

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.