Uganda’s New Sentencing Guidelines: Introduction, Initial Assessment and Early Recommendations

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UGANDA’S NEW SENTENCING GUIDELINES:  
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By  

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1.0 INTRODUCTION.

On a crisp Kampala morning in June 2013 His Lordship, Justice Murangira of the High Court Criminal Division presided over a sentencing hearing. The mood in the Courtroom 3 was somber. The Defendant had been convicted of aggravated defilement.¹ His victim was four years old at the time of the offense. The Prosecutor recounted the hideous details of the crime in the open court.

The Prosecutor asked for the imposition of the death penalty. Defence Counsel countered by groveling for a one-year sentence in prison. Justice Murangira expressed bemusement at the vast disparity between the suggested sentences. He then directed Counsel’s attention to Uganda’s recently adopted Sentencing Guidelines.² Murangira flipped through the pages of his freshly printed Guidelines. He announced that this would be the first time to his knowledge that any court applied the Guidelines.

The learned judge explained that the Guidelines were merely advisory but represented the suggested punishment for criminal offenders in Uganda. He then considered the subject offence under the Guidelines. He noted that the Guidelines provide that the standard sentence for the offense of aggravated defilement is 35 years.³ He further opined that the Guidelines provide for a recommended reduction down to 30 years based on a variety of factors. His Lordship opted to sentence the convicted man to 30 years with credit for time served on remand.

The above-described scene will quickly become less novel. Sentencing Guidelines are now part of the criminal landscape of Uganda. They are required reading for all criminal law practitioners, judicial officers and criminal defendants.

The introduction of Sentencing Guidelines is a significant development in Ugandan criminal jurisprudence. Over the short term, Uganda’s Sentencing Guidelines should make the sentencing process more predictable. In addition, the Guidelines should serve to ensure better compliance with the current legal requirements in the context of criminal sentencing. Over the long term, the Guidelines offer a mechanism that can implement significant policy reform.

This paper is a preliminary treatment of Uganda’s Sentencing Guidelines. It begins with a brief background concerning the rise and implementation of sentencing guidelines within anglophone jurisprudence. This is followed with a general introduction to Uganda’s Sentencing Guidelines. Next, the note brings out the distinctive aspects of the Guidelines. The paper concludes with a short critical assessment of the Guidelines.

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¹ The Penal Code Act (Uganda), Cap. 120, Sections 129, 130 and 133 as amended by the Penal Code (Amendment) Act 2007.


³ Sentencing Guidelines (Uganda), Third Schedule, Part I (1).
2.0 THE MEANING OF SENTENCING GUIDELINES.

The Sentencing Council for England and Wales describes Sentencing Guidelines as follows:

Sentencing guidelines are documents which set out a way for judges and magistrates to consider the seriousness of particular offences, and so decide on the appropriate sentence for each case. Guidelines set out different levels of sentence based on the harm caused to the victim and how blameworthy the offender is. This means that those offences where there is a lot of harm to the victim and the offender has a high level of responsibility for the offence are sentenced most harshly and where there is little harm to the victim and the offender had a low level role in the offence he or she is sentenced at a lower level.4

In simple terms, Sentencing Guidelines seek to manage and inform judicial sentencing. They provide standards that should bring some level of uniformity to the sentencing process.

There are several fundamental “policy drivers” that tend to push towards the development of sentencing guidelines:5 These include the need to restore or develop public confidence in the judiciary; the need for transparency in the sentencing process; the need for community engagement in sentencing policy; and the need for consistency in sentencing.6 Other important factors impacting the adoption and design of sentencing guidelines include the impact of sentencing decisions on victims, matters of costs and logistics, and the generation of disincentives against reoffending.7

The modern anglophone sentencing guideline movement rose to prominence over the past four decades. The movement gained momentum in the United States in the 1970’s with a growing public outcry over perceived judicial inconsistency and leniency in criminal sentencing.8 The American state of Minnesota was an early adopter of sentencing guidelines.9 The Minnesota Sentencing Guidelines and Commentary10 were the first sentencing guidelines adopted in the United States. The Minnesota Guidelines feature a grid system that sets an offence level on the y axis and the criminal history level on the x axis.11 Minnesota’s guideline methodology has proven to be highly influential.12


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6 ibid
7 ibid 23 citing Department of Justice (England and Wales) “Consultation on a Sentencing Guidelines Mechanism” (2010), 27 and Section 120 (11) of the Coroners and Justice Act (England and Wales) 2009
9 ibid 861
12 Terblanche (n 8) 861
13 18 USC § 3551
become a core component of federal criminal practice in the United States. In many instances, an understanding of these guidelines proves to be the most important element in the representation of a criminal defendant.

Anglophone jurisprudence outside the United States has experienced extensive activity in the consideration, development and implementation of sentencing guidelines over the past three decades. Sentencing guidelines have come to the fore in the United Kingdom. Australian states have been active policy laboratories in the creation and implementation of sentencing guidelines. On the African continent, the Republic of South Africa is home extensive dialogue and efforts concerning best sentencing practices.

Modern sentencing guidelines can be categorised as either “numerical” or “narrative.” In numerical systems the determinative mechanism is the Minnesota-style axis where the criminal history is on one axis and a numerical offence level is on the other access. Guideline ranges in the numerical system appear in boxes where the criminal history axis and the offence level axis converge. The Federal Sentencing Guidelines also uses a numerically oriented grid.

The narrative system is linear and more discretionary. Narrative systems are typically feature “different categories of offence illustrating degrees of seriousness, factors including the offenders culpability and harm caused, the range of offences and starting points in the offence range.” The Sentencing Guidelines of England and Wales employ a narrative approach.

3.0 AN OVERVIEW UGANDA’S SENTENCING GUIDELINES.

Chief Justice Benjamin Odoki issued The Constitution (Sentencing Guidelines for the Courts of (Practice) on 26 April 2013. The Sentencing Guidelines were established in exercise of the powers conferred upon the Chief Justice by Article 133(1) (b) of the 1995 Constitution of the Republic of Uganda. Article 133(1) (b) provides that the Chief Justice “may issue orders and directions to the courts necessary for the proper and efficient administration of justice.”

The stated objectives of the Sentencing Guidelines are as follows: “(a) to set out the purpose for which offenders may be sentenced or dealt with; (b) to provide principles and guidelines to be applied by courts in sentencing; (c) to provide sentence ranges and other means of dealing with offenders; (d) to provide a mechanism for considering the interests of victims of crime and the community when sentencing; and (e) to provide a mechanism that will promote uniformity, consistency and transparency in sentencing.” Similarly the Sentencing Guidelines provide that the “purpose of sentencing is to promote respect for the law in order to maintain a just, peaceful and safe society and to promote initiatives to prevent crime.”

In light of these objectives and purposes, the Sentencing Guidelines direct judges to pass sentences aimed at: “(a) denouncing unlawful conduct; (b) deterring a person from committing an offence; (c) separating an offender from society where necessary; (d) assisting in rehabilitating and re-integrating an offender into society; (e) providing reparation for harm done to a victim or to the

15 Assorted sentencing guidelines now applicable in the United Kingdom can be accessed at http://sentencingcouncil.judiciary.gov.uk/guidelines/guidelines-to-download.htm>
16 NIARIS (n 5) 2-3, 5-6, 11, 13, 18, 21, 29, 38-39
17 Terblanche (n 8) and Annette Van Der Merwe, Sentencing Procedures and General Principles 2012; 1 SACJ 151
18NIARIS (n 5) 6
19 ibid
21 NIARIS (n 5) 6
22 Sentencing Guidelines (Uganda) S. 5(1)
community; or (f) promoting a sense of responsibility by the offender, acknowledging the harm done to the victim and the community.”

Uganda’s Sentencing Guidelines follow the narrative approach. **Part III** of the Guidelines addresses “Sentencing Principles.” **Part III** begins with “General sentencing principles” in section 6 and “General factors to consider at sentencing” in section 14. Part III also includes specific factors to consider when weighing the possibility of capital punishment in sections 20 (“Factors aggravating a death sentence”) and 21 (“Factors mitigating a sentence of death”).

**Part III** includes offence specific considerations for rape and defilement cases (**Section 22** for consideration of death penalty), manslaughter (**Sections 26-29**), robbery (**Sections 30-32**), defilement (**Section 22**—capital sentence considerations—and **Sections 33-36**), criminal trespass (**Sections 37-40**), corruption and related offences (**Sections 41-44**), and theft and related offences (**Sections 44-48**). An offender’s prior criminal record is one of the general sentencing considerations under Section 6, but criminal record is not a dominant factor under Uganda’s **Sentencing Guidelines**.

The **Sentencing Guidelines** offer guidance in the context of special sentences and non-custodial sentencing options. **Section 9** sets forth the considerations for the court before imposing a custodial sentence. **Section 18** outlines the “rarest of the rare” cases where a court may pass a sentence of death. **Sections 23** through **25** concern life sentences. Part X addresses fines and Part IX concerns community service.

The **Guidelines** address matters of procedure in **Sections 12** through **16**. **Section 12** provides that “the court shall upon conviction, allow a reasonable period not exceeding seven days to determine the appropriate sentence of the offender.” **Section 13** provides that “(t)he court may, before imposing a sentence or during the sentencing hearing, ask the offender and the prosecution to indicate to the court an appropriate sentence in respect of the offence.” **Section 14** outlines the “(g)eneral factors to consider at sentencing.” It establishes the broad evidentiary scope of evidence proceedings. Section 15 concerns crediting offenders for time spend on remand. It provides at **Sub-section (2)** that “(t)he court shall deduct the period spent on remand from the sentence considered appropriate after all factors have been taken into account.” While **Section 16** concerns the commencement of custodial sentences.

The Sentencing Guidelines offer special guidance in matters with special social significance. **Section 49** addresses the sentencing of primary care-givers and **Section 50** concerns the sentencing of child offenders.

**Part XII** describes the duties of prosecution and defence at sentencing. The sections under **Part XII** generally concern what facts the prosecution and defence can put forward at the sentencing hearing. The list of relevant considerations is expansive.

A notable provision in **Part XII** is **Section 57** entitled “(a)micable settlements and restorative justice.” Under **Sub-section 57(1)** “(w)here parties express interest to reconcile in cases that are permitted under the law, the prosecution shall bring the matter to the attention of the court and shall request the court to give the parties an opportunity to settle such matters amicably. Moreover, **Sub-section 57(2)** provides “(t)he prosecution shall promote and advocate for restorative justice as a viable means of dispute resolution where applicable.”

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23 **Sentencing Guidelines** (Uganda) S. 5(2)
Uganda’s *Sentencing Guidelines* also include provisions calling for the generation of third party impact statements. *Section 14 (2)* gives sentencing courts the power to require the prosecution to produce victim impact statements and community impact statements. *Section 4* defines community impact statement at “a written or oral account of the general harm suffered by members of a community as a result of the offence” and defines a victim impact statement as “a written or oral account of the personal harm suffered by a victim of crime.” *Section 55(3)(a)* requires the prosecutor to present to the court all relevant information relating to the impact on the victim, victim family members and the community. *Form A* of the *First Schedule* to the Guidelines provides a model form for the for the victim impact statement and *Form B* provides the model form for the Community Impact Statement.

### 4.0 DISTINCTIVE FEATURES OF UGANDA’S SENTENCING GUIDELINES.

There are several distinctive features of Uganda’s *Sentencing Guidelines*. Many of these elements derive from efforts to make the Guidelines reflect indigenous qualities and address special Ugandan challenges. In this sense the Guidelines are noteworthy as there are few laws in Uganda that patently endeavour to reflect and address distinctive cultural and social aspects of Uganda. Other distinctive features reflect an emphasis on functionality and pragmatism. The Guidelines are designed to be doable, uncontroversial and effective at ensuring compliance with existing laws. This section of the article offers a short tour of some of the Sentencing Guidelines’ most notable aspects.

#### 4.1 The Inclusion of Restorative Justice.

Restorative justice has achieved a certain degree of legal prominence in Africa. The principle of community member and inter-community reconciliation is an important cultural quality in many African settings. Philosophically, restorative justice places an emphasis on the relational well-being of the community.

Restorative justice is a functional correlative of the well-known African social good of Ubuntu. Those who adhere to Ubuntu value people relationally. Arch Bishop Desmond Tutu describes “a person with Ubuntu is open and available to others, affirming of others, does not feel threatened that others are able and good, based from a proper self-assurance that comes from knowing that he or she belongs in a greater whole and is diminished when others are humiliated or diminished, when others are tortured or oppressed.”

Restorative justice is more than mere rhetoric in Africa. High profile restorative justice initiatives in the African context include the Truth and Reconciliation Commission in South Africa and Rwanda’s Gacaca Courts. Thus the inclusion of restorative justice in a legal framework is a way of making a policy “more African” and more reflective of an indigenous ethos.

Uganda’s *Sentencing Guidelines* include several provisions that call for the integration and use of restorative justice. *Section 4* provides that “‘restorative justice’ means repairing the harm caused to a victim by the commission of the offence to the victim, transforming the offender” and “reconciling the offender with the victim and the community.” Thus restorative justice under the Guidelines is a broad concept that can encompasses the victim, the offender and the community. Repair, transformation and reconciliation are all restorative outcomes under the Guidelines. *Section 6* entitled “General sentencing principles” calls on courts to take account “any outcomes of restorative justice that have occurred or are likely to occur.” As noted above, *Section 57* places

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affirmative duties on the prosecution to pursue avenues for reconciliation and restorative justice. Finally, Section 60(2) provides that “(w)here the offender wishes to reconcile with the victim, the defence shall state that expressly to the court and Prosecutor.

The Guidelines leave the functionality of restorative justice largely unscripted. One could fairly conclude that restorative justice is given minimal functional impact under the Guidelines. After all, there is no indication that restorative justice enables a judge to apply a sentence outside the prescribed ranges. However, the Guidelines are merely advisory. Thus a judge who wants to allow restorative justice to radically impact the sentence is not legally barred from doing so.

The official inclusion of restorative justice within the Guidelines imbues judges with a license to employ restorative justice in a meaningful way. Restorative justice has traditionally been a radical approach that is freed from the bounds and constraints of formal retributive justice. Therefore, a judge applying restorative justice under Section 6 could fairly contend that an allowance for the application of restorative justice necessarily bestows a license on sentencing judges to depart from the recommended guideline sentencing ranges.

4.2 An Avenue for Community Engagement.

Another distinctive aspect of Uganda’s Sentencing Guidelines is the emphasis on community engagement. Like restorative justice, a commitment to community engagement connects with deeply held conceptions regarding the importance of community in the African context.

Uganda faces a challenge when it comes to meaningful community engagement with the legal system. Poverty, language and lack of civic education and involvement all conspire to keep many Ugandan’s disengaged from the formal legal system. In the context of criminal matters, the extensive practice of mob justice is one product of community disengagement with the formal legal sector.

Uganda’s Sentencing Guidelines include provisions that seek to meaningfully integrate the community into the criminal process. The key mechanism for this engagement is the “community impact statement.” This statement gives community members a voice in the sentencing process. Through the community impact statement community members can inform the judge about how the crime at issue has affected their community.

The Sentencing Guidelines adopt an expansive approach when it comes to proffering community impact statements into evidence. Per Form B of the First Schedule to the Guidelines “(t)he Community impact statement may be filed by (a) the local council officials; (b) the traditional leaders; and (c) any interested member of the community; or any other person with information to that effect.” Thus all members of the community are effectively empowered to have their voices heard as part of the sentencing process.

27 The elements of the community impact statement include information about the financial, physical and emotional impact of the crime on the community as well as the prevalence of the crime at issue in the community. Sentencing Guidelines (Uganda) 1st Sch, fn B

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4.3 A Voice for Victims.

Uganda’s *Sentencing Guidelines* also offer victims a voice in the process through the victim impact statement. Like the community impact statement the provisions concerning the victim impact statement are liberal in terms of content as well as the eligibility of those who can submit the statements to the court. The *Sentencing Guidelines* also put the onus on the prosecutor to enter victim impact statements into the record of the court.

The use of victim impact statements is not as comparatively noteworthy as the community impact statement. Many other common law jurisdictions have noted the importance of victim involvement in the sentencing process. South Africa is a good example of an African jurisdiction that places an emphasis on the voice of victims.

4.4 An Aggressive Stance on Human Sacrifice.

Human sacrifice is a formidable problem in Uganda. The Sentencing Guidelines acknowledge this problem and announce an aggressive stance to severely punish those who practice human sacrifice. *Section 18*, which outlines the “rarest of the rare” cases that warrant the imposition of a sentence of death, includes offenses where “(e) the victim was killed in order to unlawfully remove any body part of the victim of as a result of the unlawful removal of a body part of a victim; or (f) the victim was killed in the act of human sacrifice.”

4.5 Judicial Consideration of Cultural Practices.

Uganda’s *Sentencing Guidelines* also acknowledge the relevance of cultural practices and provide a mechanism for the submission of evidence regarding such practices during the sentencing process. This should enable courts to consider the practices of the community when weighing the severity of a crime for sentencing purposes. The provision reflects the understanding that the criminal laws of Uganda are largely the product of colonial statutes and did not necessarily reflect indigenous beliefs and practices. While the provision does not amount to a means of nullifying culturally blind laws, it does offer judges a means of mollifying the impact of such laws.

4.6 A Commitment to Functionality and Pragmatism.

Another key aspect to the *sentencing guidelines* is a commitment to functionality. The *sentencing guidelines* are designed to work.

This commitment begins with the adoption of a narrative sentencing methodology. The narrative approach keeps the establishment of the sentence largely within the unassailable purview of the judge. Judges can make sentencing determinations that are not specifically dependent on the establishment of discrete factors. Under the narrative approach a judge can consider all of the relevant sentencing factors together and not reveal how any one factor shifted the sentence by any

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28 *Sentencing Guidelines* (Uganda), 1st sch, fm A
29 *Sentencing Guidelines* (Uganda) s 55(3)
30 See NIARIS (n 5) noting this emphasis many commonwealth nations including New Zealand, Northern Ireland, Canada, and England and Wales among others
32 *Sentencing Guidelines* (Uganda) s 14(3)(a)(b) and (c)
specific amount. The narrative approach combined with the advisory aspect of Uganda’s Sentencing Guidelines ensures that the sentencing process will be effectively appeal proof.

The Sentencing Guidelines also defer to the discretion of the court. Thus judges are not bound to handle the sentencing process in a certain way. The many “mays” in the Guidelines enable judges to conduct sentencing proceedings in an manner that they see fit and appropriate based on the circumstances. The discretionary features within the Guidelines help to obviate the due process concerns that can result in successfully legal challenges of sentencing guidelines.34

By way of example, the Guidelines do not include a clear rule regarding the credit that an offender should receive for being on remand prior to sentencing. Instead time spent on remand is to be “tak(en) into account” and the court is to make deductions to sentences based on what the judge “consider(s) appropriate.”35

A procedural example of discretionary license is found in section 13. It provides that “(t)he court may, before imposing a sentence or during the sentencing hearing, ask the offender and the prosecution to indicate to the court an appropriate sentence in respect of the offence.” This raises due process concerns. It would seem that an offender should be given the right to be heard with respect to matters of sentencing. But section 13 seems to give the judge the right to prevent a party from being heard on the issue of sentencing. Given the factors that courts are supposed to consider under the Guidelines the denial of the right to present evidence relevant to evidence raises due process concerns. The discretionary language helps to keep the process of sentencing largely immune from challenges on appeal.36

The narrative approach appears to be more pragmatic and fit for Uganda. Numerical sentencing frameworks rely heavily on the ability of the state to maintain accurate criminal records of convicted persons. Uganda’s capacity of maintaining such data is limited. Presently a large percentage of Ugandans do not have national identification numbers and national identification cards. Thus simply proving a Ugandan’s identity can pose practical problems. Also the way the tradition of not using consistent patrimonial family surnames poses increases the complexity of matters of identity.

The relatively small sentencing ranges in Uganda’s Sentencing Guidelines minimise the importance of sentencing hearings. Thus if there are problems presenting all of the evidence that is relevant to the sentencing process, the harm is lessened by the limited potential for adjusting sentences within the prescribed sentencing ranges.

The timeframe for sentencing limits the scope of the evidentiary process. The Guidelines provide that sentencing should take place seven days from sentencing. This timeframe prevents the sentencing process from taking on too much of a life of its own. This is probably a necessary limitation in terms of resources as the broad evidentiary scope of sentencing considerations have the potential of making sentencing hearings more taxing than the antecedent criminal trials.

35 Sentencing Guidelines (Uganda) s 15
36 One important feature that makes Uganda’s Sentencing Guidelines less vulnerable to appeal is the fact that there is no right to a jury trial in Uganda. The right to a jury trial is at the heart of many of the judicial challenges to the Federal Sentencing Guidelines in the United States (see e.g. Blakely (n 33)). However, the concerns raised in these cases are largely irrelevant when the judge is given the responsibility of making findings of facts.
4.7 The Initial Maintenance of the Status Quo.

Uganda’s *Sentencing Guidelines* maintain the substantive status quo. This is reflected in the process used to develop the Guideline ranges.

The *Guideline* ranges are the largely the product of statistical analysis. A professional statistician was engaged to generate the suggested punishment ranges that appear in *The Third Schedule* of the *Guidelines*. The statistician developed the ranges by conducting a statistical analysis of past sentences. Thus the sentencing ranges reflect historic judicial practice as opposed to policy choices. This aspect of the *Guidelines* removes them from criticism based on perceived agendas to increase or lower sentences. Instead, the use of the statistician demonstrates that the desire for consisten
drives behind the recommended sentencing ranges.

The *Guidelines* do not contain provisions that reward the acceptance of responsibility or empower the process of plea bargaining. Crowded prisons, extensive time spend on remand and limited prosecutorial and judicial capacity all combine make a persuasive case for new policies that can streamline the criminal process. Presently Uganda is in the process of integrating plea bargaining into its criminal processes. The success of plea bargaining is largely tied to the ability of offering criminal defendants a “deal” that will encourage them to willingly enter a guilty plea. Yet the *Guidelines* adhere to a sentencing framework that largely disregards the need to give defendants an incentive to accept responsibility. Thus the *Guidelines* maintain the status quo in this regard.

4.8 A Mechanism to Ensure Legal Quality Control.

The *Ugandan Sentencing Guidelines* are drafted to be an up-to-date mechanism for ensure legal quality control. The extensive statutory framework incorporated into the *Guidelines* is reflected in the “Cross References” appearing at the conclusion of the *Guidelines*.38

The *Ugandan Sentencing Guidelines* include provisions that reflect legal requirements recently established at the appellate level.39 An excellent example of the *Guideline’s* legally informed design are the provisions relating to the imposition of the death penalty. The *Guidelines* reflect the legal standards for sentencing individuals to death established in landmark *Kigula* case.40

5.0 CRITICAL ASSESSMENT AND RECOMMENDATIONS GOING FORWARD.

*Uganda’s Sentencing Guidelines* are not perfect. This section presents key areas where the current Guidelines are lacking.

First, the *Guidelines* offer little incentive to acceptance of responsibility. This problem is especially acute in the context serious crimes. For example, in the case of capital level offenses where the death penalty is not imposed the *Guidelines* propose standard sentencing windows with

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40 Kigula note 39
standard sentences of 35 years and low end sentences of 30 years. This prescribed sentencing window provides courts will little room to reward those who choose to willingly enter a plea of guilty as opposed to forcing the State to prove the case in court. Quite the contrary, the new Guidelines may actually inspire defendants facing serious charges to fight criminal liability at all costs.

Uganda should strongly consider the adoption of a tangible incentives for entering a willing guilty plea such as the provision for downward departure in a sentence based on acceptance of responsible found in the US’s Federal Sentencing Guidelines. Incorporating such provisions in the Ugandan Sentencing Guidelines would be a departure from influential British models. Incentives to encourage plea bargaining and the acceptance of criminal responsibility are not prominent policy drivers behind British sentencing guideline regimes. However, in the American context concrete numerical benefits to the acceptance of criminal liability are key incentives for the streamlining of the criminal justice process. Similar benefits could go a long way in reducing the present criminal trial backlog in Uganda.

Second, Uganda should include provisions that empower courts to reduce sentences if a convicted party assists the state in the investigation or prosecution of criminal matter. Such provisions can be valuable tools to prosecutors and law enforcement. These tools are particularly valuable in the investigation and prosecution of organised criminal operations. As criminal activities in Uganda grow in complexity such tools would become increasing useful.

Third, Uganda’s Sentencing Guidelines are likely to place demands on prosecutors that cannot be met without a considerable influx of human capital and resources. Although the Guidelines were drafted with an eye towards functionality and pragmatism, the Guidelines do place considerable evidentiary obligations on the prosecution. This contrasts with other systems such as the US federal sentencing system where probation officers conduct such investigations in their institutional capacity as neutral officers of the court. The weeklong timeline for generating a sentencing file is also likely to place an unworkable burden on the prosecution. Thus the current Sentencing Guidelines require a substantially increased institutional commitment in order to achieve compliance with their evidentiary demands.

Fourth, the permissive language throughout the Sentencing Guidelines raises concerns pertaining to the right to due process and the right to be heard. Some of the provisions in the Guidelines include surprisingly permissive language. Perhaps the permissive language was included to prevent any due process attack from being lodged against the Sentencing Guidelines for being mandatory. However, the discretionary language is a double-edged sword. Arguably the permissive language within the Guidelines gives the courts too much unchecked power.

It is prudent to construct sentencing guidelines in a way that limits the potential of extensive appellate challenges. However, when it comes to the right to be heard such rights should not be subject to arbitrary preemption. If matters are deemed relevant to sentencing, both parties—and especially the offender, should have the right and not merely the potential to present evidence

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41 Sentencing Guidelines (Uganda); 3rd Sch, pt I
42 U.S.S.G. § 3E1.1
43 NIARIS (n 5) 22-23
44 U.S.S.G. § 3E1.1 (for reductions to the sentence based on the provision of substantial assistance before initial sentencing); Rule 35(b), Federal Rules of Criminal Procedure (for reductions to a sentence based on substantial assistance made after initial sentencing)
46 Constitution of Uganda 1995, art 34(3)
concerning such matters. The current *Sentencing Guidelines* might lead courts to believe that this right to be heard can be judicially preempted without cause.

Finally, the current *Sentencing Guidelines* will prevent most judges from implementing restorative justice in a meaningful way. Although restorative justice is officially sanctioned by the Guidelines, restorative justice needs a more muscular mandate to be meaningfully implemented. Judges that believe they are constrained from departing from recommended sentencing ranges will not be able to effectively empower restorative justice.

### 6.0 CONCLUSION

The adoption of *Uganda’s Sentencing Guidelines* is a positive development. The *Sentencing Guidelines* should increase judicial consistency and help ensure that the sentencing process is compliant with the many laws and court holdings that inform the sentencing process. Moreover, the Sentencing Guidelines include worthy efforts to integrate indigenous beliefs and address special Ugandan challenges.

One is hesitant to critique a well-intentioned and progressive effort to improve the existing system. After all, in many ways the Ugandan legal culture is conservative and resistant to innovation. However, there is room for improvement.

Fortunately, the current *Sentencing Guidelines* should not the last word in the process of sentencing reform in Uganda. Institutions are being established up to make sure that the sentencing process remains vibrant and responsive. We can hope that future adjustments can be made to encourage the entry of willing guilty pleas and acceptance of criminal responsibility.

In addition, we will watch in interest to see if the necessarily institutional capacity is provided to ensure that relevant proof elements, including but not limited to statistical information, victim impact statements and community impact statements, become standard fodder in Ugandan sentencing proceedings.

The *Sentencing Guidelines* are a welcome addition to the criminal jurisprudence of Uganda. The ultimate impact of this development remains to be seen. For now we will watch with great interest, to see if Uganda’s *Sentencing Guidelines* can achieve their laudable objectives and fulfill their potential for positive reform of the criminal system.