and become hostile to society in order to maintain their self-esteem. Being labelled criminal or delinquent in court can produce a self-fulfilling prophecy, so that people behave in a ways consistent with their altered self-concepts. In other words, once they are labelled criminal by the police, courts, and the prisons, people may continue to behave as criminals (Garfinkel 1956; Shrag 1974; Conklin 1989).

Becker (1978) also argues that to be labelled a criminal one need only to commit a single criminal offence and this is all that the term refers to. Yet the word carried a number of connotations specifying

auxiliary traits characteristics of any one bearing the label. A man who has been convicted of house-breaking and thereby labelled criminal is presumed to be a person likely to break into other houses. Thus, the police in rounding up known offender for investigation after a crime has been committed operate on this premise. He is considered by the police to be likely to commit other kinds of crimes as well, because he has shown himself to be a person without "respect for the law". Thus, an apprehension for one deviant act exposes a person to the likelihood that he will be regarded as deviant (Becker 1978:99-100).

In summary, the labelling perspective has some short-comings. This perspective does not address sentencing practices per se, but argues that people who violate the law, are arrested by the police, tried in court and sentenced to imprison may have their conceptions of themselves altered and come to think of themselves as criminals. This perspective does not tell us why some people engage in primary deviation and why other people do not break the rules. The perspective fails to make clear the conditions under which labelling will alter self-concepts, restrict opportunities, hurt social relationships, and drive deviants into subculture. It

has not made clear when a label will be accepted by a rule breaker and when a deviant will reject a label.

2.4 Marxist Accounts of Criminal Justice

This section examines marxist accounts of criminal justice, especially as they relate to sentencing practices. The object is to assess the theoretical adequacy of the Marxist Perspective in accounting for the problem of sentencing practices.

Marxists do not address sentencing practices per se, but modes of production. According to them, the state emerged when society became divided into classes, that is, with the appearance of exploiters and the exploited (Illitakaya 1978:390-391). For Marx and Engels, the state is "a historical phenomenon which contributes to the ideological and political coherence of a social formation which has definite roots in the social contradictions that arise from commodity production, but which exerts influence on the class relation" (Beine 1982:48).

Among marxist theorists, there is an implicit linkage between law and the coercive violence of the state, whether expressed in the regulation of productive relations or in the direct suppression of dissent. Poulantzas, among many others, derides any sense of opposition between law and violence. He

argues forcefully that the domestic agencies of state control, the police and the courts, are linked in an ascending hierarchy of terror to the ultimate violence of the state (Poulantzas 1978:80). This contrasts with the view of functionalist scholars that the state exists to maintain stability in civil society. Law is regarded by the latter as a body of rules established through consensus by those who are governed.

Contrary to the functionalist position, the marxists view is that the state is created or dominated by that class of society that has the power to enforce its will on the rest of society. The state is established by those who desire to protect their material basis and have the power to maintain the state. Within this view, law in capitalist society is seen as giving political recognition to powerful private interests. Law is also seen as an apparatus that is created to secure the interests of the dominant class. The law provides the mechanism for the violent control of the rest of the population. In the course of class struggles, the agents of the law, police, prosecutors, judges etc. serves as a force for the protection of domestic order. Hence the state, and its accompanying law reflect and serve the needs of the ruling class (Taylor et al 1975: 192-

193).

Marxist theorists view law as an aspect of the super-structure designed to serve the interest of the ruling class, and in the sphere of criminal law as a coercive instrument of class domination and manipulation. In both cases, there is a characteristic emphasis on the role of judicial ideology as a leading form of mystification and legitimation of power relations in the economic and political spheres; and just as it insists upon the economic base of capitalism and its reflection in the nature and function of the state, the marxist perspective also stresses how law and the rule of law are undermined by the spread of imperialism and the growth of capitalism (Jossop 1980; Burlatsky 1978).

The marxist theory of law, conceives law as emerging from the domination of society by the ruling class and the replacement of an institution of property in the hands of the society by private property in the hands of a few individuals. Within the marxist tradition, law is made by the ruling class and employed by it to further its class interests and to maintain its control over the rest of society. In this sense, law (and State) is the basic characteristic of any class society (Theodoropoulos and Akuff 1985:8).

Hall et al (1978) focus on the nature of law, the police and the judicial apparatus. They argue that these apparatuses change with different stages in capital accumulation and with different forms of state. This can be seen by the emergence of legal despotism during the period of agrarian capitalism in eighteenth century England and the rule of law in the liberal state characteristic of nineteenth century industrial capitalism. They investigated the changing role of "policing" in its widest sense, in the post-war British State, and argued that in response to a general crises of authority, the state developed a series of "moral panics" culminating in a general crises of law and order. Within this view, they assumed that legal discourse and practices are indeterminate and that their actual implementation is determined by other political and ideological discourse and practices. Thus, Hall and his colleagues account of "policing the crises" successfully locates law within a complex of strategies available to the state in its attempts to consolidate the rule of capital in the bourgeois democratic state (Hall et al 1978:186-292).

Unlike the functionalist scholars who believe that law is neutral and beneficient to all. Marxists perceive law as reflecting the interests and wishes

of the ruling groups. Thompson (1975) notes that:

> Law is ... by definition a part of the superstructure adapting itself to the necessities of an infrastructure of productive forces and productive relations. As such it is clearly an instrument of the de facto ruling class; it both defines and defends these rulers claims upon resources and labour power - it says what shall be property and what shall be crime - and it mediates class relations, all of which ultimately confirm and consolidate existing class power. Hence the rule of law is another mask for the rule of class (Thompson 1975:259).

Within the marxist perspective, law is deemed to be class-based, defending the ruling groups more than the sub-groups. Thus, the functionalist scholars' notion of equality before the law is debunked.

> Arguing similarly, Hartjem (1970) notes that: Law is an expression of interests, an outgrowth of the inherent conflict of interest characteristic of society. Law is seldom the product of the whole society. Law is a result of the operation of interests, rather than an instrument that functions outside of particular interest. Though law may control interest, it is in the first place created by interests (Hartjem 1978:43-44).

In Quinney's opinion, law does not represent a compromise, of the diverse interest of society. No matter to what extent the community may agree with the law, law in every case represents a victory of one group over another, a victory born of the conflict of interests and secured by differentials in power. Law supports some interests at the expense of

others, even when these interests are those of the majority. Hence law is inherently oppressive. Podgorecki (1974) observes that:

> The basic assumption of marxist theory of law is that legal norms usually protect the interests of the ruling class and support the social relationships which are convenient for the class, with obedience to these norms being forced through coercion exerted by the state agencies (Podgorecki 1974:5).

In the view of Marxist theorists, behaviour which is considered undesirable by the dominant interest groups may be defined as appropriate by some subgroups within the society. When this situation occurs, the enactment of a statute reflects a conflict between the culture of the dominant group and the cultures of one or more subordinate groups. In these situations the law formalizes culture conflict rather than consensus. According to this view, the conflict of interests of dominant groups and subgroups is evidenced not only in the enactment of statutes but also in differential enforcement of laws. Therefore, laws considered important by these groups are more likely to be enforced than laws in which they have little interest. Thus, the violation of law by members of subgroups are more likely to be dealt with by law enforcement agencies than are violations by members of the dominant groups. Within this view, criminal law is an instrument that the

state and dominant groups use to maintain and perpetuate the social and economic order (Chambliss 1975; Quinney 1975).

The exponents of the marxist theorists do not percieve the criminal law as an expression of social values that meets the needs of the society as a whole. The emphasis is, rather, on the ability of particular groups to shape the legal system to serve their needs and safeguard their particular interests. Sellin (1962) notes:

> The criminal law may be regarded as in part a body of rules, which prohibit specific forms of conduct and indicate punishments for violations. The character of these rules, the kind or type of conduct they prohibit, the nature of the sanction attached to their violations, depend upon the character and interests of those groups in the population which influence legislation. In some states these groups may comprise the majority, in others a minority, but the social values which receive the protection of the criminal law are ultimately those which are treasured by dominant interest groups... (Sellin 1962:4-5).

In the views of marxists, the criminal law is conceived as a product of specific forms of interaction among certain historical forces that acompany the development of relations of production. Pashunkanis (1978) points out that "Criminal law is the sphere in which legal intercourse is most severely tested", for it is in the arena of criminal

justice that the rule of law is necessarily called into question. According to this view, criminal law starts out not at all from the damage suffered by the injured party, but from the violation of the norm established by the state. He observes that:

> The machinery of the state represents a very powerful weapon. On this battle field, relations do not appear in the least to be in the spirit of Kant's definition of law as a minimal limitation of the freedom of the personality indispensable to human co-existence--- The norm is determined not by the possibility of co-existence but the domination of some by others (Pashunkanis 1978:177).

Hay et al (1978) note concurringly that, the ruling class organizes its power in the state. The sanction of the state is force, but it is force that is legitimized, however imperfectly. Loyalties do not grow simply in complex societies, but are twisted, invoked and often consciously created. Hay and his colleagues, explain that eighteenth century England was not a free market of patronage relations. It was a society with a bloody penal code, an astute ruling class who manipulated it to their advantage, schooled in the lesson of justice. The benevolence of rich men to the poor, and all the remifications of patronage, were upheld by the sanction of the gallows and the rhetoric of the death sentence (Hay et al 1978:62-63).

Within this view, the private manipulation of the law by the wealthy and powerful is assumed. In eighteenth century England, the King, judges, magistrates and gentry used private extra-legal dealings among themselves to bend the statute and common law to their own purposes. Hay and his colleagues observe that, "justice" was an evocative word, despite the fact that the constitutional struggles of the seventeenth century England had helped to establish the principles of the rule of law: that offences should be fixed, and not to be indeterminate; that rules of evidence should be carefully observed; that the law should be administered by a bench learned and honest (Hay et al 1975: 32-63).

Marxists deny the contention of functionalist scholars that the rule of law ensures equal treatment and protection for all citizens in society. Sumner (1979) notes that: "the rule of law is not the effective rule at all" (Sumner 1979:266-277).

Within the marxist position, the notion of the rule of law is perceived as bourgeois ideology. It is argued that in every society there is some degree of common regularity and stability that is guaranteed by law. For example, right to life, freedom of speech and association, right to a fair trail etc. All these

represent political gains of subordinate groups in a given society and can be made meaningful if these groups are politically conscious in society.

With regard to crime, Marx concentrated on problems of political economy and the relationships between capital and labour; consequently he did not write specifically on crime. However, there are a number of passages in his writings that refer to crime and criminal justice. For example, he asserted that the fundamental conditions of modern bourgeois society in general, produce an average amount of crime in a given national fraction of society. Furthermore, Marx asserted that the most upright social groups, the judges, depend on criminals for their existence. marx's perspective on crime is one in which a relationship between economic conditions and the amount of crime is assumed. More specifically, crime is often seen to be a product of inequitable economic relationship in a context of general poverty (Taylor et al 1979:209-218).

In the view of marxists, the function of crime in society is its contribution to temporary economic stability in an economic system that is inherently unstable:

> Crime takes a part of the superflous population of the labour market and thus reduces competition among the labourers - up to a certain point preventing wages

> from falling below the minimum - the struggle against crime absorbs another part of this population. Thus the criminal comes in as one of those natural "counterweights" which bring about a correct balance and open up a whole perspective of useful occupations... the criminal... produces the whole of the police and of criminal justice... (Taylor et al 1978:167-168).

However, in the view of contemporary marxists, crime is seen as a moral and political concept which can only be understood within the context of the moral and political ideologies constituting it (Hall et al 1978; Thompson 1975; Sumner 1982). According to this view, any attempt to divorce crime from its proper context, and reframe it within a "neutral" "Objective" and "scientific" framework will merely distort its reality and provide legitimation for the operative "technocratic relationship" (Ahire 1989:22).

Marx did not write specifically on sentencing practices. The genral position of marxists is that the activities of the courts, a coercive state apparatus, are directed at the control and suppression of the exploited masses. Within this conception, the principle of the presumption of innocence which is popular in the capitalist societies has been the subject of debate. Thus, within this view, variation in sentencing practices of the courts may be viewed as deliberate act by

sentencers in the capitalist societies to protect the interest of the groups in power.

For example, marxist theorists allege that justice is class-based. This means that the rich can manipulate the system to their advantage. Within this view, criminal law is not autonomous to society, but it is itself a construction, created by those who are in position of power. The administration of justice is a human, social activity that is seen as being constructed by various legal agents to interprete and impose their order on those they select for processing. The courts which administer justice are perceived as organisations dealing with the kinds of crimes most often and most visibly engaged in by the socially disadvantaged group.

Marxists argue that the selection of suitable judges for the adjudication process has well defined limits which have been imposed by ruling groups.[1] The offenders who are processed by the courts are overwhelmingly drawn from the lower socio-economic status. It is argued that, it is the province of the Courts to decide what punishment any particular offender should actually confront. The judge has the option to determine how much of the maximum or minimum terms an offender will receive, or whether an offender will ever see the inside of a prison at all.

Thus, according to marxists, there is sentencing variation in the capitalist societies because some of the judges and magistrates are lenient with high socio-economic status offenders, while other judges and magistrates impose harsh sentences on lower socio-economic status offenders in order to protect the interest of the ruling groups.

Hay et al (1975) notes that, in eighteenth century England, "most published sentences came up to Gihborn's standards". The aim was to move the court, to impress the on lookers by word and gesture, to fuse terror and argument into amalgam of legitimate power in their minds. In the court of the justice of the peace, due process was not so much in evidence as in the High Courts. Many judges convicted offenders on flimsy evidence, particularly when they were subservient to a local magnate. The bench stressed their concern for little personal property. However, from time to time judges passed varying sentences for certain crimes like theft of clothes which they proclaimed in court to be particular misfortune of the poor.

Hay and his colleagues observe that, the nature of the criminal trial in England gave enormous discretion to men of property other than the poor. A poor man's defence was often a halting, confused

statement. At the lowest levels, within the immediate experience of the poor, pardons were part of the tissue of partenalism, expressed in the most personal terms. The great maiority of petitions for mercy were written by the rich on behalf of the poor. It was an important self-justification of the ruling group that once the poor was chastised sufficiently to protect property, it was also the duty of the courts to protect society (Hay et al 1975:29-47).

The marxists contribution to the analysis of criminal justice process lies in its clear identification of its class character and its origin on the economic organization. Thus, demonstrating the dialectical nature of the relationship between law and economy. The marxist perspective also agrees that variation in sentencing exists. However, the marxist political economy approach has failed to examine critically the social basis of variation in sentencing which is generally regarded as a deliberate act by magistrates and judges to protect the interest of the ruling group in power. It thus dismisses the discussion of variation in sentencing as a frutless exercise aimed at reforming and legitimizing an aspect of the capitalist social order. We do not share this view because in Nigeria, offenders processed through the lower courts, come

from both the lower and higher socio-economic status.

Chambliss (1974) notes that the marxists political economy approach emphasis conflicts between vested interest groups vying for the favours of state power through use of legal changes. In addition, he argues that the marxist political economy approach emphasis the inherent conflicts between those who rule and those who are ruled and see the criminal law as incorporating rules for enforcing the interests and ideologies of the ruling groups (Chambliss 1974:37).

The implication of this view for sentencing process in Nigerian lower courts, is that societal conflicts between the lower and higher socio-economic offenders are carried over into the courts. Consequently, magistrates and judges pass different sentences on offenders to protect the interest of the group in power rather than to promote the well-being of whole society.

2.5 Literature Review

The behaviour studies have considered the structure of courts as well as the characteristics of the judges who staff them. Carlen's (1976) study of London Magistrates Courts is a good illustration of research which examines the important of structure as

well as the defendant's meanings. She found that the justice which is produced in Magistrates Courts derives from socially coherent social relationships. She points out that, in the courts where several judges are involved in the decision of a case, the nature, and timing of discussions between the judges may be highly relevant to an understanding of how decisions are reached. According to her, even the layout of the court building and the judges chamber together with the amount of administrative and legal research assistance available to the judiciary, may have an influence on the extent and kind of interaction which takes place between the judges outside formal case conference. She notes that, the criminal trial in a Magistrate's Court functions by involving the defendant only as far as his presence and participation is necessary to the court's "plausible public performance of justice" (Carlen 1976:236).

Hazard (1984) also notes that the layout of the court room, the places where various participants in the proceedings are required to stand, the identification of various actors by uniform (judges' robes or wigs) are seen as far from insignificant in this respect (Hazard 1984:236).

With regard to factors relating to training and

backgrounds of judges Llewellyn (1960) stresses the numerous "steading factors' operating on judicial decision-making in courts: influences arising from common training and experience of judges adherence to known techniques of legal argument and legal analysis: the situation of group decision-making, where an appeal is heard and decided by more than one judge; certain standard of intergrity and professional skill; certain wide-spread expectation within the legal culture of the time and place as to how judicial responsibilities to be discharged are very important.

Schubert (1963) argues that the assumption that the personal attitudes and values of judges are the controlling factors in judicial decision-making is seen as evidence the behaviour studies have produced. However, he points out that, the frequent high correlation found in this research studies on judicial attitudes and judicial behaviour is unconvincing given the loseness of the concept of attitudes (Schubert 1963:100-42).

Milner (1972) also observes that most Nigerian magistrates and judges are not trained, and the choice of sentence belongs to the judge's alone. Yet his education and experience may not always be entirely appropriate in helping him to make his

sentencing decision. Whether he be a High Court judge, magistrate or member of customary or Area Court. He may be skilled in sifting evidence and ensuring that the procedural requirements for a fair trial are observed. It may even be as it has happened in the northern states, where a person can be appointed directly to the magistracy upon qualification without any previous professional experience (Milner 1972:54-55).

What behaviourists have done here is to assert that judges and magistrates are merely political actors, discharging governmental decision-making functions and are subject to pressures and constraints, not qualitatively different from those existing in other branches of governments.

Offence Attributes

With regard to factors related offence attributes, greater interest has been shown in the seriousness of offence. Sellin and Wolfgang (1964) examined a group of judges, college students, and police men at the University of Pennsylvania, and asked them to rate "seriousness" of various offences on an eleven-point rating scale. They found considerable agreement on the ranking of "seriousness" of crimes. However, their study was criticized on the ground that their sample was

unrepresentative. Rosi et al (1974) also obtained similar result with a more representative sample. He showed those questioned a list of 140 offences, and asked them to rate "seriousness" of each offence from 1-9 in ascending order of gravity. He found a substantial degree of consensus in ranking of the crimes and there was comparatively little variation in response among different racial, occupational, and educational groups. The researchers noted that:

> In asking the respondents to rate crimes we did not specify what was "seriousness", nor did we ask respondents what they meant by their ratings. Obviously, respondents imparted some meaning to the term, a meaning shared sufficiently by others to produce high degree of concensus. The norms defining how serious various criminal acts are considered to be, are quite widely distributed among blacks and whites, males and females, high and low socio-economic levels and among levels of educational attainment (Rosi et al 1974:231-237).

Offender Attributes

In terms of offender attributes influencing sentencing practices, Hagan (1974) reviewed twenty previous studies that had found associations between personal attributes of the offenders and final dispositions. The purpose of his research was to examine the relationship among age, sex, race and socio-economic status of offenders and sentence. He found that sex, race, and socio-economic status

produced the same low percentage of accuracy and that the defendant's sex played negligible role in the determination of sentence (Hagan 1974:357).

Green (1961) also in a study of 1,437 cases sentenced in Philadelfia by eighteen judges, found that the legal factors such as the prior criminal records and recommendations to the court accounted for most of the variation apparent from simple comparation. Using a prediction measure and combining these factors to classify the convicted as to expected sentences, he concluded that as cases move from extrme gravity or mildness, judicial standards tend to become less stable and sentencing reflects the individuality of the judge (Green 1961:67-69). To some scholars of the sentencing process, this introduction of concept of individuality of the judges into analysis of the problem may imply a retreat from systematic and objective investigation into the realms of subjectivity and irrationality resulting into injustice.

Case processing Attributes

With regard to case processing attributes, some researchers have found that the variation in sentences can be accounted for by the processes of probation. For example, discriminatory factors that affect sentencing process can be introduced via a

probation officer's recommendation to the judge. Carter et al (1976) found significant relationship between the probation officer's recommendation and the judge's disposition to probation in a United States Federal district court. Other examination of this factor showed that the probation officer's case load and subjective perceptions of an offender's demeanor and probable success on probation indirectly affect sentencing outcome through the officer's recommendations (Carter et al 1976; Hagan 1975).

Alschuler (1978) has found that harsher penalties are imposed upon those defendants who go on trial as compared to those entering guilty pleas. Rosett et al (1976) also note that the use of the prosecutor's discretion in determining the charge contributes to different disposition in sentences (Alschuler 1978; Rosett et al 1976).

Cole (1990) observes that the Nigerian Magistrates Courts trials are as dramatic as their Western counterparts, but the dramatization of the Nigerian lower courts proceedings lies mainly in staging of "degradation ceremonies" in which guilt is often localised and police versions of reality is upheld in a ritual of laughter; coercion and abuse. In a dramatic display of judicial misconduct marked by disregard for the principles of due process of

law, the rough treatment of Nigerian working class defendants is explained by the fact that such defendants lack political channels through which disapproval of judicial misconduct of the marginalised sectors of the populace can be challenged and curtailed. He argues that, "political accountability" in respect of the judiciary implies that judges and magistrates be subject to some form of non-government civil rights surveillance and should be questioned on points of approach. He concludes that unless and until Nigerian magistrates are deterred by public political pressures indicating disapproval, they will continue to perpetuate in such crude rhetoric and drama, an ideology of justice which produces class domination in the Nigerian society (Cole 1990:312-315).

2.6 Summary

In this chapter, we have analysed various theoretical perspectives on sentencing practices. However, this study prefers the structural functionalist perspective over the social interactionalist, the labelling, and the marxist ones. The structural functionalist discusses sentencing practices and argues that sentencing is a complex issue, but harsh judges and lenient judges do

not account entirely for sentence variation. Every magistrate and judge exercises discretion and thereby rights of citizens. The rule of law requires that discretion be restrained but it is in the area of discretion that the practices and attitudes of the sentencers affect sentencing practices.

On the one hand, social interactionalist perspective focuses on the legal process. This perspective perceives deviance behaviour as the infraction of some agreed upon rules. It argues that it is not so much the criminal act as it is society's reaction to the act that further the development of criminality. Society creates deviance by making those rules whose violation constitute deviance behaviour.

On the other, labelling perspective, focuses on the people and institutions that have power to label behaviour as deviant. This perspective argues that to be labelled a criminal, one needs only commit a single criminal offence. The police, in rounding up known offenders for investigation after a crime has been committed operate on this premise. People who violate the criminal law and arrested by the police, tried in court and sentenced to imprison may have their conceptions of themselves altered and comes to think of themselves as criminals.

The marxist perspective does not address

sentencing practices per se, but focuses on wider social forces which mould the society. This perspective sees the criminal justice process as a conflict between the ruling group and under-privileged groups. It is argued within this perspective that criminal laws are always enforced in favour of the ruling groups. Thus, ruling groups have better knowledge of the laws and how to evade them without necessarily getting entangled in the judicial net. This perspective argues that the ruling groups that appoint the enforcers of these laws can easily manipulate them to their favour. Consequently, members of the ruling groups rarely find their way into the criminal courts. However, there might be occasional rehearsals whereby the ruling groups are processed in these courts. It is argued that through such occasional cerebrated and publicised cases, the under-privileged groups are made to have faith in the criminal laws, that after all, everyone is equal before the law and will be justly treated in courts.

Also closely related to this, is the issue of the socio-economic status of offenders in the capitalist society like Nigeria. It seems to me that this emphasis represents an uncritical application of the marxist perspective. This uncritical application of this perspective may be seen in unquestioned

assumption that offenders processed through the lower courts in the capitalist society like Nigeria, come from the lower socio-economic status. Thus, indicating that the judicial process is a mechanism by which the dominant class regulate and control the behaviour of subordinate classes.

In addition to this, it has been argued by the marxists that justice is class-based. This means that the rich can manipulate the criminal justice system to their advantage. A poor offender is more likely to be convicted of a crime than an equally guilty offender of greater means. For examule, when the public official or corporation executive commits a serious crime in office, he can be prevented from doing it again by removing him from his position of power. The poor offender by contrast lacks the opportunity to commit violation such as this. If he commits a serious offence, it is likely to be with a knife or pistol, and he will have to go to prison because that happens to be the only known way of keeping weapons out of his hands.

Apart from this, we have reviewed the literature on sentencing process. We have noted that magistrates and judges are subject to pressures and restraints. Consequently, judicial standards tend to become less stable and sentencing reflects irrationality and

injustice.

In the next chapter, we will focus on the methodology adopted to examine the sentencing patterns and practices in Nigerian lower courts.

NOTES

CHAPTER TWO

1. The term "ruling group" is used in this study to embrace politicians, those engaged in the administration of government policies, especially at the upper level, owners of the means of production, since they are highly connected with the former and occasionally rolled into one. The term "ruling group" is prefered to "Elite" or "ruling class' which has generated much debate. For more detailed discussion of the issue, see Manghezi, A. op.cit. pp.69-116.

CHAPTER THREE

3. RESEARCH METHODOLOGY

3.1 Introduction

The aim of this chapter is to describe and explain the methods employed to collect and analyse the data on sentencing patterns and practices in Nigerian lower courts. The reliability and validity of the findings of any research study depend to a large extent on the method employed in collecting and analysing the relevant data. In this study, we collected data on the passed criminal cases which were processed in the Magistrates and Area Courts. It is possible that some convicted offenders might lie about their age, marital status, occupation, and their educational attainment. However, other available information extracted from official records remain valid for the period of the research study. The aspects covered in this chapter include the population of study, location of study, sampling procedure, method of data presentation and interpretation, variables, field problems and limitations.

3.2 Population of Study

In this study, the population comprises of records of individuals who have been tried and found guilty of criminal offences like property, person,

and traffic in Nigerian lower courts. Also included in the population are magistrates and judges from 1980-1988.

3.3 Location of the Study

The location of this study is northern Nigeria, a geographical region which is made up of 11 states.[1] Although the topic of this study suggests a nation-wide coverage, the consideration of research economy renders a geographical restriction rational. The limited time and finance at the disposal of the researcher did not allow the study to extend to the southern states of Nigeria.

Kaduna, Kano, Jos, and Makurdi towns have been selected for this study out of many others in the northern states of Nigeria. Kaduna and Kano represent a different cultural area from Jos and Makurdi and it was necessary to affect both. Besides, the diversification of economic, political, and social activities in these towns give the courts located in them much of the character which is typical of the lower courts in northern Nigeria.

Within the four towns, attention was focused on Magistrates and Area courts. These courts were selected because they are courts of first instance, that is, they are courts of original jurisdiction where most of the criminal cases begin before appeal

is made to higher courts. These courts also have jurisdiction to try a wide range of criminal cases including assault, house-breaking, receiving-stolen-property, theft, and traffic offences.[2] which are of interest to this study.

3.4 Sampling Procedure

In the four research centres: Kaduna, kano, Jos, and Makurdi, Magistrates and Area Courts were selected by going through the list of these courts in the Chief Magistrates and Upper Area Courts Inspectorate Offices. After that, we went to each of the selected courts and noted those that had good records keeping. A total of twenty four Magistrates Courts and fourteen Area Courts were purposively selected on this basis.

A total of 800 criminal cases were then selected from the criminal records books or files, from the Magistrates and Area courts. In the Magistrates Courts in each research centre, one hundred criminal cases were purposively selected by going through the minute books, quarterly returns, court files, and First Information Report[3] on the five offences: assault, house-breaking, receiving-stolen-property, theft, and traffic. Also those cases selected were the ones considered to be the best in terms of record

keeping.

In the Area Courts in each research centre, one hundred criminal cases were purposively selected by going through the minute books, quarterly returns, and First Information Report on the five offences: assault, house-breaking, receiving-stolen-property, theft and traffic. These offence categories were selected in both Magistrates and Area Courts because they are common offences which are often reported to the Nigeria Polic Force, and are triable in the lower courts. See Table 3.1 below for distribution of cases in each research centre.

Table 3.1: Distribution of Cases in Each Research Centre

Research Centre	Magistrates Courts	Area Courts	Total
	N	N	N
Kano	100	100	200
Kaduna	100	100	200
Jos	100	100	200
Makurdi	100	100	200
Total	400	400	800

As shown in Table 3.1, regardless of the type of offence, 100 criminal cases were selected on the five offences in each research centre in the Magistrate and Area Courts. I thought that 100 criminal cases were large enough and selected the best that had fair

variables.

It was discovered during the course of the research that not all the information on the sentencing patterns and practices in Nigerian lower courts could be obtained from court records. It was therefore necessary to use self-administered questionnaires to supplement information from official documents. Consequently, self-administered questionnaires were distributed to 38 magistrates and judges in the same research centres as shown in Table 3.2 below.

Table 3.1: Distribution of Cases in Each Research Centre

Research Centre	Magistrates Courts	Area Courts	Total
	N	N	N
Kano	10	4	14
Kaduna	6	7	13
Jos	5	1	6
Makurdi	3	2	5
Total	24	14	38

As table 3.2 shows, the largest number of respondents come from Kano Magistrate's Courts, and the smallest number of respondents come from Jos Area Courts.

3.5 Method of Data Collection and Analysis

The data collection for the study took place between May and December 1988. Two methods of data collection are used in this study: documentary source and self-administered questionnaires. The first mode of data collection is documentary source like court records; minute books; first Information Report, Case files and quarterly returns of criminal cases from the Magistrates and Area Courts. The reasons for examining these courts records was to collect information on the sentencing patterns and practices of Nigerian lower courts in their disposition of criminal cases.

The second mode of data collection is self-administered questionnaires which were used to obtain information from judges and magistrates. Self-administered questionnaires were used because access to magistrates and judges is very difficult. Besides, self-administered questionnaires have the advantage of being cheaper and quicker to administer than interviews. In this study, the questionnaires were distributed by the researcher himself and his two research assistants to a sample of 38 magistrates and judges. The researcher was at hand to explain any doubt the magistrates or the judge had, and also to ensure them of confidentiality. Then the

questionnaires were left for the respondents to complete, and were picked up later by the researcher.

The self-administered questionnaire is more appropriate in dealing with especially sensitive issues if they offer complete anoymity. The respondents, might be reluctant to report controversial or deviant attitudes in a face-to-face interview, but might do so more willingly in response to an anonymous self-administered questionnaire.

To overcome the problem of low return rate generally associated with questionnaires, I developed a device to make the return of questionnaires easier for those respondents. This was done through the provision of self-addressed and stamped envelopes for mailing the questionnaires to the researcher as soon as they completed them. On the whole the result was encouraging, because I collected most of the questionnaires were delivered to the sample respondents.

In addition to documentary sources and self-administered questionnaires, the criminal procedure in the Northern States of Nigeria and the Penal Code were studied. The purpose was to understand the powers of Magistrates and Area Court judges under these codes. The codes are lengthy and elaborate, and are written in legal jargon. The codes were studied

to enable the researcher to come to grips with the philosophy of punishment in the Nigerian lower courts.

3.6 Variables and their Measurements

In this study, the variables examined derive from the primary objectives of the research. Therefore, in order to have full knowlege of the sentencing patterns and practices in Nigerian lower courts, the following variables were examined.

Dependent Variable: it is the variable which is assumed to depend on or be caused by another (independent) variable. The major dependent variable in this study is sentencing patterns or practices.

Independent Variable: An independent variable is presumed to cause or determine a dependent variable. In this study, independent variable include factors to do with socio-demographic characteristics of offenders: age, sex, marital status, employment status, educational attainment, earning, and occupation.

Age: It is necessary to access whether age is an important determinant of sentencing passed on offenders. For example, it is useful to fine out if offenders in different age categories were given different sentences for similar offences. This will

help us measure variation between age of offenders and severity of sentence.

Sex: It is essential to determine whether sex is an important determinant of sentencing imposed on offenders.

Marital Status: It is useful to know if marital status of offenders is an important determinant of sentencing passed on offenders.

Employment Status: it is necessary to know the relationship between employment status of offenders and type of offences.

Educational Attainment: The purpose of examining educational attainment is to know whether this factor affects the severity of sentences.

Earning: We want to know the relationship between earnings of offenders and the type of offences.

Occupation: It is necessary to know the relationship between occupation of offenders and type of offences.

Concepts: Types of disposition used.

Disposition in this study includes imprisonment, bound over for good behaviour, compensation, caning, discharged and acquitted.

Imprisonment: It is necessary to know how many offenders were sentenced to imprisonment in the Area Courts as compared to the Magistrates Courts. This will help us to measure sentencing patterns in the

use of disposition methods relative to type of offences.

Bound Over for good behaviour: It is useful to know how many offenders that were bound over for good behaviour in the Area Courts as compared to the Magistrates Courts. This will help us to measure sentencing patterns relative to type of sentence and type of courts.

Compensation: It is essential to determine the number of offenders who were given compensation in Area Courts as compared to Magistrates Courts. This will help us to measure sentencing pattern in this use of disposition methods relative to type of sentence and type of courts.

Caning: it is necessary to know the number of offenders who were sentenced to caning in the Area Courts as compared to Magistrates Courts. This is essential to measure sentencing pattern in relation to type of sentence and type of courts; type of sentence and type of offences.

Discharged and Acquitted: It is useful to know how many offenders were discharged and acquitted in the Area Courts as compared to the Magistrates Courts. This will help us to measure sentencing pattern in the use of disposition methods relative to type of sentence and type of courts; type of sentence and

type of offences.

With regard to magistrates and judges, their age, sex, religion, ethnicity, and educational attainment are examined to provide information on their views on the sentencing patterns and practices. In addition to this, we want to find out whether these personal attributes influence them in passing sentences.

3.7 Techniques of Data Analysis

The most important portion of the research process is the analysis of data and the development of generalised understanding about the social phenomena under study. In this study, data on the 800 criminal cases examined in Nigerian lower courts were coded, and the coded information was fed into computer from which we obtained comulative, and absolute frequencies, value of central tendencies and measures of association provide us with the extent of relationship between dependent and independent variables. These variables were cross-tabulated through the computer to see the relationship between them.

We used chi-square in this study to measure the relationship between dependent and independent variables. The use of chi-square values at .05 level is taken as the level of significance at which the

null hypothesis may be rejected or supported. For instance, if the obtained chi-square value is higher than the table value at .05 level, the null hypothesis is rejected and the research hypothesis is accepted. On the other hand, if the obtained chi-square value is less than the table value at .05 level of significance, the null hypothesis is accepted and the research hypothesis is rejected.

Wherever Crammer's level is used in this study as a test of strength of the relationship between variables at ordinal level of measurement the following Table guides the interpretation.[5]
In addition to this, we have used Gamma as a measure of association which gives strength and direction of association.[6]

3.8 Field Problems

Some of the problems encountered in this study had to do with the specific circumstances around the magistrates and Area Courts in the four research centres. Firstly, the office opening hours were short (8 a.m. - 3 p.m), and most offices closed for religious worship at 1.00 p.m. every Friday. This made it difficult to have access to recorded information. However, I reported this problem to court registrars who are incharge of administration and in some research centres, messengers were asked

to stay behind until 4.00 p.m every day.

Another problem encountered in the study was that of suspicion. Despite the letter of introduction presented from the Department of Sociology, Ahmadu Bello University, Zaria, and from the Chief Registrar of each state, this problem persisted.To some staff the presence of any person in the record room or exhibit room was alarming. Ordinarily, only magistrates and judges or court staff are allowed in these record rooms. During my first contact with the court staff they suspected that I was a police detective disguishing in order to get information from the criminal record books or files. When I sensed this, I introduced myself as a researcher from Department of Sociology, Ahmadu Bello University, Zaria; showing my university identification card and letters of introduction for them to see. After that I explained the nature of the research and the need to go through the court records or files. This is how I got over the problem of suspicion. I also felt it was necessary to establish confidence among the court staff in order to get their cooperation and ensure the reliability of data.

The other problem was that of missing court records. In some research centres we were told by the court registrars that some of the minute books were

not available. The first reason was that following the creation of Katsina State in 1987, those magistrates who were transferred from Kaduna State to the new state carried away some of their records. Secondly, some of the records were misplaced and could not be located. In order to overcome this problem, I selected more cases in the courts where records were more complete than others.

Another problem encountered in this study was that of poor record keeping. The system of record keeping in the Magistrates and Area Courts is appaling. For example, in the Chief Magistrates Court in each research Centre, the archive is supposed to contain minute books, court files, case diaries, and quarterly returns of criminal cases. However, some of these court records were not always available.

In the Area Court in each research centre, the archive is supposed to contain minute books, and quarterly returns of criminal cases. However, the sytem of recording and keeping of court records is not better than that of the magistrates courts. For examople, in some Area Courts one case may be registered in different volumes of minute books which are not arranged in any order. As a result, a researcher can hardly find the dates on which such cases have been registered, adiourned or disposed of.

The Magistrates and the Area Courts in each research centre are required to make quarterly returns of criminal cases to their head offices. These quarterly returns contain the details of types and length of sentences of imprisonment passed on convicted offenders. They also include information on the social background of offenders and the disposition used. However, the problem of these quarterly returns remain their accuracy, because they are prepared by court clerks who have limited administrative skills.

Some of the court clerks have no proper training. Nevertheless, they occupy very important position in the hierarchy of authority within the courts. Since the inception of the judiciary in the nineteenth century, the position of court clerk has become an influential one in administration of justice, especially in Nigerian lower courts. Their privileged position in shaping the course of trials in the lower courts is acknolwedged by lawyers and offenders alike. To the lawyers, a friendly relationship with a court clerk is momentous in facilitating the approval of bail applications and the adjournment of cases. To the offenders, on the other hand, the court clerk is the symbol of court order. The court clerk dictates to the offender, what they are expected to

do in courts (Adewoye 1972; Afigbo 1972; Cole 1990).

In this study, I developed a system of cross checking the information given on convicted offenders by going through minute books, court files, case diaries and quarterly returns in the Magistrates Courts before recording information on each offender. In the Area Courts I used the same method by going through the minute books and quarterly returns of criminal cases in order to correct any obvious errors.

Another problem encountered in this study was that of access to magistrates and judges. This problem was even more difficult when the courts were in session. In most research centres, I was told by the court personel to wait or come back later. Although these personel rank much below the magistrates and judges who dominate the courts, their position affords them the opportunity of denying the researcher access to certain important information.

The other problem was that most of the research centres had no facilities for photocoping. I had to take notes whenever I came across materials that were relevant for this study. In both Magistrates and Area Courts, I was not allowed to take the court records out of the court or office room.

3.7 Limitations

This research study was limited to examination of how the five kinds of offences, assault, house-breaking, receiving-stolen-property, theft, and traffic, were disposed of by Magistrates and Area Courts for specific period between 1980 and 1988. on the whole, 800 criminal cases were extracted from the records of the Northern Nigeria lower courts surveyed.

NOTES

CHAPTER THREE

1. At the time of writing this thesis Northern Nigerian was divided into 11 States only.
2. In this study, we limit our discussion of traffic offence to dangerous driving which is punishable by a term of imprisonment or fine or both.
3. The object of the first information Report is to give the courts a complete picture of the circumstances. When an offender is brought before the courts, the courts first action will be to read the information as set out by the Nigeria Police Force to the offender in order to inform him/her at the earliest opportunity of the allegations which are made against the offender.
4. In contigency tables in this study, two measures of associations: the chi-square and cramers' V are used to find out whether the relationship between two or more variables is statistically significant or not.
5. Cramer's score — Type of Association

   0.70 — Very high association

   0.50-.69 — Substantial positive association

0.30-.49	Moderate positive association
0.10-.29	Low Positive association
0.01-.09	Negligible positive association
0.00	No association

6. The value of Gamma

+.70	Very high positive association
+.50-69	Substantial positive association
+.30-49	Moderate positive association
+.10-29	Low positive association
+.01-09	Negligible positive association
.00	No association
-.01-09	Negligible negative association
-.10-29	Low negative association
-.30-49	Moderate negative association
-.50-69	Substantial negative association

-.70 or lower a very strong negative association

7. Court staff typically includes a number of clerks, attendants, secretaries, typists, and of course registrar.

CHAPTER FOUR

4 DATA PRESENTATION AND ANALYSIS: PATTERNS OF CASES

4.1 Introduction

This chapter examines the background to the emergence of the lower courts, and presents data showing the patterns of case disposition in them. The chapter is divided into three sections. The first, is a brief historical background of lower courts in Nigeria. The second, analyses pattern of cases studied in Nigerian lower courts, while the third, examines selected socio-demographic characteristics of offenders.

4.2 A Brief Historical Background of Lower Courts in Nigeria

Prior to the establishment of British colonial rule in Nigeria, British and other foreign merchants were engaged in trade with indigenous people on the coast of West Africa. The trading coastal areas which later formed part of Nigeria included Lagos, Benin, Bonny, Brass, Old Calabar, (now Calabar), New Calabar (now Degema). In these areas, indigenous courts existed which tried to settle trade disputes between the foreigners and the indigenous people. However, the indigenious courts system were very strange to

the British and other foreign traders. It was generally believed by the litigants that they seldom obtained justice in the indigenous courts (Obilade 1979:18).

However, the arrival[1] of the British colonial powers had the most far reaching impact on Nigerian laws and courts. For example, in 1861 the imperialist state made Lagos a British colony and established a court there. The first British consul was appointed in Lagos essentially for the purpose of regulating trade disputes between the British and the indigenous people. Successive British consuls establishmed courts known as Consular Courts which dealt with the trade disputes between the British and the indigenous traders.

According to Okonkwo (1980), though the Consuls were concerned with the suppression of the slave trade and development of commerce, they had at their primary assignments, the protection of British subjects and interests. The consuls continued to exercise administrative and judicial powers until 1872 when an Order in Council was inssued to regularise their action. However, the Order in Council which applied to territories on the banks of the Old Calabar, Bonny, Cameroons, New Calabar, Brass, Opobo, Nun, and Benin Rivers vested the

consuls with civil and criminal jurisdication over British subjects and empowered them to enforce by fine, banishment or imprisonment the observance of the provisions or regulations attached to any treaty, convention or agreement made between Her Majesty and any local chief. Although the consuls had jurisdiction to hear and determine civil and criminal cases, many parts of the Oil Rivers States were without Consular Courts either because they were far beyond the reach of the consuls and their gunboats or because British subjects were not residing there (Okonkwo 1980:61-62).

The evolution of Magistrates Courts in Nigeria began in 1863 when the British administration introduced English law into the colony of Lagos with effect from March 4, 1863. The Magistrates Courts Ordinance No.24 of 1943 (as amended in 1945) established Magistrates Courts having civil and criminal jurisdiction throughout Nigeria and gave the Chief Justice power to divide Nigeria into magisterial districts.[2] A magistrate's jurisdiction covers the whole country, though he may be assigned to a specific district from time to time.

The laws administered by Magistrates Courts are the common law,[3] the doctrines of equity[4] and statutes of general application[5] which were in force

in England on January 1900. Law and equity are to be administered concurrently and, incase of conflict, equity is to prevail.

Prior to the enactment of the Native Courts Ordinance 1914, the Native Courts in the Southern Provinces were presided over by European District Officers, and each village in the area over which the court had jurisdication sent two chiefs to sit as members. The European was predominant, and there was little scope for initiative or responsibility for the Native Judges. The Native members were merely figure-heads. The European took the evidence in court when he was present. He passed judgement, and in practice he frequently passed judgement without consulting the Native members, and the more experienced he was the less important were the Native members.

In these courts, semi-educated clerks were appointed to keep records, interprete and issue the process of the courts, and in many cases, these clerks who were necessary for the European who sat as president, became the real power, and received bribes, while they terrorised the Native chiefs.

In the Northern Provinces, the Native Courts set up among the non-moslem tribes were "judicial Councils" of Elders and chiefs, who were entrusted with small powers to settle their own cases. They

were purely native, under the close supervision of the Resident and when possible a scribe was attached to the court.

However, the Islamic Courts were presided over by an Alkali (in case of Judicial Council by the Emir). The Alkali was selected by the Emir with the advice of the Chief Alkali, and confirmed by the Lieutenant-Governor or Governor-General. The Alkali could, at his discretion, or by the constitution of the court, sit with assessors or assistant (Kirk-Greene 1913-1918:266-268).

Before 1900, the customary courts did not operate within a statutory framework, and administrative controls were imposed by the British through agreements with the local rulers. However, the formal extention of British administration over the whole of Nigeria in 1900 brought immediate reorganization of the customary courts. For example, some customary penalties like witchcraft, slave dealing, the killing of twins at birth, and trial by ordeal were abolished by legislation (Milner 1972:73). In addition to this, the Native Courts proclamation No.5 of 1900 was repealed and replaced by the Native Court proclamation No.1 of 1906.

Between 1908 and 1918, the Native Courts were graded into four: 'A' 'B', 'C' and 'D'.[6] Among these

courts, only grade 'A' was vested with authority to pass the death sentence. Under the Native Court Ordinance of 1918, grade 'A' courts were provided with full judicial powers to be exercised in accordance with Native law and custom. The grade 'B' courts were to exercise judicial powers in all criminal cases punishable by two years imprisonment, or 24 lashes or a fine of £50. The grade 'C' courts were restricted to claims not exceeding £10, and imprisonment of less than 12 months. The grade 'D' courts were restricted to a prison term of 3 months or 12 lashes or a fine of £5. (Elias 1956; Lord Lugard 1913-1918).

In addition to this, limits were placed on the power of Native courts to impose humane punishments on offenders by providing powers to pass sentences by statute. Under the Native Courts Ordinance No.5 of 1918 (as amended in 1922) considerable changes were introduced in these courts in the northern and southern provinces of Nigeria. In the north, an Alkali with or without native assistants formed an Alkali Court. In the south, a single native judge, a Head Chief Sitting with assessors, was called Native Court. In 1925, Ordinance No.11 provided that an Alkali Court which tried homicide cases must not sentence offenders but should transmit records of

cases to the Emir who might sentence offenders. Similarly, no Native Court could carry out a sentence of corporal punishment until confirmed by a Head Chief or District Officer (Elias 1956:134-159).

Furthermore, before 1933, Native Courts had no power to try offenders and pass sentences under the Criminal Code. Section 4 of the Criminal Code provides that "no person shall be liable to be tried or punished in any court in Nigeria, other than a native tribunal for an offence, except under the express provision of the code or some other Ordinance" (Milner 1972:24). However, the Native Courts Ordinance of 1948 restored the power of the courts to try cases accordance to customary laws. In addition to this, Appellate Courts were provided with the power of review to resolve the conflict between customary law and Criminal Code if the decision of the court of first instance was not satisfactory, having regard to the provison of the Criminal Code. The vagueness of this provision produced differences among judges. It was generally believed that in cases involving homicide, Native Courts, passed severe sentences on offenders than the (professional Courts) Magistrates Courts. Consequently the Native Courts Ordinance 1951 provided the courts administrative authorities to remedy injustice like imposition of

excessive sentences.

Furthermore, section 26 (3) of the Native Courts Law 1956, regulated the practice and procedure of the Native Courts in accordance with the Criminal Procedure Code. This means that in considering any criminal case, a Native Court must be guided with regard to practice and procedure by the provisions of the Criminal Procedure Code. According to Richardson and Williams 1963, the principle of guidance [7] was adopted in Northern Nigeria as an expedient whereby the Native Courts might reasonably be called upon to administer a codified system of criminal law (Richardson and Williams 1963:220).

In 1959, in preparation for Nigeria's independence 1960, it was agreed by the regional governments that the customary criminal laws be abolished. The Northern Region responded by invalidating the customary criminal law, and the Western Region by withdrawing criminal jurisdiction from the customary courts.

In 1966, the military took control of the machinery of Government in Nigeria. Laws made by a Federal Military Government are called "Decrees" and those made by a Military Governor are called "Edicts". However, where an Edict made by the Military Governor is inconsistent with a Decree the

Edict is deemed to be void.

In 1968, all the Native Courts in the Northern States of Nigeria were abolished. New courts were established under Area Courts Edict No.12 of 1967. This Edict provides that "An Area Court shall administer the Native law and custom prevailing in the area of jurisdiction of the court or binding between the parties. However, the provision of the Area Courts Edict is not always observed. For example, in the case of Obi Osuagwu Versus Dominic Soldier, Dominic Soldier, the plaintiff in Alkali Court, sued Obi Osuagwu for the value of a box of clothing which he had entrusted to him for safe keeping. Both parties were Ibo from Okigwe residing in Kaduna. The Alkali Court tried the case using moslem law in favour of Dominic Soldier. Obi Osuagwu appealed to the High Court. The High Court of appeal quashed the judgement of the Alkali Court and ordered a retrial in the interest of justice (Aje 1975:50-51).

In the four research centres studied: Kano, Kaduna, Jos, and Makurdi, Magistrates Courts are established in accordance with the provisions of the Penal Code and the Criminal Procedure Code, and deal solely with criminal matters. In terms of organization, the Magistrates Courts are organized

from the lowest to the highest courts. They are divided into grades: Chief Magistrate, Senior Magistrate, Magistrates grades I,II and III.The Chief Magistrate of each state may divide the state into magisterial districts and distinguish by name each magisterial district. The criminal jurisdiction of each magistrate corresponds with its grade of court.

The Area Courts in the four research centres studied; Kano, Kaduna, Jos, and Makurdi; are divided into grades, Upper Area Court, Area Court grades I, II and III. The criminal jurisdiction of each Area Court corresponds with its grade of court and applies to Africans generally and foreigners who consent to its jurisdiction. Consequently, the Area Courts are enjoined to apply native law and custom either of the locality where both parties belong to the custom of that locality, or that binding between the parties where they have different customs.

In essence, the British colonialists met societies which had their own essential machinery for maintenance of law and order. However, when the British colonialists took over Nigeria they preserved some aspects of the indigenous customary courts. By reason of this deliberate policy the position now is that Nigeria is governed by two systems of lower courts: the received English court (Magistrates

court), and the customary court (Area court). The current operation of these courts has created duality of laws and standards as to what is acceptable and unacceptable in different communities in Nigeria.

4.3 Patterns of Cases Studied in Courts

The patterns of cases studied include person (assault) property (theft, house-breaking, receiving-stolen-property), and traffic offences. The purpose of this section is to analyse the patterns which emerge from the cases studied in Nigerian lower courts.

In the Magistrates courts, four hundred (400) disposed criminal cases were extracted from the court records on person, property and traffic offences. It was found that property offences were very frequent; therefore 240 criminal cases were included (See Table 4.1).

Table 4.1: Selected Cases Studied in Magistrate Courts

Magistrate Courts	The Type of Offences					
	Person N %	Theft N %	House breaking N %	Rec. Stolen N %	Traffic N %	Ttal N
Kano	20(20.0)	20(20.0)	18(18.0)	20(20.0)	22(22.0)	100
Kaduna	18(18.0)	20(20.0)	20(20.0)	22(22.0)	20(20.0)	100
Jos	20(20.0)	20(20.0)	22(20.0)	18(18.0)	20(20.0)	100
Makurdi	22(22.0)	20(20.0)	20(20.0)	20(20.0)	18(20.0)	100
Total	80 (20)	80 (20)	80 (20)	80 (20)	80 (20)	400

Property Offences 60%

Table 4.1 shows that property offences form the largest proportion of the criminal cases handled by the Magistrates Courts. It was observed during the data collection that the increasing demand for prestigious materials for conspicious consumption is a possible important factor in the high rates of theft. Conceivably, people are tempted to steal articles or illegally obtain money to buy items, that lend a sense of modernization to their lives. Hence stealing of bicycles, motor cars, radios, television sets, watches, and cameras are very common. Apart from their various important functions, these items are also prestigious goods. Although most crimes are found in urban areas, theft cut across both the rural and urban communities. The reason is that in Nigeria, status and prestige depend more on possession of land, livestock and movable property, and these are aspirations of most people in rural villages as well as those in urban areas.

Apart from that, house-breakings are the next most common type of property offence in Nigeria. House breaking account for total of 20.0 percent of property offences. House-breakings occur mostly at night because there is no electricity in most houses even in urban areas and there are no telephones in most of the houses, which makes it impossible for the

victims to contact the police. Besides, house-breakings, receiving stolen-property is also a common type of property crime. It is interesting to note that receiving-stolen-property also accounts for a total of 20.0 percent of the property crimes.

Person offence constitutes a total of 20.0 percent of crimes in the Magistrates Courts. Person offences normally do not attract any imprisonment sentences. However, these offences are taken seriously when the victims are badly hurt by the offenders, or when an offender is hostile to the magistrate or the judge.

With regard to traffic offences, Table 4.1 shows that selected traffic offence constitutes a total of 20.0 percent of criminal cases brought to Magistrates Courts. This volume should be seen in the context of Nigerian development whereby a sudden increase in the vehicles has taken place with the corresponding rise in the number of road accidents. This situation has influenced the courts to direct their attention to traffic offences.

It was observed during the data collection that traffic offences are more likely to be tried summarily without adjournments than any type of offences. Furthermore, in traffic offences, the Nigeria Police Force are required to obtain

information on post-mortem medical reports for the courts, and inspection reports from the vehicles inspection officer, or advice from the state counsel as whether or not to try offenders standing trial for causing death by dangerious driving.

In the Magistrates Courts surveyed, all the information collected on the criminal cases were obtained from the court records. These courts records contained First Information Reports, which were compiled by the Nigeria Police Force on each offender before being delivered to the Magistrates Courts.

In the Area Courts, four hundred (400) criminal cases were extracted from the criminal record of offenders on person, property, and traffic offences. It was found that property offences form the highest proportion of the criminal cases collected (See Table 4.2).

Table 4.2: Selected Cases Studied in Area Courts

Area Courts	The Type of Offences					
	Person N %	Theft N %	House breaking N %	Rec. Stolen N %	Traffic N %	Ttal N
Kano	22(22.0)	18(18.0)	20(20.0)	20(20.0)	20(20.0)	100
Kaduna	20(20.0)	22(22.0)	18(18.0)	20(20.0)	20(20.0)	100
Jos	18(18.0)	20(20.0)	22(22.0)	20(20.0)	20(20.0)	100
Makurdi	20(20.0)	20(20.0)	20(20.0)	20(20.0)	20(20.0)	100
Total	80 (20)	80 (20)	80 (20)	80 (20)	80 (20)	400

Property offences 60%

Table 4.2 gives the distribution of the five offences collected between the Area Courts. The most striking point in Table 4.2 is that majority of offences tried through the Area Courts are property offences. Besides Table 4.2 provides us with the kind of offences that are processed daily through the Area Courts.

In Area Courts sampled, all the information collected on the criminal cases were obtained from the court records. These courts records contained First Information Reports which were compiled by the Nigeria Police Force on each offender before being delivered to the Area Courts.

In this section, it was found that property offences have the highest percentages of offenders in Magistrates and Area Courts. It was observed during data collection that the dominance of property offences may be due to the fact that dealing in stolen property is lucrative business. As a result, many people tend to engage in property crimes. Consequently, the law weights property offences more seriously than other types of offences.

4.4 Socio-demographic Characteristics of Offenders

In this section, some selected socio-demographic characteristics of offenders are examined. The

purpose is to relate them to the data presented on patterns of cases treated in Nigerian lower courts. These include age, ethnicity and occupation of offenders.

The examination of the 800 criminal cases of offenders showed that offenders between the ages of 18-25 were involved in property offences more than any type of offences. The details of the research findings are given in Table 4.3.

Table 4.3: The Relationship Between Age of Offenders and Type of offences

Age	Type of offences			Total N
	Person N %	Property N %	Traffic N %	
Below 18 years	32(30.0)	52(49.0)	22(21.0)	106
18 - 25	75(19.0)	248(64.0)	66(17.0)	389
26+	53(17.0)	180(59.0)	72(24.0)	305
Total	160(20.0)	480(60.0)	160(20.0)	800

In Table 4.3, where age of offenders and type of offences was crosstabulated, it was found that majority (64.0 percent) of offenders between the age of 18 and 25 years were mostly involved in property offences. The research findings in Table 4.3 show that property offences are treated more seriously than person and traffic offences examined in Nigerian lower courts. The explanation for the high

percentages of property offences may be due to the frequency of property crimes being committed in the areas of courts jurisdiction.

The examination of the ethnic origin of offenders in relation to the type of offences showed that Hausa/Fulani seem to be more involved in offences (See Table 4.4).

Table 4.4: The Relationship Between Ethnicity of Offenders and Type of Offences

Ethnicity	Type of Offences			Total
	Person N %	Property N %	Traffic N %	N
Hausa/Fulani	60(18.0)	215(66.0)	52(16.0)	327
Ibo	40(21.0)	105(55.0)	46(24.0)	191
Yoruba	32(21.0)	86(56.0)	35(23.0)	153
Other Ethnics	28(22.0)	74(56.0)	27(22.0)	129
Total	20(20.0)	480(60.0)	160(20.0)	800

In Table 4.4, where ethnic origin was crosstabulated with the type of offences, it was found that (66.0 percent) of Hausa/Fulani were involved in property offences. The explantion for high percentages of Hausa/Fulani involvement in property offences is because the selected research centres fall mostly in their home base.

In terms of occupation of offenders and type of

offences, it was found that more unemployed offenders were engaged in property offences than farmers and other professional (See Table 4.5).

Table 4.5: The Relationship Between Occupation of Offenders and Type of Offences

Occupation	Type of Offences			Total
	Person N %	Property N %	Traffic N %	N
Farming: Cattle rearing	52(28.0)	95(51.0)	40(21.0)	187
Artisans: Mechanics, drivers brick-layers Welders	70(18.0)	240(62.0)	76(20.0)	386
Professional: businessmen/ women	15(15.0)	60(56.0)	31(29.0)	106
Unemployed: Labourers, housewives	23(19.0)	85(70.0)	13(11.0)	121
Total	160(20.0)	480(60.0)	160(20.0)	800

In Table 4.5, where occupation of offenders was crosstabulated with type of offences, it was found that (70 percent) of unemployed offenders were involved in property offences. The explanation for more unemployed offenders being involved in property offences may lie in the fact that this group of people is very much in need of articles. Consequently, they are more likely to be involved in

property offences than farmers, artisans and other professional groups.

To sum up, it was found in this section of the study that property offences form the largest proportion of criminal cases treated by Magistrates and Area Courts. Apart from that, the typical offender for property offences is between 18 and 25 years, unemployed, Hausa/Fulani by ethnic identification.

4.5 Summary and Conclusion

In this chapter, we examined the historical background to the emergence of lower courts in Nigeria. Second, we analysed the pattern of cases treated in Nigerian lower courts, and related the socio-demographic characteristics of offenders to the emerging pattern.

When the British colonised Nigeria they decided to preserve some aspects of the pre-colonial legal order. Consequently, Nigeria is governed by two systems of courts: the received English courts (Magistrates Courts), and the Customary Courts (Area Courts). Thus, the current operation of these courts has created duality of standard as to what is acceptable and unacceptable in different communities in Nigeria.

Regarding the analysis of pattern of cases

treated in Nigerian lower courts, it was found that property offences form majority of cases treated by the Magistrates and Area Courts. The findings of this research study appear to be consistent with other research findings on property offences. For example, Jacob (1978) found that where economic power and economic resources are distributed unequally, violations of the property codes are more likely to be punished than other offences. Also cloward et al (1970) noted that the dominance of property offences should not be viewed with misgivings in a society where differential opportunity prevails, where the few people who are privileged will exploit the poor majority. So, those who are under privileged in an attempt to have a taste of the national cake, take to either robbery, theft or burglary.

Adeyemi (1970) found that in fifty-two criminal cases sampled from an adult court 80.0 percent of imprisonment sentences were for property offences. Also, Milner (1972) found 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 are dealt severely with the intention of deterring offenders.

NOTES

CHAPTER FOUR

1. This is the period before 1862.
2. Before the Second World War (1939-45) there were (6) Magisterial Districts in Nigeria. Each district required the services of one magistrate, while (3) magistrates sat in Lagos. In 1948, however, the number of Magisterial Districts was increased to 22 with 8 magistrates sitting in Lagos Magisterial Districts. 8 grade I, and 2 grade III magistrates sat in the colony district on account of the volume of work in these parts. (See Nigerian Annual Report for 1949:158).
3. Common Law is the rule of the general custom that English judges evolved in course of time before the Middle Ages as the common principles of law which they applied in England.
4. Equity refers to natural justice or fairness.
5. Statutes of General Application are laws made by Parliament which is the sovereign law-making body in England.
6. See Schedule to Cap.30, Laws of Northern Nigeria 1963.

7. Guidance was first used in Legislation in Uganda to meet a similar situation. The Panel of Jurists which visited Northern Nigeria in 1958 to advise on the reform of the legal and judicial system, recommended that guidance should be accepted as a principle to assist the smooth introduction of the new Penal and Criminal Procedure Codes, by providing that the proceedings of the Native Courts would not be upset by any undue regard for the technicalities and complicated procedure of the two codes.

CHAPTER FIVE

5. DATA PRESENTATION AND ANALYSIS: PATTERNS OF DISPOSITION AND SENTENCING

This chapter examines the patterns of disposition and sentencing in Nigerian lower courts. It is divided into three sections. The first, examines the modes of disposition in Magistrates and Area Courts. The second, is devoted to differential treatment of convicted offenders of varying social status, and the third, focuses on selected socio-demographic characteristics of offenders in relation to sentencing.

5.1 Type of Courts and Disposition

In this study, disposition is defined as sentencing outcome given by a court at the conclusion of the trial. The rationale for passing imprisonment sentences on convicted offenders lies in the fact that such offenders are deemed to constitute a threat to both property and life which necessitate that they should be kept behind bars for specific period of time.

This study examined the frequency with which sentences of imprisonment were passed on offenders. Thus, where type of sentences and type of courts were crosstabulated, the major mode of disposition used in Magistrates Courts was discharge/acquittal. However,

in the Area Courts, the major mode of disposition was "imprisonment or fine". The details of the research findings are given in Table 5.1 below.

Table 5.1: The Relationship Between Types of Sentences and Type of Courts

Types of Sentence	Type of Courts				Total
	Area		Magistrate		
	N	%	N	%	
Imprisonment	57	(14.2)	38	(9.6)	95
Imprisonment or fine	150	(37.4)	77	(19.2)	227
Non-Custodial	66	(16.6)	24	(6.0)	90
Discharged/Acquitted	127	(31.8)	261	(65.2)	388
Total	400	(100.0)	400	(100.0)	800

Chi-square = 93.15 (df = 3) Significant at .05

Cramer's V = .34

In Table 5.1, where type of sentence and type of courts were crosstabulated, it was found that the major mode of disposition used in Area Courts was "imprisonment or fine". This mode of disposition accounted for 37.4 percent of the cases in Area Courts. In Magistrate Courts the major mode of disposition is "discharged/acquitted". The statistics show that the relationship between types of sentences and type of courts is significant at .05 level. The Cramer's V indicates a positive association.

Explanations that may be given for the modes of disposition in Area and Magistrates Courts are: first, in Magistrates Courts legal practitioners may appear on behalf of offenders. However, in Area Courts no legal practitioner appears on behalf of any party. Consequently, this may lead to different modes of disposition of criminal cases in the two courts.

In Area Courts more offenders are sentenced to "imprisonment or fine" for all offences than in the Magistrates Courts. The details of these findings are given in Table 5.2.

Table 5.2: The Relationship Between Type of Sentences by Type of Offences Controlling for Type of Courts

Type of Sentences	Type of Offences						Total
	Person			Property			
	Area N	%	Magistrates N %	Area N	%	Magistrates N %	
	Traffic						
	Area N	%	Magistrates N %				
Imprisonment*	0	(0)	0 (0)	37(15.4)	20	(8.4)	95
	20	(25.0)	18 (22.5)				
Imprisonment or fine	45(57.7)	21	(25.9)	84(34.9)	54	(22.6)	227
	21	(25.0)	2 (2.5)				
Non-Custodial	13(16.7)	0	(0)	40(16.6)	24	(10.0)	90
	13	(16.3)	0 (0)				
Discharged/ Acquitted	20(25.6)	60	(74.1)	80(33.2)	141	(59.0)	388
	27	(33.8)	60 (75.0)				
Total	78	(100)	81 (100)	241(100)	239	(100)	800
	80	(100)	80 (100)				
	Chi-square = 41.68(df=2)Sign.at 05 Crammer's V = .51			Chi-square = 32.42 (df=3)Sign.at 05 Crammer's V = .25			
	Chi-square = 40.34 (df=3) Sign.at 05 Crammer's V = .50						

* Imprisonment without option of fine.

In Table 5.2, where type of sentence is crosstabulated with the type of offence, it was found that 34.9 percent of offenders in Area Courts were sentenced to "imprisonment or fine" for property offences, while 22.0 percent of offenders were sentenced to "imprisonment or fine" in the Magistrates Courts. Similarly, while 15.4 percent of offenders were sentenced to "imprisonment" for property offences in the Area Courts, those sentenced to "imprisonment" for the same offences in Magistrates Courts were only 8.4 percent. The statistics show that the relationship betsween type of sentences and type of offences is significant at .05 level. The Cramer's V indicates positive association.

Furthermore, it was found that property offences received more sentences of "imprisonment or fine" in the Area Courts than in the Magistrates Courts. While person offences received more sentences of "imprisonment or fine" in the Area Courts than in the Magistrates Courts. This means that Area Courts gave more imprisonment sentences than Magistrates Courts.

Thus, on the basis of the research findings in Table 5.2, there is evidence to support the first hypothesis of this study that there is a relationship between type of courts and types of sentence.

Magistrates Courts are more likely to be lenient than Area Courts regardless of the type of offence.

Furthermore, in order to assess the pattern in length of imprisonment sentences, a crosstabulation was made between length of imprisonment and type of courts. The details of the research findings are given in Table 5.3.

Table 5.3: The Relationship Between Length of imprisonment and Type of Courts

Length of Imprisonment	Type of Courts				Total N
	Area N	%	Magistrate N	%	
1 - 6 months	26	(47.0)	14	(35.0)	40
7 - 12 months	17	(31.0)	9	(23.0)	26
13 - 48 months	7	(13.0)	12	(30.0)	19
99+ months	5	(9.0)	5	(12.0)	10
Total	55	(100.0)	40	(100.0)	95

Chi-square = 6.01 (df = 2) Significant at .05

Cramer's V = 0.25

In Table 5.3, where length of imprisonment and type of Courts were crosstabulated, it was found that 47.0 percent of offenders were sentenced to imprisonment for a period of 1-6 months in the Area Courts as compared to 35.0 percent of offenders in the Magistrates Courts. While 30.0 percent of offenders were sentenced to imprisonment of 13-48 months duration in the Magistrates Courts as compared

to 13.0 percent of those who were sentenced to the same duration in the Area Courts. The statistics show that the relationship between length of imprisonment and type of courts is significant at .05 level. The Gamma indicates a weak positive association. Thus, on the basis of the findings in Table 5.3, we can tentatively accept the second hypothesis that there is a relationship between length of imprisonment and type of courts. Area Courts are more likely to impose shorter imprisonment sentences than Magistrates Courts. The pattern of length of imprisonment given in Table 5.3 indicates that the Nigerian lower courts rely heavily on imprisonment sentences, but this is more the case in Area Courts than Magistrates Courts.

The examination of the use of non-custodial sentences in Nigerian lower courts shows that more offenders are given non-custodial sentences in the Magistrates Courts than in the Area Courts. The details of the findings are given in Table 5.4.

Table 5.4: The Relationship Between Non-Custodial Sentences and Type of Courts

Non-Custodial Sentences	Type of Courts				Total N
	Area N	Area %	Magistrate N	Magistrate %	
Fine only	20	(10.0)	2	(.7)	22
Bound over	10	(5.0)	6	(2.1)	16
Compensation	7	(4.0)	5	(1.8)	12
Canning	27	(14.0)	9	(3.1)	36
Probation	2	(1.0)	2	(.7)	4
Discharged/Acquitted	127	(66.0)	261	(91.6)	388
Total	193	(100.0)	285	(100.0)	478

Chi-square = 43.54 (df =10) Significant at .05

Cramer's V = .30

In Table 5.4, where type of non-custodial sentences was crosstabulated with type of courts, it was found that more offenders were given non-custodial sentences in Magistrates Courts as compared to offenders in the Area Courts. The use of non-custodial sentences in both courts is rather low.

Caning may be in lieu of, or in addition to, any punishment other than death penalty. The circumstances under which caning should be ordered in Nigerian lower courts is a matter for the sentencing court, depending on the circumstances of each

situation. For example, take the reported case of a cripple who committed a criminal breach of trust in respect of ₦60,000 entrusted to him by the Benue State Government. He was found guilty by the court and sentenced to 3 years imprisonment, and his disability not withstanding, the court ordered that he be given twelve strokes of the cane in addition to this sentence.

With regard to fine, it was found that 10.0 percent of offenders were given non-custodial sentences of fine in the Area Courts as compared to .7 percent of offenders in the Magistrates Courts. The reasons given for imposing fines are first offenders status, deterrence, and collection of revenue. Although it is not the main objective of the state to enrich itself as a result of an offender's crime, there is no doubt that the fine is an important source of revenue for the state. However, the research findings in Table 5.4 indicate that fines are least used in Nigerian lower courts.

In addition to this, majority (91.6 percent) of offenders were discharged/acquitted in the Magistrates Courts as compared to 66.0 percent of those offenders who were discharged/acquitted in the Area Courts. The reason for the variation between the courts may be due to the emphasis of the Magistrates

courts on evidence.

It was also found that 5.0 percent of offenders were bound over to be of good behaviour in the Area Courts as compared to 2.3 percent of offenders in the Magistrates Courts (See Table 5.4). To be of good behaviour, the Area and the Magistrates Courts may instead of imposing a custodial sentence, require an offender to enter into a personal recognisance to come up for judgement if called upon to do so. When an offender enters into such recognisance he/she is "bound over" that he will appear to be sentenced if required, and that failure to do so will result in forfeiture of a sum of money stipulated by the court in the order of binding over. Besides, the order of "recognisance" may impose conditions which the offender must comply with the period of the order. The basic understanding of the order is that an offender will not be sentenced by the court unless he/she misbehaves again. Thus "bound over" orders are authorized by section 25 of the Criminal Procedure Code and Section 300 of the Criminal Procedure Act, in similar terms.

In terms of the compensation to the victim, it was found that 4.0 percent of the offenders were asked to pay compensation to the victim in Area Courts as compared to 1.8 percent of the offenders in

the Magistrates Courts. The purpose of the compensation order is to enable the courts to compel the offender to pay compensation for any personal injury, loss or damage resulting from the offence. The reason for such an order is to allow the victim a simple and effective means of obtaining compensation from an offender that can afford to pay, without the need to expensive litigation.

The question of compensation is often crucial. A lot can be achieved through the systematic use of the Nigerian lower courts' powers ordering compensation. For example, in the northern states, the Penal Code gives wide powers to compensate the victim of crimes. However, the lower courts do not use them, as much as they might, as shown in Table 5.4 above.

It was found that only 1.0 percent of offenders were granted "probation" in the Area Courts as compared to .7 percent of offenders in the Magistrates Courts. The granting of probation is a matter of grace or discretion. The courts may instead of sentencing an offender make a probation order, that is, an order requiring an offender to be under the supervision of a probation officer for a period to be specified in the order which should not be less than twelve months. Furthermore, the courts may require the offender to comply with any stipulated

requirements having regard to the circumstances of the case for the purpose of securing the good conduct of the offender or for preventing a repeat of the offence or committing any other offence. Thus, probation, with its emphasis on assisting the offender to adjust in a free society, offers great hope to correctional success and less chance for human misery. However, Table 5.4 indicates that the Area and the Magistrates Courts have not sufficiently made use of probation.

Within the Area Courts, the most distinctive feature of the patterns of disposition is reflected in the short imprisonment sentences in all type of offences. The details of the research findings are given in Table 5.5.

Table 5.5: Length of Imprisonment and Type of offences in Area Courts

Location	Type of Offences and Length of Imprisonment						Total
	Person		Property		Traffic		
	1-12 months	13 months and above	1-12 months	13 months and above	1-12 months	13 months and above	
Area Courts Kano	5(71.4)	2 (28.6)	7(70.0)	3 (30.0)	1(100.0)	0 (0)	18
Area Courts Jos	4(65.6)	2 (33.4)	5(45.4)	6 (54.6)	1(6.7)	14(93.3)	32
Area Courts Makurdi	8(88.9)	1 (11.1)	22(95.6)	1 (4.4)	8(100.0)	0(0.0)	40
Area Courts Kaduna	8(57.4)	6 (42.6)	34(79.0)	9 (21.0)	3(100.0)	0(0.0)	60
Total	25(69.4)	11(30.6)	68(78.2)	19(21.8)	13(48.1)	14(51.9)	150

The most distinctive feature of the pattern of disposition illustrated in Table 5.5, is the reliance on shorter imprisonment sentences in property and person offences in most Area Courts. For example, in Makurdi Area Courts, (95.6 percent) of offenders were sentenced to 1-12 months imprisonment for property offences, however, 4.4 percent of those offenders were sentenced to 13 months and above for property offences in the same courts.

Furthermore, in Kaduna Area Courts, (79.0 percent) of offenders were sentenced to 1-12 months imprisonment for property offences. While 21.9 percent of those offenders were sentenced to 13 months and above for property offences in the same courts.

In Kano Area Courts (71.4 percent) of offenders were sentenced to 1-12 months imprisonment for person offence, while 28.6 percent of those offenders were sentenced to 13 months and above for person offence in the same court.

Also, in Jos Area Courts, (93.3 percent) of offenders were sentenced to imprisonment 13 months and above for traffic offence, but 6.7 percent of those offenders were sentenced to 1-12 months imprisonment for traffic offence in the same courts.

In Area Courts, it was found that the most distinctive pattern of disposition showed in Table 5.5, is that Jos Area Courts used longer imprisonment sentences than any of the Area courts samuled.

Also, in the Magistrates Courts, the most distinctive feature of the patterns of disposition is reflected in the heavy reliance of shorter imprisonment sentences in all type of offences. The details of the research findings are given in Table 5.6.

Table 5.6: Length of Imprisonment and Type of offences in Magistrates Courts

Location	Type of Offences and Length of Imprisonment						Total N
	Person		Property		Traffic		
	1-12 months	13 months and above	1-12 months	13 months and above	1-12 months	13 months and above	
Magistrates Courts Kano	3(75.0)	1 (25.0)	1(33.4)	2 (66.6)	0(0.0)	0 (0.0)	7
Magistrates Courts Jos	4(100.0)	0 (0.0)	10(71.4)	4 (28.6)	5(62.5)	3(37.5)	26
Magistrates Makurdi	6(85.7)	1 (14.3)	14(77.9)	4 (22.1)	7(100.0)	0(0.0)	32
Magistrates Kaduna	2(50.0)	2 (50.0)	4(80.0)	1 (20.0)	2(66.7)	1(33.3)	12
Total	15(78.9)	4(21.1)	29(72.5)	11(27.5)	4(77.8)	4(22.2)	77

In Table 5.6. (85.7 percent) of offenders were sentenced to 1-12 months imprisonment for person offence in Makurdi Magistrates Courts, but 14.3 percent of those offenders were sentenced to imprisonment 13 months and above for person offence in the same courts.

In addition to this, in Jos Magistrates Courts, (71.4 percent) of offenders were sentenced to 1-12 months imprisonment for property offences, while 28.6 percent of those offenders were sentenced to 13 months and above for property offences in the same courts.

In Kaduna Magistrates Courts, (80.0 percent) of offenders were sentenced to 1-12 months imprisonment for property offences, but 20.0 percent of those offenders were sentenced to 13 months and above for property offences in the same courts.

Furthermore, in Kano Magistrates Courts, (75.0 percent) of offenders were sentenced to 1-12 months imprisonment for person offence, while 25.0 percent of those offenders were sentenced to 13 months and above for person offence in the same courts.

In Magistrates Courts, it was found that the most distinctive pattern of disposition indicated in Table 5.6, is that Makurdi Magistrates Courts employed shorter imprisonment sentences than any of the

Magistrates Courts sampled.

In this study, it was found that Area Courts imposed shorter imprisonment sentences for person, property, and traffic offences than the Magistrates Courts. Thus, it would be revealing to compare the pattern of disposition in these courts as given in Table 5.7.

Table 5.7: Length of Imprisonment and Type of Offences in Area and Magistrates Courts

Location	Type of Offences and Length of Imprisonment						Total N
	Person		Property		Traffic		
	1-12 months	13 months and above	1-12 months	13 months and above	1-12 months	13 months and above	
Area Courts	25(69.4)	11(30.6)	68(78.2)	19(21.8)	13(48.1)	14(51.9)	150
Magistrates Courts	15(78.9)	4(21.1)	29(77.5)	11(27.5)	14(77.8)	4(22.2)	77
Total	40(72.7)	15(27.3)	97(76.4)	30(23.6)	27(60.0)	18(40.0)	227

In Table 5.7, it can be seen that in the Area Courts 69.4 percent of offenders were sentenced to 1-12 months imprisonment for person offences as compared to 78.9 percent in the Magistrates Courts. However, in the Magistrates Courts, 27.5 percent of offenders were sentenced to imprisonment for 13 months and above for property offences. While in the Area Courts, 21.8 percent of offenders were sentenced to imprisonment for 13 months and above for the same offences.

Furthermore, in Magistrates Courts, 77.8 percent of offenders were sentenced to 1-12 months imprisonment for traffic offences, while in Area Courts 48.1 percent of offenders were sentenced to 1-12 months imprisonment for the same offences. The significance of these research findings is that Magistrates Courts imposed shorter imprisonment sentences than Area Courts.

In this section, it was found that more offenders are sentenced to "imprisonment sentences" for all offences in Area Courts than in Magistrates Courts. Furthermore, more offenders were sentenced to non-custodial sentences in Magistrates Courts than in Area Courts. However, non-custodial reformative measures like: fine only, bound over, compensation, caning, and probation are seldom used by either of

the courts.

5.2 Differential Treatment of Low and High Status Offenders

In this section of the study, the differential treatment of "low" and "high" status offenders is examined. "Low" social status offenders are characterised as illiterate offenders from rural and urban areas where income at the time of this research were not more than ₦300 per month. "High" status offenders are categorised as those offenders from urban and rural areas whose income were more than ₦300 per month.

The examination of the lenth of sentence and social status of offenders show that majority of offenders irrespective of status, were sentenced to 1-12 months. The details of findings are given in Table 5.8.

Table 5.8: The Relationship Between Lenoth of Sentences and Social Status Offenders

Length of Sentence	Social Status of Offenders				Total N
	Low N	%	High N	%	
1 - 12 months	76	(95.0)	22	(91.7)	98
13+ months	4	(5.0)	2	(8.3)	6
Total	80	(100.0)	24	(100.0)	104

Chi-square = 2.25 (df =2) Significant at .05
Cramer's V = 0.24.

In Table 5.8, where the length of sentence was crosstabulated with social status of offenders, it was found that majority (95.0 percent) of "low" status offenders were sentenced to 1-12 months as compared to 91.0 percent of "high" status offenders. The statistics show that the relationship between length of sentence and social status of offenders is not significant at .05 level. The 0.24 value of Gamma indicates that there is low positive association. Thus on the basis of the findings we may reject the third hypothesis that offenders from low social status are given longer sentences than offenders from high social status.

With regard to the relationship between amount of fine and social status of offenders, it was found that majority of offenders received ₦1 - ₦100 imposition of fines. The details of the research findings are given in Table 5.9.

Table 5.9: The Relationship Between Amount of Fine and Social Status Offenders

Length of Sentence	Social Status of Offenders				Total N
	Low N	%	High N	%	
₦1 - ₦100	49	(61.3)	17	(70.8)	66
₦101-₦300	26	(32.5)	6	(25.0)	32
₦300+	5	(6.2)	1	(4.2)	6
Total	80	(100.0)	24	(100.0)	104

Chi-square = 2.25 (df =2) Significant at .05

Cramer's V = 0.24.

In Table 5.9, where the relationship between amount of fine was crosstabulated with social status of offenders, it was found that 70.8 percent of "high" social status offenders were fined ₦1 - ₦100 as compared to 61.3 percent of "low" social status offenders in the same amount. The statistics indicate that the relationship between amount of fine and social status of offenders is not significant at .05 level. The -. 22 value of Gamma shows that there is low negative association. Therefore, on the basis of the findings in Table 5.9, we may reject the fourth hypothesis that offenders from low social status experience higher fines than offenders from higher social status.

5.3 The Granting of Bail

Bail is the conditional release of a suspect with or without surety on the understanding that he/she will appear in court to defend charges against him or her. The importance of bail is to guarantee the appearance at court proceedings. The result of being granted bail is that the offender will be conditionally released until the time of trial. However, some magistrates and judges are reluctant to release suspected offenders committed to trial. Also the problem of bail patterns arises when different bail terms are granted to different offenders who are accused of similar crimes. For example, fixing high bail to prevent release may explain why ₦500 bail is set in a given case instead of ₦300, but it does not explain why a magistrate or a judge will set ₦50 bail rather than release on self recognizance.

For the purpose of bail, all offences under the Penal Code may be classified into three categories:

(a) Capital offences

(b) Non-capital offences

(c) Bailable offences

(a) Capital offences: Section 341 (1) of the Criminal procedure Code provides that person accused of an offence punishable with death shall not be released on bail.

(b) Non-bailable offences: Persons accused of an offence punishable with a term of imprisonment exceeding three years are not ordinarily entitled to bail but if they apply for it, their application could be considered on its merit. Whether bail is granted or not is determined with reference to the principles laid down in section 341 (2) (9) -(c) of the Criminal procedure Code. In addition to these, the character of the offender and his official and social standing as well as his likelihood to appear for trial are to be considered.

(c) Bailable Offences. These are offences punishable with imprisonment for not more than three years with or without fine, or an offence punishable only with fine. The rule here is that bail should be granted if conditions set out are met. These are: first, the accused person must be willing to give such security as may be seen to be sufficient to the court and the Police station. Second, there should be no reasons which in the opinion of the police officer or the court are capable of prejudicing the investigation of the case or leading to the accused person's escape.

The examination of the relationship between employment status of offenders and granting of bail showed that maiority of unemployed offenders were not granted bail in person and property offences. however, many offenders were granted bail in traffice offences as can be seen in Table 5.10.

Table 5.10: The Relationship Between Employment Status of Offenders and Granting of Bail

Employment Status	Granting of Bail						Total
	A		B		C		
	Person		Property		Traffic		
	Not Granted	Granted	Not Granted	Granted	Not Granted	Granted	N
	N %	N %	N %	N %	N %	N %	
Employed	29(94.0)	2(6.0)	30(46.0)	35(54.0)	10(21.0)	37(79.0)	143
Unemployed	103(69.0)	46(31.0)	287(67.0)	139(33.0	2(10.0)	20(91.0)	597
Total	132(73.0)	48(27.0)	317(65.0)	174(35.0	12(17.0)	57(83.0)	740
	Chi-Square = 7.8 (df=1) Sign. at.05 Gamma = -.73		Chi-Square =11.15 (df=1)Sign at .05 Gamma = 0.41		Chi-square = 1.49 (df=1)not sign at .05 Gamma = 0.15		

* 60 Cases are Missing because they were not recorded in Court files and Minute books.

In Table 5.10, where employment status of offenders was crosstabulated with granting of bail, it was found that majority (69.0 percent) of unemployed offenders were not granted bail in person offence. However, 91.0 percent of unemployed offenders were granted bail in traffic offences. In addition to this, 53.0 percent of employed offenders were granted bail in property offences. Similarly, 79.0 percent of employed offenders were granted bail in traffic offences.

Table 'A' above shows that the relationships between employment status and granting of bail are statistically significant at 0.05 level. The gamma level for column 'A' indicates negative association.

In this section, we analysed employment status of offenders in relation to the granting of bail. It was found that majority of unemployed offenders were not granted bail in person, and property offences. However, more employed offenders were granted bail in property, and traffic offences than those offenders not granted bail in the same offences. Usually, unemployed offenders do not have vehicles and are less likely to be involved in traffic offences. The reason for this apparent difference is that those persons involved in traffic offences were wives and children of those families who have vehicles. Thus,

those offenders could get financial assistance from their families. Similarly, the explanation for the difference among employed offenders in granting of bail is that, my interviews with those incharge of bail record indicated that some employed offenders could not afford the required amount of bail and were unable to use the status connection in their community to raise it.

5.4 Legal Representation

The focus of this section is on legal representation of suspects in Nigerian lower courts. One of the most important factors that affect the outcome of the trial of criminal cases is legal representation (services of lawyers). Those offenders who employ the services of lawyers stand better chance of receiving favourable treatment in Nigerian lower courts than those who cannot afford the services of lawyers.

The examination of the relationship between legal representation and differential outcome of trial for "identical" offences showed that majority of offenders were not represented in person and property offences. Nevertheless, more offenders were represented in traffic offences. The details of the findings are given in Table 5.11.

Table 5.11: The Relationship Between Earnings of Offenders and Legal Representation in Magistrates Courts

Earnings	Legal Representation						Total
	Person		Property		Traffic		Total
	Not. Rep	Rep.	Not Rep	Rep.	Not Rep.	Rep.	N
	N %	N %	N %	N %	N %	N %	
Non-Earners	17(85.0)	3(15.0)	145(80.0)	35(20.0)	15(75.0)	5(25.0)	220
N1-N300	21(75.0)	7(25.0)	25(84.0	5(16.0)	2(15.0)	11(85.0)	71
N301+	8(89.0)	1(11.0)	31(89.0)	4(11.0)	10(36.0)	18(64.0)	72
Total	46(81.0)	11(19.0)	201(82.0	44(18.0)	27(44.0)	34(56.0)	363
	Chi-Square = 1.35 (df=2) Sign. at .05 Gamma = -0.07		Chi-Square = 1.50 (df=2)Sign at .05 Gamma = .02		Chi-square = 12.9 (df=2) sign .05 Gamma = +0.47		

* 37 Cases are Missing because they were not recorded in Court files and Minute books.

In Table 5.11, where legal representation of offenders was crosstabulated with differential outcome of trial for identical offences, it was found that majority (89.0 percent) of offenders were not represented in person offence, 85.0 percent of offenders were represented in taffic offence. Also 89.0 percent of offenders were not represented in property offences. The significance of these findings in Table 5.11 is that it is only those offenders who are wealthy that can afford the services of lawyers to defend them in courts. Most of the offenders cannot afford the services of lawyers, thus leading to a serious handicap in the contest between them and the state.

In this section, it was found that majority of unemployed offenders were not granted bail, in person and property offences. Similarly, most employed offenders were not granted bail in the same offences. Furthermore, majority of employed offenders were not represented in person and property offences. However, greater proportion of employed offenders were represented in traffic offences. The reason is that they were able to pay for the services of lawyers to represent them in courts.

5.5 Summary and Conclusion

In this chapter, we set out to achieve the following objectives. First to examine pattern of disposition and sentencing in Nigerian lower courts. Second, to find the relationship between type of courts and mode of disposition of cases. Third, to examine the relationship between length of sentence and type of offences. Fourth, to determine the relationships between length of sentences, amount of fine and social status offenders. Finally, to examine the effects of selected socio - demographic characteristics of offenders on some observed sentencing decisions in Nigerian lower courts.

On the first objective, it was found that there are maior differences in sentencing pattern between Area Courts and Magistrates Courts. Area Courts imposed more imprisonment, imprisonment or fine sentences than the Magistrates Courts. However, Magistrates Courts imposed more non-custodial sentences than the Area Courts. Generally, both courts have not made sufficient use of non-custodial sentences like fine only, bound over, compensation, caning, probation etc. They seem to rely solely on custodial sentences with the hope that the fear of punishment is the strongest safeguard against crime.

On the second objective, it was found that there

is no relationship between length of sentence and social status of offenders. The statistics show that the relationship is not significant. Thus, there is no evidence to support the contention that offenders from low social status are given longer sentences than offenders from high social xtatus. Furthermore, on the third objective, there is no relationship between amount of fine and social status of offenders. Apart from that, there is no evidence to support the argument that offenders from low social status receive longer imprisonment sentences, and experience more fines than offenders from high social status.

On the fourth objective, it was found that bail was not granted in the majority of cases. We expect bail to be granted in most cases since the offences examined are bailable in Nigeria courts. Furthermore, with regard to legal representation (services of lawyers), it was found that a few offenders had legal representation as compared to greater proportion of offenders who had no legal representation. It was observed that most offenders had no knowledge of the laws, and they do not know their rights and the rules of criminal procedure. Besides, most offenders are disadvantaged by the fact that they lack the funds to employ the services of lawyers to defend them in

Nigerian lower courts.

The conclusion to be drawn from sentencing pattern and disposition in the trial process in Nigerian lower courts is that property, person, and traffic offences received more imprisonment, imprisonment or fine sentences in Area Courts than in Magistrates Courts. However, Magistrates Courts imposed more non-custodial sentences than the Area Courts.

With regard to research findings on sentencing pattern of disposition in Nigerian lower courts, other social sciences literature on sentencing practices in Nigeria seem to confirm that for the substantial majority of convicted offenders, the typical sentence is imprisonment, imprisonment or fine (Adeyemi 1972; Milner 1972; Best 1979; Udah 1979; Owomero 1980; Zacchaeus 1986).

CHAPTER SIX

6 SUMMARY, DISCUSSION, CONCLUSION AND RECOMMENDATIONS

6.1 Introduction

The aim of this chapter is to summarise and discuss the research findings on sentencing patterns and practices in Nigerian lower courts. It is on the basis of these findings that conclusions are drawn on the sentencing patterns and practices of the Nigerian lower courts.

We set out in this study to examine the sentencing patterns and practices in Nigerian lower courts. The position adopted here is that sentencing process in Nigeria is shrouded in myths which hinder an adequate appreciation of its patterns and problems. This study therefore attempts to provide the searchlight for understanding the patterns and problems of sentencing in the lower courts. Theoretically, sentences passed on convicted offenders who commit similar offences should be the same. However, there may be many irrational sentences passed by various courts. One of the most significant feature of the Nigerian sentencing process is wide discretionary powers given to magistrates and judges in the selection of penal measures to be applied to particular offenders. Nigerian statutes contain provisions making alternative penalties by allowing

imprisonment in default of payment of fine,[1] fine instead of imprisonment,[2] and other non-custodial measures available for magistrates and judges.

The first hypothesis examined in this study is that there is a relationship between types of courts and types of sentences. It is assumed that Magistrates Courts are likely to be more lenient than Area Courts regardless of offence. The data indicate that the number of offenders sentenced to imprisonment in the Area Courts was proportionately higher than the number of offenders sentenced to imprisonment in the Magistrates Courts. On the basis of the findings, it is felt that the evidence supports the first hypothesis of this study.

The second hypothesis is that there is a relationship between length of imprisonment and type of courts. Area Courts are likely to impose shorter imprisonment sentences than Magistrates Courts. The data obtained actually show that Area Courts imposed shorter sentences than Magistrates Courts. Thus, on the basis of this finding, the second hypothesis is also upheld.

An explanation for the more frequent use of imprisonment sentences by the Area Courts may be due to the fact that in these courts most offenders are disadvantaged because the law prohibits legal

representation.[3] The presence of the defence lawyer is very important because with a defence lawyer, an offender is more likely to be adequately defended, and subsequently discharged and acquitted.

The third hypothesis is that offenders of low socio-economic status are given longer sentences than offenders of high socio-economic status. In order to test this hypothesis, the employment status, occupation, and educational attainment of offenders were taken as independent variables. These variables were crosstabulated with length of sentences. The data show that the relationship between length of sentence and social status of offenders is not statistically significant. Thus, on the basis of the findings the third hypothesis is rejected.

The fourth hypothesis is that offenders from low socio-economic status experience higher fines than offenders from high social status. To test this hypothesis, educational attainment, employment status, and earning of offenders were taken as indices of socio-economic status. However, the research data indicate that the relationship between amount of fines and social status of offenders is not statistically significant. Therefore, on the basis of the findings the fourth hypothesis is rejected.

On the basis of the foregoing analysis, it is

evident that the relationship between length of sentence and social status of offenders is not statistically significant. Furthermore, the relationship between amount of fines and social status of offenders is not statistically significant. The implication of these findings is that in Area and Magistrates Courts in Nigeria, majority of offenders receive equal treatment regardless of their socio-economic status.

In chapter two, we examined the four theoretical perspectives: the structural functionalist, the social interactionalist, the labelling, and the marxist perspectives as they relate to sentencing practices. The structural functionalit perspective which directly addresses the issue of sentencing practices was adopted. This study prefers the structural functionalist perspective over the other theoretical perspectives because it explores the complex nature of the sentencing process as applicable to the Nigerian society.

In chapter four, we examined the historical background to the emergence of Nigerian lower courts, and found that these courts are homogenous because in every part of the country we have the received English courts and the customary courts. When the colonial administration took root in Nigeria, its

intention was not to abolish all the indigenous customary courts but to preserve some as much as possible. Consequently, to date Nigerians are governed by a dual systems of courts, the received English Courts (magistrates Courts) and indigenous Customary Courts (Area Courts). Thus, it is not surprising that inspite of the presence of the received English courts in Nigeria customary courts remain a popular instrument for the adjudication of disputes in Nigerian lower courts.

In addition to the historical background of Nigerian lower courts we analysed the pattern of cases studied in these courts. It was found that property offences form the largest proportion of criminal cases adjudicated by the Magistrates and Area Courts. It was observed that the high percentages of property offences is connected with the increasing demand for material articles for consumption. As a result, many people are tempted to steal articles. Although most crimes are found in urban areas, property crimes cut across both the rural and urban areas.

In terms of person offence, it was found that person offence also constitutes a high percentage of crime committed in Nigerian lower courts. Although this type of offence is not regarded as a serious

crime except when the victim of person offence is badly hurt by the offenders.

With regard to traffic offences, it was found that the volume of traffic offence in the Magistrates and Area Courts was similar to that of the person offence. The high percentage of traffic offence should not be surprising, considering the level of Nigerian development whereby a sudden increase in vehicles has taken place with corresponding rise in the number of accidents. It was observed that traffic offences are more likely to be tried summarily than property and person offences in Nigerian lower courts.

Chapter five examines the patterns of disposition and sentencing and finds that there is a difference in the sentencing pattern and practices of Area and Magistrates Courts. Area Courts imposed more imprisonment sentences than the Magistrates Courts. However, Magistrates Courts discharged/acquitted more offenders brought for trial than the Area Courts. Apart from that, property offenders received more imprisonment, imprisonment or fine than person, and traffic offences in both courts. It was found that there is no significant relationship between amount of fine and social status of offenders. Also there is no evidence to support the argument that offenders

from low social status receive longer imprisonment sentences and higher fines than offenders from high social status.

We also examined issues relating to the granting of bail in Nigerian lower courts. It was found that differences exist in granting of bails to employed and unemployed offenders for person, property, and traffic offences. The data shows that majority of offenders were not granted bail. Apart from that, it was observed that in some cases magistrates and judges were reluctant to release offenders who commit serious offences.

The issue of the earnings of offenders and legal representation was discussed. It was found that differences exist between offenders who earned ₦100 per month and those who earned ₦300 and above in legal representation for person, property, and traffic offences. Besides, those offenders who earned money had more legal representation than non-earners. In addition to this, the data indicate that only a few offenders had legal representation as compared to majority of offenders who had none. It was observed that in the Magistrates Courts, lawyers are allowed to represent their clients while in the Area Courts, except for Upper Area Courts, very little use is made of the services of lawyers.

In chapter five, the issue of fine was discussed. It was found that fines are authorised in Nigerian lower courts for various offences, often in addition to imprisonment. The use of fines without imprisonment is clearly suitable as an alternative to imprisonment. Being deprived of money is unpleasant. Depending on the proportion of the offender's assets taken, fines can be lenient or stringent. However, the main difficulty with a system of fine is to operate it even-handedly in a society like Nigeria, where wealth is so unequally distributed.

In terms of compensation to the victim, it was found that 4.0 percent of offenders in the Area Courts were asked to pay compensation to their victim. While only 1.8 percent of those offenders were asked to pay compensation to their victim in the Magistrates Courts. Similarly, 14.0 percent of offenders were sentenced to caning in the Area Courts as compared to 3.3 percent of offenders sentenced to caning in the Magistrates Courts. Sections 308 and 310 of the Criminal Procedure Code prescribe the procedure to be followed in carrying out a sentence of caning.[4] In addition to this, caning may be in lieu or in addition to any punishment other than death penalty. the circumstances under which caning can be ordered is a matter for the sentencing court,

depending upon the circumstances of each situation.

6.2 Discussion and Conclusion

The trial of criminal cases in Nigerian lower courts is a formal process conducted in a specific and predetermined fashion in accordance with the rules of criminal law, procedure and evidence. After an offender has been found guilty by the Nigerian lower courts, he/she is usually given a sentence. The sentencing of an offender is one of the critically important steps in the administration of criminal justice.

Furthermore, the sentencing process is the most important aspect in the enforcement of law in Nigerian lower courts. The aims of awarding sentence are to prevent future crime; to deter persons who will be tempted to commit similar crimes, and to reform offenders. The balance of these interesting and complementary philosophies require more than a good sense of fair play on the part of the magistrates and judges. However, by passing different imprisonment sentences to convicted offenders who commit similar crimes in Nigerian lower courts, these courts actually contribute to sentencing variation rather than preventing it.

When an offender is found guilty of an offence the magistrate or the judge proceeds to sentence

him/her. The Nigerian law provides every magistrate and judge discretion to inflict punishment on convicted offenders. However, a good number of magistrates and judges do not always exercise the discretion to the best interest of either the offender or the society. Once an offender is found guilty, the magistrates or the judge would turn to the prosecutor and ask him, is anything known about the offender? The usual reply the prosecutor gives is either "nothing is known", or "the convict has previous conviction," previous convictions are read from record of offenders, unless an offender admits in clear terms that he/she has one or more previous convictions. However, where the offender is represented by a lawyer usually the story is different. The lawyer makes a passionate plea in mitigation of sentence, calling on the court's attention to factors favourable to the offender. For example, his good character, his age, the number of his dependents, and his attitudes to work, before the magistrate imposes imprisonment sentence.

It was observed in some of the courts sampled that the maior problem in a criminal trial arises when a magistrate or a judge has to decide what punishment to award a convicted offender. Unless it is properly attuned, a magistrate or a judge may be

acting on some undisclosed prejudices. The problem becomes more complicated when the court has to consider what exact proportion to attribute to deterrence, retribution, reformation, and even vengeance in meting out punishment. A less sever magistrate or judge may be more interested in reformation. However, the worrying concern is the factor that impels sentencers to take one line of action or the other. A magistrate or a judge may invariably allow his emotion or other transient factors to sway him/her, or if by his/her composition as being crusty, he/she may have less sympathy for those who commit offences of particular kind. Whatever is the case, the safeguard is for the sentencers to formulate an adequate statement of the consideration and the factual circumstances which sentencers must taker into account and which should serve as a basis for measuring the adequacy or appropriateness of the sentence.

Furthermore, one of the cardinal principles for determining the most appropriate sentence for convicted offender is that the sentence should on no account be more severe than what the nature and circumstances of the offence merit. The judicial principle of proportionality requires that infractions of equal seriousness be punished with

equal severity. This means that the facts of each particular case and the circumstances surrounding its commission must be carefully and accurately established to measure the extent of the gravity of the offence in the light of which the sentence may be imposed. However, holding one individual offender longer than another, when both have been tried and convicted of the same crime is a glaring violation of the equality requirement.

Apart from that, magistrates and judges seldom give reasons for the imposition of a particular sentence. Also, the different maximum penalties available at present for different crimes in Nigerian lower courts, appear to bear little relation to the Penal and Criminal Procedure Codes. One may argue that the maximum of various imprisonment sentences does not matter much because maximum sentences are hardly even imposed on convicted offenders in Nigerian lower courts.

The following conclusion can be drawn from the research findings on the sentencing pattern and practices in Nigerian lower courts. The first is that two sentencing patterns are observed in these courts. The Magistrates and Area Courts are more oriented towards custodial sentences for property offences than for person and traffic offences. It is obvious

that these courts are more inclined to achieve the objectives of deterrence and retribution rather than reformation of offenders. The significance of the sentencing process is more appreciated within the context of its broader aims within the penal system itself. Basically, these aims, as expressed in the criminal laws are to safeguard the existence of society, to maintain order and to ensure that citizens live unmolested, and free from unlawful interference.

Second, there is a difference in sentencing practices between employed and unemployed offenders in granting of bail for property, person and traffic offences. Similarly, there is a difference in sentencing outcome between offenders who employed the services of lawyers and those who did not hire the services of lawyers to defend them in courts.

Third, there is a difference in pattern of disposition and sentencing in Magistrates and Area Courts. More offenders are sentenced to imprisonment, imprisonment or fine for all offences in the Area Courts than in the Magistrates Courts. Area Courts use more non-custodial sentences like fine only, bound over, compensation, caning and probation than Magistrates Courts. On the whole non-custodial measures are seldom used by either of the courts.

However, it may be argued that Magistrates Courts discharged/acquitted more offenders brought for trial than the Area Courts. In addition to this, there is a difference in disposition in length of imprisonment passed on particular offences within Magistrates and Area Courts on the one hand, and on the other between Magistrates and Area Courts.

6.3 Recommendations

Based on the research findings in this study, it is desirable to recommend some short term measures aimed at improving sentencing pattern and practices in Nigerian lower courts. It was found that one of the major problem facing convicted offenders is the varying imprisonment sentences meted to different offenders who commit the same offence. In order to improve the sentencing practices in Nigerian lower courts, it is recommended that the Nigerian legislature should pass a law establishing a sentencing commission to bring together magistrates and judges for the purpose of promoting uniformity in sentencing procedures. The purpose of the sentencing commission is to sensitize magistrates and judges to the issues involved in the sentencing process, and the biases that affect sentencing practices. In addition to this it is recommended that a sentencing

commission should provide sentencing guidelines. The sentencing guidelines should be based on the actual sentencing behaviour of magistrates and judges, the major factors that account in their pattern of disposition and sentencing.

Furthermore, it was found that the simultaneous operation of the received English courts and the customary courts has created duality of standards, and conflict as to what is acceptable and unaccepted behaviour in Nigerian lower courts. Consequently, legal conflict within different communities have given rise to sentencing pattern and practices in Nigerian lower courts. I recommend a complete overhaul of the laws and courts in order to improve sentencing practices in Nigerian lower courts. The reasons are: first, colonial laws and courts were made authoritarian because of the need to forcibly control and subjugate Nigerians. Second, colonial laws give magistrates and judges wide discretionary powers to enable them enforce whatever policies the legislature and the executive could make. In addition to this, the legal technicalities and the criminal procedures associated with the colonial laws are, at times incomprehensible not only to the majority of Nigerians but also to the magistrates and judges.

It is felt that such overhaul of the colonial system could reflect communities' values and morality in legal provisions. The overhaul should tackle the problem of discretion of the magistrates and judges. This can be done through clear definitions of offences and penalties by the Nigerian legislature, which has the power to narrow down the freedom of the magistrates and judges to choose possible causes of action. Furthermore, I recommend the introduction of a law which makes it mandatory for magistrates and judges to obtain and consider a presentence report. I believe that this will help to improve the varying sentencing patterns and practices in Nigerian lower courts.

In addition to this, it is recommended that equal status be accorded to customary and the received English courts. It is felt that such recognition will enhance the general status of the customary courts and eventually improve sentencing practices in Nigerian lower courts. Also, I suggest that the indigenous customary laws and Islamic laws currently operating in Nigeria become gradually absorbed into a common unitary law by means of clearly defined methods.

The absence of a rational, well defined and well publicised criminal justice policy in Nigeria,

hampers the efforts to prevent crime and protect society. It leads to the fragmentation and segregation of a criminal justice system which needs to be united around common objectives and shared philosophy. An effective strategy of crime prevention and control requires that every component of the criminal justice system views itself not as an entity which can act independently and unilaterally, but as an integral part of the total system. No system can function efficiently and effectively when its components adopt contradictory or conflicting philosophies.

It was found that majority of offenders had no legal representation in Area Courts. It is recommended that in order to improve the sentencing process in these courts, offenders who can afford to employ the services of lawyers to defend them in these courts should be allowed in all grades of Area Courts, and the law which prohibits legal representation in these courts should be repealed. Furthermore, those offenders who cannot employ the services of lawyers should be given free legal services in the form of public defender or court assigned counsel. I know that at the moment, the federal and states governments do not have enough lawyers to go around the country. Nevertheless, it is

suggested that the federal and the state governments should endeavour to employ public defenders on full-time or part-time basis, to represent indigent offenders. Alternatively, it is suggested that court assigned counsels should be lawyers in private practice who are selected and assigned by the courts to represent indigent offenders on case-by-case basis and they should be compensated accordingly.

It was found that the Area and the Magistrates Courts, use more custodial sentences as compared to non-custodial sentences like fine only, bound over, compensation, caning and probation. It is recommended that the Area and the Magistrates Courts should make increased use of the non-custodial sentences.

Furthermore, it is recommended that the Federal Government should introduce a system whereby an Area Court is empowered to sit as a juvenile court immediately a juvenile offender standing trial in the court is certified by that court to be a child or young person. The probation officer or the social welfare officer's report must be tendered to facilitate assessment of the child or young person involved in the offence. It is believed that this in effect will increase from the present few juvenile courts to many juvenile courts as there are many Magistrates Courts in various cities in Nigeria.

Thus, ending the age long system of having only a few juvenile courts like in Lagos.

In sentencing process, I will say that the fundamental assessments of human values and the purpose of society ought to be considered. An integral element in fair trial is a just sentencing policy which involves an understanding of human nature.

NOTES

CHAPTER SIX

1. Criminal procedure Act, SS 399-300.
   Penal Code Sections 73-74, and
   Criminal procedure Code Section 22
2. Criminal Procedure Act, Section 383.
3. The law establishing the Area Courts Edict of 1967, and Section 2 of the Native Court Law (N.S. No.6 of 1956) of Northern States of Nigeria prohibit legal practitioners from appearing in these courts.
4. Section 309(1) of the Criminal Procedure Code provides that no sentencing of caning shall be imposed on female offenders.

A SELECTED BIBLIOGRAPHY

Adeyemi, A.A. (1972) "Scientific Approach to Sentencing", in Elias T.O. (ed), The Nigerian Magistrate and the Offender, Ethiope Publishing Co. Benin City.

---------- (1970) "Sentencing of Imprisonment: Objectives, Trends and efficacy" in Elias T.O. (ed), Prison System in Nigeria, University of Lagos Press.

---------- (1977) Nigerian Criminal Process, Faculty of Law, University of Lagos and International Centre for Comparative Criminology University of Montreal.

Adewoye, O. (1977) The Judicial System in Southern Nigeria: 1814-1906, London: Longmans.

Adwani, N.H. (1978) Perspective on Adult Crime and Correction, New Delhi: Abhinar Publication.

Afigbo, A.E. (1972) The Warrant Chief: Indirect Rule in Sourthern Nigeria, London: Longmans.

Ahire, P.T. (1983) "Policing Colonialization: The Emergence and Role of Police in Colonial Nigeria". Unpublished Ph.D. Dissertation Church Hill College, Cambridge.

---------- (1989) Rethinking Crime in Nigerian Society: In Search of New Bottles for Old Wine, P.22.

Aje, Z.O. (1975) Notes on Nigerian Law. Ilorin: Printed by Kwara State Printing and Publishing Corporation.

Alschuler, A.W. (1978) "Sentencing Reform and Prosecutorial Power: A Critique of Recent proposals for 'Fixed' and 'Presumptive' "Sentencing" 126 University of Pennsylvania Law Review 550.

Andenaes, J. (1974) Punishment and Deterrence. Ann Arbor: University of Michigan Press.

Apter, D.E. (1965) The Politics of Modernization. Chicago: The University of Chicago Press.

Aubert, V. (1963) "Conscientious Objectors Before Norwegian Military Courts" in Schubert (ed) Judicial Decision-Making, New York.

Baab, et al, (1977) "Texas Sentencing Practice: A Statistical Study" 45 Texas Law Review, 471.

Babbie, E. (1979) The Practice of Social Research, Belmout California: Wadsworth Publishing, Inc.

Balbus, I. (1977) Commodity Form and Legal form: An Essay on the "Relative Autonomy" in Law Society Review, Vol.II. No.3.

Becker, H.S. (1978) Outsiders: Studies in Sociology of Deviance, New York: The Free Press.

---------- (1978) "Deviance as a Master Status" in Farrel and Swigert ed. Social Deviance. New York: J.B. Lippincott Comapny.

Becker, H. and Boskoff (1957) Modern Sociological Theory In continuity and Change. New York: Rinehart and Winston.

Becker, T. (1971) "Introduction" Political Trials, Indianapolis: The Bobbsmerill Co. Inc.

Beirne, P. (1982) "Ideology and Rationality in Marx Weber's Sociology of Law" in Piers Beirne (ed) Marxism and Law, New York: John Willey and Sons.

Best, E.S. (1979) "Sentencing Practices in Nigerian Courts: A Comparative Study of Area and Magistrates Courts". Unpublished B. Sc. Thesis, Department of sociology A.B.U. Zaria.

Bendix, R. and Lipset, S.M. (1976) "Karl Marx's Theory of Social Classes" in Bendix and Lipset (ed) Class, Status and Power, Published in USA.

Berboroglu, B. (1983) "The Class Nature of State in Peripheral Social formations" in Journal of Contemporary Asia, Vol.13, No.3.

Blanke,B.et al (1978) "On the Current Marxists Discussion on the Analysis of form and function of the Bourgeoise State', In State and Capital. Holloway and picciotto (eds) Amold: London.

Black, G.E. (1976) The Dynamics of Modernization. New York: Harper and Row.

Bloach, H.A. and Geis, G. (1962) Man Crime and Society. New York: Random House.

Blumberg, A.S. (1974) Criminal Justice. New York: Flanklin Watts Inc.

Bottomley, A.K. et al (1973) Decision in the Penal Process, Martin Robertson.

Bowers,W.et al (1972) "Severity of Formal Sanctions as a Repressive Response to Deviant Behaviour, 6 Law and Society Review. 427.

Bozeman, A. (1971) The Failure of Law in a Multicultural World, Princeton University, Press.

Bredemeier, H.C. (1962) "Law as an Integrative Mechanism," in Evan, W.M. ed. Law and Society, New York: The Free Press.

Broom, L. and Selznick, P. (1959) Sociology A Text With Adopted Readings. Evanton Illinois: Row, Peterson and company.

Buchholz,E.et al(1974) Socialist Criminology Theory and Methodology. Saxoo House D.c. health Ltd. Westmead Farnborough, Hans England.

Burman, S. and Harrell-Bond B.(1979) The Imposition of Law, London: Academic Press.

Burlatsky, F. (1978) The Modern State and Politics. Moscow: Progess Publishers.

Cahn, E. (1966) Confronting Injustice: Boston: Little Brown and Co.

Carlen, P. and Collinson, M. (1980) Radical Issues in Criminology. London: Martin Robertson.

Carlen, R. (1976) Magistrates' Justice. London: Martin Robertson.

Carter, R. and Wilkins, L.T. (1976) "Some Factors in Sentencing Policy", in William B. Sounders and Howard C. Daudistel eds. Criminal Justice Process - A Reader. New York: Praeger.

Clinard, M.E. (1952) Black Market. New York: Rinchart and Company Inc..

Cloward, R.A. and Chlin, L.E. (1970) "Differential Opportunity Structure" in Wolfgang et al eds. Sociology of Crime and Delinquency, New York: John Willey and Sons.

Chambliss, W.J. (1975) "The State, the Law, and Definition of Behaviour as Criminal or Delinquent", in Glasser, D.ed. Handbook of Criminology. Chicago: Rand Mcnally.

---------- (1975) Criminal Law in Action. California Hamilton Publishing.

Cohen, S. (1980) "Western Crime Control in the Third World Benign or malignant" Presented at International Conference Crime Control in Developing Countries University of Ibadan, Nigeria.

Cole, G. (1976) Criminal Justice: Law and Politics Massachusetts: Duxbury Press.

Cole B.A. (1990) "Criminal Proceedings in Nigerian Magistrates Courts", International Journal of Sociology of Law Vol.18 No.3, London: Academic Press.

Cooley, C.H. (1902) Human Nature and Social order, New York: Charles Scribner's Sons.

Conklin, J.E. (1981) Criminology, New York: Macmillan Publishing Co., Inc.

---------- (1989) Criminology, New York: Macmillan Publishing Company.

Connolly, P.K. (1975) "The Possibility of a Prison Sentence is a Necessity" 21 Crime and Delinquency 356.

Conquest, R. (1968) Justice and the Legal system in USSR, London: The Bedley Head.

Cotterell, R. (1984) The Sociology of Law: An Introduction, London: Butterworths.

Davis, K.C. (1971) Discretionary Justice - A Preliminary Inquiry, Urbana: University of Illinois Press.

---------- (1981) "Discretionary Power", in Miller J.K. et al eds Sentencing Reform: A Review, National Center for State Courts. Printed in U.S.A.

Dicey, A. (1915) Introduction to the Study of the Law Constitution. London: Macmillan.

Donald, C. (1971) Crime and Criminal Justice. Chicago: Quadrangel.

Durkheim, E. (1964) The Division of labour in Society. New York: The Free Press.

---------- (1973) The Division of labour in Society. New York: The Free Press.

Engels, Marx (1976) The German Ideology. Progress Pub. Moscow.

Engels, F. (1972) The Origin of the Family, Private Property and the State. New York: Pathfinder Press.
Eyben, W.E.

Eyben, W.E. (1953) Strafudmaling, The Assessment of Punishing. Also, see Spencer and Lynch. Magisterial Police in London Juvenile Courts, 8 Buil Delinq 13, 119.

Farrell, R.A. and Swigert, V.L. (1977) Social Deviance. New York: J.P. Lippincott Company.

---------- (1978a) 'Legal Disposition of Inter-group and Intra-group Homicide", Sociological Quarterly, 19.

Fataye, A.W. (1972) "Sentencing process, Practices and Attitudes: As seen by an Appeal Court Judge", Elias, T.c. (ed) The Nigerian Magistrate and Offencer, Benin

City: Ethiope Publishers.

Fadipe, L.O. (1972) Sentencing Process, Practices and Attitudes: As seen by a Magistrate and Customary Court Judge" Elias T.,O. (ed) The Nigerian Magistrate and Offender. Benin City: Ethiope Publishers.

Fox, L.W. (1953) The English Prison and Borstal System. London: routledge and Kegal Paul.

Foster, J.D. et al (1967) Definite Sentencing: An Examination of proposals in Four States. Lexinton Ky: Council of States Government.

Fozorsky, G. (1972) Philosophical Perspectives on Punishment. Albany: State University of New York Press.

Frank, A.G. (1967) Capitalism and Underdevelopment in Latin America: Historical Studies of Chile and Brazil. Revised England Edition New York: Monthly Review Press.

Frankel, M.E. (1973) Criminal Sentencing: Law Without order. New York: Hill and Wang.

Frankfurter, F.(1947) "Some Reflections on the Readings of Statutes" The Record (11 June, 1947).

---------- (1951) Joint Anti-Fascist Reguges Committee vs. McGrath, 341 U.S. 123, 162-163).

Friedman, L.M. (1975) The Legal System A Social

Science Persoective. New York: Russell Sage Foundation.

---------- (1977) Law and Society. An Introduction. New jersey: Prentice Hall, Inc. Englewood Cliffs.

Friedman, W. (1959) Law in a Chanoing Society Berkeley: University of California Press.

Garfinkel, H. (1956) "Conditions of successful Degradation Ceremonies" in American Journal of Sociology, 61, pp.420-424.

Gaylin, W. (1974) Partial Justice, new York: Alfred A. Knopf.

Gifis, S.H. (1975) Law Dictionary, New York: Barron's Educational Series Inc.

Glazebrook,P.R.(1978) Reshaoino the Criminal Law Essay in Honour of Glanville Williams. London: Stevens and Sons.

Goffman, E. (1963) STIGMA: Notes on the Management of Spoiled identity. Englewood Cliffs N.J. Prentice-Hall.

Gottfredson, M.R. and Gottfredson,D.M.(1987) Decision Makino in Criminal Justice Toward the Rational Exercise of Discretion. New York: Plenum Press.

Goulbourne, H. (1979) Politics and State in the Third World, London: Macmillan.

Graham, F.P. (1970) The Due Process Revolution The Warren Courts Impact on

Criminal Law. Rochelle Park, New Jersey: Hayden Book Company Inc.

Greebery, D.F. (1981) Crime and Capitalism Readings in Marxist Criminology. New York: Mayfield Publishing Company.

Green, E. (1961) "Sentencing Practices in the Federal Courts", Judicial Attitudes in Sentencing. London: Macmillian.

Griffith, J.A. (1981) The politics of the Judiciary. 2nd Ed. London: Fontana.

Guest, A.G. (1961) Oxford Essay on Jurisprudence. Oxford University Press.

Hagan, J. (1974) "Exta-legal Attributes and Criminal Sentencing: An Assessment a Sociological View Point", Law and Society Review. 8.

---------- (1979) "Cremonial Justice: Crime and Punishment in a loosely coupled System", Social Force. 58.

Hall, J. (1974) General Principles of Criminal Law. Indianapolis: Bobbs-Merrill.

Hall, et al (1978) Policing The Crises. Mugging. The State. and Law and Order. London: MacMillan.

Harding, C. and Koffman, L (1988). Sentencing and the Penal System Text and Materials London:

Sweet and maxwell.

Hartjen, C.A. (1974) Crime and Criminalization, New York: New Viewpoints.

Hart, F.A. (1972) Swindling and Knavery Inc. Playboy, August Edition.

Hart, H.L.A. (1967) Punishment and Responsibility, Oxford University Press.

Hay, D. et al (1975) Albion's Fatal Tree Crime and Society in Eighteen Century England, London: Books Ltd.

Hay, D. (1982) "Property, Authority and the Criminal Law" in Piers Beirne ed; Marxian and Law. (John willey and Sons).

Hazard, J.N. (1962) Furniture Arrangement as a Symbolic Judicial Role, Indiana Polis: Bobbs-Merrill.

Hendel, S. (1973ed) The Soviet Crucible: the Soveit Systems in Theory and Practice, Duxbury Press North Scituate, mass.

Healey, J.F. (1990) Statistics: A Tool for Social Research, Calfornia Wadsworth Publishing company.

Hirsch, A.V. (1976) Doing Justice The Choice of Punishment, New York: Hill and Wang.

Hirsch, J. (1978) "The State Apparatus and Social Reproduction" in State and Capital, Holloway and Picoiotto (eds) (Amold): London.

Hogarth, J. (1971) "Sentencing as a Human Process, in Crime and Justice. vol.11.

The Criminal in the Arms of the Justice, (eds) Sir Leon Radzinowicz and Marvin E. Wolfgang Basic Books Inc.

Hood, R.G. (1962) Sentencing in Magistrates' Courts, London: Stevens.

Hood, R., and Sparks, R. (1970) Key Issues in Criminology, New York: McGraw Hill.

Hoogvelt, A.M. (1978) The Sociology of Developing Societies, London: Macmillan.

Horton, P.B. et al (1971) Programmed Learning Aid for Introductory Sociology, Printed in the United State of America.

Hoyles, J.A. (1952) Treatment of the Young Delinquent, London: Epworth Press.

Illikakava, L. (1978) A.B.C. of Dialectical and Historical Materialsm, Moscow: Progress Publishers.

Iluyomode, B.O. and Eka, B.U. (1980) Cases and Materials on Administrative Law in Nigeria, University of Ife Press.

Jawitsch, L.S. (1981) The General Theory of La Moscow: Progress publishers.

Jones, J.P. (1987) Criminal Procedure Code in Northern States of Nige

The Criminal in the Arms of the Justice, (eds) Sir Leon Radzinowicz and Marvin E. Wolfgang Basic Books Inc.

Hood, R.G. (1962) Sentencing in Magistrates' Courts. London: Stevens.

Hood, R., and Sparks, R. (1970) Key Issues in Criminology. New York: McGraw Hill.

Hoogvelt, A.M. (1978) The Sociology of Developing Societies. London: Macmillan.

Horton, P.B. et al (1971) Programmed Learning Aid for Introductory Sociology. Printed in the United State of America.

Hoyles, J.A. (1952) Treatment of the Young Delinquent. London: Epworth Press.

Illikakaya, L. (1978) A.B.C. of Dialectical and Historical Materialsm. Moscow: Progress Publishers.

Iluyomode, B.O. and Eka, B.U. (1980) Cases and Materials on Administrative Law in Nigeria. University of Ife Press.

Jawitsch, L.S. (1981) The General Theory of Law. Moscow: Progress publishers.

Jones, J.P. (1987) Criminal Procedure Code in The Northern States of Nigeria.

Gaskiya Corporation Zaria.

Jossop, B. (1980) "On Recent Theories of Law, The State, and Juridico Political Ideology", International Journal of Sociology of Law, London: Academic Press Inc.

Kaufman, I. (1973) "Prisons: The Judge's Dilemma". 41 Fordham law Review, 493.

Keefe, W.J. and Ogul M.S. (1977) The American Legislative process Congress and the State, Englewood Cliffs. N.J. Prentice Hall, Inc.

Kirk-Green,A.H. (1969) Lord Lugard Political Memoranda 1913-1918, London: Frank Case and co. Ltd.

Kittrie, N. and Susman J. (1979) Legality, Morality and Ethics in Criminal Justice, New York: Prenger Publisher.

Kleinig, J. (1971) "The Concept of Desert", 8 am Philosophical Quar. 71.

La Fave, W. (1962) "The Police and Non-enformement of Law". Winconsin Law Review, 179

Lemert, E.M. (1951) A Systematic Approach to the Theory of Sociapathic Behaviour, New York: McGraw-Hill Book Company.

---------- (1978) "Secondary Deviance and Role

Conceptions" in Farrell and Swigert eds. in Social Deviance. New York: J.B. Lippinicott Company.

Lewis, C.S. (1953) "The Humantarian Theory of Punishment", Judicature. 6.

Ilewellyn, K.N.(1960) "The Normative, The Legal, and The Law Jobs: The problem of Juristic Method" 49 Yale Law Journal, 1355-400.

Llold, D. (1979) The idea of Law. New York: Penguin Books.

---------- (1966ed) The new Societies of Tropical Africa. London: O.U.P.

Lizotte, A. (1978) "External Legal Factors in Chicago's Criminal Courts: Testing the Conflict Model of Criminal Justice". 25 Social Problem, 564.

Lotz and John (1977) "The influence of Legally irrelevant Factors on Felony Sentencing" 47 Sociological Inquiry 39.

Mahmood, Y. (1985) The Criminal Process: Selected Papers Presented at the all Nigerian Magistrates Conferences. Published in August.

Mannheim,et al,(1975) "Magisterial Policy in the London Juvenile Courts".Brit Jou. Deli. vol.7.

Marsh, N. (1961) "The Rule of Law as Super-Natural" in Guest, A.g. ed. Oxford Essay on Jurisprudence, Oxford University Press.

Marx, K. (1959) Capital, Progress Publishing Moscow.

Maurice, C. (1972) Communism and Human Values, New York: International Publishers.

Mead, G.H. (1918) "The Psychology of Puritive Justice" in American Journal of Sociology, vol.23 pp.586-92.

Miller, L. (1966) "Race, Poverty, and the Law" California Law Review, 54.

Miller, J.L. et al (1981) Sentencing Reform: A Review and annotated Bibliography, London: Routledge and Kegan Paul.

Morris, H. (1968) "Persons and Punishment" The Monist, 475, 478.

Mosca, G. (1939) The ruling Class, New York: McGraw-Hill Book Company Inc.

Murphy, J.C. (1973) "Marxism and Retribution", Philosophy and Public Affairs, 211.

Nagel, S.S. (1976) "Disparities in Criminal Procedure" U.C.L.A. Law Rev., Vol.14.

---------- (1969) "Judicial background and Criminal Cases", in Quinny, R. (ed) Crime and Justice in Society, Coston: Little Brown Inc.

Newman, D. (1978) Introduction to Criminal

Justice. New York: J.B. Lippincott Company.

Nzimiro, I. (1977) "Anthropologist and their Terminologies" in Bernard (ed) _The Concept and Dynamics of Culture._ Mounton Press The Hague.

Ocran, T.M. (1978) _Law in Aid of Development_, Ghana Publishing Corporation.

Odah, U. (1979) "Dispositional Processes in Zaria Magisterial District" Unpublished B.Sc. Thesis, Department of Sociology, Ahmadu Bello University, Zaria.

Orojo, O. (1988) "Case for a Code of Conduct for Judges" in _Towards a Better Administration of Justice System in Nigeria_, Lagos: Federal Ministry of Justice.

Owomero, B.O. (1980) "Sentencing Patterns of Nigerian Lower Courts", Unpublished M.Sc. Desertation, Department of Sociology, A.B.U., Zaria.

Oyakhilome,F.E.(1972) "Police Impression of the Magistrates, in Elias T.O. (ed) _The Nigerian Magistrate and the Offender._ Ethiope Publishing Co. Benin City.

Paolucci, H. (1963) Cesare Beocaria, _On Crime and Punishment_ trans, by Henry Paolucci New York: Bobbs-Merrill.

Parsons, T. (1964) "Evolutionary Universal in Society" _Americal Sociological Review_, 29, 3.

---------- (1960) The Structure and Process in Modern Societies. New York: the Free press.

Parsons, T. and Shills, E.A. (1952) Towards General Theory of Action Cambridge, Harvard University Press.

Partridge, A. and Eldridge (1974) The Second Circuit Sentencing Study: A Report to the Judges of the Second Circuit, Washington, D.C.: Federal Judicial Center pp.36-40.

Patchett, K.W. and McClean J.D. (1965) "Decision-making in Juvenile cases McClean, J.D. Criminal Law Review, P. 699.

Picciotto, N (1979) "The theory of State, Class Struggle and the Rule of Law", in Capitalism and the Rule of Law". NDC/CSE Hutchinson: London.

Platt, T. (1975) "Prospects for a Radical Criminology in USA" in Taylor, Walton and Young (eds) Critical Criminology. Routledge and Kegan Paul.

Plonthnicov, I.(1970) Modern Africa Elites in Jos Social Stratification. New York: African Free Press.

Podgorecki, A. (1974) Law and Society. London:

Routledge and Kegan Paul.

Pope, C. (1975) Sentencing of California Falony Offenders. Washington D.C.: United States, Department of Justice, Law Enforcement Assistant Administration Criminal Justice Research Centre.

Poulantzas, N. (1982) "Law and State" in Piers Beirno and Richard Quinney in Marxism and Law. John Willey and Sons.

----------(1979) State, Power, Socialism. London New Left Books.

Perry F. (1974) Information for the Court A New Look at Social Inquiry Reports. University of Cambridge: Institute of Cambridge: Institute of Criminology.

Pye, D. V. (1966) Aspects of Political Development. Boston: Little Brown.

Rawls, J. (1972) A Theory of Justice. Cambridge, Mass Harvard University.

Richardson, S.S. & Williams T.H.(1963) Law in Africa the Criminal Procedure Code of Northern Nigeria. London: Sweet and Maxwell.

Robin, G. D. (1980) Introduction to the Criminal Justice System, Principles, procedure, Practice. New York:

Harper and Row Publishers.

Rossi, P.H. (1974) "The Seriousness of Crime: Normative Structure and Individual Differences" 39 American Sociological Review 124.

Rosett, A. and Cressey, D.R. (1974) Justice by Consent: Plea Bargains in the American Courthouse. Philadelphia: Lippincott Company.

San, D.C.N. (1985) "The Rule of Law" in Newglobe: Nigerian International Weekly & New Magazine. January 13, 1985.

Saymour, W.N. (1977) "The Meaning of Disparities in Sentencing", In Crime and Justice, vol.11. the Criminal in the arms of the Law, (eds) by Sir Leon Radiznowicz and marvin Wolfgang Basic Book Inc.

Schubert, G. (1963) Judicial Decision Making, New York: Free press.

---------- (1963) "Judicial Attitudes and voting Behaviour: The 1961 Term of the United States Supreme Court" 28 Law and Contemporary Problems.

Schrag, C. (1974) "Theoretical Foundations for a Social Science of Corrections" in Glasser, D. (ed) Handbook of Criminology, Chicago: Rand Mcnally.

Schur, E. M. (1971) Labelling Deviant Behaviour: Its Sociological Implications. New York: harper and Row.

---------- (1965) Crime Without victims: Deviance Behaviour and Public Policy, Engelwood Cliffs, N.J. Prentice-Hall.

---------- (1969) Our Criminal Society: The Social and Legal Sources of Crime in America, Englewood Cliffs, N.J. Prentice Hall.

---------- (1979) Interpreting Deviance: A Sociological Introduction, New York: Harper and Row.

Sellin, T. and Wolfgang, M.E. (1964) The Management of Delinquency, New York: John Willey and Sons.

Sunna, J.J. and Siegel, I.J. (1978) Introduction to Criminal Justice, New York: West Publishing Company

Shapland, J. (1981) Between Conviction and Sentence The Process of Mitigation, London: routledge and Kegan Paul.

Shapiro, M. (1981) Courts: A Comparative and Political Analysis, Chicago: University Press.

Sills, D. (1968) "Functional Analysis: Structural Functional analysis", International Encyclopedia of social Sciences, Vol.6.

Simmons, J.C. (1965) "Public Sterotypes of Deviants" Social problems 13, pp.223-232.

Sol, R. (1973) "The Law of Criminal Correction, St. paul, Minn. West Publishing Co.

Summer, C.S. (1982) Crime Justice and Underdevelopment. London: Heinemann.

Swigert, V.L. and Ferrell, R.A. (1977). "Normal Homicide and the Law", American Sociological Review, 42.

Taylor, I. et al. (1975) Critical Criminology. London: Routledge and Kegan Paul.

---------- (1979) The New Criminology for Social theory of Deviance. London: Routledge and Kegan Paul.

Theodoropoulos, C and Akuff, K. (1985) Africa: Law and State in Historical Perspective. Adena Publishers, Benin City, Nigeria.

Thomas, D.A. (1979) Principles of Sentencing Heinemann Educational Books Ltd.

Tomasic, R. (1985) The Sociology of Law. London: Sage Publication.

Walker, N. (1980) Punishment, Danger and Stigma The Morality of Criminal Justice Basil Blackwell, Publishing Ltd.

Wang, N. (1971) American Friends Service committee. Struggle for Justice. New York: Hill and Wang.

Weber, M. (1978) Economy and Society An Outline of Interpretative Sociology, (eds) Guenther Roth and Claus Wittich, University of California Press.

Williams, A.F. (1972) "Sentencing process, Practices, and Attitudes: As seen by the Appeal Court Judge" in Elias T.O. (ed), The Nigerian Magistrate and the offender, Ethiope Publishing Co. Benin City.

Wilkins, L.T. et al (1978) Sentencing Guidlines: Structuring Judicial Discretion-Report on the Feasibility Study, Washington, D.C. National Institute of Law Enforcement and Criminal Justice.

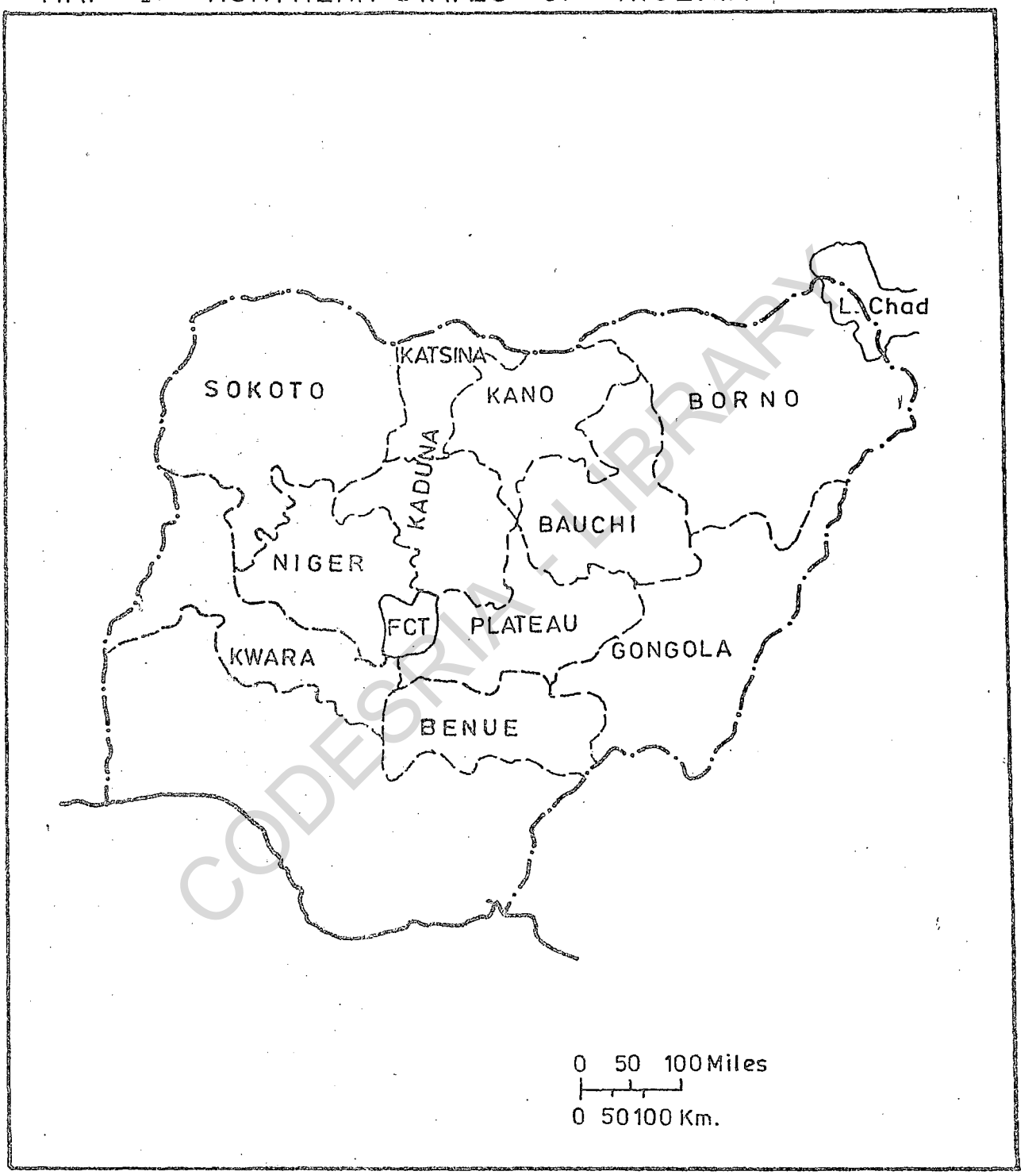
Zacchaeus T.A (1986) "Disposition of Criminal Cases in Nigeria: A Study of Ilorin Chief Magistrate Court", Unpublished B.Sc. Sociology Thesis, Department of Sociology A.B.U., Zaria.

Zimring and Hawkins (1973) Deterrence, Chicago: University of Chicago press.

Zingraff, M.T. and Thomson, R. (1984) "Defferential Sentencing of Women and Men in the U.S.A.", International Journal of Socicology of Law, London: Academic Press Inc.

APPENDIX 'A'

MAP I: NORTHERN STATES OF NIGERIA



APPENDIX B

Research on Sentencing Patterns and Practices in Nigerian Lower Courts Record Format to Extract Information

1. Type of court:
   (a) Area Court----------
   (b) Magistrate Court ----------
2. Date of Offender's first appearance in court: -
3. Type of offence:
   (a) Property specify ----------
   (b) Person specify ----------
   (c) Traffic specify ----------
   (d) Others specify ----------
4. Case Number ----------
5. Age of offender:
   (a) Below 18 ----------
   (b) 18-25
   (c) Above 25 ----------
6. Sex of offender:
   (a) Male ----------
   (b) Female ----------
7. Marital Status:
   (a) Married ----------
   (b) Single ----------
   (c) Divorces ----------
   (d) Separated ----------

8. Employment Status:

   (a) Employed ----------

   (b) Unemployed ----------

9. If employed, offender's occupation:

   (a) Farming: ----------

   (b) Artisan: ----------

   (c) Professional ----------

   (d) Others ----------

10. Education of offender:

   (a) Primary School: ----------

   (b) Secondary School.Technical ----------

   (c) University/Polytechnic: ----------

   (d) Others specify ----------

11. Ethnicity:

   (a) Hausa/Fulani ----------

   (b) Ibo ----------

   (c) Yoruba ----------

   (d) others specify ----------

12. If the offender was employed, how much was he/she earning before conviction?

   (a) N100-N300: ----------

   (b) Less than N100.00 per month ----------

   (c) Above N300.00 per month; ----------

13. Did the convicted offender employ the service of any lawyer?

   (a) Yes ----------

(b) No ----------

14. Type of sentence passed on the convicted offender

(a) Imprisonment without fine (length in months, years) ----------

(b) Imprisonment and fine (length of imprisonment and amount of fine) ----------

(c) Fine only (amount) ----------

(d) Imprisonment in default of fine ----------

(e) Bound over for good behaviour: ----------

(f) Compensation (amount) ----------

(g) Caning (number of strokes) ----------

(h) Probation/Suspend sentence ----------

(i) Discharged and acquitted ----------

15. Did the magistrate or judge state any reason for the specific sentence passed on the convicted offender?

(a) Yes ----------

(b) No ----------

16. Which of these reasons did the migistrate or judge state before convicting the offender

(a) To reform offender ----------

(b) To teach him a lesson ----------

(c) To deter other offenders ----------

(d) To remove offenders from the community: ---

17. Date case was disposed of ----------

18. Previous conviction(s) ----------

    (a) First conviction: ----------

    (b) Second conviction: ----------

    (c) More than two convictions ----------

19. Was the offender granted bail?

    (a) Yes ----------

    (b) No ----------

20. What type of bail?

    (a) Cash bail ----------

    (b) Bail pending appeal ----------

    (c) others specify ----------

APPENDIX 'C'

MAGISTRATES AND JUDGES QUESTIONNAIRE

Introduction

The purpose of this questionnaire is to collect data on the Nigerian Lower Courts for an ecademic study.

The questionnaire is also part of the study being carried out in order to supplement information from official documents. Your answer will be completely confidential. Therefore, feel free to answer questions. To ensure that there will be no way to associate you with your answer, do not put your name on the questionnaire.

Please answer all questions if possible. If any question really bothers you, or if you prefer not to answer one, you may skip it. But the more complete your answers are the more useful they will be. Your willingness to cooperate in this research is very much appreciated.

SECTION A: Personal Details

1. Age: ----------

2. Sex: ----------

3. Religion: ----------

4. Ethnicity: ----------

5. Educational Background: ----------

SECTION B: Type of Courts

1. What type of court do you preside in?

   (a) Area Court:----------

   (b) Magistrate Court:----------

2. How long have you been trying cases?----------

3. How old were you when you started trying cases

SECTION C: Nature of Sentencing Disparity

1. Do you think there is sentencing disparity in Nigerian lower Courts?

   (a) Yes ----------

   (b) No ----------

   (c) Don't know ----------

2. If yes to question 1, what do you think is the major cause of sentencing disparity in Nigerian Lower Courts?

   ----

3. What are the general implication of sentencing disparity in Nigerian Lower Courts for the administration of justice?

   ----

4. What measures would you suggest to solve the problem of sentencing disparity in Nigerian

Lower Courts?

---

5. Do you agreee that the executive should review long term sentences from time to time?

(a) Agree ----------

(b) Disagree ----------

(c) Don't know ----------

Give reasons ----------

---

6. Do you agree with the statement that the use of divergent criminal codes lead to sentencing disparity in Nigerian Lower Courts?

(a) Agree ----------

(b) Disagree ----------

(c) Don't know ----------

Give reasons ----------

---

7. Do you agree with the statement that most sentences in Nigerian Lower Courts are arbitrary and irrational?

(a) Agree ----------

(b) Disagree ----------

(c) Don't know ----------

Give reasons ----------

---

8. Do you agree that strong links between judges and the local community may lead to sentencing disparity?

(a) Agree ----------

(b) Disagree ----------

(c) Give reasons ----------

SECTION D: <u>The Extent of Sentencing Disparity</u>

1. Is sentencing disparity rampant in Nigerian lower courts?

(a) Yes ----------

(b) No ----------

(c) Don't know ----------

Give reasons ----------

---

2. How would you describe the extent of sentencing disparity in Nigerian lower courts today?

---

3. Are you worried whenever you discover that you have passed different sentences on offenders who committed the same crime?

(a) Yes ----------

(b) No ----------

4. Do you agree with the statement that reduction in sentencing disparity means that offender with similar criminal histories will receive similar sentences?

   (a) Agree ----------

   (b) Disagree ----------

   (c) Don't know ----------

5. Do you agree that judges sentencing offenders always reflect the types of community in which they serve?

   (a) Agree ----------

   (b) Disagree ----------

   (c) Don't know ----------

6. Do you agree that one of the factors that contributes to sentencing disparity in Nigerian Lower Courts is lack of sentencing guidelines?

   (a) Agree ----------

   (b) Disagree ----------

   (c) Don't know ----------

7. Do you agree that the uncharted discretionary leeway, which sentencing judges now enjoy, contributes to sentencing disparity?

   (a) Agree ----------

   (b) Disagree ----------

   (c) Don't know ----------

8. Do you think elimination of indeterminate sentencing will reduce sentencing disparity in Nigerian lower courts?

   (a) Yes ----------

   (b) No ----------

   (c) Don't know ----------

9. Do you think elimination of determinate (fixed) sentence will reduce sentencing disparity in Nigerian lower courts?

   (a) Yes ----------

   (b) No ----------

   (c) Don't know ----------

10. Do you consider types of crime in deciding the type of sentence you pass on convicted offenders?

   (a) Yes ----------

   (b) No ----------

   (c) Don't know ----------

   Give reasons ----------

   ----

11. Do you always consider the number of charges before passing any setence on convicted offenders?

   (a) Yes ----------

   (b) No ----------

(c) Don't know ----------

---

12. Do you always consider pre-sentence recommendation before passing any sentence on the convicted offender?

(a) Yes ----------

(b) No ----------

(c) Don't know ----------

Give reasons ----------

13. In your opinion, which are the three most serious crimes in Nigeria?

(a) ----------

(b) ----------

(c) ----------

14. What kinds of punishment would you recommend for each of the three most serious crimes?

(a) ----------

(b) ----------

(c) ----------

15. In your opinion, what are the major problems with the Nigerian criminal law?

---

16. What would you suggest as solution to the major problems of Nigerian criminal law?

SECTION E: The Consequence of Sentencing Disparity

1. Do you agree that as a result of sentencing disparity in Nigerian Lower Courts some Nigerians are serving terms which they are not supposed to serve?
   (a) Agree ----------
   (b) Disagree ----------
   (c) Don't know ----------
2. Do you agree that as a result of sentencing disparity in Nigerian Lower Courts, men and women offenders with similar legally relevant characteristics receive different sentence length?
   (a) Agree ----------
   (b) Disagree ----------
   (c) Don't know ----------
3. Do you agree that the consequence of sentencing disparity in Nigerian Lower Courts, raises biases in criminal law argument?
   (a) Agree ----------
   (b) Disagree ----------
   (c) Don't know ----------
4. Do you agree that the consequence of sentencing disparity in Nigerian lower courts is the human element in judges' decision?

SECTION F: Social Class and Sentencing Disparity

1. In your opinion, what class of convicted offenders should be treated leniently?

---

2. Do you think it would be desirable if the offences in Nigerian criminal law are arraigned on a scale of offence?

(a) Yes ----------

(b) No ----------

(c) Don't know ----------

Give reasons ----------

---

3. Do you agree with the suggestion that in imposing fines on convicted offenders, it is necessary to have regard to the financial circumstances of the offender?

(a) Agree ----------

(b) Disagree ----------

(c) Don't know ----------

Give reasons ----------

---

4. Do you agree with the suggestion that in imposing fines on convicted offenders, it is necessary to consider the magnitude of the offence?

(a) Agree ----------

(b) Disagree ----------

(c) Don't know ----------

Give reasons ----------

---

5. Which of the following factors will you take into consideration in determining the type of severity of sentence?

(a) Seriousness of crime ----------

(b) Number of charges ----------

(c) Recidivism ----------

(d) Information report ----------

6. What factors would you consider before sentencing?

(a) Age of offender ----------

(b) Sex of offender ----------

(c) Religion of offender ----------

(d) Tribe of offender ----------

(e) Status of offender ----------

(f) Wealth of offender ----------

(g) Political leaning of offender ----------

(h) Type of crime ----------

(i) Proof of guilt ----------

(j) Others specify ----------

7. In sentencing convicted offenders, are you guided by definite principle(s)?

(a) Yes specify ----------

(b) No ----------

8. Do you receive pre-sentence information on each offender before deciding on appropriate sentence?

(a) Yes ----------

(b) No ----------