

# **SENTENCING GUIDELINES: PRINCIPLES, PRACTICE AND PROCEDURE**

**BY**

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## **APPRECIATION**

I wish to sincerely thank My Lord, the Administrator of the Institute, Hon. Justice Salisu Garba Abdullahi and the entire management of the National Judicial Institute for inviting me to speak on the topic: Sentencing Guidelines: Principles, Practice and Procedure.

I believe that this invitation has been extended to me in recognition of one's modest pioneering contributions to the development of sentencing guidelines in Nigeria and its adoption in many states of the Federation and the FCT in my capacity as Consultant at different times with the UNODC, European Union/British Council Rule of Law and Anti-corruption Programme, Presidential Committee on Correctional Service Reforms and Decongestion and the Federal Ministry of Justice.

I am happy to share my experience in this regard and I thank My Lord, the Administrator, for giving me this opportunity.

Let me also take this opportunity to congratulate all participants in the course for your well-deserved appointments as Magistrates, and Judges of Sharia, Area and Customary Courts. I wish you all a successful career on the Bench.

## **INTRODUCTION**

The topic of my presentation is Sentencing Guidelines: Principles, Practice and Procedure.

The paper discusses the importance of sentencing guidelines in achieving consistency, predictability, uniformity, and equity in sentencing; the developments in Nigeria regarding the

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adoption of sentencing guidelines; and a brief overview of the provisions of the sentencing guidelines.

The aim of the paper is to encourage the use of these guidelines in sentencing to reduce sentencing disparities.

By way of outline, the topic will be discussed under the following headings.

- Definition of Sentencing
- Procedure and Governing Principle for Sentencing Prior to ACJA/ACJL Regime.
- Sentencing under the ACJA/ACJL Regime.
- Adoption of Sentencing Guidelines in Nigeria.
- Overview of Sentencing Procedure under the existing Sentencing Guidelines (Practice Directions).
- Role of the Defence and Prosecution in Sentencing and Implementation of Sentencing Guidelines.
- Procedure where there is no Sentencing Guidelines.
- Sentencing of Children
- Conclusion.

## **DEFINITION OF SENTENCING**

The terms “sentencing” and “sentence” are often used interchangeably to refer to the imposition or pronouncement or determination of the prescribed punishment, penalty or sanction on a convict by the court.<sup>2</sup> However, in the context of this paper, sentencing refers more to the process of arriving at or determining the appropriate punishment to be imposed on a convict by the court.

## **PROCEDURE AND GOVERNING PRINCIPLE FOR SENTENCING PRIOR TO ACJA/ACJL REGIME**

Prior to the enactment of the Administration of Criminal Justice Act (ACJA)/ Administration of Criminal Justice Laws (ACJLs) in Nigeria, there were very few statutory provisions on sentencing both in terms of procedure and governing principles (apart from allocutus).

Most of the rules governing sentencing were judge-made and not statutory. They were ad hoc interventions aimed at addressing frequent disparities and inconsistencies in imposition of sentences by the courts.

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<sup>2</sup> Thus in *Usman V. State* (2015) LPELR-40855(CA) at pp 40 - 41 Paras D – B, Habeeb Adewale Olumuyiwa Abiru, JCA, defined sentencing as “the judicial determination of a legal sanction to be imposed on a person found guilty of an offence”. The word “determination” has been defined as “final decision by a court”. See *Black’s Law Dictionary* (Eighth Edition).

However, these judge-made rules had failed to prevent disparities or achieve consistency and predictability in sentencing.

This is because these principles, apart from being mere guides on the exercise of sentencing discretion with no mandatory effect, are randomly established in cases and are not contextualized.

## **SENTENCING UNDER THE ACJA/ACJL REGIME**

The ACJA was signed into law on 13<sup>th</sup> of May 2015. The Act has since been enacted as ACJLs in virtually all the States of the Federation with slight variations in some cases to suit the peculiarities of the individual States.

The ACJA, unlike the previous regime, contains more elaborate albeit inadequate provisions on sentencing both in terms of procedure and governing principles.

The following are some of the key provisions of the ACJA on sentencing<sup>3</sup>:

1. It provides for sentencing hearing as a separate proceeding after conviction.
2. It stipulates the principles and factors to be considered and applied in sentencing a convict.
3. It provides for new variants of non-custodial sentences in appropriate cases.

There is no doubt that the ACJA and the ACJLs have made great improvements in sentencing by providing for sentencing procedure and rules governing sentencing beyond any previous law. However, like the previous laws (statutory and judicial), the ACJA and ACJLs do not contain guidelines for consideration of a sentence in any given case.

In effect, the implementation of the ACJA/ACJLs, as regards sentencing, is not likely to produce any different result in terms of addressing disparities and inconsistencies in sentencing.<sup>4</sup>

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<sup>3</sup> See sections 310, 311, 401 and 416 ACJA. The purpose of these provisions is to ensure that the court gives adequate consideration to sentencing of a convict and that appropriate and fair sentence is imposed in all cases bearing in mind the interest of the defendant, the victim and the society.

<sup>4</sup> See for example, *Auwal v FRN (2022) LPELR-57318 (CA)*. In this case, the accused persons pleaded guilty and were convicted on the count of criminal misappropriation contrary to section 309 of the Penal Code. They were each sentenced to 2 years on this count and a fine of N1, 000,000 and in default, 2 years imprisonment to run consecutively. The Court of Appeal held that the sentence of 4 years was excessive having regard to the plea of guilty which was a mitigating factor and consequently reduced the sentence to 2 years without option of fine. The sentence might well have been excessive but the question is how did the appellate court determine the appropriate credit that the accused were entitled to, based on their guilty pleas? What is the guaranty that the sentence will not be further reduced or increased if appealed to Supreme Court? In effect, the discretion remains at large. It is submitted that the appeal court essentially in this case, has simply substituted its view of what the sentence should have been

## **ADOPTION OF SENTENCING GUIDELINES IN NIGERIA**

Sentencing guidelines are the standards for determining the punishment that a person convicted of a crime should receive, based on the nature of the crime and the offender's criminal history.

It is the set of rules and principles a trial court judge follows to decide the sentence to be imposed on a defendant who is found guilty of a crime.

As is the case in many developed jurisdictions<sup>5</sup>, and some African countries<sup>6</sup> sentencing guidelines have been or are now being adopted in Nigeria.

The two main reasons for this are to:

- address the disparities that continue to exist in sentencing despite judges' rules; and
- give effect to the sentencing provisions of the ACJA/ACJL.

The adoption of sentencing guidelines in Nigeria was preceded by studies, researches and consultations which indicated the Judges preference for mandatory sentencing guidelines to promote consistency in sentencing.<sup>7</sup>

These research findings set the ball rolling for the subsequent adoption of SGs in Nigeria since 2016 to provide for consistency in sentencing.

Since 2016 some States have introduced sentencing guidelines in their criminal justice system using Practice Directions<sup>8</sup>.

These efforts have been supported by development partners and some government agencies including UNODC, EU/British Council (RoLAC), Presidential Committee on Correctional Service Reform and Decongestion, and Federal Ministry of Justice.

The States that have adopted sentencing guidelines include-Cross River State, FCT, Lagos State, Anambra State, Edo State, Adamawa State, Kaduna State. There are also subject specific sentencing guidelines in the Federal High Court (corruption and drugs cases)

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rather than determine the appropriate sentence by reference to agreed guidelines. This example applies to almost all cases where sentences of trial courts have been substituted on appeal.

<sup>5</sup> United Kingdom and the United States for example

<sup>6</sup> Ethiopia and Tanzania for example

<sup>7</sup> See the Report of the Research on the Need for Sentencing Guidelines for Judicial Officers in Nigeria; Nigerian Law Reform Commission's Report on Stakeholders Meeting on Sentencing Guidelines in Nigeria, 2012.

<sup>8</sup> Note that a Practice Direction has force of law like rules -*Oraegbunam v Chukwuka & Ors* (2009) LPELR -4796 (CA). cf *UNILAG v Aigoro* (1984) 11 SC152. It should not however be inconsistent with statute-See *Kelly v FRN* (2020) 14 NWLR (Pt.1745)479 (CA)

The provisions of section 490(g) ACJA<sup>9</sup> and sections 254, 259 and 274 of the Constitution<sup>10</sup> provide the legal support for prescribing sentencing guidelines through practice directions for courts with criminal jurisdiction in Nigeria.<sup>11</sup>

## **OVERVIEW OF SENTENCING PROCEDURE UNDER THE EXISTING SENTENCING GUIDELINES (PRACTICE DIRECTIONS)**

The provisions of the existing sentencing guidelines are similar especially with regard to the procedure for sentencing and the principles for consideration in sentencing.

However, in this paper the focus is on the Federal Capital Territory Courts (Custodial and Non-Custodial Sentencing) Practice Directions, 2020. This is one of the most comprehensive sentencing guidelines in Nigeria today. It was developed as a model to be replicated by States that do not have sentencing guidelines.

### **Objectives of the Sentencing Guidelines**

The following are the objectives of the PD-

- To establish appropriate standards and guidelines for sentencing in offences against the State, person, public order, morality, homicide, property, corruption, financial crimes and related offences, for the purpose of ensuring reasonable uniformity, proportionality and fairness in sentencing in the Federal Capital Territory;
- To establish the requirements and procedure for imposing custodial and non-custodial sentences for the purpose of preventing abuse and ensuring reasonable uniformity and fairness in sentencing; and
- To ensure that congestion in correctional centres is reduced to the barest minimum through the use of non-custodial sentences in line with section 470(2)(c) of the ACJA, section 2(1)(b) of the Nigerian Correctional Service Act, 2019 and any other applicable provisions of the Law.<sup>12</sup>

### **Application and Scope**

- The PD applies to all FCT Courts exercising criminal jurisdiction and the above listed offence categories

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<sup>9</sup> Section 490(g) ACJA empowers the Chief Judge to make rules for the purpose of generally carrying into effect the purposes of the Act

<sup>10</sup> Sections 254, 259 and 274 empower the Chief Judges to make rules of court. However, the power in this case is limited to the High Court and does not extend to Magistrates Courts or other courts with criminal jurisdiction.

<sup>11</sup> See also the High Court Act/Laws.

<sup>12</sup> See O.1 R. 1 SGPD

- The PD does not apply to children (persons below 18 years)<sup>13</sup>

### **General Guiding Principles and Factors in Sentencing**

The court is required to take the following principles/factors into consideration when determining sentence to be imposed on a convict:

a) The objective of sentencing, namely: prevention, restraint, rehabilitation, deterrence, education of the public, retribution, restitution, and restoration.

(b) The interest of the victim, the convict and the community.

(c) Appropriateness of non-custodial sentence or treatment in lieu of imprisonment.

(d) Necessary aggravating and mitigating evidence or information.

(e) Need to treat each case on its own merit.

(e) A trial court shall not pass the maximum sentence on a first offender except mandatory sentences.

(f) Sentencing to a term of imprisonment shall apply only to those offenders who should be isolated from society and with whom other forms of punishment have failed in the past or are likely to fail. (This shall be determined in accordance with the sentencing guidelines in this Practice Direction)

The above principles are captured in ss.311, 401(2) and 416(1) of the ACJA.<sup>14</sup>

### **Guiding Principles in Non-Custodial Sentencing**

- Non-custodial sentence is not to be imposed where the statute prescribes a mandatory sentence or a minimum custodial sentence.
- The court may in all other cases impose non-custodial sentence as provided under the ACJA.
- The court may impose non-custodial sentence even if the statute that creates the offence is silent on or does not specifically provide for non-custodial punishment.<sup>15</sup>
- The court shall not impose non-custodial sentence if the statute that creates the offence expressly disallows non-custodial sentence. In such a case, the court shall not consider the

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<sup>13</sup> O.1 R.2

<sup>14</sup> See O.1 R.3 PD

<sup>15</sup> See *Apamadari v Stae* (1997) 3 NWLR (Pt. 493) 289 (CA) in relation to option of fine

non-custodial sentence that is expressly disallowed but may still consider other non-custodial options that are not expressly disallowed by the statute.

- The court shall only impose a non-custodial sentence where the offence has been categorized as “Low Culpability Offence” and “Limited Harm Offence” and there are other mitigating factors.
- Prior to imposing a non-custodial sentence, the court shall, among others, ensure that -
  - (a) the interest of the victim, the convict and the community are considered;
  - (b) it is appropriate to impose non-custodial sentence as an alternative to imprisonment in the particular case;
  - (c) there are necessary mitigating factors, evidence, information or circumstances that necessitate the imposition of the non-custodial sentence; and
  - (d) the convict is not a habitual convict and will not pose danger to the community by the imposition of non-custodial sentence.
- Where a convict has met the criteria for imposition of a non-custodial sentence under the relevant Order, such non-custodial sentence shall be imposed only as an alternative to imprisonment or other custodial punishments and not in addition to custodial sentence.
- Where a convict has not met the criteria for imposition of non-custodial sentence, the court in imposing custodial sentence on such convict, may also impose fine (depending on the gravity and circumstances of the offence) in line with the provisions of section 327 (1) of the ACJA provided that the statute that creates the offence specifically allows the imposition of both imprisonment and fine for that offence.
- In all cases where the court convicts a defendant, whether the sentence is custodial or non-custodial, the court may in addition order compensation, restitution or other ancillary reliefs in line with section 321 and other relevant provisions of the ACJA.
- When imposing a non-custodial sentences, the court shall be guided by -
  - the provisions of the ACJA and other relevant laws relating to such sentence; and
  - the availability of facilities for implementation of the particular non-custodial sentence.
- The court may before imposing a particular non-custodial sentence request for advice or a report from-
  - the National Committee on Non-Custodial Measures or the Nigerian Correctional Service to determine the available facilities; or

- a social worker or any other expert to determine the appropriate non-custodial sentence for the convict or for other related purposes.

### **Conduct of Sentencing Hearing**

- The court shall conduct a sentencing hearing (which is required by the ACJA) immediately after conviction or at any subsequent date not exceeding fourteen (14) days from the date of conviction.
- Sentencing hearing helps the court determine appropriate sentence for a convict.<sup>16</sup>
- Pending the sentencing hearing, the convict shall be detained in a correction centre except where imprisonment is not a punishment for the offence or where the convict had been detained for the offence for a period longer than the maximum term of imprisonment provided for the offence.
- During the sentencing hearing, the convict shall be asked by the court if he wishes to call any witness as to his character or any other fact in mitigation of punishment if such fact had not previously been adduced in evidence at the trial, and any witness called by the convict shall be subjected to the general rules of evidence relating to the examination of witnesses including examination-in-chief, cross examination and re-examination.
- After such witness, if any, has been called, the convict shall be asked if he desires to make any statement or produce any evidence or information for mitigation of punishment.
- The prosecutor shall, where desirable, call witnesses or produce evidence in rebuttal of any fact or evidence adduced by or on behalf of the convict in mitigation of punishment unless such evidence had already been given.
- Any witness called by the prosecution shall be subject to examination-in-chief, cross examination and re-examination;
- The Court may then pass sentence on the convict or adjourn to consider and determine such sentence which shall be pronounced in open court and a reason given for the sentence.

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<sup>16</sup> It has however been held that failure to conduct sentencing hearing is not fatal to the sentence unless it resulted in miscarriage of justice. See *Ukoh v State* (2022) LPELR-56711 (CA). It is submitted that there will be miscarriage of justice where there are facts that would have affected the sentence which the defendant was prevented from introducing by reason of failure to conduct a sentencing hearing. The question is at what point and by what means would the defendant bring such facts to the attention of the appellate court for the purpose of determining miscarriage of justice? It appears however that where such facts are before the appellate court, the latter can impose the appropriate sentence based on such facts and need not remit the case to the trial court for sentencing. See *Maina V FRN* (2022) LPELR- 58942 (CA)



- Where a convict has been provided the opportunity to adduce mitigating evidence and he declines or fails to take advantage of such opportunity, the court may sentence the convict in accordance with these Practice Directions based on the evidence already adduced during trial.<sup>17</sup>
- A sentence can be pronounced only after considering nine (9) procedural steps specified in the relevant Order applicable to the offence (Order 2-8 relating to different offence categories).
- In considering sentence in offences that fall under two or more Orders or classes of offences, the court in classifying the offence should take into account the prevalent elements and other circumstances surrounding the commission of the offence as well as ensure that the Order applied in sentencing is one that contains adequate provisions for imposing appropriate sentence for the offence.<sup>18</sup>

### **The Nine Procedural Steps in Sentencing**

- Note that these 9 steps apply in all categories of offences under the PD

Step One-Determining whether Discretionary and Non-discretionary Punishment

Step Two-Determining the Offence Category

Step Three-Determining Starting Point and Category Range

Step Four-Adjustment based on Aggravating and Mitigating Factors

Step Five-Consideration of Guilty Plea and Potential Reduction of Sentence

Step Six-Totality Principle (Multiple offences, Serving Concurrent or Consecutive Sentence

Step Seven-Compensation, Restitution, Restoration and Ancillary Orders

Step Eight-Consideration of Period Spent in Custody or Remand

Step Nine-Reason for Sentence

### **Step One-Determination of Statutory Exercise of Discretion**

- The court shall determine whether the statute allows exercise of discretion in sentencing for the offence under consideration.

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<sup>17</sup> O.1 R 6 PD

<sup>18</sup> O.1 R 6 PD

- Where the statute does not permit the exercise of discretion, the court shall apply the punishment prescribed by the statute and proceed to Rules 7 and 9 of the Order (i.e. ancillary orders and reason for sentence).
- Where the statute permits the exercise of discretion in sentencing, the court shall proceed to Rule 2 to Rule 9 of the Order (i.e. follow all the steps).<sup>19</sup>

### **Step Two-Determining the Offence Category (Culpability and Harm Categories)**

- The Court shall determine the categories of the offence. In other words, the Court shall place the offence in categories.
- This is important because the degree of punishment for an offence under the Guidelines depends on the category of that offence.
- The offence should be placed under two categories -Culpability Category and Harm Category
- Culpability Category-Under this category, an offence can either be classified as high culpability or low culpability offence depending on the blameworthiness.
- Harm Category-Under this category, an offence can be classified either as serious harm, substantial harm or limited harm depending on the consequence of the offence.

### ***Culpability Category (high culpability or low culpability)***

- The PD lists some of the factors that will help the court in determining whether the circumstances of a particular offence bring it under high culpability or low culpability. These factors are based on the actions of the convict.
- These factors are not exhaustive.
- Note that in determining level of criminal culpability generally, the actions of the convict are viewed from four levels of his intention to cause the harm- where he has intention to cause harm; where he is reckless as to whether harm is caused or not; where he did not intend to cause the resulting harm but had knowledge of the risk of his action; where he is negligent.
- Note that in strict liability offences where culpability need not be proved to secure conviction, it is still a consideration in determining appropriate sentence.

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<sup>19</sup> See Or. 2 R. 1; 3.1; 4.1; 5.1; 6.1; 7.1; and 8.1.

### ***High culpability***

- Although there are factors that are peculiar to certain offence categories, the following are **factors** that are generally listed in the PD that will bring the offence under **high culpability offence**-
  - prolonged activity;
  - use of weapon;
  - damage to property;
  - significant degree of premeditation;
  - deliberate targeting of vulnerable victim;
  - leading role in the commission of the offence;
  - death resulting from the offence;

### ***Low culpability***

- Although there are factors that are peculiar to certain offence categories, the following are **factors** that are generally listed in the PD that will bring the offence under **low culpability offence**-
  - lack of premeditation;
  - subordinate role in group or gang;
  - severe mental or emotional disorder or disturbance or impaired capacity;
  - show of remorse

### ***Harm Category (serious harm, substantial/Significant harm or limited harm)***

- The PD lists some of the factors that will help the court in determining whether the circumstances of a particular offence bring it under serious harm, substantial harm or limited harm. These factors are based on the effect of the actions of the convict or the society.
- Harm may be to the victim in the form of physical injury, sexual violation, financial loss, damage to health or psychological distress.
- Harm may be to the community at large and may include economic loss, harm to public health, or interference with administration of justice.

- The nature of the harm will depend on the personal characteristics and circumstances of the victim or the impact on the community which the court will bear in mind in classifying or assessing the harm in any particular case.
- Although there are factors that are peculiar to certain offence categories, the following are factors listed in the PD that will generally bring the offence under the various harm categories

**Serious harm-**

- on-going effect on victim;
- offence committed against those working in the public sector or providing a service to the public;
- serious economic or social or environmental impact on victim or community;
- where it results in death;
- infliction of permanent or grievous bodily injury;
- damage to property;
- location of the offence.

**Substantial/significant harm -**

- significant psychological trauma;
- coercion and duress;
- social stigma on the victim or community.

**Limited harm -**

- limited impact on victim

**Step Three-Starting Point and Category Range**

- After determining the categories of culpability of the convict and severity of harm caused, the court shall apply the corresponding starting points of sentencing within the table of starting point and category range specified in the relevant Schedule.
- The existence of only one factor demonstrating low culpability and one factor demonstrating limited harm, with or without a mitigating factor, shall be sufficient to impose the starting point of 25% of the prescribed sentence which may be increased up to a maximum of 30% of the prescribed sentence if there is presence of other aggravating factors or reduced down to 1% if there is presence of mitigating factors.

- The court shall not impose a non-custodial sentence on a convict except where the offence has been categorized as low culpability offence and limited harm offence.
- The court may, where the circumstances are compelling, impose non-custodial sentence where there is at least one factor demonstrating low culpability and one factor demonstrating limited harm and at least one mitigating factor.
- The court shall impose a non-custodial sentence in any case where there are two or more factors demonstrating low culpability and limited harm and in addition, there are two or more mitigating factors or presence of a plea of guilt by the convict.
- Where the offence prescribes a minimum sentence, the court shall not impose less than that minimum sentence irrespective of the starting point set out in the relevant Schedule.
- The starting point shall apply to all convicts notwithstanding the plea of guilt or records of previous convictions.
- Where the level of culpability of a convict is qualified by multiple features of culpability, an upward adjustment from the starting point may be made, before further adjustments for aggravating or mitigating features.
- Where a particular circumstance is listed for determining both culpability/harm categories and aggravating/mitigating factors and that circumstance is taken into account in categorizing the offence under culpability/harm categories, the same circumstance/factor should not be subsequently considered in determining the aggravating and mitigating factors.

#### **Illustration with offences against persons**

- High Culpability/Serious Harm –Start 90%-Range 80% to 100%
- High Culpability/Substantial Harm-Start 80%-Range 60% to 90%
- High Culpability/Limited Harm-Start 50% -Range 40% to 60%
- Low Culpability/Serious Harm –Start 50%-Range 40% to 60%
- Low Culpability/Substantial Harm Start 40%- Range 30% to 50%
- Low Culpability/Limited Harm-Start 25%-Range Fine and other non-custodial – 30%

See Second Schedule

Note: two examples for calculating percentages of sentences:

90% of 10 years sentence is  $0.9 \times 10 \text{ years} = 9 \text{ years}$ .

60% of a 7 year sentence is  $0.6 \times 7 \text{ years} = 4.2$ .

#### **Step Four-Adjustment Based on Aggravating and Mitigating Factors**

- From the starting point, the Court will then consider whether to adjust the punishment upward or downward.
- This adjustment will be based on evidence of aggravating or mitigating factors before the Court.
- Aggravating and mitigating factors include (not exhaustive) the ones listed in the PD for different offences.<sup>20</sup>

#### **Aggravating Factors**

- Aggravating factors will generally include –
  - Previous conviction;
  - Inducing another to take part in committing the crime;
  - Lack of remorse;
  - Vulnerable victims;
  - Use of weapon;
  - Use of violence
  - Group action;
  - Abuse of position or power;
  - Offence committed while on bail;
  - Involved degree of planning;
  - location of the offence;
  - timing of the offence;
  - offence based on factors of discrimination such as religion, tribe, sex;
  - Attempt to conceal or dispose of evidence;
  - Offence committed whilst under the influence of alcohol or drugs;

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<sup>20</sup> See Ors. 2 Rs. 4, 3.4, 4.4, 5.4, 6.4, 7.4, 8.4.

## **Mitigating Factors**

- Mitigating factors will generally include-
  - no previous conviction;
  - Guilty plea;
  - convict shows remorse;
  - good character or exemplary conduct;
  - Co-operation with investigation;
  - isolated incident;
  - Age of the convict;
  - mental disorder/learning disability/impaired capacity;
  - where the convict is found to be the sole breadwinner for dependent relatives;
  - Lack of premeditation.

## **Step Five-Consideration of Guilty Plea**

- The Court may consider any guilty plea made by the convict including when such plea was made in determining reduction in the sentence to be imposed.
- A consideration for the reduction of a sentence upon a guilty plea shall not exceed a reduction by one third of the applicable punishment prescribed by law.<sup>21</sup>

## **Step Six-Totality Principle**

- In sentencing a convict for more than one offence, or where the convict is already serving a sentence, the Court shall consider whether the total sentence is just and proportionate to the offending behaviour.
- In the case of conviction for multiple offences arising from the same transaction, the sentences shall run concurrently.
- In the case of conviction for multiple offences not arising from the same transaction, the Court shall consider and make pronouncement on whether the sentences shall run concurrently or consecutively.<sup>22</sup>

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<sup>21</sup> See Ors. 2 Rs. 5, 3.5, 4.5, 5.5, 6.5, 7.5, 8.5.

<sup>22</sup> See O. 2. R. 6, 3.6, 4.6, 5.6, 6.6, 7.6, 8.6. SGPD

### **Step Seven-Compensation, Restitution, Restoration and Ancillary Orders**

- In all cases, the Court shall consider whether to make compensation, restitution, restoration, rehabilitation and treatment of victim and other ancillary orders in accordance with the provisions of the applicable Laws.
- Where the offence has resulted in loss or damage the Court shall make a restoration order in accordance with part 32 of the ACJL or other the applicable Laws.<sup>23</sup>

### **Step Eight-Time Spent in Remand**

- The period spent in custody while awaiting or undergoing trial shall be considered and computed in sentencing the convict.

### **<sup>24</sup>Step Nine-Reason for Sentence**

- The Court shall give reasons for the sentence imposed.<sup>25</sup>

## **ROLE OF THE DEFENCE AND PROSECUTION IN SENTENCING AND IMPLEMENTATION OF SENTENCING GUIDELINES**

### **Defence Counsel/ Convict**

The convict should testify on mitigating circumstances that will affect the sentence in his favour. If no such circumstances exist or if they have already been adduced at trial, the time of the court should not be wasted.

It is not the role of the defence counsel to provide the court with facts for sentencing as appears to have been the practice during *allocotus* prior to ACJA/ACJL regime. Continuation of such practice is wrong and defeats the purpose of the introduction of sentencing hearing.

### **The Prosecutor**

The Prosecutor represents the public interest, and his/her role is to assist the court in reaching its decision as to the appropriate sentence for each convict in each case.

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<sup>23</sup> See Ors. 2 Rs. 7, 3.7, 4.7, 5.7, 6.7, 7.7, 8.7 SGPD

<sup>24</sup> See Ors. 2 Rs. 8, 3.8, 4.8, 4.8, 5.8,6.8, 7.8, 8.8.

<sup>25</sup> Ors. 2 Rs. 9, 3.9, 4.9, 4.9, 5.9,6.9, 7.9, 8.9; See *Agbanyi v State* (1995) 1 NWLR (Pt.369) 1 (CA)-held that it is desirable that in exercising his discretion over sentence, a trial judge should state in his judgment the factors that influenced his decision. But in *Ezekiel v FRN* (2017) 12 NWLR (Pt. 1578)1, the SC appears to have taken the position that the trial court is not bound to give reason for exercising his discretion on sentencing. Compare with section 308(1) ACJA which requires the court to give reason for its judgment/decision. Does judgment/decision include sentence? Judgment or decision is not defined in ACJA but section 318 (1) CFRN defines decision to include sentence.



The prosecutor therefore plays or is expected to play the following roles to ensure that the court imposes appropriate sentence on the convict.

1. The Prosecutor has the responsibility of drawing the court's attention to any information that will affect the sentence. The information will include the following:<sup>26</sup>
  - Evidence of aggravating or mitigating factors of the defendant.<sup>27</sup>
  - Evidence of impact of the offence on the victim.<sup>28</sup>
  - Evidence of the impact of the offending on a community.<sup>29</sup>
  - Statutory provisions, sentencing guidelines, or relevant cases that affect the sentence.
  - Evidence of defendant's previous convictions.<sup>30</sup>
2. The Prosecutor should challenge any assertion made by the defence in mitigation that is inaccurate or misleading.<sup>31</sup>
3. The Prosecutor should apply for or draw court's attention to relevant ancillary orders that the court may make in favour of the victim and the statutory provisions supporting same.<sup>32</sup>
4. Where a plea bargain agreement is reached with the defendant, the Prosecutor has responsibility of ensuring that the recommended sentence will be considered appropriate by the judge or magistrate in line with section 270 (11) ACJA.
5. It is not the role of the Prosecutor to argue for the most severe sentence open to the court.

#### **PROCEDURE WHERE THERE IS NO SENTENCING GUIDELINES**

In most jurisdictions that are yet to adopt Sentencing Guidelines, the ACJA/ACJL still applies and the principles and procedures captured in the Sentencing Guidelines are supported by the ACJA/ACJL as earlier stated.

Sentencing Guidelines can therefore still be a guide in sentencing in these jurisdiction. They do not need to be specifically referred to in the sentence, however, the principles can be applied to achieve consistency pending adoption of Sentencing Guidelines in that State. .

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<sup>26</sup> Paragraph 11.1 of the Prosecutorial Guidelines for Federal Prosecutors 2013

<sup>27</sup> s.311(3) ACJA

<sup>28</sup> S.311(2)(b) ACJA

<sup>29</sup> S.311(2)(b)ACJA

<sup>30</sup> S. 310(2) & s. 311(2)(d) ACJA

<sup>31</sup> Paragraph 11.3 Prosecutorial Guidelines 2013

<sup>32</sup> ss314, 321,336,341, 342 ACJA

## **SENTENCING OF CHILDREN**

As earlier mentioned, the sentencing guidelines and indeed the typical sentencing regime does not apply to children, that is, persons who are less than 18 years. The adjudication of cases involving children in conflict with the law is regulated by the Child Rights Act/Laws which now exist in virtually all the states of the federation.

The summary of the guiding principles in these laws is that the interest of the child is paramount in considering disposition orders and institutional measure shall only be ordered or imposed on a child as a measure of last resort and for the minimum possible period. The court shall only impose such a measure where the offence is serious and involves violence against another person or where the child has persistently committed other serious offences and there is no other appropriate response that will protect the public safety.

Like the ACJA/ACJL the CRA contain only general provisions and guidelines regarding disposition orders (sentencing<sup>33</sup>) in respect of children.

Following these broad principles without more will also most likely lead to the same result as we have under the ACJA/ACJL regime unless there are agreed guidelines for determining appropriate disposition orders to be made in individual cases.

Consequently, the various jurisdictions (states) that have adopted the Child Rights Law are encouraged to also develop adjudication guidelines specifically in respect of disposition orders. I am aware that the Federal Ministry of Justice and the FCT Judiciary are currently collaborating to realize this.

## **CONCLUSION**

There is no doubt that sentencing guidelines have become imperative in sentencing to address the age long disparities and inconsistencies in sentencing.

States or jurisdictions that are yet to issue practice directions in this regard, are encouraged to do so. Where the guidelines already exist, they should be applied strictly in so far as the offence is one covered by the guidelines.

In States where the guidelines do not exist or where an offence is not covered by the existing guidelines, it is not out of place for the courts to have recourse to the guidelines of other States as a guide in sentencing. The principles are not different from what case law had already

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<sup>33</sup> Words like conviction and sentence are not permitted to be used with respect to children. See section 213(2) Child's Rights Act

established and now incorporated into the ACJA/ACJL. This is the only way to achieve the desired consistency and uniformity in sentencing.

Thank you for your kind attention