



**THE UNITED REPUBLIC OF TANZANIA  
THE JUDICIARY OF TANZANIA**



# **THE TANZANIA SENTENCING GUIDELINES, 2023**





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## ABBREVIATIONS

CAP	Chapter
CAT	Court of Appeal of Tanzania
CJ	Chief Justice
CPA	Criminal Procedure Act
DCEA	Drugs Control and Enforcement Act
DPP	Director of Public Prosecutions
EA	East African Law Reports
EACA	Eastern African Court of Appeal
Ed	Edition
EOCCA	Economic and Organized Crime Control Act
EWCA	England and Wales Court of Appeal
GN	Government Notice
HC	High Court
HCD	High Court Digest
J	Judge
LRT	Law Reports of Tanzania
MCA	Magistrates' Courts Act
No.	Number
NSWCCA	New South Wales Court of Criminal Appeal
Para	Paragraph(s)
Pg	Page
PC	Penal Code
PCCA	Prevention and Combating of Corruption Act
PCCPC	Primary Courts Criminal Procedure Code
R.E.	Revised Edition
S/o	Son of
TLR	Tanzania Law Reports/Tanganyika Law Reports
TZCA	Tanzania Court of Appeal
TZHC	Tanzania High Court
TZS	Tanzania Shillings
UK	United Kingdom
vs	Versus

## **FOREWORD BY THE CHIEF JUSTICE OF TANZANIA**

Sentencing of offenders, apart from being one of the important components of the criminal justice system, is one of the most difficult judicial functions. Performed perfunctorily, it may frustrate the entire objectives of the criminal justice system and breed more criminality instead of curbing it. However, when sentencing is performed prudently, it can put into effect the aims of deterrence, prevention, rehabilitation of offenders, and reparation to victims of crime. This benefits the society as a whole.

These guidelines will assist the courts at every level to pass sentences which are consistent, proportionate, fair, and just. It is a significant step in maintaining the confidence of victims, the accused, the public, and policy makers in one of the most important aspects of the entire criminal justice system, i.e. the punishment of the convict. This is the first practical guidance on sentencing to be provided to the courts in Tanzania.

These guidelines offer guidance based on the existing laws of Tanzania as enacted by the Parliament and interpreted by the courts. They set out relevant laws into a procedure of best practices, which should be followed by the courts at every sentence hearing. This will ensure that the courts consider all key aspects in the sentencing of offenders.

At present, many accused persons do not see the benefits of pleading guilty to an offence. These guidelines provide guidance on the procedure and benefits on the accused person who pleads guilty. For too long, it has been normal practice for cases to proceed to trial despite overwhelming evidence. This has been one of the causes for case backlogs in our court system. These guidelines make it clear that if a person shows contrition by pleading guilty and saves time and expenses for the victim and the criminal justice system, the uncertainty and delay of a trial, then they should, in normal circumstances, receive a lesser sentence than if they had been unnecessarily stubborn and had taken the case to trial. This is in accordance with the international good practice in the administration of justice.

The guidelines seek to ensure that the sentencing of offenders is based on fairness and justice, not the wealth or poverty of the offender. It should not be the case that wealthy offenders who commit serious crimes are given a fine as an alternative so that they can effectively pay their way out of a prison sentence. At the same time, low level offenders should not be sent to jail for long periods just because they are unable to pay a financial penalty.

I am delighted that these guidelines introduce the first ever offence-specific sentencing guidelines. This marks a new approach by the Judiciary. The guidelines clearly set out whether a crime will attract a high, medium or low range of the prescribed penalty based on the aggravating and mitigating factors revealed out during trial and sentencing hearing. This will provide certainty and consistency in sentencing.

The guidelines are a bold start of the process of improving the quality of sentencing in Tanzania. It is envisaged that they will be reviewed from time to time to cope with the prevailing circumstances. The guidelines offer general principles for sentencing and use selected recurring offences for illustration and guidance. They are expected to provide inspiration to judicial officers on the principles that can be applied in sentencing even for offences not specifically covered.

It should always be remembered that the quality of a criminal justice system is reflected in the sentence and not the verdict (acquittal or conviction). I, therefore, urge all judicial officers to read and familiarise themselves with these guidelines and honestly apply them while exercising their sentencing discretion.

I am most grateful to the then British High Commissioners, His Excellency Andy Stephens and Her Excellency Claire Harris, who were the first to support the preparation of the Tanzania Sentencing Manual for Judicial Officers, which was published in 2020. My thanks also go to the technical team which was led by Hon. Eusebia Munuo (retired Justice of Appeal), the Chief Justice's Rules Committee led by Hon. Kipenka Mussa (retired Justice of Appeal), and the stakeholders for their dedication and commitment in the preparation of the Manual.

Since the Manual was published in 2020, it had a call for its constant review and update. I thank all the stakeholders for their inputs and feedback. In 2023, the manual was updated into these guidelines. I accordingly thank the team led by Hon. Edward M.K. Rutakangwa (retired Justice of Appeal) and the Chief Justice’s Rules Committee led by Hon. Rehema K. Mkuye, Justice of Appeal and other stakeholders for their dedication and commitment in crafting these guidelines, which now replace the Tanzania Sentencing Manual for Judicial Officers.

I recognise that these Guidelines will be continuously improved as circumstances change. I continue to welcome your comments and critique as you continue to use them.

Dar es Salaam

Date: 08/06/2023



.....  
**Ibrahim Hamis Juma**  
*Chief Justice*

## **EXECUTIVE SUMMARY**

Article 107 A (1) and (2) of the Constitution of the United Republic of Tanzania, 1977 (the Constitution) provides that the Judiciary shall be the authority with final decision in the dispensation of justice in the United Republic of Tanzania. In discharging this mandate, the courts shall observe, among others, the principle of impartiality and enjoined to award reasonable compensations to victims of wrong doings committed by other persons. In giving effect to that noble duty, these guidelines are intended to serve as an aid to judicial officers and practitioners in the proper handling of the sentencing process.

The guidelines seek to clearly set out the sentencing process which should be followed by the courts in determining appropriate sentences so that the accused, victims, witnesses, investigators, prosecutors, defence attorneys, and the wider public are able to understand and have confidence in the entire process.

However, these guidelines are not intended to be an exhaustive reference book. In the course of and before sentencing, courts should always bear in mind the relevant statutes and provisions that create the penalties that they are called upon to impose.

The guidelines have two chapters. Chapter One consists of purposes of punishment, sentencing principles, types of sentences, and sentencing powers of the courts. Chapter Two deals with sentencing process, which covers determination of appropriate sentences, sentences in absentia, suspension of sentences, sentences on appeal, and a special section on sentencing of children. The remaining part of the guidelines consists of appendices, sentence guides for specific offences, and references.

# CHAPTER

# 1

## CONCEPT OF SENTENCING

### 1.1. Sentencing

A sentence is a punishment or sanction imposed on a criminal wrong doer for disobeying the law<sup>1</sup>. In our criminal justice system, sentencing comes after the conviction of an accused person, either after his own plea of guilty or after a full trial in a court of law. So, in law, a person is said to have been sentenced if he is charged under a law which creates a specific offence that can be judicially ascertained and which prescribes a specific punishment for the offence.

### 1.2. Purposes of Sentencing

In any properly functioning legal system, generally a sentence to a wrong doer is meant to promote respect for the law in order to maintain a just, peaceful and safe society as well as to promote initiatives to prevent crime. The specific purposes of sentencing, therefore, are to:

- (a) denounce unlawful conduct in order to ensure that the offender is adequately punished within the confines of the law creating the offence (retribution);
- (b) prevent crimes by deterring the offender (specific deterrence) and other persons (general deterrence) from committing offences;
- (c) protect the community by separating an offender from it where necessary (incapacitation);
- (d) rehabilitate the offender and re-integrate him back into the society (reformation);<sup>2</sup>

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<sup>1</sup> Garner, B.A. *Black's Law Dictionary* (1999, 7<sup>th</sup> Ed.) p. 1367.

<sup>2</sup> Mathias Masaka vs. Republic [2014] T.L.R. 449.

- (e) provide reparation for harm done to a victim or the community by restoring the victim, where possible, to the same position as he was before the wrong was done;<sup>3</sup> or
- (f) promote a sense of responsibility on the offender by acknowledging the harm done to the victim and the community.

### **1.3. Principles of Sentencing**

Before reaching a decision on the appropriate sentence, the court shall have regard to the following universally recognized principles:

#### **1.3.1. General principles of sentencing**

- (a) The gravity of the offence, including the degree of culpability of the offender. In considering the seriousness of the offence, the court should look at the nature of the offence and circumstances under which it was committed, the offender and the victim;
- (b) Impact of the offence on an individual victim or the community as a whole;
- (c) The offender's personal, family, community, or cultural background;<sup>4</sup>
- (d) Any out-come of restorative justice process that has occurred, or are likely to occur, in relation to the particular case;
- (e) The circumstances prevailing at the time the offence was committed up to the time of sentencing;
- (f) Previous conviction(s) of the offender. Where an offender has been previously convicted of one or more criminal offences, the court must take these previous convictions into account as an aggravating factor when sentencing in respect of a new offence;
- (g) The parity principle which requires the sentence to be similar to sentences imposed on alike offenders for identical offences committed in comparable circumstances. This principle is based on the concept that like cases should be treated alike and different cases differently;

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<sup>3</sup> See Article 107A (c) of the Constitution of United Republic of Tanzania.

<sup>4</sup> Abdallah Abdallah Njugu vs. Republic, Criminal Appeal No. 465 of 2007 (Unreported).

- (h) The totality principle, which requires that, where an offender is to serve more than one sentence, the overall sentence must be just and appropriate in the light of the overall offender's behavior that is, the aggregate sentence should be commensurate with the overall seriousness of the offender's crimes. This principle applies whether the sentence applies to both concurrent and consecutive sentences;
- (i) Where the offence is punishable with fine or imprisonment, the choice of punishment becomes a matter of discretion. However, under such circumstances, a first offender should be sentenced to a fine save where the offence is grave or widespread in the area;<sup>5</sup>
- (j) Where there is no statutory punishment for an offence, the trial court should revert to common law and punish the convict with imprisonment or fine at its discretion provided it does not give an inordinate sentence;<sup>6</sup>
- (k) In deciding whether to impose a fine, the court must never take into account the financial resources at the disposal of the accused. However, the fine should be one which an accused person can reasonably be expected to pay;<sup>7</sup>
- (l) Sentences that approach the maximum should only be imposed when the offence comes close to the worst of its type;<sup>8</sup>and should rarely be imposed on first offenders;<sup>9</sup>
- (m) The gap principle, which enjoins the court to take into consideration the gaps of time between offences. It gives credit to someone who has made efforts to avoid criminal charges;<sup>10</sup>
- (n) The step-up principle, which requires that, where an offender is convicted of a similar or identical offence to one he has been convicted and sentenced for in the past, it can be concluded that the prior sentence was not sufficiently deterrent and so the sentence for the new offence should be increased to focus on specific deterrence;

5 Section 27(2) of the Penal Code [Cap. 16 R.E. 2022] and Anania Clavery Betela vs. Republic, Criminal Appeal No. 355 of 2017 (Unreported).

6 Section 35 of the Penal Code [Cap. 16 R.E. 2022] and Republic vs. Emmanuel Timothy [1980] T.L.R 115.

7 Mohamed Juma vs Rex, 1 T.L.R. 257 and Republic vs. Athuman Seleman [1967] H.C.D. n. 210.

8 Hassan Charles vs. Republic, Criminal Appeal No. 329 of 2019 (Unreported).

9 Smith vs. R. [2007] New South Wales Court of Criminal Appeal (NSWCCA)138.

10 See Clayton Ruby, Sentencing, 7<sup>th</sup> Edition, Chapt. 8.83.

- (o) In sentencing accused persons jointly charged, while each of them is legally responsible for all the acts done in furtherance of the crime, it will not be an error of law on the part of the court to refer to the particular conduct of each participant to identify the individual culpability for which each offender is to be sentenced. This will justify the imposition of different sentences on different offenders of the same offence.
- (p) The court should always remember the fundamental principle that a sentence must be proportionate not only to the gravity of the offence, but also to the degree of participation or responsibility of the offender. For this reason, it is trite that sentencing is a highly individualized process that takes into account the offence as well as the offender.<sup>11</sup>
- (q) The one-transaction principle, which requires that concurrent sentences should be imposed for offences committed in the same transaction, for example burglary and stealing, unless extraordinary circumstances exist.<sup>12</sup>
- (r) Any other principles the court considers relevant.

### **1.3.2. Sentencing Principles in Respect of a Convicted Child<sup>13</sup>**

- (a) The need for proportionality by reference to the circumstances of both the offence and the offender;
- (b) The importance of rehabilitating and reintegrating a child offender;
- (c) The need to maintain and strengthen family relationships whenever possible;
- (d) The desirability of imposing the least restriction consistent with the legitimate aim of protecting the victims and the community;
- (e) The importance of child offenders accepting responsibility for their actions and being able to develop responsible, beneficial, and socially acceptable ways;
- (f) The need to take into account factors that have contributed to the child's offending behaviour including any mental health problems or learning disability, poverty, low educational achievement, and lack of parental care;

<sup>11</sup> E.M.K. Rutakangwa, Criminal Justice System: Sentencing by Courts in Tanzania, presented at the Induction Course of Newly Appointed High Court Judges of Tanzania on 6<sup>th</sup> December, 2019.

<sup>12</sup> R. vs Sawed Mukasa (1946) 13 EACA 97, Republic vs Kasonga s/o Luhogwa 2 T.L.R 47.

<sup>13</sup> Rule 49(1) of the Law of the Child (Juvenile Court Procedure) Rules, 2016 [GN. No. 182 of 2016].

- (g) The need to take into account the special circumstances of particular groups of child offenders, especially children living in difficult circumstances; and
- (h) A child shall not be subjected to torture, or other cruel, inhuman punishment or degrading treatment including any cultural practice which dehumanizes or is injurious to his or her physical and mental well-being.<sup>14</sup>

#### **1.4. Types of Sentences**

In our jurisdiction, sentences are provided in various statutes including but not limited to the Penal Code<sup>15</sup>, the Criminal Procedure Act<sup>16</sup>, the Community Service Act<sup>17</sup>, the Probation of Offenders Act<sup>18</sup>, the Wildlife Conservation Act<sup>19</sup>, the Economic and Organized Crime Control Act<sup>20</sup>, the Cybercrimes Act<sup>21</sup>, and the Law of the Child Act<sup>22</sup>.

Such sentences may take the form of death, imprisonment, corporal punishment, fine, forfeiture of property, payment of compensation, and finding security to keep peace and be of good behaviour. Or to come up for judgment, absolute discharge, conditional discharge, costs, probation with or without bond, release of offender on community service, approved school order, repatriation, order the child to be handed over to the care of fit person or institution.<sup>23</sup>For further details see Appendix A: Guidance on Different Types of Sentences.

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14 Section 13(1) of the Law of the Child Act [Cap. 13 R.E. 2019].

15 [Cap. 16 R.E. 2022].

16 [Cap. 20 R.E. 2022].

17 [Cap. 291 R.E. 2002].

18 [Cap. 247 R.E. 2002].

19 [Cap. 283 R.E. 2022].

20 [Cap. 200 R.E. 2022].

21 No. 14 of 2015 [Cap. 443].

22 [Cap. 13 R.E. 2019].

23 Section 25 of the Penal Code [Cap. 16 R.E. 2022], section 119 (1) & (2) of the Law of the Child Act [Cap. 13 R.E. 2019] and Joseph Lazaro and Two Other vs. Republic, Criminal Appeal No. 118 of 2014 (Unreported).

## **1.5. Sentencing Powers of Courts**

The sentencing powers of the courts are prescribed by law and vary depending on the level of the court.

### **1.5.1. Sentencing Powers of the High Court**

The High Court has unlimited sentencing powers and may pass any sentence or make any other order authorized by law.<sup>24</sup> It enjoys this mandate when exercising its original jurisdiction or when an offender has been committed for sentence.

### **1.5.2. Sentencing Powers of the District Courts and Courts of Resident Magistrate**

The sentencing powers of the district courts and courts of resident magistrate are restricted depending on the rank of the trial magistrate. A magistrate below the rank of senior resident magistrate:

- (a) can impose the minimum sentence of imprisonment prescribed by law for any offence specified in the Minimum Sentences Act;
- (b) for other offences, may impose a term of imprisonment not exceeding five years unless the provisions of any written law mandatorily provide for a greater sentence;
- (c) may impose a fine in accordance with the provisions of section 170 of the Criminal Procedure Act<sup>25</sup>, unless the provisions of any written law mandatorily provide for a greater amount;
- (d) may pass a sentence of corporal punishment, subject to the provisions of the Corporal Punishment Act;<sup>26</sup> or
- (e) for consecutive sentences, he shall not impose a sentence which exceeds an aggregate of imprisonment for ten years in case the offence is one which the court may pass a sentence exceeding five years or, in any other case, imprisonment for eight years.<sup>27</sup>

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<sup>24</sup> Section 166 of the Criminal Procedure Act [Cap. 20 R.E. 2022].

<sup>25</sup> [Cap. 20 R.E. 2022].

<sup>26</sup> [Cap. 17 R.E. 2019].

<sup>27</sup> Section 168 (3) (a) of the Criminal Procedure Act [Cap. 20 R.E. 2022] and the case of David Gamata and Another vs. Republic [2015] T.L.R. 206.

### **1.5.2.1. Confirmation of sentences by the High Court**

Some sentences passed by a magistrate below the rank of senior resident magistrate, cannot be executed until the record of the case, or a certified copy of it, has been transmitted to the High Court and a judge has confirmed the sentence or order.<sup>28</sup>

These sentences are:

- (a) a sentence of imprisonment for a scheduled offence which exceeds the minimum term of imprisonment under the Minimum Sentences Act;
- (b) for any other offence, a sentence of imprisonment of more than twelve months;
- (c) a sentence of corporal punishment, which exceeds twelve strokes of the cane; and
- (d) a sentence of a fine or for the payment of money (other than payment of compensation under the Minimum Sentences Act), which exceeds six thousand shillings.

### **1.5.2.2. Committal for sentence by the High Court**

Where a district court presided over by a district magistrate is of the opinion that there are other greater punishments to be inflicted for the offence than the court has power to inflict, the court may commit the offender in custody to the High Court for sentencing.<sup>29</sup>

Furthermore, where a district court or a court of resident magistrate convicts a person of an offence under the Wildlife Conservation Act and considers that the person should receive a sentence lesser than it has power to impose, may commit such a person for sentencing before the High Court with a recommendation for a lenient sentence stating the grounds therefor.<sup>30</sup>

When an offender is committed to the High Court for sentence, the High Court may inquire into the circumstances of the case and deal with such offender in any manner in which it could have dealt with him if he had been convicted by it of the offence in question.<sup>31</sup>

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28 Section 170 (2) of the Criminal Procedure Act [Cap. 20 R.E. 2022].

29 Section 171 (1) of the Criminal Procedure Act [Cap. 20 R.E. 2022] and section 112 (1) (b) of the Wildlife Conservation Act [Cap. 283 R.E. 2022].

30 Section 112 (1) (b) of the Wildlife Conservation Act [Cap. 283 R.E. 2022].

31 Section 171 (2) of the Criminal Procedure Act [Cap. 20 R.E. 2022].

### 1.5.3. Sentencing Powers of Primary Courts

The primary court may impose the following sentences:<sup>32</sup>

- (a) imprisonment of not more than twelve months;
- (b) a fine of not more than five hundred thousand shillings;
- (c) corporal punishment of not more than twelve strokes;
- (d) a minimum sentence for any offence prescribed under the Minimum Sentences Act<sup>33</sup> or which a mandatory minimum sentence is provided by any other law; or
- (e) an imprisonment for a term not exceeding an aggregate of imprisonment for twenty-four months in circumstances where the sentences are to run consecutively.<sup>34</sup>

#### 1.5.3.1. Confirmation of sentences by district courts

The following sentences and orders, when passed by the primary court, shall not be carried into effect unless they have been confirmed by the district court.<sup>35</sup>

- (a) imprisonment for a term exceeding six months;
- (b) corporal punishment on an adult;
- (c) supervision of a habitual offender; or
- (d) forfeiture in the exercise of its criminal jurisdiction.

#### 1.5.3.2. Committal for sentence by the district court

Where a primary court considers that an offender should receive a sentence greater than it has power to impose, it can commit such offender for sentence by the district court.<sup>36</sup> When an offender is committed to the district court for sentence, the district court may inquire into the circumstances of the case and deal with such offender in any manner in which it could have dealt with him if he had been convicted by it of the offence in question.<sup>37</sup>

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32 Sections 2, 3, 5 and 7 of the Primary Courts Criminal Procedure Code, (Third Schedule to the Magistrates' Courts Act [Cap. 11 R.E. 2019]).

33 [Cap. 90 R.E. 2002].

34 Section 6 of the Primary Courts Criminal Procedure Code, (Third Schedule to the Magistrates' Courts Act [Cap. 11 R.E. 2019])

35 Section 7 of the Primary Courts Criminal Procedure Code, (Third Schedule to the Magistrates' Courts Act [Cap. 11 R.E. 2019]).

36 Section 23 of the Magistrates' Courts Act, [Cap.11 R.E 2019] read together with section 3 of the Primary Courts Criminal Procedure Code, (Third Schedule to the Magistrates' Courts Act [Cap. 11 R.E. 2019])

37 Section 23 of the Magistrates' Courts Act, [Cap.11 R.E 2019] read together with section 3 of the Primary Courts Criminal Procedure Code, (Third Schedule to the Magistrates' Courts Act [Cap. 11 R.E. 2019]).

## 1.6. Discretionary and Mandatory Sentences

The sentencing principles in these guidelines apply to all offences. However, the powers of the court are limited by the range of sentences permitted by law. The most significant difference in sentences set out by law is between discretionary and mandatory sentences. The wording of a statute is vital in determining whether a punishment is mandatory or discretionary.

### 1.6.1. Discretionary Sentence

A discretionary sentence is one where the law has given the courts a wide option to impose a sentence up to a certain maximum. The provisions of law creating offences and/or prescribing punishments do not explicitly state that the sentencing powers of the court are discretionary. Whether the sentence is discretionary depends on the wording of the statute. The superior courts in Tanzania have held that words like “is liable”<sup>38</sup>, “shall be liable”<sup>39</sup>, “shall upon/on conviction be liable to”<sup>40</sup>, and “not exceeding...”<sup>41</sup> give discretion to the sentencing court, subject to its sentencing jurisdiction, to impose any sentence on the offender up to the maximum.

### 1.6.2. Mandatory Sentence

Mandatory sentences are those punishments which a court must impose regardless of the circumstances of the offence. The enactment of mandatory sentence provisions is a result of:

- (a) abuse of judicial discretion in assessing sentences;
- (b) disparities in sentencing of persons convicted of the same offences committed under similar circumstances;
- (c) the need to confine for a long-time certain offenders reputed to be dangerous to the community; and
- (d) increase of certain types of social evils (e.g. sexual offences), etc.

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38 Section 198 of the Penal Code [Cap. 16 R.E. 2022].

39 Section 120 of the Penal Code [Cap. 16 R.E. 2022] and Bahati John vs. Republic, Criminal Appeal No. 114 of 2019, (Unreported).

40 Section 60A of the Education Act [Cap.353 R.E. 2002] as amended by section 22 of the Written Laws (Miscellaneous Amendments) (No. 2) Act, No. 4 of 2016 and Sokoine Mtahali @ Chimongwa vs. Republic, (Criminal Appeal No. 459 of 2018) [2022] TZCA 575-TanzLII.

41 Section 35 of the Penal Code [Cap. 16 R.E. 2022].

A mandatory sentence may be in a form of being the only punishment for a particular offence or a minimum sentence for that offence. It is more common for the law to set out a mandatory minimum sentence for an offence. These may be scheduled under the Minimum Sentences Act<sup>42</sup> but increasingly nowadays under any criminal statute. For these offences, the courts must impose at least the minimum sentence.

In some statutes, the sentencing provisions use the phrase “not less than” which implies mandatory sentence, for example, the Cybercrimes Act.<sup>43</sup> Ordinarily, a phrase like “is liable or shall be liable to” implies discretion, but when this phrase is qualified by the words that presupposes mandatory sentences, then the discretion is taken away and the sentence becomes mandatory, for example “...shall be liable to imprisonment for a term of not less than...”.<sup>44</sup> Another phrase that implies mandatory sentence is “shall be sentenced to ...” in that regard the punishment so prescribed, is mandatory. For example, under section 197 of the Penal Code, the law states that “A person convicted of murder shall be sentenced to death”.<sup>45</sup>

It is worth noting here that where conviction is a result of a plea agreement, the court shall impose a sentence in accordance with that agreement notwithstanding the sentence specified by the provisions of the applicable law.<sup>46</sup>

## **1.7. Concurrent and Consecutive Sentences**

Where the court convicts an accused of more than one offence, it shall pass sentence on each count and specify whether the sentences shall run concurrently or consecutively. This is because there is a presumption that the sentences should run consecutively unless the court by order directs otherwise.<sup>47</sup>

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42 [Cap. 90 R.E. 2002].

43 Section 24 of the Cybercrimes Act, 2015 No. 14 of 2015.

44 Section 60(2) of the Economic and Organized Crime Control Act [Cap. 200 R.E. 2022] and Jackson Bambembuye vs. Republic [1981] TLR 341.

45 Section 197 of the Penal Code [Cap. 16 R.E. 2022].

46 Section 194D (6) of the Criminal Procedure Act [Cap. 20 R.E. 2022] and Director of Public Prosecutions vs. Hamis Mustapha Mwinyimvua (Criminal Appeal No. 87 of 2022) [2022] TZHC 14600-TanzLII.

47 Section 168(1) and (2) of the Criminal Procedure Act [Cap. 20 R.E. 2022], Shomari Mohamed Mkwama vs. Republic (Criminal Appeal No. 606 of 2021) [2022] TZCA 644-TanzLII, Ramadhani Hamis @Joti vs. Republic (Criminal Appeal No. 513 of 2016) [2019] TZCA 486-TanzLII and AnorId Kagoma and Basil Philimon vs. Republic Consolidated Criminal Appeals Nos. 31 and 32 of 2016 (Unreported).

### 1.7.1. Concurrent Sentences

Concurrent sentences are usually imposed upon an offender who has committed offences arising from the same series of transaction. This means the offender will serve those sentences at the same time.<sup>48</sup> For example, burglary and stealing usually attract concurrent sentences<sup>49</sup> (the one-transaction principle). Where two or more sentences of imprisonment are directed to run concurrently, only the longer term of those sentences of imprisonment shall be taken into account in computing the aggregate of sentences of imprisonment.<sup>50</sup>

Where conviction is entered in more than one capital offence or offences attracting life imprisonment, the sentence should be imposed only on one capital offence, the conviction(s) on other count(s) should be allowed to remain on the record.<sup>51</sup>

### 1.7.2. Consecutive Sentences

Consecutive sentences run one after the other. The court should pass consecutive sentences in only exceptional circumstances. These may include, where offences arise out of unrelated circumstances or incidents; or in the case of offences of similar kind, the overall criminality will not be sufficiently reflected by concurrent sentence. Further, consecutive sentences may be imposed where one or more offences qualifies for statutory minimum sentence and a concurrent sentence would improperly undermine that minimum.<sup>52</sup> Sentences of fine cannot run concurrently.<sup>53</sup> Moreover, imprisonment in default of fine cannot run concurrently with other substantive terms of imprisonment.<sup>54</sup>

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48 Shomari Mohamed Mkwama vs. Republic (Criminal Appeal No. 606 of 2021) [2022] TZCA 644-TanzLII and Ramadhani Hamis @Joti vs. Republic (Criminal Appeal No. 513 of 2016) [2019] TZCA 486-TanzLII.

49 Ramadhani Hamis @ Joti vs Republic (Criminal appeal No. 513 of 2016 CAT [2019] TZCA 486-TanzLII.

50 Section 168 (5) of the Criminal Procedure Act [Cap. 20 R.E. 2022].

51 Agnes Doris Liundi vs. Republic [1980] T.L.R. 46, Saidi Kigodi @ Side vs. Republic (Criminal Appeal No. 281 of 2009) [2011] TZCA 137-TanzLII, Dorovico Simeo vs. Republic [2012] T.L.R. 256 and in Shomari Mohamed Mkwama vs. Republic (Criminal Appeal No. 606 of 2021) [2022] TZCA 644-TanzLII where it was held: *"...an accused person being a human being has only one life time to enjoy on planet earth. He can only live once. So, sentencing him to serve two consecutive sentences of life imprisonment is unrealistic."*

52 Republic vs. Kasongo Luhogwa (1953-1957) 2 T.L.R. (R) 47, Republic vs. Suwedi Mukasa s/o Abdulla Aligwaisa (1946) EACA 97, Laurean Anacleti and Another vs. Republic. 1973 LRT n. 34, Baguani Mhina Jumbe vs. Republic, Criminal Appeal No. 120 of 1993 (Unreported) which held that "the systematic manner in which the offences were committed and the amount involved was ... an exception to the enunciated rule of practice on concurrent sentencing...", and Yassin Omari and Another vs. Republic, Criminal Appeal No. 212 of 1992 (Unreported).

53 Section 36 of the Penal Code [Cap. 16 R.E. 2022] and Section 6 of the Primary Courts Criminal Procedure Code, (Third Schedule to the Magistrates' Courts Act [Cap. 11 R.E. 2019]).

54 Stanley Murithi Mwaura vs. Republic (Criminal Appeal No. 144 of 2019) [2021] TZCA 688-TanzLII.

## 1.8. Combination of Sentences

Any court may pass a sentence combining any of the sentences which it is authorised by law to pass.<sup>55</sup> The sentences to be combined must be compatible, for example, imprisonment may be combined with compensation, fine or forfeiture. However, probation, imprisonment, police supervision, conditional discharge, death sentence, cannot be combined.

For the purpose of these guidelines, it is convenient to divide sentences into the following four groups:

<b>Group A</b>	<b>Group B</b>	<b>Group C</b>	<b>Group D</b>
<ul style="list-style-type: none"><li>■ Absolute discharge</li><li>■ Conditional discharge</li><li>■ Probation</li><li>■ Probation with bond</li><li>■ Reconciliation</li></ul>	<ul style="list-style-type: none"><li>■ Compensation</li><li>■ Costs</li><li>■ Restitution</li><li>■ Forfeiture</li></ul>	<ul style="list-style-type: none"><li>■ Imprisonment (whether or not suspended)</li><li>■ Corporal punishment</li><li>■ Fine</li><li>■ Security for keeping the peace</li></ul>	<ul style="list-style-type: none"><li>■ Police supervision order</li><li>■ Community service</li></ul>

A sentence in group A cannot be combined with any other sentence in the same group. Nor can a sentence in group A be combined with any sentence in groups C and D. However, a group A sentence can be combined with any or more of the sentences in group B.

## 1.9. Omnibus Sentence

Omnibus sentence is a single sentence for all offences of which an accused person has been convicted of at a single trial. It is illegal to pass an omnibus sentence where the accused person is convicted on two or more counts in a trial because the sentence must be passed on each count separately.<sup>56</sup>

<sup>55</sup> Section 167 (1) of the Criminal Procedure Act [Cap. 20 R.E. 2022].

<sup>56</sup> *Abraham Moses @ Abunuasi and 2 Others vs. Republic* (Criminal Appeal No. 30 of 2017) [2018] TZCA 2790-TanzLII, *Malik Kassim Titu and Another vs. Republic* (Criminal Appeal No. 169 of 1994) [TZCA 48-TanzLII, *Republic vs. Athanas* (Criminal Appeal No. 115 of 2002) [2006] TZCA 75 and *Anorld Kagoma and Basil Philimon vs. Republic*, Consolidated Criminal Appeals Nos. 31 and 32 of 2016 (Unreported)

# CHAPTER

# 2

## SENTENCING PROCESSES

### 2.1. Necessity of Conviction before Sentencing

It is imperative that before the court commences sentencing, it must be certain that it has properly entered a conviction be it after a full trial, summary trial or a plea of guilty. Failure by the trial court to correctly convict a person may result in the nullification of the trial court's decision on appeal.<sup>57</sup>

### 2.2. The Pre-Sentencing Hearing

The sentencing process is not a one-man show (i.e. the judge or magistrate alone). It involves other stakeholders, especially, prosecutors, accused and their counsel, probation officers, victims of the offence, social welfare officers, etc. This accounts for the presence of the identical sections 236 and 320 in the CPA and section 39 of the PCCPC.

It is, therefore, a duty of the court to ask the parties before passing sentence in accordance with the law whether they have anything to say. Furthermore, the court in determining the proper sentence may receive such evidence as it thinks fit in order to inform itself as to the proper sentence to be passed.<sup>58</sup> The Court of Appeal has held that, it is in the discretion of the trial court to make this determination.<sup>59</sup>

In every case, the prosecutor, accused or his representative should be given the

<sup>57</sup> Shabani Iddi Jololo & 3 Others vs. Republic, Criminal Appeal No. 200 of 2006, Khamis Rashid Shaban vs. DPP, Criminal Appeal No. 184 of 2012, Omari Hassan Kipara vs. Republic, Criminal Appeal No. 80 of 2012 and Samweli Sanyangi vs. Republic Criminal Appeal No. 141 of 2012 (All unreported).

<sup>58</sup> Sections 236, 320 and 314 of the Criminal Procedure Act [Cap. 20 R.E. 2022] and Section 39 of the Primary Courts Criminal Procedure Code (Third Schedule to the Magistrates' Courts Act [Cap. 11 R.E. 2019]) ..." but the omission so to ask him shall have no effect on the validity of the proceedings" In the case of subordinate court the law is silent, however, there are case laws e.g., Republic vs. Sulemani Saidi and Another [1977] LRT n. 29 in which Kisanga J (*as he then was*) at page 112 said: "Allocutus is an important right of an accused person and magistrates should always ensure that the accused person is given opportunity to exercise it because he may have something to say which could influence the magistrate to exercise discretion on his favour".

<sup>59</sup> Juma Buruhani Mapunda and Another vs. Republic, Criminal Appeal No. 40 of 2002 (2005) (Unreported).

opportunity to provide an account on aggravating or mitigating factors as the case may be<sup>60</sup> and in some circumstances the court may require any other relevant information from other stakeholders.

If the court considers it necessary, it may adjourn the hearing for the purpose of sentencing.<sup>61</sup> This may be necessary if the court considers that more information is required before it passes an appropriate sentence against the accused. If parties do not provide sufficient information, a more inquisitorial approach should be followed by the court acting positively to gather the necessary information even by itself calling witnesses.

### **2.2.1. The Role of the Prosecutor**

The prosecutor has a duty to provide all relevant evidence and information to assist the court in making its decision on sentence. Such information may include:

- previous convictions;
- breach of any court order;
- background of the accused including age;
- the impact of the offence on the victim and society, for example, any long-term physical damage to the victim or his property;
- the impact (if any) on his works, business, family relationships or other personal circumstances;
- the time spent in remand awaiting trial or sentence;
- early admission of an offence or remorse; or
- any details of co-operation with the authorities etc.

In addition, the prosecutor has a duty to assist the court on available options for sentence under the law, including any relevant case law or statute prescribing or guiding on minimum or maximum sentence available. The prosecution may apply to the court for any relevant ancillary order upon sentence, such as compensation, forfeiture, and restitution.

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<sup>60</sup> Haining and others vs. Republic (1972) H.C.D. n. 53 and Kisanga J in Republic vs. Sulemani Saidi and Another (1977) LRT n. 29 both referred to in B. D. Chipeta, *A Handbook for Prosecutors*, (2007, 3<sup>rd</sup> ed.,) p.77.

<sup>61</sup> Section 315(2) of the Criminal Procedure Act [Cap. 20 R.E. 2022].

If the accused is unrepresented, the prosecution should assist the court by outlining matters which should be considered to mitigate any sentence such as an early admission and indication of remorse. In all cases, the prosecutor must proceed firmly and fairly.<sup>62</sup>

### **2.2.2. The Role of the Accused and/or His Advocate**

The accused should be given an opportunity to address the court before the sentence is passed.<sup>63</sup> He may contradict, explain or qualify whatever the prosecutor has told the court about the accused and the circumstances of the case.<sup>64</sup> He should be given the opportunity to examine any record of previous conviction(s) or antecedents produced by the prosecution so as to accept or deny this record. If the antecedents are denied, the disputed or denied allegations should either be omitted or proved by admissible evidence.

He may provide the court with any information he considers relevant in mitigation of the sentence upon him such as his age, antecedents, previous good character (if appropriate), responsibilities to his family, the impact of a sentence upon him or others, and any remorse or explanation that led to the commission of an offence. The accused should be called upon to provide details of his financial position and assets so that the court can consider them in determining the appropriate fine, compensation, costs or other financial orders.

It is a duty of the prosecutor and advocate for the defence as officers of the court to truly disclose all circumstances and evidence or information that will assist the court in arriving at a just, fair and appropriate sentence. Emphasizing this duty, the Court of Appeal of England and Wales stated thus:

“We feel we must emphasize and remind practitioners that it is the duty of advocates, both prosecution and defence, to check the courts sentencing powers and alert the court... We adjudge that counsel as a matter of professional duty to the court, and in the case of defending counsel to the client, should always before starting

62 R vs. Shazib Mohammed Qayum [2010] EWCA Crim 2237 C.A of England and Wales also citing Lawton LJ in R vs. Clarke (RWW) (1974) 59 Cr. App. R. 298.

63 William Frank Haining and Others vs. Republic [1972] H.C.D. no. 53.

64 Kisanga J. in Republic vs. Sulemani Saidi and Another (1977) LRT n. 29 referred to in B.D. Chipeta, *A Handbook for Prosecutors*, (2007, 3<sup>rd</sup> Ed.,) p.77.

a criminal case satisfy itself as to what maximum sentence is. There can be no excuse for counsel not doing this and they should remember that the performance of this duty is particularly important where a man has been committed... for sentence”.<sup>65</sup>

### **2.2.3. Any Other Relevant Information**

The court has a wide discretion before passing sentence to seek any additional information including calling of witnesses as it thinks fit in order to inform itself as to the proper sentence to be passed.<sup>66</sup> In receiving such additional information or evidence, the court may be assisted by probation officers, social welfare officers, teachers, wildlife officers or any other person who may have particular relevant information or evidence to assist the court on passing appropriate sentence.

Generally, the views of the victim and/or his relatives or any other person on the impact of the offence may be sought by the court through the prosecutor. The impact of the offence may include any physical, financial, emotional or psychological injury they have suffered and/or any treatment they have received as a result of the crime; and if they feel vulnerable or intimidated by the impact of the crime to their family, etc.

## **2.3. Sentencing Process**

In exercising its sentencing powers, the court shall observe as far as practicable the following process:

### **STEP 1: Identify the statutory sentencing range for the offence – the maximum and minimum sentences in law.**

In every case, the starting point for the court is to consider the maximum and minimum sentence set out by law. This is the range of sentence which the court may apply while alive to the fact that maximum sentence cannot be exceeded. Furthermore, if the law sets a minimum sentence, then no lesser sentence shall be imposed.<sup>67</sup> However, there are two exceptions to this rule: one, where a conviction is a result of a plea agreement in which case the court has to pass the sentence

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<sup>65</sup> R. vs. Shazib Mohammed Qayum [2010] EWCA Crim 2237 C.A of England and Wales also citing Lawton LJ in R. vs. Clarke (RWW) (1974) 59 Cr. App. R. 298.

<sup>66</sup> Section 236 and 320 of the Criminal Procedure Act [Cap. 20. R.E. 2022].

<sup>67</sup> Smith vs. R. [2007] New South Wales Court of Criminal Appeal (NSWCCA)138.

agreed upon in such agreement notwithstanding the sentence provided by the law.<sup>68</sup> Two, for offences falling under the Wildlife Conservation Act where the court, in warranted circumstances, may impose a sentence below the minimum.<sup>69</sup>

In all cases, the overarching principle is that a maximum sentence should only be imposed when the offence comes close to the worst of its type<sup>70</sup> and should rarely be imposed on a first offender.<sup>71</sup>

## **STEP 2: Determine the level of seriousness of the offence within the range.**

The levels of seriousness fall into three categories, namely:

- a. Low level: These are offences at the lowest end of the scale of seriousness for that type of offence. These offences must attract the lowest level of sentence. For example, in the case of causing actual bodily harm, where there is no use of weapon.
- b. Medium level: These are offences at the middle between the highest and the lowest scale of seriousness for that type of offence. These offences must attract the medium level of sentence. For example, where there are multiple victims of an offence, where offences are committed against those in public sectors, where there is additional degradation of the victim such as taking his photographs.
- c. High level: These are offences at the highest end of the scale of seriousness for that type of offence which must attract the highest level of sentence. These may include offences:
  - (i) committed while on bail;
  - (ii) involving high degree of planning in their commission;
  - (iii) aimed at obtaining high profit;
  - (iv) committed deliberately by targeting vulnerable groups;
  - (v) associated with breach of trust, abuse of power or position; and
  - (vi) involving interference with essential services, etc.

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68 Section 194D (6) of the Criminal Procedure Act [Cap. 20 R.E. 2022].

69 Section 112(3) of the Wildlife Conservation Act [Cap. 283 R.E. 2022].

70 Hassan Charles vs. Republic, Criminal Appeal No. 329 of 2016 (Unreported)

71 Regina vs. Mayera (1952) SR 253.

In considering the level of seriousness of the offence, the court should look at the nature and circumstances of the offence, offender, and victim to assess the following:

- (a) the gravity of the offence – nature and circumstances in which the offence was committed;
- (b) the culpability of the particular offender – the motivation, conduct, intention, and particular circumstances of the offender; and
- (c) the nature and extent of harm, injury or damage that was caused, intended or might foreseeably have been caused to the victim or society<sup>72</sup>. For example, in offences committed against properties, the nature and value of the property.

**STEP 3: Consider all relevant aggravating and mitigating factors for the offence.**

The court must consider any relevant aggravating and mitigating factors<sup>73</sup> which make the offence more or less serious. In doing so, it has to strike a balance between aggravating factors which tend towards increasing the sentence to be imposed and mitigating factors which tend towards exercising leniency.<sup>74</sup>

The Criminal Procedure Act, for example, refers to the following as relevant factors in sentencing: age, character, antecedents, health condition of the offender, trivial nature of the offence, etc. The list is deliberately non-exhaustive and the sentencing court may consider any extenuating circumstances under which the offence was committed.<sup>75</sup> The courts have exercised this discretion widely and the following are some of the most common aggravating and mitigating factors:

Aggravating	Mitigating
A high level of planning, organization, sophistication or professionalism in the commission of the offence	Previous good character
Multiple victims	Young or old age of the accused where this is relevant to responsibility
Offending over a long period	Health condition or disability of accused
Offence was committed as part of a pre-meditated, planned or concerted act.	Mental instability of accused
A professional offence and the degree of sophistication involved	Impact on family circumstances of accused

<sup>72</sup> Xavier Sequeira vs. Republic, Criminal Revision No. 4 of 1993 (Unreported) and Republic vs. Bariki s/o Tweve and Another, Criminal Case No. 42 of 2002 (Unreported).

<sup>73</sup> Shehe Ramadhani @Iddi vs. Republic, Criminal Appeal No. 82 of 2020 (Unreported) and John Stephano and Five Others vs. Republic, Criminal Appeal No. 251 of 2021 (Unreported).

<sup>74</sup> Nemes Myombe Ntalanda vs Republic (Criminal Appeal No. 1 of 2019) [2021] TZCA 513-TanzLII.

<sup>75</sup> Section 339A of the Criminal Procedure Act [Cap 20 R.E 2022].

Significant actual, intended or foreseeable impact on national security	Remorse or contrition (e.g., early admission of responsibility can be evidence of genuine remorse)
High level of financial profit from the offence	The offender played only a minor role in the offence
Breach of trust and nature of trust of office abused	Trivial nature of the offence
A repeat offender	The offender was provoked <sup>76</sup> .
Offences committed while on bail or on arrest for other offences	Co-operation with the police or other state agencies after arrest or surrender
A high degree of responsibility for the offence	A genuine belief that the conduct would not constitute a criminal offence.
Deliberate and gratuitous violence, damage to property or degrading of victim	Any punishment unlawfully meted out to the accused by members of the public
Offence in the presence of vulnerable persons	Any compensation or restitution already contributed by the accused
Motivated by racial, religious, disability hostility	
The effect of the crime on the victim – physical, mental, or emotional	
Any harm caused to the victim or the community (e.g. the violence, trauma, brutality and fear instilled upon the victim)	
The financial value of the offence in terms of loss to the victim and profit to the accused and others	
Vulnerability of the victim – age, sex, disability, minority group	
The role of the offender in a group or gang or mob involved	
Targeting of persons working in the public sector	
The accused exhibited a flagrant disregard for the law	

N.B. The prosecution and the accused should both assist the court by highlighting the aggravating and mitigating factors arising in the particular case. If there are offence-specific guidance issued then these should be followed by the court.

<sup>76</sup> Section 201 of the Penal Code [Cap.16 R.E 2022].

**STEP 4: Consider the accused’s personal circumstances, any other offences committed by accused, totality principle, co-accused’s sentence, any co-operation with authorities and information from the victim.**

Having determined the overall seriousness of the offence, the court should consider the following:

The accused’s personal circumstances

- (a) The financial circumstances of the accused if the court is contemplating imposing a fine<sup>77</sup> or other financial orders;
- (b) If the accused has provided any assistance or co-operation to the authorities after his arrest which has assisted in the investigation or disruption of criminal activity;
- (c) The family circumstances of the accused and likely impact of sentence on dependants<sup>78</sup>;
- (d) Any good works or character references;
- (e) Offender’s age, mental health or physical disability; and
- (f) Any breaches of court orders.

**Other offences**

For the purposes of sentence, the court may take into consideration any other offence committed by the accused person but which he has not been convicted of.<sup>79</sup>The court may only take into consideration offences which the accused has:

- (a) admitted to have committed; and
- (b) asked the court to take them into consideration.

Before doing this, the court must first explain to the accused person in ordinary language that if these offences are taken into consideration, the sentence passed for the offence he has been convicted of may be greater. The court however, has no power to go beyond the statutory maximum sentence for the offence for which the accused has been convicted of.<sup>80</sup>

<sup>77</sup> Mohamed Juma vs. Rex, 1 T.L.R. 257 and in Republic vs. Athuman Selemani [1967] H.C.D. n. 210.

<sup>78</sup> Fortunatus Frugence vs. Republic (Criminal Appeal No. 120 of 2007) [2010] TZCA 94.

<sup>79</sup> Section 321 and 237 of the Criminal Procedure Act [Cap. 20 R.E. 2022].

<sup>80</sup> Section 321(3) and 237(3) of the Criminal Procedure Act [Cap. 20 R.E. 2022].

## **Information received from the victim**

In assessing appropriate sentence, the court may consider any information received from prosecution regarding the impact of offence upon any identifiable victim. The court has a wide discretion to receive any such information as it thinks fit in order to inform itself as to the proper sentence to be passed.<sup>81</sup> Relevant information is likely to be the impact of the offence at the time it was committed and the subsequent impact upon the victim and others. This information may have a direct impact on aggravating or mitigating factors. For example, any permanent or long-term physical, psychological or material impact is likely to aggravate the sentence.

### **STEP 5: Assess the appropriate sentence.**

In assessing the appropriate sentence, the court shall take into account the following:  
Plea of guilty

An accused person who has pleaded guilty must ordinarily be given credit for that plea. Judges and magistrates must explicitly state that the plea of guilty has been taken into account and failure to do so may be taken as indication that the plea was not considered at all or was given insufficient weight and the appellate court will definitely interfere.<sup>82</sup> However, such sentence cannot be less than any statutory minimum sentence imposed by the Minimum Sentences Act or any other law.

Where no discount is given, cogent reasons must be shown.<sup>83</sup> It is good practice for the court to state the sentence that would have been given if the accused had been found guilty after a contested trial. The court should then state the amount of a reduction that has been given from this sentence because of the plea of guilty.

Where the accused pleads guilty at the earliest stage, he deserves more credit than one who pleads guilty at a later stage. As such, there should be a greater level of reduction in the sentence available the sooner the accused pleads guilty. The following recommended guidance should be observed unless good reasons are shown for any deviation therefrom:

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<sup>81</sup> Section 236 and 320 of the Criminal Procedure Act [Cap. 20 R.E. 2022].

<sup>82</sup> Republic vs. Mohamed Ali Jamal (1948) 15 EACA 126, James Yoram vs. Republic (1951) 18 EACA 147, Silvanus Leonard Nguruwe vs. Republic [1982] T.L.R. 66 and Bernard Kapojosye vs. Republic, Criminal Appeal No. 411 of 2013 (Unreported).

<sup>83</sup> Giotas vs. Regina [2008] New South Wales Court of Criminal Appeal (NSWCCA) 287.

- (a) The recommended maximum level of reduction in sentence for a plea of guilty is one-third from the sentence that would have been given if the case had proceeded to a contested trial. This will usually be appropriate where a plea of guilty is indicated at the first stage of proceedings. The first stage will normally be the first court hearing at which a plea is taken or indication sought by the court; and
- (b) If a plea of guilty is entered after this, then the recommended level of reduction should be reduced according to the stage of the proceedings at which the plea was entered. The maximum discount for a plea of guilty after the first hearing should be one quarter of the sentence if the case had proceeded to a contested trial. The discount for a plea on the first day of trial should not be more than one tenth. After the trial has started, the reduction should normally be reduced further, even to zero.

A reduction of a sentence for a plea of guilty is justifiable because:

- (a) It is in the public interest as it saves the court's time and expense in conducting a full trial;<sup>84</sup>
- (b) It avoids the possibility of an accused securing an unwarranted acquittal through technical or procedural errors;<sup>85</sup>
- (c) It is an indication of contrition which qualifies him for leniency;<sup>86</sup>
- (d) It may reduce the impact of the crime on the victim; and
- (e) It saves time of witnesses to testify before the court.

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84 Charles Mashimba vs. Republic [2005] T.L.R. 90 at pg. 93 and Swalehe Ndungajilungu vs. Republic [2005] T.L.R. 94 at pg. 98.

85 Nilson vs. R [1970] EA followed in Yahana Hassan and Godson Hiza vs. Republic, Criminal Appeal No. 16 of 2000 (Unreported).

86 Mathias Masaka vs Republic [2014] T.L.R. 449.

### **Summary of the approach to setting reduction for a plea of guilty:**

- (a) Determine the appropriate sentence for the offence(s) if the case had been contested and proceeded to trial;
- (b) Determine the level of reduction for a guilty plea based on the stage in the proceedings the guilty plea was entered;
- (c) State the amount of that reduction; or
- (d) Apply the reduction to the appropriate sentence.

*Example of wording: “...But for your plea of guilty, the custodial term of your sentence would have been [6] years. I take into account the fact that you have pleaded guilty and that you gave this indication at the first opportunity in court proceedings and reduce your sentence by [one third]. Therefore, in giving credit for your guilty plea, the sentence shall be [4] years”.*

### **Example:**

*The following is an example of the process of the court sentencing an accused person who pleaded guilty to an offence of assault causing actual bodily harm (s.241 of the Penal Code).*

*Step 1: This offence has a maximum sentence of 5 years imprisonment and no minimum;*

*Step 2: The court considers the seriousness of the offence and decides on the facts of the case that it is at the high range of 3 to 5 years;*

*Step 3: The court considers aggravating and mitigating factors and considers it should be 4 years;*

*Step 4: The Court considers the accused's personal circumstances, impact on victim, etc. and reduces the sentence to 3½ years;*

*Step 5: The court determines the appropriate term of sentence would be 3½ years if the accused had been convicted after trial;*

*[NB: The sentence of 3½ years would have been the sentence if the accused had pleaded not guilty and had been convicted after a trial.]*

*Step 6: However, the accused had pleaded guilty so no trial was necessary. The court considers that this guilty plea has saved considerable time, expense to the state, and avoided putting the victim through a court process. It is also evidence of the accused's remorse. He admitted the offence at arrest, at police interrogation, and at the first time the case was in court.*

*The court gives the accused the maximum credit for this of  $\frac{1}{3}$  of the actual sentence. As such, the court reduces his sentence by  $\frac{1}{3}$  from 3½ years to 28 months in prison.*

*The accused is sentenced to 28 months imprisonment.*

*Step 7: The court sentences the accused to 28 months in prison but, in announcing the length of sentence give the above reasons to explain the basis upon which this was made.*

### **Time already spent in custody to be taken into account:**

If a person has been remanded in custody for any period awaiting trial and/or sentence, then at the time of the sentence the court should take into account the period spent in remand. This applies whether the sentence is mandatory or discretionary<sup>87</sup> and where an accused person has been committed for sentence or confirmation of sentence.<sup>88</sup> The time spent in custody includes all periods of detentions as a result of the offence of which he is being sentenced and shall include detention by police and at prison.

The Totality Principle and whether to impose concurrent or consecutive sentences  
In the event of conviction of more than one offence, consider the Totality Principle and whether to impose a consecutive or concurrent sentences.<sup>89</sup>

### **Step 6: Pronounce the sentence and ancillary orders.**

The pronouncement of the sentence accompanied by reasons is normally followed by ancillary orders where appropriate. Such orders may include:

- (a) Costs – the court may order a convicted person to pay costs to the public or private prosecutor as it may deem fit.<sup>90</sup>
- (b) Compensation – compensation can be awarded to any person who has suffered personal injury or material loss in consequence of the offence and that substantial compensation would be recoverable in a civil suit. The court can award such compensation (in kind or in money), as it considers fair and reasonable. Awarding compensation to victims of a sexual offence is mandatory<sup>91</sup>. Compensation is not permitted for a capital offence.<sup>92</sup>

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87 Section 172 (2) (c) of the Criminal Procedure Act [Cap. 20 R.E. 2022], Augustino Mponda vs. Republic [1991] T.L.R. 97, James Barnabas alia King Mazishi vs. Republic, Criminal Appeal No. 221 of 2004 (Unreported), R vs. Willy Walosha, Criminal Appeal No. 7 of 2002, Katinda Simbila @ Ng'waninana vs. Republic Criminal Appeal No. 15 of 2008 and Nyanzala Madaha vs. Republic, Criminal Appeal No. 135 of 2005 (All unreported).

88 Section 172 (2) (a) of the Criminal Procedure Act [Cap. 20 R.E. 2022] and Section 3 and 7(1) of the Primary Courts Criminal Procedure Code (Third Schedule to the Magistrates' Courts Act [Cap. 11 R.E. 2019]).

89 Para. 1.7 of Chapter One of these Guidelines.

90 Section 345 of Criminal Procedure Act [Cap. 20 R.E. 2022].

91 Section 348A of the Criminal Procedure Act [Cap. 20 R.E. 2022].

92 Section 348 to 350 of the Criminal Procedure Act [Cap. 20 R.E. 2022].

An order for compensation or fine should be made to take effect immediately after the expiration of the appeal period.<sup>93</sup>

- (c) Forfeiture and confiscation of any property used (or intended to be used) for the purpose of committing or facilitating the commission of an offence - Along with the general powers for forfeiture provided for under the CPA,<sup>94</sup> there are specific provisions regarding forfeiture under other laws (e.g., the Wildlife Conservation Act,<sup>95</sup> the Fisheries Act,<sup>96</sup> the Forest Act,<sup>97</sup> the Mining Act,<sup>98</sup> the Economic and Organized Crime Control Act<sup>99</sup>, and the Drugs Control Enforcement Act).<sup>100</sup> In case an application is made for confiscation of an asset under the Proceeds of Crime Act<sup>101</sup>, before the accused has been sentenced, the court may, if satisfied that it is reasonable to do so in all the circumstances, defer passing sentence until it has determined the application for the confiscation order.
- (d) Disposal of exhibits - the disposal should be in accordance with the provisions of the Criminal Procedure Act<sup>102</sup> and the Exhibits Management Guidelines.<sup>103</sup>

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93 Zakayo Pwere vs. Republic [1981] T.L.R. 82.

94 Sections 351 and 352 of the Criminal Procedure Act [Cap. 20 R.E. 2022]

95 Section 111 Wildlife Conservation Act [Cap. 283 R.E. 2022]

96 Section 38 and 39 of the Fisheries Act [Cap. 279 R.E. 2002].

97 Section 97 of the Forests Act [Cap. 323].

98 Section 91(2)(c) of the Mining Act [Cap. 123 R.E. 2019].

99 Section 23(3) Economic and Organised Crime Control Act [Cap. 200 R.E. 2022].

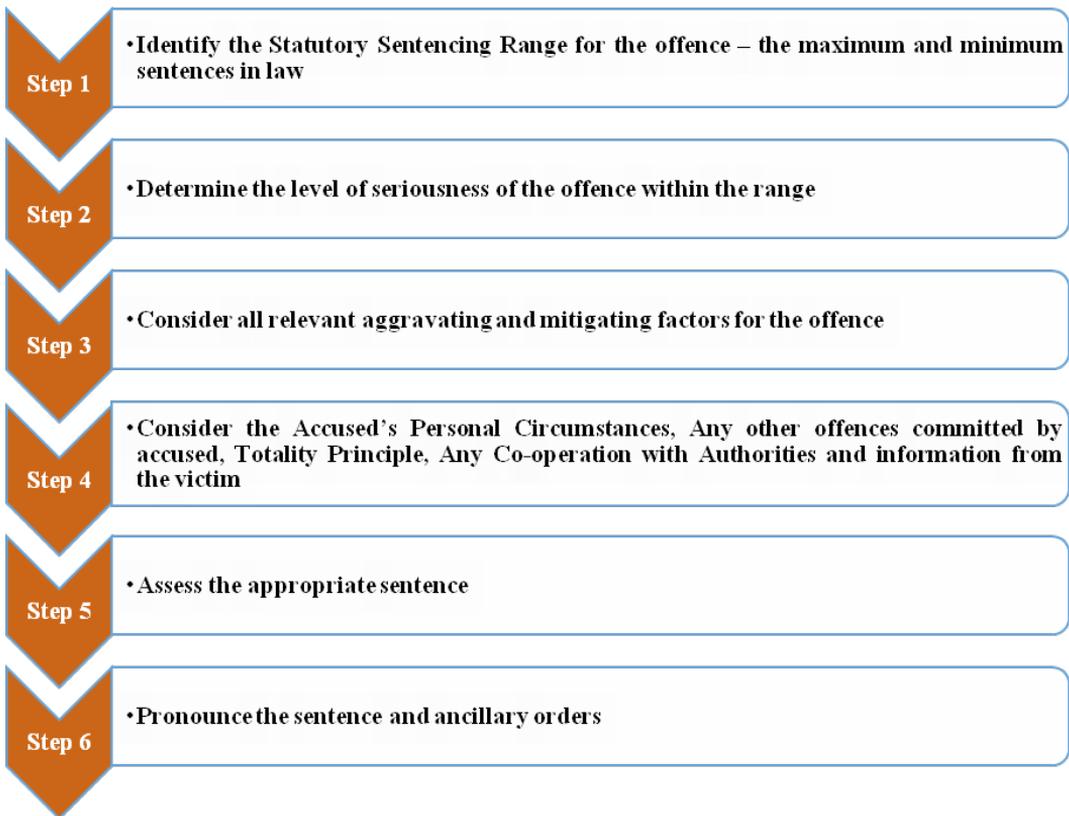
100 Section 49 of the Drugs Control and Enforcement Act [Cap. 95 R.E. 2022]

101 Section 13(2) of the Proceeds of the Crime Act [Cap. 256 R.E. 2022].

102 Section 353(1) and (2) of the Criminal Procedure Act [Cap. 20 R.E. 2022].

103 The Exhibits Management Guidelines, 2020.

## SENTENCING FLOW CHART



### 2.4. Sentencing in Absentia

The accused may be sentenced notwithstanding his absence. A sentence in absentia may be imposed in circumstances where an accused fails to appear on the date fixed for sentencing hearing or passing of a sentence. However, before a sentence in absentia is imposed, the court must satisfy itself that the accused’s attendance cannot be secured without undue delay or expense and the prosecution is accorded an opportunity to address the court on the appropriate sentence.

In the event the accused appears or is arrested after sentence in absentia, the court must afford him the right to be heard on reasons of his absence. If the court is satisfied that his absence was due to causes beyond his control, it shall set aside the sentence, proceed to re-conduct a sentencing hearing and pass an appropriate sentence in accordance with the provisions of sections 236 and 320 of the CPA and section 39 of the PCCPC.

## **2.5. Commencement of Custodial Sentence**

A custodial sentence shall start to run when sentence is imposed or confirmed.

## **2.6. Suspension of Execution of a Sentence of Imprisonment in Default of Fine**

Where an offender has been sentenced to a fine only and to imprisonment in default of payment of fine, the court may suspend execution of the prison sentence in default of payment of fine on the following conditions:

- (a) Execution of a bond, with or without sureties;
- (b) The fine should be paid within a period not exceeding fifteen days or such further period as may be extended from time to time but not exceeding fifteen days; and
- (c) Upon default, the court may order a sentence of imprisonment be executed at once.<sup>104</sup>

## **2.7. Fine, Costs or Compensation by Installment**

Where an offender has been sentenced to a fine only or to imprisonment in default of payment of fine, costs or compensation, the court may order the fine, costs or compensation to be paid by installments. The outstanding installment should be paid on the date fixed by the court unless such period is extended.<sup>105</sup>

## **2.8. Sentencing on Appeal or Revision**

It is settled law that sentencing is considered the primary prerogative of trial courts and they enjoy a wide discretion to determine the type and severity of a sentence on a case-by-case basis. In doing so, they have to consider the gravity of the offence, the circumstances of the offender, and the public interest. An appellate court has a limited role in sentencing.<sup>106</sup> It will not ordinarily interfere with the discretion exercised by a trial magistrate or judge in a matter of sentence neither can it interfere with a sentence on the ground that if it were sitting as a trial court, it would have imposed a different sentence. The following are the circumstances under which the appellate court may interfere with a sentence imposed by the lower court:<sup>107</sup>

<sup>104</sup> Section 330(1) and (2) of the Criminal Procedure Act [Cap. 20 R.E 2022].

<sup>105</sup> Section 330 (3) and (4) of the Criminal Procedure Act [Cap. 20 R.E 2022].

<sup>106</sup> DPP vs. Shida Manyama@ Selemani Mabuba (Criminal Appeal 285 of 2012) [2015] TZCA 168 -TanzLII.

<sup>107</sup> Swalehe Ndungaji Lungu vs. Republic, Criminal Appeal No. 84 of 2002, Mashinika Mswanzali @Shine vs. Republic, Criminal Appeal No. 416 of 2017, Katinda Simbila and Tofiki Juma vs. Republic, Criminal Appeal No. 418 of 2005 and Fortunatus Frugence vs. Republic, Criminal Appeal No. 120 of 2007 (All unreported).

- (a) where the trial court has acted upon some wrong principle;
- (b) where the sentence is manifestly excessive as to shock or where the sentence is manifestly inadequate;
- (c) where a trial court overlooked a material factor.<sup>108</sup> For example, where a plea of guilty was not considered or where the trial court did not consider the time spent in remand by an accused person;
- (d) where the sentence has been based on irrelevant considerations such as gender, race or religion of the offender; or
- (e) where the sentence is plainly illegal.<sup>109</sup>

## **2.9. Sentencing of Children**

The Law of the Child Act defines a child to be a person under the age of eighteen.<sup>110</sup> A child for purpose of sentencing, includes a person who was under eighteen at the time he committed the offence. On the whole, the procedure for sentencing a child is governed by the Law of the Child Act<sup>111</sup> and the Law of the Child (Juvenile Court Procedure) Rules, 2016.<sup>112</sup>

### **2.9.1. Sentencing Process under the Law of the Child Act**

Before passing a sentence, the court shall take into account such information as to the child's character, antecedents, home life, occupation, and health as may enable it to deal with the case in the best interests of the child.<sup>113</sup> In particular, it shall consider the following:

- (a) the social enquiry report;
- (b) any plea of mitigation made by the child or made on his behalf;
- (c) the culpability of the child and the harm caused, intended or foreseeable, taking into account aggravating and mitigating factors relating to the offence;
- (d) that placement in an approved school should only be imposed as an exceptional measure, as a last resort and for the shortest appropriate period of time; or
- (e) whether a discharge or a non-custodial sentence would be in the best interests of the child and serve the interests of justice.

<sup>108</sup> Nemes Myombe Ntalanda vs. Republic (Criminal Appeal No. 1 of 2019) [2021] TZCA 513-TanzLII.

<sup>109</sup> DPP vs. Focus Patric Munishi (Criminal Appeal No. 672 of 2020) [2022] TZCA 468-TanzLII.

<sup>110</sup> Section 4 of The Law of the Child Act [Cap. 13 R.E. 2019].

<sup>111</sup> [Cap. 13 R.E. 2019].

<sup>112</sup> [GN. No. 182 of 2016].

<sup>113</sup> Section 111 of the Law of the Child Act, [Cap. 13 R.E. 2019] and Rule 49(2) Law of the Child (Juvenile Court Procedure) Rules, 2016 [GN. No. 182 of 2016].

### **2.9.2. Social Enquiry Report**

Before the court passes a sentence, it shall require a social enquiry report to be prepared<sup>114</sup> by a social welfare officer within 14 days.<sup>115</sup> A social enquiry report shall contain the following:<sup>116</sup>

- (a) the child's background and other material circumstances likely to be of assistance to the court;
- (b) present family circumstances and the home life experienced by the child;
- (c) whether the child attends school or any training programme or is employed;
- (d) the child's state of health;
- (e) any previous offences the child may have committed;
- (f) assessment of the chances of the child re-offending or causing serious harm; and
- (g) recommendations on the appropriate sentence taking into account the purpose of sentence which is rehabilitation and assisting a child to be a constructive member of his family in particular and community at large.

The social enquiry report shall be factual, objective and unbiased, with clearly identified recommendations and options for passing a sentence on the child.

### **2.9.3. Forms of Sentence for a Child in Conflict with the Laws**

The following are the sentences that may be imposed against a child:

- (a) discharge the child without making any order;<sup>117</sup>
- (b) repatriation at the expense of the government to his home or district of origin within Tanzania;<sup>118</sup>
- (c) being handed over to the care of a fit person or institution named in the order if they are willing to undertake such care;<sup>119</sup>
- (d) conditional discharge with or without either (1) a surety from parents/guardians or (2) conditions;
- (e) probation order;
- (f) fine, costs or compensation; or
- (g) committal to custody at an approved school.<sup>120</sup>

114 Rule 32(5) of The Law of the Child (Juvenile Court Procedure) Rules, 2016 [GN. No. 182 of 2016].

115 Rule 46(4) of The Law of the Child (Juvenile Court Procedure) Rules, 2016 [GN. No. 182 of 2016].

116 Rule 47 (1) of The Law of the Child (Juvenile Court Procedure) Rules, 2016 [GN. No. 182 of 2016].

117 Section 119(2)(a) of The Law of the Child Act [Cap. 13 R.E. 2019].

118 Section 119(2)(b) of The Law of the Child Act [Cap. 13 R.E. 2019].

119 Section 119(2)(c) of The Law of the Child Act [Cap. 13 R.E. 2019].

120 Section 120 of The Law of the Child Act [Cap. 13 R.E. 2019].

## 2.9.4. Conditional Discharge

Where a child is convicted of an offence, the court may make an order discharging the offender on the condition to enter into a recognizance to be of good behaviour.<sup>121</sup> The period of good behaviour should be specified but should not exceed three (3) years.<sup>122</sup> An order for conditional discharge should not be made against a child convicted of homicide.<sup>123</sup>

In sentencing a child to conditional discharge, the court may order:

- (1) Conditional discharge with financial surety from a parent or guardian or the child - However, conditional with financial surety cannot be required where a guardian or parent does not have the financial means to pay.
- (2) Conditional discharge with any or a combination of the following:
  - (a) supervision order: the placement of the child under the supervision of a parent, guardian, relative or head of the social welfare department. The person or body chosen should be named in the order. If there is no parent, guardian or relative willing to supervise, then the head of social welfare department shall be appointed;
  - (b) an oral or written apology to a specified person(s) or institution(s);
  - (c) referral to a community rehabilitation or reintegration programme;
  - (d) referral to counselling or therapy;
  - (e) restitution of a specified object to a specific victim(s) where the object can be returned or restored;
  - (f) provision of some limited service or benefit to the victim(s). Any service or benefit must comply with Part VII of the Act which regulates the employment of children;
  - (g) provision of some limited service or benefit to the community when there is no identifiable person(s) or institution for restitution; or
  - (h) referral of the child to family group conferencing or to victim offender mediation.

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<sup>121</sup> Rule 50(1) of The Law of the Child (Juvenile Court Procedure) Rules, 2016 [GN. No. 182 of 2016].

<sup>122</sup> Rule 50(1) of The Law of the Child (Juvenile Court Procedure) Rules, 2016 [GN. No. 182 of 2016].

<sup>123</sup> Section 116 of The Law of the Child Act [Cap. 13 R.E. 2019].

### **2.9.4.1. Child protection referral**

Where the child who has been released on conditional discharge or on probation has no fixed abode or has no parental care, a child protection referral shall be made to the relevant social welfare department.<sup>124</sup>

### **2.9.4.2. Probation order**

When a conditional discharge is not sufficient, the court shall consider imposing a probation order.<sup>125</sup> A probation order may be subject to one or more of the following conditions:

- (a) Reporting to a relevant social welfare officer at specified times and places;
- (b) Obeying any instructions of the social welfare officer;
- (c) Reporting any changes of address, school or employment;
- (d) Not leaving an area of residence without permission;
- (e) Refraining from contacting or communicating with a specified person(s);
- (f) Refraining from entering specified premises or a specified area;
- (g) Obeying school rules or home rules; or
- (h) Additional conditions to attend school, reside at a particular place, undergo treatment or counselling, attend rehabilitation or reintegration programme, or not to use alcohol or drugs.

### **2.9.5. Committal to an Approved School**

As a matter of last resort, the court may order that a child be committed to custody at an approved school.<sup>126</sup> It may only make this order if it considers:

- (a) the offence is a serious violence;
- (b) as a result of the conviction, he is deemed to be a habitual offender;
- (c) if the offence had been committed by an adult, it would have been punishable by a custodial sentence; or
- (d) the court believes there is a significant risk or harm to members of the public.

Approved school order cannot be made unless the patron or manager of the approved school to which the child is to be committed has informed the court that he has a vacancy which may be filled by the person in respect of whom it is proposed to make the order.<sup>127</sup>

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<sup>124</sup> Rule 50(7) and 52(6) of the Law of the Child (Juvenile Court Procedure) Rules, 2016 [GN. No. 182 of 2016].

<sup>125</sup> Rule 50(1) of the Law of the Child (Juvenile Court Procedure) Rules, 2016 [GN. No. 182 of 2016].

<sup>126</sup> Rule 54 of the Law of the Child (Juvenile Court Procedure) Rules, 2016 [GN. No. 182 of 2016].

<sup>127</sup> Section 120(2) of the Law of the Child Act [Cap. 13 R.E. 2019].

The order should be for the shortest appropriate period of time not exceeding three years or until the child attains the age of eighteen, whichever is earlier. The child cannot be committed to an approved school merely on the ground that he has no accommodation or parental care. In such a case, the court has to issue a child protection referral to the relevant social welfare department.<sup>128</sup>

### **2.9.6. Fine, Costs and Compensation**

When a child is convicted of any offence for which a fine, costs or compensation may be imposed, the court may award a fine, costs or compensation alone or in addition to any other punishment if it considers it is in the best interests of the child. The fine, costs and compensation may be paid by the parent, guardian or relative of the child.

The court cannot order fine, costs or compensation to be paid by the parent, guardian, or relative of the child if it is satisfied that the parent, guardian or relative of the child, as the case may be, cannot be found or that he has not contributed to the commission of the offence by neglecting to exercise due care of the child. However, before making such an order, the parent, guardian or relative must be given an opportunity to be heard, unless after having been required to attend, he fails to do so.<sup>129</sup>

### **2.9.7. Prohibition of Imprisonment and Death Penalty on a Child Offender**

A child may not be sentenced to imprisonment<sup>130</sup> or death.<sup>131</sup> The child convicted of an offence punishable by death, has to be detained at the President's pleasure.<sup>132</sup>

### **2.9.8. Appeals**

The court shall, on conviction and sentence, inform the parties that they have 14 days in which to enter an appeal.<sup>133</sup>

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<sup>128</sup> Rule 54(3) and (4) of The Law of the Child (Juvenile Court Procedure) Rules, 2016 [GN. No. 182 of 2016].

<sup>129</sup> Section 118 of The Law of the Child Act, [Cap. 13 R.E. 2019] and Rule 51(1) of the Law of the Child (Juvenile Court Procedure) Rules, 2016 [GN. No. 182 of 2016].

<sup>130</sup> Section 119 of The Law of the Child Act, [Cap. 13 R.E. 2019].

<sup>131</sup> Section 26(2) of the Penal Code [Cap. 16 R.E. 2022].

<sup>132</sup> Section 26(2) of the Penal Code [Cap 16 R.E. 2022] and Matiko Chandruk @ Kehu vs. Republic Criminal Appeal No.139 of 2020 (Unreported).

<sup>133</sup> Rule 123 of the Law of the Child (Juvenile Court Procedure), 2016 [GN. No. 182 of 2016].

# APPENDIX A

## GUIDANCE ON DIFFERENT TYPES OF SENTENCES

### 1. Death

A death sentence cannot be imposed upon a pregnant woman<sup>134</sup> and a person who at the time of commission of the offence was under 18 years of age.<sup>135</sup>

### 2. Imprisonment

Since a custodial sentence involves curtailment of one's freedom, such sentence should be passed as a matter of last resort unless the law requires otherwise. Where the law provides for a sentence of imprisonment, accused person may be sentenced to pay a fine in addition to, or instead of imprisonment.<sup>136</sup> Furthermore, a custodian sentence should not be imposed on the accused on account of his good financial standing on the basis that if a fine were to be imposed, he would be able to pay it easily. In case the law provides for a sentence of imprisonment and an option of a fine, a first offender should be sentenced to a fine save where the offence is grave or widespread in the area.<sup>137</sup>

### 3. Fine

Where a fine is imposed under any law, in the absence of express provisions relating to that fine, the following should be taken into account:

- (a) the capacity of the accused to pay the fine must be considered along with the gravity of the offence<sup>138</sup>;
- (b) if no sum is expressed to which the fine may be extended, the fine which may be imposed is unlimited but shall not be excessive<sup>139</sup>; or
- (c) the fine should be one which an accused person can reasonably be expected to pay.<sup>140</sup>

Where an offence may be punishable by a fine and/or imprisonment, the

<sup>134</sup> Section 26 (1) of the Penal Code [Cap. 16 R.E 2022].

<sup>135</sup> Section 26 (2) of the Penal Code [Cap. 16 R.E 2022] and Matiko Chandruk @ Kehu vs. R Criminal Appeal No. 139 of 2020 (Unreported).

<sup>136</sup> Section 27(2) of the Penal Code [Cap. 16 R.E 2022] and Tabu Fikwa vs. R., [1988] T.L.R 48.

<sup>137</sup> Anania Clavery Betela vs. Republic, Criminal Appeal No. 355 of 2017 (Unreported).

<sup>138</sup> Ally and Another vs. Republic (1972) H.C.D. No.115 referred to in B. D. Chipeta, *A Handbook for Public Prosecutors*, (2007, 3<sup>rd</sup> ed.,) pg. 75.

<sup>139</sup> Section 29(a) of the Penal Code [Cap. 16 R.E. 2022].

<sup>140</sup> Salum Shabani vs. Republic [1982] TZHC 8-TanzLII.

decision is a matter for the discretion of the court.<sup>141</sup> Where the statutory provision creating an offence explicitly mentions both imprisonment and fine as methods of punishment, this indicates that a fine has been envisaged by the legislature as the principal mode of punishment, and imprisonment should not normally be passed.<sup>142</sup> If an offence has a mandatory sentence of a fine (e.g., wildlife offences based on the value of the item), then this must be imposed.

#### **4. Sentence in Default of Payment of Fine**

If the court decides that the appropriate level of sentence is only a fine, then it should set a term of imprisonment in default of payment. Provided that:

- (a) the default sentence should not be longer than 6 months unless the law allows a longer period<sup>143</sup>;
- (b) the court may suspend sentence of imprisonment in default of fine up to 15 days to allow the offender to pay the fine and may extend this period<sup>144</sup>; or
- (c) the court may also direct that payment of fine be made by installments.<sup>145</sup>

#### **5. Compensation**

Depending on the circumstances of each case, compensation may be awarded either in addition to or in substitution of any other punishment except the death sentence.<sup>146</sup> Compensation may be awarded to a person who has suffered material loss or personal injury in consequence of the offence committed and that substantial compensation is, in the opinion of the court, recoverable by that person by way of a civil suit. Compensation to victims of sexual offences is mandatory and should be commensurate to possible damages obtainable by a civil suit by the victim of the sexual offence for injuries sustained by the victim in the course of the offence being perpetrated against him or her.<sup>147</sup>

Compensation may also be awarded to any bona fide purchaser of any property in relation to which the offence was committed for the loss of such property in circumstances where the property is restored to the possession of the person

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141 Section 29(b) of the Penal Code [Cap. 16 R.E. 2022].

142 *Bakari s/o Hamis vs. Republic* [1969] H.C.D. No. 311.

143 Section 336 of the Criminal Procedure Act [Cap. 20 R.E. 2022].

144 See Chapter 2 on Suspension of Sentences.

145 Section 330 of the Criminal Procedure Act [Cap. 20 R.E. 2022] and see also part on payment by instalments.

146 Article 107A (2) (c) of the Constitution and Section 31 of the Penal Code [Cap. 16 R.E. 2022].

147 Section 348A of Criminal Procedure Act [Cap. 20 R.E. 2022].

entitled to it.<sup>148</sup> Compensation may be in money or kind, as the court deems fair and reasonable.<sup>149</sup> Compensation takes effect after it is ordered. However, it cannot be paid before the period allowed for presenting the appeal has elapsed or, if an appeal is presented, before the decision on the appeal.<sup>150</sup>

## **6. Corporal Punishment**

Corporal punishment cannot be imposed save for offences specified in the Schedule to Corporal Punishment Act<sup>151</sup>. This punishment may be imposed in lieu or in addition to other punishments<sup>152</sup> and is limited to a maximum of 24 strokes of the cane.<sup>153</sup>

## **7. Forfeiture**

Forfeiture applies to any property in possession or control of the convict at the time of his apprehension that was used or intended to be used for the purpose of committing or facilitating the commission of an offence. The court may direct the manner of disposal of the forfeited property.<sup>154</sup>

## **8. Probation with or without Bond**

A probation order may be imposed to an accused when, due to his age, character, antecedents, health or mental condition, the gravity of the offence or circumstances under which the offence was committed, it is expedient to release the offender on probation. However, this order cannot be made in favour of a subsequent offender or where the offence is punishable by death or sets a minimum sentence. The minimum probation period is one year and the maximum period is three years<sup>155</sup>. In case of breach of conditions, the offender may be arrested and after being heard, sentenced.<sup>156</sup>

The conditions of the bond must be certain and not unduly harsh, unreasonable or needlessly onerous. For instance, a condition of a bond that an accused who resides and works for gain within Arusha City, but his family lives in Engare Olmotonyi, not to enter the latter location without the permission of the sentencing judge or magistrate is harsh, unreasonable and onerous.<sup>157</sup>

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148 Section 348(2) of Criminal Procedure Act [Cap. 20 R.E. 2022].

149 Section 348 (1) of Criminal Procedure Act [Cap. 20 R.E. 2022].

150 Section 348(3) of the Criminal Procedure Act [Cap. 20 R.E. 2022].

151 Section 3 of the Corporal Punishment Act [Cap. 17 R.E. 2019].

152 Section 5 of the Corporal Punishment Act [Cap. 17 R.E. 2019].

153 Section 4 and 8 (2) of the Corporal Punishment Act [Cap. 17 R.E. 2019].

154 Section 351 of the Criminal Procedure Act [Cap. 20 R.E. 2022].

155 Section 337 of the Criminal Procedure Act [Cap. 20 R.E. 2022] and section 3 of the Probation of Offenders Act [Cap.247 R.E. 2002].

156 Section 7 of the Probation of Offenders Act [Cap.247 R.E. 2002].

157 E. M. K. Rutakangwa, Criminal Justice System: Sentencing by Courts in Tanzania, presented at the induction Course of newly appointed High Court Judges of Tanzania on 6th December, 2019.

## **9. Community Service**

In deserving cases, the court may sentence an accused person to community service instead of imprisonment after making determination under the Community Services Act<sup>158</sup>. An order for community service can be made to offenders convicted of an offence punishable by imprisonment for a term not exceeding three years (with or without a fine) or imprisonment for a term exceeding three years but the court determines a term of imprisonment for three years or less with or without a fine option.<sup>159</sup> The officer in charge of the prison may as well recommend a prisoner for community service<sup>160</sup>.

## **10. Security for Keeping Peace and Good Behaviour**

An order of security for keeping peace and good behavior may be given either alone or in addition to any punishment upon recognizance, with or without sureties, on condition to keep peace and be of good behavior for a time specified by a court. This order cannot be made in respect of a person convicted of an offence punishable with death.<sup>161</sup>

## **11. Absolute or Conditional Discharge**

The orders of absolute or conditional discharge can be given where having regard to the circumstances including the nature of the offence and the character of the offender, it is inexpedient to inflict punishment and a probation order is not appropriate. The order for conditional discharge should specify the period within which the order shall exist but the period shall not exceed 12 months. In case of breach during the period of conditional discharge, the accused will be liable to be sentenced for the original offence.<sup>162</sup>

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158 [Cap. 291].

159 Section 3 of the Community Service Act, [Cap. 291 R.E. 2002].

160 Section 51A of the Prisons Act [Cap. 58 R.E. 2002] as amended by Written Laws (Miscellaneous Amendments) Act No. 9 of 2002.

161 Section 33 of the Penal Code, [Cap.16 R.E. 2022].

162 Section 38 of the Penal Code, [Cap. 16 R.E. 2022].

# APPENDIX B

## SENTENCE GUIDELINES FOR SPECIFIC OFFENCES

### 1. Manslaughter

Name of Offence: Manslaughter c/ss 195, 199 and 201 of the Penal Code				
STEP 1: Maximum and Minimum Sentences in Law				
Maximum Sentence	Life Imprisonment			
Minimum	None			
Other Statutory Guidance	None			
STEP 2: Determine the level of seriousness of the offence – High, Medium, Low - and the appropriate starting point, sentencing range and maximum sentence for this offence				
		Starting Point	Sentence Range	Maximum Sentence
High Level	<ul style="list-style-type: none"> <li>· Use of dangerous weapon(s) or substance.</li> <li>· Serious multiple wounds.</li> <li>· The offence was motivated by gang.</li> <li>· The offence was intended to obstruct or interfere with the course of justice.</li> <li>· Death caused by domestic violence.</li> <li>· Death caused by sexual sadistic conducts.</li> <li>· Killing of vulnerable person(s) e.g., age, disability, gender, etc.</li> <li>· The killing of two or more persons.</li> <li>· Death based on race, tribe, ethnicity, religion, sexual orientation and disability of the victim.</li> <li>· Killing of public officials.</li> </ul>	10 years	10+	Life imprisonment
Medium Level	<ul style="list-style-type: none"> <li>· No use of weapon.</li> <li>· Non-fatal single blow that caused death after sometimes.</li> </ul>	4years	4+	10 years
Low Level	<ul style="list-style-type: none"> <li>· Death caused by recklessness, negligence.</li> <li>· Reasonable chastisement by parent/guardian.</li> <li>· Applying excessive force in claim of right.</li> <li>· Use of unreasonable force in self-defence or property or person.</li> <li>· Infanticide.</li> <li>· High degree of provocation depending on the extent of excitement.</li> <li>· Mental state of offender not amounting to insanity in law (temperament).</li> </ul>	Absolute or Conditional Discharge	0+	4 years
STEP 3: Consider the relevant aggravating and mitigating factors for the offence				

Aggravating Factors	Mitigating Factors
<ul style="list-style-type: none"> <li>· The use and nature of any weapon.</li> <li>· Motivated by revenge.</li> <li>· Offence was motivated by the desire for financial gain.</li> <li>· A high degree of preparation and planning.</li> <li>· The offender was an instigator or played a major role when the offence was committed by more than one person.</li> <li>· Vulnerability of the part of the body towards which the blow was directed.</li> <li>· The duration of the offence and any prolonged suffering to the victim.</li> <li>· The offence involved a high degree of fear to be caused to the victim.</li> <li>· The offence took place in front of vulnerable persons or family members of the victim.</li> </ul>	<ul style="list-style-type: none"> <li>· The offender was part of a group and clearly had a subordinate or lesser role when the offence was committed by one or more persons.</li> <li>· Remorse: for example, rushing the victim to hospital after the assault.</li> <li>· An element of self-defence (not amounting to an absolute defence).</li> <li>· An element of provocation (not amounting to immediate provocation).</li> </ul>
<p><b>STEP 4: Consider the Accused's Personal Circumstances, any other Offences committed by the accused, Co-accused's Sentence, any Co-operation with Authorities and information from the victim</b></p>	
<ul style="list-style-type: none"> <li>· Age and Health.</li> <li>· Any physical or mental disability.</li> <li>· Family circumstances, dependants and the impact of any sentence upon them.</li> <li>· Previous conviction or any breach of court orders; for example, to jump bail.</li> <li>· Community work, other good work or indication of good character.</li> <li>· The Income of the accused.</li> <li>· Consider other previous convictions (if any).</li> <li>· Co-accused's sentence (if any).</li> <li>· Co-operation with authorities (if any) – the court should be provided with reliable information from the prosecution that the offender provided substantial cooperation in relation to this offence or the disruption of other offences. If substantial this could result in substantially reduced sentence.</li> <li>· Views of the victim or members of the victim's family.</li> </ul>	
<p><b>STEP 5: Assess the appropriate sentence level range (High, Medium, Low)</b></p>	
<ul style="list-style-type: none"> <li>· The level of seriousness of the offence - High, Medium or Low.</li> <li>· The aggravating and mitigating factors within that range Apply appropriate level of reduction in accordance with general guidance on reduction of sentences for a plea of guilty.</li> <li>· The court should state the sentence that would have been given if the accused had been found guilty after a contested trial and the amount of a reduction that has been given after the plea of guilty. (refer sentencing process on plea of guilty).</li> <li>· The court should take into account the period spent in remand.</li> </ul>	
<p><b>STEP 6: Pronounce the Sentence and ancillary orders</b></p>	
<p>Pronounce appropriate sentence followed by ancillary orders if any. Ancillary orders may be;</p> <ul style="list-style-type: none"> <li>· Costs;</li> <li>· Compensation, forfeiture, reparation, restitution; etc.</li> <li>· Order of destruction of noxious substances.</li> </ul>	

## 2. Grievous Harm

Name of Offence: Grievous Harm c/s 225 of the Penal Code				
STEP 1: Maximum and Minimum Sentences in Law				
Maximum Sentence	Seven Years			
Minimum	None			
Other Statutory Guidance	Sentencing Jurisdiction			
STEP 2: Determine the level of seriousness of the Offence and appropriate starting point, sentencing range and maximum sentence for such offence				
		Starting Point	Sentencing Range	Maximum sentence
High Level	<ul style="list-style-type: none"> <li>· Serious multiple wounds.</li> <li>· The offence was motivated by gang.</li> <li>· The offence was intended to obstruct or interfere with the course of justice.</li> <li>· Harm caused by domestic violence.</li> <li>· Harm caused by sexual sadistic conducts.</li> <li>· Causing permanent disability/ deformity.</li> <li>· Vulnerability of the victim e.g., age, disability, gender, etc.</li> <li>· Use of weapon.</li> </ul>	5 years	5+	7 years
Medium Level	<ul style="list-style-type: none"> <li>· Causing temporary disability/ deformity</li> <li>· No use of weapon</li> </ul>	3 years	3+	5 years
Low Level	<ul style="list-style-type: none"> <li>· Applying excessive force in claim of right or self defence</li> </ul>	Absolute or Conditional discharge	0+	3 years
STEP 3: Consider the relevant aggravating and mitigating factors for the offence				
Aggravating Factors		Mitigating Factors		
<ul style="list-style-type: none"> <li>· The use and nature of any weapon.</li> <li>· Motivated by revenge.</li> <li>· Offence was motivated by the desire for financial gain.</li> <li>· A high degree of preparation and planning.</li> <li>· The offender was an instigator or played a major role when the offence was committed by more than one person.</li> <li>· Vulnerability of the part of the body towards which the blow was directed.</li> <li>· The duration of the offence and any prolonged suffering to the victim.</li> <li>· The offence involved a high degree of fear to be caused to the victim.</li> <li>· The offence took place in front of vulnerable persons or family members of the victim.</li> </ul>		<ul style="list-style-type: none"> <li>· The offender was part of a group and clearly had a subordinate or lesser role when the offence was committed by one or more persons.</li> <li>· Remorse: for example, rushing the victim to hospital after the assault.</li> <li>· An element of self-defence (not amounting to an absolute defence).</li> <li>· An element of provocation (not amounting to immediate provocation).</li> </ul>		

**STEP 4: Consider the Accused's Personal Circumstances, any other Offences Committed by the accused, Any Co-operation with Authorities and information from the victim**

- Age and Health.
- Any physical or mental disability.
- Family circumstances, dependants and the impact of any sentence upon them.
- Previous conviction or any breach of court orders; for example, to jump bail.
- Community work, other good works or indication of good character.
- The accused's income.
- Other offences to be sentenced (if any).
- Co-accused's sentence (if any).
- Co-operation with authorities (if any) – the court should be provided with reliable information from the prosecution that the offender provided substantial cooperation in relation to this offence or the disruption of other offences. If substantial this could result in substantially reduced sentence.
- Views of the victim and victim's family.

**STEP 5: Assess the appropriate sentence level range (High, Medium, Low)**

- (i) The level of seriousness of the offence - High, Medium or Low.
- (ii) The aggravating and mitigating factors within that range.
- (iii) Apply appropriate level of reduction in accordance with general guidance on reduction of sentences for a plea of guilty.
- (iv) The court should state the sentence that would have been given if the accused had been found guilty after a contested trial and the amount of a reduction that has been given after the plea of guilty. (refer sentencing process on plea of guilty)
- (v) The court should take into account the period spent in remand.

**STEP 6: Pronounce the Sentence and ancillary orders**

Pronounce appropriate sentence followed by ancillary orders if any. Ancillary orders may be;

- Costs; and
- Compensation, forfeiture, reparation, restitution, etc.

### 3. Assaults Causing Actual Bodily Harm

Name of Offence: Assaults causing actual bodily harm c/s 241 of the Penal Code				
STEP 1: Maximum and Minimum Sentences in Law				
Maximum Sentence	Five years			
Minimum	None			
Other statutory guidance	Sentencing jurisdiction			
STEP 2: Determine the level of seriousness of the offence and appropriate starting point, sentencing range and maximum sentence for such offence				
		Starting Point	Sentence Range	Maximum Sentence
High Level	<ul style="list-style-type: none"> <li>· Serious multiple wounds.</li> <li>· The offence was influenced by gang.</li> <li>· The offence was intended to obstruct or interfere with the course of justice.</li> <li>· Harm caused by domestic violence.</li> <li>· Harm caused by sexual sadistic conducts.</li> <li>· Causing permanent disability/ deformity.</li> <li>· Vulnerability of the victim e.g., age, disability, gender, etc.</li> <li>· Use of weapon.</li> </ul>	3 years	3+	5 years
Medium Level	<ul style="list-style-type: none"> <li>· Causing temporary disability/ deformity.</li> <li>· No use of weapon.</li> </ul>	1 year, community service to 1 year	1+	3 years
Low Level	<ul style="list-style-type: none"> <li>· Reasonable chastisement by parent/ guardian.</li> <li>· Applying excessive force in claim of right.</li> </ul>	Absolute or Conditional discharge, fine, community service to 1 year	0+	1 year
STEP 3: Consider the relevant aggravating and mitigating factors for the offence				
Aggravating Factors			Mitigating Factors	

<ul style="list-style-type: none"> <li>· The use and nature of any weapon.</li> <li>· Motivated by revenge.</li> <li>· Offence was motivated by the desire for financial gain.</li> <li>· A high degree of preparation and planning.</li> <li>· The offender was an instigator or played a major role when the offence was committed by more than one person.</li> <li>· Vulnerability of the part of the body towards which the blow was directed.</li> <li>· The duration of the offence and any prolonged suffering to the victim.</li> <li>· The offence involved a high degree of fear to be caused to the victim.</li> <li>· The offence took place in front of vulnerable persons or family members of the victim.</li> </ul>	<ul style="list-style-type: none"> <li>· The offender was part of a group and clearly had a subordinate or lesser role when the offence was committed by one or more persons.</li> <li>· Remorse: for example, rushing the victim to hospital after the assault.</li> <li>· An element of self-defence (not amounting to an absolute defence).</li> <li>· An element of provocation (not amounting to immediate provocation).</li> </ul>
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**STEP 4: Consider the Accused’s Personal Circumstances, any other Offences Committed by the Accused, Co-Accused’s Sentence, Any Co-operation with Authorities and information from the victim**

- Age and Health.
- Any physical or mental disability.
- Family circumstances, dependants and the impact of any sentence upon them.
- Previous conviction or any breach of court orders; for example, to jump bail.
- Community work, other good works or indication of good character.
- The accused’s income.
- Other offences to be sentenced (if any).
- Co-accused’s sentence (if any).
- Co-operation with authorities (if any) – the court should be provided with reliable information from the prosecution that the offender provided substantial cooperation in relation to this offence or the disruption of other offences. If substantial this could result in substantially reduced sentence.
- Views of the victim and victim’s family.

**STEP 5: Assess the appropriate sentence level range (High, Medium, Low)**

- (a) The level of seriousness of the offence - High, Medium or Low.
- (b) The aggravating and mitigating factors within that range
- (c) Apply appropriate level of reduction in accordance with general guidance on reduction of sentences for a plea of guilty.
- (d) The court should state the sentence that would have been given if the accused had been found guilty after a contested trial and the amount of a reduction that has been given after the plea of guilty- (refer sentencing process on plea of guilty).
- (e) The court should take into account the period spent in remand.

**STEP 6: Pronounce a sentence and ancillary orders**

Pronounce appropriate sentence followed by ancillary orders if any. Ancillary orders may be:

- Costs; and
- Compensation, forfeiture, reparation, restitution, etc.

## 4. Corrupt Transactions

Corrupt Transactions (s. 15 of the PCCA).				
STEP 1: Maximum and minimum sentences in law				
Maximum	TZS. 1,000,000.00 or 5-years imprisonment or both			
Minimum	TZS. 500,000.00 fine or 3 years imprisonment or both			
Other Statutory guidance				
STEP 2: Determine the level of seriousness of the offence and appropriate starting point, sentencing range and maximum sentence for such an offence				
		Starting Point	Sentence Range	Maximum Sentence
High Level	<ul style="list-style-type: none"> <li>Financial gain/ loss intended or obtained was substantial and high value (more than 3,000,000.00 TZS.).</li> <li>A significant breach of trust or responsibility.</li> <li>Offence occurred over more than one occasion.</li> <li>Offence was sophisticated or otherwise involved significant planning.</li> <li>Attempt to manipulate public officials or public systems.</li> <li>Any use of threat, violence or sexual control.</li> </ul>	TZS. 750,001.00 or 4 years and a day or both	TZS. 750,001.00 +, or 4+ years or both	TZS. 1,000,000.00 or 5 years or both
Medium Level	<ul style="list-style-type: none"> <li>None of the high-level aggravating factors to make the offence “High Level” or mitigating factors to make it “low level”.</li> </ul>	TZS. 500,001.00 or 3 years and a day	TZS. 500,001 + or 3+ years	TZS. 750,000.00 or 4 years
Low Level	<ul style="list-style-type: none"> <li>The offence was an isolated incident without any significant premeditation or planning. It was unsophisticated.</li> <li>The financial gain achieved or sought was minimal (less than TZS. 500,000.00).</li> </ul>	TZS. 500,000.00 or 3 years	None	TZS. 500,000.00 or 3 years.
STEP 3: Consider the relevant aggravating and mitigating factors for the offence				
Aggravating Factors		Mitigating Factors		
<ul style="list-style-type: none"> <li>The offender was in a position of trust or responsibility for a public body or the offender sought to corrupt such a person.</li> <li>Offence resulted in significant financial gain/loss/ advantage.</li> <li>Significant prejudicial impact on a public body.</li> <li>Significant degree of planning, premeditation or deception.</li> <li>Offence committed against essential goods or services.</li> <li>Offence committed over a prolonged period of time or repeated conduct.</li> <li>If there were several people the offender had a significant role.</li> <li>The offence involved the corrupting of officials or public system.</li> <li>Offender made substantial attempts to hinder the investigation.</li> </ul>		<ul style="list-style-type: none"> <li>The offence was unsophisticated and opportunistic with no premeditation or planning.</li> <li>Offence not motivated by greed, personal gain or advantage.</li> <li>If part of a group the offender played a minimal role.</li> <li>Offender committed the offence due to high degree of pressure falling short of duress.</li> <li>Offender made financial amends for the offence.</li> </ul>		

**STEP 4: Consider the Accused's Personal Circumstances, any other offences committed by the accused, Co-Accused's Sentence, Any Co-operation with Authorities and information from the victim**

- Age and Health.
- Any physical or mental disability.
- Family circumstances, dependants and the impact of any sentence upon them.
- Previous conviction or any breach of court orders; for example, to jump bail.
- Community work, other good works or indication of good character.
- The accused's income.
- Other offences to be sentenced (if any).
- Co-accused's sentence (if any).
- Co-operation with authorities (if any) – the court should be provided with reliable information from the prosecution that the offender provided substantial cooperation in relation to this offence or the disruption of other offences. If substantial this could result in substantially reduced sentence.
- Views of the victim and victim's family.

**STEP 5: Assess the appropriate sentence level range (High, Medium, Low)**

- The level of seriousness of the offence - High, Medium or Low.
- The aggravating and mitigating factors within that range.
- Apply appropriate level of reduction in accordance with general guidance on reduction of sentences for a plea of guilty.
- The court should state the sentence that would have been given if the accused had been found guilty after a contested trial and the amount of a reduction that has been given after the plea of guilty. (refer sentencing process on plea of guilty)
- The court should take into account the period spent in remand.

**STEP 6: Pronounce the sentence giving reasons**

Pronounce appropriate sentence followed by ancillary orders if any. Ancillary orders may be:

- Costs; and
- Compensation, forfeiture, reparation, restitution, etc.

## 5. Corruption Offences (Other than Corrupt Transactions) under the PCCA

The following are economic offences specified under the Economic and Organized Crime Control Act.<sup>163</sup>

Name of Offences				
1. Bribery of a foreign official (s. 21(1) and (2) of the PCCA).				
2. Use of any document intended to mislead principal (s. 22 of the PCCA).				
3. Obtaining an advantage (s. 23(1) and (2) of the PCCA).				
4. Sexual or other favours (s.25 of the PCCA).				
5. Public officials failing to give accounts of properties (s.26 of the PCCA).				
6. Possession of unexplained property (s.27 of the PCCA).				
7. Embezzlement and misappropriation (s. 28 (1) and (2) of the PCCA).				
8. Diversion of government property (s.29 of the PCCA).				
9. Aiding and abetting any corruption offence (s.30 of the PCCA).				
10. Abuse of position (s.31 of the PCCA).				
11. Conspiracy (S.32 of the PCCA).				
12. Undue advantage in order for a public official to be influenced (s. 33(1) of the PCCA).				
13. Soliciting or accepting undue advantage for a public official (s. 33(2) of the PCCA).				
STEP 1: Maximum and Minimum Sentences in Law				
Offence		Abuse of position (s.31 of the PCCA).		
Maximum		30 years		
Minimum		20 years		
Other Statutory guidance		None		
STEP 2: Determine the level of seriousness of the offence and appropriate starting point, sentencing range and maximum sentence for such offence				
		Starting Point	Sentence Range	Maximum Sentence
High Level	<ul style="list-style-type: none"> <li>· Financial gain/ loss intended or obtained was substantial and high value (more than TZS. 3,000,000.00).</li> <li>· A significant breach of trust or responsibility.</li> <li>· Offence occurred over more than one occasion.</li> <li>· Offence was sophisticated or otherwise involved significant planning.</li> <li>· Attempt to manipulate public officials or public systems.</li> <li>· Any use of threat, violence or sexual control.</li> </ul>	25 years and a day	25+	30 years
Medium Level	<ul style="list-style-type: none"> <li>· None of the high-level aggravating factors to make the offence “High Level” or mitigating factors to make it “low level”.</li> </ul>	20 years and a day	20 +	25 years
Low Level	<ul style="list-style-type: none"> <li>· The offence was an isolated incident without any significant premeditation or planning. It was unsophisticated.</li> </ul>	20 years	None	20 years
STEP 3: Consider the relevant aggravating and mitigating factors for the offence				
Aggravating Factors			Mitigating Factors	

<sup>163</sup> Paragraph 21 of the First Schedule to Cap. 200.

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| <ul style="list-style-type: none"> <li>· The offender was in a position of trust or responsibility of a public body or the offender sought to corrupt such a person.</li> <li>· Offence resulted in significant financial gain, loss or advantage.</li> <li>· Significant prejudicial impact on a public body.</li> <li>· Significant degree of planning, premeditation or deception.</li> <li>· Offence committed against essential goods or services.</li> <li>· Offence committed over a prolonged period of time or repeated conduct.</li> <li>· If there were several people the offender had a significant role.</li> <li>· The offence involved the corrupting of officials or public system.</li> <li>· Offender made substantial attempts to hinder the investigation.</li> </ul> | <ul style="list-style-type: none"> <li>· The offence was unsophisticated and opportunistic with no premeditation or planning.</li> <li>· Offence not motivated by greed, personal gain or advantage.</li> <li>· If part of a group the offender played a minimal role.</li> <li>· Offender committed the offence due to high degree of pressure falling short of duress.</li> <li>· Offender made financial amends for the offence.</li> </ul> |
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**STEP 4: Consider the Accused’s Personal Circumstances, any other offences committed by the accused, Co-Accused’s Sentence, Any Co-operation with Authorities and information from the victim**

- Age and Health.
- Any physical or mental disability.
- Family circumstances, dependants and the impact of any sentence upon them.
- Previous conviction or any breach of court orders; for example, to jump bail.
- Community work, other good works or indication of good character.
- The accused’s income.
- Other offences to be sentenced (if any).
- Co-accused’s sentence (if any).
- Co-operation with authorities (if any) – the court should be provided with reliable information from the prosecution that the offender provided substantial cooperation in relation to this offence or the disruption of other offences. If substantial this could result in substantially reduced sentence.
- Views of the victim and victim’s family.

**STEP 5: Assess the appropriate sentence level range (High, Medium, Low)**

- The level of seriousness of the offence - High, Medium or Low.
- The aggravating and mitigating factors within that range
- Apply appropriate level of reduction in accordance with general guidance on reduction of sentences for a plea of guilty.
- The court should state the sentence that would have been given if the accused had been found guilty after a contested trial and the amount of a reduction that has been given after the plea of guilty. (refer sentencing process on plea of guilty).
- The court should take into account the period spent in remand.

**STEP 6: Pronounce the sentence giving reasons**

- Pronounce appropriate sentence followed by ancillary orders if any. Ancillary orders may be:
- Costs; and
  - Compensation, forfeiture, reparation, restitution, etc.

## 6. Possession of Small Quantity of Drugs and Use of Drugs (s. 17, 18 and 19 of the DCEA)

Name of Offences			
<ol style="list-style-type: none"> <li>1. Possession of small quantity of narcotic drugs or psychotropic substances for personal use (s. 17(1)(a)).</li> <li>2. Possession of small quantity of narcotic drugs other than those specified under s. 17(1)(a).</li> <li>3. Use, smoking, sniffing, injecting, etc., of drugs (s. 18(a)(b) &amp; (c)).</li> <li>4. Permission to use premises, enclosure or conveyance for preparation, smoking, selling, injecting, inhaling, sniffing a narcotic drug or psychotropic substance (s. 19(1)).</li> </ol>			
STEP 1: Maximum and Minimum Sentences in Law			
Offence	Possession of small quantity of narcotic drugs or psychotropic substances for personal use (cocaine, morphine, diacetyl-morphine or any other narcotic drug or any psychotropic substance specified by the Minister by notice in the Gazette (s. 17(1)(a)).		
Maximum	Fine of not less than TZS. 1,000,000.00 or 5 years imprisonment or both.		
Minimum	None (custodial sentence)		
Other statutory guidance	Sentencing jurisdiction on imposition of fine. “Small quantity” for s. 17(1) offences means: cannabis that does not exceed 50gm; cannabis resin or cannabis oil that does not exceed 5gm; cocaine/ heroin/ amphetamine/ Type stimulant (ATS)/ Lysergic Acid Diethylamide (LSD)/ Fentanyl or Fentanyl analogues not exceeding 2gm; khat that does not exceed 2kg; any other drug that does not exceed 10gm (Regulation 3 of the Drug Enforcement and Control Regulations, GN 173 of 2016).		
Offence	Possession of small quantity of narcotic drugs other than those specified under s. 17(1)(a) & (b)).		
Maximum	Fine of not less than TZS. 500,000.00 or 3 years imprisonment or both.		
Minimum	None (custodial sentence)		
Other Statutory guidance	Sentencing jurisdiction on imposition of fine		
Offence	Use, smoking, sniffing, injecting, etc., of drugs. (s. 18(a)(b) & (c)).		
Maximum	Fine of TZS. 1,000,000.00 or 3 years imprisonment or to both		
Minimum	None (custodial sentence)		
Other Statutory guidance	Sentencing jurisdiction on imposition of fine and if there is evidence that the offender is an addict and the offence is motivated by that addiction then the court should consider the appropriateness of a medical treatment as a sentence under s. 31 DCEA.		
Offence	Permission to use premises, enclosure or conveyance for preparation, smoking, selling, injecting, inhaling, sniffing a narcotic drug or psychotropic substance (s. 19(1)).		
Maximum	None		
Minimum	TZS. 5,000,000.00 or 3 years or to both		
Other statutory guidance	Sentencing jurisdiction on imposition of fine		
STEP 2: Determine the level of seriousness of the offence and appropriate starting point and sentencing range for such offence			
Section 17 (1) (a)			
	Starting Point	Sentence Range	Maximum Sentence

High Level	<ul style="list-style-type: none"> <li>· Significant influence on others in chain.</li> <li>· Commercial gain.</li> <li>· Previous conviction for drugs offences.</li> <li>· Offence committed while on bail.</li> <li>· Recent or relevant convictions for other offences.</li> </ul>	Fine of TZS. 3,000,001.00 or 3 years and a day or to both	Fine of TZS. 3,000,001.00 + or 3+ or both	Fine of TZS. 5,000,000.00 or 5 years or to both
Medium Level	<ul style="list-style-type: none"> <li>· Motivated by financial or other gain.</li> <li>· Isolated incident.</li> <li>· Primary carer for dependant family member.</li> <li>· Offender is an addict, particularly if taking steps towards rehabilitation.</li> </ul>	Fine of TZS. 2,000,0001.00 or 1 year and a day	Fine of TZS. 1,000,000.00 + or 1+	Fine of 3,000,000.00 or 3 years
Low Level	<ul style="list-style-type: none"> <li>· Involvement through youth, naivety or exploitation.</li> <li>· Mistaken belief of the offender regarding the type of drug, taking into account the reasonableness of such belief in all the circumstance.</li> <li>· Involvement due to pressure, intimidation or coercion falling short of duress.</li> <li>· Good character.</li> <li>· Mental disorder or serious health condition.</li> <li>· Age or lack of maturity.</li> </ul>	TZS. 1,000,000.00 or absolute or conditional discharge	TZS. 1,000,000.00 + or 0+	Fine of TZS. 2,000,000.00 or 1 year

Section 17 (1) (a) & (b)

		Starting Point	Sentencing Range	Maximum Sentence
High Level	<ul style="list-style-type: none"> <li>· Significant influence on others in chain.</li> <li>· Commercial gain.</li> <li>· Previous conviction for drugs offences.</li> <li>· Offence committed while on bail.</li> <li>· Recent or relevant convictions for other offences</li> </ul>	TZS. 1,000,001.00 or 2 years and a day or both	TZS. 1,000,001.00 + or 2+	TZS. 1,500,000.00 or 3years or both
Medium Level	<ul style="list-style-type: none"> <li>· Motivated by financial or other gain.</li> <li>· Isolated incident.</li> <li>· Primary carer for dependant family member.</li> </ul> <p>Offender is an addict, particularly if taking steps towards rehabilitation</p>	TZS. 500,001.00 or 1 year and a day	TZS. 500,001.00 + or 1 +	TZS. 1,000,000.00 or 2 years
Low Level	<ul style="list-style-type: none"> <li>· Involvement through youth, naivety or exploitation.</li> <li>· Mistaken belief of the offender regarding the type of drug, taking into account the reasonableness of such belief in all the circumstance.</li> <li>· Involvement due to pressure, intimidation or coercion falling short of duress.</li> <li>· Age or lack of maturity.</li> <li>· Good character.</li> <li>· Mental disorder or serious health condition.</li> </ul>	TZS. 500,000.00 or absolute or conditional discharge	0+	TZS. 500,000.00 or 1 year

Section 18 (a) (b) & (c)				
		Starting Point	Sentencing Range	Maximum sentence
High Level	<ul style="list-style-type: none"> <li>· Significant influence on others in chain.</li> <li>· Commercial gain.</li> <li>· Previous conviction for drugs offences.</li> <li>· Offence committed while on bail.</li> <li>· Recent or relevant convictions for other offences</li> </ul>	TZS. 1,500,001.00 or 2 years and a day or to both	TZS. 1,500,001.00 + or 2+	TZS. 3,000,000.00 or 3 years or both
Medium Level	<ul style="list-style-type: none"> <li>· Significant influence on others in chain.</li> <li>· Commercial gain.</li> <li>· Previous conviction for drugs offences.</li> <li>· Offence committed while on bail.</li> <li>· Recent or relevant convictions for other offences.</li> </ul>	TZS. 1,000,001.00 or 1 year and a day	TZS. 1,000,001.00 + or 1+	TZS. 1, 500,000.00 or 2 years
Low Level	<ul style="list-style-type: none"> <li>· Involvement through youth, naivety or exploitation.</li> <li>· Mistaken belief of the offender regarding the type of drug, taking into account the reasonableness of such belief in all the circumstance.</li> <li>· Involvement due to pressure, intimidation or coercion falling short of duress.</li> <li>· Good character.</li> <li>· Age or lack of maturity.</li> <li>· Mental disorder or serious health condition.</li> </ul>	TZS. 1,000,000.00 or absolute or conditional discharge	0+	TZS. 1,000,000.00 or 1 year

NB: For an offence under s. 17(1) where there is evidence that the offender is an addict the court should consider the appropriateness of a medical treatment as a sentence under s. 18 DCEA

STEP 3: Consider the relevant aggravating and mitigating factors for the offence which may increase or decrease the sentence within that range

Aggravating Factors	Mitigating Factors
<ul style="list-style-type: none"> <li>· Previous convictions, having regard to; a) nature of the offence to which conviction relates and relevance to current offence. and b) time elapsed since conviction.</li> <li>· Offence committed on bail.</li> <li>· Possession of drug in prison.</li> <li>· Presence of others, especially children and/or non-users.</li> <li>· Possession of drug in a school or licensed premises.</li> <li>· Failure to comply with current court orders.</li> <li>· Offence committed on licence.</li> <li>· Attempts to conceal or dispose of evidence, where not charged separately.</li> </ul>	<ul style="list-style-type: none"> <li>· Offence not motivated by financial gain but dependence on drugs.</li> <li>· Element of pressure not sufficient for duress.</li> <li>· Offender is using cannabis to help with a diagnosed medical condition.</li> <li>· Determination and or demonstration of steps having been taken to address addiction or offending behavior.</li> <li>· Serious medical conditions requiring urgent, intensive or long-term treatment.</li> <li>· Isolated incident.</li> <li>· Age and/or lack of maturity where it affects the responsibility of the offender.</li> <li>· Mental disorder or learning disability.</li> </ul>

STEP 4: Consider the Accused's Personal Circumstances, any other offences committed by the accused, Co-Accused's Sentence, Any Co-operation with Authorities and information from the victim

- Age and health.
- Any physical or mental disability.
- Family circumstances, dependents and the impact of any sentence upon them.
- Previous conviction or any breach of court orders: for example, to jump bail.
- Community work, other good works or indication of good character.
- The accused's income.
- Other offences to be sentenced (if any).
- Co-accused's sentence (if any).
- Co-operation with authorities (if any) – the court should be provided with reliable information from the prosecution that the offender provided substantial cooperation in relation to this offence or the disruption of other offences. If substantial this could result in substantially reduced sentence.
- Views of the victim and victim's family.

#### STEP 5: Assess the appropriate sentence level range (High, Medium, Low)

- The level of seriousness of the offence - High, Medium or Low.
- The aggravating and mitigating factors within that range.
- Apply appropriate level of reduction in accordance with general guidance on reduction of sentences for a plea of guilty.
- The court should state the sentence that would have been given if the accused had been found guilty after a contested trial and the amount of a reduction that has been given after the plea of guilty. (refer sentencing process on plea of guilty).
- The court should take into account the period spent in remand.

#### STEP 6: Pronounce the sentence and ancillary orders

Pronounce appropriate sentence followed by ancillary orders if any. Ancillary orders may be:

- Costs;
- Compensation, forfeiture, reparation, restitution, etc; or
- Order of destruction of noxious substances.

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13. Baguani Mhina Jumbe vs. Republic, Criminal Appeal No. 120 of 1993 (unreported).
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17. Charles Mashimba vs. Republic [2005] T.L.R. 90.
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