

THE CONSTITUTION (SENTENCING GUIDELINES FOR COURTS OF JUDICATURE) (PRACTICE) DIRECTIONS, 2013

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THE CONSTITUTION (SENTENCING GUIDELINES FOR COURTS OF JUDICATURE) (PRACTICE) DIRECTIONS, 2013

(Under article 133(1)(b) of the Constitution)

IN EXERCISE of the powers conferred upon the Chief Justice by article 133 (1) (b) of the Constitution, these Practice Directions are issued this **26th day of April, 2013.**

PART I – PRELIMINARY

1. Title.

These Practice Directions may be cited as The Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013.

2. Application.

These Practice Directions shall apply to all courts of judicature

3. Objectives of these Practice Directions.

The objectives of these Practice Directions are –

- (a) to set out the purpose for which offenders may be sentenced or dealt with;
- (b) to provide principles and guidelines to be applied by courts in sentencing;
- (c) to provide sentence ranges and other means of dealing with offenders;
- (d) to provide a mechanism for considering the interests of victims of crime and the community when sentencing; and
- (e) to provide a mechanism that will promote uniformity, consistency and transparency in sentencing.

4. Interpretation.

In these Practice Directions, unless the context otherwise requires –

“advanced age” means 75 years and above;

“child offender” means an offender below the age of eighteen years;

“community” means the residents of the locality where the victim or the offender lived at the time the offence was committed or where the offence was committed;

“community impact statement” means a written or oral account of the general harm suffered by members of a community as a result of the offence;

“community service order” means a sentence imposed under the Community Service Act;

“currency point” has been defined in the fourth schedule;

“custodial sentence” means longterm, midterm or shortterm imprisonment;

“court” means a court of judicature established by or under the authority of the Constitution;

“imprisonment for life” means imprisonment for the natural life of an offender;

“long term imprisonment” means a custodial sentence ranging from 30 to 45 years;

“mid-term imprisonment” means a custodial sentence ranging from 15 to 29 years;

“minor offence” means an offence for which a court may pass a sentence not exceeding two years imprisonment;

“pre-sentence report” means information on the social background of the offender intended to assist the court in arriving at an appropriate sentence;

“primary care-giver” means a person who takes primary responsibility of a child below 4 years;

“responsible officer” means probation and social welfare officer, community development officer or any other person designated by the court;

“restorative justice” means repairing the harm caused to the victim by the commission of the offence to the victim, transforming the offender, reconciling the offender with the victim and the community;

“sentencing range” means the bracket within which a sentence is given by the court;

“short term imprisonment” means a custodial sentence ranging from 15 years and below;

“victim” means a person directly or indirectly affected by the commission of the offence or omission of a lawful duty;

“victim impact statement” means a written or oral account of the personal harm suffered by a victim of crime;

“youthful age” means the age between 18 to 35 years.

PART II -PURPOSE OF SENTENCING

5. Purpose of sentencing.

(1) The purpose 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.

(2) For the purposes of subparagraph (1), the court shall in accordance with the sentencing principles pass a sentence aimed at -

- (a) denouncing unlawful conduct;
- (b) deterring a person from committing an offence;
- (c) separating an offender from society where necessary;
- (d) assisting in rehabilitating and re-integrating an offender into society;
- (e) providing reparation for harm done to a victim or to the community; or
- (f) promoting a sense of responsibility by the offender, acknowledging the harm done to the victim and the community.

PART III - SENTENCING PRINCIPLES

6. General sentencing principles.

Every court shall when sentencing an offender take into account—

- (a) the gravity of the offence, including the degree of culpability of the offender;
- (b) the nature of the offence;
- (c) the need for consistency with appropriate sentencing levels and other means of dealing with offenders in respect of similar offences committed in similar circumstances;
- (d) any information provided to the court concerning the effect of the offence on the victim or the community, including victim impact statement or community impact statement;
- (e) the offender's personal, family, community, or cultural background;
- (f) any outcomes of restorative justice processes that have occurred, or are likely to occur, in relation to the particular case;
- (g) the circumstances prevailing at the time the offence was committed up to the time of sentencing;
- (h) any previous convictions of the offender; or
- (i) any other circumstances court considers relevant.

7. Sentencing of co-accused persons or multiple offenders.

The court shall consider the specific circumstances of each offender before sentencing co-accused persons or multiple offenders.

8. Calculating the totality of a sentence.

(1) Where the court imposes consecutive sentences, the court shall first identify the material part of the conduct giving rise to the commission of the offence and determine the total sentence to be imposed.

(2) The total sum of the cumulative sentence shall be proportionate to the culpability of the offender.

9. Custodial sentences.

(1) A custodial sentence, may be imposed where the circumstances do not meet the considerations for a sentence of imprisonment for life.

(2) A custodial sentence may be –

- (a) long-term imprisonment;
- (b) mid-term imprisonment; or
- (c) short-term imprisonment.

(3) The court shall before imposing a custodial sentence consider –

- (a) whether the purpose of sentencing cannot be achieved by a sentence other than imprisonment;
- (b) the values, norms and aspirations of the people within the community;
- (c) the character and antecedents of the offender;
- (d) the circumstances and nature of the crime committed;
- (e) the ruthlessness with which the offender committed the offence;
- (f) the health and mental state of the offender;
- (g) previous conviction record;
- (h) the age of the offender;
- (i) remorsefulness or conduct of the offender;
- (j) whether the offender may be a danger to the community;
- (k) views of the victim's family or community; or
- (l) any other matter that court considers relevant.

(4) The court may not sentence an offender to a custodial sentence where the offender –

- (a) is of advanced age;
- (b) has a grave terminal illness certified by a medical practitioner;
- (c) was below 18 years at the time of the commission of the offence; or
- (d) is an expectant woman.

(5) The court shall when sentencing a first time offender consider that imprisonment is not a desirable sentence for a minor offence.

PART IV - SENTENCING OPTIONS AND ORDERS

10. Sentencing options.

The court may impose any of the following sentencing options—

- (a) death penalty;
- (b) imprisonment for life;
- (c) imprisonment for a specified period of time;
- (d) a fine;
- (e) community service;
- (f) probation;
- (g) a caution and discharge without punishment; and
- (h) any other lawful sentence option.

11. Sentencing Orders.

The court may make any of the following orders when sentencing an offender—

- (a) conditional discharge;
- (b) costs;
- (c) compensation;
- (d) restitution;
- (e) forfeiture; or
- (f) any other lawful sentencing order.

PART V - SENTENCING PROCEDURES

12. Time to consider sentence.

The court shall upon conviction, allow a reasonable period not exceeding seven days to determine the appropriate sentence for the offender.

13. Indication of sentence.

The court may, before imposing a sentence or during the sentencing hearing, ask the offender and the prosecution to indicate to the court an appropriate sentence in respect of the offence.

14. General factors to consider at sentencing.

(1) In order to determine the appropriate sentence, the court shall take into account matters required to be taken into account by any law, and shall make the inquiry, in the case of –

- (a) the High Court, under section 98 of the Trial on Indictments Act; or
- (b) a Magistrate's court, under sections 133, 164 or 165 of the Magistrates Courts Act.

(2) For the purposes of paragraph (1), the court may require the prosecution to produce to the court –

- (a) a victim impact statement specified in Form A of the First Schedule; and
- (b) a community impact statement specified in Form B of the First Schedule.

(3) The court may summon and examine any person to give evidence regarding –

- (a) any custom prevalent in any area;
- (b) the way of living of any community; or
- (c) the background against which the alleged offence was committed.

- (4) The inquiry under sub paragraph (1) may include –
 - (a) consideration of the employment, earning ability, financial resources and assets of the offender at present or in the future, including any circumstance that may affect the ability to make reparation, pay compensation or a fine; or

- (b) information relating to any benefit, financial or otherwise, derived directly or indirectly, as a result of the commission of the offence.

(5) The court shall take into account the matters specified in the Second Schedule and the considerations specified in respect of each offence.

15. Remand period to be taken into account.

(1) The court shall take into account any period spent on remand in determining an appropriate sentence.

(2) The court shall deduct the period spent on remand from the sentence considered appropriate after all factors have been taken into account.

16. Commencement of custodial sentence.

Except where a custodial sentence is in default of payment of a fine, every custodial sentence shall be effective from the date of conviction.

PART VI - SENTENCING IN CAPITAL OFFENCES

17. Imposing a sentence of death.

The court may only pass a sentence of death in exceptional circumstances in the “rarest of the rare” cases where the alternative of imprisonment for life or other custodial sentence is demonstrably inadequate.

18. The “rarest of the rare” cases.

The “rarest of the rare” cases include cases where—

- (a) the court is satisfied that the commission of the offence was planned or meticulously premeditated and executed;
- (b) the victim was--
 - (i) a law enforcement officer or a public officer killed during the performance of his or her functions; or
 - (ii) a person who has given or was likely to give material evidence in court proceedings;

- (c) the death of the victim was caused by the offender while committing or attempting to commit--
 - (i) murder;
 - (ii) rape;
 - (iii) defilement;
 - (iv) robbery;
 - (v) kidnapping with intent to murder;
 - (vi) terrorism; or
 - (vii) treason;
- (d) the commission of the offence was caused by a person or group of persons acting in the execution or furtherance of a common purpose or conspiracy;
- (e) the victim was killed in order to unlawfully remove any body part of the victim or as a result of the unlawful removal of a body part of the victim; or
- (f) the victim was killed in the act of human sacrifice.

19. Sentencing ranges in capital offences.

(1) The court shall be guided by the sentencing range specified in Part I of the Third Schedule in determining the appropriate custodial sentence in a capital offence.

(2) In a case where a sentence of death is prescribed as the maximum sentence for an offence, the court shall, considering the factors in paragraphs 20 and 21 determine the sentence in accordance with the sentencing range.

20. Factors aggravating a death sentence.

In considering imposing a sentence of death, the court shall take into account—

- (a) the degree of injury or harm;
- (b) the part of the victim's body where harm or injury was occasioned;
- (c) sustained or repeated injury or harm to the victim;
- (d) the degree of meticulous pre-meditation or planning;
- (e) use and nature of the weapon;

- (f) whether the offender deliberately caused loss of life in the course of the commission of another grave offence;
- (g) whether the offender deliberately targeted and caused death of a vulnerable victim;
- (h) whether the offender was part of a group or gang and the role of the offender in the group, gang or commission of the crime;
- (i) whether the offence was motivated by, or demonstrated hostility based on the victim's age, gender, disability or other discriminating characteristic;
- (j) whether the offence was committed against a vulnerable person or member of a community like a pregnant woman, child or person of advanced age;
- (k) whether the offence was committed in the presence of another person like a child or spouse of the victim;
- (l) whether there was gratuitous degradation of the victim like multiple incidents of harm or injury or sexual abuse;
- (m) whether there was any attempt to conceal or dispose of evidence;
- (n) whether there was an abuse of power or a position of trust;
- (o) whether there were previous incidents of violence or threats to the victim;
- (p) the impact of the crime on the victim's family, relatives or the community; or
- (q) any other factor as the court may consider relevant.

21. Factors mitigating a sentence of death.

In considering imposing a sentence of death, the court shall take into account the following mitigating factors –

- (a) lack of premeditation;
- (b) a subordinate or lesser role in a group or gang involved in the commission of the offence;
- (c) mental disorder or disability linked to the commission of the offence;
- (d) some element of self-defense;
- (e) plea of guilt;

- (f) the fact that the offender is a first offender with no previous conviction or no relevant or recent conviction;
- (g) the fact that there was a single or isolated act or omission occasioning fatal injury;
- (h) injury less serious in the context of the offence;
- (i) remorsefulness of the offender;
- (j) some element of provocation;
- (k) whether the offender pleaded guilty;
- (l) advanced or youthful age of the offender;
- (m) family responsibilities;
- (n) some element of intoxication; or
- (o) any other factor the court considers relevant.

22. Sentence of death in rape or defilement cases.

In rape or defilement cases, the court shall consider imposing a sentence of death where the offence was committed under any of the following circumstances –

- (a) where the victim was raped or defiled repeatedly whether by the offender or by a co-accused, co-perpetrator or an accomplice;
- (b) by more than one offender, where such persons acted in the execution or furtherance of a common purpose or conspiracy;
- (c) by an offender who has been convicted of an earlier offence of rape or defilement;
- (d) by an offender knowing or having reasonable cause to believe that he or she has acquired HIV/AIDS;
- (e) repeatedly by an offender who is supposed to take primary responsibility of the child victim;
- (f) where the victim was gang raped or gang defiled; or
- (g) where the victim:
 - (i) is physically disabled and due to her physical disability, is rendered vulnerable;
 - (ii) is mentally challenged;
 - (iii) has sustained serious injuries arising from the infliction of grievous bodily harm; or
 - (iv) any other extremely grave circumstances.

PART VII - IMPRISONMENT FOR LIFE

23. Imprisonment for life.

Imprisonment for life is the second gravest punishment next to the sentence of death.

24. Imprisonment for life in capital offences.

(1) In capital offences, the court shall consider imposing a sentence of imprisonment for life where the circumstances of the offence do not justify a sentence of death.

(2) In determining whether the circumstances of an offence or offender justify imposing a death sentence or imprisonment for life, court shall consider the factors aggravating or mitigating a death sentence.

25. Imprisonment for life in non-capital offences.

In non-capital offences, the court shall consider imposing a sentence of imprisonment for life where any other custodial forms of punishment is inadequate.

PART VIII - SENTENCING IN SPECIFIC NON - CAPITAL OFFENCES

26. Sentencing options for manslaughter , robbery or defilement.

The court may sentence an offender convicted of manslaughter, robbery or defilement to –

- (a) imprisonment for life;
- (b) a custodial sentence other than imprisonment for life; or
- (c) any other sentence authorised by law.

Manslaughter

27. Sentencing range for manslaughter.

(1) The court shall be guided by the sentencing range specified in Part II of the Third Schedule in determining the appropriate sentence for manslaughter.

(2) The court shall, considering the aggravating or mitigating factors in paragraphs 28 and 29, determine the sentence in accordance with the sentencing range.

28. Factors aggravating a sentence for manslaughter.

In considering imposing a sentence for manslaughter the court shall be guided by the following aggravating factors –

- (a) degree of injury or harm;
- (b) the part of the victim's body where harm or injury was occasioned;
- (c) repeated injury or harm to the victim;
- (d) degree of intention to cause death or culpable negligence;
- (e) use and nature of the weapon;
- (f) the role of the offender in a group or gang or mob involved in the commission of the offence;
- (g) whether the offence was motivated by an intention to cause bodily harm;
- (h) whether the offence is a result of culpable negligence to discharge a duty tending to the preservation of life; or
- (i) any other factor as the court may consider relevant.

29. Factors mitigating a sentence for manslaughter.

In considering imposing a sentence for manslaughter, the court shall take into account the following mitigating factors –

- (a) lack of intention to cause death or culpable negligence;
- (b) whether the offender had a subordinate or lesser role in a group or gang involved in the commission of the offence;
- (c) the mental disorder or disability where linked to the commission of an offence;
- (d) some element of self-defence; or
- (e) any other factor as the court may consider relevant.

Robbery

30. Sentencing range for robbery.

(1) The court shall be guided by the sentencing range specified in Part III of the Third Schedule in determining the appropriate custodial sentence for robbery.

(2) The court shall, using the factors in paragraphs 31 and 32 determine the sentence in accordance with the sentencing range.

31. Factors aggravating a sentence for robbery.

In considering imposing a sentence for robbery, the court shall be guided by the following aggravating factors –

- (a) degree of injury or harm;
- (b) the part of the victim's body where harm or injury was occasioned;
- (c) whether there was repeated injury or harm to the victim;
- (d) use and nature of the weapon;
- (e) whether the offender deliberately caused loss of life in the course of the commission of the robbery;
- (f) whether the offender deliberately targeted or caused death of a vulnerable victim;
- (g) whether the offender was part of a group or gang and the role of the offender in the group, gang or commission of the crime;
- (h) whether the offence was motivated by, or demonstrates hostility based on the victim's age, gender, disability or such other discriminating characteristics;
- (i) the nature of the deadly weapon used during the commission of the offence;
- (j) the gratuitous nature of violence against the victim including multiple incidents of harm or injury;
- (k) the manner in which death occurred during the commission of the offence;
- (l) the value of the property or amount of money taken during the commission of the offence;
- (m) commission of other criminal acts such as rape or assault;

- (n) whether the offence was committed as part of a pre-meditated, planned or concerted act and the degree of pre-meditation;
- (o) the rampant nature of the offence in the area or community;
- (p) whether the offence was committed in the presence of other persons such as children, a spouse of victim or relatives;
- (q) whether the offender is a habitual offender;
- (r) whether the offence was committed while under the influence of alcohol or drugs;
- (s) whether the offender is remorseful;
- (t) previous incidents of violence or threats to the victim by the offender;
- (u) evidence of impact on the victim's family, relatives or the community; or
- (v) any other factor as the court may consider relevant.

32. Factors mitigating a sentence for robbery.

In considering a sentence for robbery, the court shall take into account the following mitigating factors –

- (a) lack of pre-meditation;
- (b) whether the offender had a subordinate or lesser role in a group or gang involved in the commission of the offence;
- (c) mental disorder or disability;
- (d) whether the offender is a first offender with no previous conviction or no relevant or recent conviction;
- (e) whether there was a single or isolated act or omission occasioning fatal injury;
- (f) whether there was no injury or harm occasioned or no threat of death or harm;
- (g) remorsefulness of the offender;
- (h) the value of the property or amount of money taken during the commission of the offence;
- (i) whether property or money was returned or recovered;
- (j) family responsibilities of the offender; or
- (k) any other factor as the court may consider relevant.

Defilement

33. Sentencing range for defilement.

(1) The court shall be guided by the sentencing range specified in Part IV of the Third Schedule in determining the appropriate sentence for defilement.

(2) The court shall, using the factors in paragraphs 34, 35 and 36, determine the sentence in accordance with the sentencing range.

34. Considerations in determining a sentence for defilement.

The court shall take into account the following factors in considering a sentence for defilement –

- (a) the age of the victim and the offender;
- (b) the nature of the relationship of the victim and the offender;
- (c) the violence, trauma, brutality and fear instilled upon the victim;
- (d) the remorsefulness of the offender;
- (e) operation of other restorative processes; or
- (f) the HIV/AIDS status of the offender.

35. Factors aggravating a sentence for defilement.

In determining a sentence for defilement, the court shall be guided by the following aggravating factors –

- (a) the degree of injury or harm;
- (b) whether there was repeated injury or harm to the victim;
- (c) whether there was a deliberate intent to infect the victim with HIV/AIDS;
- (d) whether the victim was of tender age;
- (e) the offender's knowledge of his HIV/AIDS status;
- (f) knowledge whether the victim is mentally challenged;
- (g) the degree of pre-meditation;
- (h) threats or use of force or violence against the victim;
- (i) knowledge of the tender age of the victim;
- (j) use or letting of premises for immoral or criminal activities;

- (k) whether the offence was motivated by, or demonstrating hostility based on the victim's status of being mentally challenged; or
- (l) any other factor as the court may consider relevant.

36. Factors mitigating a sentence for defilement.

In considering a sentence for defilement, the court shall take into account the following mitigating factors –

- (a) lack of pre-meditation;
- (b) whether the mental disorder or disability of the offender was linked to the commission of the offence;
- (c) remorsefulness of the offender;
- (d) whether the offender is a first offender with no previous conviction or no relevant or recent conviction ;
- (e) the offender's plea of guilty;
- (f) the difference in age of the victim and offender; or
- (g) any other factor as the court may consider relevant.

Criminal trespass

37. Sentencing range for criminal trespass.

(1) The court shall be guided by the sentencing range specified in Part V of the Third Schedule in determining the appropriate sentence for criminal trespass.

(2) The court shall, using the factors in paragraphs 38, 39 and 40 determine the sentence in accordance with the sentencing range.

38. Considerations in determining a sentence for criminal trespass.

In considering a sentence for criminal trespass, the court shall take into account the following factors –

- (a) the nature and prevalence of the offence;
- (b) the circumstances surrounding the commission of the offence;
- (c) the relationship between the parties and the conduct of the offender; or
- (d) any other factor as the court may consider relevant.

39. Factors aggravating a sentence for criminal trespass.

In considering imposing a sentence for criminal trespass, the court shall be guided by the following aggravating factors—

- (a) the degree of pre-meditation;
- (b) intimidating, insulting or annoying language or behaviour;
- (c) nature and gravity of the offence committed upon entry on property;
- (d) use or threat of use of force or violence while on the property;
- (e) that the offence is motivated by, or demonstrates, hostility based on the victim's age, gender, disability or such other discriminating characteristics; or
- (f) any other factor as the court may consider relevant.

40. Factors mitigating a sentence for criminal trespass.

In considering a sentence for criminal trespass, the court shall take into account the following mitigating factors—

- (a) lack of pre-meditation;
- (b) whether the mental disorder or disability of the offender was linked to the commission of the offence;
- (c) whether the offender is a first offender with no previous conviction or no relevant or recent conviction ;
- (d) remorsefulness of the offender;
- (e) family responsibilities of the offender; or
- (f) any other factor as the court may consider relevant.

Corruption and related offences

41. Sentencing range for corruption and corruption related offences.

(1) The court shall be guided by the sentencing range specified in Part VI of the Third Schedule in determining the appropriate sentence for corruption or a corruption related offence.

(2) The court shall, taking into account the factors in paragraphs 42 and 43 determine the sentence in accordance with the sentencing range.

42. Considerations in determining a sentence for corruption and related offences.

In considering a sentence for corruption or a corruption related offence, the court shall take into account the following factors –

- (a) the method used in the commission of the offence;
- (b) breach of trust and nature of trust or office abused;
- (c) the relationship between the offender and the aggrieved organization;
- (d) the amount of money involved or potential prejudice;
- (e) the status of the individual receiving the monies;
- (f) the degree of sophistication involved in the corrupt act;
- (g) the impact of the corrupt act to the victim organization, the state and society as well as to the administration of justice; or
- (h) any other factor as the court may consider relevant.

43. Factors aggravating a sentence for corruption or a corruption related offence.

In considering imposing a sentence for corruption or a corruption related offence, the court shall be guided by the following aggravating factors –

- (a) a corrupt intent or knowledge of effect of the act or omission to act;
- (b) abuse of office for personal or third party benefit;
- (c) the prejudicial nature of the corrupt act to the organization or public body;
- (d) whether the offence was committed in respect of a contract, sub-contract or proposal for a contract with an organization or public body;
- (e) the degree of pre-meditation;
- (f) the degree of sophistication involved in the corrupt act;
- (g) whether there was a deliberate intent to cause financial loss;
- (h) whether the offence was committed in respect of essential goods or services;
- (i) the role of the offender in a group or conspiracy involved in commission of the offence; or
- (j) any other factor as the court may consider relevant.

44. Factors mitigating a sentence for corruption or a related offence.

In considering imposing a sentence for corruption or a corruption related offence, the court shall take into account the following mitigating factors –

- (a) lack of pre-meditation;
- (b) whether the act is a result of non-deliberate neglect of duty;
- (c) the subordinate or lesser role of the offender in a group or conspiracy involved in the commission of the offence;
- (d) the offender's plea of guilty;
- (e) refund of money or items misappropriated; or
- (f) any other factor as the court may consider relevant.

Theft and theft related offences

45. Sentencing range for theft and theft related offences.

(1) The court shall be guided by the sentencing range specified in Part VII of the Second Schedule in determining the appropriate sentence for theft or a theft related offence.

(2) The court shall, taking into account the factors in paragraphs 46, 47 and 48 determine the sentence in accordance with the sentencing range.

46. Considerations in determining a sentence for theft and theft related offences.

In considering a sentence for theft or a theft related offence, the court shall take into account the following factors –

- (a) the value of the property stolen;
- (b) prevalence of the offence in the community;
- (c) the circumstances surrounding the commission of the offence;
- (d) the impact of the offence on the victim and the community;
- (e) any breach of trust where the offender is an employee, relative, neighbour or a person in a position of trust;
- (f) any aggravating or mitigating factors;
- (g) antecedents of the offender;
- (h) plea of guilty by the offender;

- (i) any reparation offered;
- (j) the operation of restorative justice processes; or
- (k) any other factor as the court may consider relevant.

47. Factors aggravating a sentence for theft or a theft related offence.

In considering imposing a sentence for theft or a theft related offence, the court shall be guided by the following aggravating factors –

- (a) the degree of loss that is serious in the context of the offence;
- (b) the amount of money lost or quantities of goods taken during the commission of the offence;
- (c) the rampant nature of the offence in the organization or public body;
- (d) the offender being in a position of financial or fiduciary trust or both;
- (e) offender's lack of remorsefulness;
- (f) habitual offending;
- (g) conversion of the property for use of self or other person;
- (h) deliberate or reckless taking of money in excess of limits of authority or in disregard of procedure;
- (i) significant degree of premeditation;
- (j) playing a leading role in a group or conspiracy involved in the commission of the offence; or
- (k) any other factor as the court may consider relevant.

48. Factors mitigating a sentence for theft or a theft related offence.

In considering imposing a sentence for theft or a theft related offence, the court shall take into account the following mitigating factors –

- (a) lack of pre-meditation;
- (b) lack of knowledge of ownership;
- (c) the subordinate or lesser role of the offender in a group or gang involved in the commission of the offence;
- (d) the offender's plea of guilty;
- (e) the remorsefulness of the offender;
- (f) whether the offender is a first offender with no previous conviction or no relevant or recent conviction; or
- (g) any other factor as the court may consider relevant.

PART IX – SENTENCING PRIMARY CARE GIVERS AND CHILD OFFENDERS

49. Sentencing a primary care-giver.

(1) Where it is brought to the attention of the court that an offender is a primary care-giver, the court shall consider the following—

- (a) the effect of a custodial sentence to a child if such a sentence is passed;
- (b) whether the child will adequately be cared for while the care giver is serving the custodial sentence;
- (c) the importance of maintaining the integrity of family care by protecting innocent children from avoidable harm.

(2) For the purposes of sub-paragraph (1), the court shall—

- (a) recognise each child as an individual with a distinct personality; and
- (b) shall strike a fair balance between the circumstances of the care-giver and the circumstances of the case.

(3) Where the appropriate sentence is clearly non custodial, the court shall determine the sentence bearing in mind the interests of the child.

(4) Where there is a range of sentences available to the court, the court shall use the welfare principle as provided for under section 3 of the Children Act in deciding which sentence to impose.

(5) In determining a sentence for an offender who is a primary care-giver, the court shall ensure that the sentence is the least damaging sentence to the interest of the child.

50. Sentencing of child offenders.

(1) When making an order against a child offender, the court shall consider the following—

- (a) the degree of participation of the child;
- (b) best interests of the child;
- (c) protection of the community from harm and ensuring people's personal safety;

- (d) rehabilitation of the child;
 - (e) any non custodial options provided for in section 94 of the Children Act;
 - (f) the shortest appropriate period of detention where that is the only appropriate sentencing option; or
 - (g) detention as a last resort if in all the circumstances it is the most appropriate sentence.
- (2) Subject to sub paragraph (1), the court shall –
- (a) consider the effect of a custodial sentence on the child;
 - (b) where the appropriate sentence is clearly non custodial, determine the sentence bearing in mind the interests of the child;
 - (c) use of the welfare principle as a guide in determining the appropriate sentence to impose; and
 - (d) ensure that the appropriate sentence is the least damaging sentence to the interests of the child.

PART X - FINES

51. Determining a fine.

(1) A person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment.

(2) Where a fine is imposed under any law, the court shall take into consideration among other things, the means of the offender so far as they are known to the court and in the absence of express provisions relating to a fine, the following shall apply –

- (a) where no sum is expressed to which the fine may extend, the amount of the fine which may be imposed is unlimited , but shall not be excessive;
- (b) in the case of an offence punishable with a fine or imprisonment, the imposition of a fine or a period of imprisonment shall be a matter for the discretion of the court with reasons;

- (c) in the case of an offence punishable with imprisonment as well as a fine in which the offender is sentenced to a fine with or without imprisonment, and in every case of an offence punishable with a fine only in which the offender is sentenced to a fine, the court passing sentence may –
- (i) direct by its sentence that in default of payment of the fine, the offender shall suffer imprisonment for a certain period, which imprisonment shall be in addition to any other imprisonment to which he or she may have been sentenced or to which he or she may be liable under a commutation of sentence and;
 - (ii) issue a warrant for the levy of the amount on the immovable and moveable property of the offender by distress and sale under warrant except that if the sentence directs that in default of payment of a fine the offender shall be imprisoned, and if the offender has undergone the whole of the imprisonment in default, no court shall issue a distress warrant unless for special reasons to be recorded in writing court considers it necessary to do so;
- (d) the period of imprisonment ordered by the court in respect of non-payment of any sum of money adjudged to be paid by a conviction or in respect of the default of a sufficient distress to satisfy any such sum shall be such term as in the opinion of the court will satisfy the justice of the case but shall not exceed in any case the maximum fixed by the scale set out in the Fourth Schedule.
- (e) the imprisonment which is imposed in default of payment of a fine shall terminate whenever the fine is either paid or levied by process of law.

PART XI - COMMUNITY SERVICE

52. Making a community service order.

- (1) The court that makes a community service order shall use the basic grid provided in the Community Service Regulations.

(2) Where the court deviates from the basic grid, the court shall give reasons taking into consideration the following—

- (a) the nature of punishment;
- (b) the age of the offender;
- (c) history of the offender's previous compliance or non-compliance;
- (d) the purpose of the punishment;
- (e) the nature of work to be performed by the offender;
- (f) the value of the work to be performed; or
- (g) the physical and health condition of the offender.

53. Other matters to take into account.

(1) Before making a community service order, the court shall satisfy itself that—

- (a) community service work is suitable for the offence;
- (b) it is appropriate in all circumstances that a community service order is the best order for the offender; or
- (c) the offender has consented to undertake community service in the form prescribed by the Community Service Regulations, to comply with his or her obligations under the community service order.

(2) In addition to the matters under the Community Service Act and the Community Service Regulations, the court shall before granting an order for community service, consider—

- (a) whether the work is community related;
- (b) the skills and experiences of the offender;
- (c) the views of the victim or the victims regarding the referral of the offender to the community for community service;
- (d) restoring the rights of the victims of the offence;
- (e) the history of the offender's previous compliance or non-compliance;
- (f) whether the offender is suffering from any adverse health conditions;
- (g) the likely benefit of the community service to the community;
- (h) the age of the offender; or
- (i) any other factor as the court may consider relevant.

54. Pre-sentence report.

(1) For the purposes of determining whether community service is the appropriate sentence or making a community service order, the court may require the prosecution, the offender or any other person to make a pre-sentence report in respect of the offender.

- (2) A pre-sentence report may contain –
- (a) a recommendation of the orders and conditions on which the sentence may be imposed;
 - (b) a recommendation on how the conditions can be used to achieve the objectives of the sentence;
 - (c) the reasons indicating that the offender is suitable to undergo community service;
 - (d) the likely benefits of the sentence to the offender taking into consideration the interests of the victim;
 - (e) the safety of the victim, offender and the community during the serving of the sentence;
 - (f) the skills or any other useful abilities of the offender to the community; and
 - (g) any matter that court may request the social worker or other designated person to provide.

PART XII – DUTIES OF THE PROSECUTION AND DEFENCE AT SENTENCING

General duties of the prosecution

55. Duty of the prosecution.

(1) During sentencing, the prosecution shall present to the court the following –

- (a) increase in the incidence of certain offences which may include crimes against women and children, economic or white collar crimes, as well as crimes against humanity;
- (b) the applicable penalty provisions for statutory offences;
- (c) reported decisions concerning sentences;
- (d) sufficient facts to enable the court impose an appropriate sentence; or

(e) any relevant information relating to the offender.

(2) For the purposes of sub-paragraph (1) information relating to an offender includes –

- (a) the circumstances under which the offence was committed;
- (b) the offender's background;
- (c) the offender's family;
- (d) the offender's past criminal record;
- (e) the responsibilities the offender has in society and whether the offender is a primary care giver;
- (f) the offender's means of livelihood;
- (g) the offender's social status;
- (h) the likelihood of the offender to reform; or
- (i) any other relevant information.

(3) The prosecution shall present to the court all relevant information relating to –

- (a) the impact of the crime on the victim, family members of the victim and the community, including the impact statements relating to the victim and the community;
- (b) statistics regarding the frequency and relative seriousness of the offence;
- (c) the degree of preparedness with which the crime was committed;
- (d) the problems encountered in trying to prevent the commission of the crime in question; and
- (e) any other aggravating factors that may be relevant to the facts of the case.

(4) The prosecution shall present sufficient facts before court to show any aggravating or other relevant factors under which the offence was committed.

(5) Upon conviction, the prosecution shall summarize to the court any aggravating factors arising from any inquiry or report, the victim impact statements and community impact statements to assist the court to determine the most appropriate sentence.

(6) For the purposes of sentencing, the prosecution shall when making any submissions to the court, have a fair balance of the interest of the victim and the general public interest.

Specific duties for the prosecution

56. Indication of sentence.

The prosecution shall indicate to the court the sentence which in the opinion of the prosecution is appropriate for the offence.

57. Amicable settlements and restorative justice.

(1) Where parties express interest to reconcile in cases that are permitted under the law, the prosecution shall bring the matter to the attention of the court and shall request the court to give the parties an opportunity to settle such matters amicably.

(2) The prosecution shall promote and advocate for restorative justice as a viable means of dispute resolution where applicable.

58. Ancillary, compensatory and related orders.

(1) The prosecution shall apply for ancillary, compensatory and confiscation orders in all appropriate cases.

(2) When considering which ancillary orders to apply for, the prosecution shall have regard to the needs of the victim including protection of the victim.

59. Adducing evidence to disprove mitigation.

The prosecution shall disprove beyond reasonable doubt any assertion made by the defence in mitigation.

Duty of the defence

60. Duty of the defence.

(1) During sentencing, it is the duty of the defence to inform the court about –

- (a) the offender's social background and social status;
- (b) details about the offender's family including dependants, if any;
- (c) any responsibilities of the offender, including whether the offender is a primary care-giver;
- (d) the offender's sources of income and financial status;
- (e) the likelihood of the offender to reform;
- (f) remorsefulness of the offender; or
- (g) any other mitigating factors that may be relevant to the case.

(2) Where the offender wishes to reconcile with the victim, the defence shall state that expressly to the court and the prosecutor.

SCHEDULES

Paragraph 14

FIRST SCHEDULE FORMS

Republic of Uganda

FORM A Victim impact statement

Part I

Particulars of offence

1. Offence_____
2. Date of commission of offence_____

Part II

Particulars of the victim

3. Name of vic_____
4. Marital status_____
5. Age_____
6. Address_____
7. Number of children_____

Part III

Financial impact

8. How has the offence or crime affected the victim financially?
 - (a) is there any loss of income_____
 - (b) if Yes, how much _____
 - (c) jobs or job opportunities lost:_____
 - (d) description of financial support to the victim after the offence _____
9. Expenses incurred by the victim as a result of the crime or offence
(include all the actual costs involved such as medical expenses, funeral expenses, costs for therapy)

Part IV

Physical Impact

10. Injuries sustained during the commission of the crime or offence

11. Injuries sustained after the offence

Emotional Effect

12. Description of the emotional distress and psychological effect of the crime or offence

13. Description of any counseling or psychological treatment

Part V

Property lost or damaged

14. Description of property lost or damaged during the commission of the crime or offence

Date: _____

Name: _____

Signature: _____

** Victims may include a spouse, children, parents and guardians of minor victims, siblings, all legal guardians of mentally or physically incapacitated victims.*

*** The victim impact statement may be filled by –*

- (a) the prosecutor;*
- (b) the investigator;*
- (c) the victim;*
- (d) medical personnel;*
- (e) a probation and social welfare officer;*
- (f) a member of the community;*
- (g) the parent or guardian of a child victim, a spouse, or a dependant or close relative of a victim who is unable to make the statement; or*
- (h) any other person with information to that effect.*

Republic of Uganda

FORM B

Community impact statement

Part I

Particulars of offence

1. Offence _____
2. Date of commission of offence _____

Part II

Particulars of community where crime or offence was committed

3. Village _____
4. Parish/ ward _____
5. Sub county/ Division _____
6. County _____
7. District/ City _____

Part III

Financial impact

8. How has the offence or crime affected the community financially?
 - (a) is there any loss of income _____
 - (b) if Yes, how much _____
 - (c) investment or business opportunities lost: _____
 - (d) description of financial support to the victim or other members of the community after the offence _____
9. Expenses incurred by the community as a result of the crime or offence (*include all the actual costs involved such as meetings to warn or address members of the community, medical, funeral expenses, costs for therapy*)

Part IV
Physical Impact

10. Injuries sustained by members of the public or community during the commission of the crime or offence

Emotional Effect

11. Description of the emotional distress and psychological effect of the crime on the community

12. Description of any counseling or psychological treatment within the community

Part V
Property lost or damaged

13. Description of community or public property lost or damaged during the commission of the crime or offence

Part V
Prevalence of particular crime in community

14. Statement on prevalence of this crime in the area since the commission of the offence

Date: _____

Name: _____

Signature: _____

Position in community, e.g. local council, traditional or religious leader:

** The Community impact statement may be filled by*

- (a) the local council officials;*
- (b) the traditional leaders;*
- (c) any interested member of the community; or
any other person with information to that effect.*

SECOND SCHEDULE

Factors to take into consideration when sentencing.

When determining a sentence, the court shall take into account the following –

- (a) antecedents of the offender or habitual offender or first offender;
- (b) gravity or nature of the offence;
- (c) brutality or nature of weapon used;
- (d) time spent on remand;
- (e) remorsefulness of the offender;
- (f) age;
- (g) health;
- (h) gender;
- (i) prevalence of the offence;
- (j) social status, family status and background;
- (k) intention or motive;
- (l) impact on society;
- (m) cost of imprisonment to the State;
- (n) financial status;
- (o) domestic violence;
- (p) stage of the trial and the circumstances within which a plea of guilty was made;
- (q) the harm caused, the harm intended to be caused, or the harm that might have foreseeably been caused (value of property involved and loss occasioned to victim);
- (r) complexity and sophistication of the offence;
- (s) amount of personal profit;
- (t) education or employment background;
- (u) accused's relations with the community;
- (v) role of the offender in the commission of the offence; or
- (w) any other factor that the court may consider relevant.

THIRD SCHEDULE

Sentencing ranges

Part I

Sentencing range in capital offences

Offence	Maximum sentence	Starting Point	Sentencing range (Appropriate Sentence to be determined after taking into account the factors aggravating or mitigating sentence in each case)
1. Murder (Sections 188 and 189 Penal Code Act, Cap. 120	Death	35 years	From 30 years up to death
2. Rape(Sections 123 and 124) of the penal code Act Cap 120	Death	35 years	From 30 years up to death
3. Aggravated defilement (Sections 129, 130 and 133 of the Penal Code Act, Cap. 120 as amended by the Penal Code (Amendment) Act 2007)	Death	35 years	From 30 years up to death
4. Robbery (sections 285 and 286(2) of the penal code Act Cap 120	Death	35 years	From 30 years up to death

Offence	Maximum sentence	Starting Point	Sentencing range
5. Kidnap with intent to murder <i>Section 243 of the Penal Code Act Cap 120</i>	Death	35 years	From 30 years up to death sentence
6. Terrorism <i>Section 6 of the Anti-Terrorism Act, No.14 of 2002</i>	Death	35 years	From 30 years up to death
7. Treason <i>Section 25 of the Penal Code Act Cap 120</i>	Death	35 years	From 30 years up to death

Paragraph 27

Part II
Sentencing range for manslaughter

Offence	Maximum sentence	Starting Point	Sentencing range <i>(Appropriate Sentence to be determined after taking into account the factors aggravating or mitigating sentence in each case)</i>
Manslaughter <i>(Section 187) of the Penal Code Act Cap 120</i>	Imprisonment for life	15 years	From 3 years up to imprisonment for life

PART III
Sentencing ranges for robbery

Offence	Maximum sentence	Starting Point	Sentencing range <i>(Appropriate Sentence to be determined after taking into account the factors aggravating or mitigating sentence in each case)</i>
1. Robbery <i>(Sections 285 and 286(1)) of the Penal Code Act Cap 120</i>	10 years' imprisonment	5 years	From one year up to 10 years imprisonment
	Imprisonment for life	15 years	From 3 years up to imprisonment for life
2. Attempted Robbery <i>287) of the Penal Code Act Cap 120</i>	7 years imprisonment	3 and a half years	From 9 months up to 7 years (Section imprisonment

Part IV
Sentencing range for defilement

Offence	Maximum sentence	Starting Point	Sentencing range <i>(Appropriate Sentence to be determined after taking into account the factors aggravating or mitigating sentence in each case)</i>
1. Simple Defilement <i>(Sections 129,130 and 133) of the Penal Code Act Cap 120</i>	Imprisonment for life	15 years	From 3 years up to imprisonment for life
2. Attempted defilement <i>(Section 129(2) of the Penal Code Act Cap 120</i>	18 years' imprisonment	9 years	From one year up to 18 years
3. Defilement of idiots or imbeciles <i>(Section 130) of the Penal Code Act Cap 120</i>	14 years' imprisonment	7 years	From 8 months up to 14 years
4. Permitting Defilement <i>(section 133) of the Penal Code Act Cap 120</i>	5 years' imprisonment	2 and a half years	From 3 months up to 5 years

Part V
Sentencing range for criminal trespass

Offence	Maximum sentence	Starting Point	Sentencing range (Appropriate Sentence to be determined after taking into account the factors aggravating or mitigating sentence in each case)
Criminal trespass (Section 302 of the Penal Code Act, Cap. 120)	one year imprisonment	6 months	From a caution up to one year imprisonment

Part VI

Sentencing range for corruption and corruption related offences

Offence	Maximum sentence	Starting Point	Sentencing range <i>(Appropriate Sentence to be determined after taking into account the factors aggravating or mitigating sentence in each case)</i>
1. False accounting by officer (section 22) <i>Anti-Corruption Act, No. 6/2009)</i>	3 years' imprisonment	One and a half years	From 6 months up to 3 years' a public imprisonment
2.Embezzlement (section 19) <i>Anti-Corruption Act, No. 6/2009</i>	14 years' imprisonment	7 years	From 2 years up to 14 years' imprisonment
3. Causing financial loss (Section 20) <i>Anti-Corruption Act, No. 6/2009)</i>	14 years' imprisonment	7 years	From 2 years up to 7 years' imprisonment
4. Solicitation and/or receipt of gratification (Sections 2 and 26) <i>Anti-Corruption Act, No. 6/2009)</i>	12 years' imprisonment	6 years	From 3 years up to 12 years' imprisonment

Offence	Maximum sentence	Starting Point	Sentencing range <i>(Appropriate Sentence to be determined after taking into account the factors aggravating or mitigating sentence in each case)</i>
5. Bribery of a public official (Section 5 and 26) Anti-Corruption Act, No. 6/2009)	12 years' imprisonment	6 years	From 3 years up to 12 years
6. Abuse of office (Section 11) Anti-Corruption Act, No. 6/2009)	7 years' imprisonment	3 and a half years	From one year up to 7 years imprisonment

Paragraph 45

Part VII


Sentencing range for theft and theft related offences

Offence	Maximum sentence	Starting Point	Sentencing range <i>(Appropriate Sentence to be determined after taking into account the factors aggravating or mitigating sentence in each case)</i>
1. Obtaining goods by false pretence (Section 305) Penal Code Act Cap 120	5 years' imprisonment	2 and a half years	From 6 months up to 5 years
2. Theft (Sections 254 and 261) Penal Code Act Cap 120	10 years' imprisonment	5 years	From one year up to 10 years

FOURTH SCHEDULE
Scale for determination of fines.

Amount	Maximum Period
Not exceeding 0.5 of a currency point	7 days
Exceeding 0.5 of a currency point but not exceeding one currency point	14 days
Exceeding one currency point but not two currency points	One month
Exceeding two currency points but not three currency points	6 weeks
Exceeding three currency points but not six currency points	3 months
Exceeding six currency points	12 months

Currency point is equal to twenty thousand shillings.


B.J. ODOKI,
CHIEF JUSTICE

CROSS REFERENCES.

Children Act, Cap 59.

Community Service Act, Cap.115

Community Service Regulations, SI No.55 of 2001

Constitution of the Republic of Uganda, 1995

Magistrates Courts Act, Cap. 16

Penal Code Act, Cap.120

Trial on Indictments Act, Cap. 23

The Revision (Fines and Other Financial Amounts in Criminal Matters) Act
No.14, 2008