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Sentencing Guidelines and Prison Congestion in Nigeria: Challenges and Prospects for Decongestion

Festus Okpoto Agbo*
Nigerian Law School, Yenagoa, Nigeria

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ABSTRACT: *This Paper examines the problems of absence of Sentencing Guidelines and Prison Congestion in Nigeria. It compares these in passing with the position in the United Kingdom. The Paper finds that the absence of Sentencing Guidelines does not encourage use of non-custodial options in sentencing but allows for uncoordinated exercise of judicial discretion in custodial sentences, which leads to prison congestion, disparity and uncertainty in penalties inflicted on prisoners convicted of same or similar offences. This is despite the efforts made in the Administration of Criminal Justice Act 2015 at providing scanty sentencing guidelines to solve the problem of uncoordinated sentencing. It concludes that comprehensive Sentencing Guidelines and Nigeria Sentencing Commission should be created to ensure adequate use of non-custodial sentences in deserving cases, uniformity and certainty in custodial sentences, and decongestion of correctional centres. The paper suggests solutions to bridge the gap, one of which is a recommendation that a penal law be enacted or existing ones amended to accommodate comprehensive Sentencing Guidelines and Sentencing Commission in Nigeria's criminal justice system. Analytical, comparative, descriptive, doctrinal, and empirical research methods are used in collating and scientifically analysing relevant statutes, statutory instruments, reports, judicial authorities, learned articles and textbooks, and interviews. These are followed with conclusion and recommendations.*

KEYWORDS: sentencing guidelines, sentencing commission, prisons, congestion, decongestion, Nigeria.

INTRODUCTION

Crimes of various forms, including terrorism which has been on the increase lately, have threatened the survival of man since creation.[1] Different means and methods have been employed to prevent commission of crimes, detect ones already committed and punish the

*LL.M., Barrister-At-Law, ACIArb.(Nig), Senior Lecturer, Nigerian Law School, Yenagoa Campus, P.M.B. 60 Yenagoa, Bayelsa State; formerly Senior State Counsel, Ebonyi State Ministry of Justice, Abakaliki; (08034974 899; agbofestus7@gmail.com). This Paper is a revised version of a Research Proposal conducted by the author between 2014 and May 2015 before the Administration of Criminal Justice Act (ACJA) was enacted by the National Assembly of the Federal Republic of Nigeria in 2015. Aside a few provisions of ACJA, Nigerian Correctional Service Act, judicial decisions, learned papers, and the Consolidated Federal Capital Territory Courts (Custodial and Non-custodial Sentencing) Practice Directions 2020, this revised version retains most of the original contents of the 2015 Research Proposal. Not much has changed in sentencing guidelines and prison congestion in Nigeria since then.

[1] The Holy Bible, Genesis 4:8, where the first murder took place. Cain killed his brother Abel out of envy. See also K Eso, *Further Thoughts on Law of Jurisprudence* (Ibadan: Spectrum 2003) 1-21.

criminals depending on the generations and climes involved. Nations all over the world have developed methods of protecting the lives and property of their citizens and foreigners found within their borders, which is one of the primary duties of any country.[2] Nigeria has her own over-flowing share of the burden of preventing, and detecting crimes and punishing the criminals involved in the commission of crimes.

The attitude of a society to crimes and punishments for them tends to help in reducing the incidence of crimes. In the olden days, say in the African societies, crimes were not tolerated. Any breach of the criminal law of the land was visited with severe punishments ranging from caning, shaming, restitution, ostracisation, death, etc.[3] Today, even though new criminal sanctions have evolved besides these traditional ones, the general attitude of the society towards offences and offenders, developments in science and technology, urbanization and expansion of human populations have combined to favour criminal activities, sometimes involving persons from different countries very far apart.[4]

In almost all the civilized nations of the world, the police have the responsibility to prevent, detect, investigate crimes; arrest criminals who breach the criminal law of the land. They, in conjunction with the Ministry of Justice, prosecute the offenders.[5] The courts of law and tribunals try the offenders, and inflict sanctions upon them if the offenders are convicted of the alleged crimes. The correction institutions such as the prisons, remand homes, borstals, etc, ensure that the convicts serve the punishments impressed upon them by the courts and tribunals after they have been lawfully tried, convicted and sentenced by the courts and tribunals. These three institutions: the police, the courts and the prisons work together for the smooth running of criminal justice system.

To prove the guilt of a defendant beyond reasonable doubt is a herculean task.[6] It is equally difficult on the part of the courts or tribunals to decide that a defendant is not guilty as charged, and to discharge and acquit him. The prosecution has to be fair to the defendant. Therefore, he is not to try to secure conviction by all means. The duties of trial courts can be divided into two: 1. to try the offender, which includes hearing evidence from both the prosecution and the defence and their witnesses, evaluation of such evidence and coming to a conclusion that the accused person is either guilty or innocent of the offence with which he is charged, and 2. to impose sanctions if the defendant is found guilty of the offence or to discharge and acquit him if he is found innocent.

In this paper, we are proceeding on the understanding that the defendant has been tried and

[2] See the Constitution of the Federal Republic of Nigeria 1999 (CFRN 1999), s 14 (2), (b).
[3] C Achebe, *Things Fall Apart* (Connecticut: Fawcett 1974) 117.
[4] AA Adeyemi, 'Transnational Legal Practice and Cross Border Criminality' [2013] 15 (1) *The Nigerian Law Jo urnal*, 1-13.
[5] In Nigeria, police officers who are not legal practitioners prosecute offenders in the Magistrates Courts. It shou ld be noted that other government agencies apart from the Ministry of Justice have prosecution units with law of ficers usually on secondment to them who prosecute offences created under the laws setting up the agencies or c ommissions. Examples are Economic and Financial Crimes Commission, Independent Corrupt Practices and Oth er Related Offences Commission, National Drug Law Enforcement Agency, Customs and Excise, etc.
[6] See Evidence Act 2011, s 135. *Cf* section 137 thereof which requires a defendant to prove some facts and defen ces on the balance of probabilities.

convicted in accordance with the substantive and procedural laws of the select jurisdictions: Nigeria and England. Whereas it is very easy to discharge and acquit a man who has been found innocent of a crime with which he is charged, or whose guilt over the alleged offence has not been proved beyond reasonable doubt; it is very difficult for a judicial officer to reach a decision as to what punishment to impose on a guilty defendant.[7] This is, among other reasons, because criminal sanction serves a lot of ends, some of which are: to deter convicts or potential offenders from reoffending or offending in the future and to pay the offender back in his own coin. The imposition of punishments on the defendant after his trial and conviction is technically called "sentencing". It comes after the accused person has been found guilty of the offence with which he is charged. The finding of guilt is technically called Conviction. Conviction must come before sentencing.[8]

Sentencing is a very critical stage in the criminal justice administration.[9] The way it is handled will, to a very large extent, determine the public confidence in the criminal justice administration or erosion of such confidence. It, also, goes to the incorruption and impartiality of the judicial officers.[10] It has to do with the equality and certainty of punishments in the same or similar circumstances.

An important input in the development of sentencing guidelines is an assessment of current sentencing practice. The Sentencing Council for England and Wales[11], for instance, uses this assessment as a basis to consider whether current sentencing levels are appropriate or whether any changes should be made. It produces a resource assessment which considers the likely effect of its guidelines on the resources required for the provision of prison places, probation and youth justice system. This requires the periodic review of sentencing guidelines to ensure that all sentences are appropriate to the offences committed and in relation to other offences. Harm and culpability factors in offences are determined. Data from the Ministry of Justice, Court Proceedings Database, Crown Court Sentencing Survey and opinions of experts and stakeholders in the criminal justice sector are used to ascertain the desirability or otherwise of developing new sentencing guidelines.[12]

[7]M Wasik, 'Going Round in Circles? Reflection on Fifty Years of Sentencing' [2004] *Criminal Law Journal*, 25 4-258. Judicial officer here is used to include magistrates and judges of other inferior courts and tribunals, judge s of high courts, National Industrial Court and Justices of the Court of Appeal and Supreme Court. See the CFR N 1999, s 318 which excludes magistrates and judges of other inferior courts and tribunals in its definition of jud icial officers.

[8] See *Aigbe& Anor v The State* [2009] 4 NWLR (Pt. 1131) 430, *Bakoshi v Chief of Naval Staff* [2004] 15 NWLR (Pt. 896) 268.

[9]A G Bryan (ed), *Black's Law Dictionary*, (9th edn, St. Paul Minnesota: West Pub. Co 2009) 1485- 1486. See al so *Webster's New Explorer Encyclopedic Dictionary*, (Massachusetts: Federal Street Press 2006) 1672.

[10] This is particularly so in Nigeria where judicial officers enjoy huge doses of discretional powers that are prone to abuse due to absence of harmonized sentencing guidelines. See M T Ladan, 'Enhancing Access to Justice in C riminal Matters: Possible Areas for Reforms in Nigeria' [2011] 7 (1) *Nigerian Law Journal*, 31, 41-45; AO Alu bo, 'The Sentencing Guidelines Imperative in Nigeria' [2012] 4 (1) *KSU BJPL*, 232-243; H U Agu, 'Judicial Di scretion in Sentencing and Examination of Witnesses under Nigerian Law' [2013] 5 *Law and Policy Review*, 76-109.

[11] The Council is created under the Coroners and Justice Act (UK) 2009, s 120 (11), (c).

[12] W Dawes and others, 'Attitudes to Guilty Plea Sentence Reductions' [2011] Sentencing Council Research Se ries, 02/11, London: Sentencing Council of England and Wales, http://sentencingcouncil.judiciary.gov.uk/fac ts/research-and-analysis-publications.htm; http://sentencingcouncil.judiciary.gov.uk/consultations-current.htm;

In Nigeria, as in most countries of the world, laws define offences and prescribe punishments for committing such offences.[13] It is noteworthy that there are facts and factors which may make judicial officers to impose different punishments for the same offences. However, the gap should not be too wide so as to cause confusion, inequality and uncertainty in a matter as weighty as sentencing.[14] It is to cure the confusion, inequality and uncertainty attendant to wide, subjective and indiscriminate use of judicial discretion in sentencing that sentencing guidelines come handy. In *EFCC v John Yakubu Yusuf &Ors*[15], the accused persons who were tried for criminal misappropriation of N27.2b under section 309 of the Penal Code Law were sentenced to two years imprisonment with the option of N750, 000 fine.

Sentencing guidelines, as the phrase suggests, can be described as a set of guidelines which aid judicial officers to arrive at just, certain, objective and fair sentences or punishments to inflict on convicts in criminal trials. They equally help to assess and upgrade or downgrade punishments for some cases on continual bases depending on the increase or decrease in the incidence of such offences. Sentencing guidelines do not admit of wide and unguided exercise of discretional powers in sentencing. They streamline the discretions and spell out in details the punishments available and how to apply them in the given cases to ensure some form of uniformity. In essence, sentencing guidelines guide judicial officers in choosing from a range of criminal sanctions, which sanctions are also the creations of substantive penal laws and the sentencing guidelines laws.[16]

In the United Kingdom, there is Sentencing Council for England and Wales. In the United

Victims Support (2010), 'Victims' Justice? What Victims and Witnesses Want from Sentencing' London: *Victi m Support*, accessed on 20/10/2014; Draft Sentencing Guidelines for Child Cruelty Offences published on 4 Au gust 2022, accessed on 8 August 2022.

[13] CFRN 1999, s 36 (8), (12).

[14] VA Hirsch and V J Roberts, 'Legislating Sentencing Principles: The Provisions of the Criminal Justice Act 20 04 Relating to Sentencing Purposes and the Roles of Previous Convictions' [2004] *Criminal Law Review,* 639-6 52. See the case of *State v Bolivia Osigbeme*, Carge No: HAU/10c/79, Unreported where a rapist was sentenced t o 2 years of imprisonment with the option of N600 and N400 for raping 2 girls and caution and discharge for th e second round of raping the girls whereas the law provides for life imprisonment-Criminal Code, s 358. See CO Okonkwo, 'Sentencing for Rape' 11 *Nigerian Law Journal*, 121. In *State v Michael Ayegbeni*, Charge No: U/7c/ 78, the rapist was sentenced to 5 years of imprisonment. In *Posu v State* [2011] 2 NWLR (Pt. 1213) 393 SC, two wicked men who took their turns in raping a girl were sentenced to 3 years imprisonment. See C C Ani, 'Forging New Trends in Sentencing- Overview of United Nations Standard Minimum Rules for Non-Custodial Measures and the Lagos State Administration of Criminal Justice (ACJL) Law 2007' [2011] 2 *The Justice Journal*, 118-1 55. It should be noted that the current law is the Administration of Criminal Justice Law 2021 (as amended). See also Hon Justice AA Alabi, 'The Need for Procedural Reforms to Facilitate Access to Justice and Speedy Trial o f Cases' (Being a Paper presented at the 2005 All Nigerian Judges Conference held at Abuja Sheraton and Towe rs between 5 and 9 November 2005) 4.

[15]Unreported, *The Sun Newspaper (Nigeria*) (Lagos 26 February 2013) 10. The charge could have been brought under ICPC Act, s 19; and 46 of EFCC Act, ss 42 (f) and 46 but for corrupt tendencies.

[16]R J Maher and HE Dufour, 'Experimenting with Community Service: A Punitive Alternative to Imprisonment' [1987] *Federal Probation,* 22-27; A Vass, 'Community Service: Areas of Concerns and Suggestions for Change ' [1986] 25 *Howard Journal of Criminal Justice,* 100; T Eadie and A Willis, 'National Standards for Discipline and Breach Proceedings in Community Service: An Exercise in Rhetorics?' [1989] *Criminal Law Review,* 412-4 19; R Nirel and others, 'The Effect of Service Work: An Analysis of Recidivism' [1997] *Journal of Quantitative Criminology*, 13. The authors found out that recidivism rate for service workers was lower by proportions of 2.4: 1, 1.7: 1 when compared to those who served imprisonment terms. It is very possible to make sentencing guideli nes pursuant to some sections of the substantive penal laws.

States of America, there is the Federal Sentencing Commission.[17] The Nigerian legal system in general, and her criminal justice in particular, are the offshoots of the English legal system by reason of our colonial experience. Whereas our former colonial master has established sentencing guidelines to ensure specificity and certainty in the administration of criminal sanctions, Nigeria is still operating in the era in which Britain left it more than 60 years ago.[18]

Nigeria, until very recently, has been static while the rest of the world is changing their criminal justice system to conform to the changing orientations. Sentencing Council is responsible for making sentencing policies. The process is continual, involving inputs from the legal experts and the general public. The sentencing policies will ensure that there are more criminal sanctions from which the judicial officers must choose in the course of administering criminal justice, depending on the offences or class of offences committed.[19] This paper examines the impacts of sentencing guidelines on the administration of criminal justice in England with a view to creating similar sentencing guidelines for use in the administration of criminal justice in Nigeria. This is more so when one considers that our criminal justice is almost in all respects similar to that of England except that ours has remained largely retributive.[20]

A problem that flows directly from the absence of comprehensive sentencing guidelines in Nigeria is the overuse of imprisonment as a criminal sanction in Nigeria. Almost all the penal statutes creating offences provide for imprisonment as punishment for them, almost always as lone punishment or in lieu of or in addition to fine, forfeiture, caning, probation, binding over, etc.[21] The reality is that over 80 percent of convicts in Nigeria are sentenced to various terms of imprisonment, even for simple offences, despite the presence of other non-custodial options provided for in our penal statutes. Not only that imprisonment is overused, its terms could be varied in similar circumstances and for same offences depending on the whims and caprices of

[17] Some States in the USA have their own sentencing commission. For instance, the North Carolina Sentencing a nd Policy Advisory Commission.

[18] See VA Hirsch and VJ Roberts, *op. cit.* 644-650. Apart from some minor amendments to the Criminal Code A ct and Criminal Code, we are still using them as donated to us by Britain. See Report of Presidential Commissio n on the Reforms of the Administration of Justice in Nigeria, vi. This culminated to the submission of Criminal J ustice Administration Bill to the National Assembly which has been passed into law by the National Assembly o f Nigeria as the Administration of Criminal Justice Act 2015. Similar Acts recently passed by the National Asse mbly of the Federal Republic of Nigeria are: Police Act 2020, Administration of Justice Commission Act, Nigeri an Correctional Service Act 2019. Community Service Bill and Victims of Crimes Remedies Bill have not been passed into laws by the National Assembly of the Federal Republic of Nigeria.

[19] R McPeake (ed), *Criminal Litigation and Sentencing* (New York: Oxford University Press 2000) 331-344; FO Emiri, *Law of Restitution in Nigeria* (Lagos: Malthouse Press Ltd 2013) 467-476 for restitution in criminal offen ces; B Barnes (ed), *Archbold Magistrates' Courts Criminal Practice* (London: Sweet & Maxwell 2011) 77-81 fo r community orders.

[20] English criminal justice is more restorative than ours. See L Sebba, 'When is a Prisoner not a Prisoner? Servic e Work in Israel and in Britain?' [2001] *Criminal Law Review,* 542- 559. Nigerian criminal justice is almost alw ays all about punishment and not how to rehabilitate offenders. That accounts for the overuse of imprisonment a s a form of punishment, although the Administration of Criminal Justice Act has made provisions for more nonc ustodial sanctions.

[21] See section 390 of the Criminal Code that generally punishes stealing with 3 years of imprisonment. A A Ade yemi, 'The Problem of Imprisonment in the Nigerian Penal System' in EG Bello and B A Ajibola (eds), *Essays i n Honour of Judge Taslim Olawale Elias* (Vol. II, Dordrecht, The Netherlands: Martinus Nijhoff 1992) 23-74.

the judicial officers.[22] This definitely leads to prisons overcrowding. It is a truism that prisons and facilities meant for few inmates now accommodate triple the intended number of inmates.[23] The initial objective of prisons which is rehabilitation is practically lost, and the human rights of inmates are roundly abused. The prison overcrowding is made worse by the number of awaiting trial inmates in the prisons. The police and the magistrates are the guiltiest in this regard.[24] Judicious and judicial use of sentencing guidelines will ensure the use of more non-custodial sentencing options, with the Sentencing Council enforcing compliance with them. This second part of the work seeks to establish a functional relationship among sentencing guidelines, excessive use of custodial sentences, and prisons overpopulation. The overall aim is to encourage the use of non-custodial sentences in deserving cases, reserving imprisonisation for fewer and more serious offences. The result is that the population of the inmates in correctional centres will be reduced to the barest minimum. Using non-custodial options will also help in rehabilitation of offenders, which is more restorative than retributive in its approach. Recidivism will be reduced.

The use of sentencing policies and non-custodial options will reduce prisons overpopulation and build the confidence of the general public in the administration of criminal justice in Nigeria since punishments for same or similar offences will be more certain and more specific.[25]

The Problems / Challenges

Having attempted in some details at showing how uncertain, unspecific, and varied criminal sanctions are imposed on convicts for same or similar offences due to the absence of comprehensive sentencing guidelines and the overuse of imprisonment and judicial discretions by the courts or tribunals in matters of sentencing, it is important to look at the institutions that administer criminal justice in Nigeria, especially the judiciary. The frequent resort to imprisonment as a form of punishment, and its direct consequence, which is prisons overpopulation, also, deserves serious consideration. This is, more so, as crimes will never

[22] See Note 14 above. Hon Justice M A Owoade, 'Sentencing: Guiding Principles and Current Trends' (Being a Paper presented at the 2007 All Nigerian Judges Conference held at Abuja Sheraton and Towers between 5 and 9 November 2007; Hon Justice O Olatawura, 'Judgment Writing, Sentencing and Execution of Judgment' (Being a Paper presented at the Induction Course for Newly Appointed Judges and Kadis at Merit House, Abuja on 21 M arch 2005) 16, 35, 39. See also The Strategy for the Implementation of Justice Sector Reforms in Nigeria (Feder al Ministry of Justice 2011) 3-5. Hon Justice H A Balogun, 'Criminal Justice Administration: The Role of the Po lice, Ministry of Justice, Judiciary and the Prisons' (Being a Paper presented at the 2007 All Nigerian Judges Co nference held at Abuja Sheraton and Towers, between 5 and 9 November 2007)

[23]Bamgbose O A, 'The Sentence, the Sentencer and the Sentenced: Towards Prison Reform in Nigeria' (Being a n Inaugural Lecture, Faculty of Law, University of Ibadan, Ibadan: Ibadan University Press 2010) 54-58; G Elai ne and P Elaine, 'The Commercial Context of Criminal Justice: Prisons Privatisation and the Perversion of Purpo se' [2007] *Criminal Law Review*, 515; S Schulhofer, 'Is Plea Bargaining Inevitable?' [1984] 5 *Havard Law Revi ew*, 1037-1107. See also Enugu Jail Break, *Daily Champion Nigeria* (Lagos 18 June 2009; *Trial* (December 201 1) 14.

[24] Holding charges, order for detention and indiscriminate arrests. M. T. Ladan *op. cit*. 37, 47-50. See also M Mb amalu, 'It's Time for Nigeria to Invest in Forensics', *The Guardian Sunday Magazine* (Vol. 31, No. 13092, Lago s 2 November 2014). GOS Amadi, *Police Powers and the Rights of Citizens in the Nigerian Criminal Justice Sy stem*, (Unpublished Ph.D Thesis, Faculty of Law, University of Nigeria, Enugu Campus, January 1993) 143, 193 -194.

[25]http://sentencingcouncil.judiciary.gov.uk/docs/consistency_in_sentencing.pdf, retrieved on 27/11/2014.

cease as long as the world exists. Crimes, rather, increase in volumes and complexity in reaction to the development of the society, science and technology in particular. Despite these changes, the operators of the Nigerian criminal justice system and the system itself have maintained the status quo, failing, neglecting or refusing to move with the trends.

The problems associated with sentencing in Nigeria resulting from the absence of detailed and harmonized sentencing guidelines, which absence encourages the overuse of imprisonment as a criminal sanction by the courts, and the attendant prisons overcrowding, can be identified as follows:

i. absence of comprehensive sentencing guidelines,
ii. overuse of imprisonment as a criminal sanction,
iii. continual sending of convicts to prisons without building more prisons,
iv. unwillingness to adapt to changing trends in crime prevention, detection and investigation by the police,
v. reluctance in amending the relevant substantive and procedural penal and other statutes such as the Criminal Code, Penal Code, Police Act, Nigerian Correctional Centres Act, and so on,
vi. maintaining prisons on the Exclusive Legislative List in the Constitution,
vii. neglecting the use of alternative criminal sanctions to imprisonment,
viii. uncertainty of punishments for same or similar offences and circumstances,
ix. not making use of our local experiences, circumstances or culture in correcting and rehabilitating social deviants,
x. absence or inadequacy of trained personnel to man alternative criminal sanctions in Nigeria,
xi. lack of political will on the part of the executive arm of the government to undertake reforms, and
xii. wide discretional powers exercisable by the judicial officers in sentencing.

In establishing these problems, the present author consistently refers to relevant substantive and procedural penal laws and the laws setting up the courts, police, and correctional centres to show that the problems listed above have hindered the effective administration of criminal justice in Nigeria, contributed to prisons overcrowding, serious violation of human rights of inmates, and erosion of public confidence in the system.

Reasons for the Research

In every research, the researcher does either of two things: either propounding new principles or ideas or knowledge, or building on and improving on the ones already started by earlier researchers. Investigation in a comparative study, such as this, starts with asking some fundamental questions, the answers to which guide the researcher in the intellectual pursuit. Once one is not satisfied by the working of his national system, he may look elsewhere if other legal systems may provide answers or solutions to his yearnings.[26] On the need for research,

[26] C Zweigert and H Kotz, *An Introduction to Comparative Law Vol. 1*: *The Framework* (North-Holland: New Y ork 1977) 25; K Bard, 'Work in Liberty under Surveillance in Hungary' in Zvekic (ed), *Alternatives to Imprison ment in Comparative Perspectives* (Chicago: UNICRI 1994) 293-304. This also calls for collaboration and mutu al assistance. See Y Akinseye-George and others (eds), *Mutual Legal Assistance in Criminal Matters: Nigerian & British, Rules and Practice* (Abuja: FMJ 2007).

Professor Gasiokwu writes that research is a continuum. Legal research comprises primarily fact finding (that is what law is on a particular subject), fact ordering, fact systematizing and studying and predicting legal trends. In research, knowledge is added to, problems are solved, inadmissible view points are refuted and some scholarly conclusions are formulated.[27]

In engaging in fact finding and attempting at providing answers to the problems of sentencing in Nigeria, arising from absence of sentencing guidelines, the absence of which leads to the overuse of imprisonment and prisons overpopulation in Nigeria, the researcher considers the following questions:

i. How are the police equipped to discharge their duties of crimes prevention, detection, investigation, arrest and prosecution?
ii. How are the judicial officers, especially the magistrates, equipped to perform their duties of criminal trials, conviction and sentencing?
iii. What impacts do the extant substantive and procedural penal laws have on the performance of the duties of the police, the courts and the prisons?
iv. How can the key players in the administration of criminal justice in Nigeria improve the system?
v. What are the duties of the Legislature in improving the criminal justice system in Nigeria?
vi. How can some measures of certainty and uniformity be brought to bear on the punishments meted out to convicts so as to gain public confidence in the system?
vii. How can government help in diversifying criminal sanctions for convicted offenders?
viii. What are the purposes of punishing offenders?

Answers to the above questions are found in comparing our national system of criminal justice with that of England. For instance, the UK Ministry of Justice Statistics shows that sexual offences accounted for 14% of the sentenced prison population on the 30 June 2012. This translates into around 10,500 prisoners. The new sentencing guidelines aim at increasing the consistency for sexual offences, while leaving the average severity of sentencing unchanged. The intention, therefore, is that average custodial sentence lengths, and the proportion of the offenders receiving the various disposal types, will change.[28] This scientific approach helps not only to provide solutions to the questions enumerated above but also to make recommendations to tackle the problems at the end of this paper.

A study of this nature must be comparative in nature. It will not be worth the name or title if it is limited to the phenomena arising from Nigeria. For a very long time in the past it was customary for legal practitioners to be insular in this sense, and to a reasonable extent it is still being practised. However, this approach is no longer tenable. Comparative legal study offers

[27] MOU Gasiokwu, *Legal Research and Methodology: The A-Z of Writing Thesis and Dissertation in a Nutshell*, (Enugu: Chenglo 2006) 3.

[28]Note 25 above. See also *Offender Management Quarterly*, http://www.justice.gov.uk/statistics/prisons-and-probation/oms-quarterly, retrieved on 6/9/2014; Criminal Justice System Quarterly Statistics of December 2021 published on 19 May 2022, accessed on 8 August 2022. D Ormerod (ed), *Blakstone's Criminal Practice* (Oxford: OUP 2010) 841-842, for sentencing guidelines on corruption offences; Thomas, *Current Sentencing Practice* (Volume 2, London: Sweet & Maxwell) 10011-10050, for detention and training young offenders; Powers of Criminal Court (Sentencing) Act, s 100 (UK).

the only way by which law can become international and consequently scientific.[29]
The primary objective of this comparative legal scholarship is knowledge. It includes both the techniques of interpreting texts, principles, rules and standards of a national system and the discovery of models for preventing or resolving social conflicts, providing much richer range of model solutions. The importance of some level of consistency and certainty in the punishments courts impose on convicts in our criminal justice cannot be over-emphasised. It is for this and other reasons that this work sets out to achieve the following objectives:

i. To critically examine the Sentencing Guidelines of England and Wales and to compare same to the practice in Nigeria in order to establish a better sentencing regime in Nigeria, putting into consideration our local circumstances.
ii. To enhance legal education. Scholars will begin to explore this very important area of criminal justice administration which attracts little or no attention in Nigeria as the key players in this sector. Litigation lawyers, most Nigerians, and judicial officers seem to favour the current sentencing trend.
iii. Look at the causes of crimes and the effect of the appropriate sentences in reducing offending and reoffending.
iv. To discuss and recommend evidence-led policing to check incidence of commission of crimes in Nigeria.
v. This research is useful for the development of sentencing policies and practice in Nigeria.
vi. To particularly inform and educate the judicial officers and the stakeholders in the criminal justice sector about the need to have consistent and certain sentences for same or similar offences.
vii. To restore the confidence of the public in the judiciary with particular reference to sentencing.
viii. To identify the lacuna in our penal statutes-substantive and procedural and the need to fill up the gap.
ix. To ginger the legislature, both at the federal and state levels, to wake up to their responsibility of law making, and review of relevant penal statutes to bring them up to the best international practices.
x. To show that Nigeria can get her set of sentencing guidelines indigenous to her environment and local circumstances.
xi. To provide judicial officers with new methods of making sentencing policies to govern offences of the same kindred.
xii. To define and delimit the discretional powers of judicial officers in sentencing and reduce the implications of wide discretional powers in sentencing.
xiii. To create awareness about the non-custodial sentences under our laws and the need to introduce new ones to enhance the administration of criminal justice in Nigeria.
xiv. To encourage the practice of restorative justice in Nigeria, and move away from retributive justice.
xv. To consider the financial implications of overuse of imprisonment as a sentencing option in Nigeria.
xvi. To look at the poor state of our correctional centres, and compare them with the

[29] MOU Gasiokwu, *op. cit*., 11-12.

standards in other jurisdictions with a view to improving them.
xvii. To study the rights of prisoners, taking into consideration the provisions of the national and international laws on the subject.
xviii. To reduce corruption to the barest minimum among police and judicial officers through effective sentencing policies and evidence-led, forensic policing.
xix. Growth and development of our economy through improved criminal justice administration, security of lives, and property through effective policing.
xx. To make recommendations for internationally acceptable practice in modern policing, sentencing, and imprisonisation.

Choice of Comparing Nigeria with the United Kingdom

This research adopted the analytical, comparative, descriptive, doctrinal, and empirical research methods. No research could rightly and strictly be based on one method. It is descriptive and analytical because the research describes and analyses the current state of Nigerian law on policing, sentencing and imprisonisation, with daunting challenges, corruption, and human rights abuses associated with them. The statutory provisions and judicial decisions on sentencing guidelines, judicial discretions on sentencing, opinions of learned authors and experts on policing, sentencing, imprisonment, non-custodial options, and restorative justice are relevant. The research also undertakes a comparative study of its subject matter between Nigeria and England and the United States of America in passing. United Kingdom has been chosen for comparison because it has a strong functional relationship with Nigeria. It gave Nigeria its criminal law and procedure. While United Kingdom has changed or amended the criminal laws and procedure it gave to Nigeria in the colonial era, with particular reference to imprisonment and sentencing, Nigeria still clings to them.[30]

Constitutions, statutes, international conventions and protocols on the treatment of prisoners and case laws on the subject form our primary sources of materials.[31] Secondary materials such as textbooks, periodicals, reports from government commissions and NGOs, internet materials, workshop and conference papers, and interviews are also used. Reading, observing, and analysing these materials make the research more doctrinal than empirical.

This study of sentencing guidelines, prison congestion, and prospects for prison decongestion in Nigeria has a lot of significance in Nigeria which includes:
i. Bringing about consistency and certainty in the practice of sentencing in the administration of criminal justice in Nigeria.
ii. The study helps to reduce and define precisely the discretional powers of judicial officers in punishment of convicts.
iii. Curtailing wide judicial discretions in sentencing will reduce corruption among judicial officers.
iv. This in turn restores public confidence in our criminal justice system.

[30] Criminal Justice Act 1948 repealed by the Criminal Justice Act 2003, Powers of Criminal Courts Act 1973, Po wers of Criminal Courts (Sentencing) Act 2000 [all of the UK].
[31]Chapter 4 of CFRN,1999, International Convention on Civil and Political Rights 1966, European Prisons Rules 1989, United Nations Standard Minimum Rules for the Treatment of Offenders 1955, Declaration of Basic Princ iples of Justice for Victims of Crime and Abuse of Power, Nigerian Correctional Service Act 2019 and the Regu lations (Nigeria) , UK Prisons Act 1952, UK Prisons Rules 1964.

v. The study encourages the use of non-custodial options in dealing with offenders thereby encouraging restorative justice.
vi. The human rights of prisoners are enhanced.
vii. Our peculiarities as a people are considered in sentencing to make the criminal justice system work more effectively.
viii. The appropriateness and certainty of sentences for crimes encouraged by the use of sentencing guidelines will check recidivism.
ix. Effective forensic policing advocated for in this research would stop indiscriminate arrests by the police in the vicinity of crime scenes which lead to prison congestion.
x. Jobs would be created for the paralegals who man the non-custodial options such as probation and parole.

Scope of the Research

This research paper refers to the Sentencing Guidelines of England and Wales and compares them with the practice in Nigeria. It examines the relationship between the effective use of sentencing guidelines and imprisonment as a punishment for crimes. Presence of sentencing guidelines certainly leads to the consideration of other non-custodial options in sentencing, taking into account our peculiar local circumstances as a people, and the need to amend our substantive and procedural criminal laws where it is appropriate.

The choice of England and Wales is premised on the functional relationship of its legal system to that of Nigeria as earlier stated in this paper. The scope of this paper is limited to Nigeria and the United Kingdom to enable the researcher deal adequately with the task at hand. It is believed that the narrower the scope, the better, deeper and more thorough the research. Only the legal aspect of establishing a sentencing commission is considered. The financial implication is not covered due to the inability of the researcher to get the necessary data in that respect.

Gap in Knowledge/Justification for the Research

When the author commenced this research in 2014, there was no ACJA 2015. However, the Criminal Procedure Act and the Criminal Procedure Code operational in the southern and northern parts of Nigeria respectively had copious provisions for non-custodial measures such as fine, forfeiture, binding over, probation, compensation, etc. Despite the provisions of those laws on non-custodial sentences, the trial courts rarely used them. It might amount to academic fraud if the present author fails, refuses, or neglects to acknowledge the position that ACJA 2015 brings with it more non-custodial provisions such as community service, parole, and suspended sentence, which was unknown to our criminal justice jurisprudence prior to 2015.[32] It has equally made more detailed provisions for factors to consider in sentencing and sentencing hearing, and encourages judicial officers to use the non-custodial sentence options even where the penal statute provides for custodial sentence only. With these innovations in the ACJA, what is the justification for the present work? In other words, is there any gap the ACJA 2015 has not filled requiring any intervention? The above questions are answered in the

[32] *Nya v Edem* [2005] 4 NWLR (Pt. 915) 345 C.A; K Omodanisi, *Non-Custodial Sentencing under the Administration of Criminal Justice Act 2015* (Abuja: NIALS 2020) 5-16, A Adekunle, *Digest of Cases on the Administration of Criminal Justice Act 2015*(Lagos: NIALS 2019) 85-89, MT Ladan (ed), *Digest of Cases on States Administration of Criminal Justice Laws in Nigeria* (Lagos: NIALS 2020) 111-114.

positive.

First, courts do not use the alternatives to imprisonment regularly as they ought to do. The reasons are obvious: there is no sentencing body charged with the responsibility of enforcing compliance with them, and the substantial penal laws creating the offences and the punishments are not amended to align with the ACJA 2015. One may argue whether a defendant charged with an offence under the Criminal Code Law or Penal Code Law, which does not provide for, say, community service as a punishment, could constitutionally be sentenced to community service.[33] In other words, could procedural criminal statute create offences? In the hierarchy of laws, substantive criminal statutes rank higher than the procedural criminal statutes just as procedural criminal statutes rank higher than sentencing guidelines.[34] It is for this reason that this paper recommends, *inter alia*, that a Sentencing Guidelines Commission be created, and that substantive penal statutes be amended or enacted to accommodate the new non-custodial punishments in the ACJA 2015. The Sentencing Commission is to regulate the uncoordinated use of judicial discretion in both custodial and non-custodial sentences to bring about uniformity. The only certain sentences in Nigeria's criminal justice system are the mandatory death sentence and minimum sentences where judicial officers do not have any judicial discretion to exercise.[35]

For instance, a defendant convicted of robbery under the Robbery and Firearms (Special Provisions) Act cannot be sentenced to a prison term less than 21 years while a defendant convicted for armed robbery under the Act must be sentenced to death.[36] In the same vein, a person charged with and convicted of advance fee fraud must not be sentenced to more than 20 years and not less than seven years imprisonment.[37] However, under section 1 (18), (a), (ii) of the Miscellaneous Offences Act[38], a person convicted of dealing in, selling, offering for sale, or otherwise exposes for sale any petroleum product, food, drink, drug, medical preparation, or manufactured or processed product which is not of the quality, substance, nature, or efficacy expected of the product or preparation, or is not of the quality, substance, nature, or efficacy, which the seller represents it to be, or has in any way been rendered or has become obnoxious, dangerous, or unfit, shall be guilty of an offence and liable on conviction to imprisonment for a term not exceeding 10 years. In this case, the trial court has discretion to impose any term of imprisonment between, say one and 10 years. In *Abiodun v F.R.N.*[39], the trial court exercised its discretion, and sentenced the appellant to seven years imprisonment out of the 10-year maximum imprisonment. His appeal against the sentence failed. Interestingly, sentencing guidelines are applicable where the court has judicial discretion to exercise in sentencing.[40]

[33] CFRN 199, s 36 (12).
[34] *Kelly v F.R.N.* [2020] 14 NWLR (Pt. 1745) 479 C.A.
[35] *Duru v F.R.N.* [2018] 12 NWLR (Pt. 1132) S.C. 20; *Yusuf v F.R.N.* [2018] 8 NWLR (Pt. 1622) S.C. 502; *State v Ali* [2020] 18 NWLR (Pt. 1755) C.A. 69; *Jibrin v State* [2022] 4 NWLR (Pt. 1820) S.C. 269; *Mohammed v AG F* [2021] 2 NWLR (Pt. 1762) 397.
[36] Robbery and Firearms (Special Provisions) Act, ss 1(1), 2 (a), (b); *Amoshina v State* [2011] 14 NWLR (Pt. 12 68) S.C. 530; *State v Oray* [2020] 7 NWLR (Pt. 1722) 130 S.C.
[37] *Duru v F.R.N.* (n 35) *supra*; *Yusuf v F.R.N.* (n 35) supra; Advance Fee Fraud and Other Fraud Related Offence s Act, s 1 (3).
[38] Cap M17 LFN 2004.
[39] *Infra* (n 58).
[40] ACJA 2015, ss 311 (2), 401 (2), 416 (2); Y Akinseye-George, *Administration of Criminal Justice Act (ACJA)*

Section 416 of ACJA still leaves judges and magistrates with wide discretional powers to exercise in sentencing. They use their discretional powers for custodial sentences notwithstanding the admonition in section 417 of ACJA 2015 to release convicts after eight hours at the most even where the penal law provides for imprisonment.[41]

The cases of *Danso v F.R.N.*[42] and *Lawrence v F.R.N.*[43] are on illegal possession of cannabis sativa under section 11 (c) of the National Drug Law Enforcement Agency Act, which prescribes punishment of life imprisonment upon conviction. Whereas Danso got a meagre two and a half years imprisonment, Lawrence got life imprisonment. As much as cases are decided in line with their peculiar facts, there was no justification for the wide difference between the sentences in these two cases except the indiscriminate use of judicial discretion in sentencing. Unfortunately, the appellate courts affirmed the sentences in the two cases. Trial courts have been advised to give reasons or factors that influence their decisions in exercising judicial discretion in sentencing.[44] The factors would necessarily include: age, first offending, gravity of the offence, education, rehabilitation, reformation, deterrence of the convict, restitution, interest of the victim, the convict, and the community, appropriateness of non-custodial sentence or treatment in lieu of imprisonment, and so on.[45] In *Usen Ekpo v State*[46], the defendant was convicted under the Counterfeit Currency (Special Provisions) Act, and sentenced to 21 years imprisonment, which is the maximum imprisonment prescribed for the offence. That was despite the offender being young and a first offender. The Supreme Court of Nigeria was disturbed by the excessive sentence but could not reduce it because there was no appeal against it. However, in *Omokuwajo v F.R.N.*[47]where the Court of Appeal of Nigeria in an appeal against the conviction of the appellant for human trafficking suo motu increased sentences of two years imprisonment to five and seven years imprisonment respectively, the Supreme Court of Nigeria reversed the sentences because there was no appeal against them.

Again, in *Lucky v State*[48], the appellant as a defendant at the trial court was charged with rape under section 35 of the Criminal Code Law of Delta State, which prescribes a punishment of life imprisonment upon conviction. He was convicted and sentenced to imprisonment term of five years with hard labour or an option of fine of N300, 000. Similarly, in *Utang v State*[49], the appellant used his position as police officer to abduct and rape the prosecutrix, a 17-year old

2015 with Explanatory Notes & Cases (Abuja: Centre for Sociolegal Studies 2017) 498- 522.

[41] ACJA, ss 453, 460, 468, ACJL Lagos, s 297 (1), *Aliagwu Lawrence v F.R.N.* (2018) LPELR-44510 (CA), *Sah eed Raji v State* [2012] LPELR-7968 (CA).

[42] (2013) LPELR-2016 (CA).

[43] (2018) LPELR-44510 (CA). See generally, Hon Justice OO Goodluck, 'Sentencing: Practice and Procedure un der Administration of Criminal Justice Act and Laws' (being a Paper presented at the Annual Refresher Course f or Judges and Kadis held at the National Judicial Institute, Abuja on 12 March 2019.) 12-23. *Adamu v State* (202 1) LPELR-51096 (CA), *Idakwo v F.R.N*. (2021) LCN/15103(CA), ACJA, ss 238, 277, 396 (2). Hon Justice PC Obiorah, 'Sentencing Guidelines: Practice and Procedure' (being a Paper Presented at Induction Course for New ly Appointed Judicial Officers of Superior Courts of Record in Nigeria Held at National Judicial Institute, Abuja Between 16 and 20 May 2022.)

[44] *Agbanyi v State* (1994) LPELR-14108 (CA).

[45] ACJA, ss 311, 239, 240.

[46] (1982) 6 SC 10.

[47] [2013] 9 NWLR (Pt. 1359) S.C. 300 at 330.

[48] (2016) LPELR-40541 (SC); Boniface *Adonike v State* (2015) LPELR-24281 (SC).

[49] [2021] 16 NWLR (Pt. 1802) S.C 381.

undergraduate. He was convicted of rape, and sentenced to seven years imprisonment. The Supreme Court described the appellant as a rapist of a low-grade cadre whose profile portrayed a beastly-opportunistic predator who deliberately ensnared hapless, helpless, and unwary victims. The Court regretted that he would only serve a mere term of seven years imprisonment but that since the prosecutor did not cross-appeal the sentence, the hands of the Court were tied.[50] In the light of a very low punishment prescribed for the offence of defiling a girl under 16, it is a bit justified that a 20-year old man who forcefully defiled a minor of 15 years old could be sentenced to 12 months imprisonment.[51] The offence contravenes section 221(1) of the Criminal Code Law of Ondo State Nigeria 2006, which prescribes two years imprisonment, with or without caning. In *Nafiu Rabiu v State*[52], the defendant was charged and convicted for culpable homicide not punishable with death for strangling his wife. He was sentenced to four years imprisonment even though the Penal Code Law under which he was tried prescribes a punishment of life imprisonment as the maximum punishment for culpable homicide not punishable with death. In each of the two cases above, the Supreme Court of Nigeria frowned on the meagre punishments imposed on the convicts, and was prepared to increase the sentences if the prosecutor had appealed against them.

In the case of *Folorunso v State*[53], the defendant, a police officer, was charged for murder and sentenced to death under section 319 of the Criminal Code Law of Lagos State for brutally shooting the deceased to death. On appeal, he was found guilty of a lesser offence of grievous bodily harm under section 332 of the Law, which prescribed a punishment of life imprisonment. He was sentenced to a fixed imprisonment of 25 years. In *David v C.O.P.*[54], the appellant was convicted for culpable homicide not punishable with death, and sentenced to the maximum punishment of life imprisonment. Whereas provocation availed David who got the maximum sentence, Folorunso who intentionally and brutally shot the deceased dead without any justification got 25 years imprisonment. He should have been convicted of murder, and sentenced to death by hanging except the failure of the prosecution to tender autopsy report to show the cause of death, the deceased having undergone surgeries following the gun injuries. That reduced the offence to manslaughter. It should be noted that life imprisonment is generally treated as if it were imprisonment for 20 years, and any judicial officer desiring to inflict a fixed imprisonment of more than 20 years on a convict convicted of an offence punishable with life imprisonment must show specific aggravating factors.[55] The discretion of a court is not to be exercised just on a whim; it must be exercised judicially and judiciously to be easily seen by an onlooker that it is not fancifully exercised as a matter of course.[56]

From the foregoing cases, the judicial and judicious exercise of judicial discretion is where the problem lies, needing the intervention of comprehensive sentencing guidelines to streamline the wide judicial discretions donated to judicial officers by Nigeria procedural penal statutes. This is because once a trial court exercises its discretion, it becomes the duty of an appellant

[50] *Ibid*, 400.
[51] newswirelawandevents.com/man-jailed-12-months-for-raping-ondo-teenager/, accessed on 24 May 2022.
[52] (1990) 11 SC 130 at 177.
[53] [2020] 15 NWLR (Pt1746) 33 S.C.
[54] [2019] 2 NWLR (Pt. 1655) S.C. 178.
[55] *Ozuloke v State* (1965) NMLR 125.
[56] *Kareem v L.P.D.C.* [2019] 15 NWLR (Pt. 1696) S.C. 481.

challenging the exercise of the discretion to satisfactorily demonstrate to the appellate court that the discretion is not properly exercised, judicially and judiciously. If the appellant fails to do that, the appellate court has no option than to affirm and endorse the exercise of the discretion by the trial court because the appellate court will not disturb the exercise of judicial discretion by the trial court merely on the ground that it would have exercised the discretion differently if it were in the position of the trial court.[57] It is only in few instances such as award of excessive sentence or sentence wrong in principle, awarding lower sentences than mandatory sentences prescribed by penal statutes, that appellate courts interfere with sentences imposed on convicts by trial courts, to reduce or increase them.[58]

When one compares the practice and procedure in sentencing in Nigeria with what obtains in the United Kingdom, the difference is obvious. In *The Queen v Ahmed Hassan*[59], Mr Justice Haddon-Cave did an elaborate 11-page sentencing remarks before sentencing the convict to life imprisonment with a minimum term of 34 years for attempted murder under section 5 of the Terrorism Act 2005 based on the Sentencing Council's Definitive Guidelines on Attempted Murder.[60] The Sentencing Council's Definitive Guidelines on Terrorism Offences, which came into force on 27 April 2018 were not operational as at the time Ahmed Hassan was sentenced. A 14-year old boy believed to be Britain's youngest defendant convicted of a gun murder was sentenced to life imprisonment, and ordered to serve a minimum term of 16 years imprisonment. The defendant, Yussuf Mustapha turned 14 years three weeks before he unlawfully killed Keon Lincolm, a Birmingham schoolboy. The trial Judge, Lord Justice William Davis, who had earlier lifted an order protecting Yussuf's identity held that the 14-year-old had shown a clear intent to kill when he opened fire on the 15-year old Lincolm at close range.[61] The only mitigating factor in his favour is age. Two other parties to the murder who were 18 years old at the time they committed the offence were sentenced to life imprisonment with a minimum term of 19 years respectively while the one who was 16 years old got a minimum term of 17 years. A 19-year old defendant who supplied the weapons for the murder got 12 years of imprisonment. The above sentences follow a certain uniform and regular pattern unlike the Nigerian situation. It should be noted that if it were in Nigeria, Yussuf would have just been detained at the pleasure of the governor, he being a young person, because murder carries with it a sentence of death.[62]

In the United Kingdom, the Sentencing Guidelines are offence-specific, and regularly reviewed unlike the general sentencing guidelines in the ACJA 2015 without a specific body to administer and review them as circumstances change. It is to fill the above gap in knowledge and practice of sentencing in Nigeria that this research is justified.

[57] *Popoola v Nigerian Army* [2022] 6 NWLR (Pt. 1825) S.C. 1 at 21, 33.
[58] *Oluwaseyi v State* [2019] 3 NWLR (Pt. 1658) S.C. 108; *Darlinton v F.R.N.* [2018]11 NWLR (Pt. 1629) S.C. 1 53; *Haruna Rafiu v State*, Appeal No. CA/I/305/2011; *Akpakpan v State* [2021] 17 NWLR (Pt. 1805) S.C. 231; *A biodun v F.R.N.* [2018] 11 NWLR (Pt. 1629) S.C. 86 at 107; *Musa v State* [2019] 2 NWLR (Pt. 1655) S.C. 154, at 154;*Okpo v State* (1972) 2 SC 24; *David v C.O.P.* (n 54) *supra.*
[59] www.judiciary.uk>2018/03>, accessed on 27 May 2022.
[60] *R v Kahar* [2016] ECWA Crim 568.
[61] www.courtroommail.com/court-sentences-14-year-old-to-life-britains-youngest-defendant-convicted-of-a-gun-murder/, accessed on 24 May 2022.
[62] Children and Young Persons Law of Lagos State, ss 2, 14, Criminal Code, ss 30, 319; *Modupe v State* [1988] 4 NWLR (Pt. 87) S.C. 130 at 142, *Guobadia v State* [2004] 6 NWLR (Pt. 869) S.C. 360.

CONCLUSION AND RECOMMENDATIONS/PROSPECTS FOR DECONGESTION OF PRISONS

Absence of Sentencing Guidelines discourages the use of non-custodial options but encourages uncoordinated use of judicial discretion in sentences of imprisonment, resulting in disparity and uncertainty in penalties imposed on prisoners convicted of same or similar offences. The Administration of Criminal Justice Act 2015 (ACJA) has not provided for elaborate Sentencing Guidelines. What the ACJA has done is just to codify the factors judicial officers hitherto considered before sentencing.[63] Nothing has really changed in this respect. The immediate past Chief Judge of the High Court of the Federal Capital Territory Abuja, Justice Ishaq Usman Bello, issued the Consolidated Federal Capital Territory Courts (Custodial and Non-custodial Sentencing) Practice Directions 2020, for use in the FCT Courts. That is more like it. It should be replicated for all State and Federal Courts in Nigeria to accelerate decongestion of prisons.[64]

Sentencing Guidelines should be created in Nigeria, with Nigeria Sentencing Commission to supervise them. This will make sentencing more certain, and reduce individual judicial discretion in sentencing. Achieving this objective will require enacting a new law or amending existing substantive and procedural laws regulating criminal justice system in Nigeria. Use of non-custodial options in sentencing convicts in less serious offences, which is one of the reasons for sentencing guidelines, would help in decongesting our correctional centres, as only those convicted of serious offences will be sentenced to prison terms. Pending the establishment of comprehensive National Sentencing Guidelines, the Administration of Criminal Justice Monitoring Committee under sections 469 and 470 of ACJA 2015 and the Administration of Criminal Justice Reform Committee under sections 375 and 377 of ACJ 2021 of Lagos State should work to decongest correctional centres in Nigeria.

The Police should acquire more technology for effective discharge of their duties, to be able to carry out meaningful investigation.[65] Intelligence-driven policing will help in decongesting the correctional centres, by ensuring that only suspects involved in crimes are arrested, and charged to courts of competent jurisdiction after discreet investigation discloses their links to the alleged offences. The Police should always use the instrument of the State to carry out proper investigation into crimes.[66] One of the primary functions of the Police is to investigate all crimes, which are brought to their notice, and wherever possible, to bring the perpetrators before the courts, together with all the relevant evidence.[67] The present practice of mass arrests of persons by the Police at and around crime scenes, and dumping suspects in the Magistrates' Courts under holding charge should stop. Magistrates should not lend their courts to the illegality of holding charge and, by extension, congesting the correctional centres.

[63] Administration of Criminal Justice Act 2015, ss 311, 313, 316, 317, 401, 470 (2) (c); Nigerian Correctional Service Act, ss 2 (1), (b), 40-44.
[64] www.thisdaylive.com/index.php/2020/11/02/new-sentencing-guidelines-will-accelerate-decongestion-of-correctional-centres-says-malami/, accessed on 24 May 2022. There is also the 'Lagos State Judiciary (Sentencing Guidelines) Practice Directions, 2018. See generally, Hon Justice OH Oshodi, 'Sentencing: Practice and Procedure under the Administration of Criminal Justice Act and Criminal Justice Laws.'7, 17.
[65] *Obaro v State* [2022] 3 NWLR (Pt. 1816) S.C. 105.
[66] *Kareem v State* [2021] 17 NWLR (Pt. 1806) S.C. 503 at 540.
[67] *Nnajiofor v F.R.N.* [2019] 2 NWLR (Pt. 1655) C.A. 157 at 176.

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