

Maximum when convicted under 398 (1), (2) and (3) – Imprisonment between 5 and 15 years.

There are no statutory circumstances defined within Article 398, only those set out in Article 39 PC will apply.

THESE GUIDELINES SHOULD BE READ IN CONJUNCTION WITH THE OVERARCHING PRINCIPLES DOCUMENT RELATING TO THE TREATMENT OF JUVENILES AND WITH THE JUVENILE JUSTICE LAW AT THE FOREFRONT OF THE SENTENCING JUDGE'S MIND.

GRAVITY OF THE OFFENCE

Matters to take into account that may increase or decrease the seriousness of the offence could include, but are not limited to the following:

Art 110 1. a) The nature, character, means, object, time, place and any other circumstances of the act

You should consider factors that could increase the seriousness of the offence such as:

- If the offence was pre-planned.
- Abuse of trust.
- Group action - where 6 or more offenders participate this is a statutory aggravating circumstance under Article 73 PC but if less than 6 people are involved you should still consider this as part of your seriousness decision.
- Previous violence against the same victim.
- Use of drugs on the victim to facilitate the offence.
- Offence motivated by hostility to the victim based on their race, religion or sexual orientation.
- The presence of others, especially children.

Art 110 1. b) The gravity of the injury or the danger caused to the party injured by the offence

- Severe psychological or physical harm caused to the victim.
- Pregnancy resulting from the rape.
- Abduction
- Forced or uninvited entry into the victim's home.
- Victim is particularly vulnerable i.e. under the age of consent, elderly, disabled.
- Violence or threats of violence that go beyond that which are already inherent in the crime of rape.
- A prolonged incident.
- Additional degradation or humiliation of the victim.

- Use of a weapon to threaten, frighten or injure the victim.

Art 110 1. c) The intensity of criminal intent, or the degree of culpa (Art 24 PC)

- Was the rape premeditated?
- Specific targeting of a vulnerable victim.



OFFENDER'S CRIMINAL CAPACITY

Article 110 2. (a-d) The Judge shall take into account the offender's criminal capacity:

- The offender's age and maturity.
- His general character.
- His past criminal record.
- Evidence of remorse
- Co-operation with the police.
- His personal circumstances i.e. his family, his employment.



On the basis of your assessment of the gravity of the offence you should reach a starting point and then increase or reduce that starting point accordingly if there are any aggravating or extenuating circumstances.



AGGRAVATING CIRCUMSTANCES

Aggravating circumstances can be found in Article 39 PC and Article 481 PC.

At this stage you should also consider recidivism (Art 61 and 124 PC)

No child should be sentenced to more than 15 years imprisonment, even in aggravated circumstances (Art 12, JIL)



EXTENUATING CIRCUMSTANCES

Extenuating circumstances can be found in Article 40 PC.

When one extenuating circumstance is present you should reduce the sentence by up to one third (Art 119 PC)

When more than one extenuating circumstance exists the punishment should not be less than one quarter of the maximum punishment (Art 121 PC)



PROPORTIONALITY

An exceptionally important consideration is Article 11 JIL - Punishment for commission of an offence by a child must be proportionate to the circumstances of the child, the gravity and the nature of the offence

Under Article 86 JIL a child cannot be detained unless certain conditions are met. In respect of rape these conditions will not be met unless the child is to be sentenced to ten years imprisonment, is a recidivist or a dangerous character to the community.

Where you are considering imprisonment for a child the sentencing judge should also have at the forefront of their mind Articles 6 and 8 JIL. **The best interests of the child are the primary consideration and detention should be a last resort.**

UNLESS YOU HAVE DECIDED ON A SENTENCE OF TEN YEARS, THE CHILD IS A RECIDIVIST OR A DANGEROUS CHARACTER YOU MUST CONSIDER DIVERSION (ART 69 JIL)

The relevant options can be found in Article 71 JIL

If imprisonment is the only option the sentencing judge should bear in mind that no Children's Rehabilitation Centres as required by the JIL exist at present and so any time spent in prison is likely to have an extremely detrimental effect on a child. Any such sentence should be kept as short as possible.



CONSIDER THE IMPOSITION OF A JUDICIAL PARDON (ART 126 CPC), A SUSPENDED SENTENCE (ART 127 CPC) OR AN EQUIVALENT PECUNIARY PUNISHMENT (ART 109 PC) IF IMPRISONMENT IS THE ONLY OPTION.

If imprisonment is the only option give proper regard to reducing the period to the extent that it can be suspended or pardoned.



Consider whether you are required to make any ancillary orders.
Include the consideration of damages under Article 131 CPC and interdiction from Public Office under Article 102 PC if the term of imprisonment warrants it.



DECIDE SENTENCE & GIVE REASONS

- Review your decision and ensure that it is proportionate and within the guidelines prescribed by law.
- State in your decision on sentence which aggravating and extenuating factors you took into account.
- Give the reasons for coming to the decision that you have, and the same for any ancillary orders.
- Announce your decision in open court.
- Remind the offender of his right to appeal.