

# **Sentencing Patterns in Criminal Cases in Uganda following the implementation of the Sentencing Guidelines 2013**



# Introduction - Evolve

- Barrister-led organisation which aims to improve access to justice, build capacity within the legal profession through education and training, and promote fairness, efficiency and integrity within the criminal justice system of Uganda
- Evolve have worked with judges, lawyers prisoners and other organisations within Uganda's justice sector to achieve these aims.
- Evolve has observed the implementation of the sentencing guidelines, and has been involved in hundreds of sentencing hearings, including those subsequent to the case of *Attorney General v. Susan Kigula and 417 others* (Constitutional Appeal No. 03 of 2006) [2009] UGSC 6
- Evolve has conducted pilot research into sentencing practices and patterns over the last 8 years.

# Purpose of Research

- The Sentencing Guidelines were introduced to tackle reported inconsistencies in the sentences which different defendants were receiving
- They were intended to promote uniformity, consistency and transparency in the sentencing process
- They did this by providing sentencing judges with starting points, sentencing ranges, and other detailed guidance
- Whilst they were a step in the right the direction, key stakeholders report that inconsistencies and disparities in sentencing still occur
- Evolve therefore analysed 574 individual sentences from the High Court, Court of Appeal, and Supreme Court to examine how well the Sentencing Guidelines have been implemented, and whether sentencing inconsistencies remain

# Gathering Cases I - Method

- It was intended to gather cases where the sentencing occurred **before** the Sentencing Guidelines were launched in June 2013, and **after**, to better compare the effect which the Sentencing Guidelines have had
- Cases were gathered from two sources:
  - All of the High Court Cases on ULII, as at Mid-December 2017, were analysed;
  - An effort was also made to physically collect and examine as many cases as possible from the Court Archives themselves

# Gathering Cases II - Statistics

- To identify cases for our research, we requested that the court registry staff at the High Court Kampala, Court of Appeal, and Supreme Court provide statistics for the years 2012-2017:

<b>Year/ Court</b>	<b>High Court Kamp.</b>	<b>Court of Appeal</b>	<b>Supreme Court</b>
2012	69	None Provided	5
2013	96	169	0 (ULII shows 3)
2014	104	153	14
2015	None Provided	104	15
2016	None Provided	274	4
2017	181	230	1 (ULII shows 18)

# Gathering Cases III – General Obstacles

- There was no systematic or organised filing system in some Courts
- There was no comprehensive system of law reporting, or provision of cases to ULII, resulting in many cases not being available online
- Court staff often had too large a workload to be able to assist with research
- Information about the location of various court files was sometimes confusing, and contradictory
- Many of the files were found to be in poor condition, incomplete, or missing

# Gathering Cases IV – The High Court, Kampala

- Files were found to be in extremely poor condition:
  - They were bound together in bundles of ten, held together by thin strands of rope.
  - Within files, papers were often not ordered
  - Many files were illegible
  - Many files were also incomplete
- Sometimes very few Court staff were in a position to grant access to files
- The location of the 2017 case files was in practice hard to ascertain. It emerged that they were in the possession of each of the clerks to the four criminal judges at the High Court, in electronic format. At first however, they had been said to be in the basement archives.

# Gathering Cases V – The Court of Appeal

- The main challenge at the Court of Appeal involved trying to identify an appropriate sample of cases from the period 2012-2014.
- The shelves in the Court of Appeal were stacked high in the Criminal Registry, but were not arranged by date or year. They were mixed up together.
- The room in which they were stored was further filled with files from floor to ceiling, piled in random order. There was no way of searching effectively through this room, or knowing which cases it contained.



# Gathering Cases VI – The Supreme Court

- The main challenges that arose in the Supreme Court related to obtaining judgments prior to 2017. All the 2017 judgments and proceedings were in a file in the registry and were therefore easy to obtain.
- Issues arose regarding cases from 2016-2017:
  - The system of case filing did not appear to be arranged by year, type of appeal or case name;
  - Clerks used an informal system of memorisation to recall where individual files were physically kept;
  - When the Clerks were unavailable due to their workload, cases could therefore not be efficiently found, or examined;
  - The Archive cases instead had to be read file by file, to try and identify those that were relevant. However those cases kept by the registry reflected only a few completed cases, in any event.

# Analysing Cases I – Sample

- Two sources of case were used:
  - All of the High Court Judgments available on ULII as at mid-December 2017. These cases were reported up to the end of September 2017
  - All of the cases physically gathered using the methods previously described.
- These cases were sifted down (rejecting those which did not contained new, or appealed, sentences)
- A total of 574 sentences (not cases) remained

<b>Court/YR</b>	<b>2017</b>	<b>2016</b>	<b>2015</b>	<b>2014</b>	<b>2013</b>	<b>2012</b>	<b>2011</b>	<b>2010</b>
Supreme Court	6	0	0	2	0	0	0	1
Court of Appeal	36	19	9	11	4	3	0	2
High Court	112	63	24	126	114	12	10	1

<b>Court/YR</b>	<b>2009</b>	<b>2008</b>	<b>2007</b>	<b>2006</b>	<b>2005</b>	<b>2004</b>	<b>2003</b>	<b>2001</b>
Supreme Court	0	0	0	0	0	0	0	0
Court of Appeal	1	0	0	0	0	0	0	0
High Court	5	2	1	2	2	2	3	1

# Analysing Cases II – Methodology

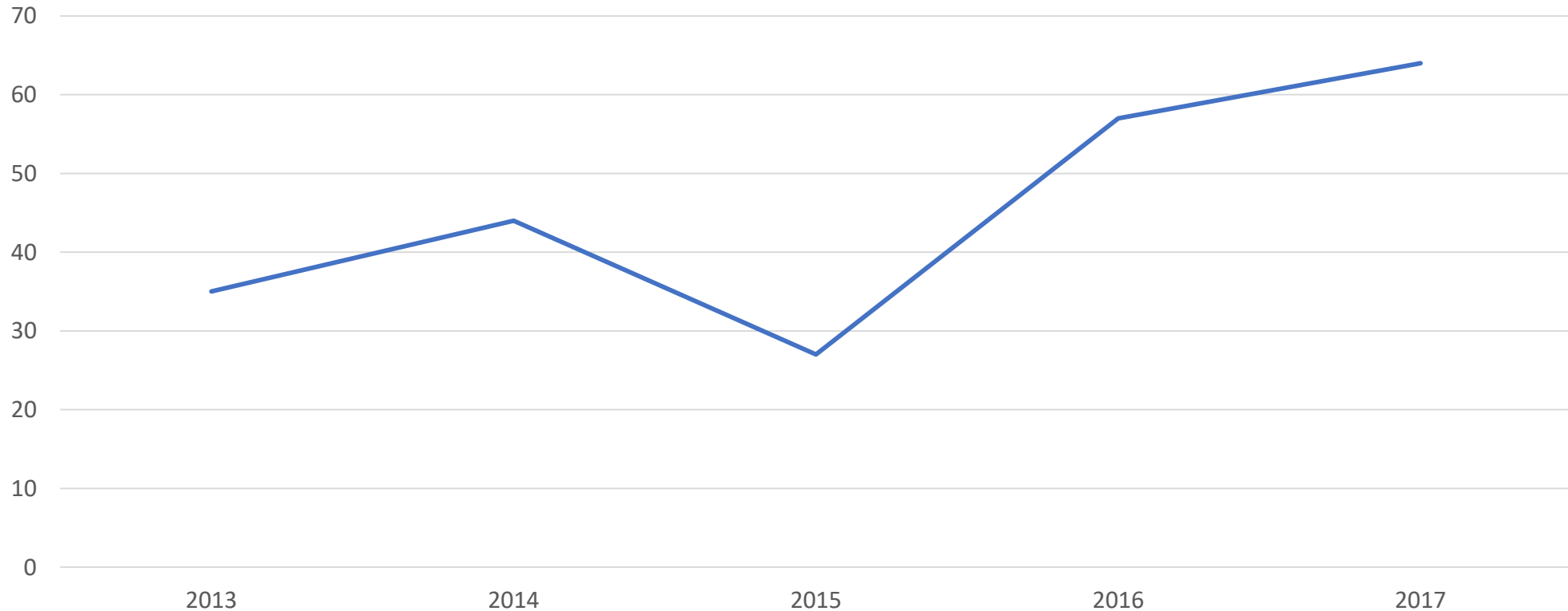
- A questionnaire was devised, comprising 137 questions
- This questionnaire was placed along the top of a spreadsheet, with the 574 cases running down the left side
- Volunteers were recruited, and given oral and written guidance on how to fill the spreadsheet in. They then worked over December and early January to do so, overseen by lawyers from Evolve.
- The Evolve team then double-checked the volunteers' entries, and contributed entries of their own
- Finally, the Data was statistically analysed in Google Sheets, using PIVOT Tables.

# Analysing Cases III – Obstacles

- It was not possible to control the sample. In short, only the cases which were available could be analysed. In consequence, our sample sizes differ year by year, court by court
- Judgments themselves can vary in the quality and quantity of information which they contain. This affects the quality of any inferences drawn from the lack of reference to some factor or other
- Mitigating factors are easier to count and compare than Aggravating factors, which are often more subjective
- In *Kigula* judgments, time spent on remand and time spent in prison are often run together which can cause difficulties for analysing sentence length, and comparing sentence lengths with guideline ranges
- Answering over a 100 questions for each sentence analysed, was extremely time consuming, both to complete, and to double-check

# Results I – Implementation of the Guidelines

- From 2013-2017, usage of the Sentencing Guidelines increased:



# Results II – Implementation of the Guidelines

<b>SECTION</b>	<b>Percentage of times cited, when it should have been applied</b>
s.20 (Agg. Factors in all Capital Cases)	16%
s.22 (Agg factors in Capital Rape/ Defilement Cases)	36%
s.28 (Agg factors in Manslaughter Cases)	0%
s.31 (Agg. Factors in Robbery Cases)	13%
s.35 (Agg Factors in Simple Defilement Cases)	44%

# Results III – Implementation of the Guidelines

- Percentage of sentences involving Defendants with family responsibilities, in which s.49 (Primary Caregiver Mitigating Factors) was mentioned:

0%



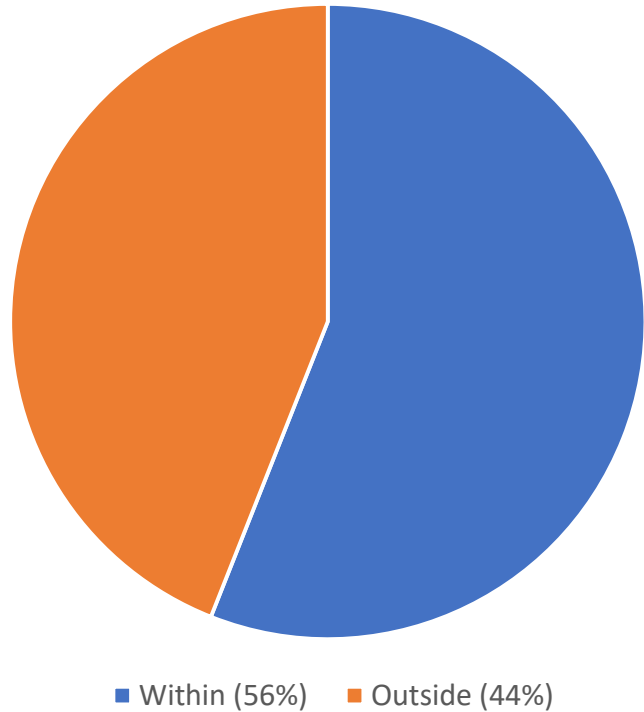
# Results IV – Implementation of the Guidelines

Percentage of Sentences referring to the Guidelines By Court

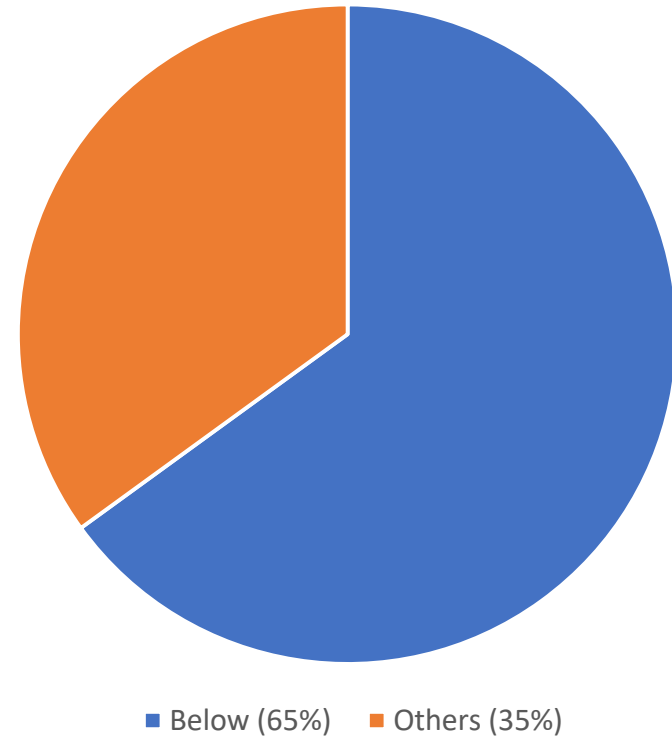
<b>High Court</b>	<b>48%</b>
<b>Court of Appeal</b>	<b>35%</b>
<b>Supreme Court</b>	None

# Results V – Implementation of the Guidelines

Percentage of Sentences within the Guideline Range



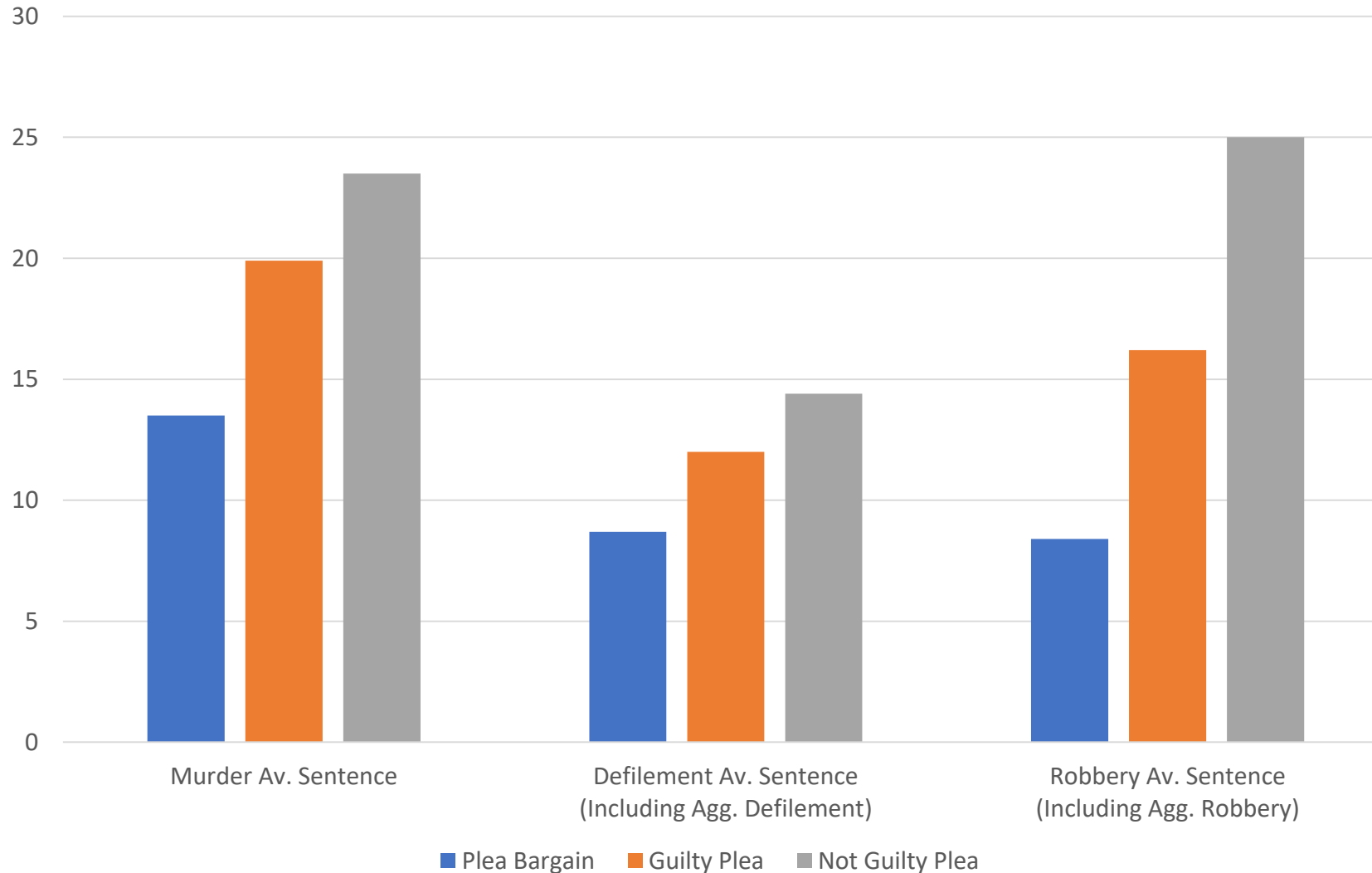
Percentage of All Sentences Beneath the Guideline Range



# Results VI – Sentencing Disparities

- Percentage of Defendants who were First Offenders (on the submission of the Defence and/or prosecution), and who received mitigation as a result: **37%**
- Percentage of Defendants who were Young (18-35 years), and who received mitigation as a result: **56%**
- Percentage of Appeals against sentence which succeeded: **57%**
- Percentage of Defendants who pleaded guilty, and received a third discount: **12%**

# Results VII – Sentencing Disparities



# Results VIII – Compliance by Prosecution and Defence Advocates with their Duties

- Percentage of cases in which the Prosecution provided aggravating factors to the court: **79%**
- Percentage of cases in which the Defence provided mitigating factors to the court: **91%**
- Percentage of cases in which the Prosecution provided statistics regarding the frequency and relative seriousness of the offence: **0%**
- Percentage of cases in which the Defence provided details about the offender's sources of income, and financial status: **4%**
- Percentage of cases in which an Impact Statement (Victim or Community) was put before the Court: **2%**
- Percentage of cases where documentary evidence was put before the Court: **21%**

# Results IX – Compliance by Prosecution and Defence Advocates with their Duties

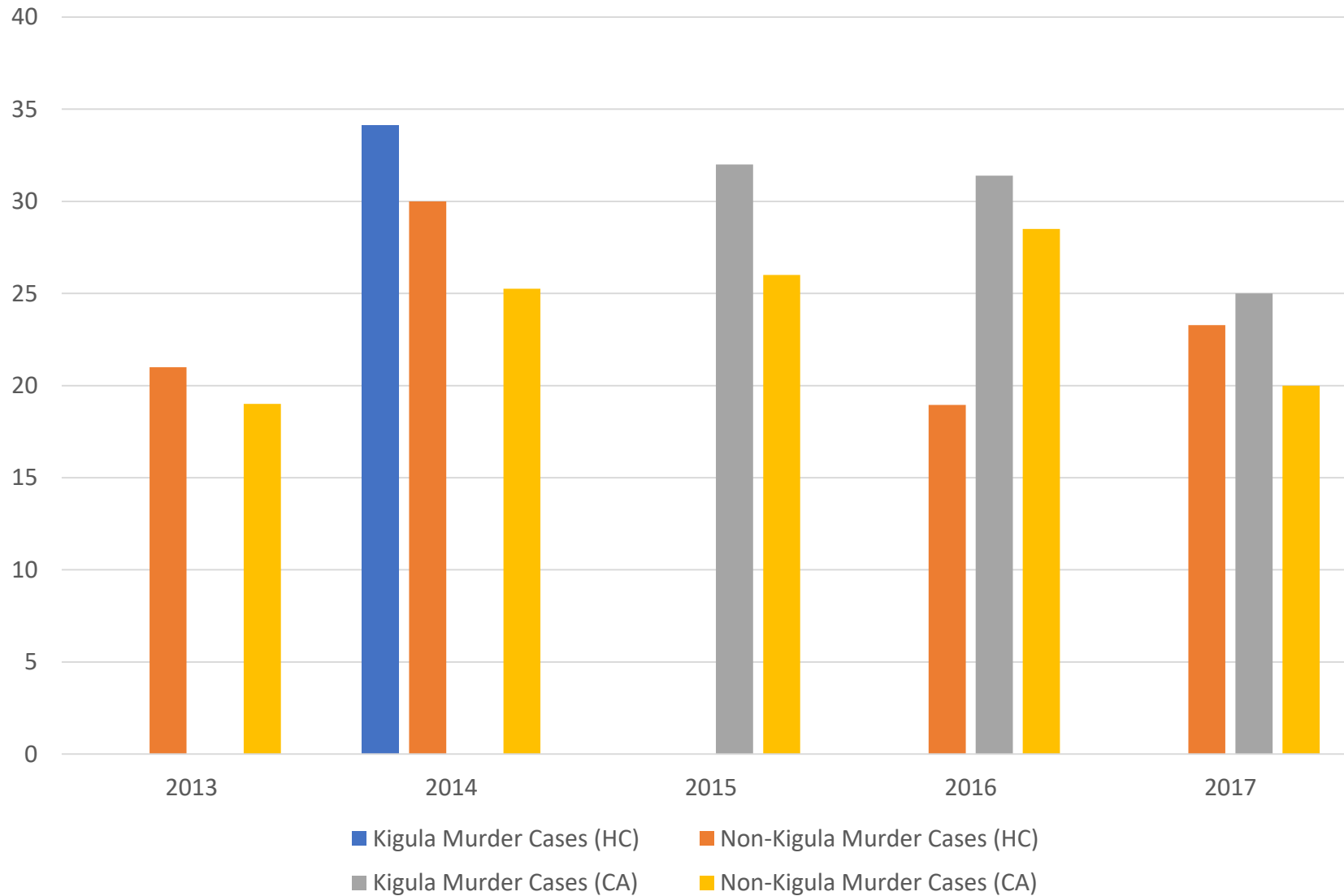
<b>Adopted by the Court, or Not?</b>	<b>Defence Mitigation</b>	<b>Prosecution Aggravation</b>
All adopted	<b>32%</b>	<b>33%</b>
Some adopted	<b>21%</b>	<b>17%</b>
None adopted	<b>47%</b>	<b>50%</b>

# Results X – Reporting and Case Citation

- Percentage of sentences which were available on ULII: **58%**
- Breakdown of Jurisprudence cited:

<b>Domestic Only</b>	<b>28%</b>
<b>International Only</b>	<b>Less than 1%</b>
<b>Mix</b>	<b>11%</b>
<b>Neither</b>	<b>57%</b>

# Results XI – Kigula Cases



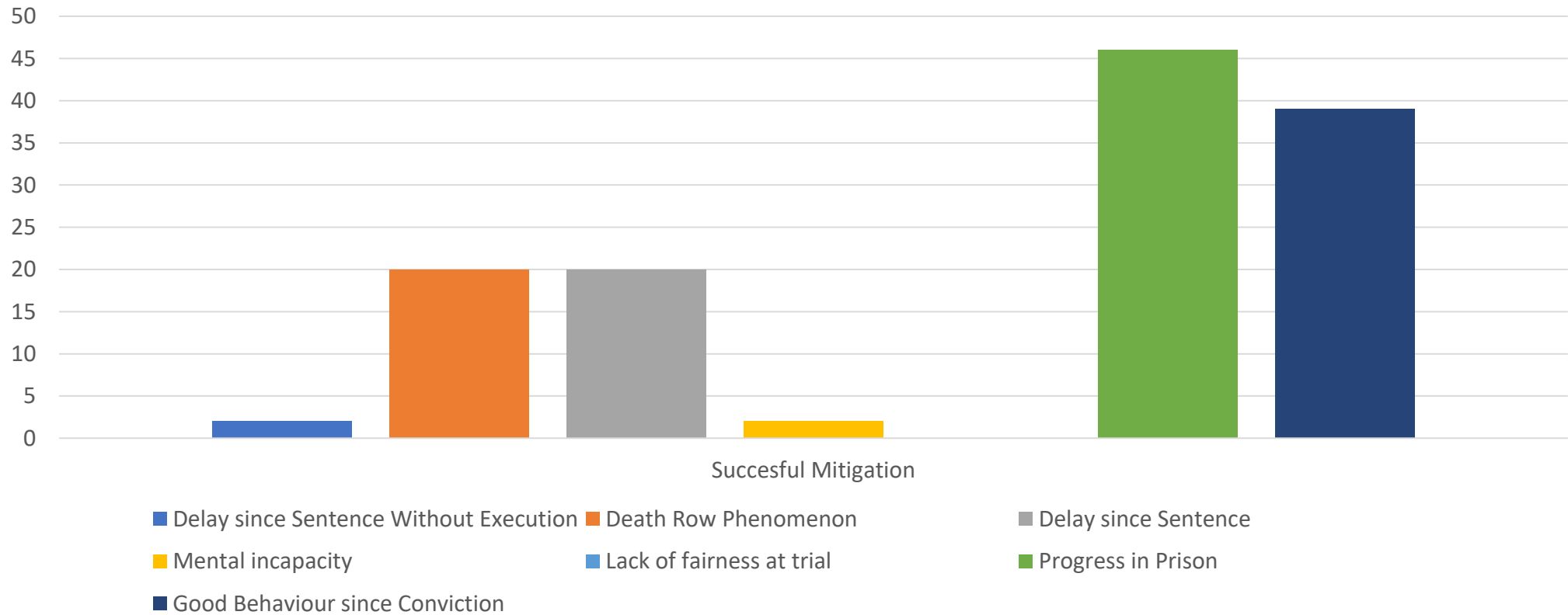


# Results XII – Kigula Cases

- Percentage of Kigula Cases in which Documentary Evidence was advanced: 65%

# Results XIII – Kigula Cases

Mitigating Factors in Kigula Cases



# Results XIV – Remand

- Percentage of cases in which remand was deducted mathematically between 2014 and 2017:

2017: 63%

2016: 47%

2015: 64%

2014: 63%

CONCLUSION