



**THE REPUBLIC OF UGANDA**

**SPEECH BY THE HON THE CHIEF JUSTICE  
HIS LORDSHIP BENJAMIN J ODOKI**

**AT THE**

**LAUNCH OF THE CONSTITUTION  
(SENTENCING GUIDELINES FOR COURTS OF JUDICATURE)  
PRACTICE DIRECTIONS LEGAL NOTICE NO 8 OF 2013  
AT KABIRA COUNTRY CLUB  
KAMPALA**

**ON**

**10<sup>TH</sup> JUNE 2013**

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**My Lord the Ag Deputy Chief Justice**

**My Lord the Hon Principal Judge**

**My Lords, the Justices of the Supreme Court**

**My Lords, Justices of the Court of Appeal**

**My Lord Judges of the High Court**

**The Director of Public Prosecutions**

**The Chairman, Uganda Law Reform Commission**

**Hon Members of Parliament**

**The Development Partners Group, JLOS**

**The Inspector General of Government**

**The Inspector General of Police**

**The Commissioner General of Prisons**

**The Secretary, Uganda Law Reform Commission**

**The Learned Solicitor General**

**Your Worship the Chief Registrar**

**You're Worships Registrars & Magistrates**

**Staff of the Uganda Law Reform Commission**

**Distinguished guests**

**Ladies and gentlemen**

It is with great pleasure that I officiate at this ceremony to Launch the Constitution (Sentencing Guidelines for Courts of Judicature) Practice Directions Legal Notice No.8 of 2013.

On the 6<sup>th</sup> August 2010, I inaugurated a taskforce chaired by His Lordship the Hon. Principal Judge Justice Yorokamu Bamwine with specific terms of reference to develop sentencing guidelines. The taskforce handed over the first draft to me on the 30th November 2011 at the Sheraton Hotel, a function that most of us here attended.

On the 16<sup>th</sup> April 2012, I recalled the taskforce specifically to transform the draft into a Practice Direction format for consideration by the Rules Committee and to be issued under Article 133 of the Constitution. The Rules Committee considered the draft and on the 26<sup>th</sup> April 2013 I signed the Practice Directions and constituted a sentencing Guidelines Committee, supported by a secretariat as its research arm.

As I have said before, these guidelines shall ameliorate the current challenges that the courts are grappling with when sentencing. These challenges in sentencing including:

1. Wide disparities in sentences by different Judges and Magistrates for the same offence committed in similar circumstances.

2. Lack of documented precedents to serve as a guide for sentencing.
3. Lack of clear benchmarks of factors to be taken into account by Court in mitigation or aggravation of sentence and the weight to be attached to such factors. Judicial Officers have creatively come up with their own factors that they take into account to determine sentencing.
4. Appropriate sentencing in capital cases following the Supreme Court decision in the *Kigula* case that made death sentences discretionary.
5. Sentencing of juvenile offenders.
6. Reliance on custodial sentences and a reluctance to impose fines, community service and other non-custodial sentences.
7. Sentencing in cases referred to the High Court by the Supreme Court arising out of the Supreme Court Constitutional Decision in the case of **Susan Kigula & 417 Ors Vs A.G.**
8. Meaning of life Imprisonment.

In Uganda, the law defines criminal offences and prescribes the corresponding penalties to be imposed by the courts after conviction. Judicial officers enjoy wide discretion in sentencing as, in most cases,

only the maximum penalty for an offence is prescribed. In practice this sentencing discretion has not always been exercised judiciously or fairly.

After convicting an accused person, it is the duty of the Court to determine the appropriate sentence within the wide range of penalties available ranging from a caution, to a fine, community service or incarceration.

The Court must have regard to the law and principles of sentencing developed by the courts over time. Judicial discretion is intended to ensure that the court imposes a sentence that fits the crime, taking into account the gravity of the offence, circumstances of the offender and the interests of society. This is known as the triad principle. Judicial discretion is intended to promote equity and proportionality in sentencing to ensure that like cases are decided alike hence, promoting consistency and uniformity in sentencing.

Judicial discretion in sentencing has sometimes been exercised inconsistently leading to public outcry about injustices in the administration of justice. The severity of sentence imposed in a particular case is very much dependent upon the whims of the individual judicial officer before whom an accused person appears.

It is therefore, important that sentencing guidelines are developed to assist in the determination of sentences within the criminal justice system.

You should note that we are currently focusing on sentencing guidelines and not sentencing rules. Sentencing guidelines should not override the discretion of the judicial officer. They should not direct but rather guide the judicial officer to arrive at a fair and just sentence which is consistent with that being passed by other judicial officers. In addition to this they promote uniformity in approach when sentencing in offences of a similar nature committed under similar circumstances.

Honourable Justice Bamwine whom I nominated to head the taskforce is an experienced Judicial Officer who is no stranger to the challenges of sentencing. I have no doubt that he has skilfully steered the process of developing sentencing guidelines, and that is why constituted the Sentencing Guidelines Committee under his leadership.

The Committee will among others make recommendations to the Chief Justice to develop guidelines, principles and ranges for sentencing, review the guidelines and provide a framework for setting penalties and ranges of sentencing, revise penalties, conduct public awareness on sentencing, advise on the use of the guidelines, establish a research, monitoring and development program on sentences and their effectiveness and monitor the implementation of the guidelines.

I constituted the Sentencing Guidelines Committee supported by Sentencing Guidelines Secretariat, drawing the membership of the committee from various stakeholders within the criminal justice system.

I implore the Committee to consult widely in order to build strong consensus on the guidelines and those that are yet to be developed.

In addition to this, the Sentencing committee should make proposals for an administrative framework on judicial parole, which will be a step further in reforming the sentencing in Uganda since in the near future we shall be having a practice direction on plea bargain as well.

As far as the development of the guidelines is concerned, It is worth noting that the taskforce did not re-invent the wheel. Sentencing guidelines have been developed in a number of jurisdictions and some of these including the United Kingdom were visited and best practices obtained.

I wish to thank the Uganda Law Reform Commission for facilitating the process of developing the draft sentencing guidelines and for giving us one of their officers to head the Sentencing Secretariat.

I appeal to our friends the development partners to support the activities of the Committee and the secretariat. I am always available for consultations if the Commission, development partners (DANIDA)

and the Justice Law and Order Sector wish to confer with me on any matter regarding this assignment.

I am aware that the Judicial Studies Institute and the Sentencing Guidelines Committee will soon embark on a nationwide advocacy of the sentencing guidelines amongst advocates, prosecutors, PSWO, Police and prisons among others. I wish to state that this is a step in the right direction in the implementation of the guidelines.

Ladies and gentlemen the taskforce made proposals for a Sentencing Reform Bill with the object of reforming sentencing in Uganda. I appeal to the Sentencing Guidelines Committee to engage with the Hon Members of Parliament to first track the quick passage of the Sentencing Reform Bill into law as a long term solution for reform of sentencing in Uganda, the Practice Direction being an interim measure.

My Lords, ladies and gentlemen, once again let me thank you for coming and let me use this opportunity to wish all of you a safe journey.

It is now my pleasure to officially launch the Constitution (Sentencing Guidelines for Courts of Judicature) Practice Directions Legal Notice No.8 of 2013.

Thank you