



**FEDERAL HIGH COURT
(CORRUPTION AND OTHER RELATED OFFENCES)
SENTENCING GUIDELINES
AND PRACTICE DIRECTION, 2015**

**CONSTITUTION OF THE FEDERAL REPUBLIC
OF NIGERIA, 1999
FEDERAL HIGH COURT (CORRUPTION AND
OTHER RELATED OFFENCES) SENTENCING
GUIDELINES AND PRACTICE DIRECTION,
2015**

**CONSTITUTION OF THE FEDERAL REPUBLIC
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In exercise of the powers conferred on me by section 254 of the Constitution of the Federal Republic of Nigeria, 1999, and all other powers enabling me in that behalf, I, **Ibrahim Ndahi Auta OFR, Honourable Chief Judge of the Federal High Court**, makes the following Guidelines and Practice Direction -

[21st May 2015] Commencement

**PART I
OBJECTIVE AND SCOPE**

1. Objective

The objective of these Guidelines and Practice Direction is to set out the procedure for sentencing of corruption and related offences for the purposes of ensuring uniformity in sentencing in the Federal High Court.

2. Scope of Application

These Guidelines and Practice Direction shall apply to sentencing in all corruption and related offences in the Federal High Court of Nigeria.

PART II PROCEDURAL STEPS

3. Non-discretionary punishment

- (1) Prior to the pronouncement of a sentence, the Judge shall determine whether the statute allows for exercise of sentencing discretion on the offence under consideration.
- (2) Where the statute does not permit the exercise of any sentencing discretion, the Judge shall apply the punishment prescribed by the statute and proceed to the provisions of paragraphs 9, 10 and 11 of these Guidelines and Practice Direction.
- (3) Where the statute permits the exercise of sentencing discretion, the Judge shall proceed to make an order after considering the provisions of paragraph 4 of these Guidelines and Practice Direction.

4. Category of the offences

- (1) In sentencing the convict, the Judge shall determine the categories of the offence in accordance with the level of culpability of the convict and the severity of harm caused by the offence, after considering the qualifying factors set out in these

Guidelines and Practice Direction.

- (2) The level of culpability of a convict shall be deemed to be of—
 - (a) high culpability if the convict -
 - (i) played a leading role where the offence is committed by a group,
 - (ii) pressured or influenced others into involvement,
 - (iii) abused position of significant power, trust or responsibility,
 - (iv) abused position occupied upon taking constitutional or statutory oath of office,
 - (v) by corrupt action, directly or indirectly targeted at a public officer or a law enforcement officer,
 - (vi) committed an offence involving significant planning, due to the sophisticated nature of the offence,
 - (vii) committed the offence continuously or repeatedly over a period of time, or

- (viii) is motivated by an expectation of substantial financial, commercial or political gain; and
- (b) low culpability if the convict -
 - (i) is involved through coercion, intimidation and or exploitation,
 - (ii) is not motivated by personal gain,
 - (iii) played peripheral role in the planning and execution of the corrupt act,
 - (iv) commits a “one-off” offence with very little or no planning and the offence is opportunistic or spontaneous, or
 - (v) has a limited awareness or understanding of corrupt activity.
- (3) The severity of harm caused by a convict shall be deemed to be of -
 - (a) serious harm where the corrupt act -
 - (i) affect the fundamental human rights of any person,

- (ii) threatens security of the State,
 - (iii) undermines revenue or economy of the State,
 - (iv) has a serious detrimental effect on person or persons,
 - (v) has a serious environmental impact,
 - (vi) seriously undermines the government, including in the provision of public services or business, and
 - (vii) substantially result in actual or intended loss to the State or other person.
- (b) significant harm where the corrupt act
- (i) has detrimental effect on a person,
 - (ii) has an environmental impact,
 - (iii) undermined the government, including in the provision of public services or business, and
 - (iv) has caused actual or intended loss to

- the State or other person.
- (c) limited harm, where there is insignificant harm or a risk of harm to a person, business or government.

PART III

CORRESPONDING RANGE AND STARTING POINT

5. Starting point and category range

- (1) After determining the categories of culpability of the convict and severity of harm caused, the Judge shall apply the corresponding starting points of sentencing within the category range specified in the Schedule to these Guidelines and Practice Direction.
- (2) The starting point shall apply to all convicts, notwithstanding the plea of guilt or evidence of previous convictions.
- (3) Where the level of culpability of a convict is qualified by multiple features of culpability specified in paragraph 4 (2) of these Guidelines and Practice Direction, an upward adjustment from the starting point may be made before further adjustment for aggravating or mitigating features, set out in paragraph 6 these Guidelines and Practice Direction.

PART IV
AGGRAVATING AND MITIGATING FACTORS

6. Aggravating and mitigating factors

- (a) Based on the evidence before the court, the Judge may consider the aggravating or mitigating factors including those listed under this paragraph and decide whether any combination of these, or other relevant factors, shall result in an upward or downward adjustment from the starting point set out in the Schedule to these Guidelines and Practice Directions.

- (b) The aggravating factors shall include—
 - (i) previous convictions,

 - (ii) multiplicity of offences committed,

 - (iii) taking steps to prevent victims or witnesses from supporting investigation or prosecution,

 - (iv) concealment, disposal or destruction of evidence,

 - (v) failure to comply with court orders during the pendency of the trial,

- (vi) influencing, frustrating, compromising or delaying investigation or prosecution, and
 - (vii) failure to respond to cautions, including administrative disciplinary actions.
- (c) The mitigating factors shall include –
- (i) absence of any previous conviction,
 - (ii) remorse, particularly evidenced by restitution or reparation to victim,
 - (iii) evidence of good character,
 - (iv) certified debilitating medical condition, and
 - (v) any assistance given by the convict to investigators during investigation or prosecution particularly in complex cases, including where the availability of evidence is limited.

7. Guilty plea

- (1) The Judge may consider any guilty plea made by the convict including when such plea was made at the trial, in determining a reduction in the sentence to be imposed.

- (2) 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.

8. Totality principle

- (1) In sentencing a convict for more than one offence, or where the convict is already serving a sentence, the Judge shall consider whether the total sentence is just and proportionate to the offending behaviour or crimes committed.
- (2) In the case of a conviction for multiple offences, the Judge shall consider and make a pronouncement on whether the sentences shall run concurrently or consecutively.

**PART V
CONFISCATION, FORFEITURE AND
ANCILLARY ORDERS**

9. Confiscation, forfeiture, compensation, restitution and ancillary orders

- (1) In all cases, the Judge shall consider whether to make confiscation, forfeiture, compensation, restitution or other ancillary

orders in accordance with the provisions of applicable laws.

- (2) Where the offence has resulted in loss or damage, the Judge may make a restoration order in accordance with section 270 of the Criminal Procedure Act.
- (3) Where the convict is a public officer, the Judge shall order the Registrar to forward a copy of the judgement to the appropriate administrative disciplinary agencies, including the Code of Conduct Bureau and the appropriate Civil or Public Service Commission.
- (4) Where applicable, the Judge shall order the registrar to forward a copy of the judgement to—
 - (i) the Corporate Affairs Commission for the purposes of disqualifications under sections 3(4)(c), 509(1)(f) and 675(1)(d) of the Companies and Allied Matters Act or winding up under section 19(2) of the Money Laundering (Prohibition) Act 2011 (as amended) or under the relevant provisions of successor enactments, and

- (ii) relevant Professional Self-Regulatory Bodies for the purpose of barring a convict from practising a profession under section 16(3) and (4) of the Money Laundering (Prohibition) Act 2011 (as amended), successor and other similar legislation.

PART VI MISCELLANEOUS

10. Time spent in remand

- (1) Where the convict was not on bail, the Judge may give credit to the time spent by the convict on remand while awaiting trial.
- (2) The Judge may take into consideration any remand time served by the Convict in relation to the final sentence.

11. Reasons for decision

The Judge shall give reasons for any form of sentence imposed.

12. Citation

These Guidelines and Practice Direction may be cited as the Federal High Court (Corruption and Other Related Offences) Sentencing Guidelines

SCHEDULE

Paragraph 5

Category of Offence

Starting Point (Applicable to all convicts)

Category Range (Applicable to all convicts)

| LEVEL OF HARM | HIGH CULPABILITY | LOW CULPABILITY |
|------------------|-------------------------|--|
| SERIOUS HARM | Starting Point 90% | Starting Point 70% |
| | Range 80% - 100% | Range 50% - 80% |
| SIGNIFICANT HARM | Starting Point 80% | Starting Point 60% |
| | Range 60% - 80% | Range 40% - 70% |
| LIMITED HARM | Starting Point 70% | Starting Point 50% |
| | Range 50% - 70% | Range 40% - 60% (option of fine) |

MADE at Abuja this 21 day of May 2015

A handwritten signature in black ink, appearing to read 'Ibrahim Ndahi Auta', with a large, stylized initial 'A'.

HON. JUSTICE IBRAHIM NDAHI AUTA, OFR
Chief Judge, Federal High Court

EXPLANATORY NOTE

*(This explanatory Note does not form part of these
Sentencing Guidelines and Practice Direction but
intends to explain its purport)*

These Sentencing Guidelines and Practice Direction set out the procedure for sentencing of corruption and other related offences for the purposes of ensuring uniformity in sentencing without derogating from the statutory and inherent discretion conferred on a judge to determine and impose sentences.

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UNODC

United Nations Office on Drugs and Crime