

THE PRINCIPLES AND PURPOSES OF SENTENCING



A PAPER PREPARED BY: THE PRESIDENT OF UGANDA LAW SOCIETY

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***CHAIRPERSON PROBONO COMMITTEE OF THE LAW
COUNCIL***

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Opening remarks:

- ▶ My Lord the Chief Justice, My Lord the DCJ ,all protocol observed'
- ▶ I wish to thank you and clearly state that it gives me great pleasure and honor to address you today /this afternoon on behalf of the president of the Uganda law society. I bring greetings from him all the way from Kenya Law society and he requested me to notify you that he will be present tomorrow as part of this honorable Conference.
- ▶ Iam Joyce Nalunga Birimumaaso and the current Chairperson BOD of the Probono Committee of the Law council. Iam also a member of the Law Council Disciplinary Committee.
- ▶ Today I will be addressing you on the 'PRINCIPLES AND PURPOSES ' OF SENTENCING.

QUOTE



“...IT IS BETTER TO RISK SAVING A GUILTY PERSON THAN TO CONDEMN AN INNOCENT ONE...”

VOLTAIRE, ZADIG



SENTENCING

- ▶ Sentencing is a judicial determination of a legal sanction upon a person convicted of an offence. A wide range of sanctions as stated.
- ▶ Sentencing principles and purposes are part of the penal laws. Its expected to provide guidance to judicial officers in applying the available sentences for particular offenders.is the climax of the sentencing process.
- ▶ The Sentencing system should not only be seen as imposed sanctions on convicted offenders but seen as ‘sentences which positively instills the basic set of vales shared by all Ugandans as expressed by the Penal laws that are reflective of observance of the Rule of Law .
- ▶ In so doing ,the court must bring the law ,including sentencing into harmony with the prevailed social values and so must reflect changes in these values in addition to the basic principles of Justice for victims of crimes and Abuse of power enunciated in the UN General Assembly A/RES/40/34 on 29th November 1985 at the 96th Plenary meeting.
- ▶ The sentencing purposes,principles and factors are weighed up according to their relevance to the circumstances of the offender and the offence.
- ▶ No one purpose has predetermined value. The judge balances the purposes, principles and factors in order to determine the most appropriate sentence.

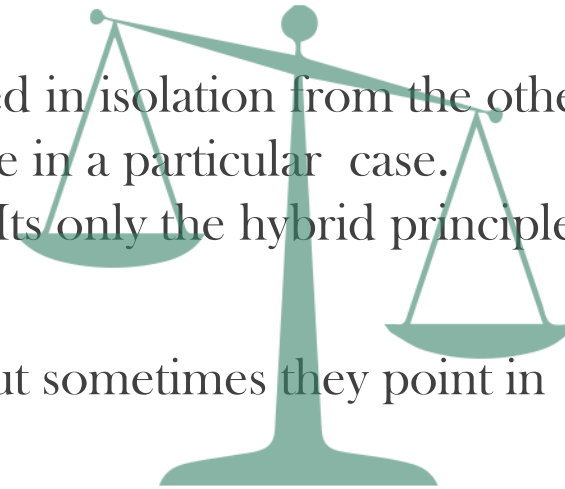
THE PRINCIPLES OF SENTENCING:

- ▶ Sentencing principles have developed through Legislation and court decisions (common Law). They guide court to impose a sentence against you with the aim of finding a sentence that will fit both the offence and the offender;
- ▶ PART III and section 6 of Directions 2013;lays out sentencing principles and purposes.
- ▶ Every court when sentencing an offender shall take into account the following principles;
- ▶ **PROPORTIONALITY**; The sentence must be proportionate to the gravity of the offending behavior. It should be proportionately and appropriately reflect the seriousness of the offence and your level of culpability. Should be commensurate with the seriousness of the offence. The seriousness of the offence is determined by culpability, risk and harm caused by offence.
- ▶ **PARSIMONY**; The Sentence should not be more severe than is necessary to meet the purposes of sentencing.
- ▶ **PARITY**; Similar sentence should be imposed for similar offences committed by offenders in similar circumstances.
- ▶ **TOTALITY**; Where an offender is to serve more than one sentence ,the overall sentence must be just and appropriate in light of the overall offending behavior.

THE PURPOSES OF SENTENCING

▶ FUNDAMENTAL PURPOSE:

- ▶ To contribute along with crime prevention initiatives in the respect for the law and the maintenance of just, peaceful and safe society by imposing just sanctions that have clear objectives alongside principles.
- ▶ Sentencing is not a purely logical exercise, and the troublesome nature of the sentencing discretion arises in large measure from the unavoidable difficulty in giving weight to each of the purposes of punishment.
- ▶ The purposes of sentencing are various ;
- ▶ They overlap and none of them can be considered in isolation from the others when determining what is an appropriate sentence in a particular case. Sometimes they conflict in sentencing decisions. It is only the hybrid principle that can resolve this.
- ▶ Seen as guideposts to the appropriate sentence but sometimes they point in different directions.
- ▶ Part II and S.5 (2)a-f of the Constitution (Sentencing guidelines for courts of Judicature) (Practice) Directions, 2013 clearly lays them out to include;



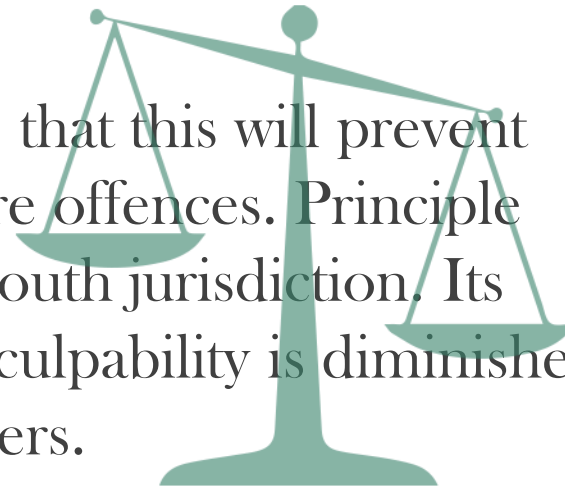
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THE PURPOSES OF SENTENCING

▶ DETERRENCE:

- ▶ Deters a person from committing an offence. We have specific deterrence and General deterrence.
- ▶ Specific deterrence is concerned with punishing an individual offender in expectation that he will not offend again. Whereas General Deterrence is related to possibility that people /community in generally be deterred.
- ▶ However ,there is no empirical evidence that this will prevent offenders from more commission of more offences. Principle doesn't favor youth being sentenced in youth jurisdiction. Its inapplicable in cases of offenders whose culpability is diminished by reason of mental or psychiatric disorders.



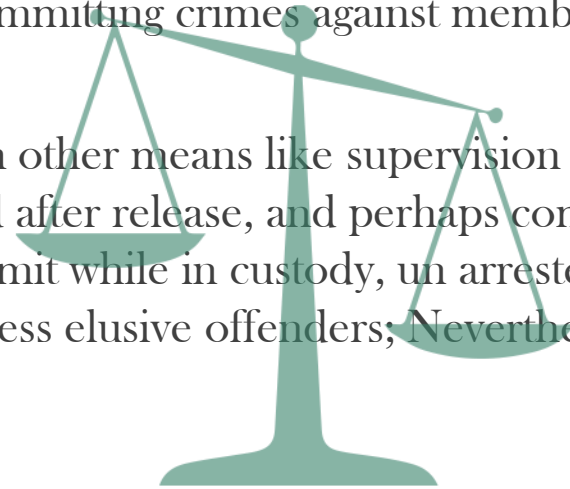
REHABILITATION

Assists an offender be rehabilitated & re-integrating him into society. It offers an offender help to overcome problems which he faces ,thereby attempting to make it easier for him or her to avoid future offending. It makes them future responsible citizens.

- ❖ Various types of assistance provided in prison intended to help the offender to improve his social skills ,his employment prospects or his capacity to obtain welfare benefits.
- ❖ **Effectiveness:**
- ❖ The aim of rehabilitation is effected individualized sentence and community penalty. It addresses underlying causes of criminal behavior (criminogenic factors)
 - ❖ However ,despite effectiveness the viability of rehabilitation has been challenged because evaluating the effectiveness of sentencing in reducing re-offending is difficult. We can only see offender after he has been through a programme of rehabilitation but we cant predict what would have happened if his sentence had not contained such elements. The fact that someone is not reconvicted does not mean he has stopped offending. It does not necessarily lead to a non-criminal way of life. It can only be achieved outside the prison system through penalties such as good behavior bonds, suspended sentences and community service orders rather than through imprisonment.
- ❖ Offenders experience social problems after completing their sentence.

PUBLIC/COMMUNITY PROTECTION

- ▶ Separating an offender from society. Is a major justification for punishment. Its incarceration and incapacitation of offenders so that they are prevented (at least temporarily) from offending against the public at large. Certain conditions are imposed so as to control the accused's behavior in the community and to prevent the repetition of the criminal activity.
- ▶ **Aim is effected through** ; Incarceration ,Death penalty for murder ,Long prison sentence etc.
- ▶ **Effectiveness:** The execution of the offender will obviously protect the public from that offender i.e. imprisonment prevent members from committing crimes against members of the public.
- ▶ However, public protection has to be achieved through other means like supervision and rehabilitation, sometimes offender is likely to re-offend after release, and perhaps commit more serious crimes. Some offenders continue to commit while in custody, un arrested offenders will not be affected by imprisonment or the less elusive offenders; Nevertheless public and community is protected.



► **RETRIBUTION:**

It Rests on the notion that if a person has knowingly done wrong ,he or she deserves to be punished. The principle includes the rule that the punishment must appropriately ,proportionately and accurately reflect and fit the seriousness of the criminal act committed and the harm it has caused.

Effectiveness: It satisfies the requirement that where a rule is broken there should be a penalty.

However ,its unpredictable that it will prevent further re-offence.

► **SYMBOLIC DENUNCIATION:**

This refers to Denouncing/condemn or censure unlawful conduct / particular type of behavior engaged by the offender.

Effectiveness: The aim is affected by the sentence reflecting the blameworthiness of the offence.

However, an ironic feature of a denunciatory sentence is that it does not have to be complied with. The passing of sentence provided the public expects that it will be carried out satisfies the symbolic denunciation.

► **REPARATION:**

This Provides for repay, repair or compensate the victim or community loss and harm. Reparation for harm done to a victim or the community.

However, its unpredictable as to whether it can yield positive change in behavior of offenders after reparation. It also does not favor pro-bono offenders.

► **RESPONSIBILITY :**

Promotes a sense of responsibility by the offender ,acknowledging the harm done to the victim and the community.

► **JUST PUNISHMENT:**

To punish the offender to an extent and in a way that is just in all circumstances.

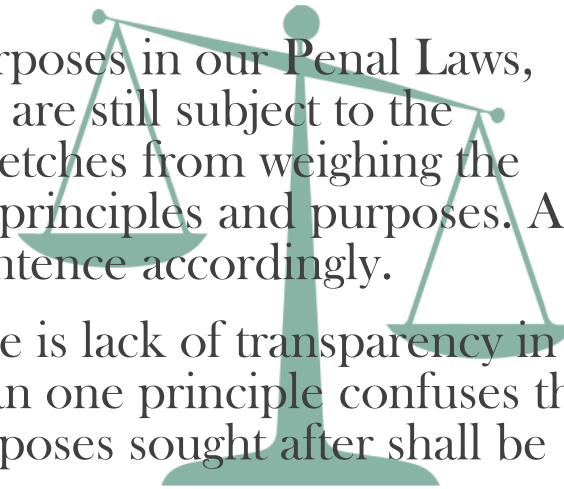
CONCLUSION:

Notably, sentencing is one of the more controversial aspects of the Uganda's criminal justice system. In determining the legal sanction to be imposed on a convict, it is noticeable that the courts have the inevitable task of trying to balance the needs of offenders, victims and greater society.

Challenges :

Despite the adoption of the above principles and purposes in our Penal Laws, guidelines and the Directions 2103 these principles are still subject to the discretion of the sentencing judge. His discretion stretches from weighing the circumstances of the offence, the offender analyzing principles and purposes. And choosing the most proportionate and appropriate sentence accordingly.

Sadly, there is still inconsistencies in sentencing, there is lack of transparency in the process, their mixture/duo combination of more than one principle confuses the sentencing judge. Also, it is unpredictable that the purposes sought after shall be achieved.



▶ The leverage given to judicial officers to pick and mix between different goals of punishment such as retributive proportionality, deterrence, rehabilitation, incapacitation, reparation, reintegration and so on leads to sentencing outcomes that are aimed at achieving conflicting goals. This in itself leads to more unwarranted disparities in sentencing.

▶ **Recommendations:**

▶ There is need for further study and understand how sentencing guideline system works , including judicial politics surrounding compliance with guidelines.

▶ **AS ULS, WE BELIEVE THIS CONFERENCE WILL ADOPT THESE AND OTHER PRINCIPLES AND PURPOSES OF SENTENCING AS DISCUSSED IN THIS PAPER ,THAT ARE REFLECTIVE OF A WOULD BE UGANDAN COMMUNITY BASED SENTENCE SCHEME, TO GRANT CONVICTS OPPORTUNITY TO MAKE CONTRIBUTION WHILE ACCEPTING THE CONSEQUENCE OF THEIR BEHAVIOR AND ADDRESS EFFECTIEV REMEDY FOR VICTIMS.**

▶ **THANK YOU FOR LISTENING TO ME THIS AFTERNOON'**

▶ **THANK YOU ,BE BLESSED**

▶ **HAVE A JUST,PEACEFUL AND FRUITFUL 2018**