

THE UNITED  
REPUBLIC OF TANZANIA



## THE JUDICIARY OF TANZANIA



## TANZANIA SENTENCING MANUAL FOR JUDICIAL OFFICERS





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## ABBREVIATIONS

<b>CAT</b>	- Court of Appeal of Tanzania
<b>CECD</b>	- Corruption and Economic Crimes Division of the High Court
<b>CPA</b>	- Criminal Procedure Act
<b>DCEA</b>	- Drugs Control Enforcement Act
<b>DPP</b>	- Director of Public Prosecutions
<b>EA</b>	- East Africa
<b>EACA</b>	- East African Court of Appeal
<b>GN</b>	- Government Notice
<b>HC</b>	- High Court
<b>HCD</b>	- High Court Digest
<b>LRT</b>	- Law Reports of Tanzania
<b>TLR</b>	- Tanzania Law Report
<b>PC</b>	- Penal Code
<b>PCCPR</b>	- Primary Court Criminal Procedure Rules

## FOREWORD BY THE CHIEF JUSTICE OF TANZANIA

The 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 criminal justice system and breed more criminality instead of curbing it. However, when sentencing is performed well 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.

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

This Manual offers guidance based on the existing laws of Tanzania as enacted by Parliament and interpreted by the courts. It sets 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. This Manual provides 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 the court system. This Manual makes it clear that if a person shows contrition by pleading guilty and saves time and expenses for both 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 international good practice in the administration of justice.

The Manual seeks 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 this Manual introduces the first ever offence-specific sentencing guidelines. This marks a new approach by the Judiciary. The guidelines set out clearly 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. It follows good practice which we have observed from other jurisdictions.

The Manual is the start of the process of improving the quality of sentencing in Tanzania. It is envisaged that it will be reviewed from time to time to cope with prevailing circumstances. The Manual offers general principles for sentencing and uses selected recurring offences for illustration and guidance. It is 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, apply, practice and familiarize themselves with this Manual. The Judicial Service Commission will, from the date of publication of this Manual, not hesitate to deal with complaints against judicial officers, on account of non-adherence to the Manual.

I am most grateful to the British High Commission, Mr. Andy Stephens and Miss Claire Harris for their support to ensure this Manual is developed and published. I thank the technical team which was led by Hon. Justice E. Munuo (retired Justice of Appeal), stakeholders and the Chief Justice Rules Committee led by Justice Kipenka Mussa for their dedication and commitment exhibited during the preparation of the Manual. The Judiciary of Tanzania owes a debt to all who contributed to the development of this Manual.

**Prof. Justice I. H. Juma**  
Chief Justice of Tanzania



## 1. Introduction

This Manual is intended to serve as an aid to sitting judicial officers and practitioners in the proper handling of the sentencing process. Its purpose is to provide guidance so that sentences meted out are lawful, consistent and proportionate within the discretion permitted by the law.

This Manual seeks to set out clearly the sentencing process which should be followed by the courts in determining sentences so that the accused, victims, witnesses, investigators, defense attorneys, prosecutors and the wider public are able to understand and have confidence in the process.

The Manual is not intended to be an exhaustive reference book or text. In the course of and before sentencing, trial courts should always bear the relevant statutes in mind, and provisions that create the penalties that they are called upon to impose.

However, this Manual implements for the first time specific guidance for some of the most common offences which the courts have discretion to sentence: manslaughter, offences of violence against the person; drugs-related offences; corruption offences, etc. In sentencing persons for an offence which has a specific guideline, a judicial officer **shall** comply with the guidelines. If they consider that the facts of a particular case merit them deviating from the guidance, they must expressly record the reasons.

As is the case with statutes, this Manual will not remain stagnant. It will be constantly reviewed and updated. The law stated in the Manual is as of **31st December, 2019**.

## 2. The Concept of Sentencing

### 2.1. Sentencing

The universal purposes of sentencing are: deterrence, retribution, rehabilitation, compensation and reparation<sup>1</sup>. See Annexure E: Sentencing by Courts in Tanzania.

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 prescribe a specific punishment for the offence: See *DPP v. Simon G. Marwa and another* [1994] T.L.R 330 (CA) and where punishment for statutory offence is not provided, 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: See *R. v. Emmanuel Timothy* [1980] T.L.R 115. For offences under the Penal Code, see section 35 of the Penal Code, Cap. 16.

### 2.2. Forms and Categories of Sentences

Sentences may be in a form of fine, imprisonment, corporal punishment, death, forfeiture of property and compensation. General sentences are defined in the Penal Code and some statutes set out sentences for statutory offences.

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<sup>1</sup> See discussion paper by E M K Rutakangwa, *Criminal Justice System: Sentencing By Courts in Tanzania*, to the members of JMAT, Arusha, 10<sup>th</sup> August 2014 and *Tabu Fikwa v R.* [1988] TLR 45, Samatta J which identify the purposes as to ensure that the offender is adequately punished, within the confines of the law for the offence (1) To prevent crime by deterring the offender and other persons from committing similar crimes (specific and general deterrence). 2) To protect the community from the offender. (3) To promote rehabilitation of the offender (Reformation). (4) To denounce the conduct of the offender (5) To recognize the harm to the victim of the crime and the community. (6) To protect the security of the society over those of the offender.

There are mainly two categories of sentences: mandatory and discretionary.

### 2.3. Mandatory and Discretionary Sentences

The sentencing principles in this Manual apply to all offences. However, the powers of the court are limited by the range of sentences permitted by law. The Sentencing Index at Part III sets out the sentencing powers for offences in summary but the Act itself must be consulted.

The most significant difference in sentences set out by law are between discretionary and mandatory sentences.

A **discretionary sentence** is when the law has given the courts a wide discretion to impose a sentence up to a maximum amount. These are the majority of sentences in Tanzania. For example, the offence of manslaughter has a maximum sentence of life imprisonment. The court may provide any punishment up to this maximum.

A **mandatory sentence** must be applied in each case by the courts. In some circumstances, the law has made it clear that there is only one punishment for an offence. For example, the only punishment for murder is death. However, it is more common for the law to set out a **mandatory minimum sentence** for an offence. These may be created under the Minimum Sentences Act but increasingly under any criminal statute. For these offences, the courts must impose at least the minimum sentence.

Mandatory sentences arose due to, among other reasons:

- a) Abuse of judicial discretion in assessing sentences;
- b) Disparities in sentencing for persons convicted of the same offences;
- c) The need to confine certain offenders reputed to be dangerous to the community for a long time; and
- d) To avert an increase of certain type of social evils, e.g. sexual offences.

The form of the wording of a statute is important to determine whether a punishment is mandatory or discretionary.

The courts have held that if the law reads: “**shall be liable to be sentenced**” then this sets out a discretionary sentence up to a maximum amount. For example, the punishment for manslaughter is: “Any person who commits manslaughter is liable to imprisonment for life.”<sup>2</sup> The maximum sentence is “life imprisonment” but the courts may sentence the convict for up to this period. In other words, the sentence can range from absolute discharge to life.

If the law states that a person “**shall be sentenced to .....**” then the punishment so prescribed, is mandatory. For example, the punishment of murder is death. This is because the law states that: “A person convicted of murder **shall be sentenced to death.**”<sup>3</sup>

### 2.4. Purpose of this Sentencing Manual:

Historically, sentencing has been in the realm of judicial discretion. It has been thought that since courts have been dealing with various cases on daily basis, they are better placed to

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<sup>2</sup> Penal Code s198

<sup>3</sup> Penal Code s197

deal with each case on its own merits. Inevitably, this led to disparities in sentencing and undermined confidence in the administration of criminal justice.

However, if properly applied, judicial discretion need not give rise to any undesired disparities. Judicial discretion is said to be properly applied if decisions are made not arbitrarily or capriciously or with ill-intention. For example, a judicial decision given without reasons is said to be arbitrary. That is not a proper use of judicial discretion. This malady has slowly been inflicting Tanzanian Courts lately.

Apart from statutory guidelines, there are also numerous judicial guidelines. But most judicial officers do not adhere to the guidelines and so dissimilarities in sentencing of different people for similar offences continue to dominate not only from place to place but even in the same court.

The purpose of this Manual is to put in place in one condensed and user-friendly text all the important laws, principles, factors, steps and processes of sentencing for different levels of sentencing jurisdictions. It will therefore:

- Promote transparency and predictability in the administration of criminal justice.
- Promote public confidence and awareness in the sentencing process.
- Minimize abuse of judicial discretion in the sentencing process.

## 2.5. Overview of “The Sentencing Manual”

This Manual has three separate parts:

- **PART I** - Puts in place a **Sentencing Guide: Practical Reference to Key Laws, Principles and Procedures**. This is a brief reference guide to some of the most important laws, principles, factors, steps and process of sentencing for different levels of sentencing jurisdictions. Also, it includes the setting out of clear templates to assist judicial officers in the process of sentencing including
  - (1) A sentencing template which may be used in every case. (“**Annex A**”)
  - (2) A sentencing process flow chart (“**Annex B**”)
  - (3) A guidance on the different sentences (“**Annex C**”)
  - (4) A guide to the laws, principles and practices for sentencing child offenders (“**Annex D**”)
- **PART II** - Establishes the first **Offence-Specific Sentencing Guidelines** for some of the most common offences which the courts have discretion to sentence: manslaughter, offences of violence against the person; drugs-related offences and corruption offences. In sentencing persons for an offence which has a specific guideline, a judicial officer must comply with the guidelines. If the officer considers that the facts of a particular case merits deviation from the guidance, the reasons must be expressly recorded.
- **PART III** - Sets out a **Sentencing Index**. It is a quick reference guide for the courts to, at a glance, observe the minimum and maximum sentences prescribed by law and which offences have discretion in sentencing.

## PART I

# SENTENCING GUIDE: PRACTICAL REFERENCE GUIDE TO KEY LAWS, PRINCIPLES & PROCEDURES

### 3. Introduction

The sentencing process is a delicate balancing act. The Court of Appeal of Tanzania has said that:

“The sentencing process is one of, if not the most, intractable and delicate tasks in the administration of justice, especially where the law has not fixed a minimum sentence. This is where ingenuity and wisdom work together in order to lead us to substantial justice as no two cases are identical in all circumstances. This is all because there is no common yardstick or denominator for measuring the sentence which will match every crime.”<sup>4</sup>

The Court of Appeal has also commented on the role of sentencing between the appropriate sentence for the individual and those of society: -

“We must point out that, sentiments aside, sentencing has a crucial role to play in the criminal justice system. In sentencing, the court has to balance between aggravating factors, which tend towards increasing the sentence awardable, and mitigating factors, which tend towards exercising leniency. The sentencing court should also balance the particular circumstances of the accused person before it and the society in which the law operates.”<sup>5</sup>

This Sentencing Guide seeks to bring together the key statutory law, case law and procedures that are good practice for the sentencing of offenders. In addition, it sets out the following to assist judicial decision makers:

- **Annex A: Sentencing Process Flow Chart:** A one-page summary of the process to be applied by judicial officers in the sentencing of all offences. This sets out the pre-sentence matters which must be dealt with and then the 10 steps every judicial officer should consider as part of the sentencing process.
- **Annex B – Sentencing Form:** This is a practical worksheet for judicial officers to use in every sentencing exercise to make sure that they obtain all necessary information and then use this to determine the appropriate sentence.
- **Annex C Approach by Court to Different Types of Sentence Options:** This provides key guidance from statute and case law on the main different types of sentence to be imposed.
- **Annex D Sentencing of Children:** The sentencing of persons under the age of 18 has different considerations to the sentencing of adults. This annex sets out the key

<sup>4</sup> Katinda Simbila @ Ng'waninana V.R, Criminal Appeal No. 15 of 2008 (unreported)

<sup>5</sup> Benard Kapojosye v.R. Criminal Appeal No. 411 of 2013 (unreported).

legal and procedural considerations for the court to consider from the Law of the Child Act and the Law of the Child (Juvenile Court Procedure) Rules, 2016.

#### 4. Pre-Sentence: Judgment, Conviction, Procedure for Plea of Guilty

It is imperative that before the court commences sentence, it must be certain that it has fully complied with the pre-sentence legal requirements for judgement and conviction.

The Court of Appeal has overturned convictions and sentences because of the failure by the trial court to correctly follow procedures, including a failure to correctly convict a person.<sup>6</sup>

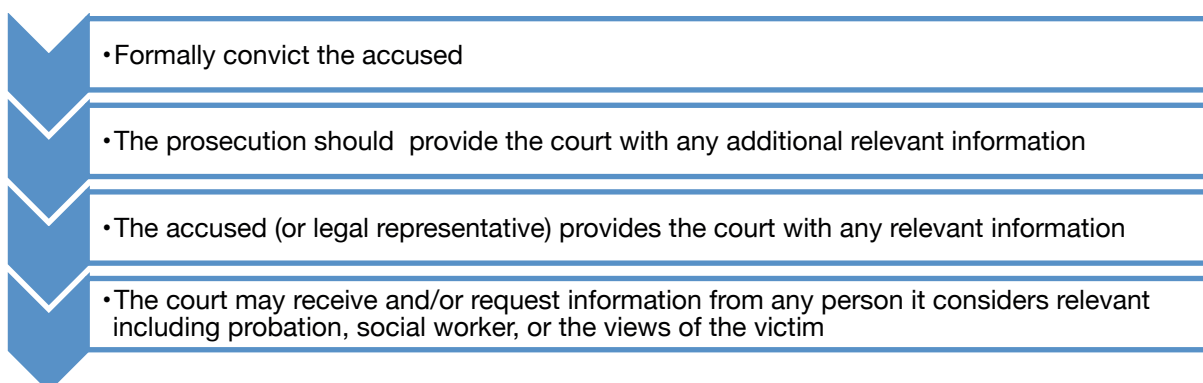
The Court of Appeal has also overturned convictions and sentence because of the failure to comply with the lawful procedures on giving judgment.<sup>7</sup>

The law states that the sentencing process must take place after the accused person has pleaded guilty or has been found guilty of an offence(s) and first been formally convicted.<sup>8</sup> Thereafter, the convicted person must be lawfully sentenced.<sup>9</sup> The appropriate considerations and steps of judgment and conviction must be followed or a sentence may be irregular.

In addition, the courts must follow the correct procedures in law to ensure, *inter alia*, that the accused has correctly understood the process, is able to make representations on the appropriate sentence and that the court has received sufficient information from the prosecution, probation and any other relevant person including, if appropriate, the victim.

The main steps for the court to consider before sentence are:

##### Preliminary Matters before sentence



<sup>6</sup> See the Court of Appeal consideration of the failure of a trial court to convict a person in *Samweli Sanyangi v R*. Criminal Appeal No. 141 of 2012 in which

“...the sentencing process was rendered a nullity because it ought to have been preceded by a conviction. This is not the first time that the effect of a failure to convict an accused before sentencing is considered by this court. There is a series of previously decided cases on that point. They include the cases of *Shabani Iddi Jololo & 3 others v R*. Cr. Appeal No.200 of 2006 (CA-DOM), *Khamiz Rashid Shaban v the DPP, Zanzibar*, Cr Appeal No.184 of 2012 (CA-ZNZ) and *Omari Hassan Kipara v R*, Cr. Appeal No. 80 of 2012”

<sup>7</sup> See Court of Appeal criticism of lower courts where the trial court had not made an appropriate judgment or indicated a conviction before moving onto sentence. *Jofrey s/o Leiboo v. R*. Criminal Appeal No. 24 of 2013, (applies to subordinate)

“No sentence can be passed or imposed on an accused person unless and until he or she has been duly convicted on any offence”

<sup>8</sup> Sections 235 (1) and 298 (3) of the C.P.A and rule 37 (1) of the P.C.C.PC

<sup>9</sup> See, the Tanzania Court of Appeal decisions in:- *Juma Jackson @ Shida v.R*. Criminal Appeal No. 254 of 2011; *ShabanIddi Jololo & Others v. R*. Criminal Appeal No. 200 of 2006; *Ruzibukya Tibabyekomya v. R*. Criminal Appeal No. 218 of 2011; *Jonathan Mlugani v.R*. Criminal Appeal No.15 of 2011, *Elias Mwangoka v. R*. Criminal Appeal No. 25 of 2015 (CA Mbeya) (all unreported)

#### 4.1. Judgment

Unless otherwise provided by the law the decision of every trial of a criminal cases shall be delivered in an open court. This should be given immediately, or as soon as possible, after the termination of the trial, but no longer than ninety days.<sup>10</sup>

Every judgment must comply with the following statutory requirements:<sup>11</sup>

- Be in writing or reduced to writing under the personal direction and superintendence of the presiding judge or magistrate;
- Be in the language of the court;
- Contain the point or points for determination;
- Contain the decision of the court and the reasons for that decision;
- Be dated and signed by the presiding officer as of the date on which it is pronounced in court;
- In the case of a conviction, the judgment shall specify the offence of which, and the section of the statute which the accused person is convicted and the punishment to which he is sentenced.
- In the case of an acquittal, the judgment shall state the offence of which the accused person is acquitted and shall direct that he be set at liberty.

In addition, the following directions from case law have been provided:

- If a judgment refers to a witness or accused person, it should refer to them by name and number (e.g. Mussa Ally (PW4)). They should not be referred to by number or letter of alphabet as this may lead to confusion.<sup>12</sup>

#### 4.2. Alternative Counts

When the accused has been charged with alternative counts, the court should enter a conviction on the count (if any) which has been proved and no finding should be made on the alternative counts.

#### 4.3. Alternative Verdicts

The general rule is, subject to statutory exceptions, a person cannot be convicted of an offence with which he has not been charged.<sup>13</sup>

The statutory exceptions to this are that an accused person may be convicted of the following offences when not charged with them:

- A minor offence to the charged offence where the facts to prove this offence have been proved.<sup>14</sup> This can be done when the main offence charged constitutes several particulars and a combination of some of these constitute a complete minor offence. Even though the minor offence has not been charged a conviction can be made for this offence when the particulars of this offence are proved but the remaining particulars of the charged offence are not;

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<sup>10</sup> The CPA section 311(1)

<sup>11</sup> The CPA section 312 and Rule 37 PCCPC.

<sup>12</sup> See *Ahmed s/o Mahamed v R* (1969) HCD No. 235

<sup>13</sup> *Bakari Ihonde s/o Mhaya v R* (1921-1952) 1 TLR at p354

<sup>14</sup> CPA s300

- Attempt to commit the charged offence.<sup>15</sup>

In addition, an accused person can be convicted of specific alternative offences even when not charged with. The court must have determined that he is not guilty of the offence charged but the alternative offence is made out. Such alternative offences are as follows:

- Infanticide as an alternative to murder; child destruction as an alternative to either murder, manslaughter or procuring an abortion/miscarriage; procuring an abortion/miscarriage as an alternative to child destruction; concealment of birth as an alternative to murder, infanticide or child destruction.<sup>16</sup>
- Reckless, dangerous or careless driving as an alternative to manslaughter.<sup>17</sup>
- Sexual assault, procures rape, incest as alternatives to rape or attempted rape; defilement of an imbecile as an alternative to incest.<sup>18</sup>
- Burglary, entering a dwelling to commit an offence, breaking and entering into a building; or to commit an offence of being armed, etc., with intent to commit an offence, as alternative to each other.<sup>19</sup>
- Obtaining goods by false pretences, cheating, receiving stolen property, conveying or possessing stolen property as an alternative to stealing; stealing as an alternative to cheating; cheating and obtaining goods by false pretences as alternatives to each other; under the different provisions of receiving or retaining stolen property.<sup>20</sup>
- Receiving or retaining stolen property as an alternative to possession of property suspected of having been corruptly acquired.<sup>21</sup>

#### 4.4. Procedure on a Plea of Guilty:

The process for taking a plea of guilty has been established in case law<sup>22</sup> and statute as follows:

- The charge and the particulars should be read out to the accused. So far as possible, this should be in his own language, but if that is not possible, then in a language he can speak and understand.<sup>23</sup>

<sup>15</sup> CPA s301

<sup>16</sup> CPA s302

<sup>17</sup> CPA s303

<sup>18</sup> CPA s304

<sup>19</sup> CPA s305

<sup>20</sup> CPA s306

<sup>21</sup> CPA s307

<sup>22</sup> Spry V.P. in *Adan v Republic* [1973] EA 445 as approved by the Court of Appeal in *Khalid Athumani v R.* [2006] TLR 79

*"When a person is charged, the charge and the particulars should be read out to him, so far as possible, in his own language, but if that is not possible, then in a language he can speak and understand. The magistrate should then explain to the accused person all the essential ingredients of the offence charged. If the accused then admits all those essential legal elements, the magistrate should record what the accused has said, as nearly as possible in his own words, and then formally enter a plea of guilty. The magistrate should next ask the prosecutor to state the facts of the alleged offence and, when the statement is complete, should give the accused an opportunity to dispute or explain the facts or to add any relevant facts. If the accused does not agree with the statement of facts or asserts additional facts which, if true, might raise a question as to his guilt, the magistrate should record a change of plea to "not guilty" and proceed to hold a trial. If the accused does not deny the alleged facts in any material respect, the magistrate should record a conviction and proceed to hear any further facts relevant to the sentence. The statement of facts and accused's reply must, of course, be recorded"*



- The court should then explain to the accused person all the essential ingredients of the offence charged.<sup>24</sup>
- The accused shall be asked by the court whether he admits or denies the truth of the charge.<sup>25</sup>
- If the accused admits all those essential legal elements, the court should record what the accused has said, as nearly as possible in his own words, and then formally enter a plea of guilty.<sup>26</sup> “For a plea of guilty to stand the court must satisfy itself without any doubt and must be clear in its mind, that an accused fully comprehends what he is actually faced with, otherwise injustice may result.”<sup>27</sup>
- The court should ask the prosecutor to state the facts of the alleged offence. This has two purposes:
  - (1) It enables the court to satisfy itself that the plea was unequivocal;
  - (2) It provides the basis upon which to assess sentence.<sup>28</sup>

In complex cases, it is good practice for the prosecution to assist the court by providing the basis of facts in writing and provide a copy to the accused.

- The accused should be asked to dispute or explain the facts or to add any relevant facts.
- If the accused does not deny the alleged facts in any material respect, the magistrate should record a conviction and proceed to hear any further facts relevant to the sentence.<sup>29</sup>
- The statement of facts and accused’s reply must be recorded. The court should obtain from the accused his permanent address and also record this.<sup>30</sup>
- An accused may change his plea from guilty to not guilty (or vice versa) at any time before sentence is passed.<sup>31</sup>
- If the accused does not agree with the statement of facts or asserts additional facts, the court should consider the effect of this upon plea and the basis of facts upon which the court must sentence:

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<sup>23</sup> CPA s228(1)

<sup>24</sup> *Yonasani Egalu and others v R.* (9 EACA 65) p67 of the Court of Appeal of East Africa referred to in B D Chipeta, *A Handbook for Public Prosecutors*, (2009, 3<sup>rd</sup> ed.,) p.44

“In any case in which a conviction is likely to proceed on a plea of guilty (in other words, when an admission by the accused is likely to take the place of otherwise strict proof of the charge beyond reasonable doubt by the prosecution) it is most desirable not only that every constituent of the charge should be explained to the accused but that he should be required to admit or deny every element of it unequivocally”

<sup>25</sup> CPA s228(1)

<sup>26</sup> CPA s228(2)

<sup>27</sup> Per Kileo, J.A., Oriyo, J.A., And Mmilla, J. A. in the case of *Andrea Kitundu v. R.*, Cri. Appeal No. 185 of 2010, CAT at Dodoma (unreported)

<sup>28</sup> See *Adan v Republic*, *op cit*

<sup>29</sup> Only when the accused admits the facts are correct will the court enter a plea of guilty and convict the accused person of the offence charged, see *Samson Kayora and Another v R.* (1985) TLR 158 summarized in B D Chipeta, *A Handbook for Public Prosecutors*, (2009, 3<sup>rd</sup> ed.,) p.44

<sup>30</sup> CPA s228 (6)

<sup>31</sup> *Kamundi v Republic* [1973] EA 540 and *Wanjiru v R.* [1975] EA 5 referred to in *Asia Ally v R.* [2000] TLR 234



- If the dispute of facts amounts to a denial of an essential element of the offence and raises a question as to his guilt, the plea is equivocal and the court should record a change of plea to “not guilty” and proceed to hold a trial.<sup>32</sup>
- If the dispute of facts does not concern a denial of the essential legal elements of the offence the court can take it as a plea to the charge. The court should record a conviction on the charge(s).<sup>33</sup>

*However, before the court proceeds to sentence, it must consider if the difference in versions of facts between accused and prosecution would have a significant impact on the sentence.*

*The court may be assisted by requesting that the prosecution and accused put in writing the difference in the factual basis highlighting the aggravating and mitigating factors relevant to the level of sentence.*

*(1) If the court determines that the matter in dispute **would not** have a significant impact on sentencing, the court should proceed on the basis of the account of the accused.<sup>34</sup>*

*(2) If the court determines the dispute **would have** a significant impact on sentence the court, it should identify the particular issue in dispute and, on this element alone, invite the accused and prosecution to provide evidence which they can test through cross-examination. If the dispute concerns matters solely within the knowledge of the accused he should be asked to provide evidence on oath and be cross-examined. The court will then make a determination on this particular issue in dispute. It will proceed to sentence based on these findings.<sup>35</sup>*

<sup>32</sup> See *DPP v Paule Reuben Makujaa* (1992) TLR 2 and *Samson Kayora and Another v R.* (1985) TLR 158

<sup>33</sup> See *Asumani s/o Mataka v R.* (1968) HCD 427

<sup>34</sup> The approach outlined here on consideration of the basis of a plea of guilty is based on the common law approach developed by the laws of England and Wales in *R v Beswick* [1996] 1 Cr.App.R. 343, *R v Tolera* [1999] 1 Cr.App.R. 25 and *R v Underwood* [2005] Cr.App.R 13 as considered in the *Attorney General's Guidelines on the Acceptance of Pleas and the Prosecutor's Role in the Sentencing Exercise* (2009).

<sup>35</sup> This process has been developed in other Commonwealth jurisdictions from practice in court. In England & Wales the consideration of a particular issue for the purpose of sentencing is referred to as a *Newton* hearing.

*Example:*

*The accused pleads guilty to an offence of causing actual bodily harm (s.241 Penal Code). The prosecution's case is that the accused used a stick as a weapon and punched the victim three times. This caused a 5-cm wound to the victims arm and other bruises. The prosecution evidence is that this was an unprovoked assault.*

*The accused admits punching the victim several times and causing bruising to the body. Therefore, he pleads guilty to the offence. However, he denies using a weapon or causing any wound. Also, he claims that he was provoked by the victim who had insulted his family.*

*On these facts the court:*

- *Accepts the guilty plea and convicts the accused as he has admitted the offence*
- *Considers the difference in mitigating and aggravating factors is so significant that it may have a substantial difference in sentence.*
- *The court sets a date for a hearing of evidence so that it can determine the factual basis upon which to sentence. The prosecution and accused will provide evidence (e.g. eye witness, medical) on the issues in dispute **only**. The court will make a finding based on normal rules of criminal procedure.*
- *The court sentences the accused on the factual basis of its finding.*

#### **4.5. The Sentencing Powers of Courts**

The types of punishment and orders available to the court upon conviction are set out in statute as: death;<sup>36</sup> imprisonment;<sup>37</sup> corporal punishment;<sup>38</sup> fine;<sup>39</sup> forfeiture;<sup>40</sup> payment of compensation;<sup>41</sup> finding security to keep the peace and be of good behaviour or to come up for judgment;<sup>42</sup> absolute and/or conditional discharge;<sup>43</sup> costs;<sup>44</sup> probation;<sup>45</sup> probation with bond;<sup>46</sup> release of offender on community service.<sup>47</sup>

<sup>36</sup> The Penal Code, Cap 16, R.E. 2002, r25(a)

<sup>37</sup> The Penal Code, Cap 16, R.E. 2002, r25(b)

<sup>38</sup> The Penal Code, Cap 16, R.E. 2002, r25(c)

<sup>39</sup> The Penal Code, Cap 16, R.E. 2002, r25(d)

<sup>40</sup> The Penal Code, Cap 16, R.E. 2002, r25(e)

<sup>41</sup> The Penal Code, Cap 16, R.E. 2002, r25(f)

<sup>42</sup> The Penal Code, Cap 16, R.E. 2002, r25(g)

<sup>43</sup> The Penal Code, Cap 16, R.E. 2002, r38(1)

<sup>44</sup> The Penal Code, Cap 16, R.E. 2002, r32; and The CPA section 345.

<sup>45</sup> The Probation of Offenders Act section 3

<sup>46</sup> The CPA section 337 to 339

<sup>47</sup> The CPA section 339A; and The Community Service Act section 3

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>48</sup>

The High Court has unrestricted sentencing powers and may pass the maximum penalty sanctioned by law.<sup>49</sup>

The sentencing powers of the courts subordinate to the High Court, are restricted.<sup>50</sup> They are as follows:

- Passing the minimum sentence of imprisonment prescribed by law for any offence specified in the Minimum Sentences Act.
- For other offences, imposing a term of imprisonment not exceeding five years **unless the provisions of any written law authorises the court to impose a greater sentence.**
- Imposing a fine not exceeding twenty million shillings, **unless the provisions of any written law authorises the court to impose a greater amount.**
- Passing a sentence of corporal punishment.

If the magistrate is not of the rank of Senior Resident Magistrate, then, in the following circumstances, no sentence can 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:

- A sentence of imprisonment for a scheduled offence which exceeds the minimum term of imprisonment under the Minimum Sentences Act;
- For any other offence, a sentence of imprisonment of more than 12 months;
- A sentence of corporal punishment which exceeds 12 strokes; and
- 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.

The sentencing powers of the Primary Courts are restricted by sections 2, 3, 5 and 7 of the PCCPC which provide that the courts powers are limited to: (1) imprisonment of not more than 12 months; (2) a fine of not more than Tshs. 500,000; (3) corporal punishment of not more than 12 strokes.

#### 4.6. Committal for Sentence<sup>51</sup>

After convicting a person in a subordinate court, the court can, if it considers that the person should receive a sentence greater than it has power to impose, commit a person for sentence.

A primary court can commit a person for sentence to a district court. The district court can commit a person for sentence to the High Court. In making this decision the court must obtain information as to:

<sup>48</sup> See *R. v. Emmanuel Timothy* [1980] T.L.R 115. For offences under the Penal Code see section 35 of the Penal Code Cap. 16

<sup>49</sup> The CPA section 166; “The High Court may pass sentence or make any other order authorized by law”.

<sup>50</sup> CPA s170

<sup>51</sup> See powers of s171-72 CPA and paragraph 7 of the 3<sup>rd</sup> Schedule to MCA (PCCP) for powers of committal for sentence

- (1) the character and antecedents of the person; and
- (2) the circumstances of the offence.

The sentencing court “shall inquire into the circumstances of the case and shall deal with the offender in any manner in which he could have been dealt with by [that sentencing court] if he had been convicted by [that sentencing court] of the offence in question.”

All subordinate courts have the power to commit the person to custody or admit them to bail pending confirmation of sentence.<sup>52</sup>

There is no power under these provisions for the sentencing court to reconsider plea or otherwise the propriety of the conviction.<sup>53</sup>

## 5. The Sentencing Hearing

Before moving to process of passing sentence the Registrar or other officer of the court should ask the accused person whether he has anything to say why sentence should not be passed upon him in accordance with the law.<sup>54</sup>

In order to assist the court in determining the proper sentence, the court may receive such evidence as it thinks fit in order to inform itself as to the sentence proper to be passed.<sup>55</sup> The Court of Appeal has considered that it is at the discretion of the trial court to make this determination.<sup>56</sup>

It is likely that in all but the simplest of cases this will require the assistance of the prosecutor [see Para 5.1] and the accused (or his representative) [see Para 5.2] or any other information the court considers relevant [see Para 5.3].

In every case, the accused should be given the opportunity to provide an account in his mitigation.<sup>57</sup>

If the court considers it necessary, the court may adjourn the hearing for the purpose of sentencing.<sup>58</sup> This may be necessary if the court considers it requires more information before it is able to appropriately sentence the accused. The prosecution, accused or probation officer may advise the court that an adjournment is required to obtain this information.

<sup>52</sup> CPA s170 and paragraph 7(3) of the 3<sup>rd</sup> Schedule to MCA (PCCP)

<sup>53</sup> See *DPP v Thadei Mlomo and others* Cr Appeals 7-15 of 1989, (CA-Mbeya), (1989) (unreported)

<sup>54</sup> CPA s 314 ...”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. *R. v Sulemani Saidi and another* [1977] LRT No.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 persons 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>55</sup> CPA s 236 and 320; paragraph 39 of the 3<sup>rd</sup> Schedule to MCA (PCCP)

<sup>56</sup> See *Juma Buruhani Mapunda an another v R.* Cr. Appeal No. 40 of 2002 (2005) (unreported)

<sup>57</sup> See *Haining and others v R.* (1972) HCD n.53 and Kisanga J in *R v Sulemani Saidi and another* (1977) LRT n29 both referred to in B D Chipeta, *A Handbook for Prosecutors*, (2007, 3<sup>rd</sup> ed.,) p.77

<sup>58</sup> CPA s315(2)

### 5.1. The Role of the Prosecutor:

The prosecutor must assist the court and provide all relevant evidence and information to assist the court in making its decision on sentence. He will have access to relevant information in addition to the facts of the case, including previous convictions, breach of any court orders, background of the accused, process of the case, the impact of the offence on the victim and society, time served on remand, etc. The prosecutor should assist the court on available options for sentence under the law, including any relevant guidance from case law or statute. The prosecution should make applications to the court for any relevant ancillary orders upon sentence, such as compensation, forfeiture and restitution.

In all matters the prosecutor must proceed firmly and fairly. The role of the prosecutor should include the following:

- If there has been a trial the court will know the facts of the case. In a case of a guilty plea the prosecutor will tell the court the facts of the case [see process above at para 3 regarding a plea of guilty]
- Provide the court with any additional relevant information on the offender: e.g. previous convictions; breach of orders; time served in custody; any early admission or indication of remorse; age (particularly if a juvenile) and other personal circumstances known.
- Provide the court with the impact of the offence upon the victim and wider society. For example, any long term physical damage to the victim or his property. The impact (if any) on his work, business, family relationships or other personal circumstances.
- Provide the court with any details of co-operation with the authorities.
- Outline any minimum or maximum sentences available. Any relevant case law should be provided to the court by the prosecution and copies made available for the accused to consider.
- Remind the court of any powers restricting publication and protecting the identity of witnesses.
- Apply for any relevant ancillary orders [see Para 7 below] including compensation, forfeiture, restitution.

### 5.2. The Role of the Accused and/ or the Accused's Advocate.

The accused **should** be given an opportunity to address the court before the sentence is passed.<sup>59</sup>

He may contradict, explain or qualify whatever the prosecutor has told the court about the accused and the circumstances of the case.<sup>60</sup>

<sup>59</sup> *Haining and others v R.* (1972) HCD n.53

<sup>60</sup> *Kisanga J in R v Sulemani Saidi and another* (1977) LRT n29 referred to in B D Chipeta, *A Handbook for Prosecutors*, (2007, 3<sup>rd</sup> ed.,) p.77

He should be given the opportunity to examine any record of previous convictions produced by the prosecution and given the opportunity to accept or deny this record.

*He may provide the court with any information he considers is relevant in mitigation of the sentence upon him such as his age, antecedents, previous good character (if appropriate), his responsibilities to his family, the impact of sentence upon him or others, any remorse, any explanation what led the accused to commit the offence.*

*The accused should be asked to provide details of his financial income and assets so that the court can consider this in determining the appropriate level of fine, compensation or other financial order.*

If the accused does not have the sufficient means to pay for an advocate but the court considers it is in the interests of justice that an accused person should have legal aid to assist his preparation and conduct of his case then the court shall issue a certificate to this effect. The Registrar should assign to the accused a legal aid provider who has such an advocate.<sup>61</sup> The appropriate form is at Ninth Schedule - Form No.009 of the Legal Aid Regulations 2018.

If the accused is unrepresented, the prosecution should assist the court by outlining those matters which should be considered to mitigate any sentence such as an early admission and indication of remorse.

### **5.3. Any Other Relevant Information**

The court has a wide discretion before passing sentence to receive any “such information as it thinks fit in order to inform itself as to the proper sentence to be passed.”<sup>62</sup>

*In particular, the court may be assisted by probation officers, social workers, teachers or others who may have particular relevant evidence to assist their consideration on sentencing.*

*The views of any identifiable victim (including the relatives of a deceased person) on the impact of the offence should be sought by the court through the prosecution (see below for details).*

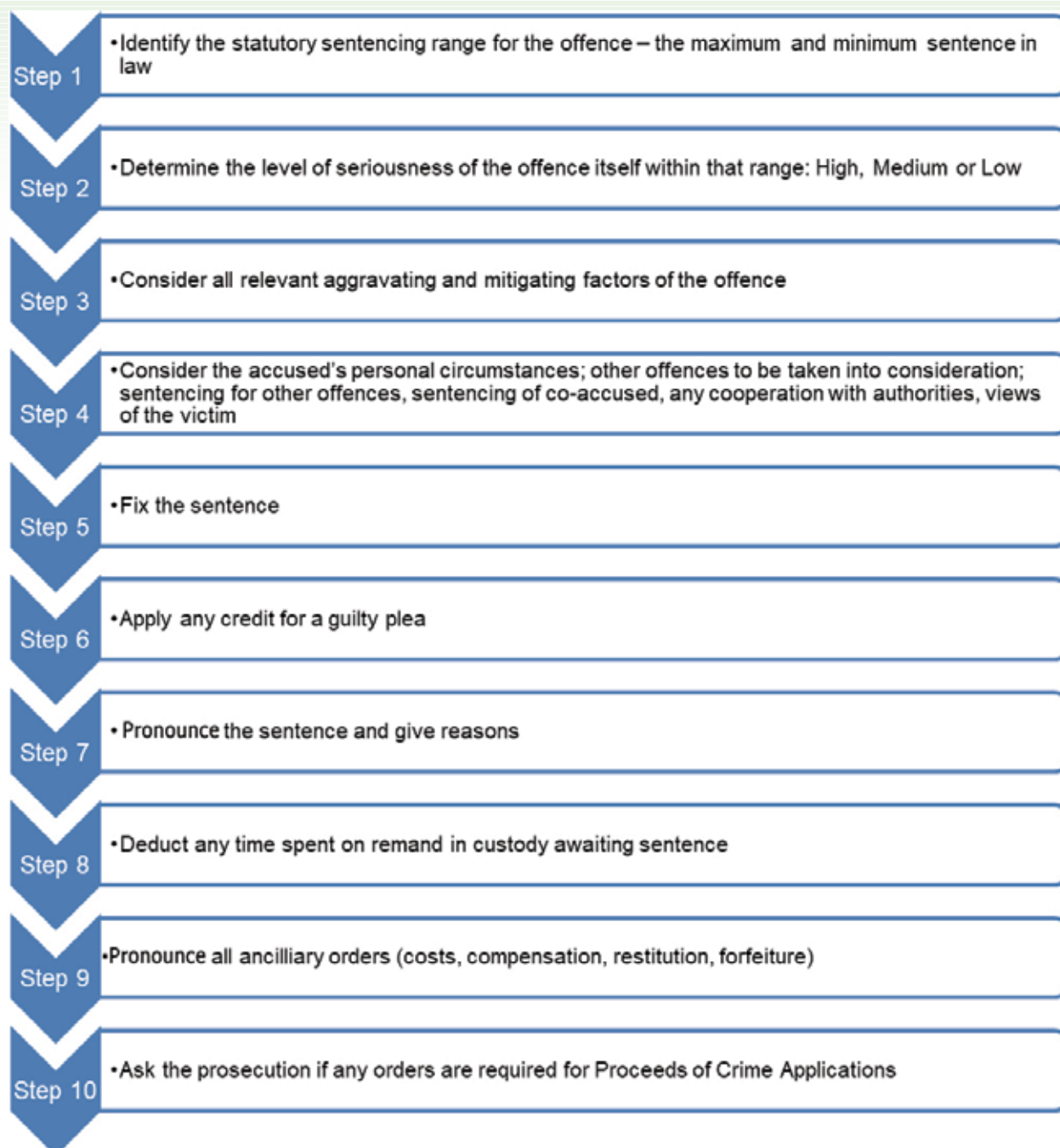
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<sup>61</sup> Legal Aid Act 2017 s33

<sup>62</sup> CPA s236 and s320

## 6. Sentencing Process:

The following is the process which should be considered by the court in sentencing every offence.



NB:

1. *If there is offence specific sentencing guidance for the offence then this should be followed. These set out the ranges of seriousness for those particular offences and provide guidance to fix the level of sentence.*
2. *If a court decides to give a sentence which is more or less than the guidelines then it **must** give reasons to explain that decision and why the particular circumstances of the case provide exceptional circumstances to sentence outside of the guidelines.*

A checklist sheet for the courts to use in individual cases is attached as Annex II.

### 6.1. Identify the Statutory Sentencing Range for the offence

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 to the case.

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#### *STEP 1 Identify the Statutory Sentencing Range for the offence – the maximum and minimum sentences in law*

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A maximum sentence cannot be exceeded. If the Act sets a minimum sentence then this is minimum sentence that shall be imposed.<sup>63</sup>

A maximum sentence should only be imposed when the offence comes close to the worst of its type. In **Regina v Mayera** (1952) SR 253, the court held that:-

*“A maximum punishment is reserved for the worst offence of the class for which the punishment is provided. A court, in sentencing for an offence, should consider whether it may not be likely that far worse instances of the same class may in future come before it, and should keep some penalty in reserve in order to be able more severely to punish the greater offences. Thus it is undesirable to punish a first offender who steals a lamb with the maximum penalty .....for then no greater penalty can be inflicted on the hardened criminal, who steals an ox or a horse, or a number of sheep, unless he happens to come within the provision allowing a greater punishment in case of second or subsequent conviction”*

**NB:** If the sentencing court incorrectly states the maximum sentence in its assessment of the appropriate sentence, that is an appealable error, but depending on the circumstances of the case, it may not necessarily lead to the sentence being reduced or increased.<sup>64</sup>

The sentence must be lawful. A maximum sentence cannot be exceeded. If the Act sets a mandatory minimum sentence then at least that minimum sentence must be imposed, however hard it may appear in particular cases.

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<sup>63</sup> See *Smith v R.* [2007] NEW SOUTH WALES COURT OF CRIMINAL APPEAL (NSWCCA)138

<sup>64</sup> See *Smith v R.* [2007] NEW SOUTH WALES COURT OF CRIMINAL APPEAL (NSWCCA)138



## 6.2. Consider the level of Seriousness of the Offence

In every case the court should first determine the nature and seriousness of this particular offence. In considering the seriousness of the offence the court should look at the nature and circumstances of the offence, offender and victim, to assess:<sup>65</sup>

- The **gravity of the offence** – the nature and circumstances in which the offence was committed;
- The **culpability of the particular offender** – the motivation, conduct, intention and particular circumstances of the offender; and
- The nature and extent of **harm, injury or damage** that was caused, intended or might foreseeably have been caused to the victim or society.

The court will be guided by the need for consistency with appropriate sentence levels including sentences for offences of similar seriousness determined by higher courts.

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### *STEP 2 Determine the level of seriousness of the offence within the range of seriousness. Is it High, Medium, or Low level for that offence?*

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The court should assess if the level of seriousness places it at the **low, middle or high** end for this type of offence.

- Low seriousness – these are offence at the lowest end of the scale of seriousness for that type of offence. They must attract the lowest level of sentence.
- Medium seriousness-these are offences at the middle between the highest and the lowest scale of seriousness for that type of offence. They must attract the medium level of sentence.
- High seriousness-these are offences at the highest end of the scale of seriousness for that type of offence. They must attract the highest level of sentence.

## 6.3. Aggravating and Mitigating Factors:

The court must consider any relevant aggravating and mitigating factors which make the offence more or less serious.

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

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The Penal Code refers to the following as relevant factors in sentencing: age, character, antecedents, health condition of the offender, and trivial nature of the offence. The list is deliberately non-exhaustive and the sentencing court may consider “any extenuating circumstances under which the offence was committed.”<sup>66</sup> The

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<sup>65</sup> See Samatta JK in the case of *Xavier Sequeira v R*, Criminal Revision 4 of 1993 (unreported) see also *R v Bariki s/o Tweve and another* Criminal Case 42 of 2002 (unreported)

<sup>66</sup> Penal Code s339A

courts have exercised this discretion widely and the following are some of the most common aggravating and mitigating factors:

<b>Aggravating</b>	<b>Mitigating</b>
<i>A high level of planning, organization, sophistication or professionalism for the offence</i>	<i>Previous good character</i>
<i>Multiple victims</i>	<i>Young or old age of the accused where this is relevant to responsibility</i>
<i>Offending over a long period</i>	<i>Health condition or disability of accused</i>
<i>A pre-meditated offence</i>	<i>Mental instability of accused</i>
<i>A professional offence and the degree of sophistication involved</i>	<i>Impact on family circumstances of accused</i>
<i>Significant actual, intended or foreseeable impact on national security</i>	<i>Remorse or contrition (e.g. early admission of responsibility can be one evidence of genuine remorse)</i>
<i>High level of financial profit from the offence</i>	<i>The offender played only a minor role in the offence</i>
<i>Abuse of position of trust and/or power</i>	<i>Trivial nature of the offence</i>
<i>A repeat offender</i>	<i>The offender was provoked<sup>67</sup></i>
<i>Offences committed whilst on bail or on arrest for other offences</i>	<i>Co-operation with the police or other state agencies after arrest or surrender</i>
<i>A high degree of responsibility for the offence</i>	<i>A genuine belief that conduct would not constitute a criminal offence</i>
<i>Deliberate and gratuitous violence, damage to property or degrading of victim</i>	<i>Any punishment unlawfully meted out to the accused by members of the public</i>
<i>Offence in the presence of vulnerable persons</i>	<i>Any compensation or restitution already contributed by the accused.</i>
<i>Motivated by racial, religious, disability hostility</i>	
<i>The effect of the crime on the victim – physical, mental, emotional</i>	
<i>Any harm caused to the victim</i>	

<sup>67</sup> Save that Provocation is a qualified defence for murder reducing the offence to manslaughter.

<i>The financial value of the offence in terms of loss to the victim and profit to the accused and others</i>	
<i>Vulnerability of the victim – age, sex, disability, minority group</i>	
<i>Targeting of persons working in the public sector</i>	
<i>The accused showed a flagrant disregard for the law</i>	

*The prosecution and 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.*

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***STEP 4 Consider the Accused's Personal Circumstances, Totality Principle, Co-Accused Sentence, Any Co-operation with Authorities and information from the victim***

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#### **6.4. Consider the Accused's Personal Circumstances**

Having reached a determination of the overall seriousness of the offence, the court should consider the personal circumstances of the offender, including:

- The financial circumstances of the accused must be considered if the court is considering a fine or other financial order;
- *If the accused has provided any assistance or cooperation to the authorities after his arrest which has assisted in the disruption, investigation or disruption of criminal activity;*
- *The family circumstances of the accused and likely impact of sentence on dependents;*
- *Any good works or character references; and*
- *Any breaches of court orders.*

#### **6.5. Take any other offences into Consideration**

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.<sup>68</sup>

The court may only take into consideration offences which the accused has:

- Admitted the commission of offences; and
- Asks the court to take them into consideration.

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<sup>68</sup> CPA s321 and 237

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 may be greater.

The court has no power to go beyond the statutory maximum for the offence for which the accused has been convicted.<sup>69</sup>

#### **6.6. Sentencing for more than one offence: Concurrent and Consecutive (Cumulative) Sentences:**

When an accused is convicted of two or more offences, separate sentences **must** be imposed for each count. The East African Court of Appeal has said it is a general practice that sentences shall run concurrently.<sup>70</sup> A trial court should only award consecutive sentences in exceptional circumstances,<sup>71</sup> such as the extreme gravity of a particular offence.<sup>72</sup> However, where the sentence is for murder or other capital offence (i.e.: death by hanging), the court should not impose a death sentence for the other offences.

This is the ‘totality principle’, in that the total sentence provided should reflect the entire offending.

In the circumstances that after being convicted of one offence a person is convicted of another offence there is a presumption that the sentences should run consecutively unless the court directs it shall be concurrent.<sup>73</sup> Again, reasons should be given.

*Any term of imprisonment which is a result of a default to pay a fine as part of a sentence for an offence which could have been imprisonment; the additional default prison term should be consecutive to other parts of the sentence.*<sup>74</sup>

#### **6.7. Consider Information received from victim**

It is good practice for the court to seek from the prosecution any information regarding the impact of the offence upon any identifiable victim. In the case of a deceased victim a close family member is likely to be the appropriate person.

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>75</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

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<sup>69</sup> CPA 321(3) and 237(3)

<sup>70</sup> *R v Kasongos/o Luhogwa* (1953-1957) 2 TLR (R) 47;

<sup>71</sup> *R v Kasongos/o Luhogwa* (1953-1957) 2 TLR (R) 47; *R v Suwedi Mukasa s/o Abdulla Aligwaisa* (1946) EACA 97; *Laurean Anacleiti and another v R.* 1973 LRT No.34; *Baguani Mhina Jumbe v R* Cr. Appeal 120 of 1993 (unreported); *Yassin Omari and another v R.* Cr. Appeal No. 212 of 1992

<sup>72</sup> See for example the Court of Appeal decision in *Baguani Mhina Jumbe v R* Cr. Appeal 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”.

<sup>73</sup> Penal Code s36 and PCCPC s6

<sup>74</sup> Penal Code s36 and PCCPC s6

<sup>75</sup> CPA s236 and s320

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 offence.

This information may be provided through the prosecutor and/or, at the invitation of the court, the victim themselves if this is considered appropriate by the court.

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### **STEP 5 Determine the appropriate length of the sentence**

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#### **6.8. Reduction in sentence for a guilty plea:**

An accused person who has pleaded guilty must ordinarily be given credit for that plea and this should be stated in the sentencing process. However, such sentence cannot be less than any statutory minimum sentence as imposed by the Minimum Sentences Act or other law.

A reduction in a guilty plea is merited because:

- (a) It is in the public interest as it “saved the court’s time and expense in conducting a full trial.”<sup>76</sup>
- (b) It avoids the possibility of an accused securing an unmerited acquittal through a technical or procedural error.<sup>77</sup>
- (c) It is also an indication of contrition which qualifies him for lenience from the court and a milder sentence.<sup>78</sup>

“... it is generally, if not universally, recognized that an accused pleading guilty to an offence with which he is charged, qualifies him for the exercise of mercy from the court. The reason is, I think, obvious, in that one of the main objects of punishment is the reformation of the offender. Contrition is the first step towards reformation, and, a confession of a crime, as opposed to brazening it out, is an indication of contrition. Therefore, in such a case, a court can and does impose a milder sentence than it would otherwise have done”

- (d) It may reduce the impact of the crime on the victim and witnesses by saving them from having to testify in court.

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### **STEP 6 Apply any credit for a guilty plea**

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Judges and magistrates must explicitly state that a guilty plea has been taken into account and failure to do so may be taken as indicating that the plea was not

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<sup>76</sup> E.g. *Charles Mashimba v R.* [2005] TLR 90 at 93 for an offence of manslaughter; *Swalehe Ndungajilungu v R.* [2005] TLR 94 at 98

<sup>77</sup> *Nilson v R.* [1970] EA followed in *Yahana Hassan and Godson Hiza v R.*, Cr. Appeal No. 16 of 2000 (unreported)

<sup>78</sup> *Francis Chilemba v R.* 1968) HCD No. 510 as applied by Court of Appeal at Arusha in *Paul v R.* [1990-94] 1 EA 513 (CAT)

considered at all or was given insufficient weight and the appellate court will definitely interfere.<sup>79</sup>

Where no discount is given for this, the sentencing court must give cogent reasons for not doing so.<sup>80</sup> For example, the courts have held that the fact the offender is not a first-time offender is a reason for not applying a discount.<sup>81</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 guilty plea.

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 are general guidance and it is good practice for the court to explain any deviation from the following:*

- *The maximum level of reduction in sentence for a guilty plea 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 guilty plea 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.*
- *If a guilty plea is entered after this then the level of reduction should be reduced according to the lateness in proceedings. The maximum discount for a plea 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 reduce further, even to zero.*

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

- (1) Determine the appropriate sentence for the offence(s) if the case had been disputed and proceeded to trial
- (2) Determine the level of reduction for a guilty plea based on the time in proceedings the guilty plea was entered
- (3) State the amount of that reduction.
- (4) 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”*

<sup>79</sup> See, R. v. Mohamed Ali Jamal (1948) 15 EACA 126, James Yoram v. R (1951) 18 EACA 147, Silvanus Leonard Nguruwe v. R. [1982] T.L. R. 66, Benard Kapojosye v. R. (supra).

<sup>80</sup> Giotas v. Regina [2008] NEW SOUTH WALES COURT OF CRIMINAL APPEAL (NSWCCA) 287.

<sup>81</sup> See multiple Court of Appeal cases referred to at F Mirindo. *Administration of Justice in Mainland Tanzania* (2011) page 422 footnote 64

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### *Step 7 Pronounce the sentence and give reasons*

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#### **6.9. Time already spent in custody to be taken into account from the sentence:**

If a person has been remanded in custody for any period awaiting trial and/or sentence then at the time of the sentence the sentencing court should “take into account the period the person spent in remand.”<sup>82</sup> This also applies to persons committed to the High Court in custody from a subordinate court for sentence or to have their sentence confirmed.<sup>83</sup>

The Court of Appeal has explained that time already spent in custody should be deducted from the time to be served as part of the sentence.<sup>84</sup>

Ramadhani, CJ explained on behalf of the Court of Appeal that:

***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 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 personal circumstances, impact on victim, etc. and reduces the sentence to 3 1/2 years;*

*Step 5 – The court determines the appropriate term of sentence would be 3 ½ years if the accused had been convicted after trial;*

***[NB: The sentence of 3 ½ 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 1/3 of the actual sentence. As such the court reduces his sentence by 1/3 from 3 ½ 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.*

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<sup>82</sup> CPA s172

<sup>83</sup> CPA s172

<sup>84</sup> See *Augustino Mponda v R.* [1991] TLR 97; *James Barnabas alia King Mazishi v R.*, Cr. Appeal No. 221 of 2004 (unreported) ; *R v Willy Walosha*, Cr. Appeal No. 7 of 2002 (unreported); *Katinda Simbila @ Ng’Waninana v. R.* Cr. Appeal No. 15 of 2008 (unreported) (Court of Appeal Tabora)



*“the period of time spent in custody is a result of problems with the administration of justice in the country. So, it is our considered opinion that the period should not be loaded on the accused persons who are helpless and cannot do anything about it. Trial courts should take such periods into account and if that is not evident appellate courts should interfere.”<sup>85</sup>*

The “time spent in custody” includes all periods of detentions as a result of the offence which is being sentenced and shall include detention by police and at prison.

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### ***Step 8 Deduct any time spent on remand in custody awaiting sentence***

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The practical mechanism for doing this is not set out in statute. The Court of Appeal has said that it should not be left to the Superintendent of Prisons to make the calculation concerning the amount of actual time in custody to be taken off the sentence. It said this was a role for the courts.

The current practice of the courts is to pronounce a sentence based on what they would have given minus the time spent in custody. *It is suggested that best practice is that instead the court pronounce the actual sentence it proposes and then orders that the time spent in custody is deducted from the actual sentence.*

*This has the benefit that the gravity of the offence is reflected in the actual sentence pronounced and the accused, victim and public all have confidence that the sentence was sufficiently serious. Finally, it also means that those sentenced to offences with mandatory minimum sentences are not arbitrarily detained longer due to administrative inefficiencies.*

#### ***Summary of the approach to taking time served in custody from sentence:***

- (1) Undertake the sentencing process and determine the appropriate sentence*
- (2) State that this is the sentence*
- (3) Determine from the prosecutor, accused and prison authorities the number of days in police detention and prison awaiting trial for that particular offence*
- (4) State that any time the accused has spent in detention or custody must be considered as time which has already been served as part of the sentence.*

*Example of words by court: “.....I sentence you to a term of [4] years in prison. Any time you have served in police detention or prison custody for this particular offence shall be automatically deducted from the time you have left to serve for this sentence. I am informed by the prison authorities that this is a period of [205] days.”*

## **7. Ancillary Orders**

In addition to any sentence imposed by the court, it may make ancillary orders depending on which statutory powers apply to which offence. In every case, it is good

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<sup>85</sup> See *Nyanzala Madaha v R.* [CAT] Cr. Appeal No. 135 of 2005 (unreported)



practice for the court, on completion of sentence, to ask the prosecution which ancillary orders it is seeking out of the case. The accused (or his representative) should be given the opportunity to respond to the prosecution.

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### *Step 9 Pronounce all ancillary orders (costs, compensation, restitution, forfeiture)*

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There are numerous orders available to all offences under the Criminal Procedure Act, Penal Code and other legislation.

In addition, many of the same powers are also found in statutes governing specific offences such as wildlife, drugs, corruption, terrorism, economic crimes act. Many of these acts have additional ancillary powers available which should be considered by the prosecution and the court:

- **Costs** – the court may order a convicted person to pay the costs of the public or private prosecutor subject to maximum amount stated in statute which is Tshs. 4000 in the High Court and Tshs. 2000 in the subordinate court.<sup>86</sup>
- **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”. The awarding of damages to victims of a sexual offence is mandatory. Compensation is not permitted for a capital offence.<sup>87</sup>
- **Forfeiture and confiscation of any property used (or intended to be used) for the purpose of committing or facilitating the commissioning of an offence.** There is a general power under the CPA for all criminal offences.<sup>88</sup> This is subject to particular provisions regarding forfeiture under any Act the offender may have been convicted (e.g. Wildlife Conservation Act,<sup>89</sup> Fisheries Act, The Forest Act, the Mining Act, Economic and Organized Crime Control Act<sup>90</sup> and Drugs Control Enforcement Act).
- **Disposal of exhibits not claimed within 12 months.**<sup>91</sup> The court may order the sale, destruction or other disposal of exhibits not claimed within 12 months – there is nothing to stop this order being given at sentence and executed 12 months later.

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<sup>86</sup> S345 CPA

<sup>87</sup> Ss348-50 CPA

<sup>88</sup> Section 351-2 of the CPA provide general powers to the court on any offence to order forfeiture and confiscation of any property under “his possession or control at the time of his apprehension – (a) has been used for the purpose of committing or facilitating the commission of any offence; or (b) was intended by him to be used for that purpose”. The court may order for the destruction, delivery or sale of that property.

<sup>89</sup> See s111 Wildlife Conservation Act 2009 which lists specific items and widens powers in certain circumstances to forfeit items “used or employed in the commission of the offence”.

<sup>90</sup> S23(3) EOCCA

<sup>91</sup> S353(1) CPA but also see provisions in offence specific legislation

- **Disposal of articles subject to decay**<sup>92</sup> - this power may be used at any time during the court process including after sentence.
- **Power to subject an offender to police supervision from the date of release from prison** – this power is available to any offender who has been convicted of an offence which is punishable with a term of three years or more. The length of supervision must not exceed five years from the offenders’ release from prison. The supervision could include a requirement to reside in a specific district; not leave district without written consent; provide details of residence; present himself to officials in the district on request.<sup>93</sup>

There are many orders specific to certain offences under certain Acts. The most notable include:

- Forfeiture of any property owned by a person convicted of a serious drug offence under the DCEA.<sup>94</sup>
- For corruption offences under the PCCA a person convicted of certain corruption offences must, in addition to any sentence (including fine), pay to the government (or to his principal if acting as an agent) the amount or value of any advantage they received from the offence.<sup>95</sup>
- Registration of certain offenders (e.g. persons convicted of wildlife offences).<sup>96</sup>

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*Step 10 Ask the prosecution if any orders are required for proceeds of crime applications*

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## 8. Proceeds of Crime

The process for a confiscation order of the proceeds of crime under the Proceeds of Crime Act is not a part of the sentencing process.

However, the court should be aware that the prosecution may, in appropriate cases, after conviction apply to the court for either:

- (1) a forfeiture order against tainted property in respect of the offence; or
- (2) a pecuniary penalty order against the person in respect of any benefit derived by the person from the commission of the offence.

In particular, if an application is made before the accused has been sentenced then the court may, if satisfied that it is reasonable to do so in all the circumstances, defer

<sup>92</sup> S353(2) CPA – may be applied at any time in trial and not simply on conviction. Similar provisions apply for offence specific legislation E.g. wildlife trophies under sections 101 Wildlife Conservation Act 2009

<sup>93</sup> S341-43 CPA

<sup>94</sup> S49 The Drugs Control and Enforcement Act 2015

<sup>95</sup> See PCCA and provisions for ss15, 16,17 and 18

<sup>96</sup> See sections 119 and 120 Wildlife Conservation Act 2009

passing sentence until it has determined the application for the confiscation order.<sup>97</sup> As such, it is good practice to ask the prosecution if proceeds of crime application is being considered.

*If the application is for a pecuniary penalty order, then deferring sentence is unlikely to be reasonable as the court cannot grant this order before the expiry of 6 months after the date of conviction.*

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<sup>97</sup> The Proceeds of Crime Act s13(2)

## References

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1. ***Criminal Procedure Act***, Cap. 20 [R.E 2002]
2. ***Cyber Crime Act***, Cap. 443
3. ***Economic and Organized Crime Control Act***, Cap 200 [R.E 2002];
4. ***Law of the Child Act***, Cap. 13;
5. ***Legal Aid Act***, 2017 No. 1 of 2017;
6. ***Penal Code***, Cap. 16 [R.E 2002]
7. ***The Drugs Control and Enforcement Act***, 2015;
8. ***The Forest Act, Cap.323***
9. ***The Prevention and Combating of Corruption Act, Cap. 329 [R.E 2002]***
10. ***The Proceeds of Crime Act***; Cap. 256
11. ***The Written Laws (Miscellaneous Amendments) (No,2) ACT***, 2012;
12. ***The Written Laws (Miscellaneous Amendments) Act***, 2016;
13. ***Wildlife Conservation Act***, 2009 Cap. 283

### B. Rules

1. ***Juvenile Court Procedure Rules***, GN 182 of 2016

### C. Cases

1. ***Adan v Republic*** [1973] EA 445;
2. ***Ahmed s/o Mahamedi v R***, (1969) HCD No. 235
3. ***Ally and Another v R***. (1972) HCD 115;
4. ***Asia Ally v R***. [2000] TLR 234;
5. ***Asumani s/o Mataka v R***. (1968) HCD 427;
6. ***Augustino Mponda v R***. [1991] TLR 97;
7. ***Baguani Mhina Jumbe v R*** Cr. Appeal 120 of 1993 (unreported);
8. ***Bakari Ihonde s/o Mhaya v R*** (1921-1952) 1 TLR;
9. ***Benard Kapojosye v.R***. Criminal Appeal No. 411 of 2013 (unreported);
10. ***Charles Mashimba v R***. [2005] TLR 90;
11. ***DPP v Paule Reuben Makujaa***, (1992) TLR 2;
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15. ***Giotas v.Regina [2008]*** NSWCCA 287;
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19. ***Jofrey s/o Leiboo v. R.*** Criminal Appeal No. 24 of 2013;
20. ***Jonathan Mlugani v.R.*** Criminal Appeal No.15 of 2011;
21. ***Juma Jackson @ Shida v.R.*** Criminal Appeal No. 254 of 2011;
22. ***Juma Buruhani Mapunda and Another v R.*** Cr. Appeal No. 40 of 2002 (2005) (unreported);
23. ***Kamundi v Republic,*** [1973] EA 540;
24. ***Katinda Simbila @ Ng’Waninana v. R.*** Cr. Appeal No. 15 of 2008 (unreported) (Court of Appeal Tabora);
25. ***Khalid Athumani v R.*** [2006] TLR 79;
26. ***Khamiz Rashid Shaban v the DPP,*** Zanzibar, Cr Appeal No.184 of 2012 (CA-ZNZ);
27. ***Laurean Anacleiti and Another v R.*** 1973 LRT No.34;
28. ***Nilson v R. [1970];***
29. ***Nyanzala Madaha v R.*** [CAT] Cr. Appeal No. 135 of 2005 (unreported);
30. ***Omari Hassan Kipara v R,*** Cr. Appeal No. 80 of 2012;
31. ***Paul v R. [1990-94]*** 1 EA 513 (CAT);
32. ***R v Bariki s/o Tweve and another,*** Criminal Case 42 of 2002 (unreported);
33. ***R v Beswick,*** [1996] 1 Cr. App. No. 343,
34. ***R v J.W.*** [2010] NSWCA 10;
35. ***R v Kasongos/o Luhogwa,*** (1953-1957) 2 TLR (R) 47;
36. ***R v R. [2012]*** NSWCA32;
37. ***R v Sulemani Saidi and another*** (1977) LRT 29;
38. ***R v Suwedi Mukasa s/o Abdulla Aligwaisa,*** (1946) EACA 97;
39. ***R v Tolera,*** [1999] 1 Cr. App. 25;
40. ***R v Underwood [2005]*** Cr. App. R 13;

41. ***R v Willy Walosha***, Cr. Appeal No. 7 of 2002 (unreported);
42. ***R. v Sulemani Saidi and Another***, [1977] LRT No.29;
43. ***R. v. Mohamed Ali Jamal***, (1948) 15 EACA 126;
44. ***Ruzibukya Tibabyekomya v. R.*** Criminal Appeal No. 218 of 2011;
45. ***Salum Shabani v R.*** Cr. Appeal 49 of 1982;
46. ***Samson Kayora and Another v R.*** (1985) TLR 158
47. ***Samweli Sanyangi v R.*** Criminal Appeal No. 141 of 2012;
48. ***Shabani Iddi Jololo & 3 Others v R.*** Cr. Appeal No.200 of 2006 (CA-DOM),
49. ***Silvanus Leonard Nguruwe v. R.*** [1982] T.L. R. 66;
50. ***Smith v R.*** [2007] NSWCCA 138;
51. ***Swalehe Ndungajilungu v R.*** [2005] TLR 94 at 98;
52. ***Tabu Fikwa v R.*** [1988] TLR 45;
53. ***Wanjiru v R.*** [1975] EA 5;
54. ***Xavier Sequeira v R,*** Criminal Revision 4 of 1993 (unreported);
55. ***Yahana Hassan and Godson Hiza v R,*** Cr. Appeal No. 16 of 2000 (unreported);
56. ***Yassin Omari and Another v R.*** Cr. Appeal No. 212 of 1992;
57. ***Yonasani Egalu and Others v R.*** (9 EACA 65) P. 67

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2. B. Slaterry, A Handbook on Sentencing;
3. F. Mirindo, Administration of Justice in Mainland Tanzania, (2011).

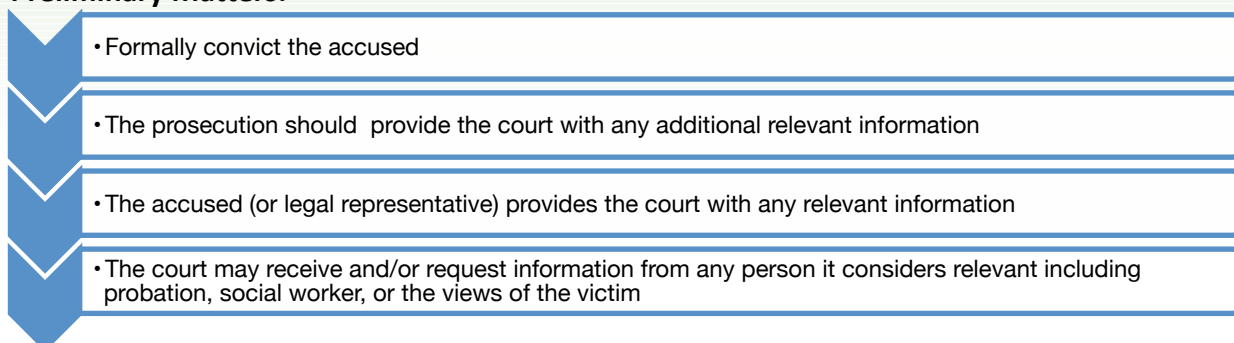
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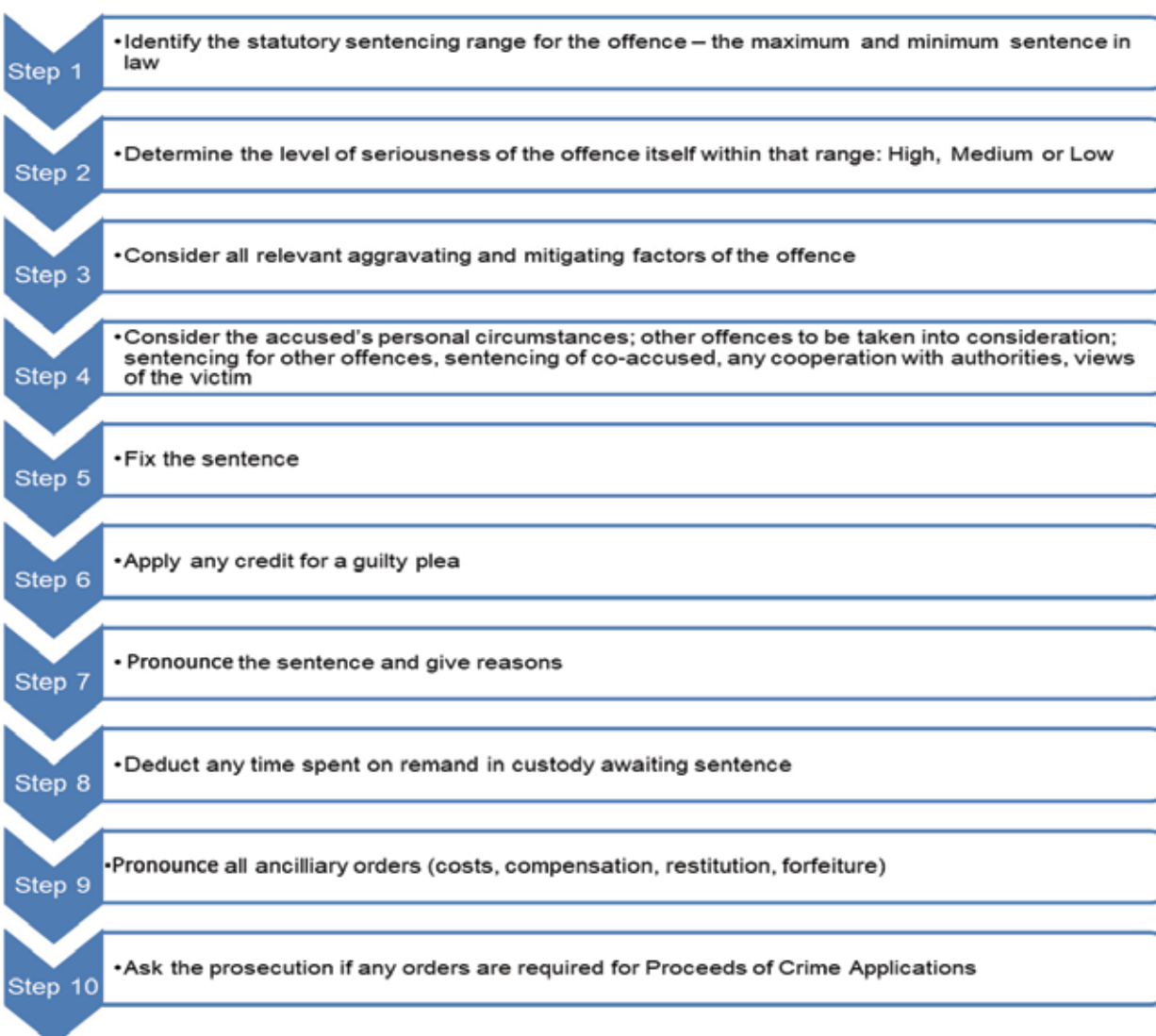
## Annex A: Sentencing Process Flow Chart

The sentencing process starts after there has been a conviction of the accused based either upon (1) a plea of guilty; or (2) a conviction following a contested trial. In either circumstance the court must formally convict a person before proceeding to sentence. The court will then proceed to sentence as follows:

### Preliminary Matters:



### The Sentencing Process



## Annex B – Sentencing Form

(Made under section 394 of CPA and section 71 MCA)

<b>Court</b>	
<b>Case No.</b>	
<b>Parties:</b>	
<b>Charge/ indictment:</b>	
<b>Date of conviction</b>	
<b>Date of sentence hearing</b>	

<b>Information to be obtained to inform sentence decision:</b>	
<b>Prosecution outline of key facts of case including aggravating/ mitigating factors; any co-operation with authorities and any relevant legal guidance for courts</b>	
<b>Previous Convictions:</b>	
<b>Accused information including mitigating factors and personal circumstances and any relevant guidance</b>	
<b>Other Information (e.g. Probation)</b>	
<b>Information from victim (where appropriate)</b>	

<b>(i) Identify the statutory sentencing range for the offences</b>	
<b>Minimum Sentence for offence(s)</b>	
<b>Maximum Sentence for offence(s)</b>	



<b>[NB: If the offence has a specific sentencing guideline then they must be applied]</b>	
<b>(ii) Seriousness of Offence within the sentencing range: Low/ Medium/ High - with reasons</b>	
<b>(iii) Aggravating factors (increasing seriousness)</b>	
<b>(iv) Mitigating factors (reducing seriousness of this offence)</b>	
<ul style="list-style-type: none"> <li>• Personal circumstances (including financial means)</li> </ul>	
<ul style="list-style-type: none"> <li>• Any co-operation with authorities</li> </ul>	
<ul style="list-style-type: none"> <li>• Other offences and/or sentence of co-accused</li> </ul>	
<ul style="list-style-type: none"> <li>• Views of victim</li> </ul>	
<b>(v) Fix the sentence</b>	
<b>(vi) If pleaded guilty a reduction (if appropriate) of no more than 1/3</b>	
<b>(vii) Pronounce sentence</b>	
<b>(viii) Order that any time spent in remand (if any) to be deducted from time left to serve</b>	
<b>(ix) Ancillary orders (for example compensation, disqualification from driving or proceeds of crime.</b>	

<b>Date and Signature:</b>	
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## Annex C Approach by Court to Different Types of Sentence Options

### 9. Judicial Guidance on Different Forms of Punishment

#### 9.1. Imprisonment

*“Wherever a first offender is concerned the emphasis should always be on the reformatory aspect of punishment unless the offence is one of such a serious nature that an exemplary punishment is required or unless the offence is so widespread that severe punishment is needed as shock deterrent.” Georges, C.J.<sup>27</sup>*

*“It is a common law principle that where a statute creating an offence lays down in no uncertain terms the sort of punishment to be imposed on offenders against that statute, it is incumbent on the court called upon to enforce the law to act within the strict language of the law;*

*“Section 30 of the Moshi (Manufacture and Distillation) Act uses the words “shall be liable on conviction to imprisonment” which when properly construed gives discretion to the court to impose an option of a fine sentence”*

*“The application of the common law principle (i.e.(i)) must be subject to section 27(3)<sup>98</sup> of the Penal Code which says that a person liable to imprisonment may be sentenced to pay a fine in addition to, or instead of imprisonment”. Samatta, J. in Tabu Fikwa v. R., [1988] T.L.R 48*

##### 9.1.1. Fine

Where a fine is imposed under any law, in the absence of express provisions relating to that fine the following apply:

- Where it is proposed to impose a sentence of a fine, the capacity of the accused to pay the fine must be considered along with the gravity of the offence.<sup>99</sup>
- Where 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>100</sup>
- The fine should be one which an accused person can reasonably be expected to pay.<sup>101</sup>

When an offence may be punishable by a fine and/or imprisonment the decision is a matter for the court.<sup>102</sup>

Where the statutory provision creating an offence explicitly mentions both imprisonment and fine as methods of punishment this indicates that fine has been

<sup>98</sup> Penal Code [Cap. 16 R.E 200] s27(2)

<sup>99</sup> See *Ally and Another v R.* (1972) HCD n115 referred to in B D Chipeta, *A Handbook for Public Prosecutors*, (2007, 3<sup>rd</sup> ed.,) p75

<sup>100</sup> Penal Code r9(a)

<sup>101</sup> *Salum Shabani v R.* Cr. Appeal 49 of 1982 (Mtenga J.)

<sup>102</sup> Penal Code r29(b)

envisaged by the legislature as the principal mode of punishment, and imprisonment should not normally be awarded.<sup>103</sup>

If an offence has a mandatory level of fine (e.g. wildlife offences based on the value of the item) then this must be imposed.

#### **9.1.2. Sentence in Default of Fine:**

If the court decides that the appropriate level of sentence is **only** a fine then the court should set a sentence of imprisonment in default of payment.

- This default sentence should not be longer than 6 months unless the law allows a longer period.<sup>104</sup>
- The court may adjourn for the offender to pay up to 15 days and extend this period.
- The court may also direct that payments are made by installments.<sup>105</sup>

#### **9.1.3. A Bond for good behavior<sup>106</sup>**

- The duration of a bond must not exceed 3 years.
- 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”.

#### **9.1.4. Community Service**

In deserving cases the Court may also sentence an accused person to community service instead of imprisonment after making determination under the Community Services Act, Cap. 291.

#### **9.1.5. Corporal Punishment**

In certain circumstances, the Court may also sentence an accused person to corporal Punishment under section 25(3) of the Penal Code, Cap. 16 R.E 2002 and section 167(1) and 170(1)(c) & (2)(b) of the Criminal Procedure Act Cap. 20 R.E 2002.

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<sup>103</sup> As per *Bakari s/o Hamis v. R* [1969] H.C.D No. 311

<sup>104</sup> CPA s336

<sup>105</sup> CPA s330

<sup>106</sup> CPA s337

## Annex D Sentencing of Children

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The “Tanzanian Sentencing Handbook” sets out the procedures and laws for adults. If the court is sentencing a youth it **must** be modified to comply with this law and regulations

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### 10. General

The law for sentencing of children and adults is different. The Law of the Child Act, Cap. 13 and the Law of the Child Act, Cap. 13 (Juvenile Court Procedure) Rules, 2016, G.N. 182/2016 apply to all children in criminal proceedings. This guidance shall be applicable to a child who is in conflict with the law. If a person is under 18 he is a child. If he is under 18 at the time he committed the offence then he is a child for the purposes of sentence even if at such time, he has attained the age of majority.

### 11. Juvenile Court - general

Criminal proceedings concerning a child shall be conducted in a Juvenile Court in accordance with the *Law of the Child Act*, Cap. 13.<sup>107</sup> This court shall be presided over by a Resident Magistrate.

All court proceedings shall be held **in camera** in Magistrates chambers or in closed courtrooms.<sup>108</sup> The format of the room should be less formal than an adult court room.

The persons permitted to attend include:<sup>109</sup>

- court personnel,
- advocates,
- social welfare officers,
- guardians at litem/ a next friend/ or other appropriate representatives;
- parents / guardians/ care takers;

In addition, with permission of the court and the consent of the child the following may attend:

- a relative or friend of the child;
- persons attending for purposes of training or research’
- Any other person the magistrate considers is appropriate

#### 11.1. Age Determination:<sup>110</sup>

When a person appears before a court claims to be a child, and that claim is disputed, the court shall cause an inquiry to be made into the child’s age<sup>111</sup> (under s113 of the Law of the Child Act, Cap. 13).

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<sup>107</sup> Law of the Child Act, Cap. 13 s97, 98 and 100

<sup>108</sup> Law of the Child (Juvenile Court Procedure) Rules, 2016 **G.N. 182/2016** r11(1)

<sup>109</sup> Law of the Child (Juvenile Court Procedure) r11(2) and Law of the Child Act, Cap. 13 s99(1)

<sup>110</sup> Law of the Child Act, Cap. 13, s113 and Law of the Child (Juvenile Court Procedures) Rules, r.12

<sup>111</sup> Law of the Child (Juvenile Court Procedure) r12(1)

The court in making this determination may rely upon any of the following records:<sup>112</sup>

- Birth certificate - which shall be considered conclusive evidence unless rebutted
- Medical evidence as is necessary to prove birth whether it is of a documentary nature or otherwise
- Information from any primary school attended by the child as to the child's date of birth
- Any primary school leaving certificate or its equivalent
- Any other credible information or document

If the above documents are not available or do not determine the age of the child the court may take into account the following evidence:<sup>113</sup>

- Any immunization or medical evidence
- A medical examination to determine age (except skeletal X ray shall not be used as a means of age determination without the leave of the court which shall only be given in exceptional circumstances)
- A social enquiry report requested by the juvenile court. This shall be provided by the social welfare officer

The court may order that DNA evidence is taken to determine the identity of the child.<sup>114</sup>

Where the enquiry is inconclusive on the matter of age but "there is cause to believe that the person may be a child it shall be presumed that the person is a child under the age of 18 and shall be treated as such."<sup>115</sup> The Court has recently held that the evidence of a parent is better than that of a medical doctor as regards the parent's evidence on the child's age. ..After all the contents of the Birth Certificate by and large depends on the information from parents.<sup>116</sup>

## **11.2. Legal Assistance for children at all sentence hearings is mandatory:**

The court shall ensure that a child is represented at all hearing.<sup>117</sup> Where the child does not have representation, the magistrate shall adjourn proceedings at the first hearing to allow a representative to be appointed for the child. If representation is appointed that day then the case shall be adjourned for a short time for them to speak and shall then continue on the same day. If representation is not appointed on that day the case shall be adjourned for a maximum of 14 days.<sup>118</sup>

A person who is a child in criminal proceedings shall have a right to legal aid and other appropriate assistance.<sup>119</sup> If a child does not have legal representation it shall be provided free of charge, wherever practicable.<sup>120</sup>

<sup>112</sup> Law of the Child (Juvenile Court Procedure) r12(2)

<sup>113</sup> Law of the Child (Juvenile Court Procedure) r12(4)

<sup>114</sup> Law of the Child (Juvenile Court Procedure) r12(6)

<sup>115</sup> Law of the Child (Juvenile Court Procedure) r12(7)

<sup>116</sup> Mustapha Khamis v. R Criminal Appeal No. 70/2016 CAT (Unreported)

<sup>117</sup> Law of the Child (Juvenile Court Procedure) Rules r 27(1)

<sup>118</sup> Law of the Child (Juvenile Court Procedure) r27(1)-(4)

<sup>119</sup> Law of the Child (Juvenile Court Procedure) r14(1)

<sup>120</sup> Law of the Child (Juvenile Court Procedure) r14(2)

Where a child cannot afford to pay for legal representation and it is not practicable to provide free legal assistance then he shall be represented by a parent or appropriate assistance from a guardian *ad litem*.<sup>121</sup> The court shall explain to the child that he may choose to be represented by a parent or that he may select a guardian *ad litem* or request that the court appoint such person.<sup>122</sup>

However, the magistrate shall disqualify a particular parent, guardian *ad litem* or carer from assisting the child if:<sup>123</sup>

- They are charged with an offence based on the same facts
- They have been convicted of an offence against the child
- It is not in the best interests of the child to be so assisted
- The child is in the care of the local government authority under Child Protection Regulations, 2014<sup>124</sup> and they determine it is not in the best interests of the child

If there is conflict between the child and the guardian *ad litem* the child may request that he or the court appoint a new one.<sup>125</sup> If the court considers the guardian *ad litem* is acting contrary to the best interests of the child the court may, on its own motion or an application by the social welfare department, dismiss them and either the child or court shall appoint a new one.<sup>126</sup>

The magistrate-in-charge in consultation with the head of the social welfare department for the district shall ensure there are an adequate number of guardian *ad litem* to assist a child.<sup>127</sup> The court shall keep a record of available guardian *ad litem*.<sup>128</sup>

### **11.3. Court powers to require attendance of parent, guardian, relative or social welfare officer:<sup>129</sup>**

In its discretion, the court may require the attendance at court of the child's parent, guardian, relative, or social welfare officer.

If a parent, guardian *ad litem* or care taker does not attend court then the court may issue a summons to compel them to attend.<sup>130</sup>

### **11.4. Participation of the child in the proceedings:**

The court should make sure that a child has the capacity to participate in criminal proceedings; by understanding the proceedings or being able to instruct his representatives. The court can adjourn and seek reports to determine if a fair hearing can take place.<sup>131</sup>

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<sup>121</sup> Law of the Child (Juvenile Court Procedure) r15(1) and (2)

<sup>122</sup> Law of the Child (Juvenile Court Procedure) r15(2)

<sup>123</sup> Law of the Child (Juvenile Court Procedure) r26

<sup>124</sup> GN.11 of 2015

<sup>125</sup> Law of the Child (Juvenile Court Procedure) r15(7)

<sup>126</sup> Law of the Child (Juvenile Court Procedure) r15(8)

<sup>127</sup> Law of the Child (Juvenile Court Procedure) r15(9)

<sup>128</sup> Law of the Child (Juvenile Court Procedure) r15(10)

<sup>129</sup> Law of the Child Act Cap. 13 s.112

<sup>130</sup> Law of the Child (Juvenile Court Procedure) 2016 r.112

<sup>131</sup> Law of the Child (Juvenile Court Procedure) 2016 r.35

### 11.5. Plea

When a child is charged with an offence, the court shall explain to the child in a language that he understands:<sup>132</sup>

- The substance of the charges and the particulars of the offence;
- The facts that shall be established before the child can be found guilty;
- The role of the magistrate; and
- The procedures of the court.

The child shall be asked to enter a plea<sup>133</sup> after he has been given an opportunity to communicate with his representative.<sup>134</sup>

If a child pleads guilty the court shall record the plea as nearly as possible in the words he uses and enter a plea of guilty.<sup>135</sup>

The court shall invite the prosecutor to present the summary of the facts and call upon the child to respond on the facts.<sup>136</sup> If the court is satisfied that the response amounts to an unequivocal plea it shall enter a conviction.<sup>137</sup>

If the court is not satisfied that the plea is unequivocal it shall enter a plea of not guilty and proceed to trial.

### 11.6. Conviction following trial - the judgment

If the child is convicted following a trial then the magistrate shall deliver a written judgment which shall be pronounced at court within 21 days of conclusion of the proceedings.<sup>138</sup> It shall

- contain the evidence presented, points for determination, the court's verdict and its reasons.<sup>139</sup>
- be dated and signed by the Magistrate.<sup>140</sup>
- Specify the offence and the section of the law under which the child has been convicted.<sup>141</sup>

The court shall explain to the child the substance of the judgment given and its consequences.<sup>142</sup>

The court shall inform the parties that they have 14 days in which to enter an appeal<sup>143</sup>.

### 11.7. Sentencing principles and process

The court shall, before reaching a decision on the appropriate sentence for a convicted child have regard to the following principles:<sup>144</sup>

<sup>132</sup> Law of the Child Act, Cap. 13 s.105 and Law of the Child (Juvenile Court Procedure) r32

<sup>133</sup> Law of the Child Act, Cap. 13 s.107

<sup>134</sup> Law of the Child (Juvenile Court Procedure) r32(2)

<sup>135</sup> Law of the Child (Juvenile Court Procedure) r32(3)

<sup>136</sup> Law of the Child (Juvenile Court Procedure) r32(4)

<sup>137</sup> Law of the Child (Juvenile Court Procedure) r32(5)

<sup>138</sup> Law of the Child (Juvenile Court Procedure) r48(1) and (3)

<sup>139</sup> Law of the Child (Juvenile Court Procedure) r48(1) and (3)

<sup>140</sup> Law of the Child (Juvenile Court Procedure) r48(2)

<sup>141</sup> Law of the Child (Juvenile Court Procedure) r48(5)

<sup>142</sup> Law of the Child (Juvenile Court Procedure) r48(7)

<sup>143</sup> Law of the Child (Juvenile Court Procedure) r123

<sup>144</sup> Law of the Child (Juvenile Court Procedure) r49(1)

- The need for proportionality by reference to the circumstances of both the offence and the offender;
- The importance of rehabilitating and reintegrating a child offender;
- The need to maintain and strengthen family relationships whenever possible;
- The desirability of imposing the least restriction consistent with the legitimate aim of protecting the victims and the community;
- The importance of child offenders accepting responsibility for their actions and being able to develop responsible, beneficial and socially acceptable ways;
- 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;
- The needs to take into account the special circumstances of particular groups of child offenders, especially children living in difficult circumstances.

Before passing sentence, the court shall take into account the following information as to his character, antecedents, home life, occupation and health as may enable it to deal with the case in the best interests of the child.<sup>145</sup>

- The Social Enquiry Report (see below for details);
- Any plea of mitigation made by the child or made on his behalf;
- The culpability of the child and the harm caused, intended or foreseeable, taking into account aggravating and mitigating factors relating to the offence;
- 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
- Whether a discharge or a non-custodial sentence would be in the best interests of the child and serve the interests of justice.

### 11.8. Social Enquiry Report

Before the court may sentence it shall require a "social enquiry report" to be prepared<sup>146</sup> by a court social welfare officer. This shall be completed within 14 days of the request being made.<sup>147</sup>

A social enquiry report shall contain details of the child including:<sup>148</sup>

- The child's background and other material circumstances likely to be of assistance to the court;
- Present family circumstances and the home life experienced by the child;
- Whether the child attends school or any training programme or is employed
- The child's state of health;
- Any previous offences the child may have committed;
- Assessment of the chances of the child reoffending or causing serious harm; and
- Recommendations on the appropriate sentence taking into account the purpose of sentence shall be rehabilitation and to assist the child to be a constructive member of his family and community.

<sup>145</sup> Law of the Child Act, Cap. 13 s.111 and Law of the Child (Juvenile Court Procedure) r49(2)

<sup>146</sup> Law of the Child Act (Juvenile Court Procedure) r32(50)

<sup>147</sup> Law of the Child Act (Juvenile Court Procedure) r46(4)

<sup>148</sup> Law of the Child Act (Juvenile Court Procedure) r47(1)



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

### 11.9. Forms of Sentence for a Child in Conflict of the Laws

A child may not be sentenced to imprisonment<sup>149</sup> or death.

The following are the sentences to be considered for a child in accordance with the Law of the Child:<sup>150</sup>

- Discharge the child without making any order;<sup>151</sup>
- Order the child to be repatriated at the expense of the government to his home or district of origin within Tanzania;<sup>152</sup>
- Order the child to be handed over to the care of a fit person or institution named in the order if they are willing to undertake such care;<sup>153</sup>
- Conditional Discharge with or without either (1) a surety from parents/ guardians or (2) conditions;
- Probation Order;
- Fine against the parent/ guardian/ relative of the child; or
- Committal to custody at an approved school.<sup>154</sup>

*NB: A conditional discharge is not available for homicide.*<sup>155</sup>

In addition, following sentence the following ancillary orders may be considered as orders after sentence:

- Compensation to be paid by the parent/ guardian/ relative of the child
- Costs to be paid by the parent/ guardian/ relative of the child

#### 11.9.1. Conditional Discharge:

Where a child is convicted of an offence, the court may make an order discharging the offender on the condition that he agrees (enters into a recognisance) to be of good behaviour.<sup>156</sup>

The period of good behaviour shall be specified and shall not exceed three (3) years.<sup>157</sup>

There are three versions of a conditional discharge which may be given:

##### (1) Conditional Discharge

(2) **Conditional Discharge with financial surety** - This may be required from the parent or guardian of the child. However, it shall not be required if they do not have the financial means to pay.

<sup>149</sup> Law of the Child Act, Cap. 13 s119

<sup>150</sup> Law of the Child Act (Juvenile Court Procedure) r50-54

<sup>151</sup> Law of the Child Act Cap. 13, s119(2)(a)

<sup>152</sup> Law of the Child Act Cap. 13, s119(2)(b)

<sup>153</sup> Law of the Child Act Cap.13, s119(2)(c)

<sup>154</sup> Law of the Child Act Cap. 13, s120

<sup>155</sup> Law of the Child Act, Cap. 13 s116

<sup>156</sup> Law of the Child (Juvenile Court Procedure) r50(1)

<sup>157</sup> Law of the Child (Juvenile Court Procedure) r50(1)

(3) **Conditional discharge:** Any one or combination of the following

- **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
- **An oral or written apology to a specified person(s) or institution(s)**
- **Referral to a community rehabilitation or reintegration programme**
- **Referral to counselling or therapy**
- **Restitution of a specified object to a specific victim(s) where the object can be returned or restored**
- **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
- **Provision of some limited service or benefit to the community when there is not identifiable person(s) or institution for restitution**
- **Referencing the child to family group conferencing or to victim offender mediation**

#### 11.9.2. Fine

The court may award a fine by itself or in addition to any other punishment if it considers it is in the best interests of the child. However, the fine must be paid by the parent, guardian or relative of the child.<sup>158</sup>

#### 11.9.3. Probation Order

When a conditional discharge is not sufficient the court **shall** consider imposing a probation order.

A probation order may be subject to one or more of the following conditions:

- Reporting to a relevant social welfare officer at specified times and places
- Obeying any instructions of the social welfare officer
- Reporting any changes of address, school or employment
- Not leaving an area of residence without permission
- Refraining from contact or communication with a specified person(s)
- Refraining from entering specified premises or a specified area
- Obeying school rules or home rules
- 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

#### 11.9.4. Committal to an Approved School.<sup>159</sup>

As a matter of last resort, the court may order that a child is committed to custody at an approved school.

<sup>158</sup> Law of the Child Act, Cap. 13, s.118 and Law of the Child (Juvenile Court Procedure) r51(1)

<sup>159</sup> Law of the Child (Juvenile Court Procedure) r54

It may only make this order if it considers:

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

The maximum term of sentence is 3 years or until he is 18 years, - whichever is earlier.

#### **11.9.5. Costs**

The court may award costs by itself or in addition to any other punishment if it considers it is in the best interests of the child. However, the fine must be paid by the parent, guardian or relative of the child.<sup>160</sup>

#### **11.9.6. Compensation**

The court may award compensation by itself or in addition to any other punishment if it considers it is in the best interests of the child. However, the fine must be paid by the parent, guardian or relative of the child.<sup>161</sup>

#### **11.10. Appeals**

The court shall, on conviction and sentence inform the parties that they have 14 days in which to enter an appeal.<sup>162</sup>

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<sup>160</sup> Law of the Child Act, Cap. 13 s.118 and Law of the Child (Juvenile Court Procedure) r51(1)

<sup>161</sup> Law of the Child Act, Cap. 13 s.118 and Law of the Child (Juvenile Court Procedure) r51(1)

<sup>162</sup> Law of the Child (Juvenile Court Procedure) r123

## PART II

### Sentence Guidelines for Specific Offences

#### Introduction

1. **Manslaughter (s.195 Penal Code)**
2. **Grievous bodily harm (s.225 Penal Code)**
3. **Assault causing actual bodily harm (s.241 Penal Code)**

#### **Corrupt transactions (Offences under the Prevention and Combatting of Corruption Act ("PCCA") less than 1 billion Tsh)**

- i. Corrupt Transactions (S15 PCCA)
- ii. Corrupt Transactions in Contracts by a Public Official (s16 PCCA)
- iii. Corrupt Transactions in Procurement (s17(1)(a) and (b) PCCA)
- iv. Corrupt Transactions in Auctions (s18(1)(a) and (b) PCCA)
- v. Corrupt Transactions in Employment (s20(1)(a) and (b) PCCA)
- vi. Transfer of Proceeds of Corruption (s34(1)(a) and (b) PCCA)

#### **Other Corruption Offences under the PCCA**

- Bribery of a Foreign Official (s21(1) and (2) PCCA)
  - Use of any document intended to mislead principal (s22 PCCA)
  - Obtaining and Advantage (S23(1) and (2) PCCA)
  - Sexual or other favours (S.25 PCCA)
  - Public Officials Failing to Give Accounts of Properties (s.26 PCCA)
  - Possession of Unexplained Property (s.27 PCCA)
  - Embezzlement and Misappropriation (s28 (1) and (2) PCCA)
  - Diversion of Government Property (s.29 PCCA)
  - Aiding and Abetting Any Corruption Offence (s.30 PCCA)
  - Abuse of Position (S.31 PCCA)
  - Conspiracy (S.32 PCCA)
  - Undue Advantage in Order for a Public Official to be influenced (s33(1) PCCA)
  - Soliciting or Accepting undue Advantage for a Public Official (s33(2) PCCA)
  - Drug Offences under the Drug Control and Enforcement Act
- **Drug Trafficking under the Drugs Control and Enforcement Act ("DCEA") 2015**
    - Drug Trafficking (s 15(1))
    - Drug Trafficking in narcotic drug or psychotropic substance (15(1)(a))
    - Trafficking, diverting or illegally dealing in any way with precursor chemicals, substances with drug related effect and used in the process of manufacturing (15(1)(b))
    - Directly or indirectly facilitates or causes other person to be used as a bondage for the purpose of drug trafficking (15(1)(c))
    - Production, Transportation, Importation, Exportation, Selling, Purchasing of Narcotic Drugs or Substances (15(2))
    - Illegal Possession of machines, equipment and laboratory or other utensils for narcotic and psychotropic substances (s16)

- **Drug Trafficking of lesser amount (DCEA s15A)**
- **Possession of small quantity of drugs and use of drugs**
  - Possession of small quantity\* of narcotic drugs or psychotropic substances for personal use (17(1)(a))
  - Possession of small quantity\* of narcotic drugs other than those specified under s. 17(1)(a). (17(1)(a))
  - Use Smoking, Sniffing, Injecting, etc of Drugs. (s18(a)(b) & (c))
  - Permission to use premises, enclosure or conveyance for preparation, smoking, selling, injecting, inhaling, sniffing a narcotic drug or psychotropic substance (s19(1))
- **Other Drug Offences under the DCEA**
  - Administering for narcotic drug or psychotropic substance (s.20(1)(a)(b) &(c))
  - Embezzlement by authorized cultivators (s.21)
  - Breaching of terms, licence or permit (s.22)
  - Financing of illegal activities (s.23)

## Introduction to Offence Specific Sentencing Guidelines

The Chief Justice has established the following **Offence Specific Sentencing Guidelines** for certain criminal offences. These will provide for consistency and proportionate sentences for offenders.

Parliament has set out in statute the range of sentence for criminal offences. These guidelines provide clear guidance to judicial officers on how to sentence individual offenders within these sentencing range. As such they assist the courts to put into practical effect the will of parliament to individual criminal cases – this is the roll of the judiciary at sentencing.

The guidelines follow an approach set out in PART I: Sentencing Guide: Practical Reference Guide to Key Laws, Principles and Procedures. In particular, they set out how these principles should be applied to certain specific offences. PART I should be referred to for fuller guidance and explanation.

The offences chosen are some of the most common offences which the courts have discretion to sentence: manslaughter, offences of violence against the person; drug offences; corruption offences.

In sentencing persons for an offence which has a specific guideline a judicial officer shall comply with the guidelines. If they consider that the facts of a particular case are exceptional and merit them deviating from the guidance they must expressly provide reasons and record this.

## 1. Manslaughter

Name of Offence: MANSLAUGHTER c/s 195, 199 and 201 of Penal Code			
STEP 1: Maximum and Minimum Sentences in Law			
Maximum Sentence		Life Imprisonment	
Minimum		None	
Other Statutory Guidance		None	
STEP 2: Consider the level of seriousness of the offence – High, Medium, Low - and the appropriate starting point and sentencing range for this offence			
		Sentence Range	Starting Point
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 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</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 to Life imprisonment	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>	4-10 years	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>	Conditional discharge to 4 years	4 years
STEP 3: Consider the relevant aggravating and mitigating factors which may increase or decrease the sentence within that range.			
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</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 person</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></ul>	

blow was directed • The duration of the offence and any prolonged suffering to the victim • The offence involved a high degree of fear to be caused to the victim. • The offence took place in front of vulnerable persons or family members of the victim	• An element of provocation (not amounting to immediate provocation)
<b>STEP 4: Consider the accused's personal circumstances and other individual factors relevant to sentence including totality principle, co-accused sentence, any co-operation with the authorities, the views of the victim</b>	
• 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 income • Other offences to be sentenced (if any) • Co-accused 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's family	
<b>STEP 5: Fix the Sentence within the Appropriate level range (High, Medium, Low)</b>	
(i) The level of seriousness of the offence - High, Medium or Low; (ii) The aggravating and mitigating factors within that range (or exceptionally which may take the offence to a higher or lower range) (iii) The accused person personal circumstances, the prevalence of the offence he views of the victim or members of the family fix the sentence within the appropriate level range. (iv) The views of the victim's family (v) Announce the Sentence by giving reasons	
<b>STEP 6 : Reduce the sentence for any guilty plea (if applicable)</b>	
Apply appropriate level of reduction in accordance with general guidance on reduction of sentences for a guilty plea. The amount should reduce the closer it was given to trial. The court should state what the sentence would have been if the case had been contested at trial and the amount of reduction (or credit) for this guilty plea. NB: A reduction can <b>not</b> take a sentence below a statutory minimum sentence.	
<b>STEP 7: Pronounce the Sentence giving reasons</b>	
<b>STEP 8 Deduct any time served in custody</b>	
• The prison service, prosecution and offender should agree with the court the amount of days the offender has served in custody at the police station and prison before sentence • The court should not deduct this amount from the actual sentence it orders. Instead, the court should order that this time is taken by the prison service as time already served towards sentence.	
<b>STEP 9: Ancillary Orders</b>	
• Costs • Compensation, forfeiture, reparation, restitution • Order of destruction of noxious substances • Before making any financial order consider the offender's ability to pay	



## 2. Grievous Harm

Name of Offence: GRIEVOUS HARM c/s 225 of Penal Code			
STEP 1: Maximum and Minimum Sentences in Law			
Maximum Sentence		Seven Years	
Minimum		None	
Other Statutory Guidance		Sentencing Jurisdiction	
STEP 2: Seriousness of the Offence and appropriate starting point and sentencing range for such offence			
		Sentence Range	Starting Point
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 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</li><li>Use of weapon</li></ul>	5-7 years	7 years
Medium Level	<ul style="list-style-type: none"><li>Causing temporary disability/deformity</li><li>No use of weapon</li></ul>	3-5 years	5 years
Low Level	<ul style="list-style-type: none"><li>Applying excessive force in claim of right or self defence</li></ul>	Conditional discharge to 3 years	3 years
STEP 3: Consider the relevant aggravating and mitigating factors which may increase or decrease the sentence within that range.			
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 person</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 and other individual factors relevant to sentence including totality principle, co-accused sentence, any co-operation with the authorities, the views of 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 income
- Other offences to be sentenced (if any)
- Co-accused 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's family

**STEP 5: Fix the Sentence within the Appropriate level range (High, Medium, Low)**

- (vi) The level of seriousness of the offence - High, Medium or Low;
- (vii) The aggravating and mitigating factors within that range (or exceptionally which may take the offence to a higher or lower range)
- (viii) The accused person personal circumstances, the prevalence of the offence he views of the victim or members of the family fix the sentence within the appropriate level range.
- (ix) The views of the victim's family
- (x) Announce the Sentence by giving reasons

**STEP 6 : Reduce the sentence for any guilty plea (if applicable)**

Apply appropriate level of reduction in accordance with general guidance on reduction of sentences for a guilty plea. The amount should reduce the closer it was given to trial.

The court should state what the sentence would have been if the case had been contested at trial and the amount of reduction (or credit) for this guilty plea.

NB: A reduction cannot take a sentence below a statutory minimum sentence.

**STEP 7: Pronounce the Sentence giving reasons**

**STEP 8 Deduct any time served in custody**

- The prison service, prosecution and offender should agree with the court the amount of days the offender has served in custody at the police station and prison before sentence
- The court should not deduct this amount from the actual sentence it orders. Instead, the court should order that this time is taken by the prison service as time already served towards sentence.

**STEP 9: Ancillary Orders**

- Costs
- Compensation, forfeiture, reparation, restitution
- Order of destruction of noxious substances
- Before making any financial order consider the offender's ability to pay

### 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: Seriousness of the Offence and appropriate starting point and sentencing range for such offence			
		Sentence Range	Starting Point
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 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</li><li>Use of weapon</li></ul>	3-5 years	5 years
Medium Level	<ul style="list-style-type: none"><li>Causing temporary disability/deformity</li><li>No use of weapon</li></ul>	1-3 years	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>	Conditional discharge, fine, community service to 1year	1 year
STEP 3: Consider the relevant aggravating and mitigating factors which may increase or decrease the sentence within that range.			
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 person</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>	

<b>STEP 4: Consider the accused's personal circumstances and other individual factors relevant to sentence including totality principle, co-accused sentence, any co-operation with the authorities, the views of the victim</b>	
<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 works or indication of good character</li> <li>• The accused income</li> <li>• Other offences to be sentenced (if any)</li> <li>• Co-accused 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's family</li> </ul>	
<b>STEP 5: Fix the Sentence within the Appropriate level range (High, Medium, Low)</b>	
(xi)	The level of seriousness of the offence - High, Medium or Low;
(xii)	The aggravating and mitigating factors within that range (or exceptionally which may take the offence to a higher or lower range)
(xiii)	The accused person personal circumstances, the prevalence of the offence he views of the victim or members of the family fix the sentence within the appropriate level range.
(xiv)	The views of the victim's family
(xv)	Announce the Sentence by giving reasons
<b>STEP 6 : Reduce the sentence for any guilty plea (if applicable)</b>	
<p>Apply appropriate level of reduction in accordance with general guidance on reduction of sentences for a guilty plea. The amount should reduce the closer it was given to trial.</p> <p>The court should state what the sentence would have been if the case had been contested at trial and the amount of reduction (or credit) for this guilty plea.</p> <p>NB: A reduction can <b>not</b> take a sentence below a statutory minimum sentence.</p>	
<b>STEP 7 Pronounce a Sentence giving reasons</b>	
<b>STEP 8 Deduct any time served in custody</b>	
<ul style="list-style-type: none"> <li>• The prison service, prosecution and offender should agree with the court the amount of days the offender has served in custody at the police station and prison before sentence</li> <li>• The court should not deduct this amount from the actual sentence it orders. Instead, the court should order that this time is taken by the prison service as time already served towards sentence.</li> </ul>	
<b>STEP 9: Ancillary Orders</b>	
<ul style="list-style-type: none"> <li>• Costs</li> <li>• Compensation, forfeiture, reparation, restitution</li> <li>• Order of destruction of noxious substances</li> <li>• Before making any financial order consider the offender's ability to pay</li> </ul>	

## Corrupt Transactions

**NB: If the offence is charged under sections other than section 15 of the PCCA the minimum sentence is 20 years and a maximum sentence is 30 years.**

Name of Offences			
1. Corrupt Transactions (s15 PCCA)			
2. Corrupt Transactions in contracts by a public official (s16 PCCA)			
3. Corrupt Transactions in Procurement (s17(1)(a) and (b) PCCA)			
4. Corrupt Transactions in auctions (s18(1)(a) and (b) PCCA)			
5. Corrupt Transactions in employment (s20(1)(a) and (b) PCCA)			
6. Transfer of proceeds of corruption (s34(1)(a) and (b) PCCA)			
STEP 1: Maximum and Minimum Sentences in Law			
*If the value of the offence is more than one billion shillings then the minimum sentence is 20 years and a maximum sentence is 30 years			
Offence		Minimum Sentence	Maximum Sentence
Corrupt Transactions (s15 PCCA)		500,000 Tsh fine or 3 years imprisonment	1 million Tsh and/ or 5 years imprisonment
Corrupt Transactions in contracts by a public official (s16 PCCA)		1 million Tsh fine or 3 years imprisonment	3 million Tsh and/ or 5 years imprisonment
Corrupt Transactions in Procurement (s17(1)(a) and (b) PCCA)		None	15 million and/ or 7 years imprisonment
Corrupt Transactions in auctions (s18(1)(a) and (b) PCCA)		None	15 million and/ or 7 years imprisonment
Corrupt Transactions in employment (s20(1)(a) and (b) PCCA)		None	5 million and/ or 3 years imprisonment
Transfer of proceeds of corruption (s34(1)(a) and (b) PCCA)		None	10 million and/ or 7 years imprisonment
STEP 2: Seriousness of the Offence and appropriate starting point and sentencing range for such offence			
		Sentence Range	Starting Point
High Level	<ul style="list-style-type: none"><li>Financial gain/ loss intended or obtained was substantial and high value (more than 3 million Tsh)</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>	3 years to maximum for offence (5 to 7 years depending on offence) and Fine up to the maximum	Maximum custodial sentence (ie: 5 or 7 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>	6 months to 3 years imprisonment AND Fine up to maximum (*If prison is imposed for	3 years AND Fine

		an offence under s15 or s16 then the minimum sentence of custody must be 3 years)	
Low Level	<ul style="list-style-type: none"> <li>The offence was an isolated one off incident without any significant premeditation or planning. It was unsophisticated.</li> <li>The financial gain achieved or sought was minimal (less than 500,000 Tsh)</li> </ul>	Conditional Discharge, Fine, Community Order (*If a fine is imposed for an offence under s15 or s16 then the minimum amount is 500,000 Tsh or 1 million Tsh)	1 million Tsh

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

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 offence</li> </ul>

**STEP 4: Consider the accused's personal circumstances and other individual factors relevant to sentence including totality principle, co-accused sentence, any co-operation with the authorities, the views of the victim**

<ul style="list-style-type: none"> <li>Age and Health</li> <li>Any physical or mental disability</li> <li>Family circumstances, dependents 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 works or indication of good character</li> <li>The accused income</li> <li>Other offences to be sentenced (if any)</li> <li>Co-accused 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</li> </ul>
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<p>sentence.</p> <ul style="list-style-type: none"> <li>Views of the victim's family</li> </ul>
<b>STEP 5: Fix the Sentence within the Appropriate level range (High, Medium, Low)</b>
<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 (or exceptionally which may take the offence to a higher or lower range)</li> <li>The accused person personal circumstances, the prevalence of the offence he views of the victim or members of the family fix the sentence within the appropriate level range.</li> <li>The views of the victim's family</li> <li>Announce the Sentence by giving reasons</li> </ul>
<b>STEP 6 : Reduce the sentence for any guilty plea (if applicable)</b>
<p>Apply appropriate level of reduction in accordance with general guidance on reduction of sentences for a guilty plea. The amount should reduce the closer it was given to trial.</p> <p>The court should state what the sentence would have been if the case had been contested at trial and the amount of reduction (or credit) for this guilty plea.</p> <p>NB: A reduction can <b>not</b> take a sentence below a statutory minimum sentence.</p>
<b>STEP 7: Pronounce the Sentence giving reasons</b>
<b>STEP 8 Deduct any time served in custody</b>
<ul style="list-style-type: none"> <li>The prison service, prosecution and offender should agree with the court the amount of days the offender has served in custody at the police station and prison before sentence</li> <li>The court should not deduct this amount from the actual sentence it orders. Instead, the court should order that this time is taken by the prison service as time already served towards sentence.</li> </ul>
<b>STEP 9: Ancillary Orders</b>
<ul style="list-style-type: none"> <li>Confiscation – it is mandatory to order the confiscation to the government of any advantage received.</li> <li>If acting as an agent it is mandatory to order that the advantage be paid back to the principal</li> </ul>
<b>STEP 10: Proceeds of Crime</b>
<p>Ask the prosecution if any orders are required or anticipated under the Proceeds of Crime Act (e.g. restraint, forfeiture, or an application for a pecuniary penalty order)</p>

## Corruption Offences (other than Corrupt Transactions) under the PCCA

The following are offences specified under the Economic and Organized Crime Control Act, Cap. 200.

Name of Offences		
<ol style="list-style-type: none"> <li>1. Bribery of a Foreign Official (s21(1) and (2) PCCA)</li> <li>2. Use of any document intended to mislead principal (s22 PCCA)</li> <li>3. Obtaining and Advantage (s23(1) and (2) PCCA)</li> <li>4. Sexual or other favours (s.25 PCCA)</li> <li>5. Public Officials Failing to Give Accounts of Properties (s.26 PCCA)</li> <li>6. Possession of Unexplained Property (s.27 PCCA)</li> <li>7. Embezzlement and Misappropriation (s28 (1) and (2) PCCA)</li> <li>8. Diversion of Government Property (s.29 PCCA)</li> <li>9. Aiding and Abetting Any Corruption Offence (s.30 PCCA)</li> <li>10. Abuse of Position (s.31 PCCA)</li> <li>11. Conspiracy (S.32 PCCA)</li> <li>12. Undue Advantage in Order for a Public Official to be influenced (s33(1) PCCA)</li> <li>13. Soliciting or Accepting undue Advantage for a Public Official (s33(2) PCCA)</li> </ol>		
STEP 1: Maximum and Minimum Sentences in Law		
Offence	Minimum Sentence	Maximum Sentence
Bribery of a Foreign Official (s21(1) and (2) PCCA)	None	10 million and/ or 7 years imprisonment
Use of any document intended to mislead principal (s22 PCCA)	None	7 million Tsh and/ or 5 years imprisonment
Obtaining and advantage (S23(1) and (2) PCCA)	None	10 million and/ or 7 years imprisonment
Sexual or other favours (S.25 PCCA)	None	5 million and/ or 3 years imprisonment
Public officials failing to give account of properties (s.26 PCCA)	None	5 million and/ or 3 years imprisonment
Possession of unexplained property (s.27 PCCA)	None	10 million and/ or 7 years imprisonment
Embezzlement and misappropriation (s28 (1) and (2) PCCA)	None	10 million and/ or 7 years imprisonment
Diversion of government property (s.29 PCCA)	None	2 million and/ or 2 years imprisonment
Aiding and abetting any corruption offence (s.30 PCCA)	None	2 million and/ or 2 years imprisonment
Abuse of position (S.31 PCCA)	None	5 million and/ or 3 years imprisonment
Conspiracy (S.32 PCCA)	None	5 million and/ or 3 years imprisonment
Undue advantage in order for a public official to be influenced (s33(1) PCCA)	None	2 million and/ or 2 years imprisonment
Solilciting or accepting undue advantage for a public official (s33(2) PCCA)	None	3 million Tsh and/ or 2 years imprisonment



**STEP 2: Seriousness of the Offence and appropriate starting point and sentencing range for such offence**

		<b>Sentence Range</b>	<b>Starting Point</b>
High Level	<ul style="list-style-type: none"> <li>Financial gain/ loss intended or obtained was substantial and high value (more than 3 million Tsh)</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>	3 years to maximum for offence (5 to 7 years depending on offence) AND Fine up to the maximum	Maximum custodial sentence (ie: 5 or 7 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>	6 months to 3 years imprisonment AND Fine up to maximum (*If prison is imposed for an offence under s15 or s16 then the minimum sentence of custody must be 3 years)	3 years AND Fine
Low Level	<ul style="list-style-type: none"> <li>The offence was an isolated one off incident without any significant premeditation or planning. It was unsophisticated.</li> <li>The financial gain achieved or sought was minimal (less than 500,000 Tsh)</li> </ul>	Conditional Discharge, Fine, Community Order (*If a fine is imposed for an offence under s15 or s16 then the minimum amount is 500,000 Tsh or 1 million Tsh)	1 million Tsh

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

<b>Aggravating Factors</b>	<b>Mitigating Factors</b>
<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 offence</li> </ul>

<p><b>STEP 4: Consider the accused's personal circumstances and other individual factors relevant to sentence including totality principle, co-accused sentence, any co-operation with the authorities, the views of 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 works or indication of good character</li> <li>• The accused income</li> <li>• Other offences to be sentenced (if any)</li> <li>• Co-accused 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's family</li> </ul>
<p><b>STEP 5: Fix the Sentence within the Appropriate 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 (or exceptionally which may take the offence to a higher or lower range)</li> <li>• The accused person personal circumstances, the prevalence of the offence he views of the victim or members of the family fix the sentence within the appropriate level range.</li> <li>• The views of the victim's family</li> <li>• Announce the Sentence by giving reasons</li> </ul>
<p><b>STEP 6 : Reduce the sentence for any guilty plea (if applicable)</b></p> <p>Apply appropriate level of reduction in accordance with general guidance on reduction of sentences for a guilty plea. The amount should reduce the closer it was given to trial.</p> <p>The court should state what the sentence would have been if the case had been contested at trial and the amount of reduction (or credit) for this guilty plea.</p> <p>NB: A reduction can <b>not</b> take a sentence below a statutory minimum sentence.</p>
<p><b>STEP 7: Pronounce the Sentence giving reasons</b></p>
<p><b>STEP 8 Deduct any time served in custody</b></p> <ul style="list-style-type: none"> <li>• The prison service, prosecution and offender should agree with the court the amount of days the offender has served in custody at the police station and prison before sentence</li> <li>• The court should not deduct this amount from the actual sentence it orders. Instead, the court should order that this time is taken by the prison service as time already served towards sentence.</li> </ul>
<p><b>STEP 9: Ancillary Orders</b></p> <ul style="list-style-type: none"> <li>• Confiscation – it is mandatory to order the confiscation to the government of any advantage received.</li> <li>• If acting as an agent it is mandatory to order that the advantage be paid back to the principal</li> </ul>
<p><b>STEP 10: Proceeds of Crime</b></p> <p>Ask the prosecution if any orders are required or anticipated under the Proceeds of Crime Act (e.g. restraint, forfeiture, or an application for a pecuniary penalty order)</p>

## Drug Trafficking (s 15A DCEA)

Name of Offence			
<b>Trafficking in narcotic drug or psychotropic substance or illegally dealing or diverting precursor chemicals or substance of less amount (s15A)</b> To be an offence under s15A the quantity of drugs needs to be below the following amounts: (a) 200g of narcotic drugs, psychotropic substances (b) 100 litres or 100kg of precursor chemicals (c) 50kg of cannabis or khat			
STEP 1: Maximum and Minimum Sentences in Law			
Offence	Minimum Sentence	Maximum Sentence <sup>163</sup>	
Trafficking in narcotic drug or psychotropic substance or illegally dealing or diverting precursor chemicals or substance of less amount (s.15A DCEA)	None	30 years	
STEP 2: Seriousness of the Offence and appropriate starting point and sentencing range for such offence: (High, Medium, Low)			
The level of seriousness for drug trafficking is based on an assessment of two criteria (1) the nature and quantity of the substance; (2) the seriousness of the offender’s role in the offence			
	(1) The nature and quantity of the substance		
	Narcotic drugs, psychotropic substance - not more than 50gm	Narcotic drugs, psychotropic substances: - 50gm or more but not exceeding 150gm	Narcotic drugs, psychotropic substances: - 200gm or less but not below 150gm
	Precursor chemicals or substance with drug related: - 30 litres or below in liquid form, or - 30 kg or below in solid form	Precursor chemicals or substance with drug related: - 50 litres or less but not below 30 litres in liquid form or - 50 kg or less but not below 30 kg in solid form	Precursor chemicals or substance with drug related: - 100 litres or less but not below 50 litres in liquid form or - 100 kg or less but not below 50 kg in solid form
	Cannabis and or khat - not more than 30gm	Cannabis and or khat: - 30gm or more but not exceeding 50gm	Cannabis and or khat: - 50gm or less but not below 30gm

<sup>163</sup> Minimum and maximum sentences as per Cap 95 read together with Cap 200

R O L E  I N  O F F E N C E	<ul style="list-style-type: none"> <li>Performs a limited function under direction</li> <li>Engaged by pressure, coercion, intimidation</li> <li>Involvement through youth, naivety/exploitation</li> <li>No influence on those above in a chain</li> </ul>	<b>Low</b>  <b>Sentencing Range of 0 - 3 years minimum</b>  <b>Starting Point 2 years</b>	<b>Low</b>  <b>Sentencing Range of 0 - 3 years minimum</b>  <b>Starting Point 3 years</b>	<b>Medium</b>  <b>Sentencing Range of 3 - 10 years</b>  <b>Starting Point 8 years</b>
	<ul style="list-style-type: none"> <li>Operational or management function within a chain</li> <li>Involves others in the operation whether by pressure, influence, intimidation or reward especially if those involved are children</li> <li>Motivated by financial or other advantage, whether or not operating alone</li> <li>Some awareness and understanding of scale of operation</li> </ul>	<b>Low</b>  <b>Sentencing Range of 0 - 3 years minimum</b>  <b>Starting Point 3 years</b>	<b>Medium</b>  <b>Sentencing Range of 3 - 10 years</b>  <b>Starting Point 10 years</b>	<b>High</b>  <b>Sentencing Range of 10-30 years</b>  <b>Starting point of 20 years</b>
	<ul style="list-style-type: none"> <li>Directing or organizing</li> <li>Buying and selling on a commercial scale</li> <li>Substantial links to, and influence on, others in chain</li> <li>Close link to original source</li> <li>Expectation of substantial financial gain</li> <li>Uses business as cover</li> <li>Abuses a position of trust</li> </ul>	<b>Medium</b>  <b>Sentencing Range of 3 - 10 years</b>  <b>Starting Point 8 years</b>	<b>High</b>  <b>Sentencing Range of 10-30 years</b>  <b>Starting point of 20 years</b>	<b>High</b>  <b>Sentencing Range of 10-30 years</b>  <b>Starting point of 30 years</b>

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

Aggravating Factors	Mitigating Factors
Any possession or use of weapons  Any use or threat of violence  Linked to corruption  Presence of vulnerable persons especially children  Possession of drug in a school or licensed premises  Attempts to conceal or dispose of evidence, where not charged separately  Established evidence of community impact	Offence not motivated by financial gain but dependence on drugs  Element of pressure not sufficient for duress  Age and/or lack of maturity where it affects the responsibility of the offender  Mental disorder or learning disability

**STEP 4: Consider the accused's personal circumstances and other individual factors relevant to sentence including totality principle, co-accused sentence, any co-operation with the authorities, the views of the**

<b>victim</b>
<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 works or indication of good character</li> <li>• The accused income</li> <li>• Other offences to be sentenced (if any)</li> <li>• Co-accused 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 any victims or reports on impact on society</li> </ul>
<b>STEP 5: Fix the Sentence within the Appropriate level range (High, Medium, Low)</b>
<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 (or exceptionally which may take the offence to a higher or lower range)</li> <li>• The accused person personal circumstances, the prevalence of the offence he views of the victim or members of the family fix the sentence within the appropriate level range.</li> <li>• The views of the victim's family</li> <li>• Announce the Sentence by giving reasons</li> </ul>
<b>STEP 6 : Reduce the sentence for any guilty plea (if applicable)</b>
<p>Apply appropriate level of reduction in accordance with general guidance on reduction of sentences for a guilty plea. The amount should reduce the closer it was given to trial.</p> <p>The court should state what the sentence would have been if the case had been contested at trial and the amount of reduction (or credit) for this guilty plea.</p> <p>NB: A reduction can <b>not</b> take a sentence below a statutory minimum sentence of 20 years for s15(1) offences</p>
<b>STEP 7 Pronounce the Sentence giving reasons</b>
<b>STEP 8 Deduct any time served in custody</b>
<ul style="list-style-type: none"> <li>• The prison service, prosecution and offender should agree with the court the amount of days the offender has served in custody at the police station and prison before sentence</li> <li>• The court should not deduct this amount from the actual sentence it orders. Instead, the court should order that this time is taken by the prison service as time already served towards sentence.</li> </ul>
<b>STEP 9: Ancillary Orders</b>
<ul style="list-style-type: none"> <li>• Automatic confiscation and forfeiture of the instruments and proceeds derived from the offence under section 15(1) (a), (b), (c).</li> <li>• Forfeiture and destruction of the drugs</li> <li>• If acting as an agent it is mandatory to order that the advantage be paid back to the principal</li> </ul>
<b>STEP 10: Proceeds of Crime</b>
<ul style="list-style-type: none"> <li>- Consider confiscation and forfeiture of the instrumentalities of the offence</li> </ul> <p>Ask the prosecution if any orders are required or anticipated under the Proceeds of Crime Act (e.g. restraint, forfeiture, or an application for a pecuniary penalty order)</p>

## Drug Trafficking offences (s 15(1) and (2) DCEA)

Name of Offence			
1. Trafficking in narcotic drug or psychotropic substance (s 15(1)(a))			
2. Trafficking, diverting or illegally dealing in any way with precursor chemicals, substances with drug related effect and used in the process of manufacturing (s15(1)(b))			
3. Directly or indirectly facilitates or causes other person to be used as a bondage for the purpose of drug trafficking (s15(1)(c))			
4. Production, Transportation, Importation, Exportation, Selling, Purchasing of Narcotic Drugs or Substances (s15(2))			
STEP 1: Maximum and Minimum Sentences in Law			
Offence	Minimum Sentence	Maximum Sentence <sup>164</sup>	
15(1) (a) Trafficking in narcotic drug or psychotropic substance	20 years	30 years <sup>165</sup>	
15(1)(b) Trafficking, diverting or illegally dealing in any way with precursor chemicals, substances with drug related effect and used in the process of manufacturing.	20 years	Maximum 30 years	
15(1)(c) Directly or indirectly facilitates or causes other person to be used as a bondage for the purpose of drug trafficking	20 years	Maximum 30 years	
15(2) Production, Transportation, Importation, Exportation, Selling, Purchasing of Narcotic Drugs or Substances	20 years	Maximum 30 years	
Illegal Possession of machines, equipment and laboratory or other utensils for narcotic and psychotropic substances (s16)	20 years	Maximum 30 years	
STEP 2: Seriousness of the Offence and appropriate starting point and sentencing range for such offence: (High, Medium, Low)			
The level of seriousness for drug trafficking is based on an assessment of two criteria (1) the nature and quantity of the substance; (2) the seriousness of the offender’s role in the offence			
	(2) The nature and quantity of the substance		
	Narcotic drugs, psychotropic substances more than 200gm but not exceeding 1kg	Narcotic drugs, psychotropic substances more than 1kg but not exceeding 5kg	Narcotic drugs, psychotropic substances more than 5kg
	Precursor chemicals or substance with drug related more than 100 but not exceeding 200	Precursor chemicals or substance with drug related more than 200 but not exceeding 500 litres in liquid form, or 100 but not exceeding	Precursor chemicals or substance with drug related more than 500 litres in liquid

<sup>164</sup> Minimum and maximum sentences as per Cap 95 read together with Cap 200

<sup>165</sup> (Cap 95 Read together with Cap 200) Plus Confiscation and Forfeiture of Instruments and Proceeds Derived from the Offence for offences under section 15(1)(a), (b), (c), (2) and 16

		litres in liquid form, or 100 but not exceeding 200 kg in solid form	500 kg in solid form	form, or 500 kg in solid form
		Cannabis and or khat < 200gm	Cannabis and or khat Greater than 200gm less than 500gm	Cannabis and or khat above 500gm
<b>R O L E  I N  O F F E N C E</b>	<ul style="list-style-type: none"> <li>Performs a limited function under direction</li> <li>Engaged by pressure, coercion, intimidation</li> <li>Involvement through youth, naivety/exploitation</li> <li>No influence on those above in a chain</li> </ul>	<b>Low</b>  <b>Sentencing Range of 20 - 25 years</b>  <b>Starting Point 20 years</b>	<b>Low</b>  <b>Sentencing Range of 20 - 25 years</b>  <b>Starting Point 23 years</b>	<b>Medium</b>  <b>Sentencing Range of 25-30 years</b>  <b>Starting Point 25 years</b>
	<ul style="list-style-type: none"> <li>Operational or management function within a chain</li> <li>Involves others in the operation whether by pressure, influence, intimidation or reward especially if those involved are children</li> <li>Motivated by financial or other advantage, whether or not operating alone</li> <li>Some awareness and understanding of scale of operation</li> </ul>	<b>Low</b>  <b>Sentencing Range of 20 - 25 years</b>  <b>Starting Point 23 years</b>	<b>Medium</b>  <b>Sentencing Range of 25-30 years</b>  <b>Starting Point 25 years</b>	<b>High</b>  <b>30 years</b>
	<ul style="list-style-type: none"> <li>Directing or organizing</li> <li>Buying and selling on a commercial scale</li> <li>Substantial links to, and influence on, others in chain</li> <li>Close link to original source</li> <li>Expectation of substantial financial gain</li> <li>Uses business as cover</li> <li>Abuses a position of trust</li> </ul>	<b>Medium</b>  <b>Sentencing Range of 25-30 years</b>  <b>Starting Point 25 years</b>	<b>High</b>  <b>30 years</b>	<b>High</b>  <b>30 years</b>
<b>STEP 3: Consider the relevant aggravating and mitigating factors which may increase or decrease the sentence within that range.</b>				
<b>Aggravating Factors</b>			<b>Mitigating Factors</b>	
Any possession or use of weapons			Offence not motivated by financial gain but dependence on drugs	
Any use or threat of violence			Element of pressure not sufficient for duress	
Linked to corruption			Age and/or lack of maturity where it affects the responsibility of the offender	
Presence of vulnerable persons especially children				
Possession of drug in a school or licensed premises				



Attempts to conceal or dispose of evidence, where not charged separately	Mental disorder or learning disability
Established evidence of community impact	
<b>STEP 4: Consider the accused's personal circumstances and other individual factors relevant to sentence including totality principle, co-accused sentence, any co-operation with the authorities, the views of the victim</b>	
<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 works or indication of good character</li> <li>• The accused income</li> <li>• Other offences to be sentenced (if any)</li> <li>• Co-accused 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 any victims or reports on impact on society</li> </ul>	
<b>STEP 5: Fix the Sentence within the Appropriate level range (High, Medium, Low)</b>	
<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 (or exceptionally which may take the offence to a higher or lower range)</li> <li>• The accused person personal circumstances, the prevalence of the offence he views of the victim or members of the family fix the sentence within the appropriate level range.</li> <li>• The views of the victim's family</li> <li>• Announce the Sentence by giving reasons</li> </ul>	
<b>STEP 6 : Reduce the sentence for any guilty plea (if applicable)</b>	
<p>Apply appropriate level of reduction in accordance with general guidance on reduction of sentences for a guilty plea. The amount should reduce the closer it was given to trial.</p> <p>The court should state what the sentence would have been if the case had been contested at trial and the amount of reduction (or credit) for this guilty plea.</p> <p>NB: A reduction can <b>not</b> take a sentence below a statutory minimum sentence of 20 years for s15(1) offences</p>	
<b>STEP 7: Pronounce the Sentence giving reasons</b>	
<b>STEP 8 Deduct any time served in custody</b>	
<ul style="list-style-type: none"> <li>• The prison service, prosecution and offender should agree with the court the amount of days the offender has served in custody at the police station and prison before sentence</li> <li>• The court should not deduct this amount from the actual sentence it orders. Instead, the court should order that this time is taken by the prison service as time already served towards sentence.</li> </ul>	
<b>STEP 9: Ancillary Orders</b>	
<ul style="list-style-type: none"> <li>• Automatic confiscation and forfeiture of the instruments and proceeds derived from the offence under section 15(1) (a), (b), (c).</li> <li>• Forfeiture and destruction of the drugs</li> <li>• If acting as an agent it is mandatory to order that the advantage be paid back to the principal</li> </ul>	
<b>STEP 10: Proceeds of Crime</b>	
<p>- Consider confiscation and forfeiture of the instrumentalities of the offence</p> <p>Ask the prosecution if any orders are required or anticipated under the Proceeds of Crime Act (e.g. restraint, forfeiture, or an application for a pecuniary penalty order)</p>	



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

Name of Offences			
1. Possession of small quantity* of narcotic drugs or psychotropic substances for personal use (17(1)(a))			
2. Possession of small quantity* of narcotic drugs other than those specified under s. 17(1)(a). (17(1)(a))			
3. Use Smoking, Sniffing, Injecting, etc of Drugs. (s18(a)(b) & (c))			
4. Permission to use premises, enclosure or conveyance for preparation, smoking, selling, injecting, inhaling, sniffing a narcotic drug or psychotropic substance (s19(1))			
STEP 1: Maximum and Minimum Sentences in Law			
Offence		Maximum Sentence	
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 (s17(1)(a))		Fine of 1 million Tsh AND 5 years imprisonment.	
Possession of small quantity* of narcotic drugs other than those specified under s. 17(1)(a). (s 17(1)(b))		Fine of 500,000 Tsh AND 3 years imprisonment	
Use Smoking, Sniffing, Injecting, etc of Drugs. (s18(a)(b) & (c))		Fine of 1 million Tsh AND 3 years imprisonment	
Permission to use premises, enclosure or conveyance for preparation, smoking, selling, injecting, inhaling, sniffing a narcotic drug or psychotropic substance (s19(1))		Fine of 5 million Tsh AND 3 years imprisonment	
Guidance:			
“Small quantity” for s17(1) offences means: cannabis that does not exceed 50g; cannabis resin or cannabis oil that does not exceed 5g; cocaine/ heroin/ amphetamine/ Type stimulant (ATS)/ Lysergic Acid Diethylamide (LSD)/ Fentanyl or Fentanyl analogues not exceeding 2g; khat that does not exceed 2kg; any other drug that does not exceed 10g (Drug Enforcement and Control Regulations s.3).			
If the offender is convicted of an offence under s18 DCEA and 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 s31 DCEA			
NB: If the court decides that the appropriate level of sentence is <b>only</b> a fine then the court should set a sentence in default of payment. This default sentence should not be longer than 6 months (CPA s336). The court may adjourn for the offender to pay up to 15 days and extend this period. The court may also direct that payments are made by instalments (CPA s330)			
STEP 2: Seriousness of the Offence and appropriate starting point and sentencing range for such offence			
		Sentence Range	Starting Point
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 whilst on bail</li><li>Recent or relevant convictions for other offences</li></ul>	Minimum of 6 months imprisonment up to statutory maximum term AND Fine up to the maximum	Maximum custodial sentence (ie: 3 or 5 years)
Medium Level	<ul style="list-style-type: none"><li>Motivated by financial or other gain</li><li>Isolated incident</li></ul>	1 to 6 months imprisonment	6 months AND

	<ul style="list-style-type: none"> <li>Primary carer for dependant family member</li> </ul> Offender is an addict, particularly if taking steps towards rehabilitation	AND Fine (statutory mandatory minimum)	Fine
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/ serious health condition</li> <li>Age or lack of maturity</li> <li>Good character</li> <li>Mental disorder/ serious health condition</li> <li>Age or lack of maturity</li> </ul>	Community Order; or Fine (statutory mandatory minimum); or 1 month prison	Mandatory minimum statutory fine

**NB: For an offence under s17 (1) and there is evidence that the offender is an addict the court should consider the appropriateness of a medical treatment as a sentence under s18 DCEA**

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

Aggravating Factors	Mitigating Factors
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	Offence not motivated by financial gain but dependence on drugs
Offence committed on bail	Element of pressure not sufficient for duress
Possession of drug in prison	Offender is using cannabis to help with a diagnosed medical condition
Presence of others, especially children and/or non-users	Determination and/or demonstration of steps having been taken to address addiction or offending behavior
Possession of drug in a school or licensed premises	Serious medical conditions requiring urgent, intensive or long-term treatment
Failure to comply with current court orders	Isolated incident
Offence committed on licence	Age and/or lack of maturity where it affects the responsibility of the offender
Attempts to conceal or dispose of evidence, where not charged separately	Mental disorder or learning disability

**STEP 4: Consider the accused's personal circumstances and other individual factors relevant to sentence including totality principle, co-accused sentence, any co-operation with the authorities, the views of 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 income
- Other offences to be sentenced (if any)
- Co-accused sentence (if any)

<ul style="list-style-type: none"> <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's family</li> </ul>
<b>STEP 5: Fix the Sentence within the Appropriate level range (High, Medium, Low)</b>
<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 (or exceptionally which may take the offence to a higher or lower range)</li> <li>• The accused person personal circumstances, the prevalence of the offence he views of the victim or members of the family fix the sentence within the appropriate level range.</li> <li>• The views of the victim's family</li> <li>• Announce the Sentence by giving reasons</li> </ul>
<b>STEP 6 : Reduce the sentence for any guilty plea (if applicable)</b>
<p>Apply appropriate level of reduction in accordance with general guidance on reduction of sentences for a guilty plea. The amount should reduce the closer it was given to trial.</p> <p>The court should state what the sentence would have been if the case had been contested at trial and the amount of reduction (or credit) for this guilty plea.</p> <p>NB: A reduction can <b>not</b> take a sentence below a statutory minimum sentence.</p>
<b>STEP 7: Pronounce the Sentence giving reasons</b>
<b>STEP 8 Deduct any time served in custody</b>
<ul style="list-style-type: none"> <li>• The prison service, prosecution and offender should agree with the court the amount of days the offender has served in custody at the police station and prison before sentence</li> <li>• The court should not deduct this amount from the actual sentence it orders. Instead, the court should order that this time is taken by the prison service as time already served towards sentence.</li> </ul>
<b>STEP 9: Ancillary Orders</b>
<ul style="list-style-type: none"> <li>• Confiscation – it is mandatory to confiscate any article or property used to commit or facilitate the offence (s 49A DCEA)</li> </ul>
<b>STEP 10: Proceeds of Crime</b>
<p>Ask the prosecution if any orders are required or anticipated under the Proceeds of Crime Act (e.g. restraint, forfeiture, or an application for a pecuniary penalty order)</p>

## ANNEXTURE “A” TO PART II

### OTHER DRUG OFFENCES CONTRARY TO THE DCEA

Name of Offences			
<div>1. Administering for narcotic drug or psychotropic substance (s.20(1)(a)(b) &amp;(c))</div> <div>2. Where the offence under S.20(1) is committed in school or other education institutions, or the victims are persons under the age of eighteen years (s.20(2))</div> <div>3. Embezzlement by authorized cultivators (s.21)</div> <div>4. Breaching of terms, licence or permit (s.22)</div> <div>5. Financing of illegal activities (s.23)</div>			
STEP 1: Maximum and Minimum Sentences in Law			
Offence		Minimum Sentence	Maximum Sentence
Administering for narcotic drug or psychotropic substance (s.20(1)(a)(b) &(c))		30 years imprisonment and Fine of 50 million Tsh	30 years imprisonment and Fine of 50 million Tsh
Where the offence under S.20(1) is committed in school or other education institutions, or the victims are persons under the age of eighteen years (s.20(2))		30 years	30 years
Embezzlement by authorized cultivators (s.21)		30 years imprisonment and Fine of 15 million Tsh (or 30 million if a repeat offender)	30 years imprisonment and Fine of 15 million Tsh (or 30 million if a repeat offender)
Breaching of terms, licence or permit (s.22)		30 Years imprisonment AND Fine 25 million Tsh and revoke license	30 Years imprisonment AND Fine 25 million Tsh and revoke license
Financing of illegal activities under s15 (s.23)		Life imprisonment and Fine of 1 billion Tsh	Life imprisonment and Fine of 1 billion Tsh
STEP 2: Seriousness of the Offence and appropriate starting point and sentencing range for such offence (it is upon Court discretion)			
		Sentence Range	Starting Point
High Level	<div><div>• Weapon used</div><div>• Deliberate or planned</div><div>• Committed over a long period of time</div><div>• Repeated offending</div><div>• Commercial setup</div><div>• Harm caused to a victim</div></div>	30 years to Life Imprisonment	30 years
Medium Level	<div><div>• If the offence does not fall within high and low level then should be placed under medium</div></div>		
Low Level	<div><div>• One off act</div><div>• unplanned</div><div>• Minor or no harm caused</div><div>• Small quantity or amount of value</div><div>• Minor breach</div></div>	Fine of 50 Million Tsh to 30 years imprisonment	Fine of 50 Million Tsh
STEP 3: Consider the relevant aggravating and mitigating factors which may increase or decrease the sentence within that range.			
Aggravating Factors		Mitigating Factors	
Any possession or use of weapons		Offence not motivated by financial gain but dependence on drugs	

Any use or threat of violence Linked to corruption Presence of vulnerable persons especially children Possession of drug in a school or licensed premises Attempts to conceal or dispose of evidence, where not charged separately Established evidence of community impact	Element of pressure not sufficient for duress Age and/or lack of maturity where it affects the responsibility of the offender Mental disorder or learning disability
<b>STEP 4: Consider the accused's personal circumstances and other individual factors relevant to sentence including totality principle, co-accused sentence, any co-operation with the authorities, the views of the victim</b>	
<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 works or indication of good character</li> <li>• The accused income</li> <li>• Other offences to be sentenced (if any)</li> <li>• Co-accused 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's family</li> </ul>	
<b>STEP 5: Fix the Sentence within the Appropriate level range (High, Medium, Low)</b>	
<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 (or exceptionally which may take the offence to a higher or lower range)</li> <li>• The accused person personal circumstances, the prevalence of the offence he views of the victim or members of the family fix the sentence within the appropriate level range.</li> <li>• The views of the victim's family</li> <li>• Announce the Sentence by giving reasons</li> </ul>	
<b>STEP 6 : Reduce the sentence for any guilty plea (if applicable)</b>	
<p>Apply appropriate level of reduction in accordance with general guidance on reduction of sentences for a guilty plea. The amount should reduce the closer it was given to trial.</p> <p>The court should state what the sentence would have been if the case had been contested at trial and the amount of reduction (or credit) for this guilty plea.</p> <p>NB: A reduction can <b>not</b> take a sentence below a statutory minimum sentence.</p>	
<b>STEP 7: Announce the Sentence giving reasons</b>	
<b>STEP 8 Deduct any time served in custody</b>	
<ul style="list-style-type: none"> <li>• The prison service, prosecution and offender should agree with the court the amount of days the offender has served in custody at the police station and prison before sentence</li> <li>• The court should not deduct this amount from the actual sentence it orders. Instead, the court should order that this time is taken by the prison service as time already served towards sentence.</li> </ul>	
<b>STEP 9: Ancillary Orders</b>	
<ul style="list-style-type: none"> <li>• Confiscation – it is mandatory to order the confiscation to the government of any advantage received.</li> <li>• If acting as an agent it is mandatory to order that the advantage be paid back to the principal</li> </ul>	
<b>STEP 10: Proceeds of Crime</b>	
Ask the prosecution if any orders are required or anticipated under the Proceeds of Crime Act (e.g. restraint, forfeiture, or an application for a pecuniary penalty order)	

## Corruption Offences under the Prevention and Combating of Corruption Act, Cap 329

NB: Except for section 15 all other sections fall under the Economic and Organized Crime Control Act, Cap. 200

THE PREVENTION AND COMBATING OF CORRUPTION ACT, CHAPTER 329			
*Corruption offences whose value is more than one billion shillings shall be tried by THE CORRUPTION AND ECONOMIC CRIMES DIVISION OF THE HIGH COURT.			
LAW & SECTION	OFFENCE	MAXIMUM SENTENCE	STARTING POINT
S. 15	Corrupt Transactions	Tshs 1,000,000/= or Three Years imprisonment.	Tshs 500,000/= or Two Years imprisonment
			Tshs 500,000/=–1,000,000/= Imprisonment 2-3 Years. Ancillary Orders- <ul style="list-style-type: none"> <li>• Confiscation</li> <li>• Refund</li> </ul>

STEP NO 2: Consider Aggravating and Mitigating Factors	
Aggravating	Mitigating
A high level of planning, organization, sophistication or professionalism for 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
A pre meditated offence	Mental instability of accused
A professional offence and the degree of sophistication involved	Impact on family circumstances of accused
Significant actual, intended or foreseeable impact on national security	Remorse or contrition (e.g. early admission of responsibility can be one evidence of genuine remorse)
High level of financial profit from the offence	The offender played only a minor role in the offence
Abuse of position of trust and/or power	Trivial nature of the offence
A repeat offender	The offender was provoked <sup>1</sup>
Offences committed whilst 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 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



<i>Offence in the presence of vulnerable persons</i>	<i>Any compensation or restitution already contributed by the accused.</i>
<i>Motivated by racial, religious, disability hostility</i>	
<i>Pre meditated offence</i>	
<i>The effect of the crime on the victim – physical, mental, emotional</i>	
<i>Any harm caused to the victim</i>	
<i>The financial value of the offence in terms of loss to the victim and profit to the accused and others</i>	
<i>Vulnerability of the victim – age, sex, disability, minority group</i>	
<i>Targeting of persons working in the public sector</i>	
<i>Targeting of persons</i>	
<i>The accused showed a flagrant disregard for the law</i>	
<b>STEP 3 Consider the Accused personal circumstances, totality principle co-accused sentence any cooperation with the authorities</b>	
Personal circumstances	
<ul style="list-style-type: none"> <li>• Age</li> <li>• Any disability ( physical or mental)</li> <li>• Family circumstances, dependants and impact of sentences upon them</li> <li>• Work, income and savings</li> <li>• Community work, other good works</li> <li>• Previous conviction, breach of any court orders</li> </ul>	
<b>STEP 4 FIX THE SENTENCE WITHIN THE APPROPRIATE LEVEL RANGE ( LOW, MEDIUM, HIGH)</b>	
<ul style="list-style-type: none"> <li>• The seriousness of the offence (High, Medium or Low level offence)</li> <li>• The aggravating and mitigating factors within that range ( or exceptional have taken the offence to a high / lower range</li> <li>• The accused personal circumstances, co-operation with the authorities,</li> <li>• Views of the victims, institution and/ or community</li> <li>• The prevalence of the offence/ need to deterrence</li> </ul>	
<b>STEP 5 ( if applicable) Reduce the sentence for any guilty plea</b>	
<ul style="list-style-type: none"> <li>• Apply appropriate level of reduction in accordance with general guidance on reduction of sentence for guilty plea <ul style="list-style-type: none"> <li>○ If the offender pleaded guilty then, unless there are exceptional reasons (which must be given) the offenders sentence should be reduced</li> <li>○ The court should state the amount of reduction (or credit) for this guilty plea</li> <li>○ The amount of reduction should reduce the closer it was given before trial</li> </ul> </li> </ul>	

<ul style="list-style-type: none"> <li>○ The maximum reduction should be one third</li> </ul> <p>NB: the court cannot give a discount which would reduce the sentence below any statutory minimum sentence of prison (3 or 5 years) or fine (500,000/= Tsh or 1,000,000/=)</p>
<b>STEP 6 Pronounce the sentence giving reasons</b>
<b>STEP 7 Deduct any time served in custody</b>
<ul style="list-style-type: none"> <li>• The prison service, prosecution and offender should agree on the amount of days which the offender has served in custody at the police station and prison before sentence.</li> <li>• The court should not take this amount from the actual sentence it orders. Instead, the court should order that this time is taken by the prison service as time already served towards the sentence.</li> </ul>
<b>STEP 8- Ancillary Order</b>
<ul style="list-style-type: none"> <li>• Order for the destruction of the drugs, psychotropic substance, plant, material, apparatus or utensils shall be liable to confiscation ( s.44 DCEA)</li> <li>• Compensation , forfeiture, reparation, restitution,</li> <li>• Consider the offender's ability to pay and time to pay any financial order</li> </ul>
<b>STEP 9- Proceeds of Crime Act</b>
Ask the prosecution if any orders are required regarding any application under the proceeds of Crime Act ( e.g. restraint, forfeiture or application for the pecuniary penalty order)



## Sentence Guidelines for Offences under the Drug Control and Enforcement Act, 2015 Cap. 95

THE DRUG CONTROL AND ENFORCEMENT ACT, 2015 CAP 95			
STEP 1: ESTABLISH WHAT ARE THE MINIMUM AND MAXIMUM SENTENCE			
SN	LAW & SECTION	VARIOUS DRUGS OFFENCES	SENTENCE
	15(1) (a)	Trafficking in narcotic drug or psychotropic substance	Minimum 20 years Maximum 30 years (Cap 95 Read together with Cap 200) Plus Confiscation and Forfeiture of Instruments and Proceeds Derived from the Offence.
	15(1)(b)	Trafficking, diverting or illegally dealing in any way with precursor chemicals, substances with drug related effect and used in the process of manufacturing.	Minimum 20 years Maximum 30 years (Cap 95 Read together with Cap 200) Plus Confiscation and Forfeiture of Instruments and Proceeds Derived from the Offence.
	15(1)(c)	Directly or indirectly facilitates or causes other person to be used as a bondage for the purpose of drug trafficking	Minimum 20 years Maximum 30 years (Cap 95 Read together with Cap 200) Plus Confiscation and Forfeiture of Instruments and Proceeds Derived from the Offence.
	15(2)	Production, Transportation, Importation, Exportation, Selling, Purchasing of Narcotic Drugs or Substances	Minimum 20 years Maximum 30 years (Cap 95 Read together with Cap 200) Plus Confiscation and Forfeiture of Instruments and Proceeds Derived from the Offence.
	15A	Trafficking in narcotic drug or psychotropic substance or illegally dealing or diverting precursor chemicals or substance of less amount	Liabe Imprisonment for a term of 30 years
	16	Illegal Possession of machines, equipment and laboratory fomarcioic drugs and psychotropic substances	Minimum 20 years Maximum 30 years (Cap 95 Read together with Cap 200) in addition a Fine of not less than (Tsh. 200,000,000/=). Confiscation and Forfeiture of Instruments and Proceeds Derived from the Offence.
	17(1)(a)	Possession of small quantity of narcotic drugs or psychotropic substances ( <i>cocaine, morphine, diacetylmorphine or any other narcotic drug or any psychotropic substance specified by the Minister by notice in the Gazette</i> )	A fine of not less than Tshs 1,000,000/=, or to imprisonment for a term of five years or to both.
	17(1)(b)	Possession of small quantity of narcotic drugs other than those specified under s. 17(1) (a).	A fine of not less than five hundred thousand shillings or to imprisonment for a term of three years or to both
	18(a)(b) & (c)	Use Smoking, Sniffing, Injecting, etc of Drugs. Found in any house, room or place illegally used for smoking, injecting inhaling, sniffing any narcotic drug or psychotropic substance. Found in possession of any pipe or other utensil for use in connection	A fine of not less than one million shillings or to imprisonment for a term of three years or to both.

		with smoking, inhaling, sniffing or otherwise using narcotic drugs or psychotropic substance	
19(1)		Permission of a premises, enclosure or conveyance to be used for the purpose of preparation of narcotic drug or psychotropic substance or for smoking, selling, injecting, inhaling, sniffing, or otherwise use such drug without a permit from a relevant authority.	A fine of not less than five million shillings or imprisonment for a term of not less than three years, or both.
20(1)(a)(b) & (c)		Administering for narcotic drug or psychotropic substance. Adding a narcotic drug or psychotropic substance to a food or drink or uses any other method to administer such drugs without the knowledge of the consumer.  Selling, supplying or acquiring a narcotic drug or psychotropic substance on presentation of prescription knowing or having reasons to believe that the prescription is forged, unlawfully obtained or acquired or was issued more than six months before presentation	Shall be sentenced to a fine not less than 50 million shillings or to imprisonment for a term of not less than thirty years or to both.
20(2)		Where the offence under S.20(1) is committed- (a) in school or other education institutions, or (b) the victims are persons under the age of eighteen years	Shall be sentenced to imprisonment for a term not less than thirty years.
21		Embezzlement by authorized cultivators.	A fine of fifteen million shillings or to imprisonment for a term of not less than thirty years or both, and the court may, for reasons to be recorded in the judgment impose a fine of not less than thirty million shillings if the offender repeat the offence.
22		Breaching of terms, licence or permit.	A fine of not less than twenty five million shillings or to imprisonment for a term of not less than thirty years or to both, and in addition, his licence or permit shall be revoked.
23		Financing of illegal activities.	A fine of not less than one billion shillings in addition to life imprisonment.
24		Conspires with another person to commit. Solicits, incites, aids, conceals or attempts to solicit, incite, aid, abet or conceal any other person to commit. Causes, procures or attempts to cause or procure the commission of an offence under this Act (Cap 95).	A fine of not more than twenty million shillings or to imprisonment for a term of not more than thirty years or to both.

25	Attempt and Omission.	<p>Liable to imprisonment for a term of not less than the half of the maximum term of imprisonment with which he would have been punishable in the event of his having committed such offence, with fine of not less than half of the maximum amount of fine which that person would have been punished, had that person committed the offence.</p>
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## STEP 2: CONSIDER THE LEVEL OF SERIOUSNESS OF THE OFFENCE

A drugs case requires an assessment of the quantity (by weight and/or purity) of the drugs involved and the role played by accused.

### A. SCHEDULED OFFENCES UNDER THE ECONOMIC AND ORGANIZED CRIME CONTROL ACT, Cap. 200

SN.	SECTION	OFFENCE	QUANTITY/SENTENCE			ROLE		
			Low 20 years minimum	Medium 25 - 30 years	High 30 years maximum	Low 20 years minimum	Medium 25 - 30 years	High 30 years maximum
1.	15(1)(a)	Trafficking in narcotic drug or psychotropic substance	Narcotic drugs, psychotropic substances more than 200gm but not exceeding 1kg	Narcotic drugs, psychotropic substances more than 1kg but not exceeding 5kg	Narcotic drugs, psychotropic substances more than 5kg	<ul style="list-style-type: none"><li>Performs a limited function under direction</li><li>Engaged by pressure, coercion, intimidation</li><li>Involvement through youth, naivety/exploitation</li><li>No influence on those above in a chain</li></ul>	<ul style="list-style-type: none"><li>Operational or management function within a chain</li><li>Involves others in the operation whether by pressure, influence, intimidation or reward especially if those involved are children</li><li>Motivated by financial or other advantage, whether or not operating alone</li><li>Some awareness and</li></ul>	<ul style="list-style-type: none"><li>Directing or organizing</li><li>Buying and selling on a commercial scale</li><li>Substantial links to, and influence on, others in chain</li><li>Close link to original source</li><li>Expectation of substantial financial gain</li><li>Uses business as cover</li><li>Abuses a position of trust</li></ul>

SN.	SECTION	OFFENCE	QUANTITY/SENTENCE			ROLE			understanding of scale of operation	
			Low 1yr - 3 years minimum	Medium 3 - 10 years	High 10 - 30 years maximum	Low 0 - 3 years minimum	Medium 3 - 10 years	High 10 - 30 years maximum	<ul style="list-style-type: none"><li>Operational or management function within a chain</li><li>Involves others in the operation whether by pressure, influence, intimidation or reward especially if those involved are children</li><li>Motivated by financial or other advantage, whether or not operating alone</li><li>Some awareness and understanding of scale of operation</li></ul>	<ul style="list-style-type: none"><li>Directing or organizing</li><li>Buying and selling on a commercial scale</li><li>Substantial links to, and influence on, others in chain</li><li>Close link to original source</li><li>Expectation of substantial financial gain</li><li>Uses business as cover</li><li>Abuses a position of trust</li></ul>
	15A(1)	Trafficking in narcotic drug or psychotropic substance or illegally	Narcotic drugs, psychotropic substance not more than 50gm	Narcotic drugs, psychotropic substances equal to 50gm or more but	Narcotic drugs, psychotropic substances equal to 200gm or less but not below 150gm	<ul style="list-style-type: none"><li>Performs a limited function under direction</li><li>Engaged by pressure, coercion, intimidation</li></ul>	<ul style="list-style-type: none"><li>Operational or management function within a chain</li><li>Involves others in the operation whether</li></ul>	<ul style="list-style-type: none"><li>Directing or organizing</li><li>Buying and selling on a commercial scale</li><li>Substantial links to, and influence on, others in chain</li><li>Close link to original source</li></ul>		

		dealing or diverting precursor chemicals or substance		not exceeding 150gm			<ul style="list-style-type: none"><li>• Involvement through youth, naivety/exploitation</li><li>• No influence on those above in a chain</li></ul>	<ul style="list-style-type: none"><li>• by pressure, influence, intimidation or reward especially if those involved are children</li><li>• Motivated by financial or other advantage, whether or not operating alone</li><li>• Some awareness and understanding of scale of operation</li></ul>	<ul style="list-style-type: none"><li>• Expectation of substantial financial gain</li><li>• Uses business as cover</li><li>• Abuses a position of trust</li></ul>
			Precursor chemicals or substance with drug related equal to 30 litres or below in liquid form, or equal 30 kg or below in solid form	Precursor chemicals or substance with drug related equal to 50 litres or less but not below 30 litres in liquid form or equal 50 kg or less but not below 30 kg in solid form	Precursor chemicals or substance with drug related equal to 100 litres or less but not below 50 litres in liquid form or equal 100 kg or less but not below 50 kg in solid form				
			Cannabis and or khat not more than 30gm	Cannabis and or khat equal to 30gm or more but not exceeding 50gm	Cannabis and or khat equal to 50gm or less but not below 30gm	<ul style="list-style-type: none"><li>• Performs a limited function under direction</li><li>• Engaged by pressure, coercion, intimidation</li></ul>	<ul style="list-style-type: none"><li>• Operational management within a chain</li><li>• Involves others in the operation whether</li></ul>	<ul style="list-style-type: none"><li>• Directing or organizing</li><li>• Buying and selling on a commercial scale</li><li>• Substantial links to, and influence on, others in chain</li><li>• Close link to original source</li></ul>	

SN.	SECTION	OFFENCE	QUANTITY/SENTENCE			ROLE	Involvement through youth, naivety/exploitation • No influence on those above in a chain	by influence, intimidation or reward especially if those involved are children • Motivated by financial or other advantage, whether or not operating alone • Some awareness and understanding of scale of operation	Expectation of substantial financial gain • Uses business as cover • Abuses a position of trust
			Low	Medium	High				
	16	Illegal Possession of machines, equipment and laboratory fomarcotic drugs and psychotropic substances	Minimum sentence 30 years imprisonment plus a fine of not less than 200million shs.	Minimum sentence 30 years imprisonment plus a fine of not less than 200million shs.	Minimum sentence 30 years imprisonment plus a fine of not less than 200million shs.	Low Minimum sentence 30 years imprisonment plus a fine of not less than 200million shs.			
						Medium Minimum sentence 30 years imprisonment plus a fine of not less than 200million shs.			
						High Minimum sentence 30 years imprisonment plus a fine of not less than 200million shs.			



B. NON – SCHEDULED OFFENCES									
SN.	SEC.	OFFENCE	QUANTITY/SENTENCE			ROLE			
			Low	Medium	High	Low	Medium	High	
1.	17(1)(a)	Possession of small quantity of narcotic drugs or psychotropic substances( <i>cocaine, morphine, diacetylmorphine or any other narcotic drug or any psychotropic substance specified by the Minister by notice in the Gazette</i> )	A fine of not less than Tshs 1,000,000/=, or imprisonment for a term of 1 year or to both.	2 years – 3 years Or Fine of 2 million and 3 million shillings	Both Five million and imprisonment of Five years	Involvement through youth, naivety or exploitation  Mistaken belief of the offender regarding the type of drug, taking into account the reasonableness of such belief in all the circumstance	Motivated by financial or other gain  Isolated incident	Influence on, others in chain, commercial gain  Previous conviction for drugs offences	
2.	17(1)(b)	Possession of small quantity of narcotic drugs other than those specified under s. 17(1)(a).	A fine of not less than five hundred thousand shillings (500,000/=) or imprisonment for a term of one year or to both	1 year to 2 years or fine of 600,000/= to 1,400,000/=	Fine of five hundred thousand (1,500,000/=) and imprisonment of three years (3 years)	Involvement due to pressure, intimidation or coercion falling short of duress	parent/guardian for dependant family member	Offence committed while in bail	
3.	18(a)(b) & (c)	Use Smoking, Sniffing, Injecting, etc of Drugs. Found in any house, room or place illegally used for smoking, injecting inhaling, sniffing any narcotic drug or	A fine of not less than one million shillings or to imprisonment for a term	A fine of One and a half million(1,500,000/= ) to two	A fine of not less than three million shillings and imprisonment for a term	Good character  Mental disorder/serious health condition	Offender is an addict, particularly if taking steps towards rehabilitation	Recent or relevant convictions for other offences	

		psychotropic substance. Found in possession of any pipe or other utensil for use in connection with smoking, inhaling, sniffing or otherwise using narcotic drugs or psychotropic substance	of one year.	million(2,000,000/=) or One and half year – 2years to imprisonment	of three years.	Age or lack of maturity		
	19(1)	Permission of a premises, enclosure or conveyance to be used for the purpose of preparation of narcotic drug or psychotropic substance or for smoking, selling, injecting, inhaling, sniffing, or otherwise use such drug without a permit from a relevant authority.					<b>There is no discretionary Powers</b>  A fine of not less than five million shillings or imprisonment for a term of not less than three years, or both.	
4.	20(1)(a)(b) &(c)	Administering for narcotic drug or psychotropic substance.  Adding a narcotic drug or psychotropic substance to a food or drink or uses any other method to administer such drugs without the knowledge of the consumer.  Selling, supplying or acquiring a narcotic drug or psychotropic substance on presentation of prescription					<b>There is no discretionary powers</b>	



		knowing or having reasons to believe that the prescription is forged, unlawfully obtained or acquired or was issued more than six months before presentation	
5.	21	Embezzlement by authorized cultivators.	<p><b>There is no discretionary powers</b></p> <p>A fine of fifteen million shillings or to imprisonment for a term of not less than thirty years or both, and the court may, for reasons to be recorded in the judgment impose a fine of not less than thirty million shillings if the offender repeat the offence.</p> <p><b>There is no discretionary powers</b></p> <p>A fine of not less than twenty five million shillings or to imprisonment for a term of not less than thirty years or to both, and in addition, his licence or permit shall be revoked</p>
6.	22	Breaching of terms, licence or permit.	<p><b>There is no discretionary powers</b></p> <p>A fine of not less than one billion shillings in addition to life imprisonment.</p>
7.	23	Financing of illegal activities.	<p><b>There is no discretionary powers</b></p> <p>A fine of not more than twenty million shillings or to imprisonment for a term of not more than thirty years or to both.</p>
8.	24	Conspires with another person to commit. Solicits, incites, aids, conceals or attempts to solicit, incite, aid, abet or conceal any other person to commit. Causes, procures or attempts to cause or procure the commission of an offence under this Act (Cap 95).	<p><b>There is no discretionary powers</b></p> <p>A fine of not more than twenty million shillings or to imprisonment for a term of not more than thirty years or to both.</p>

9.	25	Attempt and Omission.	<p><b>There is no discretionary powers</b></p> <p>Liable to imprisonment for a term of not less than the half of the maximum term of imprisonment with which he would have been punished in the event of his having committed such offence, with fine of not less than half of the maximum amount of fine which that person would have been punished, had that person committed the offence.</p>
<b>STEP 3: CONSIDER WHAT ARE THE RELEVANT AGGRAVATING AND MITIGATING FACTORS WHICH MAY INCREASE OR DECREASE THE SENTENCE WITHIN THE RANGE</b>			
<b>AGGRAVATING</b>		<b>MITIGATING</b>	
<i>A high level of planning, organization, sophistication or professionalism for the offence</i>		<i>Previous good character</i>	
<i>A professional offence and the degree of sophistication involved</i>		<i>Young or old age of the accused where this is relevant to responsibility</i>	
<i>High level of financial profit from the offence</i>		<i>Health condition or disability of accused</i>	
<i>Abuse of position of trust and/or power</i>		<i>Mental instability of accused</i>	
<i>Deliberate and gratuitous violence, damage to property or degrading of victim</i>		<i>Impact on family circumstances of accused</i>	
<i>The effect of the crime on the victim – physical, mental, emotional</i>		<i>Remorse or contrition (e.g. early admission of responsibility can be one evidence of genuine remorse)</i>	
		<i>The offender played only a minor role in the offence</i>	
		<i>Trivial nature of the offence</i>	
		<i>The offender was provoked<sup>2</sup></i>	
		<i>Co-operation with the police or other state agencies after arrest or surrender</i>	

	<i>A genuine belief that conduct would not constitute a criminal offence</i>
	<i>Any punishment unlawfully meted out to the accused by members of the public</i>
	<i>Any compensation or restitution already contributed by the accused.</i>
<b>STEP 4 Consider the Accused personal circumstances, totality principle co-accused sentence any cooperation with the authorities</b>	
Personal circumstances	<ul style="list-style-type: none"> <li>• Age</li> <li>• Any disability ( physical or mental)</li> <li>• Family circumstances, dependants and impact of sentences upon them</li> <li>• Work, income and savings</li> <li>• Community work, other good works</li> <li>• Previous conviction, breach of any court orders</li> </ul>
<b>STEP 5 FIX THE SENTENCE WITHIN THE APPROPRIATE LEVEL RANGE ( LOW, MEDIUM, HIGH)</b>	
	<ul style="list-style-type: none"> <li>• The seriousness of the offence</li> <li>• The aggravating and mitigating factors within that range ( or exceptional have taken the offence to a high / lower range</li> <li>• The accused personal circumstances, co-operation with the authorities,</li> <li>• Views of the victims, institution and/ or community</li> <li>• The prevalence of the offence/ need to deterrence</li> </ul>
<b>STEP 6 ( if applicable) Reduce the sentence for any guilty plea</b>	
	<ul style="list-style-type: none"> <li>• Apply appropriate level of reduction in accordance with general guidance on reduction of sentence for guilty plea <ul style="list-style-type: none"> <li>○ If the offender pleaded guilty then, unless there are exceptional reasons (which must be given) the offenders sentence should be reduced</li> <li>○ The court should state the amount of reduction (or credit) for this guilty plea</li> <li>○ The amount of reduction should reduce the closer it was given before trial</li> <li>○ The maximum reduction should be one third</li> </ul> </li> </ul> <p>NB: the court cannot give a discount which would reduce the sentence below any statutory minimum sentence of prison (3 or 5 years) or fine (500,000/= Tsh or 1,000,000/=)</p>
<b>STEP 7 Pronounce the sentence giving reasons</b>	
<b>STEP 8 Deduct any time served in custody</b>	

<ul style="list-style-type: none"> <li>• The prison service, prosecution and offender should agree on the amount of days which the offender has served in custody at the police station and prison before sentence.</li> <li>• The court should not take this amount from the actual sentence it orders. Instead, the court should order that this time is taken by the prison service as time already served towards the sentence.</li> </ul>
<b>STEP 9- Ancillary Order</b>
<ul style="list-style-type: none"> <li>• Order for the destruction of the drugs, psychotropic substance, plant, material, apparatus or utensils shall be liable to confiscation ( s.44 DCEA)</li> <li>• Compensation, forfeiture, reparation, restitution,</li> <li>• Consider the offender's ability to pay and time to pay any financial order</li> </ul>
<b>STEP 10- Proceeds of Crime Act</b>
Ask the prosecution if any orders are required regarding any application under the proceeds of Crime Act ( e.g. restraint, forfeiture or application for the pecuniary penalty order)

## **PART III**

# **SENTENCING INDEX**

## PART III

### SENTENCING INDEX

SENTENCING INDEX									
PENAL CODE									
S/N o	Offence	Courts jurisdiction	with	Mandatory Sentence Range		Applicable Law	Discretionary Sentence		
				Minimum term	Maximum term		Fine	Default custodial	Other sentence
1.	Aiding, abetting, counseling, or procuring the commission of an offence	Any Court		Same punishment as for the offence aided, abetted, counseled or procured.		22 (Cap. 16)			
2.	Treason	High Court		Death		39 (Cap.16)			
3.	Treason	High Court		Death	Death penalty	40 (Cap.16)			
4.	Misprision of treason.	High Court		Imprisonment for life.	life imprisonment	41 (Cap.16)			
5.	Promoting warlike undertaking.			Imprisonment for life.	life imprisonment	43 (Cap.16)			
6.	Inciting to mutiny.			Imprisonment for life.	life imprisonment	45 (Cap.16)			
7.	Aiding in acts of mutiny.	A Subordinate court.		Imprisonment for two years.	not indicated	46 (Cap.16)			
8.	Inducing desertion.	do.		Imprisonment for six months.	Six months	47 (Cap.16)			
9.	Aiding prisoner of war to escape.			Imprisonment for life.	life imprisonment	48(a) (Cap.16)			
10.	Permitting prisoners of war to escape.	do.		Imprisonment for two years.	life imprisonment	(b) (Cap.16)			

11.	Administering or taking oath to commit capital offence.	A subordinate court.	Imprisonment for life.	Death penalty	59 (Cap.16)			
12.	Administering or taking other unlawful oaths.	do.	Imprisonment for seven years.	seven years	60 (Cap.16)			
13.	Unlawful drilling.	do.	do.	Six years	62(1) (Cap.16)			
14.	Being unlawfully drilled		Imprisonment for two years.	seven years	(2) (Cap.16)			
15.	Raising discontent and ill will for unlawful purposes.		Imprisonment for twelve months.		63 B (Cap.16)	1000	One year	
16.	Foreign enlistment.	A subordinate court.	Imprisonment for two years.	not indicated	65 (Cap.16)			
17.	Piracy.	do.	Imprisonment for life.	life imprisonment	66 (Cap.16)			This section fall under economic offence
18.	Unlawful assembly.	A Subordinate court.	Imprisonment for one year.	One year	74 and 75 (Cap.16)			
19.	Riot.	do.	Imprisonment for two years.	not indicated	74 (Cap.16)			
20.	Rioting after proclamation.	do.	Imprisonment for five years.	Five years	79 (Cap.16)			
21.	Obstruction proclamation	do.	Imprisonment for five or ten years.	Five years	80 (Cap.16)			
22.	Rioters destroying buildings.		Imprisonment for life.	life imprisonment	81(Cap.16)			
23.	Rioters injuring buildings.	do.	Imprisonment for seven years.	seven years	82 (Cap.16)			

24.	Riotously interfering with railway, etc.	A Subordinate court.	Imprisonment for two years.	not indicated	83 (Cap.16)			
25.	Going armed in public.	do.	do.		84 (Cap.16)			forfeit of arms
26.	Forcible entry.	do.	do.	not indicated	85 (Cap.16)			
27.	Forcible detainer.	do.	do.	not indicated	86 (Cap.16)			
28.	Committing affray.	do.	Imprisonment for six months.		87 (Cap.16)	Five hundred Shillings	Six months	
29.	Challenging to fight a duel.	do.	Imprisonment for two years.	not indicated	88 (Cap.16)			
30.	Abusive language and brawling.	do.	Imprisonment for six months.	Six months	89(1) (Cap.16)			
31.	Threatening violence.	do.	Imprisonment for one year.		89(2)(Cap.16)			
32.	If the offence is committed in the night.	do.	Imprisonment for two years.	Two years				
33.	Watching or besetting.	A Subordinate court.	Imprisonment for six months.	Six months	89A(Cap.16)			
34.	Intimidation	do.	Imprisonment for one year.	One year	89B(Cap.16)			
35.	Dissuading persons from assisting with self-help schemes.	do.	Fine of one thousand shillings or imprisonment for six months or both.		89C(Cap.16)	fine not exceeding 1000	Not six months	
36.	Assembling for purpose of smuggling.	do.	Imprisonment for two years.		90(Cap.16)	Two years		
37.	Officer discharging duties in respect of property in which he has a special interest	A Subordinate court.	Imprisonment for one year.	One year	94(Cap.16)			



38.	False claims by officials.	do.		Imprisonment for two years.	not indicated	95(Cap.16)			
39.	Abuse of office.	do.		do.	three years	96(Cap.16)			This section fall under Economic Offences
40.	Abuse of office (if for purposes of gain).	do.		Imprisonment for three years.					
41.	False certificates by public officers.	do.		Imprisonment for two years.	not indicated	97(Cap.16)			
42.	Unauthorised administration of oaths.	do.		Imprisonment for one year.	One year	98(Cap.16)			
43.	False assumption of authority.	do.		Imprisonment for two years.	not indicated	99(Cap.16)			
44.	Personating public officers.	do.		do.	not indicated	100(Cap.16)			
45.	Threat of injury to persons employed in the public service.	do.		do.	not indicated	101(Cap.16)			
46.	False statements by interpreters.	A Subordinate court.		The same punishment as for perjury.	seven years	103(Cap.16)			
47.	Perjury or subornation of perjury.	do.		Imprisonment for seven years.	seven years	104(Cap.16)			
48.	Fabricating evidence.	do.		do.	seven years	106(Cap.16)			
49.	False swearing	do.		Imprisonment for two years.	not indicated	107(Cap.16)	See S.35	See S.35	
50.	Deceiving witnesses.	do.		do.	not indicated	108(Cap.16)	See S.35	See S.35	
51.	Destroying evidence.	do.		do.	not indicated	109(Cap.16)	See S.35	See S.35	
52.	Conspiracy to defeat justice and interference with witnesses.	do.		Imprisonment for five years.	Five years	110(Cap.16)			

53.	Compounding offences.	do.	Imprisonment for two years.	not indicated	111(Cap.16)	see S.35	See S.35	
54.	Compounding penal actions.	do.	do.	not indicated	112(Cap.16)	See S.35	See S.35	
55.	Advertising for stolen property	do.	do.	not indicated	113(Cap.16)	See S.35	See S.35	
56.	Contempt of court.	do.	Imprisonment for six months or a fine of fifty thousand shillings.		114(1).	Five hundred Shillings	six months	
57.	Contempt of court (if committed in view of court).	do.	Fine of four hundred shillings or in default of payment imprisonment for one month.		114(2).	Four Hundred	Four Months	
58.	Preventing or obstructing service or execution of process.	A Subordinate court	Imprisonment for one year.	one year	114A(Cap.16)			
59.	Rescue--				115(Cap.16)			
60.	If person rescued is under sentence of death or imprisonment for life or charged with offence punishable with death or imprisonment for life;		Imprisonment for life.	life imprisonment	(a)(Cap.16)			
61.	If person rescued is imprisoned on a charge or under sentence for any other offence;	A subordinate court.	Imprisonment for seven years.	seven years	(b)(Cap.16)			
62.	In any other case.	do.	Imprisonment for two years.		(c)(Cap.16)			

63.	Escape.	do.	do.	do.	not indicated	116(Cap.16)	See S.35	See S.35	
64.	Absence from extra-mural employment.	do.	do.	Imprisonment for two years or a fine or both.		116A(1)			
65.	Aiding prisoners to escape.	do.	do.	Imprisonment for seven years.	seven years	117(Cap.16)			
66.	Removal etc. of property under lawful seizure.	do.	do.	Imprisonment for three years.	three years	118(Cap.16)			
67.	Frauds and breaches of trust by public officers.	do.	do.	Imprisonment for seven years.	seven years	120(Cap.16)			
68.	Neglect of official duty.	do.	do.	do.	not indicated	121(Cap.16)	See S.35	See S.35	
69.	False information to persons employed in the public service.	do.	do.	Imprisonment for six months or fine of one thousand shillings.		122(Cap.16)	one thousand	Six months	
70.	Disobedience of statutory duty.	do.	do.	Imprisonment for two years.	two years	123(Cap.16)			
71.	Disobedience of lawful orders.	do.	do.	do.	Two years	124(Cap.16)			
72.	Insult to religion of any class.	A Subordinate court.	do.	Imprisonment for two years.	not indicated	125(Cap.16)	See S.35	See S.35	
73.	Disturbing religious assemblies.	do.	do.	do.	not indicated	126(Cap.16)	See S.35	See S.35	
74.	Trespassing on burial places.	do.	do.	do.	not indicated	127(Cap.16)	See S.35	See S.35	
75.	Hindering burial of dead body, etc.	do.	do.	do.	not indicated	128(Cap.16)	See S.35	See S.35	
76.	Uttering words with intent to wound religious feelings.	do.	do.	Imprisonment for one year.	One year	129(Cap.16)			

77.	Rape.	A Subordinate court.	Imprisonment for life with or without corporal punishment.	thirty years, life imprisonment	131(Cap.16)			corporal punishment
78.	Attempted rape.	do.	Imprisonment for a term of not less than thirty years with or without corporal punishment.	twenty years	132(Cap.16)			
79.	Abduction.	do.	Imprisonment for seven years	seven years	133(Cap.16)			
80.	Abduction of girl under sixteen.	do.	Imprisonment for two years.	not indicated	134(Cap.16)	See S.35	See S.35	
81.	Sexual assault on persons and indecent assault on women	do.	Imprisonment for a period not exceeding five years or a fine not exceeding three hundred thousand shillings.	Five years	135(1)			
82.	Insulting the modesty of a woman.	do.	Imprisonment for one year.		(3)(Cap.16)			
83.	Defilement of girl under twelve.	do.	Imprisonment for life, with or without corporal punishment.	repealed	136(1)			
84.	Attempted defilement of girl under twelve.	do.	Imprisonment for fourteen years with or without corporal punishment.	repealed	(2)(Cap.16)			
85.	Defilement of an idiot or imbecile.	do.	do.	fourteen years	137(Cap.16)			
86.	Defilement by husband of wife under twelve.		Imprisonment for five years.	ten years	138(1)			

87.	Parent or guardian parting with possession of girl under twelve in order that she may be carnally known by her husband.	A Subordinate court	Imprisonment for two years.	ten years	(2)(Cap.16)			
88.	Procuring girl under twelve in order that she may be carnally known by her husband.	do.	do.	ten years	(3)(Cap.16)			
89.	Acts of gross indecency between persons	do	Imprisonment for a term not less than ten years, corporal punishment and compensation.		138A	not exceeding three hundred thousand	five years	corporal punishment, compensation
90.	Sexual exploitation of Children	do	Imprisonment for a term of not less than five years and not exceeding twenty years.	twenty years	138B			
91.	Grave Sexual abuse	do	Imprisonment for a term of not less than twenty years and not exceeding thirty years.	thirty years, life imprisonment	138C			corporal punishment
92.	Sexual harassment	do	Imprisonment for a term not exceeding five years or a fine not exceeding two hundred thousand shillings or both fine and imprisonment and compensation.		138D	two hundred thousand shillings	five years	

93.	Procuration for prostitution.	do.	Imprisonment for a term of not less than ten years and not exceeding twenty years or to a fine of not less than one hundred thousand shillings and not exceeding three hundred thousand shillings.		139(Cap.16)	one hundred thousand shillings	ten to twenty years	
94.	Trafficking of persons	do	Imprisonment for a term of not less than ten years and not exceeding twenty years or to a fine of not less than hundred thousand shillings and not exceeding three hundred thousand shillings.		139A	one hundred thousand shillings	ten to twenty years	
95.	Procuring defilement	do.	Imprisonment for a term of not less than ten years and not exceeding twenty years or to a fine of not less than hundred thousand shillings and not exceeding three hundred thousand shillings or to both and compensation.		140(Cap.16)	one hundred thousand shillings	five years	

96.	Householder permitting defilement of girl under twelve on his premises.	do.	Imprisonment for five years.	not indicated	141(Cap.16)	See S.35	See S.35	
97.	Householder permitting defilement of girl under sixteen on his premises.	do.	Imprisonment for two years.	not indicated	142(Cap.16)	See S.35	See S.35	
98.	Detention with unlawful intent or in brothel.	do.	do.	not indicated	143(Cap.16)	See S.35	See S.35	
99.	Male person living on earnings of prostitution or persistently soliciting.	do.	do.	not indicated	145(Cap.16)	See S.35	See S.35	corporal punishment
100.	Woman aiding etc. for gain prostitution of another woman.	do.	do.	not indicated	146(Cap.16)	See S.35	See S.35	
101.	Keeping a brothel.	do.	do.	not indicated	148(Cap.16)	See S.35	See S.35	
102.	Conspiracy to defile.	do.	Imprisonment for three years.	three years	149(Cap.16)			
103.	Attempt to procure abortion.	do.	Imprisonment for fourteen years.	fourteen years	150(Cap.16)			
104.	Woman attempting to procure her own abortion.	do.	Imprisonment for seven years.	seven years	151(Cap.16)			
105.	Supplying drugs or instruments to procure abortion.	do.	Imprisonment for three years.	three years	152(Cap.16)			
106.	Unnatural offences.	do.	Imprisonment for life and any case imprisonment for a term of not less than thirty years.	thirty years, life imprisonment	154(1)(Cap.16)			
107.	Unnatural offences for child	do.	Imprisonment for life.	life imprisonment	(2)(Cap.16)			

108.	Attempt to commit unnatural offence.	do.	Imprisonment for a term not less than thirty years.	twenty years	155(Cap.16)			
109.	Indecent assault of boy under fourteen.	do.	Imprisonment for life.	life imprisonment	156 (1)(Cap.16)			
110.	do.	do.	Imprisonment for fifteen years.		(2)(Cap.16)			
111.	Indecent practices between males.	do.	Imprisonment for five years.	Five years	157(Cap.16)			
112.	Incest by males (if a female is less than eighteen years).	do.	Imprisonment for a term of not less than thirty years.	thirty years	158(1)(a)			
113.	Incest by males (if a female is eighteen years and above).	do.	Imprisonment for term not less than twenty years or to a fine not exceeding three hundred shillings or to both the fine and imprisonment and compensation.	twenty years	(1)(b)(Cap.16)			
114.	Incest by females.		Imprisonment for life or imprisonment for a term not less than thirty years and compensation.	thirty years	160(Cap.16)			
115.	Fraudulent pretence of marriage.		Imprisonment for ten years.	ten years	163(Cap.16)			
116.	Dishonestly or fraudulently going through ceremony of marriage.		Imprisonment for five years.	Five years	165(Cap.16)			



117.	Desertion of children.		Imprisonment for two years.	not indicated	166(Cap.16)	See S.35	See S.35	
118.	Neglecting to provide food, etc., for children.	A Subordinate court.	do.	not indicated	167(Cap.16)	See S.35	See S.35	
119.	Master not providing for servants or apprentices.	do.	do.	not indicated	168(Cap.16)	See S.35	See S.35	
120.	Child stealing.	do.	Imprisonment for seven years.	seven years	169 (Cap.16)			
121.	Cruelty to children.		Imprisonment for a term of not less than five years and not exceeding fifteen years.	Five years	169A.			compensation
122.	Committing common nuisance.	A Subordinate court.	Imprisonment for one year.	One year	170(Cap.16)			
123.	Keeping common gaming house.	do.	Imprisonment for two years.		171(3).	five million Shillings	five years	
124.	Being found in common gaming house.	do.	Fine of one hundred shillings for first offence, and for each subsequent offence a fine of four hundred shillings or imprisonment for three months or both.		(4)(Cap.16)			
125.	Keeping or permitting the keeping of a common betting house.	do.	Imprisonment for one year.	One year	172(Cap.16)			

126.	Chain letters.	do.	Fine of four thousand shillings or imprisonment for six months or both.	repealed	173B..			
127.	Trafficking in obscene publications.	do.	Imprisonment for two years or a fine of two thousand shillings.		175(Cap.16)	two hundred thousand shillings	two years	
128.	Being an idle or disorderly person.	do.	Imprisonment for three months or a fine not exceeding five hundred shillings or both.		176(Cap.16)	five hundred Shillings	three months	
129.	Harbouring common prostitutes	do.	Fine of five hundred shillings for first offence, and of one thousand shillings for subsequent offences.		176A(Cap.16)	five hundred Shillings	three months	
130.	Being a rogue or vagabond.	A Subordinate court	Imprisonment for three months for first offence and for each subsequent offence imprisonment for one year.	three months	177(Cap.16)			
131.	Failure to account for money collected by public subscription.		Imprisonment for two years for first offence.	Two years	177A(Cap.16)	two hundred shillings	one month	
132.	do.			not indicated	Imprisonment for three years for subsequent	See S.35	See S.35	

						offence.			
133.	Wearing uniform without authority.	A Subordinate court		Imprisonment for one month or a fine of two hundred shillings.		178(1)	two hundred	one month	
134.	Bringing contempt on uniform.	do.		Imprisonment for three months or a fine of four hundred shillings.		(2)(Cap.16)	three hundred	Four Months	
135.	Importing or selling uniform without authority.	do.		Imprisonment for six months or a fine of two thousand shillings.		(3)(Cap.16)	two hundred	Six months	
136.	Doing any act likely to spread infection of dangerous disease.	do.			not indicated	179(Cap.16)	See S.35	See S.35	
137.	Adulteration of food or drink intended for sale.	do.		do.	not indicated	180(Cap.16)	See S.35	See S.35	
138.	Selling, or offering or exposing for sale, noxious food or drink.	do.		do.	not indicated	181(Cap.16)	See S.35	See S.35	
139.	Adulteration of drugs intended for sale.	do.		do.	not indicated	182(Cap.16)	See S.35	See S.35	
140.	Selling adulterated drugs.	do.		do.	not indicated	183(Cap.16)	See S.35	See S.35	
141.	Fouling water of public spring or reservoir.	do.		do.	not indicated	184(Cap.16)	See S.35	See S.35	
142.	Making the atmosphere noxious to health.	do.		do.	not indicated	185(Cap.16)	See S.35	See S.35	

143.	Carrying on offensive trade.	do.	Imprisonment for one year.	One year	186(Cap.16)			
144.	Hoarding of Commodities		20 years Imprisonment	30 years imprisonment	194A (Cap.16)			This Offence fall under Economic Offences
145.	Murder.		Death.	Death penalty	197(Cap.16)			
146.	Murder (if woman convicted is pregnant).		Imprisonment for life.					
147.	Manslaughter.		do.	life imprisonment	198(Cap.16)			
148.	Infanticide		do.	life imprisonment	199(Cap.16)			
149.	Being accessory after the fact to murder.		Imprisonment for seven years.	seven years	213(Cap.16)			
150.	Sending written threat to murder.		do.	seven years	214(Cap.16)			
151.	Conspiracy to murder.		Imprisonment for fourteen years.	fourteen years	215(Cap.16)			
152.	Aiding suicide.		Imprisonment for life.	life imprisonment	216(Cap.16)			
153.	Attempted suicide.	A Subordinate court.	Imprisonment for two years.	not indicated	217(Cap.16)	See S.35	See S.35	
154.	Concealing the birth of a child.	do.	do.	life imprisonment	218(Cap.16)			
155.	Child destruction		Imprisonment for life.	not indicated	219(Cap.16)	See S.35	See S.35	
156.	Disabling in order to commit offence.		Imprisonment for life.	life imprisonment	220(Cap.16)			
157.	Stupefying in order to commit an offence	Do.	Imprisonment for life.	life imprisonment	221(Cap.16)			

158.	Acts intended to cause grievous harm or prevent arrest.		do.	life imprisonment	222(Cap.16)			
159.	Preventing escape from wreck.		do.	life imprisonment	223(Cap.16)			
160.	Intentionally endangering safety of persons travelling by railway.		Imprisonment for life.	life imprisonment	224(1)			
161.	Endangering without intent	A Subordinate court	Imprisonment for two years.	not indicated	(2)(Cap.16)	See S.35	See S.35	
162.	Doing grievous harm.	A Subordinate court.	Imprisonment for seven years.	seven years	225(Cap.16)			
163.	Attempting to injure by explosive substances.		Imprisonment for fourteen years.	fourteen years	226(Cap.16)			
164.	Administering poison with intent to harm.		do.	fourteen years	227(Cap.16)			
165.	Wounding and similar acts.	A Subordinate court	Imprisonment for three years.	three years	228(Cap.16)			
166.	Failing to provide necessities of life.	do.	do.	three years	229(Cap.16)			
167.	Rash and negligent acts.	A Subordinate court	Imprisonment for two years.	not indicated	233(Cap.16)	See S.35	See S.35	
168.	Other negligent acts causing harm.	do.	Imprisonment for six months.	seven months	234(Cap.16)			
169.	Handling of poisonous substances in negligent manner.	do.	Imprisonment for six months or a fine of two thousand shillings.		235(Cap.16)	two thousand shillings	six months	
170.	Exhibiting false light, mark, or buoy.	A Subordinate court.	Imprisonment for seven years.	seven years	237(Cap.16)			

171.	Conveying person by water for hire in unsafe or overloaded vessel	do.	Imprisonment for two years.	not indicated	238(Cap.16)	See S.35	See S.35	
172.	Causing danger or obstruction in public way or line of navigation.	do.	Fine.		239(Cap.16)	not indicated		
173.	Common assault.	A Subordinate court.	Imprisonment for one year.	One year	240(Cap.16)			
174.	Assault occasioning actual bodily harm.	do.	Imprisonment for five years.	Five years	241(Cap.16)			
175.	Assaulting person protecting wreck.	do.	Imprisonment for seven years.	seven years	242(Cap.16)			
176.	Various assaults	do.	Imprisonment for five years.	Five years	243(Cap.16)			
177.	Kidnapping.	A subordinate court	Imprisonment for seven years.	seven years	247(Cap.16)			
178.	Kidnapping or abducting in order to murder.		Imprisonment for ten years.	ten years	248(Cap.16)			
179.	Kidnapping or abducting with intent to confine a person.	A Subordinate court	Imprisonment for seven years.	seven years	249(Cap.16)			
180.	Kidnapping or abducting in order to subject person to grievous harm, slavery, etc.		Imprisonment for ten years.	ten years	250(Cap.16)			
181.	Wrongfully concealing or keeping in confinement a kidnapped or abducted person.		Same punishment as for kidnapping or abduction.	seven years	251(Cap.16)			

182.	Kidnapping or abducting child under fourteen with intent to steal from its person.	A Subordinate court	Imprisonment for seven years.	seven years	252(Cap.16)			
183.	Punishment for wrongful confinement.	do.	Imprisonment for one year or a fine of three thousand shillings.		253(Cap.16)	three thousand	One year	
184.	Buying or disposing of any person as a slave.		Imprisonment for seven years.	Seven years	254(Cap.16)			
185.	Habitually dealing in slaves.		Imprisonment for ten years.	ten years	255(Cap.16)			
186.	Unlawful compulsory labour.	A Subordinate court	Imprisonment for two years.	not indicated	256(Cap.16)	See S.35	See S.35	
187.	Theft.	A Subordinate court.	Imprisonment for three years.	seven years	265(Cap.16)			
188.	Stealing wills.	do.	Imprisonment for ten years.	ten years	266(Cap.16)			
189.	Stealing certain animals.	do.	Imprisonment for fifteen years.	fifteen years	268(Cap.16)			
190.	Stealing from the person, in a dwelling-house, in transit, etc.	do.	Imprisonment for ten years.	ten years	269(Cap.16)			
191.	Stealing by persons in the public service.		Imprisonment for fourteen years.	fourteen years	270(Cap.16)			
192.	Stealing by clerks and servants.	do.	Imprisonment for ten years.	ten years	271(Cap.16)			
193.	Stealing by directors or officers of companies.	do.	Imprisonment for fourteen years.	fourteen years	272(Cap.16)			
194.	Stealing by agents, etc.	do.	Imprisonment for ten years.	ten years	273(Cap.16)			

195.	Stealing by tenants or lodgers.	do.	Imprisonment for seven years.	seven years	274(Cap.16)			
196.	Stealing after previous conviction.	do.	Imprisonment for fourteen years.	fourteen years	275(Cap.16)			
197.	Concealing registers.		Imprisonment for ten years.	ten years	276(Cap.16)			
198.	Concealing wills.		do.	ten years	277(Cap.16)			
199.	Concealing deeds.		Imprisonment for three years.	three years	278(Cap.16)			
200.	Killing animals with intent to steal.	Any court by which the theft of the animal would be triable.	Same punishment as if the animal had been stolen.	fifteen years	279(Cap.16)			
201.	Severing with intent to steal.	Any court by which the theft of the thing would be triable.	Same punishment as if the thing had been stolen.		280(Cap.16)			
202.	Fraudulent disposition of mortgaged goods.	A subordinate court.	Imprisonment for two years	not indicated	281(Cap.16)	See S.35	See S.35	
203.	Fraudulently dealing with ore or minerals in mines.	do.	Imprisonment for five years.	Five years	282(Cap.16)			
204.	Fraudulent appropriation of mechanical or electrical power.	do.	do.	Five years	283(Cap.16)			
205.	Conversion not amounting to theft.	do.	Imprisonment for six months or a fine of one thousand shillings.		284(Cap.16)	one thousand shillings	six months	



206.	Loss occasioned to Government or parastatal organisation by employees.	A Subordinate court.	20 years imprisonment and Ancillary Order for Forfeiture	30 years imprisonment and ancillary order for forfeiture	284A(Cap.16) read together with section 60 of Cap. 200			Confiscate Forfeiture This Offence Fall under Economic Offences
207.	Robbery.	A Subordinate court	Imprisonment for twenty years.	fifteen years	286(Cap.16)			
208.	Attempted robbery.	do.	Imprisonment for life, with or without corporal punishment.	seven years	287(Cap.16)			
209.	Armed Robbery	do.	Imprisonment for not less than seven years and not exceeding twenty years.	thirty years	287A(Cap.16)			
210.	Attempt Armed Robbery	do.	Imprisonment for life, or imprisonment for not less than fifteen years with corporal punishment.	thirty years	287B Cap.16)			
211.	Gang Robbery			thirty years	287C (Cap 16)			
212.	Assault with intent to steal.	do.	Imprisonment for not less than five years nor more than fourteen years with corporal punishments.	Five years	288(Cap.16)			
213.	Demanding property by written threats.	do.	Imprisonment for fourteen years.	fourteen years	289(Cap.16)			

214.	Threatening with intent to extort.	do.	do.	three years	290(Cap.16)			
215.	In certain specified cases and in any other case.	A Subordinate court.	Imprisonment for three years.		290(Cap.16)			
216.	Procuring execution of deeds etc. by threats.	do.	Imprisonment for fourteen years.	fourteen years	291(Cap.16)			
217.	Demanding property with menace with intent to steal.	A Subordinate court.	Imprisonment for five years.	Five years	292(Cap.16)			
218.	Housebreaking.	A Subordinate court.	Imprisonment for fourteen years.	fourteen years	294 (1) (Cap.16)			
219.	Burglary.	do.	Imprisonment for twenty years.	twenty years	- 294(2) (Cap.16)			
220.	Entering dwelling-house with intent to commit felony.	do.	Imprisonment for ten years.	fourteen years	295(Cap.16)			
221.	If offence is committed in the night.	do.	Imprisonment for fourteen years.	ten years	295(Cap.16)			
222.	Breaking into building and committing an offence.	do.	Imprisonment for ten years.	ten years	296(Cap.16)			
223.	Breaking into building with intent to commit an offence.	do.	Imprisonment for five years.	fourteen years	297(Cap.16)			
224.	Being found armed, etc., with intent to commit an offence.	do.	Imprisonment for five years.	Five years	298(Cap.16)			

225.	If offender has been previously convicted of an offence relating to property.	do.	Imprisonment for fourteen years.	fourteen years	298(Cap.16)			
226.	Criminal trespass.	do.	Imprisonment for three months.	three months	299(Cap.16)			
227.	If the property upon which offence is committed is a building used as human dwelling or as a place of worship or as a place for custody of property.	do.	Imprisonment for one year.	One year	299(Cap.16)			
228.	Obtaining property by false pretence.	A Subordinate court	Imprisonment for seven years.	seven years	302(Cap.16)			
229.	Obtaining execution of a security by false pretence.	do.	do.	seven years	303(Cap.16)			
230.	Cheating.	do.	Imprisonment for three years.	three years	304(Cap.16)			
231.	Obtaining credit, etc., by false pretence.		Imprisonment for five years.	Five years	305(Cap.16)			
232.	Conspiracy to defraud.	A Subordinate court	Imprisonment for five years.	Five years	306(Cap.16)			
233.	Frauds on sale or mortgage of property.	do.	Imprisonment for five years.	Five years	307(Cap.16)			
234.	Pretending to tell fortunes.	do.	Imprisonment for two years.	not indicated	308(Cap.16)	See S.35	See S.35	
235.	Obtaining registration, etc., by false pretence.	do.	Imprisonment for two years.	Two years	309(Cap.16)			
236.	False declaration for passport.		Imprisonment for two years.	not indicated	310(Cap.16)	See S.35	See S.35	

237.	Receiving or retaining property stolen or unlawfully obtained.	A Subordinate court	Imprisonment for ten years.	ten years	311(Cap.16)			
238.	Failing to account for possession of property suspected to be stolen or unlawfully obtained.	A Subordinate court.	Imprisonment for three years.	three years	312(Cap.16)			
239.	Unlawful possession of Government and Railway stores.	do.	Imprisonment for two years.	not indicated	312A(2)	See S.35	See S.35	
240.	Unlawful possession of service stores.	do.	do.	not indicated	(3)(Cap.16)	See S.35	See S.35	
241.	Receiving goods stolen outside Tanzania.	do.	Imprisonment for seven years.	seven years	313(Cap.16)			
242.	Fraudulently disposing of trust property.	A Subordinate court.	Imprisonment for seven years.	seven years	314(Cap.16)			
243.	Directors and officers of corporation's fraudulently appropriating property, or keeping fraudulent accounts, or falsifying books or accounts.	do.	Imprisonment for fourteen years.	fourteen years	315(Cap.16)			
244.	False statements by officials of corporations.	do.	Imprisonment for seven years.	seven years	316(Cap.16)			
245.	Fraudulent false accounting by clerk or servant	do.	Imprisonment for fourteen years.	fourteen years	317(Cap.16)			
246.	False accounting by public officer.	do.	Imprisonment for seven years.	seven years	318(Cap.16)			
247.	Endangering Safety of			thirty years	318A (Cap			This offence

	aviation					16)				fall under economic offences
248.	Arson.	A Subordinate court	Imprisonment for life.	life imprisonment	319(Cap.16)					
249.	Attempt to commit arson.	do.	Imprisonment for fourteen years.	fourteen years	320(Cap.16)					
250.	Setting fire to crops or growing plants.	do.	Imprisonment for fourteen years.	fourteen years	321(Cap.16)					
251.	Attempting to set fire to crops or growing plants.	A Subordinate court	Imprisonment for seven years.	seven years	322(Cap.16)					
252.	Casting away a vessel.		Imprisonment for fourteen years.	fourteen years	323(Cap.16)					
253.	Attempt to cast away a vessel.	A Subordinate court	Imprisonment for seven years.	seven years	324(Cap.16)					
254.	Injuring animals.	do.	Imprisonment for two years.	not indicated	325(Cap.16)	See S.35	See S.35			
255.	Destroying or damaging property in general.	do.	Imprisonment for seven years.	seven years	326(1) (Cap.16)					
256.	Destroying or damaging dwelling house or a vessel with explosives	do.	Imprisonment for life.	life imprisonment	326(2)(Cap.16)					
257.	Destroying or damaging river bank or wall or navigation works, or bridges.	do.	Imprisonment for life.	life imprisonment	- 326(3) (a) (Cap.16)					
258.	Destroying or damaging Tanzania-Zambia pipeline or property thereof.	A Subordinate court	do.	life imprisonment	326(3)(c) (Cap.16)					

259.	Destroying or damaging wills or registers.	A Subordinate court	Imprisonment for fourteen years.	fourteen years	(4)(Cap.16)			
260.	Destroying or damaging wrecks.	do.	Imprisonment for seven years.	seven years	(5)(Cap.16)			
261.	Destroying or damaging railways.	do.	Imprisonment for fourteen years.	fourteen years	(6)(Cap.16)			
262.	Destroying or damaging railways.			thirty years	6A(a) (Cap 16)			
263.	Destroying or damaging railways.			twenty years	6A(b) (Cap 16)			
264.	Destroying or damaging property used for supply of electricity.	A Subordinate court	Imprisonment for fourteen years if offence likely to result in danger to human life, otherwise imprisonment for seven years.	fourteen years	(7)(a)(Cap.16)			
	Destroying or damaging property used for supply of electricity.	A Subordinate court	Imprisonment for fourteen years if offence likely to result in danger to human life, otherwise imprisonment for seven years.	seven	(7)(b)(Cap.16)			
265.	Destroying or damaging property of special value.	do.	Imprisonment for seven years.	seven years	(8)(Cap.16)			
266.	Destroying or damaging deeds or records.	do.	do.	seven years	(9)(Cap.16)			

267.	Attempt to destroy or damage property by use of explosives.	do.	Imprisonment for fourteen years.	fourteen years	327(Cap.16)			
268.	Communicating infectious disease to animals.	do.	Imprisonment for seven years.	seven years	328(Cap.16)			
269.	Removing boundary marks with intent to defraud.	A Subordinate court	Imprisonment for three years.	three years	329(Cap.16)			
270.	Injuring or obstructing railway works, etc.	A Subordinate court	Imprisonment for three months or a fine of four hundred shillings.		331(Cap.16)	Four Hundred	three months	
271.	Threatening to burn any building, etc. or to kill or wound any cattle.	A Subordinate court	Imprisonment for seven years.	seven years	332(Cap.16)			
272.	Defacing bank/notes.	A Subordinate court	Fine of five thousand shillings for each note defaced or in default to imprisonment for one year.	One year	332A(Cap.16)			
273.	kite fly			ten years	332B(1) (Cap 16)			
274.	kite fly by Bank Employee			ten years	332B(2) (Cap 16)			
275.	Forgery (where no special punishment is provided).	A Subordinate court	Imprisonment for seven years.	seven years	337(Cap.16)			
276.	Forgery of a will document of title, security, cheque, etc.	do.	Imprisonment for life.	life imprisonment	338(Cap.16)			forfeiture

277.	Forgery of judicial or official document.	do.		Imprisonment for seven years.	seven years	339(Cap.16)			
278.	Forgery, etc., of stamps.	do.		do.	seven years	340(Cap.16)			
279.	Making or having in possession paper or implements for forgery of currency banknotes, etc.	do.		Imprisonment for seven years.	seven years	341(Cap.16)			
280.	Uttering false document.	Any court by which forgery of document would be triable.		Same punishment as for forgery of document.	not indicated	342(Cap.16)	See S.35		
281.	Uttering cancelled or exhausted document.	do.		do.	seven years	343(Cap.16)			
282.	Procuring execution of document by false pretence.	do.		do.	seven years	344(Cap.16)			
283.	Obliterating or altering the crossing on a cheque.	do.		Imprisonment for seven years.	seven years	345(Cap.16)			
284.	Making or executing document without authority	do.		do.	seven years	346(Cap.16)			
285.	Demanding property upon forged testamentary instrument.	Any court by which forgery of instrument would be triable.		Same punishment as for forgery of instrument.	seven years	347(Cap.16)			
286.	Purchasing or receiving forged bank-note.	A Subordinate court		Imprisonment for seven years.	seven years	348(Cap.16)			



287.	Falsifying warrant for money payable under public authority.	do.	do.	seven years	349(Cap.16)			
288.	Permitting falsification of register or record.	do.	do.	seven years	350(Cap.16)			
289.	Sending false certificate of marriage to registrar.	do.	do.	seven years	351(Cap.16)			
290.	Making false statement for insertion in register of births, deaths, or marriages.	A Subordinate court	Imprisonment for three years.	three years	352(Cap.16)			
291.	Wrongful issue of notes.	A Subordinate court	Imprisonment for five years.	Five years	352A(Cap.16)			
292.	Counterfeiting coin.	A Subordinate court	Imprisonment for life.	life imprisonment	354(Cap.16)			
293.	Making preparations for coining.	A Subordinate court	do.	life imprisonment	355(Cap.16)			
294.	Clipping coin.	A Subordinate court	Imprisonment for seven years.	seven years	356(Cap.16)			
295.	melting down coin	A Subordinate court			357 9cap 16)	fifty thousand	two year	
296.	Being in possession of clippings.	do.	do.	seven years	359(Cap.16)			
297.	Uttering counterfeit coin.	do.	Imprisonment for two years.	not indicated	360(Cap.16)	See S.35	See S.35	
298.	Repeated uttering of counterfeit coin.	do.	Imprisonment for three years.	three years	361(Cap.16)			
299.	Uttering piece of metal as coin.	do.	Imprisonment for one year.	One year	362(Cap.16)			
300.	Exporting counterfeit coin.	do.	Imprisonment for two years.	not indicated	363(Cap.16)	See S.35	See S.35	

301.	Being in possession, etc., of die or paper used for purpose of making revenue stamps.	A Subordinate court	Imprisonment for seven years.		365(Cap.16)			
302.	Being in possession, etc., of die or paper used for postage stamps.	do.	Imprisonment for one year or fine of one thousand shillings.	not indicated	366(Cap.16)	See S.35	See S.35	
303.	Counterfeiting, etc., trade mark.	A Subordinate court.	Imprisonment for two years.		367(Cap.16)			
304.	Personation in general.	A Subordinate court.	Imprisonment for two years		368(Cap.16)			
305.	If representation is that the offender is a person entitled by will or operation of law to any specific property and he commits the offence to obtain such property.	A Subordinate court.	Imprisonment for seven years.		368(Cap.16)			
306.	Falsely acknowledging deeds, recognisances, etc.	A Subordinate court.	Imprisonment for two years.	not indicated	370(Cap.16)	See S.35	See S.35	
307.	Personation of a person named in a certificate.	Any court by which forgery of certificate would be triable.	Same punishment as for forgery of certificate.	seven years	371(Cap.16)			
308.	Lending etc. certificate for purposes of personation.	A Subordinate court.	Imprisonment for two years.	not indicated	372(Cap.16)			
309.	Personation of person named in a testimonial of character.	do.	Imprisonment for one year.	One year	373(Cap.16)			

310.	Lending, etc., testimonial of character for purposes of personation.	do.	Imprisonment for two years.	not indicated	374(Cap.16)			
311.	Attempt to commit an offence.	Any court by which the offence attempted would be triable.	Imprisonment for two years.		381(Cap.16)	Fine	two years	
312.	Attempt to commit an offence punishable with death or imprisonment for fourteen years or more.	Any court by which the offence attempted would be triable.	Imprisonment for seven years.	seven years	382(Cap.16)			
313.	Neglecting to prevent commission or completion of an offence.	A Subordinate court.	Imprisonment for two years.	not indicated	383(Cap.16)	See S.35	See S.35	
314.	Conspiracy to commit an offence.	Any court by which the offence would be triable.	Imprisonment for seven years.	seven years	384(Cap.16)			
315.	Conspiracy to commit an offence.	Any court by which the offence would be triable.	Imprisonment for two years.	not indicated	385(Cap.16)	See S.35	See S.35	
316.	Conspiracy to effect certain specified purposes.	A Subordinate court	Imprisonment for two years.		386(Cap.16)			
317.	Being an accessory after the fact to an offence.	A Subordinate court	Imprisonment for seven years.	seven years	388(Cap.16)			
318.	Being an accessory after the fact to an offence.	do.	Imprisonment for two years.	three years	389(Cap.16)			
319.	Soliciting or inciting the commission of an offence.	do.	Imprisonment for two years.	not indicated	390(Cap.16)	See S.35	See S.35	

## THE WILDLIFE CONSERVATION ACT, CAP.283

NB: These offences are provided for under the Schedule of the Economic and Organized Crime Control Act, Cap. 200

S/No	Offence	Courts with jurisdiction	Mandatory Sentence Range		Discretionary Sentence			
			Minimum term	Maximum term	Applicable Law	Fine	Default custodial	Other sentence
	Restriction on possession of weapon in game reserve			Fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding three years or to both.	17(2)(Cap. 283)			
1.	Hunting in game reserve, game controlled area or wetlands reserve			imprisonment for a term not less than five years but not exceeding ten years and the court may, in addition thereto, impose a fine of five hundred thousand shillings but not exceeding two million shillings;				
2.				imprisonment for a term of not less than two years but not exceeding five years and the court may, in addition thereto, impose a fine of not less than three hundred shillings but not exceeding five hundred shillings;				

CYBER CRIME ACT							
3.	Illegal access				S.4(2)	Fine of not less than three million shillings or three times the value of the undue advantage received, whichever is greater or to imprisonment for a term of not less than one year or to both.	
4.	Illegal remaining remain in a computer system or continue to use a computer system after the expiration of time which he was allowed to access the computer system				S.5(2)	on conviction to a fine of not less than one million shillings	to imprisonment for a term of not less than one year
5.	illegal Interception				S.6(2)	20 years imprisonment	30 years imprisonment This section fall under Economic Offence
6.	illegal data interference				7(1)(g)	20 years imprisonment	30 years imprisonment This section fall under Economic Offence

7.	Communicates, discloses or transmits any computer data, program, access code or command to an unauthorized person				7(2)(b)	20 years imprisonment	30 years imprisonment	This section fall under Economic Offence
8.	internationally and unlawfully receives unauthorised computer data,				7(2)(b)	20 years imprisonment	30 years imprisonment	This section fall under Economic Offence
9.	A person who intentionally and unlawfully destroys or alters any computer data, where such data is required to be maintained by law or is an evidence in any proceeding under				7(3)(C)	20 years imprisonment	30 years imprisonment	This section fall under Economic Offence
10.	A person who intentionally and unlawfully mutilating, removing or modifying the data, program or any other form of information existing within or outside a computer system				7(3)(a)	20 years imprisonment	30 years imprisonment	This section fall under Economic Offence

11.	A person who intentionally and unlawfully activating, installing or downloading a program that is designed to mutilate, remove or modify data, program or any other form of information existing within or outside a computer system				7(3)(b)	20 years imprisonment	30 years imprisonment	This section fall under Economic Offence
12.	a person who intentionally and unlawfully creating, altering, or destroying a password, personal identification number, code or method used to access a computer system				7(3)(c)	20 years imprisonment	30 years imprisonment	This section fall under Economic Offences
13.	Obtain computer data protected against unauthorized access without permission				8(1)	20 years imprisonment	30 years imprisonment	This is Economic Offence

14.	A person who intentionally and unlawfully hinders or interferes with (a) the functioning of a computer system; or (b) the usage or operation of a computer system,				S.9	20 years imprisonment	30 years imprisonment	This is Economic Offence
15.	unlawfully deal with or possess							
16.	A person shall not unlawfully deal with or possess: (a) a device, including a computer program, that is designed or adapted for the purpose of committing an offence; (a) a computer password, access code or similar data by which the whole or any part of a computer system is capable of being accessed with the intent that it be used by any person for the purpose of committing an offence.				S.10	20 years Imprisonment	30 years imprisonment	This is Economic Offence



17.	A person shall not intentionally and unlawfully input, alter, delay transmission or delete computer data, resulting in unauthentic data, with the intent that it be acted upon as if it were authentic, regardless of whether or not the data is readable or intelligible				S.11	20 years imprisonment	30 years imprisonment	This is economic offence
18.	A person shall not cause a loss of property to another person by- (a) any input, alteration, deletion, delaying transmission or suppression of computer data; or (b) any interference with the functioning of a computer system, with fraudulent or dishonest intent				S. 12	20 years imprisonment	30 years imprisonment	This section fall under Economic Offence
19.	A person shall not (a) publish child pornography, through a computer system; or (b) make available or facilitate the access of child pornography				S.13	a fine of not less than fifty million shillings or three times the value of undue advantage received, whichever is greater,	or to imprisonment for a term of not less than seven years	be adjudged to compensate a person injured by the offence

	through a computer system.								
20.	A person shall not publish or cause to be published through a computer system or through any other information and communication technology (a) pornography; or (b) pornography which is lascivious or obscene.				S. 14	(a) a fine of not less than twenty million shillings or (b) pornography which is lascivious or obscene, to a fine of not less than thirty million shillings or	for a term of not less than seven years (b) to a fine of not less than thirty million shillings or to imprisonment for a term of not less than ten years.		
21.	A person shall not, by using a computer system impersonate another person				S. 15	a fine of not less than five million shillings or three times the value of undue advantage received by that person, whichever is greater,	or to imprisonment for a term of not less than seven years		
22.	Any person who publishes information or data presented in a picture, text, symbol or any other form in a computer system knowing that such information or data is false, deceptive, misleading or inaccurate, and with intent to				S.16	a fine of not less than five million shillings or	to imprisonment for a term of not less than three years		



25.	A person shall not unlawfully publish or cause to be published, through a computer system, a material which incites, denies, minimizes or justifies acts constituting genocide or crimes against humanity				S.19	20 years imprisonment	30 years imprisonment	This section fall under Economic Offence
26.	A person shall not, with intent to commit an offence under this Act (a) initiate the transmission of unsolicited messages (b) relay or retransmit unsolicited messages (c) falsify header information in unsolicited messages.				S.20	a fine of not less than three million shillings or three times the value of undue advantage received, whichever is greater or	to imprisonment for a term of not less than one year	
27.	A person shall not knowingly and unlawfully disclose details of a criminal investigation, which requires confidentiality				S.21	a fine of not less than ten million shillings or	to imprisonment for a term of not less than three years	
28.	A person who intentionally and unlawfully destroy, delete, alter, conceal, modify, renders computer data meaningless, ineffective				S. 22	a fine of not less than three million shillings or	to imprisonment for a term not less than one year	

	or useless with intent to obstruct or delay investigation									
29.	A person shall not initiate or send any electronic communication using a computer system to another person with intent to coerce, intimidate, harass or cause emotional distress					S.23	a fine of not less than five million shillings or	to imprisonment for a term of not less than three years		
30.	A person shall not use a computer system with intent to violate intellectual property rights protected under any written law					S.24	(a) non-commercial basis, is liable to a fine of not less than five million shillings (b) commercial basis, is liable to a fine of not less than twenty million shillings or	(a) to imprisonment for a term of not less than three years (b) commercial basis, is liable to imprisonment for a term of not less than five years.	in addition, be liable to pay compensation to the victim of the crime	
31.	Attempt to commit an Offence under the cyber-crime Act					26(3)	a fine not less than one million shillings or	to imprisonment for a term not less than six month		
32.	Any person who conspires with another					27	Any person who conspires with	Any person who		

	person to commit an offence under this Act, commits an offence, and is liable on conviction to a fine of not less than one million shillings or to imprisonment for a term of not less than one year					another person to commit an offence under this Act, commits an offence, and is liable on conviction to a fine of not less than one million shillings or to imprisonment for a term of not less than one year	conspires with another person to commit an offence under this Act, commits an offence, and is liable on conviction to a fine of not less than one million shillings or to imprisonment for a term of not less than one year.	
33.	Where a person commits an offence under this Act or any written law in relation to critical information infrastructure,					S.29	A fine not less than one hundred million shillings or three times the loss occasioned or  To imprisonment for a term not less than five years	

## 1. SENTENCING ON APPEAL

Generally Sentencing is in discretion of the Trial Court. The appellate court will not ordinarily interfere with the discretion exercised by a trial magistrate or judge in a matter of sentence unless it is evident that the trial court has acted upon some wrong principal or overlooked some material fact. Circumstances where the Appellate Court can interfere with a sentence are:-

- (i) Where the sentence is manifestly excessive or it is so excessive as to shock.
- (ii) Where the sentence is manifestly inadequate.
- (iii) Where the sentence is based upon a wrong principle of sentencing.
- (iv) Where a trial Court overlooked a material factor.
- (v) Where the sentence has been based on irrelevant considerations such as the race or religion of the offender.
- (vi) Where the sentence is plainly illegal, as for example, corporal punishment is imposed for the offence of receiving stolen property.
- (vii) Where the trial Court did not consider the time spent in remand by an accused person.

See **Swalehe Ndungaji Lungu v. R**, Criminal Appeal No. 84 of 2002 (CA); **Katinda Simbila and Tofiki Juma v. R**, 418 of 2005 (CA); **Rajabu Daud v. R**, Criminal Appeal No. 106 of 2012 (CA), Herman Basekana v. R, Criminal Appeal No. 443 of 2016 (CA) (All Unreported) [www.tanzlii.org](http://www.tanzlii.org)

