



CONTEXTUAL SENTENCING AND COMMUNITY IMPACT STATEMENTS

**KEY NOTE ADDRESS BY THE PRINCIPAL JUDGE ,
HON. JUSTICE DR. YOROKAMU BAMWINE
AT THE MEETING OF THE SENTENCING GUIDELINES
COMMITTEE AND OTHER STAKEHOLDERS ON MAIN
STREAMING COMMUNITY IMPACT STATEMENTS AT
SENTENCING
4TH AUGUST, 2017
JUDICIAL TRAINING INSTITUTE**

Your Lordships

Your Worships

Distinguished Stakeholders

- 1- This is a meeting of the Sentencing Guidelines Committee. For a long time we have not had time to meet. Allow me to welcome you all.

- 2- I thank the Judicial Training Institute (till recently the Judicial Studies Institute) and the University of Birmingham for this initiative. Our major task as a Committee is to discuss the mainstreaming of community impact statements during the sentencing process.

3- Motivation for Development of the Sentencing Guidelines.

3:1 For a long time major concerns in this country had been that:

- The sentencing process did not lead to justice for the victim, the accused and the public.
- Most sentences were open ended, unrealistic, and inconsistent and left to the discretion of court.
- The public had no direct in-put / participation in the sentencing process to allow court get the feeling of the community as regards the seriousness of the offence.

3:2 I need not over stress that a sentence is meant to:

- (a) Promote respect for the law;
- (b) Deter the accused from future criminal conduct – it being designed to function as deterrent to future criminal activity;
- (c) Reflect the seriousness of the offence;
- (d) Provide just punishment for the offence;
- (e) Provide the convict with educational or vocational training, or rehabilitative assistance.

In other words, it is an attempt to reform criminals and to train those who are interested in helping themselves to be better citizens.

3:3 From the research conducted over the years, the public appreciates the sentencing regime when:

- The Punishment fits the crime.
- The criminals get what they deserve (their due desserts), regardless of their station in life.
- Sentences deter potential criminals. People feel safer without the offenders amidst them.
- As regards calculation of the period spent in custody when passing sentence, prisoners are happy when court is definite and clear in its calculation of sentence. Judicial officers interpret differently the constitutional requirement (Art. (23(8) that period spend in lawful custody before conviction and sentence “be taken into account in imposing the term of imprisonment”.

On the whole, we were given the task at a time when there was need to develop sentencing regime to ensure uniformity and consistency in sentencing. The guidelines were to highlight areas of weaknesses of judicial officers since they are human e.g. being prone to emotions when sentencing.

- Disparity is inevitable because each offence and offender must be treated on its own merits. However, sentencing should not depend on the individual mood of the Judge. It should be based on some benchmarks known to all judicial officers.

3:4 So we set out in 2011 or thereabouts to:

- Provide principles and guidelines to be applied by courts in sentencing or dealing with convicts;
- Provide sentencing ranges and other means of dealing with convicts;
- Provide a mechanism for considering the interests of victims of crime (Victim Impact Statements) and the Community (Community Impact Statements) when sentencing, and
- Provide a mechanism that will promote uniformity, consistency and transparency in sentencing i.e. a uniform approach in sentencing and applying the same benchmarks and sentencing within the ranges provided.

The Idea was to meet the various expectations of the various players in the justice system.

Our target was for judicial officers to impose sentences that are humane, predictable, and effective using a uniform approach to sentencing.

3:5 And how would we achieve our objectives?

We would achieve them through:

- Allowing active participation of convicts, victims, public etc in the sentencing process.
- Promoting non-custodial sentences, as a departure from the culture of imprisonment even in non-deserving cases.
- Developing Guidelines which are well structured, not too long, repetitive or verbose.
- Sentences that will be guided by starting points and sentence ranges.
- Sentences that will depend on well researched aggravating and mitigating factors.
- Sentences that will not be rushed but imposed after a reasonable 'cool' off period.
- Sentences that will enhance access to justice to the children, the marginalised, the sick and the aged.

The guidelines in place have:

- Encouraged plea bargains –suspects make informed decisions as to whether to plead guilty or not on the basis of sentence ranges.
- Encouraged courts to deduct the period spent on remand from the sentence considered appropriate after all the factors, aggravating and mitigating, have been considered.

4:1 The interests of the community

I consider the following factors crucial:

- a) Whether the accused is a danger to the society.
- b) Whether any compensation has been paid or offered, by the accused to the victim;
- c) The extent to which the community at large was or is affected by the accused's deeds;
- d) The negative effect imprisonment may have on the accused and the corresponding harm to society resulting there from.

(A Practical Approach to Criminal Procedure in Botswana by William M. Modise, p.358)

4:2 All in all, the purpose of a sentence is to act as a **punishment**, a **deterrent**, a **form of treatment** and a **measure of protection** for the **society**.

Blessed are those who can impose sentences that embody all these 4 important factors.

In Mosiwa Vs the State (a Botswana Court case) the court said this about a sentence:

“... The sentencer’s message should be crystal clear so that the full effect of deterrent sentences may be realised, and that the public may be satisfied that the court has taken adequate measures within the law to protect them of serious offenders. By the same token, a sentence should not be of such severity as to be out of proportion to the offence, or to be manifestly excessive, or to break the offender, or to produce in the minds of the public a feeling that he has been unfairly and harshly treated”.

4:3 As I conclude, it is important that we reflect on where we were before the sentencing guidelines were developed, where we are now and where we want to go.

We have been told again and again that it is not good for judges to delay justice when we are mandated to deliver it as soon as possible. I know that we have challenges which outsiders may not know or if they know is no business of theirs.

I appeal to Ugandans – especially the lawyers and administrators of justice to use the sentencing guidelines - to encourage plea bargaining among members of the public so as to promote sanity.

A visiting Judge from USA is on record as saying:

“It is bad for people to keep running to courts of law when they are aware that they are guilty. If they accept and beg for lighter punishments it would be better”.

Let’s consider more deeply the mainstreaming of community impact statements during the sentencing process in the context of stress free sentencing, plea bargaining and overall reduction of case backlog. Even if we increased our budget tenfold, as long as we do not encourage pleas of guilty in the context of sentence negotiation, our dockets will keep constantly full.

I thank you all for listening to me. God bless.