

Articulating Sentencing Guidelines to Structure Judicial Sentencing Discretion in Nigeria

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Abstract

The general purpose of sentencing is to punish or correct offenders and promote respect for the law in order to maintain a just, peaceful and safe society as well promote initiatives to prevent crimes. Penal laws usually provide the minimum and maximum punishment and it is the duty of the court to impose the right quality and quantum of sentence within the statutory limits to achieve the objective of sentencing in criminal trial. This duty appears simple, however, it is ironically the most incoherent and extremely difficult task in criminal justice delivery. This is owing to the facts that, the court at the stage of sentencing is often confronted with a serious decision of policy to decide which among the conflicting objectives of sentencing that is applicable to the particular facts of a case, before proceeding to impose the right sentence that can serve the real essence of justice. This paper, employing doctrinal research methodology in making a comparative analysis of sentencing guidelines in Nigeria, the United Kingdom and the United States found that, trial judges in Nigeria wield near absolute discretion at the stage of sentencing, and this individualised approach to justice often lead to the imposition of too lenient sentences inadequate to deter abhorrent behaviours or lead to the award of inconsistent sentences to different offenders who committed the same or similar offences in almost the same circumstances. To ensure predictability of punishment and promote uniformity and transparency in sentencing, it is recommended that legislative measures be employed to

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structure judicial discretion through comprehensive sentencing guidelines. Also, the training of judges in sentencing procedure including alternatives to imprisonment and their application in appropriate circumstances is recommended.

Key words: Aggravating and mitigating factors, judicial discretion, presentencing report, sentencing guidelines, sentencing hearing, victims' impact statement.

1.1 Introduction

Penal laws besides defining criminal conducts often prescribed the minimum, maximum or alternative sentence to which convicts may serve.² Where in a provision of law, a mandatory sentence is prescribed, the trial Judge upon conviction of an offender, must hand down such mandatory minimum sentence as provided by law.³ This is owing to the fact that a judge whose job is to declare and or enforce the law as it is, has no power to amend the law or act in gross violation of the law by imposing sentences for offence(s) less than the prescribed minimum or exceeding the maximum sentence.⁴ Apart from the ranges of minimum to maximum sentence or alternative sentence, a judge is left with almost complete discretion to impose any sentence.⁵ Such discretion must of course be exercised judicially and judiciously,⁶ guided by sentencing principles like the objectives of sentencing and mitigating and aggravating factors. Regrettably, very often than not, the discretion in sentences are exercised by trial courts not on the basis of established principles and rules, but in accordance with idiosyncratic sentimental disposition of judges.⁷

The wide discretion and an individualised approach to justice retained by trial judges at the stage of sentencing often lead to oddly lenient sentences; wide range disparity and inconsistency in sentencing as well as disregard for statutory minimum sentences. These may be owing to a number of

² *Mohammed v AG Fed* (2021)3 NWLR (pt.1764)397 at 432, paras A-D (SC)

³ *Yusuf v FRN* (2018) 8 NWLR (pt.1622) 502 at 526 para E-G (SC); *Duru v FRN* (2018)12 NWLR (pt.1632)20 at 46 paras. B-C. (SC); *Emmanuel v FRN* (2019) LPELR-47925(CA).

⁴ *Ademoye v State* (2014) All FWLR (pt.729) 1210 at 1216 para B (CA); *Duru v. FRN* (2019) All FWLR (pt.985)404 at 450, paras. C-E (SC); *Ezeani v FRN* (2019)12 NWLR (pt.1686)221 at 250-251, paras. G-A (SC).

⁵ *Oyewumi v The State* (2019) LPELR-47892, 34-35 (CA).

⁶ *Ademoye v State* (2014) All FWLR (pt. 729) 1210 at 1216 para B (CA).

⁷ *Doripolo v The State* (2012) LPELR-15415 (CA) at 37-39 (Saulawa, JCA).

factors including the fact that Judges may give greater or lesser weight to legally relevant mitigating or aggravating factors, corruption, favouritism, influence peddling, and so on.⁸ The lack of set rules providing a benchmark factors for courts to consider as aggravating or mitigating circumstances, and heavy reliance on custodial sentences are also factors exacerbating the indeterminacy and inconsistencies in sentencing.⁹

Cases of exercise of discretion leading to inconsistency and wide range disparity in sentencing are replete in Nigeria. For instance in *State v Masiga*¹⁰ the trial court convicted the defendant for rape of a ten-year-old girl but sentenced him to a fine of N20,000.00 (twenty thousand naira only) or 6 years imprisonment whereas in *Isa v Kano State*¹¹, the convict who raped an eight-year-old girl was sentenced to 10 years imprisonment and in addition, the court imposed a fine of N10,000.00 (ten thousand naira) on him and in default of payment of the fine to serve an additional one year jail term. While in the case of *Adenekan v The State of Lagos*¹² the appellant put his mouth and hand in the vagina of the victim, a four year old girl, the trial court convicted him for rape and sentenced him to 60 years imprisonment.

There is also plethora of cases on the failure to impose mandatory minimum sentences by trial courts.¹³ For instance in *Yusuf v FRN*¹⁴, the defendant was convicted and sentenced by the trial court to six (6) months imprisonment instead of the minimum seven (7) years stipulated by section 1(3) of the Advanced Fee and Other Fraud Related Offences Act,

⁸ Anthony Wesaka, 'New Guidelines Give Judges Less Freedom on Sentences' Daily Monitor (Uganda June 12, 2013), available at <<http://www.monitor.co.ug/News/National/New-guidelines-give-judges-less-freedom-on-sentences/-/688334/1879754/-/11qw7bhz/-/index.html>> accessed on 10th August, 2020; Moses Serwanga, 'New Sentencing Guidelines a Litmus Test for Judicial Officers' African Confidential (Uganda July 31, 2013), available at <<http://africanconfidential.com/new-sentencing-guidelines-a-litmus-test-for-judicial-officers/>> accessed on 10th April, 2020.

⁹ BJ Odoki, Speech at the Launch of the Constitution (Sentencing Guidelines for Courts of Judicature) Practice Directions Legal Notice No. 8 of 2013, at 3 (June 10, 2013), available at <http://www.jlos.go.ug/index.php/documentcentre/document-centre/doc_download/280-speech-by-the-chief-justice-at-the-launch-of-the-sentencing-guidelines> accessed on 10th April, 2020.

¹⁰ (2018)8 NWLR (pt.1622) 383 (SC).

¹¹ (2016) All FWLR (pt.822) 1773 (SC)

¹² (2021)1 NWLR (pt.1756)130 (CA).

¹³ *Yusuf v FRN* (2018)8 NWLR (pt.1622)502 (SC) *Ayomitan v State* (2018) LPELR-45700 (CA)

¹⁴ *Ibid.*

2006. On appeal by prosecution to the Court of Appeal, the appellate court increased the sentence to the minimum seven years. And on further appeal by the offender to the Supreme Court, the apex court held that the trial court was wrong to have reduced the mandatory sentence provided by law and that the Court of Appeal rightly increased the sentence. In *Ayomitan v State*¹⁵, the Court of Appeal equally increased the 14 years term to the mandatory sentence of life imprisonment in an appeal based on a conviction for conspiracy and attempted armed robbery.

The Supreme Court of Nigeria has in a plethora of cases frowned at the imposition of too lenient sentences and considers it a dereliction of judicial duty for judicial officers to engage in such practice.¹⁶ For instance in *Popoola v State*¹⁷, the court in condemning the 5 year lenient sentence imposed by the trial judge in a case of rape held that it amounted to abdication of his role as a judicial officer.¹⁸ In *Lucky v The State*¹⁹, the Supreme Court in condemning a lenient sentence of option of fine after a sentence of 5 years, held that ‘the sentence imposed is an invitation for defilement and rape within His Lordship’s jurisdiction. With respect to His Lordship, the sham of prison term he imposed on the appellant is an attack on law and moral basis for prison term.’²⁰ Another instance is the case of *Adonike v The State*²¹ where the Supreme Court lamented thus: ‘the appellant herein was sentenced to six years imprisonment with hard labour and six strokes of the cane. I wish it was more than this and unfortunately, there is no appeal against sentence.’²²

This article therefore critically examines sentencing guidelines in Nigeria. For ease of understanding, the article is segmented into five (5) main parts. The first part is the introduction, the second part conceptualises sentencing guidelines. At the third part, sentencing guidelines in other jurisdictions particularly in the United States and England were examined. Sentencing

¹⁵ *Ayomitan* (n11).

¹⁶ *Lucky v The State* (2016) 13 NWLR (pt.1528) 128 at 163, para. H; 164, paras. C-G; 165, para. A (SC); *Popoola v State*(2014)All FWLR (pt.715) 200 (SC). *Adonike v The State* (2015)7 NWLR (pt.1458) 237 at 266, para. B (SC).

¹⁷ *Ibid.*

¹⁸ *Ibid* 217 paras. F-G.

¹⁹ *Lucky* (n14)

²⁰ *Ibid*,163, para. H; 164, paras. C-G; 165, para. A.

²¹ (2015)7 NWLR (pt.1458)237 (SC).

²² *Ibid*, 266, para. B.

guidelines in Nigeria is considered in the fourth part where principles of sentencing in the country is discussed including the objectives of sentencing; the consideration of the interest of victim, the convict and the community; the appropriateness of non-custodial sentence; previous conviction; and necessary mitigating and aggravating factors. The article is concluded with recommendations proffered in the final part.

2.1 Meaning of Sentencing Guidelines

According to Black's Law Dictionary, sentencing guidelines are 'a set of standards for determining the punishment that a convicted criminal should receive, based on the nature of the crime and the offender's criminal history.'²³ This definition is rather the definition of the United States grid-based sentencing guideline which is centred on the nature of offence and criminal history, but falls short of the definition of sentencing guideline as implemented in other countries especially in England and Wales where other considerations including several mitigating and aggravating factors are required to be considered before sentencing.

The rationale behind the adoption of sentencing guidelines is to provide guidance on circumstances or factors the court should take into account when sentencing an offender; promote transparency and ensure that courts across the country are consistent in sentencing offenders. In a nutshell, sentencing guidelines are a guide to the judicial officer to arrive at a fair and just sentence which is consistent with that being passed by other judicial officers, though providing the flexibility of deviating from them if it is in the interests of justice to do so.

3.1 Sentencing Guidelines in United States, England and Wales

To properly understand sentencing guidelines in Nigeria, it is essential to understand well entrenched practices and experiences on sentencing guidelines in other jurisdictions especially United States, England and Wales.

3.1.1 Sentencing Guidelines in the United States

The United States as a federation does not have uniform sentencing laws or procedures. Each state and the federal jurisdiction have their own

²³ BA Garner and others (ed), *Black's Law Dictionary* (9th edn, West Publishing Co. 1999) 1368.

sentencing system²⁴ and have implemented sentencing guidelines to assist judges in handing down fair and consistent punishment.²⁵ In Minnesota for instance, the Minnesota Sentencing Commission is charged with establishing the Minnesota Sentencing Guidelines and updating them on an annual basis²⁶ subject to legislative approval.

Sentencing guidelines across the United States is the two dimensional Sentencing Grid System (a two-part test) that assesses the severity of the crime and the individual's criminal history. The Grid is a table with horizontal and vertical axis and each cell of the grid contains a range of sentence length.²⁷ On the vertical axis of the grid is the highest severity level 11 which incorporates mostly murder cases down to the lowest severity level 1, which incorporates certain assault felonies.²⁸ On the horizontal axis of the Grid is the 'criminal history score' where the convict accumulates points for (a) Prior felonies; (b) custody status at the time of the offense-, whether the convict was on probation or otherwise; (c) prior to certain misdemeanours; and, (d) previous juvenile matters.²⁹ The Standard Minnesota Sentencing Grid applies to all felony cases except for charges for sex and drug crimes which have separate sentencing grids each with eight and nine severity levels respectively. However, convicts of sex and drugs offences accumulate points on 'criminal history score' in much the same way as offences on the Minnesota standard sentencing grid.³⁰

The Guidelines are developed around the concept of 'presumptive sentences,' a term which comes from the fact that the punishment is presumed to be appropriate for all typical cases, after accounting for the individual's criminal history and the severity of the offense for which a

²⁴ Mirko Bagaric and Theo Alexander, 'First-Time Offender, Productive Offender, Offender with Dependents: Why the Profile of Offenders (Sometimes) Matters in Sentencing' (2015) (7)(2) Albany Law Review, 397-446, 401.

²⁵ John Arechigo, 'Overview of Minnesota Sentencing Guidelines' (Nov 14, 2019) available at <<https://arechigo-stokka.com/blog/minnesota-sentencing-guidelines/>> accessed on 6th October, 2020.

²⁶ *Ibid.*

²⁷ Andrew Ashworth and JV Roberts, 'The Origins and Nature of the Sentencing Guidelines in England and Wales' 3 available at <http://content.schweitzer-online.de/static/catalog_manager/live/media_files/representation/zd_std_orig_zd_schw_orig/000/924/774/9780199684571_content_pdf_1.pdf> accessed on 6th October, 2020.

²⁸ See Appendix A for an Extract from the Minnesota Sentencing Grid.

²⁹ John Arechigo (n24).

³⁰ *Ibid.*

person was convicted.³¹ Within the presumptive sentence, there are two important factors: (1) the presumptive duration, which is a defined sentence length as measured in months; and, (2) The presumptive range of punishment, starting from a point 15 percent lower and 20 percent higher than the presumptive duration. In a typical case, involving one that does not encompass unusual circumstances, the judge will use the presumptive duration. However, where there are factors that reflect unfavourably on the convicted individual, the court can sentence up to the presumptive range limit. Likewise, when the person's actions justify a reduced sentence, a judge may issue a sentence on the low end of the presumptive range.³²

Trial courts must sentence within the guidelines ranges – either the exact presumptive duration or within the presumptive range unless it finds ‘substantial and compelling’ reasons to depart therefrom.³³ A departure falls completely outside the Guidelines by imposing a higher or lower than the presumptive sentencing range, representing an exercise of discretion by the judge based on available aggravating or mitigating circumstances. Whenever a judge deviates from the Minnesota Sentencing Guidelines and issues an upward or downward departure, he or she must prepare a ‘Departure Report’ regarding the situation.³⁴

In 2008, the Sentencing Commission Working Group (SCWG) set up in England evaluated the utility of the Minnesota-style sentencing guideline for use in England and Wales and came to a conclusion that such schemes held little attraction for sentencing in England, being ‘far too restrictive of judicial discretion to be acceptable.’³⁵

To date, research did not reveal any country that has adopted the American two-dimensional matrix structure for its guidelines.³⁶ There is the general perception around the world that sentence ranges in the United

³¹ *Ibid.*

³² *Ibid.*

³³ Minnesota Sentencing Guidelines and Commentary, Revised, August 2011.

³⁴ John Arechigo (n24).

³⁵ Andrew Ashworth and JV Roberts (n26) 2.

³⁶ JV Roberts, ‘The Evolution of Sentencing Guidelines: Comparing Minnesota and England and Wales’ available at <https://ora.ox.ac.uk/objects/uuid:47090d32-3927-496b-8051-a420fa5b0c8a/download_file?file_format=pdf&safe_filename=RobertsfinalacceptedCJ.pdf&type_of_work=Journal+article> accessed on 4th October, 2020.

States are too narrow and the compliance requirement too restrictive.³⁷ The grid structure was also studied and rejected by the Western Australian government in 1990, the Canadian Sentencing Commission in 1986, the New South Wales Law Commission in 1996, and South Korea in 2009.³⁸

3.1.2 Sentencing Guidelines in England and Wales

The production, issue, and review of sentencing guidelines in England are the responsibilities of the Sentencing Council of England and Wales (SCEW). While sentencing guideline systems in the US was created at a single stroke introducing an integrated set of guidelines, the guidelines issued by the English Council is not contained in a single document but made at various times with respect to specific offences. The structure of sentencing guidelines in England is offence-specific it is made piecemeal by creating guidelines for particular offences or groups of offence.³⁹ Some of these guidelines include the Sexual Offences Definitive Guideline 2014;⁴⁰ Burglary Offences Definitive Guideline 2012;⁴¹ Attempted Murder Definitive Guidance 2009⁴² *etcetera*. In murder cases however, the approach to sentencing is not contained in sentencing guidelines, but rather in statutory form in sections 269 to 277 and Schedules 21 and 22 of the Criminal Justice Act 2003.

The sentencing guidelines in England promote consistency or uniformity at sentencing by prescribing a sequence of steps for courts to follow when sentencing an offender, while also allowing a significant degree of

³⁷ Andrew Ashworth and JV Roberts (n26).

³⁸ JV Roberts, 'The Evolution' (n35).

³⁹ Andrew Ashworth and JV Roberts (n26) 5.

⁴⁰ Sentencing Guidelines Council, *Sexual Offences Definitive Guideline* (effective Apr. 1, 2014), available at [http://sentencingcouncil.judiciary.gov.uk/docs/Final_Sexual_Offences_Definitive_Guideline_content_\(web\).pdf](http://sentencingcouncil.judiciary.gov.uk/docs/Final_Sexual_Offences_Definitive_Guideline_content_(web).pdf).> accessed on 10th August, 2020.

⁴¹ Sentencing Council, *Burglary Offences Definitive Guideline* (effective Jan. 16, 2012) http://sentencingcouncil.judiciary.gov.uk/docs/Burglary_Definitive_Guideline_web_final.pdf.> accessed on 10th August, 2020.

⁴² Sentencing Guidelines Council, *Attempted Murder Definitive Guidance* (effective July 27, 2009) available at [http://sentencingcouncil.judiciary.gov.uk/docs/Attempted_Murder_Definitive_Guideline_\(web\)accessible.pdf](http://sentencingcouncil.judiciary.gov.uk/docs/Attempted_Murder_Definitive_Guideline_(web)accessible.pdf).> accessed on 10th August, 2020.

discretion.⁴³ The English guideline structure contains a series of up to nine steps, and a trial courts must follow the steps, making decisions at each step of the process.⁴⁴ The first two steps are the most critical and most important as they determines the limits of the sentence range that the court will work within as it proceeds through the remaining steps of the guideline. For instance, the nine steps in the Street Robbery Guideline⁴⁵ are as follows:

Step One: Determining the Offence Category

The first step is the most important as it determines the limits of the sentence range that the court will work within as it proceeds through the remaining steps of the guideline. At Step one, the court assigns the case to one of three levels of harm (category 1, 2 and 3), and the defendant to one of three levels of culpability (high, medium and lesser). Consistency at this crucial first step of the guidelines' methodology is promoted by requiring all courts to consider the same set of factors to determine which category of harm and culpability is appropriate. For instance, where there is the use of weapon like blade article or firearm or the use of weapon to inflict violence, or very significant force in the commission of the offence of street robbery or the offence was motivated by hostility the defendant is required to be considered to be of high culpability.

Also, where there is production of weapon other than a blade article or firearm, or threat of violence by any weapon but which is not produced, the guideline requires the court to consider the defendant of medium culpability. And where there is just threat or use of minimal force in the commission of the robbery, the guideline requires the court to consider the defendant as being of lesser culpability.⁴⁶ Step one also provides the factors for ascertaining the category of harm in the same manner as ascertaining culpability.⁴⁷ The list of factors at Step one which determines the category of sentence range is exclusive; courts may take other factors into account only later, at step two. The exclusive nature of this list is one

⁴³ JV Roberts, 'Structured Sentencing: Lessons from England and Wales for Common Law Jurisdictions' available at <https://www.researchgate.net/publication/258181091_Structured_Sentencing_Lessons_from_England_and_Wales_for_Common_Law_Jurisdictions> accessed on 10th October, 2020.

⁴⁴ JV Roberts, 'The Evolution' (n35).

⁴⁵ Made pursuant to the Criminal Justice Act 2003 s224 and the Theft Act 1968, s8(1).

⁴⁶ See Appendix B for an extract from the Street Robbery Guideline.

⁴⁷ *Ibid.*

of the most restrictive elements of the English guidelines and aims to promote a more uniform approach across courts.

This feature of the guidelines plays an important role in promoting a consistent approach to sentencing since it restricts the trial court to a limited list of factors. After determining the relevant offence category, a court moves to the next step.

Step Two: Starting Point and Category Range

Step two prescribes the sentence starting point and the category sentence range. Courts use the corresponding starting point sentence to shape a sentence that will then be modified by the remaining steps in the guideline. This essentially means moving up or down from the starting point sentence to reflect relevant mitigating and aggravating factors.⁴⁸ For instance, an offender whose culpability is considered high and the harm occasioned by the offence is under category 1 of the Street Robbery Guideline, the starting point sentence is 8 years while the court can impose any sentence within the sentence range of 7-12 years depending on the aggravating and mitigating factors. Similarly, where the culpability of the offender is considered to be lesser and the offence category is for instance category 3, the starting point sentence provided under the guideline is 1 year's custody and the court is at liberty to adopt non-custodial sentence or custodial sentence not exceeding 3 years depending on the aggravating and mitigating factors.⁴⁹ The starting point applies to all offenders irrespective of plea or previous convictions. The list of mitigating and aggravating factors at step two is, unlike the list provided at step one, non-exhaustive. A court may therefore consider other factors not contained in the list provided by the guideline and then reflect these additional circumstances in the sentence imposed.⁵⁰

⁴⁸ JV Roberts, 'Sentencing Guidelines in England and Wales: Recent Developments and Emerging Issues' (2013) (76)(1) *Law and Contemporary Problems*, 2 available at <<https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=4344&context=lcp>> accessed on 10th October, 2020.

⁴⁹ See Appendix C for an extract from the Street Robbery Guideline.

⁵⁰ Andrew Ashworth and JV Roberts (n26).

Step Three: Consider Any Factor Which Indicate a Reduction for Assistance to the Prosecution

The court is required to take into account assistance by defendants to the prosecution to determine whether to further reduce or review the sentence already determined at step two pursuant to section 73 and 74 of the Serious Organised Crime and Police Act 2005 and any other rule of law by virtue of which an offender may receive a discount sentence in consequence of assistance given (or offered) to the prosecutor or investigator. Any potential reduction here is independent of the reduction for the guilty plea, although the utilitarian justification is the same in both cases.⁵¹

Step Four: Reduction for Guilty Plea

The court at step four is required to take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act (CJA) 2003 and the Guilty Plea Guideline. The level of reduction reflects the stage at which the offender indicated a willingness to admit guilt to the offence for which he is eventually sentenced.⁵² Save where the law prescribes minimum mandatory sentences in certain circumstances. Where the guilty plea was entered at the first reasonable opportunity in relation to the offence for which sentence is being imposed, the level of the reduction will be gauged on a sliding scale ranging from a maximum of one third; also, the reduction will be to a maximum of one quarter where a trial date has been set; and to a maximum of one tenth for a guilty plea entered at the 'door of the court' or after the trial has begun.⁵³ Where the plea of guilty comes very late, it is still appropriate to give some reduction.⁵⁴

Step Five: Dangerousness

At step five, the court is required to consider whether having regard to the criteria contained in chapter 5 of part 12 of the CJA, 2003, it would be appropriate to impose an extended sentence⁵⁵ or a life sentence.⁵⁶

⁵¹ JV Roberts, 'Sentencing Guidelines' (n47) 5.

⁵² Sentencing Guideline Council: Reduction in Sentence for a Guilty Plea Guideline 2004, para 4.3.

⁵³ *Ibid* para 4.2.

⁵⁴ *Ibid* para 4.3(iii).

⁵⁵ *Ibid* s226A

⁵⁶ Criminal Justice Act, s224A or 225

Step Six: Totality Principle

At this step, the court is required to invoke the totality principle to ensure that the total sentence is just and proportionate to the overall offending behaviour in accordance with the Offences Taken into Consideration and Totality Guideline. The totality principle is relevant when the court is sentencing an offender for more than one offence, or where the offender is already serving a sentence.

Step Seven: Compensation and Ancillary Orders

Step seven reminds the trial court to consider making a compensation order and/or any other ancillary orders.

Step Eight: Reason

Step Eight invokes section 174 of the CJA which imposes a duty on courts to give reasons and to explain, for the benefit of the offender and others, the effect of the sentence.

Step Nine: Consideration for Time Spent on Bail

The final step nine, mandates the court to take into consideration any remand time served in relation to the final sentence. Courts should consider whether to give credit for time spent on remand or on bail, in accordance with sections 240 and 240A of the CJA 2003.

The English guidelines allow courts greater discretion at sentencing⁵⁷ unlike the Minnesota grid which is more restrictive in nature, and generate high levels of judicial conformity and consistency. The English approach also houses additional guidance found in a number of generic guidelines and offers the court a wider range of guidance, such as information on the use of different disposals, the sentencing of multiple crimes, the appropriate level of reduction to reflect a guilty plea and other issues. The English approach therefore contrasts with the US schemes which adopt a simpler methodology: once a court has established the offender's criminal history score, and the seriousness level of the offence of conviction, consistency in the US is achieved by restricting courts to a

⁵⁷ JV Roberts, 'The Evolution' (n35).

range of sentence length which is determined primarily by two factors, crime seriousness and criminal history.⁵⁸

The English guidelines has evolved considerably in structure. However, the structure of the Minnesota main grid remains largely unchanged since 1980.⁵⁹ Sentencing guidelines developed in other jurisdictions including South Korea, Uganda, Jamaica and China has adopted the harm-culpability combination rather than the US criminal history alternative which is considered to accord the courts a very restricted discretion.⁶⁰

4.1 Sentencing Guidelines in Nigeria

In Nigeria,⁶¹ there is no comprehensive sentencing guideline other than the guidance provided in case laws and under the ACJA or the Administration of Criminal Justice Law (ACJL) of the various states in Nigeria. There are no sentencing council or commission saddled with the responsibility of rolling out and updating sentencing guidelines. Apart from the minimum to maximum sentence, every other variable is at the discretion of the court, subjected to review by appellate courts.⁶²

The ACJA in an attempt to structure judicial discretion in sentencing made provisions for sentencing hearing and some factors the court shall take into consideration in pronouncing sentence to include (a) the objectives of sentencing;⁶³ (b) the interest of victim, the convict and the community;⁶⁴ (c) appropriateness of non-custodial sentence; (d) previous conviction; and (e) all necessary mitigating and aggravating factors.⁶⁵ There are other general sentencing principles provided for under part 40 of the ACJA.

⁵⁸ Andrew Ashworth and JV Roberts (n26) 9.

⁵⁹ JV Roberts, 'The Evolution' (n35).

⁶⁰ *Ibid.*

⁶¹ Except however the FCT Abuja, which has the Consolidated Federal Capital Territory Courts (Custodial and Non-Custodial Sentencing) Practice Direction, 2020, first made in 2016 and which replicates the English Guideline style. However instead of being offence specific, it is based on category of offences and involves calculation based on percentages in determining the sentences starting points and ranges. This guideline is more complicated, lengthy and requires mathematical calculation rather than logic and reason.

⁶² *Ademoye v State* (2014) All FWLR (pt.729) 1210 at 1215, para. B (CA).

⁶³ ACJA 2015 s401.

⁶⁴ *Ibid* s311(2) (b).

⁶⁵ *Ibid* s311(3).

4.1.1 Sentencing Hearing

In Nigeria, before the enactment of the ACJA, sentencing hearing was only in the form of plea of allocutus.⁶⁶ In the case of *Edwin v The State*⁶⁷ the Supreme Court of Nigeria defined allocutus to mean a plea in mitigation of the punishment richly deserved by a convict for the offence with which he was charged and for which he was tried and found guilty and convicted accordingly.⁶⁸

Allocutus as a plea in mitigation of the sentence is made after conviction but before sentence is pronounced.⁶⁹ The plea of allocutus may be made by the convict in person, his legal representative or through a witness to give evidence of previous good character and good works of the convict.⁷⁰ Where evidence of good character is given by way of allocutus, the prosecution is also at liberty to produce evidence of previous conviction.⁷¹ The trial court will then proceed to impose the sentence after the allocutus.⁷² In a plethora of decisions, the courts in interpreting section 247 of the Criminal Procedure Act which provides for the plea of allocutus have held that the failure to ask a defendant to make a plead of allocutus has no effect whatsoever on the validity of the proceedings and does not violate a defendant's right of fair hearing guaranteed under section 36(6)(b) of the CFRN 1999 as amended.⁷³

With the enactment of the ACJA,⁷⁴ the law makes provision for sentencing hearing. it provides for the production of any evidence by the offender during sentencing hearing and for the court to conduct an inquiry into the convict's antecedents before sentencing.⁷⁵ Also, the provision under section 247 of the Criminal Procedure Act that the failure to call upon a convict to make a statement in mitigation of his punishment shall have no

⁶⁶ Criminal Procedure Code s247 and 248; now ACJA, 2015, s310.

⁶⁷ (2019) 7 NWLR (pt.1672) 553 (SC).

⁶⁸ *Lucky v The State* (2016)13 NWLR (pt.1528) 128 (SC).

⁶⁹ *Emmanuel v FRN* (2019) LPELR-47925, 9-13, paras. E-B (CA); *Yougreen v State* (1978)11 FCA.

⁷⁰ *Emmanuel* (n68).

⁷¹ *Umaru v FRN* (2016) All FWLR (pt.816) 475 at 488; *State v John* (2013)12 NWLR (pt.1368) 337; *Lucky v State* (2016)13 NWLR (pt.1528) 128.

⁷² *Emmanuel* (n68).

⁷³ *Edwin v The State* (2019) 7 NWLR (pt.1672) 553 (SC); *Ogunyayo v The State* (2014) 12 NWLR (pt.1420) 1 (CA).

⁷⁴ ACJA s310 and 311

⁷⁵ ACJA 2015, s310(1), 311(3) and s416(2)(f) and (g).

effect on the validity of the proceedings is not retained under section 310 of the ACJA and by the mischief rule of interpretation of statutes, this can be interpreted as curing the defect in the former law by making sentencing hearing mandatory in non-capital offences.

While the convict in Nigeria is accorded the latitude of providing any evidence in mitigation of his punishment, the prosecution is restricted to producing evidence of previous conviction of the defendant as an aggravating factor. In the United Kingdom, United States, Tanzania and other countries, the law allows for the presentation of victims' impact statement and presentencing report during sentencing hearing.⁷⁶

a) Victim Impact Statement

Victim-impact statement is a statement of the financial, physical, and psychological impact of crime on a victim, the victim's family or caregiver.⁷⁷ It is an oral or written statement given in court after conviction but before sentencing on the impact of a crime upon a victim. A victim is a person directly harmed by a criminal offence, or the family or caregiver of a person killed or injured.⁷⁸ A victim impact statement can be made by a victim, a family member/caregiver or legal representative by reading same in open court or handed up in written form. The maker of the statement can be cross-examined or questioned in relation to the statement.⁷⁹ Though under the ACJA, 2015 of Nigeria, there is no explicit provision allowing the victim or his family member or legal representative to lead evidence or make submission during sentencing hearing, the court is however required under section 311(2)(b)⁸⁰ to take the interest of the victim into consideration in pronouncing sentence.

b) Presentencing Report

⁷⁶ Cyrus Tata and others, 'The Interpretation and Use of Pre-Sentence Reports in the Sentencing Process' (2007) available at <<https://www.researchgate.net/publication/229036862>> accessed on 28th August, 2020.

⁷⁷ Alfred M Tijah, 'An Examination of the Rights of Crime Victims in Plea Bargain Agreements in Nigeria' (2020) (9) Benue State University Law Journal 120.

⁷⁸ *Ibid* 133

⁷⁹ Victims Services and Criminal Law Review, NSW Department of Justice and NSW Sentencing Council, 'Sentencing Information Package' (2014) available at <<http://www.victimsservices.justice.nsw.gov.au>> accessed on 31st August, 2020.

⁸⁰ ACJA 2015, s.416(2)(f).

Presentencing Report, also referred to as Social Enquiry Report, refers to a report prepared by a probation officer, community service officer or police officer under the criminal justice system that assist courts to reach their sentencing decision by providing background information about the offender's family, previous offences and conduct, the victims and community attitude towards the offender, his employment and other circumstances⁸¹ as well as their risk of re-offending and the viability of non-custodial sentencing options.⁸² It is a report of the history of a person convicted of crime before sentencing to determine if there are extenuating circumstances which should ameliorate the sentence or a history of criminal behaviour to increase harshness of the sentence.⁸³ The presentencing report is served on the parties to the criminal proceedings and at the sentencing hearing, the prosecutor and the defendant are entitled to argue against the recommendations for sentencing made in the presentencing report.⁸⁴

Pre-sentence reports are written by probation officers, community service officer or police officer. The defendant will often meet with the appropriate officer before sentence and they will discuss the offence and the defendant's attitude towards it. Sometimes 'stand down' or 'on the day' pre-sentence reports are ordered. This means the court orders a report to be prepared by the probation service on the same day as the defendant pleads guilty, allowing the sentence to take place on that day also; this procedure is often used in less complex cases where there has not been sufficient time or opportunity to prepare a report in advance.⁸⁵ The court may also seek advice from experts like psychiatrists or probation officers regarding the desirability of a particular sentence keeping in view its likely impact on the offender.⁸⁶

⁸¹ Salma Fundi and Sarah Stroumsa, 'Social Enquiry Report/Pre Sentence Report' available at <https://www.academia.edu/31803251/BULLET_SOCIAL_ENQUIRY_REPORT_PRE_SENTENCE_REPORT_SER> accessed on 31st August, 2020.

⁸² Cyrus Tata and Others (n75).

⁸³ Salma Fundi and Sarah Stroumsa (n80).

⁸⁴ Cyrus Tata and Others (n75).

⁸⁵ Christopher Kessling, 'How Sentencing Works: What Will Happen at My Sentencing Hearing?' available at <<https://www.defence-barrister.co.uk/my-sentencing-hearing>> accessed on 6th October, 2020.

⁸⁶ SMA Qadri, *Criminology and Penology* (6th edn, Eastern Book Company 2014) 384.

Presentencing report is imperative as it assists to individualise punishment. It also leads to a realistic, rather than a merely theoretical, re-examination of the entire philosophy of punishment.⁸⁷ However, the major pitfalls of presentencing reports are that, they are untested subjective findings and perceptions of the report writers who may have limited and hearsay-laden information. Also because of their detailed nature, presentencing reports are almost encyclopaedic in nature which court considers most part unnecessary.⁸⁸ They may be time consuming not only in the preparation but also for the court to consider the report before sentencing. In Nigeria, where public office holders take a long time in investigation or preparing documents for like legal advice *etcetera*, presentencing reports will be most undesirable in Nigeria since a convict may be to await sentencing report in the same manner defendants awaits trial for a very long time. Though there is no direct and express provisions for presentencing report under the ACJA, 2015, this can be however inferred from the provisions of section 416(2)(f)⁸⁹ which provides that a ‘trial court shall conduct an inquiry into the convict’s antecedents before sentencing.

4.1.2 The Objectives of Sentencing

The general purpose or objectives of sentencing is to promote respect for the law in order to maintain a just, peaceful and safe society and to promote initiatives to prevent crime. Section 401(2)(a)-(g) of the ACJA 2015 outlines a number of sentencing objectives which the court shall have in mind in determining a sentence and among which the court may choose for each particular case. Section 401(2) provides that:

- (2) In determining a sentence, the court shall have the following objectives in mind, and may decide in each case the objectives that are more appropriate or even possible:
 - (a) prevention, that is, the objective of persuading the convict to give up committing offence in the future, because the consequences of crime is unpleasant;
 - (b) restraint, that is, the objective of keeping the convict from committing more offence by isolating him from society;

⁸⁷ *Ibid.*

⁸⁸ Cyrus Tata and Others (n75).

⁸⁹ ACJA 2015, s416(2)(f).

- (c) rehabilitation, that is, the objective of providing the convict with treatment or training that will make him into a reformed citizen;
- (d) deterrence, that is, the objective of warning others not to commit offence by making an example of the convict;
- (e) education of the public, that is, the objective of making a clear distinction between good and bad conduct by punishing bad conduct;
- (f) retribution, that is, the objective of giving the convict the punishment he deserves, and giving the society or the victim revenge; and restitution, that is, the objective of compensating the victim or family of the victim of the offence.⁹⁰

The objectives of sentencing as captured in the above provisions are prevention, restraint, rehabilitation, deterrence, education and retribution. The sentence imposed by a court must reflect the chosen objective of sentencing. In the case of *Lucky v State*⁹¹ the trial court convicted the defendant for the offence of rape and during sentencing the court acknowledged that rape and defilement in his jurisdiction is fast assuming a frightening dimension. In rejecting the plea for leniency, the trial court held that it is the duty of the court to send the right signal to would-be rapists and discourage the rampancy of the widespread crime by punishing those found guilty severely. It is clear from the above that the court chose deterrence and retribution as the sentencing objective for the case however, the trial court went ahead to sentenced the convict to a lenient term of five (5) years imprisonment with hard labour or with an option of fine of three hundred thousand naira only (N300,000.00). The Supreme Court in condemning the sentence as not reflective of the chosen sentencing objective held that:

The sentence imposed by the trial court is not only a contradiction in terms of the court's stated intention to ride his jurisdiction of the offences of rape and defilement, but a contemptuous and contumacious departure or derogation

⁹⁰ *Ibid.*

⁹¹ (2016)13 NWLR (pt.1528) 128 (SC).

from. Rather than achieve the purpose set out in the preamble to the judgment, the sentence imposed is an invitation for defilement and rape within His Lordship's jurisdiction. With respect to His Lordship, the sham of prison term he imposed on the appellant is an attack on law and moral basis for prison term. I was tempted to revisit the sentence in this case but that would have violated the principle that appellate court cannot disturb a sentence imposed unless there is an appeal against the sentence. A violation of that principle would be as much a wrong as the punishment imposed on the appellant and there is a truism that two wrongs do not make a right.⁹²

4.1.3 The Interest of the Victim, the Convict and the Community

The interest or needs of crime victims beside the just punishment of offenders include protection from re-victimisation; opportunity to participate in the criminal justice system; the right to be informed to understand the intricacies of criminal trial; and the provision of support, restitution or compensation for harm.⁹³ The interest of the convict may include just punishment which is not excessive to ensure his education, rehabilitation, reformation and safety or the individualisation of sentencing. Individualisation here means that instead of the sentence fitting the offence, the sentence should fit the offender.⁹⁴ While the best interest of the society can be considered to mean the maintenance of peace and order.

The provisions of section 311(2)(b) of the ACJA requires courts to consider and thus balance the interest of crime victims, convicts and the community during sentencing. The question as to what sentence/punishment is in the best interest of the trio is a difficult one and may be dependent on the circumstances of each case. For instance, though custodial sentence is meant to punish an offender, help to reform him and also to serve as deterrent to others,⁹⁵ it may however be considered risky to the society since marginal offenders may be converted into hardened criminals by exposing them to the prison environment. On another hand,

⁹² *Ibid* 163, para. H; 164, paras. C-G; 165, para. A.

⁹³ Alfred M Tijah (n76) 114.

⁹⁴ SMA Qadri, (n85) 377.

⁹⁵ *Ademoye v State* (2014) All FWLR (pt.729) 1210 at 1215 para B (CA).

imposing non-custodial or lesser sentence may expose victims to re-victimisation or create the impression that the offender got away with only a slap on the wrist which may affect public confidence in the criminal justice system and whittle down the deterrent objective of sentencing.

4.1.4 Appropriateness of Non-Custodial Sentence or Treatment in Lieu of Imprisonment

Non-custodial sentences are punishment other than terms of imprisonment imposed on a convict by a court of competent jurisdiction. Such include probation, fine, compensation / restitution, forfeiture, castration, canning, deportation, suspended sentence *etcetera*.

The use of imprisonment constitutes the most employed sentence imposed on offenders in Nigeria. To prevent the unnecessary use of prison sentence and presumably decongest the ever overcrowded Nigerian prisons, the law requires the sentencing judge to advert his mind to the appropriateness of non-custodial measures in pronouncing sentence.⁹⁶ Section 416(2)(k) of the ACJA, 2015 provides that sentencing to a term of imprisonment shall apply only to those offenders who should be isolated from society and with whom other forms of punishment have failed or is likely to fail. This implies that any person who is not a threat to the wellbeing of the society ought not to be sent to prison unless there is no other suitable punishment in the circumstances of the case.

4.1.5 Previous Conviction

Previous conviction as a factor of sentencing involves the use of criminal history information of an offender in aggravation or mitigation of the sentence for which the offender has currently been convicted. Section 311(2)(d) of the ACJA 2015 mandates Nigerian Court to consider previous conviction as factor in pronouncing sentence. However, there is no provision or practice limiting the extent of the application of previous conviction as an aggravating factor. The law failed to answer the question as to the length of time to which previous conviction may remain relevant or whether similar previous conviction count more than convictions unrelated to the current offence.

⁹⁶ ACJA 2015, s.311(2)(c).

In England, section 143(2) of the Criminal Justice Act 2003 limits the role of previous conviction in sentencing by providing that the court must treat previous conviction as an aggravating factor (a) if the court considers that it can reasonably be so treated having in particular to the nature of the offence to which the conviction relates and its relevance to the current offence, and (b) the time that has elapsed since the conviction.

Previous conviction can also be considered as mitigating factor for sentencing by dint of a combined reading of sections 211, 239, 240 and 311(2) of the ACJA. Where in one series of acts or omissions that is so connected together as to form the same transaction or which form or are part of a series of offences of the same or a similar character, and more offences than one are committed by the same defendant, the prosecution is required by law to frame charges for the trial of the offences at one trial.⁹⁷ Where all the offences arising from the same transaction are not so charged at once, the sections provide to the effect that, the prosecution may afterward on a separate charge notwithstanding the fact that the defendant was acquitted or convicted of an offence on the previous trial, try the offender for a distinct offence committed in the cause of the same transaction as the previous trial.⁹⁸ However, the court must take into cognisance the sentence in the previous trial in mitigation of punishment under the subsequent charge.⁹⁹

Similarly, a defendant acquitted or convicted of an offence constituted by an act or omission causing consequences which together with that act or omission constitute a different offence from that for which he was acquitted or convicted, may afterwards be tried for the last-mentioned offence if the consequences had not happened or were not known to the court to have happened at the time when he was acquitted or convicted when the consequences create the offence of murder or manslaughter,¹⁰⁰ provided that the court must take into cognisance the sentence in the previous trial in mitigation of punishment under the subsequent charge.¹⁰¹

⁹⁷ *Ibid* s211.

⁹⁸ *Ibid* s239.

⁹⁹ *Ibid* s311.

¹⁰⁰ *Ibid* s240.

¹⁰¹ *Ibid* s311.

4.1.6 Mitigating and Aggravating Circumstances

Appropriate and proportionate sentence is a matter for the discretion of the sentencing judge swayed by circumstances. Some of the factors influencing sentences are provided by statutes while other factors typically relate to the circumstances of the offense itself, such as the use of a weapon or the severity of the injuries suffered by a victim. These circumstances could be in mitigation or aggravation of the quantum of sentence to be imposed.

The ACJA 2015 under section 311(2) & (3) and 416(2) list some mitigating and aggravating factors which the court must consider before exercising its discretion of sentencing or review of sentencing.

a) *Mitigating Circumstances*

Mitigating circumstances refers to factors or circumstances that may weigh on the mind of the sentencing Judge to impose a lesser punishment on the offender upon conviction. In the case of *COP v Buhari*¹⁰² the court identified some mitigating circumstances to include the age of the convict, first offender status, admission of guilt, conduct of the offender after commission of crime and his good work record. Other factors include provocation, period in custody, minor role in the offence, lack of prevalence of the offence and membership of the same family.

b) *Aggravating Circumstances*

Aggravating circumstances are those factors which enhance the punishment to be received by the offender or which make the mitigating factors inapplicable.¹⁰³ They include: seriousness of the offence, abuse of position of trust, prevalence of the offence, taking a major role in the offence, status of the victims, and public abhorrence of the type of crime.

6.1.7 General Principles of Sentencing

Part 40 of the ACJA, which houses sections 416-437 of the Act, makes provision for sentencing generally other than capital sentence. These general principles of sentencing guides the court's discretion in matters

¹⁰² (2000) FWLR (pt.1)164

¹⁰³ Leonard C Opara, 'The Law and Policy in Criminal Justice System and Sentencing in Nigeria' (2014) (4)(7) *International Journal of Asian Social Science* 888

such as the determination of the term of imprisonment to be imposed on a convict;¹⁰⁴ the order of consecutive sentence;¹⁰⁵ the effective date of sentence;¹⁰⁶ the imposition of fine and term of imprisonment in default of payment of fine.¹⁰⁷ Section 416(2) of the ACJA provides that, in exercising its discretion of sentencing or review of sentence, the court shall take into consideration the following factors, in addition to the objectives of sentencing under section 401 of the Act:

- (a) each case shall be treated on its own merit;
- (b) the objectives of sentencing, including the principles of reformation, shall be borne in mind in sentencing a convict;
- (c) an appeal court may, in a proper case, reduce the sentence imposed by the trial court, especially where it is excessive or based on wrong principles, or an appeal court may increase the sentence imposed by the trial court especially where it is inadequate;
- (d) a trial court shall not pass the maximum sentence on a first offender;¹⁰⁸
- (e) the period spent in prison custody awaiting or undergoing trial shall be considered and computed in sentencing a convict;
- (f) trial court shall conduct an inquiry into the convict's antecedents before sentencing;
- (g) it may be desirable to adjourn for sentencing in order to have time to consider any evidence adduced at the sentencing hearing in accordance with section 311 of this Act.

A sentence of imprisonment takes effect from and includes the whole of the day of the date on which it was pronounced.¹⁰⁹ A court may however specify a different effective date when making an order for consecutive sentence or a trial a court may states that a sentence may take effect at a

¹⁰⁴ ACJA 2015, s416

¹⁰⁵ *Ibid*, s418

¹⁰⁶ *Ibid*, s419 and 431

¹⁰⁷ *Ibid*, s420, 422 and 437

¹⁰⁸ *Emmanuel v FRN* (2019) LPELR-47925 (CA)

¹⁰⁹ ACJA 2015, s419

later date after the convict had served a previous sentence imposed by another competent court.¹¹⁰

Consecutive or concurrent sentences are made where a defendant is convicted for more than one offence. In such situation each offence must receive a separate sentence to be valid.¹¹¹ And where the offences relate to the same act or set of facts, the sentence is required to be ordered to run concurrently. In the case of *Okpogo v FRN*¹¹² the Delta State High Court after convicting the appellant for stealing sentenced him to 7 years imprisonment. The court however postponed the effective date of the sentence to start running after the appellant have completed serving a previous sentence of 10-year imprisonment for the offence of operating a bank without a licence imposed by the Federal High Court, Asaba. The appellant on appeal challenged the discretion of the trial court in ordering a consecutive sentence. The Court of Appeal applying section 418 of the ACJA as domesticated in Delta State dismissed the appeal and held that the trial court had powers to order consecutive sentence. The Court of Appeal further held that even though both trials emanated from the same transaction, the charges at the Delta State High Court had no correlation with the case at the Federal High Court.

Another general principle of sentencing under the ACJA is that, a court, in fixing the amount of a fine to be imposed on a convict, shall take into consideration, amongst other things, the means of the convict.¹¹³ This means that fines are not to be excessive¹¹⁴ and a heavy fine is not to be imposed on a man of low or modest income as the courts are required to consider the financial means of the offender before the imposition of fine¹¹⁵

In Nigeria, besides the statutes creating the offences and the ACJA, the sentencing discretion enjoyed by trial judges are also restricted by appellate review. Generally, an appellate court may interfere with the sentencing discretion of a trial court where it is wrong in principle or

¹¹⁰ *Ibid*, s418(1)

¹¹¹ *Ikenso v State* (2016) LPELR-41041 (CA)

¹¹² (2018) LPELR-44271 (CA)

¹¹³ ACJA 2015, s427

¹¹⁴ Penal Code, s72

¹¹⁵ *Goke v IGP* (1957) WRNLR 80; *Abdullahi v State* (2015) LPELR-25928 (CA)

manifestly excessive or inadequate in the circumstances.¹¹⁶ Where however a trial court exercises its sentencing discretion *bonafide*, uninfluenced by irrelevant consideration and not arbitrary or illegally, an appellate court will not interfere.¹¹⁷ Also, an appellate court will not interfere simply on the ground that if it had tried the case, it might have altered the sentence or passed a different sentence.¹¹⁸

5.1 Conclusion and Recommendations

In legal systems where sentencing guidelines are non-existent, the trial judge has wide latitude of discretion to exercise.¹¹⁹ The unguarded exercise of discretion often leads to excessive indeterminacy in sentencing, wide range disparity, inconsistency and the lack of transparency in sentencing. The ACJA makes provisions for sentencing hearing and factors the court must consider before pronouncing sentences that is- the objectives of sentencing; the interest of the victim, the convict and the community; appropriateness of non-custodial sentence; previous conviction and aggravating and mitigating factors. The law unlike sentencing guideline in England and the US does not prescribe sentencing ranges and there is equally no methodical sequence or arrangement for arriving at a just, proportionate and consistent sentencing decision. Also no mechanisms exist for monitoring and updating the guidelines by way of a sentencing council or commission.

The purpose of sentencing guidelines is to limit judicial discretion in sentencing. However, the provisions of the ACJA has done very little in this respect and thus has not effectively made adequate provisions for arriving at a proportionate, neutral, consistent, and uniform sentencing decision in Nigeria. The lack of uniformity in the quantum of punishment imposed by different courts for the same or similar offences is still a difficult sentencing problem in Nigeria. Sentencing in the country despite the ACJA is still based on assumptions in accordance with idiosyncratic sentimental disposition of judges. It is axiomatic that when a person is happy or sad, his state of mind affects his disposition and judges as human beings are not less affected by issues of life than others.

¹¹⁶ *Darlington v FRN* (2019) All FWLR (pt.1006) 600 at 621, paras. E-F (SC); *Duru v FRN* (2018)12 NWLR (pt.1632) 20 at 46 paras. D-E. (SC)

¹¹⁷ *Eye v FRN* (2018) All FWLR (pt.961) 1448 at 1466-1467, paras. H-C (SC)

¹¹⁸ *Elizabeth v FRN* (2021) LPELR-54632 (CA)

¹¹⁹ *Nwude v FRN* (2016)5 NWLR (pt.1506) 471 at 525 para A (CA).

To ensure predictability of punishment and promote uniformity and transparency in sentencing, the following measures are recommended. First, legislative measures be employed to structure judicial discretion through the making of comprehensive

sentencing guidelines which are presumptively binding save in exceptional circumstances. The English offence based guideline approach is preferred for Nigeria as it offers courts wide range of guidance, such as information on the use of different disposals, the sentencing of multiple crimes, the appropriate level of reduction to reflect a guilty plea and other issues. This is unlike the US two dimensional sentencing grid system which adopts the offender's criminal history score, and the seriousness level of the offence convicted in determining range of sentence length. Alternatively, practice direction by courts should be made to structure sentencing discretion.

Secondly, judges should be continually trained in sentencing procedure and guidelines including alternatives to imprisonment and their application in appropriate situations. Thirdly, sentencing council consisting of experts, experienced in sentencing must be established to ensure that sentencing guidelines and policies are formulated and updated.

Fourthly, The ACJA should be amended to clearly make sentencing hearing mandatory to ensure the individualisation of punishment; in addition, the Act should also be amended to expressly make provisions for victim impact statement to enhance the interest of victims in sentencing and finally, the ACJA should be amended to properly define the extent of the application of previous conviction in sentencing. Previous convictions on offences related to the offence in issue which is more recent should be considered weightier than unrelated convictions.

Appendix A Extract from the Minnesota Sentencing Grid

Presumptive sentence lengths are in months. Italicized numbers within the grid denote the discretionary range within which a court may sentence without the sentence being deemed a departure. Offenders with stayed felony sentences may be subject to local confinement.

SEVERITY LEVEL OF CONVICTION OFFENCE (Example offenses listed in italics)		0	1	2	3	4	5	6 or more
<i>Murder, 2nd Degree (Intentional: Drive-By-Shootings)</i>	1 1	306 261- 367	326 278- 391	346 295- 415	366 312- 463	386 329- 463	406 346- 480	426 363- 480
<i>Murder 2nd Degree (Unintentional)</i> <i>Murder, 3rd Degree (Depraved Mind)</i>	1 0	150 128- 180	165 141- 198	180 153- 216	195 166- 234	210 179- 252	225 192- 270	240 204- 288
<i>Murder, 3rd Degree (Controlled Substance)</i> <i>Assault, 1st Degree</i>	9	86 74- 103	98 84- 117	110 94- 132	122 104- 146	134 114- 160	146 125- 175	158 135- 189
<i>Agg. Robbery, 1st Degree</i> <i>Burglary, 1st Degree (w/Weapon or Assault)</i>	8	48 41-57	58 50- 69	68 58-81	78 67-93	88 75- 105	98 84- 117	108 92- 129
<i>Felony DWI</i> <i>Financial Exploitation of a Vulnerable Adult</i>	7	36	42	48	54 46-64	60 51-72	66 57-79	72 62- 84 ^{2, 3}
<i>Assault, 2nd Degree</i> <i>Burglary, 1st Degree (Occupied Dwelling)</i>	6	21	27	33	39 34-46	45 39-54	51 44-61	57 49-68

<i>Residential Burglary Simple Robbery</i>	5	18	23	28	33 29-39	38 33-45	43 37-51	48 41-57
<i>Nonresidential Burglary</i>	4	12 ¹	15	18	21	24 21-28	27 23-32	30 26-36
<i>Theft Crimes (Over \$5,000)</i>	3	12 ¹	13	15	17	19 17-22	21 18-25	23 20-27
<i>Theft Crimes (\$5,000 or less) Check Forgery (\$251-\$2,500)</i>	2	12 ¹	12 ¹	13	15	17	19	21 18-25
<i>Assault, 4th Degree Fleeing a Peace Officer</i>	1	12 ¹	12 ¹	12 ¹	13	15	17	19 17-22

12¹=One year and one day

- Presumptive commitment to state imprisonment. First-degree murder has a mandatory life sentence and is excluded from the Guidelines under Minn. Stat. § 609.185. See section 2.E, for policies regarding those sentences controlled by law.
- Presumptive stayed sentence: at the discretion of the court, up to one year of confinement and other non-jail sanctions can be imposed as conditions of probation. However, certain offenses in the shaded area of the Grid always carry a presumptive commitment to state prison. See sections 2.C and 2.E.

Appendix B

Extract from the Street Robbery Guideline

STEP ONE	
Determining the offence category	
<p>The court should determine the offence category with reference only to the factors listed in the table below. In order to determine the category, the court should assess culpability and harm.</p> <p>The court should weigh all factors set out below in determining the offender’s culpability.</p> <p>Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender’s culpability</p>	
Culpability demonstrated by one or more of the following:	
A – High culpability	<ul style="list-style-type: none"> • Use of a weapon to inflict violence • Production of a blade article or firearm or imitation to threaten violence • Use of very significant force in the commission of the offence • Offence motivated by or demonstrating hostility based on any of the following characteristics of presumed characteristics of the victim: religion, race, disability, sexual orientation or transgender identity
B – Medium culpability	<ul style="list-style-type: none"> • Production of a weapon other than a bladed article or firearm or imitation firearm to threaten violence • Threat of violence by any weapon (but with is not produced) • Other cases where characteristics for categories A or C are not present
C – Lesser culpability	<ul style="list-style-type: none"> • Involved through coercion, intimidation or exploitation • Threat or use of minimal force • Mental disability or learning disability where linked to the commission of the offence

Harm The court should consider the factors set out below to determine the level of harm that has been caused or was intended to be caused to the victim	
Category 1	<ul style="list-style-type: none">• Serious physical and/or psychological harm caused to the victim• Serious detrimental effect on the business
Category 2	<ul style="list-style-type: none">• Other cases where characteristics for categories 1 or 3 are not present
Category 3	<ul style="list-style-type: none">• No/minimal physical or psychological harm caused to the victim• No/minimal detrimental effect on the business

Appendix C
Extract from the Street Robbery Guideline

STEP TWO			
Starting point and category range			
<p>Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. A case of particular gravity, reflected by multiple features of culpability or harm in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out on the next page.</p> <p>Consecutive sentence for multiple offences may be appropriate—please refer to the Offences Taken into consideration and totality guideline.</p>			
Culpability			
Harm	A	B	C
Category 1	Starting point 8 years' custody	Starting point 5 years' custody	Starting point 4 years' custody
	Category range 7 - 12years' custody	Category range 4 - 8years' custody	Category range 3 - 6years' custody
Category 2	Starting point 5 years' custody	Starting point 4 years' custody	Starting point 2 years' custody
	Category range 4 - 8years' custody	Category range 3 - 6years' custody	Category range 1 - 4years' custody

ROBBERY - STREET AND LESS SOPHISTICATED COMMERCIAL

Category 3	Starting point 4 years' custody	Starting point 2 years' custody	Starting point 1 years' custody		
	Category range 3 – 6 years' custody	Category range 1 – 4 years' custody	Category range High level community order - 3 years' custody		

The table on the next page contains a non-exhaustive list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the sentence arrived at so far. In particular, relevant recent convictions are likely to result in an upward adjustment. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.