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SENTENCING FIRST OFFENDERS IN BOTSWANA

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INTRODUCTION

It is intended by this paper to explore among other things, the objectives of sentencing, the types of sentences, the determination of these types of sentences and what factors to consider in sentencing a first offender. Uncertainty is deep seated in the sentencing process.¹ As put by an American judge, "a large number of persons accused of crimes are often at a loss when brought before the courts of the land, whether they would go free, be locked in or anything in between." An attempt has been made in this paper to shed some light to those who for the first time will find themselves faced with such a problem.

DEFINITION AND OBJECTIVES

Definition

Sentence arises only when an accused person has been convicted, either on his own plea and admission of guilt or on a plea of not guilty. It is the recorded declaration of the Court pronouncing the legal consequences of the facts judicially ascertained.² Sentencing however is

The post conviction stage of the criminal justice process in which the defendant is brought before the court for imposition of sentence.³

It is the imposition of criminal penalties for violating the law;⁴ the end of the process for the defendant, the time when the severity of punishment is fixed.⁵ For the purposes of this study, I am persuaded to accede to these definitions.

Objectives

The objectives constitute the aims intended to be achieved when sentencing a first offender. Among the earliest aims appears retribution, the more modern being rehabilitation. It is hoped that more will evolve with time. Other current aims include incapacitation and deterrence. Whilst these objectives may have found their way into the practices of our courts, they have not yet gained entry into our statute books as a formal measure.

RETRIBUTION

Retribution stretches as far back as the Biblical times. In those times the principle was that it shall be done to him as he has done; a fracture for a fracture, an eye for an eye, a tooth for

1 David W. Neybauer *America's Courts And The Criminal Justice System* Books/Cole Publishing Co. Monterey/California p309.

2 Lester Bernhardt Orfield, *Criminal Procedure from Arrest to Appeal*, Greenwood. Westport. 1972 p 535.

3 Henry, Campbell, *Blacks Law Dictionary*, St Paul minn. West Publishing Co, 1979 5th Ed. p 1222, p 1223.

4 Gerald D. Robin *Introduction to the Criminal Justice System: Principles Procedure and Practice*, Harper & Row, Publishers, New York, 2nd Edition p329.

5 David W. Neubauer, *America's Courts and the Criminal Justice System* Note 1 above.

a tooth.⁶ Punishment was made to fit the crime, to appease the victim if he survived, the relatives if the victim departed the human scene. The underlying concept was getting even. Retribution as it were, a desire for revenge,⁷ was as put by other writers, an expression of social condemnation that reinforced the societal values and norms that the defendant transgressed.⁸

Incapacitation/isolation/restraint

While some books on criminal justice employ the term incapacitation, others are content with yet another, isolation. But there is a third which has crept into the vocabulary of social scientists, that is restraint. The terminology might be different, but the concept behind is similar. It is aptly expressed in the statement; "lock them up and throw away the key".⁹ As a sentencing philosophy the purpose originally was to remove dangerous persons from the community.¹⁰ In those times a member of the society who committed a serious crime was normally banished from that particular community. This prevailed in African society in what has now become known as Central Africa. In those generations people went into exile even before they were banished. It was not only a punitive measure but a custom designed to cleanse the community, which was believed to have been soiled by the hideous act committed. Contemporaneously, Britain sent criminals to places as far as Australia. Other countries like the Soviet Union exiled so-called dissidents to desolate and distant lands within the Union itself. Through this concept the offender was denied the opportunity to put into execution his criminal propensities hence the community was protected. As a matter of fact his threat to society at least during the time of his incapacitation was greatly reduced or eliminated. Whether a sentencing tribunal could accurately estimate when the offender would be a 'good risk'¹¹ for not recidivating is a moot question. In modern times incapacitation has become humane containment in a prison or institution.

Deterrence

This is the threat of actual imposition of punishment.¹² It has both a general and specific aspect.¹³ According to this sentencing philosophy, law abiding citizens can be deterred from turning into crime. Within this theory is the argument that when criminals are punished and a public spectacle is made of them, members of the public would be discouraged from committing similar offences. The specific element creeps in when the punishment is aimed at a particular individual. At this level, the amount and kind of punishment meted out is such as to make the offender not recidivate. In short punishment is made to fit the criminal and not the crime.

6 *Leviticus* Chapter 25 verses 17-22 reproduced in Note 5 above.

7 See note 5 above.

8 See note 4 above.

9 See note 5 above.

10 See note 5 above.

11 See note 4 above.

12 See note 4 above

13 Harold J. Vetter, Leonard Territo *Crime and Justice in America A Human Perspective*, Western publishing Co. St. Paul 1984 Chap. 11. p 338.

Rehabilitation

This denotes the efforts to change an offender from law-breaker to a law-abider and a useful member of the community through treatment.¹⁴ It links criminal behaviour with abnormality or some form of deficiency in the criminal.¹⁵ It proceeds on the assumption that human behaviour can be altered. That since it is the product of antecedent causes, these would have to be identified and classified for treatment. These antecedent causes could be psychological, social, vocational or academic.¹⁶ Success is based on the need to assess the needs of the individual and the provision of a programme to meet these needs.¹⁷ This theory has been heavily criticized. It has been argued that there is great difficulty in identifying first, antecedent causes of criminal behaviour,¹⁸ that this philosophy assumes the characteristic of a medical model implying that the offender is sick because he cannot adjust to society. This, it is further argued, is fallacious. The argument proceeds, offenders may well be aware of their actions and completely rational in deciding to engage in criminal activity because of its higher personal pay off. In any event, if offenders are to be rehabilitated, the assumption is that they must learn to accept the values of those conducting the treatment even though backgrounds might differ, perceptions vary and attitudes are opposed.

Critique

The writer does not intend to embark on a critique of these sentencing philosophies but rather to employ them in shedding some light on how the courts proceed in the execution of their daily sentencing duties.

Prison

While rehabilitation assumes a therapeutic cloak, the other theories accept in some measure the legitimacy of a prison as a place of punishment. It becomes such a place when one adopts the attitude that it is a place from which "men recoil with horror — a place of real suffering painful to the memory, terrible to the imagination . . . a place of sorrow and wailing, which should be entered with horror and quitted with earnest resolution never to return to such misery".¹⁹ It is contended that the courts of our land bear in mind the above theories and adopt a somewhat similar though moderate attitude of what prisons are, when the criminal justice process has reached the post conviction stage, the stage when the defendant would either receive a custodial or a non custodial sentence.

TYPE OF SENTENCE

There are basically two types: a custodial and a non-custodial sentence. A custodial type of sentence may arise in circumstances where the offence committed is punishable with imprisonment and it is almost certain that even if the learned judge were to properly exercise his discretion the offender would still be incarcerated. The latter sentence may arise in an

14 See note 4 above.

15 Robert D. Pursley *Introduction to Criminal Justice*, MacMillan, London, 3rd Ed. p 390.

16 See note 4 above.

17 See note 4 above.

18 See note 4 above.

19 Robert D. Pursley *Introduction to Criminal Justice*, MacMillan. London. 3rd Ed. p 390.

instance where the nature of the offence is such that the judge properly directing himself will refrain from sending the offender to prison. It should be observed that in all other cases other than in murder and treason convictions, the learned judge or magistrate properly directing himself will consider whether or not he should avoid sending a first offender to prison²⁰ that is consider a non-custodial sentence. Below are some of the non-custodial sentences falling for consideration by the learned judge or magistrate.

(i) Non-custodial

Types

Security for keeping the peace (section 33 (1) Penal Code)

When the tribunal is of the view that it is not necessary to punish the offender by sending him to prison, the court may in terms of this section order the accused to enter into a recognisance (undertaking) with or without sureties (guarantors) in a specific amount determined by it. The amount so determined is not paid at the time but is forfeited when the accused is found not to have kept the peace and been of good behaviour for a time fixed by the court, a condition of the recognisance, or find sureties as directed, he is liable to be committed to prison.

Binding over to come for judgement and Discharge (section 33 (2) Penal Code)

In accordance with this subsection the court may in time of passing sentence, discharge the offender but require him to enter into a recognisance in the sum the court may determine, with or without guarantors, to come up for judgement at some future sitting or when called upon to do so. This in effect is a power to defer sentence. No time limit need be specific and the defendant is brought back to court only if he misbehaves.²¹

Recognisance to keep the peace (section 302 Criminal Procedure and Evidence)

If the conditions upon which any recognisance or security under section 35 of the Penal Code²² was given are not observed by the person who gave it, the court may declare the recognisance or security to be forfeited and any such declaration or forfeiture shall have the effect of a judgement in a civil action in that court.

Discharge without punishment (section 34 Penal Code)

This in essence is similar to the Absolute discharge of the Powers of Criminal Courts Act 1973 of England.²³ Section 34 para-phrased provides that when the court is of the opinion that the charge has been proved, that having regard to the extenuating circumstances in which it was committed or character, age, antecedents, health, mental condition of the accused or trivial nature of the offence, that it is inexpedient to inflict any punishment, it may, without proceeding to conviction dismiss the charge. This section is used where a great deal is to be said by way of mitigation in favour of the accused.²⁴ A discharge under

20 Sir. Rupert Cross, *The English Sentencing System*, Butterworths, London. 1975. p 6. See further Nigel Murray, *Some Advice to New Magistrates*. Notes based on a handout for use with a lecture delivered by Nigel Murray to law students at the University of Botswana on 6th March, 1986.

21 Nigel Walker, *Sentencing: Theory Law and Practice*, Butterworths, London. 1985 p 228.

22 This is a misprint. The correct section referred to is section 33 of the Penal Code.

23 See section 7 (i) reproduced in the *English Sentencing System*, note 20 above p 7.

24 Nigel Walker, *Sentencing Theory, Law Practice*, Butterworths, London. 1985 p 231.

section 34 should only be used in the exceptional circumstances set out under that section.²⁵ Absolute discharges are intended for cases in which the judge has a few if any misgivings about a repetition of the offence and wishes to do all he can to reduce the stigma attaching to the conviction.²⁶

Discharge with caution/reprimand (section 310 Criminal Procedure and Evidence Act)

The provisions of this section may operate in circumstances subsumed under section 34 of the Penal Code. It is however not limited to those set out in section 34 of the code. There could be no doubt that it is suitable for clear-cut minor offences and at least those offences which the tribunal adjudges should not have been brought to court for trial but rather a decision not to prosecute have been taken. Juveniles and the infirm can suitably be dealt with under this section. The section may operate as the courts 'caution' or 'reprimand' where the police could have appropriately cautioned or reprimanded the accused. Murder, robbery, rape; and any conspiracy, incitement or attempts to commit these offences are excluded. The section also does not apply to offences in which a minimum punishment is provided.

The fine

When imposed by the court it is intended to punish the offender. Such punishment arising in the form of financial loss. In the event that financial loss is not suffered, loss of liberty in consequence thereof becomes inevitable. Fines are quite common, especially in motoring offences, and are normally imposed when the tribunal is of the view that the above sentences are unsuitable. According to Judge Murray:

Where it is necessary to punish an offender the usual penalty will be a fine.²⁷

When the tribunal has concluded that a fine is appropriate certain considerations arise. The maximum fine is rarely ever imposed. The amount of the fine imposed must not exceed the defendant's ability to pay. In other words it must not be too excessive. In the *State vs Molelo Gaseome and Others*,²⁸ the learned judge altering the sentence proceeded to say the following:

As I said before in previous judgements, the sentencing of an accused to a large fine which he has no hope of paying is wrong in principle. A fine should be geared to the means of the accused and if he cannot afford to pay a fine another method of punishment should be considered even imprisonment if it is warranted.

Gaseome and four others had been convicted on their own pleas of guilty to the offence of hunting and killing one gemsbok in the Gemsbok National Park without a permit contrary to the Fauna Conservation Act. They had been sentenced by a magistrate to pay a fine of P450 (which they were unable to pay) or 18 months imprisonment in default of payment. One of them, a boy of 15 years, had been discharged upon entering a recognisance.²⁹ Ordinarily the court will ascertain the means of the offender before the imposition of the fine. But the fine is not normally increased simply because of the amplitude of means of

25 Nigel Murray note 20 above p 26.

26 Sir Rupert Cross note 20 above p 10.

27 Nigel Murray note 20 above p 26.

28 *State v. Molelo Gaseome and Others*.

29 Note 28 above.

the offender.³⁰ The Criminal Procedure and Evidence Act makes provision for the payment of fines in instalments within a period not exceeding twelve months.³¹ The criminal code lays down periods of imprisonment in default of payment, the outer maxima being 6 months of imprisonment.³²

Where a money penalty is imposed an alternative term of imprisonment proportionate to it is provided. The majority of cases brought before the courts are dealt with by way of fines.

Offenders to be kept out of Prison

It may now have been clear that the measures outlined above are in keeping with the general principle that first offenders should be kept out of prison where possible.

In *Julia Sakala and Another vs The State*,³³ the learned judge (HAYFRON-BENJAMIN), considering the submission of the Defence Counsel that the appellants should not have been sent to prison because they were first offenders, proceeded to say the following:

There are no doubt judicial pronouncements on this score, that *first offenders* should not be sent to prison, if other satisfactory punishments can be imposed. These *dicta* in my humble view state too widely the policy of our courts. The policy of our courts is to avoid sending young offenders to prison if possible, and this for the simple reason that they are likely to come out of gaol rather worse characters than when they went in, and society would be saddled with them for a long period . . .

Where young offenders are concerned, the judge proceeded, courts take into account the seriousness of the offence and the circumstances of the offence and the circumstances under which it was committed. On the same score in the *State vs. Mabongo*,³⁴ Mohamed J; quoting a South African decision³⁵ with approval stated:

Sending a first offender to jail should generally be avoided if a non-custodial sentence would serve to afford the community adequate protection, depending of course on the seriousness of the crime and the circumstances of the particular case . . .

The *locus classicus* on the matter is the *dictum* of Aguda C.J. (as he then was) in an earlier case, *Visser vs The State*³⁶ where he held:

As I said in a recent case I myself am thoroughly convinced of the principle that a first offender must as far as possible be kept out of jail but to raise that principle to an immutable principle of law will be to do violence to justice in some cases.

Referring to the decision in *Visser vs. The State*; per O'Brien Quinn, C.J.:

That decision of Aguda C.J. still holds good but has been amplified and refined in more recent cases as the incidence of crime has increased a great deal in the 10 years since 1974.³⁷

The court of appeal has fairly recently ratified the proposition of law discussed above.³⁸

30 Nigel Murray note 20 above p 27.

31 Section 306 Criminal Procedure and Evidence Act Cap.: 08:02 Laws of Botswana.

32 Sections 31 Penal Code Cap. 08:01 Laws of Botswana.

33 *Julia Sakala and another v. The State* High Court Criminal Appeal No. 85/1978 Unreported.

34 *State v. Mabongo* 1978 BLR 72.

35 *State v. Kulati* 1975 (1) SA 557 at 560.

36 *Visser v. The State* 1974 (1) BLR 68.

37 *Tshweu Baphutlele v. The State* Criminal Appeal No. 186/1984 unreported (Per O'Brien Quinn CJ).

38 *David Pule v. The State* Criminal Appeal No. 27/1984 unreported.

(ii) Custodial

A custodial sentence may arise in circumstances where a judge properly directing himself to the law and facts before him considers that a non-custodial measure is inappropriate but decides that passing a term of imprisonment whether suspended partially or to be effectively served is appropriate.

Types

Suspended sentence

The purpose and rationale of a suspended sentence was eloquently stated in the celebrated English case of *R v. O. Keeffe*.³⁹ The judicial pronouncement there propounded has been cited with approval in our courts. Per O'Brien Quinn C.J.⁴⁰:

It has been laid down in *R.v O'Keeffe* that before passing a suspended sentence the court must go through the process of eliminating other possible courses, and only when, having considered the alternatives, it decides that the case in question is one for imprisonment should the option of a suspended sentence be considered. The passing of a suspended sentence is not, primarily an exercise in leniency but is the passing of the most suitable sentence possible having taken into consideration every aspect of the matter and after coming to the conclusion that a custodial sentence would be the most appropriate sentence . . .

It has been submitted by other writers, quite rightly in my view, that if a prison sentence in a matter is quite inevitable by reason of the circumstance that the offence requires a deterrent or discriminatory sentence, then taking into consideration the circumstances under which it was committed and those of the offender, total suspension is justifiable. The fact of the suspension is not to be mistaken for a let off. Moreover, the total suspension of the sentence does not justify an increase in the length of the term of imprisonment.⁴¹ Where the offender profited from the offence it would appear that a fine is called for in addition to the sentence. Where no financial loss is suffered it is submitted that to tag a fine to the custodial measure albeit suspended would be to punish the offender twice.⁴²

Partial Suspensions

As per Hayfron-Benjamin C.J.:

The primary object of partial suspension of sentences is deterrence. It is to hold the sword of Damocles over the head of the convict prisoner who has served the unsuspended portion, to be of good behaviour during the period of suspension. Where a person has served a part of his sentence in custody, he may feel that to complete the whole sentence would be in his interest; he would have finished paying his debt to society. On the other hand a first offender who has spent over a year in prison would have become accustomed to the place, and the suspended part of the sentence would hold no terrors for him. To be really effective in respect of first offenders whether old or young, I am of the view that that portion of the sentence to be served in custody should be relatively short and designed mainly to expose him to prison conditions. The period suspended should be a longer period, so that the offender, who has tasted

39 *R.v. O'Keeffe* 1969 (1) All ER 426.

40 *State v. Fanyane Phillimon*, High Court Review Case NO. 128/1983 (Unreported).

41 See further for a different view, 1977 Criminal Law Review (Sentence) p 661 at p 670.

42 See note 41 above.

just a bit of prison life would, if possible, weigh carefully in his mind the prospects of a long period under those conditions and the benefits of going straight.⁴³

This proposition with regard to suspension of sentencing was re-affirmed in *The State v Fanyane Phillimon*⁴⁴ and has since been in principle approved by the court of appeal.⁴⁵ A long and partially suspended sentence may effectively be the worst that a young offender can expect on his first offence. Exceptions to this lie in murder, rape, robbery and offences whereof a minimum punishment is prescribed by law. Any conspiracy, incitement or attempt to commit any of these offences are also excluded. Beyond the realm of suspension of sentences is the arena whereof the recidivist is normally dealt under. I am therefore constrained by the delimitation that appears in the opening paragraph of this paper, to refrain from indulging in considerations relating to the passing of a wholly effective sentence.

FACTORS TO CONSIDER IN PASSING SENTENCE

First Offence

Where applicable the court should resort first to non-custodial measures outlined above. It has also been suggested that where young offenders who are likely to reform are concerned, they should be given a short, sharp shock by being sentenced to a suitable period of imprisonment, and the major portion of it being suspended, in effect reminding them for a long period of the consequences of committing further similar offences.⁴⁶ It is submitted that this statement is equally applicable to the adult offender. That the accused has committed his first offence should also influence the court to suspend the sentence wholly depending on the circumstances of the particular case.

Guilty Plea

It is indicative of accused's wish to relieve his conscience of its burden of guilt.⁴⁷ It has been held⁴⁸ that a confession of guilt should tell in favour of an accused person. It is evidence of contrition, remorse and willingness to make amends.⁴⁹ Provided that they are in fact guilty, it is in the public interest and in the interest of the smooth working of the judicial system that they should in fact plead guilty.⁵⁰ It has been further held that it is quite proper to give an accused a lesser sentence where he has indicated genuine remorse by tendering such a plea.⁵¹ However, the fact that he pleaded not guilty should not influence the court to pass a harsher sentence.

Compensation (Section 304 Criminal Procedure Evidence)

In *Aupa Khasu vs. The State*,⁵² the accused had been convicted of unlawful wounding. The complainant had been brought before a doctor who found that he was suffering from fairly

43 See note 33 above.

44 *State v. Fanyane Phillimon* Review case No. 128/83 unreported.

45 *David Pule v. The State* Criminal Appeal No. 27/1984.

46 *Steyn and Watton v The State*, Criminal Appeal No. 294/1982 unreported.

47 *The State v. Mavele Phili and another*, High Court Review Case No. 355/1982 unreported.

48 *S.v. Rahii* 1981 BLR 252.

49 *R. v. De Haan* 1967 (3) ALL ER 618 cited in *S.V. Fanyane Phillimon Review case No.128/1983*.

50 See note 48 above.

51 *R. v. Harper* 9 68 2 QB.

52 *Aupa Khasu v. The State* Criminal Appeal No. 68/1984 unreported.

severe stab wounds. On appeal against sentence, the learned judge dealing with the question of compensation remarked:

. . . Nevertheless a readiness to make good any loss occasioned or to compensate for injury is a factor to be considered. This readiness and desire to make amends can be expressed without a court order being made. This attitude is one to be encouraged. If the accused who offers compensation and the accused who does not both receive the same punishment, the willingness to compensate would soon dry up. The person to suffer would be the complainant.⁵³

Excessive Delay

Excessive pre-trial detention of an accused has been held to constitute a breach of the citizens rights under the constitution. Attention was drawn to such delay in *The State v Masilo Setshago*⁵⁴ where the accused had been under arrest without trial on charges of using a bicycle without the owner's permission for more than a month. The court in that case proceeded to say that what is a reasonable time will turn on the circumstances of each particular case. The circumstances of the particular case include the complexity and seriousness of the matter involved, the accessibility to the place where the offence was committed (*locus in quo*), the availability of counsel, witnesses, officers of the court and physical evidence. *The State v Makwekwe*⁵⁵ went further and held that excessive delay was a factor to be considered in the determination of sentence. It is no small matter for a man to live for years with a serious charge hanging over his head. It inflicted mental suffering and must of necessity interfere with his freedom of movement, employment opportunities and his social life.

Maximum Penalty

The maximum sentence is the penalty beyond which a prisoner cannot be punished. The maximum penalty is reserved for the most serious cases and is rarely ever imposed.⁵⁶ It has been the practice of our courts in passing sentence to set out the maximum penalty which must be imposed on an offender before becoming eligible for parole or release. Among statutes for a minimum sentence is the Habit-Forming Drugs (Amendment) Act, 1984.⁵⁷ In Section 3 it provides:

3. (1) Except as provided by this Act, no person shall:
 - (a) deal in any habit-forming drug or any plant from which an habit forming drug can be manufactured; or
 - (b) possess or use any such drug or plant.
 - (c) Any person who contravenes subsection (1) (a), otherwise than in relation to dagga, shall be guilty of an offence and on conviction thereof shall be sentenced to all of the following punishments:
 - (a) imprisonment for a term of not less than 10 or more than 15 years;
 - (b) a fine of not less than P15 000 or in default of payment imprisonment for an additional term of not less than 3 or more than 5 years.
 - (c) corporal punishment; and notwithstanding any law to the contrary, the court

53 At p 5.

54 Appeal No. 305/1992.

55 *State v Makwekwe* 1981 BLR 196.

56 *Toure Cherk Mohamed v. The State* court of appeal. Criminal Appeal No. 8/1984.

57 Habit-Forming Drugs (Amendment Act, 1984 Cap 63:04.

shall not order that the operation of the whole or any part of the sentence be suspended.

Our courts treat such statutes with some measure of reluctance. When dealing with them they interpret them with circumspection especially when they are in conflict with the constitution. It was argued for example, in *Desai, Modi and Others vs. The State*⁵⁸ that the above minimum punishments were inhuman and degrading and thus contrary to section 7(1) of the Constitution of Botswana. The learned President of the Court of Appeal expressed his agreement with Aguda's view in *S. v. Petrus*⁵⁹ that whilst courts may dislike mandatory punishments because they take away from the courts "the power to modulate punishment to fit the circumstances of the offender, as well as the circumstances in which the offence was committed", the imposition of minimum punishments by itself was not necessarily inhuman or degrading punishment or treatment. In spite of all this the learned President held that a combination of all three mandatory provisions in the *Desai* case was inhuman and degrading and thus *ultra vires* section 7(1) of the Constitution. The court expunged the corporal punishment component of the provisions; viz paragraph (c) of section 3 (2) of the Habit Forming Drugs Act.

CONCLUSION

Sentencing is rather complex. This paper has attempted to bring to light a rather general approach of sentencing tribunals in Botswana. It also brought out, although in outline, the purpose for which punishment is meted out. The aims of sentencing, it is submitted, provide criminal law as an instrument of social control with its policy basis. Now and then judges have repeatedly stated that an offender must not be 'visited with punishment to the point of being broken; that punishment should fit the criminal as well as the crime, be fair to the state and to the accused and be blended with a measure of mercy'.⁶⁰ It is submitted therefore that for the aforesaid goals to be achieved, and for the accused who stands convicted on the dock to know what is likely to be his position after sentence has been pronounced, the above approach should at least be considered.

58 *Desai and Modi v. The State Criminal Appeal* No 9/1996 unreported.

59 *S v. Petrus Criminal Appeal* no. 34/1983 unreported.

60 *Klass Ranthobane Masie v. The State Criminal Appeal* No. 14/1982 unreported.



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