

These guidelines have been prepared in order to assist those responsible for the complex and sensitive exercise of sentencing juveniles for crimes that they have been convicted of. They are not designed to be restrictive, rather the hope is that they will provide useful assistance with the hope that appropriate and more consistent sentencing can be achieved moving forward.

In this document it is intended to set out the main parts of the legislation that are likely to be relevant to the sentencing judge when dealing with juveniles. This main guide can then be used in conjunction with the guides on specific offences which aim to set out the sentencing process and the likely factors that will be in issue in respect of those specific offences.

When using the guidelines the sentencing judge should always have regard to the following Articles as set out in the Juvenile Justice Law No. 36/2007. This is not an exhaustive list of the Articles that may be relevant but it is expected that these will be the most commonly used in the sentencing process. **Many of the institutions and people referred to in the JJJ do not currently exist but that should not stop judges, prosecutors, lawyers and the police from applying the spirit of the law to cases involving juveniles. Indeed, the law has precedence over any other and it is the sentencing judge's duty to apply it as best he/she can.**

JUVENILE JUSTICE LAW No. 36/2007

Article 3. Precedence of this Law

This law shall have precedence over any other law or provision in all matters concerning the administration of Children Justice.

Article 6. Best Interests of the Child

In any action and decision affecting children, the best interest of the child shall be the primary consideration.

Article 8. Deprivation of Liberty

1.2. A child may be deprived of liberty only as a measure of last resort; and only for the minimum necessary period of time.

1.3. A child may be deprived of liberty only if he is caught in flagrant delicto or accused of committing offenses set forth by law.

1.4. Children deprived of liberty shall be placed or kept in a safe and secure place permitted by law.

Article 9. Rights of Child deprived of liberty

9.1 Any child deprived of liberty shall have the right to:

d. Have legal counsel and to communicate with his/her legal advisers freely.

Article 10. Criminal Capacity

Notwithstanding the provisions of the Penal Code or any other law:

10.1. Whoever, at the time he committed an act, had not attained fifteen years of age shall not be liable.

10.2. A child who attained fifteen years of age until eighteen years may be liable for criminal responsibility in accordance with the Penal Code, but not full criminal responsibility

10.3 Whoever, at the time he committed an act, had attained eighteen years of age shall have complete criminal punishment and shall not be recognized as child or youth.

Article 11. Proportionality

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.

Article 12. Prohibition of Certain Punishments

No child shall be subject to:

75 Death penalty.

76 Life imprisonment.

77 Corporal punishment.

78 Maximum punishment of the child shall not exceed 15 years (aggravated circumstances)

Article 14. Participation

14.1 Every child who is capable of communicating his/her views shall be given an opportunity to express his/her views in any judicial proceedings concerning the child.

14.2 Views of the child shall be taken into consideration by the court and shall be given due weight in accordance with the age and maturity of the child.

14.3 it is the responsibility of the judge to provide a lawyer or interpreter to assist the child that is unable to express his views.

14.4 the lawyer provided the proceeding article shall not be absent from the court hearings.

Article 67. Definitions of Diversions

This article sets out the various diversion options that are available to the sentencing judge and defines them.

Article 68 Purpose of Diversion

68.1 The purpose of diversion is to:

- a. To know and understand the special needs of the child.
- b. Promote the reintegration of the child into the family and community.
- c. Promote reconciliation between the child and the person or community affected by the harm caused by the child.⁷
- d. Prevent the child from having a criminal record

As above it is clear from this article that the intention of the JIL is to ensure that as fewer children as possible are placed into detention.

Article 69. Child to be considered for Diversion under Certain Circumstance

69.1 A child must be considered for diversion if:

- a. The crime committed is punishable with imprisonment for a period less than ten years.
- b. The child voluntarily acknowledges responsibility for the offence.
- c. There is insufficient evidence to prosecute.

Note the word “must.” There is not an option to ignore the possibility of diversion if one of the conditions above is met.

Article 70. Selection of a Diversion

70.1 In selection of specified diversion option for a particular child at preliminary hearing consideration must be given to:

- a. Health and behaviour of the child
- b. Education level, cognitive ability and domestic and environmental circumstances.
- c. The proportionality of the option recommended or selected to the circumstance of the child, the nature of the offence.
- d. The age and developmental needs of the child.

Article 71. Diversion Options

This article sets out the options available to the sentencing judge as defined in Article 67 above.

Article 72. Decision Regarding Diversion Order

72.1 The Children Judge must ascertain whether the child can be diverted after consideration of:

- a. The proposal of the Attorney General.
- b. The assessment report by the Probation Officer unless assessment has been dispensed with.
- c. The views of all persons present at preliminary hearing who have relation with the child such as parents.

72.2 The Children Judge after consultation with above persons must decide on the most appropriate diversion option.

72.3 Diversion mechanism may be applied anytime before the decision of the case.

At present no Probation Officers exist but please note the sentencing judge has the discretion to dispense with an assessment and still consider diversion.

Article 83. Sentence

83.1 Children Court must, after convicting a child, impose any sentence only in accordance with this Law.

83.2 it is admissible for the court to be assisted by any person deemed as an expert. It is also admissible to examine the general health of the child before the decision of the court and the child shall be kept in an appropriate place.

83.3 Determination of the judgment shall be in accordance with the criminal procedure code unless stated in this law.

Article 84. Imprisonment

Imprisonment shall be where children are rehabilitated

Article 85. Community Based Sentence

Children Court Judge may pass sentences, subject to any diversion options provided under article 68a.

Article 86. Commitment to Children Rehabilitation Center

86.1 The Children Court may pass sentence if the child commits one of the following offences.

- a. A crime punishable with death sentence
- b. Life imprisonment
- c. Imprisonment for a period not less than ten years
- d. The child is recidivist.
- e. The child is of a dangerous character to the community.

Article 85. Community Based Sentence

THESE ARE THE VERY LIMITED CIRCUMSTANCES UPON WHICH A CHILD CAN BE DETAINED.

PENAL CODE 1962

Article 39. Ordinary Aggravating Circumstances

If there are any aggravating circumstances to consider they will be set out in a statement that will be contained on the charge sheet in accordance with Article 71 CPC.

Article 40. Ordinary Extenuating Circumstances

There is a list of ordinary extenuating circumstances set out in the Penal Code. According to Article 42 PC these shall be taken into account in the offender's favour even though they are not known by him or they are mistakenly believed by him to be non-existent.

Articles 61 – 70. Recidivists, Habitual and Professional Offenders

These articles set out very specific rules for how an offender must be dealt with if he has previous convictions.

The sentencing judge has discretion under Article 62 PC not to take account of previous convictions. This discretion can be exercised depending on the particular facts of a case and the mitigation that relates to the offence and / or the offender.

This discretion does not apply if the offender has been convicted of an offence of the same kind as the offence he was previously convicted for.

Articles 71 – 80. More than One Person Participating in an Offence

There will be some offences that are more likely to have multiple offenders than others e.g. affray. Article 73 PC describes when this can be an aggravating circumstance.

Articles 101 – 108. Accessory Penalties

Depending on the length of imprisonment handed down there will be occasions where the sentencing judge will need to impose a ban on the offender being in Public Office for a specific period of time.

Article 109. Discretionary Powers of the Judge in Imposing Punishment: Limits

The sentencing judge has discretion to apply the punishment that he sees fit for the crime in accordance with the minimum and maximums prescribed by law. Reasons should be given for the decision made.

For a first-time offender where a sentence of not more than one year has been imposed consideration can be given, upon the request of the offender, to converting the imprisonment into the equivalent financial punishment.

Article 110. Gravity of the Offence: Evaluation for the Purpose of Punishment

When reaching a starting point for the sentence to impose the sentencing judge should have regard to the nature and circumstances of the offence as well as the criminal capacity of the offender i.e. his intentions, previous conduct and personal circumstances.

Specific factors that the sentencing judge may wish to have regard to are set out in the individual sentencing guidelines.

Article 114. Detention before Sentence

Any time spent in detention prior to the imposition of sentence of imprisonment should be deducted from the time that remains to be served.

If a fine is imposed any time spent in detention should also be deducted from that.

Article 117. Increase or Reduction in Punishment

The sentencing judge should increase or reduce the sentence after he has reached a starting point. i.e. if the sentencing judge believes that the correct sentence for an offence that carries between 1 and 5 years imprisonment is one of 3 years imprisonment, and there is one aggravating circumstance it is the 3 years that should be increased by one third to make a total of 4 years.

If there are 2 aggravating circumstances the next increase in the sentence is based on the figure already reached by the increase for the first aggravating circumstance. i.e. in the example above the next increase would be on the 4 year total. Another increase of a third would be 1 year and 4 months leading to a total sentence of 5 years and 4 months.

Articles 118 – 121. Limits of Increase and Reduction

These articles set out the maximum limits that a sentencing judge is entitled to increase or reduce a sentence by according to the number of aggravating or extenuating circumstances.

CRIMINAL PROCEDURE CODE

Article 120. Deliberation of the Court and Pronouncement of the Judgement

The sentencing judge must read his judgement in open court and in the presence of the accused, unless the sentence is one of a fine only in which case the presence of the accused's Counsel will be deemed sufficient.

Article 121. Form of Judgement

Among other things this should include a statement of the facts and circumstances that form the subject of the charge, a statement of the factual and legal grounds upon which the judgement is based and reference to the law on which the judgement is based. The judgement should include the punishment imposed and any security measures which may be ordered.

Article 125. Fine in Place of Imprisonment

For any sentence of a year or less, taking into account the gravity and nature of the offence under Art 110 PC the sentencing judge may convert a sentence of imprisonment into a fine. See Art 109 PC for further guidance and Art 112 PC for rate of conversion.

Article 126. Judicial Pardon

For juveniles where the maximum punishment prescribed by law for an offence is not more than 3 years the sentencing judge can choose to order no punishment and judicially pardon the offender. This decision should be made having regard to the matters outlined under Art 110 PC and where the sentencing judge considers that the offender will not commit more offences.

A judicial pardon can only be given once.

Article 127. Suspended Sentence

Where a term of imprisonment not exceeding 6 months has imposed (or to a fine that is the equivalent of a 6 month sentence) the activation of that sentence can be suspended for 5 years

SENTENCING FOR JUVENILES

OVERARCHING PRINCIPLES

when, having regard to Art 110 PC the sentencing judge considers that the offender will not commit another offence. This article cannot apply to recidivists.

Maximum when convicted under 444(1) – Imprisonment of up to one year or a fine of 1000 Sh.So.

Maximum when convicted under 444(2) – Imprisonment of between 3 months and 5 years.

Statutory aggravating circumstance: Affray is caused for political reasons or by rivalry between ethnic groups.

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:

- The length of time that the affray took place over, with lengthy incidents likely to be more serious.
- The degree of fighting or violence used created substantial fear to others. Likewise low-level violence may be less serious.
- Weapons being used or objects being thrown.
- Conduct was used that *could have* resulted in serious injury to others. Any actual injury will result in a charge under Article 444(2).
- The conduct took place in the presence of a vulnerable person / people (for example children)
- Damage was caused to property

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

This will be relevant for offences under Article 444(2). The more serious the injury the longer the sentence is likely to be. Cases involving the death of a person are likely to be at the top end of the sentencing bracket unless there are other mitigating features.

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

- Was the affray premeditated?
- Consider the offender's specific role in the affray. Peripheral involvement may be less culpable.
- If the offender did not instigate the trouble they may be less culpable.
- Was there any provocation that caused the offender to become involved in the affray that would make him less culpable?
- Stopping as soon as the police became involved could lessen the culpability.



**OFFENDER'S CRIMINAL
CAPACITY**

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

- Age and maturity of the offender.
- What were the offender's motives for committing the crime?
- His general character.
- His past criminal record.
- Remorse demonstrated.
- 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.

If there is one aggravating circumstance the sentence that you impose should be increased by one third. (Art 118, PC)

If there is more than one aggravating circumstance the sentence that you impose cannot be more than three times the maximum sentence fixed by law.

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 affray these conditions will not be met unless the child 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 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.

Article 126 may apply to an offence under 444(1) or 444(2).



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.

Maximum when convicted under 440(1) – Imprisonment of 3 months to 3 years.

Maximum when convicted under 440(2) – Imprisonment of between 3 to 7 years.

Maximum when convicted under 440(3) – Imprisonment of between 6 to 12 years.

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:

- Victim particularly vulnerable.
- Sustained or repeated assault on the same victim.
- Previous violence towards the same victim.
- Threatened or actual use of a weapon. You can include as a weapon a shod foot, use of a noxious substance, use of an animal or headbutting.
- Intention to commit more serious harm than actually resulted.
- Offence motivated by hostility towards victim's gender, race, religion or sexual orientation.
- Presence of others, particularly children.
- Abuse of trust.
- Excessive degradation or humiliation of victim.

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

This seriousness of the injury will be evident from which subsection of Hurt the offence has been charged under. The more serious the injury the longer the sentence is likely to be. You should still assess the gravity of the injury within the bracket that it has been charged.

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

- Was the hurt premeditated?
- Single blow may be less culpable.

- Specific targeting of a vulnerable victim will be aggravating.
- If group what was the offender's specific role in the hurt. Peripheral involvement may be less culpable.
- Was there a significant degree of provocation that lessens culpability?
- Acting in excessive self-defence may make the offender less culpable.



OFFENDER'S CRIMINAL CAPACITY

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

- Age and maturity of the offender.
- His general character. Is this an isolated incident?
- His past criminal record.
- Remorse demonstrated.
- 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.

If there is one aggravating circumstance the sentence that you impose should be increased by one third. (Art 118, PC)

If there is more than one aggravating circumstance the sentence that you impose cannot be more than three times the maximum sentence fixed by law.

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 hurt these conditions will not be met unless the child is convicted under 440(3) and sentenced to at least ten years 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 THE CHILD IS SENTENCED TO TEN YEARS IMPRISONMENT, IS A RECIDIVIST OR A DANGEROUS CHARACTER YOU MUST CONSIDER DIVERSION (ART 69 JIL)

The relevant options can be found in Article 71 JJI

If imprisonment is the only option the sentencing judge should bear in mind that no Children's Rehabilitation Centres as required by the JJI 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.

Article 126 may apply to an offence under 440(1).



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.

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, JJL)



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 JJJ - 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 JJJ 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 JJJ. **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 JJJ)

The relevant options can be found in Article 71 JJJ

If imprisonment is the only option the sentencing judge should bear in mind that no Children's Rehabilitation Centres as required by the JJJ 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.

Maximum when convicted under 484(1) – Imprisonment between 3 and ten years with a fine between 5 000 to 20 000 Sh.So.

Maximum when convicted under 484 (2) – As above

Statutory aggravating circumstances:

484 (3) (a) Where the violence or threats are committed with arms / by a person disguised / by more than one person acting together

484 (3) (b) Where the violence used renders the victim incapable of giving consent.

In aggravating circumstances the sentence should be increased by at least a third but by up to one half.

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:

- The element of violence used.
- Was a weapon shown or used? The presence of a weapon usually indicates premeditation so will increase the seriousness. In addition carrying “arms” in one of the statutory aggravating circumstances. “Arms” are defined in Article 541 PC.
- Any particular vulnerability of the victim. i.e. juvenile, elderly, someone with disabilities or a person performing public services during the night e.g. a taxi driver.
- The value of the property taken.
- Targeting a particular victim because of the value of their property.
- The use of a disguise is a statutory aggravating circumstance because of the extra degree of fear that it may instil in a victim alongside the obvious premeditation that can be inferred from the use of a disguise.
- Acting in a group is also a statutory aggravating circumstance because of the added fear group activity will cause to a victim.

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

- The degree of any injury caused to the victim or the nature and length of any threats.
- The fear that the victim felt as a result of the threat or violence.
- The time of the day when the offence takes place; at night time is likely to cause greater fear to the victim.

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

- Was the robbery premeditated or did the offender become involved spontaneously?
- In cases where the offender acted as part of a group consider the offender's specific role in the robbery. Peripheral involvement may be less culpable.
- Likewise being the "ringleader" may increase culpability.
- Can the offender's involvement be attributed to peer pressure?
- Was the property stolen voluntarily returned to the victim prior to police involvement?



OFFENDER'S CRIMINAL CAPACITY

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

- The age and maturity of the offender.
- 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.

If there is one aggravating circumstance the sentence that you impose should be increased by one third. (Art 118, PC)

If there is more than one aggravating circumstance the sentence that you impose cannot be more than three times the maximum sentence fixed by law.

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 robbery 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 JJL. **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 JJL)

The relevant options can be found in Article 71 JJL

If imprisonment is the only option the sentencing judge should bear in mind that no Children's Rehabilitation Centres as required by the JJL 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.

Maximum when convicted under 480 – Imprisonment up to 3 years and with a fine between 300 to 5,000 Sh.So.

Maximum when convicted under 481 (Aggravating Circumstances):

One Aggravating circumstance – Imprisonment from 1 to 6 years with a fine of Sh. So. 1000 to 10,000.

Two Aggravating Circumstances (including one from Article 39) – Imprisonment from 3 to 10 years and a fine from Sh.So 2,000 to 15,00

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.
- Any particular vulnerability of the victim. i.e. have they been targeted because they are unlikely to be able to resist the theft?
- The value of the property taken, including sentimental value.
- A high level of gain for the offender.
- Targeting a particular victim because of the value of their property.
- Acting in a group is also a statutory aggravating circumstance under Art 481 if the offence is committed by three or more people.
- Breach of trust.
- Theft took place over a long period of time.

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

- The value of the item stolen to the victim, including sentimental value.
- Confrontation with the victim.

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

- Was the theft premeditated?
- In cases where the offender acted as part of a group consider the offender's specific role in the theft. Peripheral involvement may be less culpable.
- Likewise being the "ringleader" may increase culpability.
- Was the property stolen voluntarily returned to the victim prior to police involvement?



OFFENDER'S CRIMINAL CAPACITY

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

- Age and maturity of the offender.
- What were the offender's motives for committing the crime? You may be able to consider desperation or extreme need if that was the cause of the theft.
- 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. The increases in sentence are set out in 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 theft these conditions will not be met unless the child is to be sentenced to ten years imprisonment where there are two aggravating circumstances, 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 JJI 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.



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



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DECIDE SENTENCE & GIVE REASONS

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