

MAKERERE



UNIVERSITY

SCHOOL OF LAW

NEGOTIATED JUSTICE AGREEMENTS: EXAMINING THE EFFECTIVENESS OF
PLEA BARGAIN IN ACHIEVING JUSTICE UNDER THE 1995 CONSTITUTION

BY

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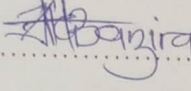
JUNE 2026

DECLARATION

I, **Aggrey Bazirake**, declare that this dissertation has been prepared and completed independently by me. It is an original work that has not been submitted to any institution for any form of credit, award, or examination, and all contributions borrowed from any other work in the form of literature have been duly acknowledged through quotations, footnotes, and as complete references.

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APPROVAL

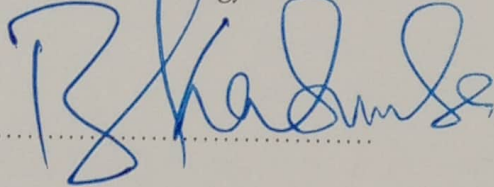
The dissertation, *Negotiated Justice Agreements: Examining the effectiveness of plea bargain in achieving justice under the 1995 Constitution*, has been prepared and submitted for examination under my guidance and supervision.

Supervisors' Name: Dr. Busingye Kabumba

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12th June 2026

Signature:



DEDICATION

To everyone who believed I could.

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“Before I formed you in the womb I knew you, before you were born, I set you apart; I appointed you as a prophet to the nations.” Jeremiah 1:5 (NIV)

I give all the honor to the Lord, who is always first in my life, for enabling me complete this journey. I am deeply grateful for the never-ending grace, mercy, divine guidance, strength, patience, knowledge, and teaching me that there is always light at the end of every tunnel.

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LIST OF ACRONYMS

ACHPR	African Charter on Human and Peoples' Rights
ACJA	Administration of Criminal Justice Act
ADR	Alternative Dispute Resolution
AfCHPR	African Court on Human and Peoples' Rights
AHRLR	African Human Rights Law Reports
AJS	Alternative Justice System
All ER	All England Law Reports
CCO	Community Correction Order
CEDAW	Convention on the Elimination of Discrimination against Women
CLE	Clinical Legal Education
CPAA	Criminal Procedure Second Amendment Act
DPP	Director of Public Prosecutions
DRC	Democratic Republic of Congo
EAC	East African Community
EACA	East Africa Court of Appeal
EACJ	East African Court of Justice
ECHR	European Convention for the Protection of Human Rights
ECHR	European Convention on Human Rights
ECOSOC	United Nations Economic and Social Council
ECtHR	European Court of Human Rights
EFCC	Electronic and Financial Crimes Commission Act

eKLR	Electronic Kenya Law Reports
EWCA	England and Wales Court of Appeal
FGM	Female Genital Mutilation
HRC	Human Rights Council
IACtHR	Inter-American Court of Human Rights
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICD	International Crimes Division
ICESCR	International Covenant on Economic, Social, and Cultural Rights
ICJ	International Court of Justice
ICTJ	International Centre for Transitional Justice
ICTR	International Criminal Tribunal of Rwanda
ICTY	International Criminal Tribunal of Yugoslavia
JTI	Judicial Training Institute
KALR	Kampala Law Reports
LDC	Law Development Centre
LRA	Lord's Resistance Army
MICT	Mechanism for International Criminal Tribunals
NICArb	Nigerian Institute of Chartered Arbitrators
NPAA	National Prosecuting Authority Act
NRA/M	National Resistance Army/ Movement
OAS	Organization of American States
OAU	Organization of African Union

ODPP	Office of the Directorate of Public Prosecution
OIC	Order in Council
PILAC	Public Interest Law Clinic
PSAs	Plea and Sentencing Agreements
SACR	South African Criminal Law Reports
SASR	South Australian State Reports
SIFoCC	Standing International Forum of Commercial Courts
TLR	Tanzania Law Reports
UDHR	Universal Declaration of Human Rights
UGCC	Uganda Constitutional Court
UHRC	Uganda Human Rights Commission
UHRC	Uganda Human Rights Commission
ULR	Uganda Law Reports
UN	United Nations
UNHRC	United Nations Human Rights Committee
UNSC	United Nations Security Council
UNTOC	United Nations Convention against Transnational Organized Crime
WLR	Weekly Law Reports

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ABSTRACT

The practice of plea bargaining was adopted as one of the avenues to reducing case backlog in the criminal justice system. This practice involves the accused waiving their constitutionally guaranteed and protected rights from which the applicants gets a lesser sentence in return. This process has indeed reduced case backlog, and effectiveness in the judiciary whereas promoting restorative justice, and harmony. However, some scholars argue that the procedure is hampered with some loopholes, unequal bargaining power, irregularities, and other factors that affect effective administration of justice because it significantly affects the choice and rights of the applicants undertaking a plea bargain.

This research examines the practice of plea bargain as a method of Alternative Dispute Resolution in the Criminal Justice System, and assess its effectiveness in achieving justice under the 1995 constitution of the Republic of Uganda. The study finds that inefficiencies in access to justice force some accused person to undertake plea bargaining though the same process is credited for promoting conciliation and harmony due to its involvement of the victims in the process. The study finds that plea bargain process should be streamlined to ensure that restorative justice is fully encouraged, reconciliation, and social harmony is encouraged between and among parties. It also emphasizes that concerned parties should also ensure that an individuals' rights are not traded for freedom because of deficiencies in the criminal justice system.

Lastly, it recommends for an establishment of an externship program under Clinical Legal Education or as a pre-enrolment criminal justice service requirement for students after their legal practice to assist in offering pro bono services in plea bargaining camps. This mandatory externship programme generates a rotating cohort of supervised legal practitioners in criminal courts at relatively low institutional cost.

CHAPTER ONE

INTRODUCTION

- 1.0 Introduction
- 1.1 Background of the study
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*“Before courtrooms. Before wigs.
Before Latin phrases we still struggle to pronounce,
Africans resolved disputes. Under trees. Before.”*

Hon. Justice Dr. Mumba Malila, Chief Justice of Zambia.

1.0 Introduction

The right to a fair and speedy trial constitutes a foundational pillar of criminal justice systems worldwide and is enshrined as a non-derogable right in international human rights law. The 1948 Universal Declaration of Human Rights (UDHR) laid the foundation for the right to a fair hearing,¹ establishing standards that have since been incorporated into constitutional frameworks globally. The 1995 Constitution of Uganda represents a watershed moment in the legal history, being the first

¹ The 1995 Constitution of the Republic of Uganda, Preamble and Articles 10- 11(1-2).

document to comprehensively entrench a Bill of Rights;² drawn from principles traceable to the Magna Carta.

This research examines the effectiveness of plea bargains in achieving access to justice under the 1995 Constitution. It critically evaluates whether plea bargaining practices effectively fulfil Uganda's constitutional mandate of promoting access to justice or whether they circumvent constitutional protections in pursuit of administrative efficiency. The study analyses the adequacy of plea bargaining rules and judicial practices vis-a-vis constitutional safeguards, interrogating inherent loopholes and weaknesses in the current system. Through comparative analysis of how other jurisdictions have implemented plea bargaining while maintaining constitutional protections, the research develops comprehensive legal, policy, and best practice recommendations to ensure that plea bargaining serves justice rather than undermines it.

The central inquiry of this dissertation is whether the waiver of fundamental constitutional rights through plea bargaining including rights to trial, cross-examination, production of evidence, and the presumption of innocence can be reconciled with the 1995 Constitution's guarantee of access to justice, or whether such waivers represent an unconstitutional compromise that sacrifices individual rights for systemic convenience.

1.1 Background of the study

The historical significance of fair trial rights dates back to June 15, 1215, when King John of England accepted the Magna Carta, one of the first written documents that expressly provided for a certain limit to the absolute power of the ruler. The Charter's celebrated Clause 39 proclaiming that no free man shall be taken or imprisoned or disseized or outlawed or exiled or in any way ruined, nor will we go or send against him, except by the lawful judgment of his peers or by the law of the land.³ Clause 40 reinforced this guarantee, stating that no one will we sell, to no one will we deny or delay right or justice.⁴ These provisions established foundational guarantees of fair, speedy, and public hearings in criminal matters that continue to serve as cornerstones of justice administration in Uganda.⁵

² The 1995 Constitution of the Republic of Uganda, Chapter IV.

³ The Magna Carta, Clause 39.

⁴ R Aitken, & M Aitken 'Magna Carta. Litigation'. (2008) 35, 59. 35(3), 59-62.

⁵ Republic of the United States Constitution 1791, (Sixth Amendment).

The Magna Carta was a royal charter of rights agreed to by King John of England at Runnymede, near Windsor, on 15 June 1215. It was first drafted by Archbishop of Canterbury Stephen Langton to make peace between the unpopular king and a group of rebel barons, it promised the protection of church rights, protection for the barons from illegal imprisonment, access to swift justice, and limitations on feudal payments to the Crown, to be implemented through a council of 25 barons. Neither side honoured their commitments, and the charter annulled by Pope Innocent III, leading to the First Barons' War.

International human rights instruments have consistently reinforced these principles. Article 14(3) (c) of the International Covenant on Civil and Political Rights (ICCPR) buttresses the right to be tried without undue delay.⁶ Article 7(1) (d) of the African Charter on Human and Peoples' Rights (ACHPR) mandates member States to ensure that every individual has the right to be tried within a reasonable time by an impartial court or tribunal.⁷ The Universal Declaration of Human Rights (UDHR) is used as the most important document of the century which similarly obliges member States to observe the right to a speedy trial.⁸

Consequently, the fair trial of an accused within reasonable time is firmly entrenched in both the 1995 Constitution of the Republic of Uganda under Article 28, and universally recognized instruments. In *Avocats Sans Frontiers (On behalf of Gaetan Bwampamye) v Burundi*, the Commission noted that the right to fair trial involves fulfilment of certain objective criteria, including the right to equal treatment, the right to defence by a lawyer, especially where this is called for by the interests of Justice, as well as the obligation on the part of Courts and Tribunals to conform to international standards in order to guarantee a fair trial to all.⁹

In criminal proceedings, the accused possesses fundamental rights including the right to be notified of charges, which establishes the foundation for a fair hearing.¹⁰ Contemporary human rights law has

⁶ Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976, in accordance with Article 49.

⁷ This document was from Decision 115(XVI) of the Assembly of Heads of State and Government at its Sixteenth Ordinary Session held in Monrovia, Liberia, from 17 to 20 July 1979 for the establishment of bodies to promote and protect human and peoples' Rights.

⁸ Dr SLB Jensen, HiStories: 75 years of the Universal Declaration of Human Rights, United Nations Library & Archives Geneva. Available on YouTube at <https://www.youtube.com/watch?v=sqGqw4YqbF8>. [Last accessed March 11, 2026].

⁹ African Commission on Human and Peoples Rights, Twenty-eighth Ordinary Session 23 October- 6 November 2000.

¹⁰ This entails the presumption of innocence principle, informing the accused the nature of the offence in a language they understand, granting the accused facilities and adequate time to prepare for the case, legal representation, among cross examination of the witnesses.

embraced the legitimacy of plea bargaining, subject to minimal standards requiring voluntary, informed, unequivocal, and fact-based pleas of guilt to validate proceedings as fair hearings.¹¹ While it is established that an accused may waive constitutional rights through voluntary bargaining,¹² critical questions arise regarding whether such waivers genuinely serve the constitutional mandate of access to justice.

Uganda's administration of justice reflects its complex historical trajectory. During the pre-colonial era, traditional rulers served as custodians of law and dispute resolution. The 1902 Order in Council (OIC) introduced the Repugnancy clause under Article 20, which granted native courts powers to administer justice in manners acceptable under African traditions,¹³ provided such customs were not repugnant to justice or morality as understood by the British.¹⁴ This colonial imposition created tensions between indigenous justice systems and Western legal frameworks that persist in contemporary legal practice in the criminal justice sector.

Under Article 20(2) of the 1995 Constitution, fundamental human rights must be respected, upheld, and promoted by all government organs, agencies, and individuals. The right to a fair hearing encompasses the rights to produce witnesses, cross-examination, and the presumption of innocence as outlined in Article 28.¹⁵ Consequently, courts bear the constitutional duty to protect the rights of accused persons throughout the trial process, a responsibility that becomes particularly complex in the context of plea bargaining.

The Judicature (Plea Bargain) Rules No. 43 of 2016 were enacted primarily to address mounting case backlogs in the criminal division and, by extension, alleviate prison overcrowding.¹⁶ The 1995 Constitution permits accused persons to plead guilty under Article 28(2)(3)(a), and plea bargaining operationalizes this provision by allowing accused persons to plead guilty to alleged offenses in

¹¹ GN Kisekka (2020), 'Plea bargaining as a human rights question' *Cogent Social Sciences*, 6(1).

¹² *State v. Hinners*, 471 N.W.2d 841, 843 (Iowa 1991).

¹³ As stated in *Mwenge v Migadde* (1932-5) ULR 97, the traditions could be tested to the white man's understanding by not being repugnant to the English written laws and good conscience.

¹⁴ The 1902 Order-in-Council contained a reception clause under Article 15 (2). The reception clause essentially defined the law to be applied in the protectorate and in particular in the judicial determination of disputes and matters by court. The applicable law was to include in law, doctrines of equity and statutes of general application of force. The reception date of Statutes of General Application was legislation in force in England as of 11th August 1902. This is how laws such as the Evidence Act and Penal Code came to be part of the laws of Uganda.

¹⁵ The 1995 Constitution of the Republic of Uganda, Article 28.

¹⁶ GN Kisekka, 'Plea Agreements as Unconscionable Contracts. The Ugandan Experience'. *Beijing Law Review*, (Vol.15 No.4, December 12, 2024) 1.

exchange for reduced sentences negotiated between prosecution and judicial officers. While the stated purpose of plea bargains is to reduce case backlogs and expedite justice delivery,¹⁷ the mechanism fundamentally alters the traditional trial process by requiring defendants to waive constitutionally guaranteed rights.

The constitutional tension becomes more acute when examining the experiences of accused persons; any become frustrated with the justice system due to prolonged periods on remand without trial a frustration stemming from systemic failures in arrests, investigations, and other procedural stages. This desperation compels some accused persons to resort to plea bargains not as genuine admissions of guilt but as pragmatic means of saving time and gaining release. Such circumstances raise critical questions about whether plea bargains truly fulfil the constitutional mandate of administering justice under the 1995 Constitution or merely provide an expedient mechanism for case management at the expense of constitutional rights.

1.1.1 Constitutional developments in Uganda and the promulgation of the 1995 Constitution.

The British conquest of Uganda was through force and fraud created enduring wounds within the body politic that continue to influence legal and constitutional discourse.¹⁸ Where force was not employed in conquering the Kingdoms, fraudulent agreements purporting acceptance of British protection and loyalty were imposed.¹⁹ These agreements, lacking force of law, bound the British only during their pleasure,²⁰ and followed religious-political wars of the 1880s that divided peoples along new religious commitments.²¹

Uganda's declaration as a British protectorate in 1894 brought the territory under the Africa Order-in-Council 1889, making it a creature of British colonial administration.²² The colonial administration imposed its own system of administration on societies with different culture and social systems, applying a system of indirect rule.²³ The policy of indirect rule held centre stage in Uganda's

¹⁷ There was a reduction in cases from 24% in 2017 to 17% in 2019 (Uganda Budgets Speech, 2020, para. 24).

¹⁸ SL Lunyigo, 'The colonial roots of Internal Conflict in Uganda, Paper presented to the International seminar on International Seminar on internal Conflict', 21st-25th September 1987.

¹⁹ *Sobhuza v Miller* 1926 AC 518.

²⁰ GSK Ibingira, (1973), *The Forging of an African Nation: The Political and Constitutional Evolution of Uganda from Colonial Rule to Independence, 1894-1962* Viking Press Kampala, Uganda Publishing House in English. 40.

²¹ PG Okoth, (1994) 'The Political Economy of Human Rights crisis in Uganda, 1962-1985', *Trans-African Journal of History*, (Vol. 23) 144.

²² HB Hanson, (1984) *Mission Church and State in the Colonial Setting*, London. 59-64.

²³ Ibingira (n 20 above) 61.

administration and politics. Significantly, in determining territorial boundaries, no serious consideration was given to ethnic or tribal groupings,²⁴ as European imperial powers prioritized spheres of influence, strategic military positions, raw materials, trade, and economic considerations over indigenous social organization.²⁵ The British never genuinely attempted to establish a nation state, for the obvious reason that effectiveness of British Colonial *acceptance* thrived on a policy of divide and rule.²⁶

The 1902 the Order in Council passed as the first constitution established the framework for colonial administration in Uganda.²⁷ The Order constituted the basic law for exercising Crown jurisdiction, with the entire East Africa sphere declared a local jurisdiction.²⁸ The Commissioner was vested with the powers of the Government of Uganda and for this purpose he was to have an Official Seal by which his acts would be authenticated.²⁹ This colonial legal framework introduced adversarial justice systems fundamentally alien to indigenous dispute resolution traditions, creating tensions that persist in current debates about plea bargaining's appropriateness within Uganda's constitutional democracy.

The 1962 Independence Constitution, unlike the home-grown 1995 Constitution, represented an imposed document. The High Court (Her Majesty's High Court) established in 1902 was re-established under section 90(1) of the 1962 Constitution,³⁰ with laws administered by the High Court were set out in section 2 of the Judicature Ordinance, 1962.³¹ However, observations of applicability of customary law were prompted in cases like the Court of Appeal for East Africa in the case of *The Kabaka's Government v Musa N.S. Kitonto*.³² Musa Kitonto brought an action for damages in the Buganda High Court against the Kabaka's Government which was the employer for Mr. Ssebowa at Bombo Hospital for dental treatment. The Government was alleged to be vicariously liable for the negligent discharge

²⁴ GW Kanyeihamba, *'Constitutional and Political history of Uganda, from 1894 to Present'*. (2010) (2nd edition), 1.

²⁵ The Berlin West Africa Conference, 1884-1885, attended by European Imperial Powers came to this understanding. Preamble to the Uganda Order in Council, 190.

²⁶ SL Lunyiigo (1989), 'The Colonial Roots of Internal Conflict', also in K. Rupesinghe (ed.), *Conflict Resolution in Uganda*, Oslo Internal Peace Research Institute, 24-27.

²⁷ JM Gray, 'Early Treaties in Uganda' (1948) *Uganda Journal*, 12.

²⁸ JT Mugambwa, 'Evolution of British Legal Authority in Uganda with special Emphasis on Buganda: 1890-1938', PhD thesis, Australian National University, January 1986. 112.

²⁹ The 1902 Order in Council, Article 12.

³⁰ The Uganda (Independence) Order in Council, 1962, Schedule to the Order, S.I. 1962 No. 2175, Statutory Instruments, East Africa.

³¹ The Judicature Ordinance No. 62 of 1962.

³² Civil Appeal No. 14 of 1965 (Unreported) Uganda.

of his duties. Although, Kabakas government challenged the jurisdiction of the Court, the defence failed.

Post-colonial Uganda's history was characterized by political and constitutional instability, tyranny, oppression and exploitation,³³ emanating from the tensions and conflicts generated by the political leadership which had assumed power upon independence. The 1966 abrogation of the 1962 Constitution by the then Prime Minister Apollo Milton Obote followed a confrontation with the then President Edward Muteesa which led to a state of emergency and the 1966 interim constitution referred to as the pigeon hall constitution after being adopted by the National Assembly. The Uganda High Court later described this constitution's adoption on 15th April 1966 as one of *successful revolution*.³⁴

The 1967 Republican Constitution abolished Kingdoms and declared Uganda a unitary state, ending the Federation and the beginning of a unitary system of government.³⁵ However, there was utilization of the courts both by the deposed president and by the arrested ministers at that time. The five ministers were arrested in February 1966 under the terms of the (Colonial) Deportation Ordinance, pending an investigation of their activities, and taken to Northern Uganda. In an Appeal to the Court of Appeal for Eastern Africa in Nairobi, it was held that the Deportation Ordinance was inconsistent with the human rights provisions of the 1962 Uganda.³⁶

President Milton Obote was over thrown by Amin in 1971 who suspended the 1967 Constitution,³⁷ unleashing a reign of constitutionalism, criminality, and exercise of power through Proclamations. Following Amin's in 1979, similar proclamations were pronounced by successive regimes preceding the election of the last civilian administration in 1980. Obote's second rule, from 1980 to 1985, was

³³ The 1995 Constitution of the Republic of Uganda, Preamble.

³⁴ *Uganda v. Commissioner of Prisons, Ex Parte Michael Matovu*, [1966] 1 EA 514. The High Court in applying the Kelsenian principles noted that it was a deliberate and considered view that the 1966 Constitution was a legally valid constitution and the supreme law of Uganda; and that the 1962 Constitution having been abolished as a result of a victorious revolution in law does no longer exist nor does it now form part of the Laws of Uganda, it having been deprived of its de facto and de jure validity. The 1966 Constitution, was held, as a new legal order and had been effective since April 14, 1966, when it first came into force.

³⁵ AM Obote (The President) during the Parliamentary Debate on the Constitutional proposals, Uganda Argus 23rd June. These developments later saw the adoption of the 1967 Constitution on 8th September 1967.

³⁶ GF Engholm & AA Mazrui, *Violent constitutionalism in Uganda, Government and Opposition*, Cambridge University press, (July- October 1967, Vol. 2 No. 4) 585-599.

³⁷ Legal Notice No. 1 of 1971 (Amin Proclamation).

characterized by widespread civil unrest and gross human rights violations.³⁸ On 26th January 1985, the NRA/M (National Resistance Army/ Movement) forces led by Yoweri Kaguta Museveni assumed power.³⁹ This turbulent constitutional history directly informs the 1995 Constitution's emphasis on human rights protections and access to justice.

In 1988, Uganda Constitutional Commission was appointed and tasked to develop a new constitution,⁴⁰ which was adopted on 27th September by the Constituent Assembly.⁴¹ This constitutional making process was a major step towards democratization, giving people opportunity to review past experiences, identify root causes of problems, learn from past mistakes, and provide genuine solutions for better governance and future development.⁴² The Preamble and objectives of the 1995 constitution highlight the history, culture, values, and aspirations of the people, foundations against which plea bargaining's constitutional legitimacy must be assessed.

1.1.2 Criminal Justice System in the pre-colonial era

The nature of law in pre-colonial Africa was customary and unwritten, having its sources in the practices and norms of the people, and embodied their aspirations. Pre-colonial African laws, though not documented in written form, were recorded and committed to memory in the collective memory and consciousness of all members of the relevant society. The unwritten nature of pre-colonial African philosophies and culture attracted substantial criticism, resulting in Africans being labelled as intellectually inferior to Western countries, a colonial narrative that justified imposed legal systems.

However, concepts like Ubuntu or *Hunhu* largely unwritten principles passed through generations via spoken word, observation, experience, language, and art. The absence of a written law furthered communal feelings and belonging as law breakers were assisted and counselled community members. The African world view prioritized community through members came to know both themselves and

³⁸ FM Ssekandi, & Gitta, Cos. 'Protection of fundamental rights in the Uganda constitution'. (1994) *Columbia Human Rights Law Review*, 26(1), 191-214.

³⁹ The NRA/M also issued Legal Notice 1 of 1986 (NRM Proclamation) suspending Chapter IV, except Article 24, which provided for a President, 7 and Chapter V of the constitution. Unlike previous regimes, the NRA/M also suspended Article 3, which provided for amendment of the constitution, and Articles 63 and 64.

⁴⁰ Uganda Constitutional Commission, Guidelines on constitutional Issues 10 (1991).

⁴¹ The process was of a popular participation through nationwide consultation and national public debate building a national consensus and promoting the general acceptability and legitimacy.

⁴² J Oloka-Onyango, BJ Odoki, *The Challenges of Constitution making and implementation in Uganda, Constitutionalism in Africa; creating opportunities, facing challenges*; (2001) 264-286.

the encompassing world reflecting principles of connectedness and communitarian nature fundamentally different from the individualistic adversarial justice systems later imposed.

Pre-colonial era's diverse ethnicities maintained various dispute resolution mechanisms, values, taboos, and beliefs aimed at fostering peaceful coexistence. Disputes were referred to third parties, especially community elders, for resolution, redress, and coherence building. Most African legal systems lacked legislatures, formal courts and specialized legal officers. Customs that governed pre-colonial societies comprised rules of custom, morality, and religion enforceable by central political systems or other authorities in serious misconduct cases.

African societies had various forms of settling and resolving disputes in their communities depending on their socio-political set up, norms, and customs. Way before the formal judicial system existed, African societies relied on mediation, dialogue, negotiations, and consensus-building to address disputes within our communities. These indigenous practices entrenched social harmony and peace, which are core values in ADR today”.⁴³ Pre-colonial and African Conflict Resolution focused on communal peace as the guiding principle in managing all conflicts. The ultimate aim of adjudication was always to promote the unity of the community as opposed to concern with individuals. These native customs provided very satisfactory dispute resolution approaches that were people-centred and that left the community members largely satisfied.⁴⁴

Disputes and maintenance of social order have existed since time immemorial, and the resolution mechanisms varied depending on the society or community. Pre-colonial societies were organised into centralized and decentralized systems. Centralized societies had judicial systems with the King as the supreme appellate, while decentralized communities operated under a system of elders. The nature of disputes that existed took various forms, including offences against morality, communal collective wellbeing, and matters such as pregnancies outside marriage.

The nature of dispute resolution aimed at creating harmony, order, morality, and coexistence. The nature of punishments, while sometimes considered archaic or barbaric by modern standards, had no observance to the presumption of innocence, human rights, rule of law, and separation of powers as

⁴³ Speech delivered by Chief Justice of Kenya, Hon. Justice Martha Koome to the Nigerian Institute of Chartered Arbitrators (NICArb), Lagos, December 2024. Reported in <https://dailytrust.com/arbitration-panacea-to-dispute-resolution-in-africa-stakeholders/>.

⁴⁴ Chief Justice of Uganda, Alfonse Chigamoy Owiny-Dollo forward statement in the Strategic Plan for Promoting ADR in Africa at the African Chief Justices' Alternative Dispute Resolution (ADR) Forum. 1.

understood today. It is also notable that some social norms were patriarchal and discriminated against women. The period had methods of peaceful resolution between families, including compensation to the aggrieved party and intermarriages to restore relationships.

Dispute resolutions were aimed at achieving truth and forgiveness. Customary practices and rules of behavior culturally known and applied by natives dominated the core values of conflict resolution in traditional African societies.⁴⁵ These principles were built on the desirability to administer social order and justice in a unique way based on mutual trust and cohesion, the bedrock of affirming public morality and customary values.⁴⁶

Before colonial administration, parties were represented by persons skilled in oratorical prowess with persuasive argumentative power. Parties recounted stories while counsel presented oral arguments, with elders acting as arbiters pronouncing judgment garbed with wisdom and experience.⁴⁷ Pre-colonial punishment was characteristically severe, rigid, and demanding, with laws wholly religious in form representing transcendental laws handed down by gods.⁴⁸

From historical accounts, representation and negotiation were a central factor in families, clans, tribes, and people met one another and sought to regulate marriage customs, contracts, hunting, trade, navigation, communications, disagreements, and wars.⁴⁹ Family members' involvement of both wrongdoer and wronged party reaffirmed communal ties. In pre-colonial Nigeria, strong moral solidarity bonds engendered by religion existed, with violations grounds for punishment that reaffirmed and strengthened social bonds.⁵⁰ Punishment enhanced social cohesion, religious rituals, and family life.

Pre-colonial dispute resolutions fronted restorative justice, with customs as powerful social control means. Pre-colonial African communities' corrective practices echoed underlying traditional values,

⁴⁵ A Oyeniyi & S Ouma, 'A Re-Assessment of the impact and potency of traditional dispute Resolution mechanisms in Post- Conflict Africa', (2017) *Ave Maria International Law Journal*. 1.

⁴⁶ OB Olaoba, 'African Traditional Methods of Conflict Resolution', (2010) PCR831: Course Guide. 41.

⁴⁷ AS Tiewul & FA Tsegah, 'Arbitration and the Settlement of Commercial Disputes' (1975) *A Selective Survey of African Practice*. 393, 396.

⁴⁸ PO Nkwankwo, *Criminal Justice in the Pre-colonial, colonial, and post-colonial eras, An application of the colonial model to changes in the severity of punishment in the Nigerian Law*, (1992) University press of America. 35.

⁴⁹ H. Nicholson, *The Evolution of Diplomatic Method*, (1997) 17.

⁵⁰ Nkwankwo, (n 48 above) 48.

effectively responding to crime before formal criminal justice systems' inception.⁵¹ Ubuntu justice according to precolonial African customs and tradition in conflict resolution was conciliatory, aiming to restore peace and harmony between members.⁵²

1.1.3 The Criminal Justice system in the colonial and post-colonial Uganda

The colonial encounter of the British was in 1894 fundamentally transformed Uganda's justice systems. Colonial ideology in its encounter with indigenous African societies claimed that if Africans claimed to have a criminal justice history and the past, such histories were undocumented and lacked philosophical and intellectual significance.⁵³ The colonial criminal system and dispute resolution in Uganda saw the introduction of a codified system of laws in 1902.

The laws that were made or authorized by the Commissioner, laws contained in the First Schedule to the Foreign Jurisdiction Act of 1890 were made applicable to Uganda. The application of the latter laws were subject to the Uganda Order-in-Council and to the exceptions, adaptations and modifications as described in the Order. The 1902 Order in council introduced the applicability of the English laws under the reception clause,⁵⁴ exposing the white man agenda and side-lined interpretation of the laws. The colonial masters suppressed the native justice systems in implementation of the British legal system or corpus juris Britannia derived from the British culture, norms, and values,⁵⁵ through a narrow interpretation standard of the colonial master. However, most people had confidence in traditional justice systems and continued to challenge the colonial master.

In *Timoni Mwenge v Serwano Migadde*,⁵⁶ this was an application by the Applicant for an order of injunction restraining the respondent from obstructing the survey of 300 acres of land purchased by the Applicant from F.K. Nakatanza. Gary, Ag. J was asked to hold that the land cannot be alienated to the plaintiff inasmuch as it was of Butaka tenure, and the ancestral burial ground of members of the defendants clan, and for that reason by an ancient custom of the Buganda not alienable to persons who were not members of that clan. Although the judge had a precedent in *Fazaldin Miranbux v Simoni*

⁵¹ S. Kinyanjui, 'Restorative justice in traditional pre-colonial „criminal justice systems' in Kenya'. (2009) 1-16, *Tribal Law Journal* 10(1).

⁵² JY Mokgoro, 'Ubuntu, the constitution and the rights of non-citizens'. (2010) 321, *Stellenbosch Law Review* 21(2).

⁵³ W Idowu, 'African philosophy of law: Transcending the boundaries between myth and reality. (2005) 52-93. *An Interactive Interdisciplinary e-Journal for Cultural and Historical Studies and Creative Work* 4(2).

⁵⁴ The 1902 Orders in Council, Article 15.

⁵⁵ D Rukare, , & D Banik, *The access to justice challenge in Uganda. Rights and legal empowerment in eradicating poverty*, (2008) 109-30.

⁵⁶ Miscellaneous cause No. 19 of 1933.

Lule,⁵⁷ which had held that such land was inalienable outside the clan. In examining the land legislation passed by the Native Government for the Baganda of Buganda, he held that such tenure no longer existed. He stated that if any provisions of any law are repugnant to the continued existence of any custom, that custom had to be treated as abrogated and destroyed even if the law does not expressly abrogate it. That right of the British Government to acquire any of the land public or private compulsorily for purposes of public utility was expressly recognised.⁵⁸ The Court on relying on *Stanislas Mugwanya v Lwi Sensuma*,⁵⁹ further stressed that the Lukiiko did not always allot Butaka land to members of the clan.

A High Court of Uganda to be known as His Majesty's High Court of Uganda was established under Article 15 of the Order in Council with full civil and criminal jurisdictions in all cases and over all persons in Uganda. Judges of this court were appointed and dismissed at the pleasure of His Majesty, the King of England. The Commissioner was authorized to make Ordinances establishing subordinate courts including courts of special jurisdiction. Appeals to and from these courts and the High Court were also to be provided for by similar Ordinances.

In all cases, civil or criminal, to which natives were parties, courts were guided by native law in so far as it was applicable and is not repugnant to justice and morality or inconsistent with any Order-in-Council or Ordinance, or any regulation or rule made under any Order-in-Council or Ordinance; and all such cases were to be decided according to substantial justice without undue regard to technicalities of procedure and without undue delay. This repugnancy clause gave colonial authorities through the courts power to determine which indigenous practices were acceptable, effectively subordinating customary justice systems to colonial legal frameworks.

The repugnancy clause was commonly invoked by English colonial courts to invalidate African customary law based on the rationale that the legal philosophies behind some of those customs were repugnant to justice and morality.⁶⁰ In the case of *R v. Amkeyo*,⁶¹ the court invalidated a marriage validly contracted under African Customary Law on the basis that such a marriage was a wife purchase and

⁵⁷ 3 U.L.R 101.

⁵⁸ *Alipo Kabazi v Jemusi Kibuuka* 1 U.L.R 9.

⁵⁹ 2 U.L.R 207.

⁶⁰ B Wire, *Integration of African customary legal concepts into modern law: restorative justice: a Kenyan example*. Societies, (2019) 9(1), 17.

⁶¹ (1952) 19 E.A.C.A.

repugnant to law on grounds that it differed so materially from the ordinarily accepted idea of what constitutes a civilized form of marriage.

In the case of *Gwao Bin Kilimo v Kisunda Bin Ifuti*,⁶² Wilson J, was tasked with an application for revision of a decision of the second class subordinate Court at Singida. The Judge reversed the decision of the lower Court and allowed the objection and ordered the restoration to the Applicant of his two head of cattle which were wrongly seized. In his analysis, he stated that molarity and justice are abstract conceptions and every community probably has an absolute standard of its own by which to decide what justice is and what molarity is. He stated that the only standard of justice and molarity which a British Court can apply was its own British standard, and that it was not just to take away a man's property in order to compensate a party who has suffered injury at the hands of the man's son, the son being of full age and being fully responsible in law for his own actions. Therefore, that the Mosaic law was of no doubt contemplated that the sins of the fathers should be visited on the children up to the third and fourth generation was contrary to the principles of British justice that sins of the sons should be visited on the fathers, when the sons are themselves fully responsible persons in law.

Pre-colonial crimes were acts seriously violating indigenous people's *collective conscience* and essentially violations of fundamental moral code which was held sacred, provoking punishment for this reason. The advent of colonial rule saw the transposition of western-styled dispute resolution mechanisms where court assisted instrumentality became the only option for the parties.⁶³ This colonial epoch significantly affected political, social, cultural, and economic life.⁶⁴ Punishment was severer in the colonial era than in the pre-colonial period because it was geared to exploitation and it was through legal punishment that the colonialists met their exploitative goals.⁶⁵ The colonialists met their exploitative goals through legal punishment.

The perpetrators of the crime of witchcraft were punished by death rather than restitutive laws, and other regulatory sanctions addressed against the crimes of murder, burglary, theft, etc. The crime of witchcraft evoked moral emotions and was a shock to all good consciences; consequently, punishment by death was demanded more than any other type of sanction.⁶⁶ The colonial government attempted

⁶² (1938) 1 T.L.R (R) 403.

⁶³ A Oyeniye Abe & S Ouma, (n 45 above) 1.

⁶⁴ N Gatheni, *Mapping cultural and colonial encounters, 1880s–1930s*. (2009) 40.

⁶⁵ Z Renate, *Frantz Fanon: Colonialism and Alienation*, New York: Monthly Review Press. (1974) 54.

⁶⁶ D Emile. (1933). *The Division of Labor in Society*, New York: The MacMillan Company. (1933) 112.

to regulate the criminal offences like witchcraft by enacting the Witchcraft Act.⁶⁷ This was later held to be unconstitutional in the case of *Salvatori Abuki & Anor v The Attorney General*.⁶⁸

The post-colonial period and the 1995 constitution entrench Chapter IV embodying elements of natural justice, fair hearing, legal representation, presumption of innocence. The concept of plea bargaining requires waiving of constitutionally guaranteed rights. The 1995 Constitution of the Republic of Uganda recognizes various methods in dispute resolution. Uganda currently employs different methods and various platforms in conflict resolution and this is evident from the adoption of electronic court system. This is due to the excess of prisoners and lack of manpower, and resources to try each prisoner in a reasonable amount of time.⁶⁹ However, whether these modern innovations, including plea bargaining, genuinely serve or have served constitutional access to justice or merely address administrative convenience remains the central inquiry of this research.

1.1.4 Human rights and access to justice

Human rights are re defined to mean entitlements enjoyable by persons by virtue of being human. Fundamental human rights and freedoms are provided for under Article 20 of the 1995 Constitution as inherent and not granted by the State. The State has a duty to respect, uphold, and promote them by all organs and agencies of the government and all persons.⁷⁰ Human rights are truths held self-evident: that all people are created and endowed by their Creator with certain inalienable rights, and that governments are instituted to secure these rights, deriving just powers from the consent of the governed.⁷¹

Human rights are a component of the rule of law or the concept that the law should govern. Having recognized the Magna Carta as one of the first written documents, it opened path for other legal instruments that had an impact of the rights of peoples. These among others included the Habeas Corpus Act of 1679 and the Bill of Rights of 1689. The lessons that derive from the enlightenment philosophy, the natural law school and the theory of social contract,⁷² and other liberalism and

⁶⁷ Witchcraft Act, Cap 108 Laws of Uganda.

⁶⁸ Constitutional Case No .2 of 1997.

⁶⁹ J Kitara, Gulu Prison Inmates Embrace Plea Bargaining Campaign, NEW VISION (June 16, 2018), Available on <https://www.newvision.co.ug/new-vision/news/1479809-gulu-prison-inmatesembrace-plea-bargaining-campaign> [Last accessed on 23rd April 2026].

⁷⁰ *The Honourable Attorney General (Tanzania) v Reverend Christopher Mtikila* Civil Appeal No. 45 of 2009.

⁷¹ The American Declaration of Independence, July 4th 1777, Preamble.

⁷² Rousseau, (1762) 1968.

utilitarianism authors. The same as well laid the foundation documents of the modern day democracies, such as the Declaration of Independence, the Bill of Rights and the Constitution of USA,⁷³ the Declaration of Rights of Man and Citizen in France.⁷⁴

Human rights are generally categorized into three generations. First is the conventional liberal conception of human rights born from Western European ideas of the seventeenth and eighteenth centuries, symbolized by the thinking's of John Locke.⁷⁵ The second generation rights were social and economic in character. The third generation of rights founded in the wake of the unfavorable situation in which the Third World found itself, where there arose a need to redress the imbalance in a rivalry-ridden world so as to enhance 'peoples rights' or 'solidarity right'.

In interpreting the Bill of Rights and chapter four of the 1995 Constitution, courts take cognizance that constitutional provisions containing fundamental rights are permanent provisions intended to cater for all times and give the widest possible construction to realize guaranteed rights' full benefit.⁷⁶ When interpreting the Constitution and more particularly the bill of rights, it has to be done against the backdrop of our cheered and repressive history in the human rights field.

Access to justice is guaranteed as a right under such treaties as the Universal Declaration of Human Rights (UDHR). Access to justice can be viewed as right of access to the justice system by citizens, encompassing financial accessibility and acceptance of the judicial system.⁷⁷ Access to Justice is an element of good governance, and rule of law. The international community is required to commit to promoting the rule of law at the national and international levels and to ensuring equal access to justice for all by 2030.⁷⁸ The World Bank defines access to justice as access y the people to fair, effective, and accountable mechanisms for the protection of rights, control of abuse of power and resolution of conflicts.⁷⁹

⁷³ D Armitage, 'The Declaration of Independence and International Law', *The William and Mary Quarterly*, (3rd Ser., Vol. 59, No. 1, Jan., 2002), 39-64.

⁷⁴ G Jellinek, *The declaration of the rights of man and of citizens: a contribution to modern constitutional history*. (1901) 8.

⁷⁵ AA Annainand & FM Deng (eds.), *'Human Rights in Africa: Cross Cultural Perspectives, Washington D.C.'* The Brookings Institution, (1990) 33.

⁷⁶ PM Mpanga 'Interpreting the human right to water as a means to advance its enforcement in Uganda' (2016) 16 *African Human Rights Law Journal* 204-224.

⁷⁷ D Rukare, & D Banik, (n 45 above) 109-30.

⁷⁸ SDG 16.3.

⁷⁹ World Bank, 2007:1 available on <http://dx.doi.org/10.3362/9781780448435.015>. Accessed on 9th September 2025.

Access to Justice in Uganda is limited due to number of factors which include case backlogs, high litigation costs, and delayed trials, geographical barriers to formal courts systems, conservative cultural barriers, and ignorance of legal procedures of access to justice. This is observable from the recent Judiciary Reports which indicate that over 70,000 cases are pending in the High court.⁸⁰ Therefore, finding more efficient and just ways of resolving criminal cases is a fundamental process of rule of law,⁸¹ and development.⁸²

Access to justice constitutes a fundamental pillar of any democratic society and remains central to the realization of constitutional rights under the 1995 Constitution of the Republic of Uganda. It is notable that disputes are inevitable occurrences in society, and throughout history, communities have devised various mechanisms to resolve them. The Judiciary of Uganda is implementing a comprehensive strategy of encouraging Alternative Dispute Resolution (ADR), both within and outside the traditional court structure and system. Plea bargaining represents one such ADR mechanism in criminal procedure, yet its effectiveness in achieving constitutional access to justice remains insufficiently examined.

Systemic failures within Uganda's criminal justice system exacerbate constitutional concerns. Judicial officials lack sufficient time and resources to manage overwhelming caseloads that continue to increase year in year out. Consequently, many prisoners languish on remand for extended periods often years without trial, resulting in deprivation of constitutionally protected human rights. In these circumstances, some prisoners express willingness to plead guilty simply to begin serving sentences and secure eventual release. This creates a coercive environment where desperation, rather than genuine admission of guilt or voluntary waiver of rights, drives plea bargain participation.

The exclusion or marginalization of victims and complainants from plea bargaining negotiations by some judicial officers further compounds constitutional concerns. Although criminal cases are prosecuted on behalf of the State in the public interest, justice necessarily encompasses the interests of victims. However, plea bargaining negotiations usually occur primarily between prosecutors and accused persons (or their counsel), with judicial officers sometimes failing to adequately involve or

⁸⁰ The Judiciary National Court Case Census 2025 Report. Available on <https://judiciary.go.ug/files/downloads/The%20Judiciary%20National%20Court%20Case%20Census%202025%20Report.pdf> Accessed on 10th February 2026.

⁸¹ SK Amoo & I Skeffers, *The rule of law in Namibia* (2007) 17 at 37.

⁸² C Alkon, *Plea bargaining as a legal transplant: A good idea for troubled criminal justice systems?* (2009) 335-418.

consider victims' perspectives. Due to constant adjournments and prosecutorial delays in presenting evidence, some complainants lose interest in their cases, creating pressure to accept plea bargains that may not serve justice for victims, accused persons, or society.

Inadequate legal representation in Uganda presents a critical constitutional challenge. Many accused persons, particularly those charged with capital offenses, receive representation from unprepared state-brief-allocated lawyers rather than competent, adequately prepared counsel. State brief lawyers tend to get overwhelmed due to the number of files allocated to them everyday session and objectively they cannot prepare full for all the case files. Such representation raises questions about whether plea bargains concluded under these circumstances can be considered voluntary, informed, and unequivocal as required by both domestic constitutional standards and international human rights law.

Underlying systemic failures including deficiencies in investigations, evidence gathering, witness coordination, and prosecutorial preparation create conditions that compel accused persons to resort to plea bargains not as genuine admissions of guilt but as pragmatic responses to systemic dysfunction. Prolonged remand periods without trial, delayed justice, and lack of confidence in the criminal justice system transform plea bargaining from a voluntary alternative dispute resolution mechanism into a coercive necessity for survival within a failing system.

Understanding these historical perspectives and challenges in the criminal justice system is critical to assessing whether plea bargaining as currently practiced is effective in aligning with or departs from Uganda's constitutional vision of justice, and whether it honours or undermines the cultural and legal traditions that shaped the 1995 Constitution's Bill of Rights.

1.1.5 Alternative Dispute Resolution Mechanisms

Alternative Dispute Resolution (ADR) Mechanisms refer to different ways of resolving disputes outside of court, including plea bargaining. It is the process of opting for alternative forms of dispute resolution and justice system without necessarily engaging adversarial court litigation. The adversarial court system of litigation focuses on a winner-and-loser approach without necessarily foreseeing the potential impacts in the aftermath of the decision. ADR is aimed at creating an avenue for alternative resolution of disputes other than litigation and avoiding the negative effects of retributive justice, and the costly, expensive nature of litigation. The goal of ADR is to find a procedurally just process that

can produce satisfactory results.⁸³ Broadly analysing, the object of ADR is not retributive justice that emphasizes the punishment of alleged perpetrators,⁸⁴ but rather focuses on restorative justice reflected in mutual acceptance and compliance with the negotiated reparation agreement.⁸⁵

The idea of Alternative Justice System (AJS) provides avenues for access to justice and advocates for a flexible approach convenient to both parties. The approach to alternative dispute resolution takes various forms, which include but not limited to mediation, arbitration, negotiation and conciliation. Therefore, it provides cheap, simple procedures and quick access to justice.

The High Court of Uganda established the Mediation desk, and it has been successful in family matters. This has created harmonious relationships among parties and strengthens the institution of family and marriage. The Judicial Training Institute (JTI) has also undertaken training of Religious leaders in Alternative Dispute Resolution, focusing on the acquisition of ADR skills while performing their duties and understanding the social context within which dispute resolution occurs. This is based on the need to enhance their capacities to serve as effective mediators while complementing the formal justice system.

Alternative Justice Systems (AJS) indicate other forms of addressing conflicts and dispensing justice operating alongside or in place of formal legal systems. This form of justice is intended to emphasize reconciliation, restore social harmony, and ensure community based justice intended to close the justice gap.⁸⁶ In Uganda, alternative justice system includes involving other dispute resolution avenues like the religious institutions, cultural institutions. The involvement of cultural institutions was evident in the *Mathew Kanyamunyu & Anor v Uganda*,⁸⁷ where the parties opted for a plea bargain and underwent the traditional initiation of *mato put*. The process indicates remorse and acceptance of responsibility for the crime.

⁸³ AK Schneider, 'Bargaining in the Shadow of International Law: What the Normalization of Adjudication in International Governance Regimes Means for Dispute Resolution', (2009) 41 *New York University Journal of International Law and Politics*. 789, 790.

⁸⁴ LB Bingham, 'Designing Justice: Legal Institutions and Other Systems for Managing Conflict', (2008) 24 *The Ohio State Journal on Dispute Resolution*, 41.

⁸⁵ H Messmer & O Hans-Uwe (eds.), *Restorative justice on trial: pitfalls and potentials of victim-offender mediation*, international research perspectives (1992) 2.

⁸⁶ Justice Needs and Satisfaction in Uganda 2024, HiiL Report Pg. 181.

⁸⁷ Criminal Miscellaneous Application No. 151 of 2020.

Alternative Dispute Resolution (ADR) aims at finding solutions acceptable to both sides and is less interested in determining a winner or loser but rather in achieving fairness. The integration of ADR in the formal court system reflects a shift toward traditional dispute resolution mechanisms. ADR has been implemented in different sectors of the Judiciary, and part of an international strategy. The Standing International Forum of Commercial Courts (SIFoCC), a 2016 initiative of the former Lord Chief Justice of England and Wales, Lord Thomas, allows judiciaries in commercial courts from across the world to take part in a discussion and collaboration with a focus on commercial courts and Alternative Dispute Resolution.

1.1.6 Plea bargaining

Plea bargaining refers to a negotiation process where a prosecutor makes certain concessions in exchange for a defendant's guilty plea.⁸⁸ It is a practice encompassing negotiation over reduction of sentence, dropping some or all of the charges, or reducing the charges in return for admitting guilt, conceding certain facts, foregoing an appeal, or providing cooperation in other criminal case.⁸⁹ The accused person negotiates with the prosecuting authority either to seek for reduction of the charges maybe from a capital offense to a lesser offence.⁹⁰ Therefore, the agreement implies the waiver of the presumption of innocence and the right to a public trial with all the safeguards linked to it and the State offer something in return.⁹¹ Therefore, the criminal receives a significantly reduced sentence, the prosecution is spared the burden of establishing its case beyond reasonable doubt, and the Court is eventually spared the time consuming process.⁹²

Plea bargaining has elements of African traditional justice. It is a reflection and healing process through which an accused acknowledges their fault and pleads for forgiveness in form of a shorter sentence, which also saves courts time. In practice, the parties at both sides take into consideration the mitigating and aggravating factors in plea negotiation. Therefore, a plea bargain presents a contract with juristic effect between accused persons and prosecutors.⁹³

⁸⁸ K Kovarovic, *Pleading for Justice: The Availability of Plea Bargaining as a Method of Alternative Dispute Resolution at the International Criminal Court*, (2011) 283, 289.

⁸⁹ MM Feeley, 'Perspectives on Plea bargaining', (1979) 13 *Law and Society Review*, 199-200.

⁹⁰ Interview with Counsel Ivan Evans Kyazze, Resident Senior State Attorney in ODPP, at Makerere University Guest House on 8th May 2026.

⁹¹ RL Lippke, *The Ethics of plea bargaining*, Oxford, (2011) 61, 232.

⁹² Y Bamwine, *Plea bargaining in Uganda. Law, Procedure and Practice*, Royal Printhood Publishers. (2022) 10.

⁹³ *Santobello v New York* 404 US 257 (1971).

Justice is often used interchangeably with law, stemming from the concept that law is an instrument of social, economic, and political control that is geared towards justice.⁹⁴ The aim of justice in African philosophy is eliminating disharmony among people in a communities.⁹⁵ This stands in stark contrast to western legal systems' approach to justice which is adversarial, repressive, and retributive justice approaches.⁹⁶ It thus acts as an additional alternative dispute resolution process for individuals to gain justice through a more efficient and personalized experience than a trial can provide.⁹⁷

Plea bargaining represents a form of Alternative Dispute Resolution (ADR) in criminal procedure, yet its implementation raises constitutional concerns. Some Judicial officers fail to adequately involve victims and complainants in the bargaining process, with negotiations occurring primarily between prosecution and the applicant or their counsel. This practice is particularly problematic given that criminal cases are prosecuted on behalf of the State, often leaving victims with limited or no voice in the process. Due to constant adjournments and prosecutorial delays, some complainants lose interest in their cases, creating pressure on accused persons to accept plea bargains regardless of whether they serve justice.

The discussions on plea bargaining in Uganda are back to the discussions by Hon. Justice Jeremiah Herbert Ntagoba when he was still the principal judge,⁹⁸ and later furthered by Hon. Justice James Ogola.⁹⁹ Plea bargaining was introduced in Uganda with the support of Pepperdine University in 2015 in eleven High Court circuits to help improve the case backlog in the country, which was resulting in severe prison overcrowding.¹⁰⁰ Further, plea bargaining arose from justice administration delays,

⁹⁴ Q Olanira, 'Administration of justice and the development of African jurisprudence: Yoruba and Igbo societies as case studies'. Unpublished thesis, Obafemi Awolowo University, Nigeria, 2016 25.

⁹⁵ JY Mokgoro, (n 52 above) 21(2), 321).

⁹⁶ E Masitera, *Ubuntu justice and the power to transform the modern Zimbabwean rehabilitation justice system*, (2018) 109–120.

⁹⁷ J Cohen & P Harley, 'Dispute Resolution Institute Symposium: Intentional Conversations about Restorative Justice', (2013) *Mediation and the Practice of Law*. 235, 245.

⁹⁸ First Principle Judge, 1988-2001.

⁹⁹ Second Principle Judge, 2001-2010.

¹⁰⁰ D Kiyonga, Plea bargain innovation helps clear 1,500 cases, THE OBSERVER (Oct. 3, 2016), <https://observer.ug/news-headlines/46770-plea-bargain-innovation-helps-clear-1-500-cases>.

especially from prosecution. Criminal law principle is that prosecution bears the burden to prove cases against accused persons,¹⁰¹ proven beyond reasonable doubt though not mere any shadow of doubt.¹⁰²

Plea bargaining provides an alternative option for accused persons who wish to admit their guilt and accept blame for their actions without having to go for trial. A plea bargain is voluntary, and an accused person expresses willingness to participate in the bargain, but judges or magistrates have a final approval of guilty pleas and sentencing terms.¹⁰³ Plea bargaining, also known as a plea agreement or plea deal, has roots in the United States of America,¹⁰⁴ and it is the process whereby the accused and the prosecutor in a criminal case work out a mutually satisfactory disposition of the case subject to court approval.¹⁰⁵ The agreement had to stipulate the terms that is to say a reduced charge for example from murder to manslaughter or simply reduced sentence for reasons appearing in the agreement. This in turn saves accused persons and witnesses from the anxiety of criminal prosecution, and also encourages victim consultation before the agreement is concluded which promotes public participation in the criminal justice system and transparency.¹⁰⁶

Theoretically, plea bargaining is rooted in contract law principles requiring mutual agreement subject to judicial safeguards to ensure fairness and legality. Plea bargaining takes different types, for example fact bargaining where the accused person changes his or plea on the basis that the prosecution represent facts of the case which will not directly implicate the accused. Secondly, charge bargaining where the prosecutor drops one or more charges for a lesser sentence or lesser charge. Thirdly, sentence bargaining aimed at giving the accused a lighter punishment.

Therefore, it embodies elements of mutual benefit and informed consent; the plea should be voluntary having understood the charges and the consequences of a plea bargain to ensure maintenance of integrity of the criminal justice system in promoting flexibility and efficiency in handling criminal law

¹⁰¹ *Woolmington v DPP* [1935] AC 462; Lord Viscount Sankey quoted: “Throughout the web of the English Criminal Law one golden thread is always to be seen, that it is the duty of the prosecution to prove the prisoner's guilt subject to what I have already said as to the defence of insanity and subject also to any statutory exception. . . No matter what the charge or where the trial, the principle that the prosecution must prove the guilt of the prisoner is part of the common law of England and no attempt to whittle it down can be entertained.”

¹⁰² *Miller v Ministry of Pensions* [1947] 2 All E.R. 372 Lord Denning stated that, “The degree of beyond reasonable doubt is well settled. It need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of a doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice.”

¹⁰³ J Kitara, Gulu Prison Inmates Embrace Plea Bargaining Campaign, NEW VISION (June 16,2018), <https://www.newvision.co.ug/new-vision/news/1479809/-gulu-prison-inmatesembrace-plea-bargaining-campaign>

¹⁰⁴ TW Church, ‘In defence of bargain justice’, *Law and Society Review*, (1979) 13(2):509.

¹⁰⁵ BA Garner, (Ed.). *Black's Law Dictionary* (Seventh Edition): West Publishing Company Ltd. 1999.

¹⁰⁶ Y Bamwine (n 92 above) 13.

cases. Therefore, the courts are guided by the procedure whereby the agreement has to be explained to the accused person by the advocate, Justice of the peace or a duly certified court interpreter. Further, the Court or the advocate has to explain the implications of the agreement to the accused person and court has to ensure that it was not obtained under force, coercion, or misrepresentation of facts.¹⁰⁷

Plea bargaining requires an accused to waive their constitutionally protected rights. The standard for valid waivers derives from the *Johnson v Zerbst*,¹⁰⁸ which established that the waiver must be an intentional relinquishment of the right. This goes beyond merely informing the accused of their constitutional rights but fully understand what they are relinquishing.

Plea bargaining has been implemented in other countries such as Namibia, Kenya, and South Africa through the Criminal Procedure (Plea bargaining) Rules, which enable prosecutors to make informed decisions while maintaining ethical standards and accountability. Plea bargaining has been key in reducing backlogs in the criminal justice system of these countries, and creating a restorative approach between the victims and perpetrators. The High Court of Uganda records indicate that numerous cases have been handled successfully, and the High Court Criminal Division is undertaking plea bargain camps in prisons across the country to ease access for prisoners who wish to plea bargain.

Lastly, proving cases requires various steps involving tracing and coordinating witnesses, evidence gathering, and financial delays causing investigative delays. Delayed justice costs are heavy, immeasurable, with no remedy removing the sense of injustice delayed justice costs the accused.¹⁰⁹

1.2 Problem Statement

The rise of negotiated justice can be attributed to a great extent to the failure of the justice systems to go through a full-fledged procedure and the public trial within reasonable time and at reasonable costs.¹¹⁰ The 1995 Constitution of the Republic of Uganda guarantees fundamental rights to fair, speedy, and public hearings under Article 28, establishing comprehensive protections that include the presumption of innocence, the right to legal representation, the right to examine witnesses, the right

¹⁰⁷ The judiciary (Plea Bargain) Rules, 2016.

¹⁰⁸ 304 US 458 (1938).

¹⁰⁹ B Odoki, 'Delayed Justice: What are its full costs, a paper presented at a Human Rights Seminar in Botswana 1990' (1996) *Makerere Law Journal* 30-42.

¹¹⁰ L Bachmaier, (2018). 'The European Court of Human Rights on negotiated justice and coercion' (2018) 26(3) *European Journal of Crime, Criminal Law and Criminal Justice*, 236-259.

to present evidence, and the right against self-incrimination. These constitutional safeguards represent the cornerstone of Uganda's democratic commitment to justice and the rule of law.

However, the implementation of plea bargaining through the Judicature (Plea Bargain) Rules No. 43 of 2016 and the 2022 Plea Bargain Guidelines creates a fundamental constitutional tension that threatens to undermine these protections. In plea bargaining agreements, accused persons waive and relinquish multiple constitutional rights simultaneously. The judiciary is constitutionally entrusted with protecting these inherent rights to fair hearing. Yet current plea bargaining practices require applicants to waive constitutional protections in exchange for reduced sentences, what can be characterized as *handshake sentences* raising fundamental questions about whether administrative efficiency has supplanted constitutional justice.

While plea bargaining is intended to enhance access to justice, promote fairness, and reduce case backlogs in the criminal justice system,¹¹¹ the traditional trial process's length and complexity cannot justify circumventing constitutional protections. The current plea bargaining framework appears to require self-incrimination in return for reduced sentences, potentially undermining the fundamental purposes of criminal law and justice administration as envisioned by the framers of the 1995 Constitution of the Republic of Uganda, thus the need to examine whether they have been effective in promoting access to justice under the 1995 Constitution.

This research therefore examines whether plea bargaining effectively achieves access to justice as guaranteed under the 1995 Constitution, or does it represent an unconstitutional compromise that sacrifices fundamental rights for administrative convenience? The study interrogates whether the comprehensive waiver of constitutional rights inherent in plea bargaining serves the constitutional mandate of justice or merely provides an expedient mechanism for case management that derogates from constitutional protections while perpetuating systemic failures that should instead be addressed through comprehensive criminal justice reform. The research focuses on the legitimacy of the constitutional waivers.

¹¹¹ Remarks by the Executive Director of the Judicial Training Institute (JTI) Justice Andrew Khaukha on 13th and 14th June 2025 ahead of the plea bargaining camps scheduled for Nakasongola, Gulu, and Lira Prisons. These were aimed at assessing preparedness and sensitizing inmates on the benefits of plea bargaining as a tool for timely and restorative justice.

1.3 Research Objectives

The research canvases general and specific objectives to comprehensively examine the effectiveness of plea bargaining.

1.3.1 General Objective

1. To examine the effectiveness of plea bargaining in achieving access to justice under the 1995 constitution of the Republic of Uganda.

1.3.2 Specific Objectives

1. To trace the historical evolution of plea bargaining systems and their integration into Uganda's criminal justice framework; analysing pre-colonial, colonial, and post-colonial dispute resolution systems in Uganda and assess the relevance of contemporary plea bargaining practices.
2. To evaluate the international legal and human rights framework governing plea bargaining.
3. To critically assess the domestic legal framework governing plea bargaining in Uganda.
4. To conduct a comparative analysis of plea bargaining implementation in other jurisdictions and identify best practices for constitutional compliance by the Judiciary and the Directorate of Public Prosecutions (ODPP).
5. To develop comprehensive legal, policy, and procedural recommendations for improving plea bargaining practices to align with constitutional guarantees of access to justice under the 1995 Constitution of the Republic of Uganda.

1.4 Research Questions

1. What are the historical developments of plea bargaining systems, and how were they integrated into Uganda's criminal justice framework?
2. How do pre-colonial, colonial, and post-colonial dispute resolution systems in Uganda inform contemporary understanding of plea bargaining and access to justice?
3. What international legal and human rights standards govern plea bargains and access to justice?

4. What is the domestic legal framework governing plea bargaining in Uganda, and does it adequately protect constitutional rights; do the current plea bargaining practices achieve access to justice as guaranteed under Article 28 of the 1995 Constitution?
5. How have other jurisdictions successfully implemented plea bargaining while upholding constitutional safeguards, and what lessons can Uganda adopt?
6. What legal, policy, and procedural reforms are necessary to ensure that plea bargaining fulfils the constitutional mandate of access to justice rather than circumventing constitutional protections?

1.5 Scope of the study

The study focuses on the High Court Criminal Division and Court of Appeal particularly capital cases because Magistrate Courts do not have jurisdiction over capital offences due to the gravity and nature.¹¹² The Research examines the pre-colonial system of dispute resolutions and the subsequent developments up to 1st September 2025. This includes both the developments in criminal law, criminal procedure and constitutional developments. The same highlights the challenges associated with plea bargains.

1.5.1 Content scope

The research examines the effects of plea bargaining in achieving access to justice under the 1995 constitution. It highlights the historical developments of plea bargains, the challenges, and the recommendations for reform.

1.5.1.1 Conceptual Considerations

The research was approached under the following conceptual consideration:

1.5.1.2 Criminal Justice and the history of criminal justice

Criminal justice is a system used by government to maintain social control, prevent crime, enforce laws, and administer justice.¹¹³ This is enforced and maintained by government organs like the police,

¹¹² The Magistrates Court Act, Section 161.

¹¹³ CR Jeffery, *Criminology: An Inter-Disciplinary Approach*, (1990) 342-346.

prisons, military, and rehabilitation centres. The pursuit of criminal justice is predicated on fairness or due process which is essentially the pursuit of an ideal.¹¹⁴

Modern criminal justice system has evolved with new forms of punishment, added rights for offenders and victims and police reforms reflected in changing customs, political ideals and economic conditions.¹¹⁵ Traditional forms of punishment in criminal matters was the payment to the victim of crime (or their family), known as wergild, of violent crimes such as robbery, murder, or manslaughter. Those who could not afford to buy their way out of punishment were subjected to various forms of harsh corporal punishments, such as mutilation, branding, burying a live, and burning alive.¹¹⁶

The research examines whether plea bargaining has maintained the balance between societal protection, offender accountability, victim interests, and constitutional rights, or whether it tilts excessively toward administrative efficiency at constitutional rights' expense.

1.5.1.3 Retributive Justice

Traditional justice system attempted to achieve justice by allowing the procedure time to take into account the gravity of the crime and the interests of the victim. This theory emphasizes punishing offenders for what they have done. The least substantial reason to believe that an investigation would not serve the interests of justice the traditional criminal justice system is primarily focused on punishment and does not allow the victim to address his own personal needs and concerns.¹¹⁷

Proponents argue that punishment is crucial to make perpetrators accountable for their past actions; to deter future crime; to counter a culture of impunity; and create an environment in which perpetrators and victims can realistically be expected to live next to one another.¹¹⁸

Plea bargaining's relationship with retributive justice is complex; while it results in punishment inform of reduced sentences, questions arise about whether negotiated sentences adequately reflect crime severity, satisfy societal punishment expectations, or achieve deterrence objectives.

¹¹⁴ PO Nkwankwo, (n 48 above) 5.

¹¹⁵ CR Jeffery, (n 113 above) 342-346.

¹¹⁶ PO Nkwankwo, (n 48 above) 6.

¹¹⁷ Centre for Justice and Reconciliation: What is Restorative Justice?, RESTORATIVE JUSTICE, <http://restorativejustice.org/am-site/media/what-is-restorative-justice.pdf> (last visited August 30th, 2025).

¹¹⁸ Cahill, Michael 2007, Retributive Justice in the real world. *Washington Law review*, Volume 85, 4. Raymond, Greg 2005.

1.5.1.4 Restorative Justice

Restorative justice can be defined as a process or processes that is utilized in criminal justice systems around the world to offer a more personal form of justice.¹¹⁹ It entails restoring victims, repairing harm, and reweaving the fabric of human relationships in a community.¹²⁰ This is intended to achieve justice in a non-conventional way. Broadly, restorative justice emphasizes healing, restoration and reparation.¹²¹ It is an umbrella term referring to processes that bring together all the parties affected by a crime to actively participate in the resolution of matters arising from this crime.¹²²

Restorative justice looks at the effect of the crime on the victim and his relationships with other individuals who were affected by the crime.¹²³ The essence of restorative justice to create a solution to a never ending cycle of anger and revenge, give the victims a sense of peace by enabling them to heal and move on with their lives and to reintegrate the offenders back into society.¹²⁴

1.5.1.5 Transitional Justice

Transitional Justice includes arrange of approaches that societies undertake to reckon with legacies of widespread or systematic human rights abuses as they move from a period of violent conflict or oppression towards peace, democracy, rule of law, and respect for individual and collective rights.¹²⁵ This form of justice lays a ground for restorative justice. It is aimed at consolidating peace, promoting human rights, democracy and healing past wrongs in such post conflict situations.¹²⁶ This form of justice is traced back to the 1990s human rights struggles to address systematic abuses by former regimes without jeopardizing the ongoing political transformations.¹²⁷

¹¹⁹ J Cohen & P Harley, (n 97 above) 254.

¹²⁰ J Cohen & P Harley, (n 97 above) 254.

¹²¹ E McLaughlin, *Restorative Justice: Critical issues*, Sage Publications, (2003) 20-25.

¹²² H Zehr, Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters, ECOSOC Res 2000/14, UN Doc E/2000/INF/2/Add.2 35 (2000).

¹²³ ME Reimund, 'Criminal Justice System Symposium: The Law and Restorative Justice: Friend or Foe? A Systematic Look at the Legal Issues in Restorative Justice', (2005) 667, 673-80.

¹²⁴ DL Christopher, *They All Laughed at Christopher Columbus When he Said the World was Round- The Not-So-Radical and Reasonable Need for a Restorative Justice Model Statute*, 30. (2011). 530.

¹²⁵ International Centre for transitional justice at <http://ictj.org/en/tj/>.

¹²⁶ MS Turyagenda, 'Justice is in the eyes of the beholders: Restorative and Retributive Justice in Northern Uganda'. Research Report submitted in partial fulfilment for Master's Degree in Human Rights Practice, 2009 1.

¹²⁷ International Centre for Transitional Justice (ICTJ) 2008 at <http://www.ictj.org/en/tj>.

The International Centre on Transitional Justice (ICTJ) states that from the case of *Velasquez Rodriguez v Honduras*,¹²⁸ in which the Inter-American court found that all states have four fundamental obligations in the area of Human Rights i.e. to take reasonable steps to prevent Human rights violations, to conduct a serious investigation of violations when they occur, to impose suitable sanctions on those responsible for the violations and to ensure reparation for the victims of the violations.

The Ugandan Parliament enacted the Amnesty Act of 2000, which aimed to break the cycle of violence in northern Uganda by encouraging combatants of various rebel groups to leave their armed groups without fear of prosecution.¹²⁹ Since its passage into law, Ugandans largely supported the Amnesty Act and perceived it as a crucial tool for ending the violence and promoting reconciliation.¹³⁰ According to the Amnesty Act, the government was not to prosecute or punish such persons if they had reported to the nearest local or central government authority, renounce and abandon involvement in the war or armed rebellion, and surrender any weapons in their possession.¹³¹

While transitional justice typically addresses mass atrocities and conflict situations as indicated, its principles inform this research by highlighting tensions between justices inform of prosecution, punishment, and peace inform of reconciliation and social cohesion. Plea bargaining similarly involves trade-offs between full prosecution and negotiated outcomes.

1.5.1.6 Traditional Justice

The term traditional justice refers to customary law processes used to resolve disputes. This term encompasses processes that were used prior to the conflict, and those that have been modified to deal with atrocities committed during the conflict.¹³² Traditional justice processes indicates that the processes used among communities in Uganda entail some variations in content, but they embody comparable restorative processes that aim at realizing justice through compensation and reconciliation.¹³³

¹²⁸ IACtHR, July 29, 1988.

¹²⁹ Amnesty Act, 2000, preamble.

¹³⁰ U.N. Disarmament, Demobilization, and Reintegration Resource Centre, Uganda, <http://www.unddr.org/countryprogrammes.php?c=37> last visited 31st August, 2025.

¹³¹ The Amnesty Act, 2000, Section 4.

¹³² H Among, 'The application of traditional justice mechanisms to the atrocities committed by child soldiers in Uganda: A practical restorative justice approach', (2013) 13 *African Human Rights Law Journal* 441-463.

¹³³ Mato Oput proceeds in three phases, the cleansing ceremony (Breaking the egg), the purification rite of spitting in a sheep's mouth and then the actual reconciliation rite of the Mato Oput.

Traditional justice in Uganda is reflected in customs like The *Mato Oput* in Northern Uganda.¹³⁴ However, as stated by Stephen Mubiru, J, in *Kanyamunyu Mathew Muyogoma v Uganda*,¹³⁵ *mato oput* has no effective system of regulation and review in place. It is shrouded in legal ambiguity and as a result its interface with formal criminal justice is opaque. The adoption of traditional justice mechanisms for atrocities committed by child soldiers was evidenced in paragraph 3.1 of the Agreement on Accountability and Reconciliation (Agreement) between the government of Uganda and the Lord's Resistance Army (LRA).¹³⁶ Such processes include *cula kwor* practiced among Acholi and Langi for homicide;¹³⁷ *kayo cuk* (among the Langi); and *mato oput* (among the Acholi).¹³⁸ Moreover, paragraph 12(IV) of the Agreement provided that children shall be exempted from criminal justice processes, but may participate as appropriate in reconciliation processes.¹³⁹

1.6 Significance of the study

The dissertation is the partial fulfilment of the requirement for the award of fulfilment for the award of the Bachelor of laws. This research examines the effectiveness of plea bargaining in achieving access to justice, addressing critical gaps in realising effective implementation of plea bargaining, plea bargaining's constitutional implications and practical effects within Uganda's justice system, making significant contributions across academic, legal, policy, and practical domains.

The research filled that critical gap by interrogating fundamental tensions between plea bargaining and constitutional guarantees, integrating constitutional law, criminal procedure, human rights law, and indigenous justice concepts, advancing an understanding of how imported legal mechanisms interact with Uganda's constitutional and cultural contexts.

¹³⁴ As above at 133.

¹³⁵ Misc. Criminal Application No. 151 of 2020.

¹³⁶ Para 3.1 Agreement on Accountability and Reconciliation between the Government of the Republic of Uganda and the Lord's Resistance Army/ Movement, Juba, Sudan (*Agreement on Accountability and Reconciliation*) http://www.beyondjuba.org/BJP1/peace_agreements/Agreement_on_Accountability_And_Reconciliation.pdf (accessed 27 March 2012). This agreement was never signed by the LRA but is highly recognized and persuasive in Uganda's transitional justice framework. High Court Divisions 'Establishment of International Crimes Division (ICD) of the High Court in Uganda' <http://www.judicature.go.ug/index.php?option=com.content&task=view&id=117&Itemid=154> accessed on 31st August 2025.

¹³⁷ Concerned Parents Association & Lango Cultural Foundation Lango traditional mechanisms and its application to the current war situation (2008) 1.

¹³⁸ Mato Oput Project Community perspectives on the Mato Oput process: A research study by the Mato Oput Project, Beyond Juba Project Conflict justice and reconciliation in Teso (2008) 7.

¹³⁹ As above at 136.

This is an examination of pre-colonial, colonial, and post-colonial justice systems which provides an important historical context by tracing how dispute resolution mechanisms evolved and how indigenous justice concepts relate to modern plea bargaining.

Through systematic comparative analysis, it draws lessons from other jurisdictions implementation of plea bargaining systems, identifying best practices for constitutional compliance under the 1995 Constitution of the Republic of Uganda. It also provides evidence-based recommendations for reforming Uganda's plea bargaining system. Further, the research adds to scholarly literature on plea bargaining and offers insights for legal practitioners, judicial officers, and policy makers involved in the criminal justice reform.

The study advocates for the protection and preservation of the constitutional safeguards under the 1995 constitution in administration of Justice and aims at upholding all players in the criminal justice system accountable and embody the principles of state policy and national development.

1.7 Literature Review

The literature on plea bargaining in Uganda reveals significant gaps in analyzing its constitutional implications and effectiveness of plea bargaining in achieving access to justice. While scholars have examined various aspects of plea bargaining, a comprehensive constitutional analysis remains underdeveloped on plea bargaining and access to justice.

Ugandan culture is collective because people view themselves as part of a larger social network that includes one's family, co-workers and others whom [they] are socially connected.¹⁴⁰ Consensual justice inter parties to end a dispute is used by diverse jurisdictions.¹⁴¹ This cultural context provides a historical foundation for understanding alternative dispute resolution mechanisms in Uganda and other African Countries, though the literature inadequately explores how plea bargaining either aligns with or departs from these traditional values in achieving constitutional access to justice.

Kisekka (2020) notes that an ordinary plea of guilt and a plea bargaining are both admissions of the guilt which end in convictions when the accused waives their right to a full trial in preference for shorter procedures. The trial processes are limited to allocutus and mitigation hearings and prior

¹⁴⁰ Pepperdine Law Global Justice Program, Uganda Internship Manual, <http://www.clearlycultural.com/geert-hofstede-cultural-dimensions/> and <http://geert-hofstede.com/dimensions.html> (last visited August 30, 2025).

¹⁴¹ H Jung, 'Plea bargaining and its repercussions on the theory of criminal procedure' (1997) 5(2) *European Journal of Crime, Criminal Law & Criminal Justice*, 112.

sentencing.¹⁴² While this analysis examines human rights challenges through the trial process, it does not adequately address whether these shortened procedures effectively achieve access to justice as constitutionally guaranteed under the 1995 Constitution. The critical question of whether expedited justice equates to constitutional justice remains unanswered, and whether waivers obtained under conditions of systematic delay and inadequate representation satisfy constitutional spirit of access to justice.

Furthermore, Kisekka's work examines the contractual validity of plea agreements analysing whether they amount to unconscionable contracts,¹⁴³ but does not examine the tension between efficiency and the substantive protections guaranteed under Article 28, particularly regarding the presumption of innocence and the right to present a defence.

Lubaale, (2016) points out that the accused in Uganda is usually represented by an unprepared state-brief- allocated lawyers instead of a competent counsel, and then only when the accused is charged with a capital offence or that punishable by life imprisonment. At times, Counsel lacks the legal expertise to critically analyse the disclosed information to fill the gaps and make the right choice.¹⁴⁴ The research explores whether plea bargains concluded with inadequate representation can be considered voluntary and informed as required by constitutional standards, or how this affects the overall effectiveness of plea bargaining in achieving access to justice. This is because the inadequacy of legal representation identified by Lubaale might have greater constitutional significance in access to justice.

Reddy (2019) argues that waiver of constitutional rights cannot be considered valid unless preceded by meaningful legal advice.¹⁴⁵ Though focused on South Africa, this research focuses on Uganda given that the two countries have similar constitutional protections and examines the plea bargaining process with regards to access to justice.

Gray makes a point that Uganda could improve its judicial system by utilizing alternative dispute resolution processes that promote similar shared values such as collaboration, community, and

¹⁴² NG Kisekka, (n 11 above) 5.

¹⁴³ As above.

¹⁴⁴ EC Lubaale, (2016). 'The advent of plea bargaining in Uganda: Is the criminal justice system cognizant of what it is up against?' (2016) 22(2) *East African Journal of Peace and Human Rights*, 136–173.

¹⁴⁵ K Reddy, 'Constitutional waivers and the Right to Counsel', (2019) 32(2) *South African Journal of Criminal Justice*, 145-172.

harmony.¹⁴⁶ This points to the view of incorporating plea bargaining in the Criminal Justice system. The analysis lacks a constitutional framework for evaluating whether such ADR mechanisms fulfill the 1995 Constitution's justice mandate or merely serve as expedient case management tools.

Fish in analyzing the Petite Policy posits that prosecutors should act not only as adversary advocates but also as quasi-judicial enforcers of constitutional rights.¹⁴⁷ This is not the position with the practice of criminal procedure and practice where prosecutors efficiency are assessed on the successful cases handled and target. The Petite Policy was issued on 5th April 1959 by the Department of Justice to restrain from prosecuting defendants who had already faced state prosecution for the same crime.

Ikpah says that the court systems inability to try cases in a timely manner is a violation of the defendant's due process rights.¹⁴⁸ This analysis is not a case study of backlogs in Uganda. Ikpah does not analyze whether plea bargaining as a solution to case backlogs actually cures the constitutional violations and this research examines plea bargains in the context of the 1995 constitution.

Langer,¹⁴⁹ argues that Uganda's adoption of plea bargaining must be understood not as a neutral procedural reform but as one that fundamentally alters the relationship between the State and the accused. This does not delve into whether this alteration bears or has an implication towards access to justice under the 1995 Constitution of Uganda.

Kate Kovarovic suggests that in order to better implement the use of plea bargaining in Uganda's criminal justice system, the court needs to utilize restorative justice processes that will best 'provide multiple remedies and meet the goals of victims, societies and the community.'¹⁵⁰ This literature lacks empirical assessment of how plea bargaining practices should incorporate restorative justice principles, and whether such incorporation is constitutionally mandated or merely desirable. The analysis does s inherent in plea bargaining.

Haley, in Galaway and Hudson argues that the state and its criminal justice system cannot stand in as fictitious surrogate for real people who have been personally afflicted by crime. The debts offenders

¹⁴⁶ G Hannah. 'Can restorative justice processes help improve plea bargaining in Uganda's criminal justice system'. (2019) 19(2) *Pepperdine Dispute Resolution Law Journal*, 215-230.

¹⁴⁷ ES Fish, 'Prosecutorial constitutionalism'. (2017) 90(2) *Southern California Law Review*, 90(2), 237-[ii].

¹⁴⁸ TS Ikpa, *Balancing Restorative Justice Principles and Due Process Rights in Order to Reform the Criminal Justice System*, (2007) 301, 321.

¹⁴⁹ M Langer, 'From transplants to legal translations: The globalization of plea bargaining and the Americanization thesis in criminal procedure', (2004) 45(1) *Harvard International law journal*, 1-64.

¹⁵⁰ K Kovarovic, *Pleading for Justice: The Availability of Plea Bargaining as a Method of Alternative Dispute Resolution at the International Criminal Court*, (2011) 302.

owe are not an abstract entity called the state but to the victims and actual communities.¹⁵¹ Deep-seated resentments and key obstacles to reconciliation are removed and people on different sides of the divide can feel that a clean slate has been provided for.¹⁵² This view does not address how plea bargaining; which is negotiated primarily between prosecutors and accused persons can fulfill obligations to victims while simultaneously achieving constitutional access to justice. The literature does not adequately explore this tripartite relationship or how victim exclusion by from plea negotiations by some judicial officers affects constitutional justice.

Musoke notes that government loses billions of shillings in feeding prisoners who are often remanded as a result of case backlog and places the blame on the Judiciary for failing to have mechanisms to ensure that the public enjoys swift judgements.¹⁵³ Musoke does not address whether plea bargains have been effective in reducing these costs or whether they align with the 1995 Constitution's justice mandate. The analysis prioritizes efficiency over constitutional validity.

Nakibuule notes that plea agreements can be irrevocable due to the accused's limited contractual capacity and freedom to contract them.¹⁵⁴ The view is based on an analysis by Scott and Stuntz (1992) of viewing plea bargaining through a lens of a legal contract.¹⁵⁵ Nakibuules' view that rethinking plea bargains as legitimate contracts for Uganda could be a move in the right direction because it recognizes the rights of the accused in the plea bargain process. However, the literature does not adequately examine whether criminal constitutional rights can be contractually waived, what constitutional standards should govern such waivers, or how such a contractual framework aligns with the 1995 Constitution's non-derogable rights provisions. The tension between contract law principles and constitutional criminal procedure remains unresolved in the literature.

Turner (2017) examines how international criminal tribunals have grappled with negotiated justice while maintaining due standards.¹⁵⁶ In a comparative constitutional analysis, Volger also documents how European jurisdictions with inquisitorial traditions have struggled to accommodate plea

¹⁵¹ Galaway and Hudson, *Restorative justice: International Perspectives*, Criminal Justice Press. (1996) 3.

¹⁵² NJ Clark, 'The three Retributive justice, restorative justice, and reconciliation', *Contemporary Justice Review*, (Vol 11, 2008 No 4) 331-350.

¹⁵³ GP Musoke, *Case backlog in Uganda, its impact on Justice and the possible solutions thereto*. (2023) 2.

¹⁵⁴ GN Kisekka. (n 16 above) 15(4), 2093-2133.

¹⁵⁵ RE Scott & WJ Stuntz, 'Plea Bargaining as Contract'. (1992) 101 *The Yale Law Journal*, 1909-1968.

¹⁵⁶ JI Turner, Plea bargaining and International criminal justice, (2017) 15(2) *Journal of International Criminal Justice*, 219-244.

bargaining within their constitutional frameworks that historically emphasized truth seeking over party autonomy.¹⁵⁷

1.8 Ethical considerations

The research paper properly cited and acknowledged all authorities and where necessary appropriate permission will be sought first from relevant authorities and participants. Permission and consent of all individual Respondents and all Authorities was sought and obtained. The research maintained neutrality and objectivity to avoid any form of bias that would have resulted in unbalanced conclusions. Further, where the information was sensitive and privileged, it was kept confidential.

1.9 Research Methodology

This research employed a doctrinal legal research method for in-depth analysis of the effectiveness of plea bargaining in achieving access to justice.

1.9.1 Research Design

The study employed a doctrinal legal research method, a descriptive legal research design in documenting current plea bargaining practices from international, regional, national practices and the outcomes. This was supplemented with qualitative research method. It also employed an analytical research design critically examining the relationship between plea bargaining and constitutional guarantees, and comparative research design to analyse plea bargaining systems in other jurisdictions. It also employed a comparative research design from other countries focusing on the position of the laws on plea bargaining and the procedural processes.

1.9.2 Data collection

The research mainly relied on secondary data from on existing literature, publications, newspapers, judiciary reports, internet sources, different legislations from various jurisdictions, and court observations of plea bargaining proceedings.

Primary data was collected through use of interviews from various stakeholders. A structured interview guide coupled with unstructured questions kept being posed to the Respondents. The study

¹⁵⁷ R Volger, *Lost in translation: The growth of plea bargaining in Europe, in crime, procedure and evidence in a comparative and international context*, Hart publishing. (2008) 189-192.

was conducted from Magistrate Courts, State Attorneys, Private Counsel, and Legal Aid Clinics. The study population comprised of a Chief Magistrate station at LDC Court, a Magistrate at LDC Court, State Attorneys at Nakawa ODPP, and a seasoned lawyer in private practice with experience in plea bargain from the United States of America, among others. This was based on level of work experience and knowledge expected from them having handled and participated in a number of plea bargain sessions.

Interviews were conducted after seeking prior appointments with the Respondents, as well as using the Snowball method of data collection. Some interviews were through face to face interactions at agreed meeting points, while others were conducted online through WhatsApp exchanges. Most importantly, they were all conducted using an interview guide.

1.9.3 Limitation of the study

Time constraints due to heavy schedules of some Respondents, which made some miss out from being interviewed. The process was limited with resource and financial constraints in terms of reaching some Respondents, and costs in printing materials required. Some information and documents like Victim Assessment Reports were not obtained throughout the whole process because they were not available.

1.9.4 Data analysis

The Research took a form of thematic analysis of the collected data, comparative analysis across jurisdictions, context analysis, constitutional and legal doctrinal analysis. The data collected will be analysed by evaluating its relevance to the study.

1.9.5 Data control

To ensure that the quality of the data is not compromised, data was collected from reputable publications.

1.10 Chapter synopsis.

The study is divided into five chapters:

Chapter One introduces the research topic and whole concept. It gives the background of alternative dispute resolution in the precolonial, colonial and post-colonial period. The chapter gives

constitutional develops and criminal justice as perceived in the African context. It further gives the objectives of the research, research questions, methodology and examines the literature on different conceptual frameworks.

Chapter Two entails a comprehensive discussion of the international legal and human rights framework on plea bargains. It posits that plea bargains are subject to international legal protections. The Chapter discusses the concept of justice and the different forms of justice at the International, Regional, and sub-regional level.

Chapter Three discusses domestic legal and access to justice framework. The chapter also examines the effects and effectiveness of plea bargaining in achieving access to justice under the 1995 Constitution.

Chapter Four provides a comprehensive analysis of the legal position of various jurisdictions and how they have effectively implemented plea bargaining while up holding constitutional safeguards.

Chapter Five gives a conclusion and recommendations to the stakeholders in ensuring that plea bargaining serves the objective of administering justice and not an escape route from the trial process. The chapter emphasizes the idea of restorative justice, sensitization of the prisoners and prison authorities on the relevance of plea bargaining and discouraging self-incrimination due to lose of confidence in the justice system and delayed in criminal trials.

CHAPTER TWO

INTERNATIONAL AND REGIONAL HUMAN RIGHTS FRAMEWORK

2.0 Introduction

2.1 International Legal Framework

2.1.1 Universal Declaration of Human Rights (UDHR) 1948

2.1.2 International Covenant on Civil and Political Rights (ICCPR) 1966

2.2 International Criminal Tribunals

2.3 The Rome Statute

2.4 The Four Geneva Conventions of 1949

2.5 Regional Framework

2.6 Conclusion

Injustice anywhere is a threat to justice everywhere.

Martin Luther King Jr.

2.0 Introduction

This chapter undertakes a critical analysis of the International and Regional legal framework governing fair trial rights in relation to plea bargaining practices. It examines the Universal Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR), jurisprudence of international criminal tribunals, Rome Statute of the International Criminal Court, and Regional human rights instruments. International criminal law lays a basis for constitutional rights and guarantees, replacing impunity with accountability, facilitating reconciliation, bringing perpetrators to justice in fair trials, and restoring the rule of law.¹ The international legal framework establishes

¹ RE Rauxloh, 'Negotiated History: The Historical Record in International Criminal Law and Plea Bargaining', (2010) 739, 740 *International Criminal Law Review* 10.

standards against which constitutional guarantees are drawn and assessed. The intersection of international human rights law with domestic criminal justice systems creates a framework within which plea bargaining practices must operate, establishing the minimum standards that States must observe. Although International law permits plea bargaining, it subjects it to stringent requirements to ensure that waiver of rights does not become waiver of justice.

This chapter establishes the international legal context within which Uganda's plea bargaining system must operate to remain constitutionally compliant and internationally legitimate. This chapter argues that international human rights law establishes non-negotiable standards for a valid plea bargaining and while rights may be waived, such waivers must represent an intentional relinquishment rather than a concession extracted by systematic pressure.

2.1 International Human Rights Instruments

These instruments include: The Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) among others represent the cornerstone of international human rights law and establish the normative framework within which all criminal justice systems must operate.

2.1.1 Universal Declaration of Human Rights (UDHR) 1948

The origins of the Universal Declaration of Human Rights are traced back to the closing remarks by the then President of the United States, President Truman at the San Francisco Conference.² The outcome of the Conference set the entry of human rights into the domain of criminal law.³ The UDHR was adopted by the United Nations General Assembly on 10th December 1948,⁴ representing the first comprehensive international instrument guaranteeing human rights. This marked a starting point towards shaping human rights discourse and a foundation to other instruments like the International Covenant on Civil and Political Rights.

The UDHR served as the first international instrument to articulate fundamental human rights in universal terms. While not a formal treaty and therefore not directly legally binding in the strict sense,

² E Roosevelt, *Universal declaration of human rights* Applewood Books, 2001.

³ BM Katureebe, Key note address at the judicial symposium on Human Rights in the context of criminal justice held on the 15th to 17th November, 2017 at Lake Victoria Serena Hotel, Kigo. Pg. 2 Available on accessed on 27th February 2025.

⁴ G Brown, *The Universal Declaration of Human Rights in the 21st century: A living document in a changing world*. Open Book Publishers, 2016; UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III).

it is evidence of the interpretation and application of the UN Charter,⁵ influencing constitutional developments by underscoring the inherent dignity and equal rights of everyone. Therefore, although the Declaration is not a treaty that should be ratified by States for it to enter into force, it has attained the status of customary international law and a Grund-norm.⁶ This therefore, is a representation of the basic rights and inherent fundamental freedoms inalienable and equally applicable to everyone, being born free and equality in dignity and rights.⁷

The UDHR constitutes part of customary international law, though this position lacks uniform international support.⁸ However, it has achieved customary international law status through widespread acceptance and incorporation into domestic legal systems. Judge Ammoun, noted that the affirmations of the Universal Declaration of Human Rights can bind States on a basis of custom because they constitute a practice of accepted law.⁹ It further operates as a guiding principle to orient the behaviour of governments, acting as a fundamental agreement across cultures and ideologies regarding the inherent dignity of each human person and the equality among them.¹⁰ Therefore, this serves as a model for many domestic constitutions, laws, regulations, and policies that protect fundamental human rights.

Article 8 provides that everyone has a right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law,¹¹ prohibiting arbitrary arrest or detention.¹² A right to effective remedy and a prohibition of arbitrary arrest or detention implies that plea bargaining must not become an obstacle to effective remedies and prolonged pre-trial detention that coerces pleas may constitute arbitrary detention.

Article 10 establishes for full equality to a fair and public hearing by an independent and impartial tribunal to everyone, in the determination of his rights and obligations and of any criminal charge

⁵ *South West Africa Cases (Ethiopia v South Africa)*, UNICJ (051)/S63. Judge Tanaka's dissent opinion at 293.

⁶ E Jorge, SC Gossman, Promoting human rights as an international policy for world peace, (2009) *Mexican Law Review*. 197.

⁷ Available on www.un.org/en/documents/udhr/hrlaw.shtml accessed on 25th April 2026.

⁸ H Hannum 'The status of the Universal Declaration of Human Rights in national and international law' (1995) 25 *Georgia Journal of International and Comparative Law*, 287.

⁹ *South West Africa/ Namibia* [Advisory Opinions and Judgements] (*Ethiopia v South Africa; Liberia v South Africa*) 1960–1966.

¹⁰ JE Mendez, The 60th anniversary of the UDHR. (2009) 30(4) *University of Pennsylvania Journal of International Law*, 1157–1170.

¹¹ Universal Declaration of Human Rights, Article 8.

¹² Universal Declaration of Human Rights, Article 9.

against him.¹³ This provision establishes the foundational principle of fair hearing rights that underpins modern criminal justice systems and must inform plea bargaining practices. Therefore, a waiver of a public hearing must be voluntary.

In the case of *Houngue Eric Noudehouenou v Republic of Benin*,¹⁴ The Applicant pointed out that the Ministry of Justice and the Ministry of the Interior of Benin issued an Inter-ministerial Decree No. 023MJL/DC/SGM/DACPG/SA023SGG19 dated 22 July 2019 prohibiting the issuance of official papers to persons wanted by the courts of Benin in violation of Article 11 of the UDHR. The Applicant asserted that Article 3 of the said decree prohibited the establishment and issuance of official papers on behalf of, and to persons wanted by the courts, alleging that the above provisions were inconsistent with certain principles relating to the protection of fundamental human rights, notably the presumption of innocence.

The Applicant further argued that by refusing to issue the said official papers to persons accused of criminal acts even though they have not been convicted by the courts, the Respondent State intended to prevent citizens from running for the 2021 presidential election. The Court stressed that the presumption of innocence implied that any person prosecuted for an offence is presumed not to have committed it, a priori, as long as his or her guilt has not been established by a final judgment. It is clear that the scope of the right to presumption of innocence covers the entire procedure from the moment of arrest to the delivery of final judicial decision.

In the case of *Sebastien Germain Ajavon v. Republic of Benin*,¹⁵ Court observed that compliance with the principle of presumption of innocence is not only binding on the criminal court, but also on all other judicial, quasi-judicial and administrative authorities, such as the courts, the judiciary and the administration of justice.

Article 11(1) further provides for the right to be presumed innocent until proved guilty according to law in a public trial. It is at this basis that States have an obligation to establish frameworks at which he has had all the guarantees necessary for his defence for everyone charged with a penal offence. The right to presumption of innocence under the UDHR presents a cornerstone of fair trial rights and creates a constitutional tension with plea bargaining, which requires defendants to admit guilt without

¹³ Universal Declaration of Human Rights, Article 10.

¹⁴ *Noudehouenou v Republic of Benin* (Application No. 003/2020) [2020] AfCHPR 4 (4 December 2020).

¹⁵ *Sebastien Germain Ajavon v Republic of Benin*, ACtHPR, Application No. 013/2017 Judgment of 29 March 2019 (merits), Pg. 192.

the prosecution meeting its burden of proof. Although guilty pleas reverse this presumption, their validity depends on genuine admission.

The UDHR's emphasis on fair and public hearings raises critical questions about plea bargaining's compatibility with international human rights standards. When accused persons waive their rights to public trial through plea agreements negotiated in private between prosecutors and defence counsel, may conflict with the UDHR's vision of open justice and public accountability. The UDHR's requirement that accused persons have all the guarantees necessary for their defence encompasses rights that are typically waived in plea bargaining, including the right to call and examine witnesses, the right to present evidence, and the right to challenge the prosecution's case.

Lastly, the burden rests on States to demonstrate that plea bargaining practices, as implemented, represent a proportionate response to systemic challenges rather than an expedient circumvention of fundamental protections.

2.1.2 International Covenant on Civil and Political Rights (ICCPR, 1966)

The International Covenant on Civil and Political Rights (ICCPR) and the Optional Protocol thereto were adopted by the UN General Assembly through Resolution 2200A (XXI),¹⁶ and entered into force in 1976. The ICCPR gives binding force to the principles established in the UDHR, constituting the international Bill of Rights the bedrock of international human rights law. It was adopted by the General Assembly on 16 December 1966 and entered into force on 23 March 1976.¹⁷

The United Nations Human Rights Committee (UNHRC) was established to oversee its implementation and compliance by reviewing periodic reports submitted by member states.¹⁸ The ICCPR obliges States to uphold civil and political rights of individuals which include the rights to due process and a fair trial. Therefore, in accordance with Article 28 of the Covenant, the State Parties established the Human Rights Committee (HRC) on 20 September 1976,¹⁹ and individuals who claim

¹⁶ Assembly, UN General. 'International Covenant on Civil and Political Rights.' *United Nations, Treaty Series 999 (1966):* 171.

¹⁷ W Schomburg & J Nemitz, *The protection of human rights of the accused before the international criminal tribunal for Rwanda*, (2007) 1.

¹⁸ International Covenant on Civil and Political Rights, Article 23.

¹⁹ International Covenant on Civil and Political Rights, Article 28.

that any of their rights set forth in the Covenant has been violated and have exhausted all domestic remedies may submit a written communication to the Human Rights Committee for consideration.²⁰

The *Travaux Préparatoires*,²¹ of the ICCPR reveal that the drafters considered fair trial rights fundamental, and in significant respects, non-derogable. This indicates that while some fair trial rights may be waived in appropriate circumstances, such waivers must be subject to stringent safeguards and cannot be presumed from silence. The rights should not be waived through bargaining, creating robust protections against States from using procedural shortcuts to circumvent their obligations to provide fair trials.

Article 14 of the ICCPR provides comprehensive guarantees for fair trial and due process rights in criminal proceedings.²² Article 14(1) establishes equality before the courts and tribunals for all persons in the determination of any criminal charge against any person. The principle of equality before courts is particularly relevant in plea bargaining where disparities in legal representation, resources, and bargaining power between prosecutors and accused persons may create de facto inequality. In instances where accused persons are represented by overburdened state-brief lawyers while prosecutors possess superior resources and expertise, the resulting plea agreements may reflect power imbalances rather than genuine voluntary consent.

In the case of *Kalilou and Another v Côte d'Ivoire*,²³ the Applicants alleged that the Respondent State had violated their rights to a fair trial, equality and dignity, the right of access to justice and the right to an effective remedy as set out in the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights. The Court consolidated two similar applications against the same State for efficient administration of justice under Rule 54 of the Rules of Procedure of the Court.

Article 14(2) enshrines the presumption of innocence in criminal offences until proven guilty which is fundamental to the protection of human rights in prosecutions.²⁴ The accused's right to a fair trial may be waived by the accused provided that such waiver is unequivocal and attended by minimum

²⁰ The Protocol, Articles 1, 2, 3 and 5. Also Rule 96 of the Committee's Rules of Procedure (CCPR/C/3/Rev.8).

²¹ *Travaux Préparatoires* of the negotiations for the elaboration of the United Nations Convention against Organized Crime and the Protocols thereto, negotiations of the United Nations Convention against Transnational Organized Crime (General Assembly resolution 55/25, annex I).

²² International Covenant on Civil and Political Rights, Article 14.

²³ *Kalilou and Another v Côte d'Ivoire* (Application No. 036/2019; Application No. 037/2019) [2019] AfCHPR 33 (13 September 2019).

²⁴ International Covenant on Civil and Political Rights, Article 14(2).

safeguards.²⁵ The Committee's language unequivocal and attended by minimum safeguards establishes a high threshold that domestic plea bargaining systems must meet. However, the right against self-incrimination under Article 14(3) (g) protects individuals from being compelled to provide evidence against themselves.²⁶

Further, Article 14(3) of the ICCPR establishes minimum guarantees that apply to everyone charged with a criminal offence. Article 13(3) (c) specifically mandates that accused persons have *the right to be tried without undue delay* which recognizes that delayed justice constitutes a violation of fair trial rights and imposes obligations on States to ensure timely resolution of criminal cases.²⁷ The right to trial without undue delay has been a primary justification for introducing plea bargaining in Uganda.

The ICCPR's guarantee of trial without undue delay places an affirmative obligation on States like Uganda to ensure adequate judicial resources, efficient prosecution, and timely case management. These obligations cannot be satisfied simply by pressuring accused persons to waive their trial rights through plea bargaining. The Human Rights Committee has emphasized that the right to be tried without undue delay designed to avoid keeping persons too long in a state of uncertainty about their fate and... to ensure that the delay does not become such that the fairness of the procedure is impaired.²⁸

In *Mubonen v Finland*,²⁹ the HRC emphasized that a guilty plea could not be considered voluntary if induced by improper pressure. This established that the voluntariness requirement is not satisfied by a mere absence of direct coercion; systematic pressures that deprive an accused of meaningful choice may also render a plea involuntary.

Therefore, compliance with the ICCPR requires that Plea bargaining meets these minimum standards like equality of arms, genuine voluntariness, informed consent, and meaningful judicial oversight.

²⁵ The UN Human Rights Committee, General comment No. 32.

²⁶ International Covenant on Civil and Political Rights, Article 14(3) (g).

²⁷ International Covenant on Civil and Political Rights, Article 14(3).

²⁸ General Comment No. 32.

²⁹ (Communication No. 89/1981).

2.2 The International Criminal Tribunals

International tribunals are established either by way of UN Security Council Resolution to guarantee the protection of human rights of persons accused of having perpetrated serious violations of international humanitarian law.³⁰ The experience of these tribunals in developing standards for guilty pleas provides valuable guidance for domestic jurisdictions implementing plea bargaining systems.

The International criminal tribunals were established to prosecute the most serious crimes of concern to the international community. The two tribunals, the ICTY and the ICTR, employed charge bargaining and sentence bargaining in return for guilty pleas and cooperation by accused persons.³¹ Notably, the introduction of plea bargaining in these tribunals was driven by pressure from the United Nations Security Council (UNSC) to have the cases completed by 2010, and the lengthy process of the adversarial system of adjudication.³² The standards established by these tribunals for accepting guilty pleas represent efforts to balance accountability, efficiency, and fairness in the most demanding circumstances.

2.2.1 The International Criminal Tribunal for the former Yugoslavia (ICTY)

The International Criminal Tribunal for the former Yugoslavia (ICTY) was established by the UN Security Council Resolution 827 on 25th May 1993 under Chapter VII of the UN Charter.³³ This followed the characterization of the situation in the former Yugoslavia as a threat to international peace and security.³⁴

The ICTY's initial position on plea bargaining was a hostile one. In a statement by the President of the ICTY at a briefing to members of diplomatic missions on 11 February 1994, it was declared that plea bargaining was inconsistent with the tribunal's unique purpose and functions. This was a reflection that international crimes, by their nature and gravity, demanded full trials that would

³⁰ E Decaux, A Dieng, & M Sow, *From Human Rights to International Criminal Law / the protection of human rights of the accused before the International Criminal Tribunal for Rwanda*. (2007) 89.

³¹ NA Combs, 'Copping a plea to Genocide: The plea bargaining of international crimes' (2022) 151 *University of Pennsylvania Law Review*, 1.

³² As above at 30 Pg. 145.

³³ Resolution 827 of 1993 http://www.icty.org/x/file/Legal%20Library/Statute/statute_827_1993_en.pdf (Last accessed on 1st March 2026).

³⁴ S Mubiru, *Plea Bargaining Within the Context of Transitional Justice: Exploring its Potential for Promoting Peace and Accountability in the Wake of International Crime in Uganda*. (2014) 4.

establish an accurate historical record, provide opportunities for victim participation, and demonstrate that justice would be fully done, than compromising the broader objectives.

The ICTY was mandated to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991. The ICTY's mandate extended beyond merely punishing individual perpetrators to include establishing historical truth, documenting atrocities, and providing accountability for mass crimes. Therefore, negotiated justice was seen as potentially compromising these broader objectives.

At plea taking, the Prosecution has an obligation to state the material facts underpinning the charges in the indictment, but not evidence by which such material facts are to be proven. In *Prosecutor v Kupreskic*,³⁵ the Appeal Chambers held that it is only in limited circumstances that a defective indictment can be cured if the Prosecution provides the accused with timely, clear, and consistent information detailing the charges preferred. However, the duty to ascertain the admissibility of such fact rests with the Tribunal.³⁶

However, practical realities eventually led to acceptance of plea bargaining at the ICTY. The complexity and cost of international criminal trials, combined with heavy caseloads and pressure to complete the tribunal's mandate within reasonable timeframes, created incentives to explore alternative mechanisms. The ICTY gradually developed a framework for accepting guilty pleas, subject to strict safeguards.

A pivotal moment in the evolution of plea bargaining was the *Prosecutor v Drazen Erdemovic*.³⁷ Drazen Erdemovic, a soldier in the Bosnian Serb army, participated in the execution of hundreds of unarmed Muslim men following the fall of Srebrenica. He pleaded guilty to crimes against humanity claiming he acted under duress. The Trial Chamber accepted his plea and sentenced him to ten years' imprisonment.

The Joint Separate Opinion of Judges McDonald and Vohrah in *Erdemovic* established the foundational standards for guilty pleas in international criminal law that continue to guide practice today. Their opinion articulated three essential pre-conditions which included voluntariness precluding pleas obtained through coercion, improper pressure, or promises beyond legitimate sentence reductions;

³⁵ IT-95-16-A, Judgement, 23 October 2001, para. 114.

³⁶ *Prosecutor v Ntagirwa, Bagambiki and Imanishimwe*, ICTR-99-46-A 10 December 2004, Para. 10.

³⁷ (Sentencing Judgement) IT-96-22-T.

informed which entails explanation of charges, distinction between alternative charges, and consequences of waiver; and the factual basis for plea and consistency with guilt.

On appeal, however, the Appeals Chamber found that while Erdemovic's plea was voluntary and not equivocal, it was not informed. The Chamber held that the Trial Chamber had failed to adequately explain the distinction between a crime against humanity and a war crime, and that Erdemovic had not understood that by pleading guilty to the more serious charge he was accepting greater moral and legal responsibility than if he had pleaded guilty to the alternative.³⁸ This finding led the Appeals Chamber to remit the case for a new plea to be entered.

Rule 62 of the ICTY Rules of Procedure and Evidence,³⁹ adopted under Article 51 of the Rome Statute established requirements for guilty pleas and the participation of victims in the proceedings at the Trial Chambers. These provided that the tribunal must be satisfied that the guilty plea has been made voluntarily, informed, not equivocal, and that there's sufficient factual basis for the crime and the accused's participation in it. These requirements establish minimum standards that should inform domestic plea bargaining practices. The emphasis on voluntariness recognizes that guilty pleas obtained through coercion or undue pressure lack legitimacy.

The ICTY's application of these above mentioned standards are illustrated in the *Prosecutor v Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic*.⁴⁰ Dragoljub Kunarac initially pleaded guilty to rape as a crime against humanity. However, during the plea proceedings, the Trial Chamber questioned the accused to satisfy itself that the plea met the requirements of Rule 62 Rules of Procedure and Evidence. The Chamber found that Kunarac did not intend to plead guilty to all the factual allegations set out in the indictment and, crucially, did not perceive his criminal conduct to be part of a widespread or systematic attack against the Muslim population a legal requirement for a crime against humanity. Consequently, the Trial Chamber entered a not-guilty plea on behalf of the defendant,⁴¹ a demonstration that judicial oversight is not a rubber-stamping exercise; courts must actively probe whether the accused's understanding aligns with the legal elements of the offence.

³⁸ <https://cld.irmct.org/notions/show/684/pre-conditions-for-entry-of-a-guilty-plea>

³⁹ Rules of Procedure and Evidence, Rule 62.

⁴⁰ *The Prosecutor v. Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic*, IT-96-23 and IT-96-23/1, Appeals Chamber, Judgement, 12 June 2002.

⁴¹ <https://www.icty.org/en/sid/7682>.

Similarly, in the *Prosecutor v Stevan Todorovic*,⁴² Stevan Todorovic pleaded guilty to persecutions as a crime against humanity. The Trial Chamber were satisfied that the conditions were met, and that the plea was voluntary, informed, unequivocal, and supported by a sufficient factual basis thus entering a finding of guilt. This case illustrates that when proper procedures are followed, plea bargaining can serve the interests of justice even in cases involving the most serious international crimes.

The plea bargaining practice in international criminal law has been criticized for potentially elevating the interest in judicial economy over those of victims. Professor Damaska observed that arguments supporting bargained justice, other than those of practical utility have much lesser force in the international than in the domestic arena.⁴³ Therefore, although plea bargaining may offer practical benefits, these should not override fundamental principles of accountability, proportionality, and victims' rights.

In the case of *The Prosecutor v Biljana Plavsic*,⁴⁴ at the ICTY, the accused received a sentence which many considered inadequate for her role in atrocities. Plavsic, a former member of the Bosnian Serb presidency, pleaded guilty to one count of persecutions as a crime against humanity. She received a sentence of 11 years' imprisonment, a sentence many considered inadequate given her role in atrocities. While her plea was hailed by some for its contribution to reconciliation in war-torn Bosnia, it was simultaneously criticized for potentially sacrificing victims' interests to expedite case resolution. This illustrates that plea bargaining may compromise accountability in pursuit of efficiency.

The ICTY's experience demonstrates both the potential benefits and risks of plea bargaining in criminal justice. On one hand, guilty pleas facilitated case management, allowed victims to avoid re-traumatization through testimony, and sometimes provided cooperation that assisted in prosecuting other perpetrators. On the other hand, concerns arose that plea bargaining elevated efficiency over accountability, resulted in inadequate sentences for serious crimes, and failed to provide victims with full acknowledgement of the harms they suffered.

However, the International Criminal Tribunal for the former Yugoslavia (ICTY) initially declared that plea bargaining was inconsistent with its unique purpose and functions. This position reflected concerns that negotiated might undermine the tribunals' mandate to establish historical truth, achieve

⁴² (Sentencing Judgement) IT-95-9/1.

⁴³ LA Barria, & SD Roper, 'How effective are international criminal tribunals? An analysis of the ICTY and the ICTR'. (2005) 9(3) *The International Journal of Human Rights*, 349–368.

⁴⁴ (Sentencing Judgement, IT-00-39 & 40/1.

accountability for mass atrocities, and provide justice to victims which creates a tension between the efficiency and justice about plea bargaining's constitutional validity.

Lastly, International tribunals, in assessing the validity of a plea agreement, they must ensure that the plea is made voluntarily, made on an informed basis, is not equivocal, and that the existence of the crimes and the participation of the accused in those crimes depend on sufficient factual basis. Plea bargaining contributed to the resolution of the procedural challenges at the ICTY.

2.2.2 The International Criminal Tribunal for Rwanda Statute (ICTR)

The International Criminal Tribunal for Rwanda (ICTR) was established by the UN Security Council Resolution 955 on 8th November 1994, following the 1994 Genocide in Rwanda.⁴⁵ The ICTR was created under Chapter VII powers and mandated to prosecute persons responsible for genocide and other serious violations of international humanitarian law in Rwanda. The ICTR's Rules of Procedure and Evidence incorporated provisions similar to those of the ICTY regarding guilty pleas. Rule 62(B) of the ICTR Rules requires the Trial Chamber to satisfy itself that a guilty plea is made freely and voluntarily, is an informed plea, is unequivocal, and is based on sufficient facts for the crime and the accused's participation in it.⁴⁶

Under the ICTR, the Miranda rights were guaranteed under Rule 42(A) (iii) of the ICTR Rules of Procedure and Evidence, and a right to Counsel of his or her own choice though the suspect can voluntarily waive his Counsel.⁴⁷ The voluntary waiver of such a right must be an informed decision by the suspect.⁴⁸ Further, the accused has a right to be informed of his or her right to plead guilty or not guilty on each count.⁴⁹ Therefore, for purposes of fair trial, the ICTR under Articles 19 and 20 oblige the Prosecution to a full disclosure in order to allow the defense a proper preparation for cross examination.

In *Prosecutor v Niyitegeka*,⁵⁰ the Appeals chamber held that the Prosecution has an obligation to read out the facts to make an opportunity to make corrections where necessary. This was evident from the case

⁴⁵ S Mubiru, (n 34 above) 5.

⁴⁶ *Kambanda v Prosecutor*, <https://www.cambridge.org/core/journals/american-journal-of-international-law/article/abs/kambanda-v-prosecutor/EBA1364031E532ABD35910A3C8B6F303>.

⁴⁷ SM Meisenberg, *The Right to Legal Assistance at the International Criminal Tribunal for Rwanda: a Review of its jurisprudence*, (2007) 127.

⁴⁸ The ICTR Rules, Rule 42.

⁴⁹ The ICTR Rules, Rule 62(A) (iii).

⁵⁰ ICTR-96-14-A, Judgement, 9 July 2004, Para. 30-36.

of *Prosecutor v Elizaphan Ntakirutimana and Gerald Ntakirutimana*,⁵¹ where the Appeals chamber found that the material facts for which the accused were convicted had not been pleaded by the prosecution in the indictment.

The ICTR Statute provided for the rights of an accused under Article 20. Article 14 of ICCPR was reflected in Article 20(1) of the ICTR Statute promulgated the principle of non-discrimination and equality requiring equality for all persons before the courts and tribunals. At the pre-trial stage, the Prosecution has an obligation to disclose to him no later than 60 days copies of all the witnesses whom the prosecutor intends to call to testify at trial.⁵²

Secondly, the right to an expeditious trial under Article 19(1) of the ICTR Statute and the trial without undue delay.⁵³ In the case of *Prosecutor v Semanza*,⁵⁴ Judge Lal Chanda Vohrah and Judge Shahabuddeen found that the ICTR that a delay of 89 days between the transfer of an accused to the ICTR and his initial appearance led to a violation of his right. In *Prosecutor v Barayagwiza*,⁵⁵ the Appeals Chamber held that there was a substantive delay and a violation of the accused's rights after a 20 day lapse between the Appellants transfer and his initial appearance.

In the case of *Prosecutor v Jean Kambanda*.⁵⁶ Jean Kambanda, who served as Prime Minister of Rwanda during the 1994 Genocide, entered into a plea agreement with the Office of the Prosecutor on 29th April 1998. He pleaded guilty to six counts including genocide, complicity in genocide, and crimes against humanity.⁵⁷

Despite the plea agreement, on appeal, the Trial Chamber sentenced Kambanda to life imprisonment-the maximum possible sentence. This demonstrated that guilty pleas do not automatically result in lenient sentences, international tribunals retain discretion to impose sentences they consider appropriate, regardless of prosecutorial recommendations, the gravity of crimes must be reflected in sentencing, and even where defendants accept responsibility, plea agreements may facilitate efficiency without necessarily compromising accountability.

⁵¹ ICTR-96-10-A and ICTR-96-17-A, 13 December 2004, Para. 125.

⁵² The ICTR Rules, Rule 66(A) (ii).

⁵³ The ICTR Statute, Article 20(4) (c).

⁵⁴ ICTR-97-23-A, Decision, 31 May 2000.

⁵⁵ ICTR-97-19-AR72, 31 March 2000, para 62.

⁵⁶ *Kambanda v. Prosecutor*. No. ICTR 97-23-A.

⁵⁷ Plea agreement between *Jean Kambanda and the Office of the Prosecutor, Kambanda* (ICTR-97-23-I) 29th April 1998.

The *Kambanda case* raises questions about the incentive structure of plea bargaining. If defendants who plead guilty receive the same sentences they would likely have received after trial, the practical benefit of pleading guilty diminishes. This tension between offering meaningful incentives for guilty pleas and ensuring proportionate punishment for serious crimes remains unresolved in international criminal law and has direct relevance for domestic plea bargaining systems.

The *case of Jean Kamanda* illustrates the complexities of plea bargaining in international criminal law. Despite pleading guilty to genocide that occurred in Rwanda, Kambanda was sentenced to life imprisonment. This demonstrates that even where plea agreements exist, international tribunals retain discretion in sentencing and may impose severe penalties despite guilty pleas, reflecting the gravity of international crimes and tribunals' broader justice mandates.

Further still, the ICTR provides for a right to Appeal a conviction under Article 24. The grounds of appeal must be founded on an alleged error of law, and an alleged error of fact which might have occasioned a miscarriage of justice,⁵⁸ though the Prosecution also has the right to appeal an acquittal or the sentence imposed on the accused on the basis of the same grounds,⁵⁹ and the Tribunal may allow additional relevant evidence in either to support the acquittal.⁶⁰

This experience reinforced the principle that plea bargaining in serious criminal cases requires careful balancing of competing interests: the interests of accused persons in receiving credit for accepting responsibility; the interests of victims in seeing perpetrators held accountable, the interests of society in establishing truth and promoting reconciliation; and the interests of the justice system in managing resources efficiently.

The experience of these international tribunals provides valuable lessons for domestic jurisdictions implementing plea bargaining systems, particularly regarding the safeguards necessary to protect fundamental rights while achieving efficiency objectives. With the closure of ICTR on 31st December 2015 and ICTY on 21 December 2017, the UN set up the Mechanism for International Criminal Tribunals (MICT) on 22 December 2010 to perform residual duties of both the ICTR and ICTY.⁶¹

⁵⁸ The ICTR, Article 24.

⁵⁹ W Schomburg & J Nemtz, *The protection of human rights of the accused before the international criminal tribunal for Rwanda*, (2007) 104.

⁶⁰ *Prosecutor v Bagilishema*, ICTR-95-1A-A, Decision on motions raised under Rule 115, 30 May 2002, Pg.3.

⁶¹ United Nations Mechanism for International Criminal Tribunals, 22 August 2013. Available on <http://www.unmict.org/en/about> (Last accessed on 1st March 2026).

However, the tribunal fell short of this obligation due to failure of a large number of UN member states to live up to their financial obligations causing restrictions on the hiring process affecting the ability of the ICTR to conduct the proceedings as expeditiously as possible.

2.3 The Rome Statute

The Rome Statute of the International Criminal Court (ICC), adopted on 17th July 1998 and entered into force on 1 July 2002, represents the most comprehensive international instrument establishing the International Criminal Court (ICC). The Rome Statute creates a framework for prosecuting individuals for genocide, crimes against humanity, war crimes, and the crime of aggression. Therefore, the drafters wanted to avoid fragmented and judge made nature if the procedural law of the ad hoc tribunals at the ICTY and ICTR.⁶²

The Rome Statute neither explicitly requires nor forbids plea bargaining, but establishes a structured procedure for admissions of guilt that prioritizes judicial verification over party autonomy. Article 65 of the Rome Statute provides for admissions of guilt,⁶³ however it requires the accused to understand the nature and consequences of the plea of guilty, ensure that it's voluntary, and supported by facts. In *Prosecutor v Thomas Lubanga Dyilo*,⁶⁴ the ICC emphasized that admissions must be voluntary and reliable, though Lubanga did not ultimately enter a guilty plea, it provides guidance on the minimum standards for valid admissions of guilt.

The Rome Statute provides for the presumption of innocence, placing the onus is on the prosecution to prove the guilt of the accused beyond reasonable doubt.⁶⁵ The accused is entitled to a public, fair and impartial hearing with certain minimum guarantees: to be informed of the charges against him or her/her in a language he or she understands; have adequate time and facilities to prepare for a trial, defense through a Counsel. Further, the accused have a right to examine witnesses, translation and interpretation of documents, disclosure of evidence.⁶⁶

Instead of explicitly regulating plea bargaining, Article 65(5) of the Rome Statute provides that any discussions between the Prosecutor and the defense regarding modification of the charges, the

⁶² PA Oyugi, 'Plea negotiation at the International Criminal Court: opportunities and costs' Published Doctoral dissertation, Stellenbosch: Stellenbosch University), (2021) 7.

⁶³ The Rome Statute, Article 65.

⁶⁴ ICC601/04601/06, Pre-Trial Chamber I, Decision on Confirmation of Charges, 29 January 2007, available at <http://www.icc-cpi.int>

⁶⁵ The Rome Statute, Article 66.

⁶⁶ The Rome Statute, Article 67.

admission of guilt, or the penalty to be imposed shall not be binding on the court. This provision recognizes plea bargaining's potential utility while preserving judicial independence and ensuring that sentences reflect the gravity of crimes. Rule 65 of the Rules of Procedure and Evidence acknowledges that plea agreements may exist but relieves the court from the duty to be bound by such agreements.⁶⁷ It is upon such grounds that in cases of conviction or acquittal, the Prosecutor and Defense may appeal based on procedural error, error of law, and error of fact.⁶⁸

Before the trial commences, the charges are read in a language the accused understands and afforded an opportunity to plead guilty or not guilty.⁶⁹ Article 65 of the Rome Statute entrenches a system similar to plea bargaining principles, by recognizing any discussions between the prosecutor and the defense regarding modification of the charges, the admission of guilt or the penalty to be imposed though not that binding.⁷⁰ This provides and allows for discussions between the prosecutor and defense regarding modification of the charges, admission of guilt, or the penalty to be imposed thus recognizes plea bargaining's potential utility while preserving judicial independence and ensuring that sentences reflect the gravity of crimes. In the same vein, it provides for victim participation and to present their views and concerns on issues that affect their personal interest.⁷¹

The Rome Statute also provides for victim participation, allowing victims to present their views and concerns at stages of the proceedings determined to be appropriate by the Court.⁷² This represents a significant innovation in international criminal procedure and reflects recognition that justice must account for victims' interests, not merely those of the prosecution and accused.

The Rome Statute provides for a provision on proceeding on an admission of guilt.⁷³ Where an accused admits guilt, the tribunal determines whether the accused understands the nature and consequences of the admission of guilt. The admission is made voluntarily after consultation with the defense counsel; and that the admission is consistent with the facts as presented by the Prosecutor.⁷⁴ However, if the Trial Chamber is satisfied with the consultation and

⁶⁷ The Rome Statute, Article 64, paragraph 8(a).

⁶⁸ The Rome Statute, Article 81. Also *The Prosecutor v Jean Bemba Gombo* (Judgement on the Appeal of Mr. Jean-Pierre Bemba Gombo against Trial Chamber III's judgement ICC-01/05-02/08 Pg. 35-60).

⁶⁹ The Rome Statute, Article 64(8) (a).

⁷⁰ The Rome Statute, Article 65(5).

⁷¹ The Rome Statute, Article 68(3).

⁷² The Rome Statute, Article 68(3).

⁷³ The Rome Statute, Article 65.

⁷⁴ The Rome Statute, Article 65(1).

admission of guilt under Article 65(1), it may proceed to convict the accused. If it is not satisfied, the admission of guilt is considered invalid and may proceed to order a trial.⁷⁵

Admission of guilt in criminal procedure is a mitigating factor and Courts give it a substantial weight. In *The Prosecutor v Ahmad Al Faqi Al Mahdi*,⁷⁶ the accused pleaded guilty to the war of destruction of cultural and historical monuments in Timbuktu, Mali. The Prosecutor and the Defense entered into a plea agreement in which Mr. Al Mahdi took responsibility for the crimes charged and provided a detailed account for his actions. This is proof that guilt and agreements fit in the legal framework of the ICC and serves to fostering peace.⁷⁷

The Rome Statute and ICC framework demonstrate that international law permits admissions of guilt while subjecting them to rigorous judicial scrutiny. It provides guidance on how international law addresses the tension between efficiency and justice in criminal cases. Secondly, it establishes that voluntariness must be assessed after consultation with counsel, recognizing the critical role of legal representation in ensuring valid waivers. It also requires a factual basis for convictions, preventing convictions based solely on admissions where those admissions are inconsistent with the evidence, and preserves judicial discretion to reject agreements that do not serve justice. .

2.4 The Four Geneva Conventions of 1949

The four Geneva conventions regulate international armed conflicts, and through Article 3, also apply to non-international armed conflicts occurring within the territory of a single State.⁷⁸ They squarely spell out the obligation to investigate, prosecute, and punish the most egregious violations of the laws of war as a struggle against immunity.⁷⁹

The Geneva conventions of 1949 and their additional Protocols of 1977 establish rules for the protection of persons who do not take part in hostilities and those who are no longer participating in hostilities. Articles 49, 50, 129, 146 of the Geneva conventions impose obligations on State parties to enact legislation providing effective penal sanctions for persons committing grave breaches, and to

⁷⁵ The Rome Statute, Article 65(3).

⁷⁶ (Sentence and Judgement) ICC-01/12-01/15 (27th December 2016).

⁷⁷ PA Oyugi, (n 62 above) 57.

⁷⁸ *Uganda v Kwoyelo Thomas alias Latoni* International crimes Division HCT-00-ICD-SC-02 of 2010.

⁷⁹ JE Mendez, (2009). The 60th anniversary of the UDHR. (2009) 30(4) *University of Pennsylvania Journal of International Law*, 1157-1170.

search for persons alleged to have committed such breaches and bring them before their own courts regardless of their nationality.

The obligation to provide *appropriate punishment* is contrary to plea bargaining that favors inadequate sentences. If plea bargaining results in sentences that are disproportionately lenient given the gravity of the offences, this may conflict with the Geneva Conventions' requirement of appropriate punishment. However, the principle that serious crimes require appropriate punishment suggests that plea bargaining systems must maintain proportionality between the gravity of offences and the sentences imposed, and must not permit sentence reductions that would render punishment inappropriate.

2.5 Regional Human Rights Framework

Regional human rights embody jurisprudence on fair trial rights and, plea bargaining providing a comprehensive perspective for its implementation.

2.5.1 African Charter on Human Rights and Peoples' rights (Banjul Charter) 1981

The Banjul Charter was adopted on 27th June 1981 and entered into force on 21st October 1986, representing the primary regional human rights instrument in Africa. An African country that ratifies the Charter undertakes regional legal obligations to respect, protect, and fulfil the rights contained therein. The Banjul Charter aimed at upholding and safeguarding human rights and fundamental rights across Africa, rooted in its mandate of solving legal problems relating to human and peoples' rights and fundamental freedoms upon which African States may base their legislation.⁸⁰

The supervision and interpretation of the African Charter on Human and Peoples rights was vested in the African Commission on Human and Peoples' Rights. The Africa Court on Human and Peoples' Rights was established under a protocol that became operational on 25th January 2004. Article 3(1) of the Protocol confers on the Court jurisdiction to hear all cases concerning alleged human rights violations,⁸¹ thus extending to all cases and disputes submitted to it concerning the interpretation and application of the Charter, the Protocol and any other relevant human rights instrument ratified by the States concerned. It is thus notable that in the event of a dispute as to whether Court has

⁸⁰ African Charter on Human and Peoples' Rights, Article 45(c).

⁸¹ African Charter on Human and Peoples' Rights, Article 3(1).

jurisdiction, the Court shall decide.⁸² The Commission considers communications compatible with the Charter of the Organization of African Union (OAU),⁸³ ensuring the protection of human rights which and under Article 56(2).⁸⁴

The Court exercises jurisdiction under Article 3 of the Protocol to all cases and disputes concerning the interpretation and application of the Charter, and any other relevant human rights instruments ratified by the States.⁸⁵ Therefore, pursuant to Rule 49(1) of the Rules of the Court, the Commission conducts a preliminary examination of its jurisdiction in accordance with the Charter, the protocol and the Rules.⁸⁶ Further, Article 60 empowers the Court to draw inspiration from international law on human and peoples' rights.

Article 7 of the Charter provides that every individual shall have the right to have his cause be heard, the right to be presumed innocent until proven guilty by a competent court or tribunal,⁸⁷ and the right to be tried within a reasonable time by an impartial court or tribunal.⁸⁸ The same is drawn back to the resolution on the Right to a fair trial and legal assistance under the African Charter., urging sensitization, promotion, and protection, and incorporation of these rights into domestic legislation by member States.⁸⁹

The Right to be heard under Article 7(1) (b) comprises of the right to be presumed innocent until proven guilty by a competent court or tribunal.⁹⁰ The right to presumption of innocence cannot cease to apply until a final judgement is passed, and extends to appeal proceedings.⁹¹ This is aimed at avoiding passing a judgement on an accused before a ruling is issued by the competent court.⁹² This remains applicable even after a trial judgement has been handed down, provided the accused filed a notice of appeal.⁹³

⁸² African Charter on Human and Peoples' Rights, Article 3(2).

⁸³ The Banjul Charter, Article 56(2).

⁸⁴ In Communication 709/19- *Senator Jean-Pierre Bemba Gombo v Democratic Republic of Congo*, Para 26-29.

⁸⁵ *Letuya and others v Republic of Kenya (Ruling)* (Application No. 010/2024) [2024] ACHPR 9 (16 October 2024).

⁸⁶ Rules of the Court of September 2020, Rule 49(1).

⁸⁷ The Charter, Article 7(1) (b).

⁸⁸ The Charter, Article 7 (1) (d).

⁸⁹ Resolution on the Right to a Fair trial and Legal Assistance, adopted at its 26th session held in November 1999.

⁹⁰ The Banjul Charter, Article 7(1) (b).

⁹¹ *Englert v Germany* (ECtHR 9 October 1985) para 35.

⁹² *Mabera v Cameroon* (Communication 416/12) [2015] ACHPR 3.

⁹³ *Prosecutor v Kordic and Cerkez*, IT-95-14/2-A, Judgement, Para. 1133.

In the case of *Houngue Eric Noudebouenou v Republic of Benin*,⁹⁴ the Applicant submitted that the Respondent State violated the right to an effective, efficient and adequate remedy enshrined in Article 7(1) of the Charter, Article 2(3) of the ICCPR and Articles 8 and 10 of the UDHR. The Court noted that while the right to an effective remedy was not explicitly provided for in Article 7 (1) of the Charter, this provision can be interpreted in conjunction with Article 2 (3) (a) of the International ICCPR relating to civil and political rights.

Article 2(3)(a) of the International ICCPR requires the Parties States to undertake and guarantee that any person whose rights and freedoms recognized in the present ICCPR have been violated will have an effective remedy, even if the violation has been committed by persons acting in the exercise of their functions official. The Court observed that the right to an effective remedy has three (3) components. Firstly, the remedy must be effective capable of providing redress for a situation violating fundamental rights. Secondly, the scope of the provision must relate to laws, conventions, regulations and customs, and thirdly, the organ competent to ensure the defense of fundamental rights must be a judicial body.

The right to defense for every individual under Article 7(1) of the Charter includes the right to be defended by Counsel of his choice. The Principles and Guidelines on the Right to a fair and Legal Assistance in Africa,⁹⁵ stipulate that the accused, or the accused defendants Counsel has a right to facilities which assist or may assist the accused in the preparation of his or her defense. The facilities in this case include to all relevant information held by the prosecution that could help the accused exonerate himself or herself. Therefore, it is the duty of the competent Authorities to ensure lawyers access to appropriate information, files and documents in their possession or control in sufficient time.⁹⁶ Therefore, State have to guarantee this right at each stage of the proceedings.⁹⁷

This right enables an accused to use the services of a specialist who is well informed about the procedure and substantial issues, in order to guarantee his rights from the beginning of the proceedings.⁹⁸ In the case of *International Pen and Others v Nigeria*, the Commission concluded that the right to defense was violated after the defense was denied access to the evidence on which the

⁹⁴ *Houngue Eric Noudebouenou v Republic of Benin*, (Application No. 003/2020) [2020] AfCHPR 4 (4 December 2020).

⁹⁵ Principles and Guidelines on the Right to a fair and Legal Assistance in Africa, 2003.

⁹⁶ African Commission on Human and Peoples' Rights, Principles and Guidelines on the Right to a fair Trial and Legal Assistance in Africa (2001) Guidelines N(3)(d), N(3)(e)(3)(i-v).

⁹⁷ The Charter, Guideline N (1)(d1).

⁹⁸ *Avocats Sans Frontières (on behalf of Bwampamye) v Burundi* Communication 231/99 (2000) AHRLR 48.

prosecution was based.⁹⁹ This establishes that the right to effective defense includes access to information necessary for making an informed decision about whether to accept a plea offer.

Fair trial rights are fundamental to the protection of other rights and that States have obligations to ensure that justice systems function effectively. Article 7(1)(d),¹⁰⁰ mandates member states to ensure that every individual has the right to be tried within reasonable time by an impartial court or tribunal. In the case of *Pagnouille (on behalf of Mazou) v Cameroon*,¹⁰¹ the Commission held that two (2) years of proceedings without any trial and without being given any reason for the delay constituted a violation of the right to be tried within reasonable time. Further, in *Centre for Free Speech v Nigeria*,¹⁰² a communication concerning a two year period of detention without trial, the Commission laid emphasis on the need for cases involving pre-trial detention to be tried as expeditiously as possible. Therefore, regardless of the circumstances, a period of seven (7) years of pre-trial detention without any final judgment is unreasonable.¹⁰³

This obligations requires States to ensure adequate judicial resources, efficient case management, and timely resolution of cases. These obligations cannot be satisfied merely by pressuring accused persons to waive their trial rights through plea bargaining. The Commission establishes that prolonged delays constitute independent violations of the Charter. Therefore, where such delays create pressure on accused persons to accept plea bargains, the resulting pleas may be tainted by the States prior violation of Charter rights.

In the case of *Paul v Benin*,¹⁰⁴ the complainant filed a cross appeal in reply to the principle appeal and that the appeal court proceeding pending were unduly prolonged. The African Commission was of the view that the undue prolongation of the case at the level of the Appeal Court was contrary to the spirit and the letter of Article 7(1) (d). Therefore the African Commission found that the Republic of Benin was in violation of Article 7(1) (d) of the African Charter, and required it to take appropriate measures to ensure that the complaints appeal was determined by the Court of Appeal as quickly as possible.

⁹⁹ *International Pen and Others (on behalf of Saro-Wiwa) v Nigeria* Communications 137/94 (2000) AHRLR 73 (ACHPR 2007).

¹⁰⁰ African Charter on Human and Peoples Rights, Article 7(1) (d).

¹⁰¹ Communication 39/90 (2000) AHRLR 57 (ACHPR 1997).

¹⁰² Communication 206/97 (2000) AHRLR 250.

¹⁰³ *Abubakar v Ghana* Communication 103/93 (2000) AHRLR 124 (ACHPR 1996) para 10-12.

¹⁰⁴ (Communication 199 of 1997) [2004] ACHPR 58 (4 June 20024).

Article 26, imposes obligations on States Parties to guarantee the independence of the courts and to allow the establishment and improvement of appropriate national institutions entrusted with the promotion and protection of rights. This provision reinforces the importance of judicial independence in all proceedings, including plea bargaining. Judges must exercise independent judgment when reviewing plea agreements and must not simply defer to prosecutorial recommendations.

The Commission assesses whether local remedies are being unduly prolonged on a case by case basis, depending on the circumstances and merits of each case.¹⁰⁵ In the case of *Modise v Botswana*,¹⁰⁶ and *Association of Victims of Post Electoral Violence and Interights v Cameroon*,¹⁰⁷ the Commission considered that given that local remedies lasted ten and five years respectively, they were unduly prolonged.

Further, Article 56(5) of the Charter requires communications sent to first exhaust local remedies if any, unless it's obvious that this procedure is unduly prolonged. Therefore, every individual is equal before the law, and entitled to equal protection of the law. In *Zimbabwe Lawyers for Human Rights and the Institute for Human rights and Development (on behalf of Andrew Barclay Meldrum) v Republic of Zimbabwe*, the Commission reemphasized that Article 3 of the Charter guarantees fair and just treatment of individuals within the legal system of a given country, whereby every individual is equal and guaranteed equal protection of the law.

In the case of *The Law of Ghazi Suleiman v Sudan*,¹⁰⁸ it was reasoned that the political situation at the time did not permit the victim to exhaust local remedies because application of law was made difficult due to the state of emergency. Therefore, the Commission state that it was reasonable to assume that not only will the procedure of local remedies be unduly prolonged, but also that it will yield no results. The local remedies were not available, adequate and effective pursuant to Article 56(5) of the African Charter.¹⁰⁹ In the case of *Jose Alidor Kabambi et al v DRC*,¹¹⁰ a period of one year and eight months was considered unusually long, especially in view of the legal timeframe prescribed by the law.

Article 56(6) of the Charter requires that a communications relating to human and people's rights be submitted within a reasonable period from the time the local remedies are exhausted, or from the date

¹⁰⁵ *Mebara v Cameroon* (Communication 416/12) [2025] ACHPR 3.

¹⁰⁶ Communication 97/93 (2000) AHRLR 30 (ACHPR 2000) para 69.

¹⁰⁷ *Association of Victims of Post Electoral Violence and Interights v Cameroon* Communication 272/03 (2009) AHRLR 47 (ACHPR 2009).

¹⁰⁸ Communication 228/99 *The Law Office of Ghazi Suleiman v Sudan* (ACHPR 2002), para 3.

¹⁰⁹ *Ibrahim v Sudan* (Communication 386/10)[2013] ACHPR 121 (25 February 2013).

¹¹⁰ Communication 408/11 ACHPR 2013, and also *Ben Salem v Tunisia* (2007) AHRLR 54 (CAT 2007) para 8.5.

the Commission is seized with the matter. This process is aimed at ensuring that States make available, effective, and sufficient access to redress human rights violations, without any impediment. The burden of proving that effective local remedies exist and they have not been exhausted falls upon the Government making such claims.¹¹¹ States have an obligation to prove that the domestic remedies are exhausted and they are effective,¹¹² so that grievances are handled through its own domestic legal system.¹¹³

Lastly, the African legal framework emphasizes not just procedural rights but also the substantive outcome of justice, aligning with restorative justice values.

2.6 Conclusion

The International and Regional legal framework establishes comprehensive standards for fair trial rights, due process, and access to justice that must inform the implementation and evaluation of plea bargaining. The framework establishes that the presumption of innocence and the right against self-incrimination remain fundamental protections even in the context of plea bargaining. In instances where systemic pressures create conditions in which accused persons accept plea bargains primarily to escape prolonged unlawful detention rather than as genuine admissions of guilt, such practices may violate international human rights standards.

Further, international tribunals have emphasized that judicial oversight is essential. Courts cannot be bound by prosecutorial agreements but must independently verify that guilty pleas meet these standards and that resulting sentences serve justice. For serious international crimes, international legal instruments impose obligations to prosecute and impose appropriate punishment. Therefore, waivers of rights must be informed, and judicial officers should not simply rubber-stamp prosecutorial agreements but must exercise meaningful discretion to protect fundamental rights and ensure appropriate punishment.

¹¹¹ Article 37(3) of the Regulations adopted in OAS Doc. OAE Ser.L.V/II.82.

¹¹² *Loayza-Tamayo v Peru* Judgment of September 17, 1997. Preliminary Objections, Ser.C, No.25 (31 January 1996) at para. 40.

¹¹³ *Social and Economic Rights Action Centre and the Centre for Economic and Social Rights v Nigeria*, Communication No. 155/96 para 37-39, 2001.

CHAPTER THREE

THE DOMESTIC LEGAL FRAMEWORK ON PLEA BARGAIN

- 3.1 Introduction
- 3.2 The Legal Framework
- 3.3 Effects of Plea bargaining
- 3.4 The effectiveness of plea bargaining in achieving access to justice under the 1995 constitution of the Republic of Uganda
- 3.5 Emerging issues
- 3.6 Conclusion

“Often we mistake stability, in terms of security and economic activity, to mean a country is doing well. We forget the third and important pillar: rule of law and respect for human rights.”

Kofi Annan, UN Secretary General, 1997-2006.

3.1 Introduction

This chapter is an analysis of Uganda’s domestic legal framework on Plea Bargain. It critically scrutinizes the Constitutional rights under Chapter IV of the 1995 Constitution of the Republic of Uganda. The chapter delves into the statutory legal frameworks that embody the principles of access to justice and the administration of justice generally. Further, it critically analyses the Plea Bargain Rules in line with the Sentencing Guidelines.

This chapter argues that Uganda's domestic legal framework on plea bargain, while comprehensive on paper, contains significant gaps in implementation that undermine constitutional guarantees. This chapter examines and analyses the domestic legal framework governing plea bargaining, evaluating it against constitutional guarantees of access to justice, fair hearing, and due process to assess whether it serves constitutional objectives or undermines fundamental rights protections.

3.2 The Legal Framework

This is an analysis of the Constitution of the Republic of Uganda and its historical grounding in colonialism. The research is anchored in chapter IV specifically Article 28 that forms the foundation for fair hearing rights in Uganda. The analysis also extends to other statutory instruments and the Rules on Plea bargain.

3.2.1 The 1995 Constitution of the Republic of Uganda

The current Justice system of Uganda was superimposed on Ugandan society during the colonial period and remains alien to large parts of the population.¹ This historical reality continues to influence contemporary constitutional framework on access to justice and criminal justice administration. However, the legal framework forming part of the Ugandan law reflect in crimes that have been established by international conventions, some emerging from customary international law.²

A Constitution is a written organic, durable instrument meant to serve the present and several generations yet unborn.³ The 1995 Constitution of the Republic of Uganda is the supreme law of Uganda,⁴ forming the standard upon which all other laws are judges.⁵ Therefore, any provision that contravenes it is null and void.⁶ This supremacy clause can stand if the plea bargaining process infringes the constitutional rights. It operates as the supreme legal framework within which all other laws must operate.

The constitution stands on a very different footing from other legislation for the most part, though the principles of interpretation are the same to a large extent.⁷ All other laws are subjected to it and they are declared null and void if inconsistent with it.⁸ It is also the reason why the language used is much broader and encompassing than that used in other statutes; intended to cover rights and freedoms for all people without discrimination because it is made for present generations and those unborn.

¹ D Rukare, & Banik, *The access to justice challenge in Uganda. Rights and legal empowerment in eradicating poverty*, (2008) 109-30.

² *Uganda v Kwoyelo Thomas alias Latoni* International crimes Division HCT-00-ICD-SC-02 of 2010.

³ *Nafiu Rabin v The State* (1981) 2 NCLR.

⁴ *Sentaro and others v Forum for Democratic Change and 2 Others* (Election Petition 83 of 2015) [2016] UGHCEP 335 (13 January 2016).

⁵ *Uganda Law Society v Attorney General* (Constitutional Petition 18 of 2005) [2006] UGCC 10 (31 January 2006).

⁶ The 1995 Constitution of the Republic of Uganda, Article 2(1).

⁷ *David Wesley Tusingwire v The Attorney General*, Constitutional Appeal No. 4 of 2016.

⁸ The 1995 Constitution of the Republic of Uganda, Article 2.

In the case of *Unity Dow v Attorney General of Botswana*,⁹ it was remarked that the Constitution is the Supreme Law of the land and Courts must breathe life into it as occasion may arise to assure the healthy growth of the state through it. It is the primary duty of Judges to make the Constitution grow and develop while accommodating the new changes the word has to offer in order to meet the just demands and aspirations of an ever developing society which is part of the wider society governed by acceptable concepts of human dignity.¹⁰

Although, it provides for the application and promotion of the principles of reconciliation between parties in adjudicating cases of both civil and criminal nature,¹¹ it further establishes fundamental rights and principles that must inform the implementation and evaluation of plea bargaining practices. Chapter IV of the Constitution provides for the recognition, protection, and promotion of fundamental and other human rights and freedoms,¹² and Uganda has an obligation to be respected, upheld and promoted by all organs and agencies of Government by all persons.¹³ The Province of the Court is solely to decide on the rights of individuals.¹⁴

In interpreting the Constitution, Courts have a duty to meet the just demands and aspirations of an ever developing society governed by some acceptable concepts of human dignity.¹⁵ Considering each provision in isolation from others can lead to great inconvenience, while in other cases manifest injustice or absurdity can occur.¹⁶ In determining the constitutionality of legislation, both its purpose and effect must be taken into consideration.¹⁷

The interpretation of the constitution takes a broadly and purposive legalistic way so as to give the spirit particularly those provisions concerned with the protection of constitutional rights.¹⁸ This includes observing a generous and purposive construction of the constitutional provisions,¹⁹ each provision of which is an integral part thereof, logically proper and imperative to construe one part in the light of the provisions of other parts.²⁰

⁹ [1992] LRC (Const.) 623 at page 668.

¹⁰ *Hunter v Southam Inc.* [1984] 2 S.C.R. 145.

¹¹ The 1995 Constitution of the Republic of Uganda, Article 126(2) (d).

¹² The 1995 Constitution of the Republic of Uganda, Article IV.

¹³ *Attorney General v Major General David Tinyefuza* (Constitutional Appeal 1 of 1997) [1998] UGSC 34 (28 January 1998).

¹⁴ *Marbury v Madison*, & Recited in *Uganda v Commissioner of Prisons, ex parte Matoru* at Pg. 530.

¹⁵ *Unity Dow v Attorney General of Botswana* (1992) LRC (Cons 623), Aguda, JA.

¹⁶ *Attorney General v Major General David Tinyefuza* (Constitutional Appeal 1 of 1997) [1998] UGSC 34 (28 January 1998).

¹⁷ *Attorney General v Salvatori Abuki*, Supreme Court Constitutional Appeal No.1 of 1998.

¹⁸ *Attorney General of Trinidad and Tobago v Whiteman* (1991)2 WLR, 1200.

¹⁹ *Attorney General of Gambia v Momodou Jobe* (1984) AC 689.

²⁰ *A.K Gopalan v State of Madras* (1950) 5 CR 88.

3.2.1.1 The right to a fair hearing and access to justice

The administration of justice in Uganda is a function of the judiciary, and the entire process of trial from the arraignment of an accused person to sentence is what constitutes administration of Justice. Article 127 further requires Parliament to make laws providing for participation of the people in the administration of justice.²¹ Article 28(1) provides comprehensive guarantees for fair trial rights in determination of civil rights and obligations or any criminal charge,²² entitling every person a fair, speedy and public hearing before an independent and impartial court or tribunal established by law.²³ This implies that Courts of law and tribunals must be free from external influence and must approach court without bias.²⁴ Cases must be resolved within reasonable time frames embodying interrelated guarantees of fair hearing, speedy trial, public hearing, and independent and impartial tribunal each of which is implicated by plea bargaining.

In *Citizens' Concern Africa v Attorney General*,²⁵ The petitioner challenged Section 91 (1) (2)(3)(7)(8X10) and (11) of the Land Act Cap 227 as amended by Section 37 of the Land Act (Amendment) 2004. The petitioner complained that under the impugned section, the Commissioner Land Registration is the complainant and a judge in his or her case. The Petitioner alleged that the Commissioner, Land Registration, generates a complaint, notifies the persons likely to be affected by the cancellation to show cause why the land title should not be cancelled, and that the Commissioner conducted a hearing and decided whether to cancel the land title or not.

The Court guided that although Articles 28(1) and 44(c) of the Constitution are not applicable to hearings before the Commissioner for Land Registration, such hearing must comply with the Article 42,²⁶ which protect any person affected by those proceedings and decisions made in relation thereto. Article 28(3) (a) contains a crucial phrase, *or until that person has pleaded guilty*, a language that explicitly contemplates that accused persons may waive their right to trial and admit guilt. However, this constitutional recognition of guilty pleas does not automatically validate all pleas regardless of the circumstances in which they are made.

²¹ The 1995 Constitution of the Republic of Uganda, Article 127(1).

²² The 1995 Constitution of the Republic of Uganda, Article 28.

²³ As above at 23.

²⁴ *In Re application for Recusal of Owiny - Dollo CJ* (Civil Miscellaneous Application No. 3 of 2021) [2021] UGSC 7 (17 March 2021).

²⁵ (Constitutional Appeal No. 3 of 2019) [2023] UGCC 12 (20 February 2023).

²⁶ The 1995 Constitution of the Republic of Uganda, Article 42 provides for a right to a just and fair treatment in administrative decisions.

Article 28(3) (a) establishes the principle of presumption of innocence to every person charged with a criminal offence until proved guilty or until that person has pleaded guilty.²⁷ This presumption of innocence places the burden of proof on the prosecution,²⁸ to establish guilt beyond reasonable doubt.²⁹ The presumption of innocence is like a golden thread which runs through the criminal law of England, and its enforcement lies at the foundation of the administration of criminal law.³⁰ Lord Sankay's judgement in *Woolmington v DPP*,³¹ referred to the presumption of innocence as a 'golden thread' running through the criminal law; that the burden of proof is placed upon the prosecution except for some circumstances in defences but the defendant is presumed innocent.³²

Gray observes that constitutionally protecting the presumption of innocence ensures that the State bears the burden of justifying any deprivation of liberty through criminal sanction.³³ The Prosecution always has the duty to prove each of the ingredients of an offence, and generally speaking, the burden never shifts onto the accused except where there is a statutory provision to the contrary.³⁴ The presumption of innocence safeguards the inherent power imbalance between the State and the individual, reducing the risk of wrongful conviction. It reflects the principle, deeply embedded in common law constitutionalism that it is better for guilty persons to go free than for innocent persons to be convicted. Plea bargaining fundamentally alters this landscape. When an accused pleads guilty, the prosecution never meets its burden of proof. The presumption is extinguished not by evidence, but by admission.

The standard of proof beyond reasonable doubt need not reach certainty, but must carry a high degree of probability.³⁵ Lord Denning on Pages 373-372 in *Miller v Minister of Pensions* (1947) 2 All ER 372 stated that proof beyond reasonable doubt does not mean proof beyond the shadow of a doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If evidence is so strong against a man as to leave only a remote possibility in his favor, which

²⁷ The 1995 Constitution of the Republic of Uganda, Article 28.

²⁸ The Evidence Act, Section 101. Cap 6.

²⁹ *Woolmington v DPP* [1935] AC 462, Lord Viscount Sankey LC established the golden thread principle in his statement that "throughout the web of the English Criminal Law, one golden thread is always to be seen, that it is the duty of the prosecution to prove the prisoner's guilt subject to ... the defence of insanity and subject also to any statutory exception."

³⁰ *Coffin v United States* 156 US 432.

³¹ As above, at 15.

³² A Gray, Constitutionally protecting the presumption of innocence, (2012) *University of Tasmanian Law Review*, 31.

³³ As above.

³⁴ *Uganda v Akugizibwe David* HCT-01-CR-SC-0280 of 2022.

³⁵ *Miller v Minister of Pensions* (1947) 2 All ER 372.

can be dismissed with a sentence: it is possible but not in the least probable, the case is proved beyond reasonable doubt; but nothing short of that will suffice.

Article 28(3) (b) requires for every accused person to be informed immediately, in a language that the person understands, of the nature of the offence. In the case of *Alex Dinasoni alias Chandiru v Uganda*,³⁶ the High Court held that there was no illegality characterizing the Appellants plea bargain after taking into account the handwritten notes of the learned trial judge who had presided over the trial of the appellant, having read and explained to the accused in Luganda, the language the appellant indicated to court as the language she understood, when he was taking plea.

In the case of *Sebuliba Siraji v Uganda*,³⁷ Court stated that Article 28(3)(b) assists the appellate courts in discerning whether the appellant fully understood the nature and consequences of the proceedings against him or her. The Appeal Court in upholding the conviction based its conclusion on the answers by the Appellant to all the stages of the proceedings which indicated that he understood what was said to him, its consequences, and what the proceedings were all about under section 63 of the Trial on Indictments Act.

Article 28(3) (c) guarantees the right to be given adequate time and facilities for the preparation of his or her defence.³⁸ This provision ensures that accused persons can meaningfully challenge the prosecution's case. Where plea bargains are concluded under pressure to resolve cases quickly, without adequate time for consultation with counsel or investigation of potential defences, this constitutional provision is violated. The State thus benefits from its own failure to provide timely justice by securing waivers of rights from desperate accused persons. Many accused persons received inadequate legal advice and lacked sufficient time to make informed decisions about plea offers.³⁹

In the case of *Uganda v Sserwadda & 6 Others*,⁴⁰ the Court stated that no witnesses were to be called upon to testify without adequate full disclosure in order to afford the accused persons adequate facilities to defend themselves as enshrined in Article 28(3)(c) of the Constitution.

Article 28(3) (d) guarantees a right to an accused charged with a criminal offence permission to appear before the court in person or, at the persons own expense, by a lawyer of his or her choice. In the case

³⁶ (Criminal Appeal No.46 of 2018) [2026] UGSC 4 (10 February 2026).

³⁷ (Criminal Appeal Number 0319 of 2009) [2014] UGCA 123 (18 December 2014).

³⁸ The 1995 Constitution of the Republic of Uganda, Article 28(3) (c).

³⁹ GN Nakibuule, 'Plea Agreements as Unconscionable Contracts, The Ugandan Experience. (2024) 15 *Beijing Law Review*, 2093.

⁴⁰ (Miscellaneous Cause 14 of 2022) [2022] UGHICD 9 (3 October 2022).

of *Rebecca Wamboka v Uganda*,⁴¹ the appellant was aggrieved by the decision of the trial Magistrate whereby she was sentenced to 4 months imprisonment for the offence of assault occasioning actual bodily harm c/s 236 of the Penal Code Act. It was indicated that there was no prosecutor in court, although the accused was present, her advocate was also absent. Court set aside the conviction holding that it was a violation of the appellant's Constitutional rights when she was denied the assistance of a lawyer of her choice despite asking court to allow her do so.

Article 28(3) (e) guarantees a right to mandatory legal representation at State expense where an accused person is charged with a criminal offence which carries a sentence or life imprisonment, if the interests of justice so require. At the High Court level, some persons particularly those charged with capital offences are represented by state-brief lawyers who are overburdened and unable to provide adequate legal advice. The State Brief Rules 2022 provide for payment of UGX 250,000-500,000 for plea bargain representation,⁴² which compromises the constitutional guarantee of effective representation. The inadequacy of these fees raises serious questions about the quality of State legal representation. If lawyers are paid a pittance, they must handle excessive caseloads to earn a living. The result is perfunctory advice, limited client consultation, and insufficient investigation all of which compromise the accused's ability to make an informed decision about whether to accept a plea offer.

In the case of *Argueta Valasquez v Uganda*,⁴³ the appellant, a Spanish speaker, was produced in court but could not comprehend the proceedings conducted in English. An interpreter was eventually provided, and the appellant pleaded guilty. On appeal, he argued that the trial magistrate erred in failing to provide him with an advocate, even though he had not requested one. The State Attorney argued that since the appellant did not ask for a lawyer, there was no violation. The Court set aside the conviction, holding that the State was obligated to ensure legal representation for an accused charged with an offence attracting life imprisonment at every stage of trial, including plea taking, to ensure equality of arms. It was immaterial whether the accused requested counsel.

This case reaffirms that the State's obligation to provide legal representation is proactive, not reactive. That courts should not wait for accused persons, many of whom are uneducated, impoverished, and unaware of their rights to request for State Counsel. Therefore, before accepting a guilty plea in a serious criminal case, the court must ensure that the accused has had the benefit of legal advice. Where

⁴¹ (HCT-04-CR-CN-0013-2007) [2010] UGHC 150 (8 December 2010).

⁴² The State Brief Rules 2022.

⁴³ (Criminal Appeal 27 of 2021) [2021] UGHCCRD 78 (2 December 2021).

state-brief lawyers are overburdened or absent, the constitutional guarantee is violated even if the accused does not complain.

Article 28(3)(f) requires the accused person with a criminal offence to be afforded, without payment by that person, the assistance of an interpreter if that person cannot understand the language used at the trial. This principle applies with equal force to plea bargaining. If an accused person does not understand the language in which the charge is explained or the consequences of pleading guilty explained, any waiver of rights is invalid. Rule 4 provides a requirement that the court ensure understanding cannot be satisfied if language barriers are not addressed through competent interpretation.⁴⁴ In the case of *Onida Moses & Another v Uganda*,⁴⁵ the central question was whether failure to provide an interpreter from English to Luo occasioned a miscarriage of justice. The Court held that where an accused person does not understand the official language of the court, an interpreter must be provided without expense. Interpretation is the only means of ensuring proper understanding and participation in proceedings.

Article 28(3) (g) requires the accused to be afforded facilities to examine witnesses and to obtain the attendance of other witnesses before the Court. This provision entitles every person charged with a criminal offence to be afforded facilities to examine in person or by his/her legal representative the witness called by the prosecution and to obtain the attendance and examination of witnesses to testify on his or her behalf. This process provides a platform to assess the veracity and credibility of the witnesses presented. In the case of *Seru Bernard v Uganda*,⁴⁶ the Appellant was denied the opportunity to cross examine both the victim of the defilement and her mother and the trial judge did not specify under what law, if any, he admitted the statements. Therefore, the conviction was quashed because it violated the Appellants right to a fair trial.

Uganda embraced plea bargaining as a mechanism to dislodge to dislodge caseloads and expedite justice delivery. The Annual ADR Performance Review Report of 2025 indicated that plea bargaining helped the Judiciary conclude approximately 3,000 cases in 12 sessions and 14 camps in a people-centered approach model of Justice, cost effective, and limiting on number of appeal cases. Plea bargaining in Uganda's domestic legal framework requires defendants to waive important procedural rights that are designed to ensure fair and accurate outcomes. Inherent in a guilty plea are waivers of

⁴⁴ The Judicature (Plea bargaining) Rules, Rule 4.

⁴⁵ (Criminal Appeal No. 33 of 2021) [2022] UGHCCRD 2 (13 January 2022).

⁴⁶ (Criminal Appeal No. 0277 of 2009) [2014] UGCA 69 (18 December 2014).

the right to remain silent, the right to confront witnesses, the right to a public trial, and the right to a jury trial, thus allowing prosecutorial overarching and other procedural failures and factual inaccuracies to remain unchecked.⁴⁷ The plea bargaining process contains significant gaps in implementation that undermine constitutional guarantees.

3.2.2 The Judicature (Plea bargaining) Rules, 2016 and The Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013

The Criminal justice system of Uganda has long grappled with high case backlog rates, straining the prisons due to delay in resolution of cases and remand. The idea of plea bargaining was initiated in April 2013 with the appointment of a nine member Taskforce headed by the then Principal judge, Yorokamu Bamwine, with support from the US-based Pepperdine University.⁴⁸ The Rules were promulgated by Justice Benjamin Odoki, the then Chief Justice, under powers conferred by Article 133 of the 1995 Constitution of the Republic of Uganda, and section 40 of the Judicature Act.

Plea bargaining was formally introduced in 2015 in eleven High Court circuits to help improve the case backlog in the country, which had resulted in severe prison overcrowding. The pilot program included personnel from the Judiciary, the Office of the Director of Public Prosecutions (ODPP), the Uganda Law Society, and the Ministry of Gender where by it disposed cases efficiently, saving costs estimated half of full trials. Notably, *the Constitution (sentencing guidelines for courts of Judicature) (Practice) Directions 2013*,⁴⁹ guide the judicial officer on the sentencing range and principles that apply during the exercise of judicial discretion. The Judicature (plea bargain) rules 2016 which were established under the Judicature Act section 41 (1) and (2) (e) to act as a handmaid of justice.⁵⁰

The Rules operationalize the Judicature Act and apply across all courts providing guidance to judicial officers, prosecutors and accused lawyers shedding a ray of hope.⁵¹ These represent the primary domestic framework governing plea bargaining practice, establishing procedures, requirements, and

⁴⁷ *United States v Raynor*, 989 F. Supp. 43, 49 (D.D.C. 1997).

⁴⁸ H Nsambu, Judiciary introduces plea bargain sessions, New Vision available on <https://www.newvision.co.ug/news/1308514/judiciary-introduces-plea-bargain-sessions> (Last accessed on 8th March 2026).

⁴⁹ Legal Notice 8 of 2013.

⁵⁰ *Rani Kusum v Smt Kanchan Devi and others*, Civil Appeal No 5066 of 2005.

⁵¹ The Judicature (Plea Bargain) Rules, SI No. 43 of 2016, Rule 6(c).

safeguards intended to ensure that plea bargaining operates fairly. These are all rooted and based in the intended purpose of addressing case backlogs in the criminal justice system.

Rule 2 provides that they apply to all courts of judicature,⁵² this provision extends plea bargaining framework to magistrate courts thus potentially easing access to justice to a much larger population of accused persons given that majority of criminal cases are handled at Magistrates courts level.

Rule 3(b)(c)(d)(e)(f) highlight the objectives of plea bargaining.⁵³ The Rules enable the accused and the prosecution in consultation with the victim to reach an amicable agreement on an appropriate punishment, to facilitate reduction in case backlog and prison congestion, provide quick relief from the anxiety of criminal prosecution, to encourage accused persons to own up to their criminal responsibility and to involve the victim in the adjudication process. Objective 3(b) enables the accused and the prosecution in consultation with the victim to reach an amicable settlement on an appropriate punishment for the offence for which the accused is charged.

Rule 4 requires that the accused understand the rights being waived.⁵⁴ The provision imposes an obligation on the court to satisfy itself that the accused understands the nature of the charges and the essential ingredients, the consequences of pleading guilty, the right to a trial and the waived rights, and the plea is voluntary.

Rule 5 of the Plea bargaining Rules,⁵⁵ a plea bargain may be initiated orally or in writing by the accused or the prosecution at any stage before sentence is passed. In the case of *Inensko Adams v Uganda*,⁵⁶ Court stated that even if the accused is still under police custody or on pretrial remand or has been released on bail, he or she may initiate the process in writing in person, or through an Attorney, or Prisons officer addressed to the prosecutor, or the administrator of the court. This implies that it can be initiated orally to the trial judge or magistrate in open court during the hearing of a case.

Rule 6 provides that either party may initiate plea discussions at any stage before sentencing.⁵⁷ Notably, it is not a collective undertaking in cases where accused persons are jointly charged but each accused makes an individual decision based on their own circumstance which protects the process against the risk of a co-accused to be pressured to plead guilty and compromise voluntariness. This promotes

⁵² The Judicature (Plea bargaining) Rules, 2016, Rule 2.

⁵³ The Judicature (plea bargain) rules 2016, Rule 3.

⁵⁴ The Judicature (Plea bargaining) Rules, 2016, Rule 4.

⁵⁵ Judicature (plea bargain) rules 2016, Rule 5.

⁵⁶ (Criminal Appeal No. 004 of 2017) [2018] UGHCCRD 401 (24 August 2018).

⁵⁷ The Judicature (Plea bargaining) Rules, 2016, Rule 6.

flexibility and facilitates case resolution, granting victims a right to be consulted and their views considered before plea agreements are finalized. This promotes acknowledgement of guilt, taking accountability, and promoting healing between the parties.

Rule 8(1) permits Courts to participate in the plea bargaining process.⁵⁸ Rule 8(2) requires the parties to inform court of the plea bargain negotiations and to consult the court on its recommendations with regard to possible sentence before the agreement is brought to court for approval. Although this provision does not give a judicial officer discretion to impose his or her own sentence, it enables provides a platform for judicial oversight to ensure there's no miscarriage of justice or abuse of the process.⁵⁹

Rule 8(3) provides for a trial where a plea bargaining offer is rejected by a judicial officer.⁶⁰ Crucially, judicial officers who engage in failed negotiations must recuse themselves from subsequent trials in the same case. This protects against the risk that a judge who has heard admissions during negotiations might be prejudiced if the case proceeds to trial, maintaining judicial impartiality under Article 28.

Rule 8 requires courts or judicial officers to be part of the plea discussions.⁶¹ The court retains discretion to reject plea agreements that fail to serve justice, involve inadequate sentences, or were obtained through improper means. This serves as a safeguard against prosecutorial overreaching and ensure that negotiated outcomes serve constitutional objectives. The Court further conducts a hearing to ensure that the accused understands the nature of the charges; the consequences of pleading guilty; whether the plea is voluntary; and factual.

More to the above, judicial officers who engage in failed negotiations recuse themselves from subsequent trials in the same case. This protects against the risk that a judge from being prejudiced if the case proceeds for trial maintaining judicial impartiality under Article 28.⁶²

Rule 9 provides for protection of minors.⁶³ Rule 9(2) provides that where an accused is a minor, the plea agreement must be executed by a guardian or legal representative. This provision recognises that minors lack full legal capacity and require adult supervision to ensure an informed and voluntary decisions. However, some accused persons enter plea agreements while minors, or committed crimes

⁵⁸ The Judicature (plea bargain) rules 2016, Rule 8(1).

⁵⁹ *Inensko Adams v Uganda* (Criminal Appeal No. 004 of 2017) [2018] UGHCCRD 401 (24 August 2018).

⁶⁰ Judicature (plea bargain) rules 2016, Rule 13.

⁶¹ The Judicature (Plea bargaining) Rules, 2016, Rule 8.

⁶² The 1995 Constitution of the Republic of Uganda, Article 28.

⁶³ The Judicature (Plea bargaining) Rules, 2016, Rule 9.

while minors,⁶⁴ which in a broadly it is an inadequate provision in practice and some guardians don't be present and thus ineffective.

Further, Rule 12 gives a right to an accused person to be informed of their right to be presumed guilty until proven guilty or until they plead guilty. Rule 12(2) required that a charge shall be read and explained to the accused in a language that he or she understands and the accused shall be invited to take plea. In *Musinguzi Apollo v Uganda*,⁶⁵ the Court held that where there is a plea bargain, the accused must still plead guilty, and the plea-taking proceedings must be on record. By the time the prosecution lays the agreement before court under Rule 12, negotiations have ended and what remains is the agreed position.⁶⁶ Therefore, under Rule 12, it is mandatory for the trial judge to explain to the accused person his or rights that are going to be waived, the effect of the said agreement and the agreement is signed before a judicial officer. Further, in *Wesamba Adan v Uganda*,⁶⁷ it was stated that it is the duty of the trial judge to find out whether the contents of the plea bargain agreement, were explained to the accused to avoid the miscarriage of justice.

Rule 12(3) 12 requires the prosecution to lay before the court the factual basis contained in the plea bargain agreement for court to determine whether there exists a basis for the agreement. The accused person should freely and voluntarily, without threat or use of force, execute the agreement with full understanding of all matters.⁶⁸ In the case of *Lwere Bosco v Uganda*,⁶⁹ the Court of Appeal held that where the procedure under Rule 12 was not explained to the accused by the trial judge, held that the failure to comply with the procedure under the Rules occasioned a miscarriage of justice, and thus rendered the plea bargain defective and set it aside.

Lastly, the plea bargain confirmation has to be signed by the parties before the presiding Judicial officer in the Form set out in the Third Schedule and becoming part of the court record and thus binding on the prosecution and the accused.⁷⁰

Rule 13 empowers judicial officers to reject plea agreements that may occasion a miscarriage of justice.⁷¹ This may include unduly lenient sentences, underscoring the judiciary's responsibility to

⁶⁴ GK Nakibuule, G. K. (n 39 above) 2093.

⁶⁵ (2019) UGCA 157.

⁶⁶ *Othieno v Uganda* (Criminal Appeal 97 of 2020) [2023] UGCA 314 (8 November 2023).

⁶⁷ Criminal Appeal No. 0101 of 2020.

⁶⁸ The Judicature (plea bargain) rules 2016, Rule 12(4).

⁶⁹ Criminal Appeal No. 531/2016) [2020] UGCA 2020.

⁷⁰ The Judicature (plea bargain) rules 2016, Rule 12(5).

⁷¹ The Judicature (Plea bargaining) Rules, 2016, Rule 13.

protect the public interest and integrity of the justice system. The same provision safeguards against prosecutorial overreaching and ensures that negotiated outcomes serve access to justice.

Rule 15 further judicial oversight further by ensuring that there is factual basis for plea bargaining before accepting it.⁷² The provision prevents convictions based solely on admissions where those admissions are inconsistent with the evidence protecting against wrongful convictions where accused persons may plead guilty to crimes they did not commit. Under Rule 15(3), the Court if in its opinion considers a particular case to be deserving a more severe sentence than the recommended one in the plea agreement, it may reject it.

The Plea bargaining (sentencing) Guidelines were also introduced in 2022 to provide further structure and consistency of plea bargaining practices regarding the sentence concessions that may be offered in exchange for guilty pleas. They are aimed at ensuring similarly situated defendants receive similar treatment, bar enormous offers which prevents unjust sentencing disparities and protecting against wrongful convictions and ensures that sentences imposed bear reasonable relationships to the gravity of offences committed.

In the case of *Abiti Moses v Uganda*,⁷³ the Court stated that the rationale for having both parties endorse a plea bargain is that it is not appealable except in exceptional circumstances. Where a plea of guilty is entered, no appeal lies except as to the legality of the plea or sentence. Therefore, as stated in *Lwere Bosco v Uganda*,⁷⁴ the Court held that a convict cannot later change their mind on appeal, faulting the trial judge for confirming a sentence voluntarily initiated and agreed to by the parties. The convict cannot argue that the sentence was harsh and excessive.

The 2022 Sentencing Guidelines build upon the Sentencing Guidelines in Legal Notice No. 8 of 2013, also focusing on ensuring proportionality, voluntariness, and compliance. They help ensure that plea outcomes do not vary arbitrarily based on factors such as which prosecutor handles the case, which judge presides, or demographic characteristics of defendants. This makes it more transparent and predictable thus making better informed decisions and accountability.

The ODPP Plea Bargain Guidelines emphasize contractual elements like offer, acceptance, consideration, and voluntariness. However, as Nakibuule argues, conceptualizing plea agreements

⁷² The Judiciary (Plea bargaining) Rules, 2016, Rule 15.

⁷³ Criminal Appeal No. 286 of 2015.

⁷⁴ Criminal Appeal No. 531 of 2016.

purely as contracts may be problematic because accused persons often lack genuine contractual capacity due to coercive conditions like prolonged detention, inadequate representation, and uncertainty about trial dates.⁷⁵ Where accused persons accept plea offers not as free actors but as desperate individuals seeking escape from systemic dysfunction, the contractual model breaks down.

Therefore, as stated in *Agaba Emanuel & 2 Ors v Uganda*,⁷⁶ cited with approval in *Tamuzadde Hamidu v Uganda*,⁷⁷ plea bargaining agreements once concluded, create an agreement between the prosecutor and the accused with all the features of an agreement in the law of contract and thus binding on both parties and shall only be allowed to avoid the agreement and appeal only in extreme cases.

3.2.3 The Magistrates Court Act

Criminal procedure in magistrates Courts is governed by the Magistrates Court Act, Cap. The Act requires the Court to explain to the accused person the nature of the charge against him or her during committal proceedings, substance of the indictment and summary of the case read to the accused person and copies of the same availed to the accused. It is at this stage that the accused is allowed to take plea. In the case of *Uganda v Hajji Elisa Namunyu & 5 Ors*,⁷⁸ the Appellant disputed that they had not pleaded to the charges in the trial court since it was not recorded in the record of trial court that the charges had been read to the Appellants. The Court of Appeal declared the conviction and sentence null and void based on procedural technicalities.

It was stated in *Barihaihi & Anor. v Attorney General*,⁷⁹ that the procedure gives the accused person reasonable information as to the nature of the offence with which he or she is charged in order to prepare for a defence, and to have an accused remanded to a place authorized by law.⁸⁰ In *Soon Yeon Kong Kim & Anor v Attorney General*,⁸¹ an accused person before the commencement of the trial can apply for pre-trial disclosure of material statements and the exhibits subject to the discretion of the trial court. However, the right to disclosure is not absolute as it can be limited by evidence by the State

⁷⁵ GK Nakibuule, (n 39 above) 2093.

⁷⁶ Criminal Appeal No. 139 of 2017.

⁷⁷ CA Criminal Appeal No. 456 of 2014.

⁷⁸ SCCA No. 49 of 2020.

⁷⁹ (Constitutional Petition No. 23 of 2011) [2019] UGCC 8 (8 July 2019).

⁸⁰ *Foundation for Human Rights Initiative v Attorney General*, Constitutional Appeal No. 03 of 2009.

⁸¹ Constitutional Reference No. 6 of 2007 (Unreported).

on grounds of State secrets, protection of witnesses from intimidation, protection of the identity of informers, and justification for fair trial purposes.⁸²

The case of *The Prosecutor v Bosco Ntaganda*,⁸³ is instrumental on what would be considered in restrictions on disclosure to include; the existence of an objectively justifiable risk to the safety of the person concerned or which may prejudice further or on-going investigation arising from disclosing the particular information to the Defence; and an assessment as to whether the redactions sought are “prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.

When an accused person appears before a Court without jurisdiction, they have the charges read to them to enable the accused person know the nature of the offences brought against them in order to prepare their defence although they cannot take plea.⁸⁴ There is no derogation as long as all the accused’s rights are fully observed and with the freedom to challenge any infringement.⁸⁵

In the case of *Foundation for Human Rights Initiative v Attorney General*,⁸⁶ Katureebe, CJ, stated that an accused person is produced before a Magistrate’s Court which in any case has neither power to try the case nor to consider bail is a necessary judicial and administrative measure. This was because if all the capital offences were to be filed straight to the High Court for mentioning and committal, such would occasion immense confusion and unnecessary backlog in the High Court.

Section 124(1) provides for a procedure of recording a plea of guilty.⁸⁷ It provides that where an accused person pleads guilty to a charge, the magistrate shall record the plea as nearly as possible in the words used by the accused and shall then explain to the accused person in ordinary language the nature of the charge to which he or she pleaded guilty, and particularly inform the accused person of the meaning and effect of the plea and of the sentence which may be passed.

Section 124(2) requires that the Court shall then ask the accused whether or she admits the truth of the charge and whether he or she has any cause to show why he or she should not be convicted on his or her own plea. Its notable under Section 204(3),⁸⁸ in cases of plea of guilty like in the instant case, its trite law that no appeal is allowed except as regards to the legality of the plea or legality of the

⁸² *Uganda v Sserwadda & 6 Others* (Miscellaneous Cause 14 of 2022).

⁸³ ICC-01/04-02/06.

⁸⁴ *Namubiru and Another v Attorney General* (Constitutional Reference 22 of 2017) [2023] UGCC 120 (15 February 2023).

⁸⁵ *Wesley Tusingwire v Attorney General*, Constitutional Appeal No. 4 of 2016.

⁸⁶ Constitutional Appeal No. 03 of 2009. (Judgement of Katureebe, CJ).

⁸⁷ Magistrates Courts Act, Sections 124 (1)–(2).

⁸⁸ The Magistrates Court Act, Section 204(3).

sentence. In the case of *Kule Rabson and Others v Uganda*,⁸⁹ the Court stated that while A2 was tried and subsequently convicted and sentenced there was no record that he ever took plea. Court noted that an argument could be made that the trial Chief Magistrate made an error in recording whether it was A2 instead of A3 that had taken plea. However, this did not change the fact that the record showed that A2 never took plea and this was an incurable and fatal error amounting to a mistrial. This is because Section 124(1) of the Magistrates Courts Act provides in mandatory terms that the substances of the charge shall be stated to the accused person by the court, and the accused person shall be asked whether he or she admits or denies the truth of the charge.

Further, in the case of *Nuwagaba Benson v Uganda*,⁹⁰ the Appellant was first arraigned in Court on 10th October, 2023 wherein charges were read to him in Runyankore which he understood but was advised by the presiding Magistrate Grade One not to take plea because the latter had no jurisdiction over the matter. On 28th November, 2023, the trial Chief Magistrate presided over the hearing, after trial Court ruled that a prima facie case was established, the Appellant gave sworn testimony and also brought DW2 to testify before he closed his case and Court delivered its judgment and sentence. There was no indication that the Appellant did take plea to any of the four counts he was charged with before the trial court. The High Court stated that convicting an accused for an offence they did not only plead to, or defend themselves, is a violation of their constitutional right to a fair hearing and a miscarriage of justice. The ground was therefore allowed.

Further, Section 132(1) (c) provides where at any stage of a trial, it appears to a magistrate's court that the accused desires to plead guilty to an offence other than the offence with which he or she is charged, then the court, if it is satisfied that no injustice to the accused will be caused thereby, may make such order for the alteration of the charge by way of its amendment or by the substitution or addition of a new charge as it thinks necessary to meet the circumstances of the case.⁹¹ This allows Courts to modify charges to reflect what accused persons are actually admitting in a plea bargain facilitating case resolution while ensuring that convictions correspond to actual criminal conduct.

In the case of *Uganda v Ashaba Boaz*,⁹² The issue for the court to resolve was whether the trial court correctly acquitted the Respondent in view of the glaring evidence of the receipt of the

⁸⁹ (Criminal Appeal 1 of 2024) [2025] UGHC 1321 (6 November 2025).

⁹⁰ (Criminal Case No. 0639 of 2023 (Ibanda Chief Magistrate's Court); HCT-05-CR-CN-0029-2024) [2026] UGHC 169 (27 February 2026).

⁹¹ Magistrates Court Act, Section 132 (1) (c).

⁹² (Criminal Appeal No. 13 of 2021) [2022] UGHCCRD 36 (11 August 2022).

Ugx.12,000,000/= from PW1. The trial magistrate found a prima facie case established and required the accused to be put to his defense. The charge was subsequently found to be defective although the Respondent had been acquitted. The High Court found the acquittal to have been incorrectly arrived at having held that a prima facie case have been established on a defective charge not supported by the evidence led by the Prosecution. Court further stated that the Respondent was not required to defend himself against a defective charge.

The import of section 132(1)(a) is to give the trial court the latitude to correct any mistakes/infractions by the Prosecution provided no miscarriage of justice is occasioned to the accused. Kazibwe, J stated that if every defect in a charge sheet terminated into an acquittal, a lot of injustice would be occasioned to complainants for lapses by the Prosecution in the preparation of charge sheets and Justice would not be served at the expense of technicalities. The dismissal of the case and acquittal of the Respondent in view of the evidence on record had led to a miscarriage of justice which the court had to remedy. The Appeal succeeded and the judgment of the lower court was thereby set aside. An Acquittal on a defective theft charge was set aside.

Further, Section 50 (1) of the Criminal Procedure Code Act,⁹³ provides for powers of the High Court on revision. The provision states that In the case of any proceedings in a Magistrate's court, the record of which has been called for or which has been reported for order or which otherwise comes to its knowledge, when it appears that in those proceedings, an error material to the merits of any case or involving a miscarriage of justice has occurred, High Court has powers to conduct a revision.

Section 50 (5) of the same Act provides that any person aggrieved by any finding, sentence or order made or imposed by a magistrate's court may petition the High Court to exercise its power of revision under this section; but no such petition shall be entertained where the petitioner could have appealed against the finding, sentence or order and has not appealed. In the case of *Uganda v Adongpiny Evelyn*,⁹⁴ Justice George Okello defined revision as the action of revising or looking over again, especially critically or careful examination or perusal with a view to correcting or improving (something).

Section 133 (1)(c) of the Act,⁹⁵ provides that where at any stage of a trial, it appears to a magistrate's court that the accused desires to plead guilty to an offence other than the offence with which he or she is charged, then the court, if it is satisfied that no injustice to the accused will be caused thereby,

⁹³ The Criminal Procedure Code Act, Section 50.

⁹⁴ Criminal Revision No. 001 of 2022.

⁹⁵ Magistrates Court Act, Section 133.

may make such order for the alteration of the charge by way of its amendment or by the substitution or addition of a new charge as it thinks necessary to meet the circumstances of the case. This provision allows courts to modify charges to reflect what accused persons are actually admitting in a plea bargain, facilitating case resolution while ensuring that convictions correspond to actual criminal conduct.

Section 160 allows for termination of criminal proceedings where parties have reconciled. The same section requires magistrates to promote reconciliation, and encourage and facilitate the settlement in an amicable way in offenses of a personal or private nature, not amounting to felony.⁹⁶ This process shares some features with plea bargaining because both involve negotiation resulting in reducing or modified charges emphasizing resolution. The judicial officer's initiation and subsequent participation in encouraging reconciliation in criminal cases is an informal system to facilitate the quick disposal of criminal cases, restoring relationships between parties.⁹⁷

In light to the above, Article 126 (2) (c) and (d),⁹⁸ provide that in adjudicating cases of both a civil and criminal nature, the courts shall, subject to the law, apply the principles that adequate compensation shall be awarded to victims of wrongs and reconciliation between parties shall be promoted. In the case of *Uganda v Swaibu Mukidi and Another*,⁹⁹ it was held that, where reconciliation is reached on a case which is a felony, the prosecution may withdraw the case instead of moving court for reconciliation. Also, in the case of *Uganda v D Kaya*,¹⁰⁰ it was held that Section 156 (now 160) was not applicable as reconciliation is permitted only in proceedings not amounting to a felony. In *Ibanda George v Uganda*,¹⁰¹ the offence of obtaining money by false pretences contrary to section 305 of the Penal Code Act was a felony and as such, reconciliation could be an option in answering the charges as stated by section 160 of the Magistrates Courts Act.

3.2.4 Trial on Indictment Act

The Trial on indictments Act, Cap governs criminal procedure in the High Court for cases prosecuted on indictment and contains provisions relevant to plea bargaining. The High Court has used an informal plea bargaining system by offering an accused a less severe sentence in exchange for a plea

⁹⁶ Magistrates Courts Act, Cap 16, Laws of Uganda, Section 160.

⁹⁷ A Wesaka. 2015. "Plea bargain: A case system the judiciary says will curb backlog", Daily Monitor, 21 April 2015. Available: <http://www.monitor.co.ug/artsculture/Reviews/Plea-bargain--A-case-system-the-judiciary-says-will-curb-backlog/691232-2692650-k7pb71/index.html>. (Accessed 25th December 2025).

⁹⁸ The Constitution of the Republic of Uganda 1995.

⁹⁹ (1995) III KALR.

¹⁰⁰ (1979) HCB.

¹⁰¹ Criminal Revision Cause No. 31 of 2023 [2025] UGHCCRD 49 (22 October 2025).

of guilty to a capital offence.¹⁰² In capital offences, the court is empowered to make an order for the alteration of the indictment, by way of its amendment or by substitution or addition of a new count, as the court thinks necessary to meet the circumstances of the case,¹⁰³ which would best serve the interests of plea bargaining.

In the case of *Bariibaihi & Anor. v Attorney General*,¹⁰⁴ the petitioner alleged that section 1 of the Trial on Indictments Act ousted the jurisdiction of the High Court under Article 139 which provides for unlimited original jurisdiction in all matters and such appellate as may be conferred on it by the constitution or other law. Section 1 of the Trial on Indictments Act, creates an exception provision to writ that the High Court shall have jurisdiction to try any offence under any written law and may pass any sentence authorized by law except that no criminal case shall be brought under the cognizance of the High Court for trial, unless the accused person has been committed for trial to the High Court in accordance with the Magistrates Courts Act.

The court took a decision that although Section 1 of the Trial on Indictments Act, bars the High Court from hearing any criminal case in which the accused person has not been committed to the High Court for trial, this is a mere procedural step merely setting down the practice of approaching the court for purposes of trial in criminal matters in exercise of its jurisdiction. Therefore, committal proceedings are a pre-trial requirement intended to promote the right to a fair hearing and any party that wishes to benefit of the exercise of the High Court's jurisdiction must bring its claim adhering to such procedure.

The Act provides for procedure of recording a plea of guilty to a charge or an indictment under sections 63 and 64.¹⁰⁵ Courts ensure that accused persons understand the charges, the consequences of pleading guilty in a language an accused understands. Therefore, an allocutus is conducted by allowing accused persons to present mitigating factors, express remorse, or provide context that may influence sentencing decisions.

¹⁰² J Tabaro. 'Alternative justice a solution to backlog in Uganda's judicial system'. Paper presented to faculty of law students, _____ at _____ Makerere _____ University. Available: https://www.observer.ug/index.php?option=com_content&view=article&id=20681:alternative-justice-a-solution-to-backlog-in-ugandas-judicial-system. (Accessed 26th December 2025).

¹⁰³ Trial on Indictments Act, Chapter 23 of the Laws of Uganda, Section 50 (2).

¹⁰⁴ Constitutional Petition No. 23 of 2011 [2019] UGCC 8 (8 July 2019).

¹⁰⁵ Trial on Indictments Act, sections 63 and 64.

The case of *Adan v Republic*,¹⁰⁶ provides that where an accused enters a plea of guilty, the court should ensure that the plea is made unequivocally, and the accused has to plead to each of the elements of an offence.¹⁰⁷ The East African Court of Appeal (as it then was) that when a person is charged with an offence, the charge and the particulars thereof should be read out to him, so far as possible in his own language, but if that is not possible in the language which he can speak and understand.

Thereafter the Court should explain to him the essential ingredients of the charge and he should be asked if he admits them. If he does admit his answer should be recorded as nearly as possible in his own words and then plea of guilty formally entered. The prosecutor should then be asked to state the facts of the case and the accused be given an opportunity to dispute or explain the facts or to add any relevant facts he may wish the court to know. If the accused does not agree with the facts as stated by the prosecutor or introduces new facts which, if true might raise a question as to his guilt, a change of plea to one of not guilty should be recorded and the trial should proceed. If the accused does not dispute the alleged facts in any material respect, a conviction should be recorded and further facts relating to the question of sentence should be given before sentence is passed.

The courts have been keen to quash convictions where they find that the plea of guilty is not unequivocal.¹⁰⁸ The unequivocal plea requirements creates important safeguards like requiring judicial officers to ensure accused persons admissions clearly and consistently acknowledge all elements of the elements to which they are pleading guilty. The case of *Tomasi Mufumu v R*,¹⁰⁹ stated that; ...it is very desirable that a trial judge, to not only satisfy himself that the plea is an unequivocal plea, but should satisfy himself also and record that the accused understands the elements which constitute the offence and the consequences of that plea. Therefore, the conviction must be quashed where the plea is not unequivocal.¹¹⁰

In the case of *Ndikubwimana v Uganda*,¹¹¹ the Court of Appeal quashed a conviction and 25-year prison sentence for murder and aggravated robbery, ruling that the plea-taking process at the High Court was illegal and procedurally defective. The court of appeal stressed that the procedure for recording a guilty plea is a fundamental safeguard stating that, the safeguards are not mere technicalities but grounded

¹⁰⁶ *Adan v Republic* [1973] 1 EA 443 (CAN).

¹⁰⁷ *Chelangat Andrew Multon Mugisha Vincent v Uganda* Unreported Court of Appeal Criminal Appeal No 111 of 2012; *Sebuliba Siraji v Uganda* Unreported Court of Appeal Criminal Appeal No 0319 of 2009; *Tomasi Mufumu v R* [1959] EA 625.

¹⁰⁸ *R v Tambukiza S/O Unyonga* (1958) EA 212.

¹⁰⁹ [1959] EA 625.

¹¹⁰ *R v Tambukiza s/o Unyonga* [1958] EA 212).

¹¹¹ *Ndikubwimana George v Uganda*, Criminal Appeal No. 0074 of 2020.

in the constitutional right to a fair hearing. Therefore, the court found the plea-taking process illegal, unconstitutional, and fatally defective, rendering the conviction unsafe. The case demonstrates that despite the formal requirements of Rule 4 of the Plea Bargain Rules, some trial courts are failing to ensure that accused persons understand the charges and the consequences of pleading guilty.

3.3 Effects of Plea bargain

From the provisions of the laws and Rules discussed, the following are the effects of plea bargain.

3.3.1 Promotes Reconciliation and smooth healing process

The process starts with the accused owing the offence and it's only available to persons who know that they committed the offence. Therefore, a judicial officer reads the charges afresh to the accused to ensure that the accused was not coerced into entering the plea bargain.¹¹² The system embodies victim and complainant consultation mechanisms whereby courts consider victims' views and also ensure protection to vulnerable victims for example children and victims of rape and defilement. Although, in some cases victims are consulted, their offer in a bargain is only treated as a suggestion and prosecution discretion overrides it,¹¹³ because they tend to be harsh at some times.

There are also instances where victims and complaints cannot be traced to give their views due to loss of interest in some cases or having changed locality. This creates meaningful participation in the resolution process and can advance victims' interests in avoiding re-traumatization through testifying about sensitive matters; achieving acknowledgement of harm without protracted litigation; participating in determining appropriate outcomes; moving closure with healing.

Reconciliation is key and this has been evident in cases where the accused and the complainant are from the same family, lineage, or community.¹¹⁴

However, in some criminal cases, victims are often excluded from plea negotiations, which normally occur between prosecutors and defense counsel. This is in instances where the prosecution has failed to trace the victim and in instances where the victim has lost interest in following up on the criminal

¹¹² Interview with HW Joanita Muwanika, Magistrate at Law Development Centre Court in Chambers on

¹¹³ Interview with Ms. Maimuna Naluwembe Kayemba, legal scholar and defence Counsel in the Plea bargain camp at Gulu prison in 2025, via WhatsApp on 29th May 2026.

¹¹⁴ Interview with Counsel Evans Ochieng, former Counsel in *Uganda v Mathew Kanyamunyu* at Ochieng Advocates Chambers in Ntinda on 30th April 2026.

matter. Therefore, though criminal cases are prosecuted on behalf of the State, often leaving victims with limited or no voice in the process. The process empowers individuals by promoting collaboration, empathy, and mutual understanding between and among parties in a case.

Plea bargaining relieves victims from the ordeal of giving testimony and second traumatization through proceedings,¹¹⁵ and prevents retaliation tendencies.¹¹⁶ The process provides rapid relief from anxiety induced by criminal prosecution due to uncertainty of pending charges which creates psychological stress. Timely resolution can alleviate this burden allowing individuals to begin serving sentences with certainty rather than enduring prolonged anxiety about unknown outcomes.

3.3.2 Restorative justice objectives

The victim or relatives of the victims have the opportunity to participate in the sentencing process which enables them along the healing process, promoting reconciliation and willingness to receive the accused persons in society after serving their sentence.¹¹⁷ The aspect of victim participation in plea bargaining serves restorative justice objectives by centring victim's needs and promoting their recovery. A case in point is interests of child victims and child defendants who are spared from the trauma of testifying in open court about their abuse and violence. Further, it promotes amicable resolution of disputes on appropriate punishments which transforms adversarial proceedings into more constructive processes that acknowledge harm, provide accountability, and promote healing.

Further still, an accused is not left at the mercy of the Court, due to voluntary acceptance of guilt. The accused admits to the commission of the offence and requests to negotiate a sentence.¹¹⁸ Although State Prosecutors do not follow up after these cases, but they weigh and assess whether the victim will be safe even after the accused has served their sentence. So in proposing a sentence, they ensure that the proposed sentence will enable them to reform and restoration.¹¹⁹ In some cases, victims end up forgiving perpetrators after seeking for forgiveness and showing remorse.¹²⁰ In cases where victims or

¹¹⁵ *Prosecutor v. Plavšić*, Case No. IT-00-39&40/1-S, para 66 and 68 (Feb. 27, 2003).

¹¹⁶ A Petrig, 'Negotiated Justice and the Goals of International Criminal Tribunals, With a Focus on the Plea Bargaining Practice of the ICTY and the Legal Framework of the ICC', (2008) 8 *Chicago-Kent journal of international and comparative law* 22.

¹¹⁷ Y Bamwine, *Plea bargaining in Uganda. Law, Procedure and Practice*, Royal Print-hood Publishers. (2022) 24.

¹¹⁸ Interview with Counsel Rebecca Mulungi, defence counsel in plea bargain cases, at Legal Aid Clinic- Law Development Centre on 5th May 2026 at Law Development Centre.

¹¹⁹ Interview with Counsel Atukunda Ritah, State Attorney at Nakawa ODPP on 5th May 2026.

¹²⁰ Interview with Counsel Mahatma Odongo, State Attorney at Nakawa ODPP on 5th May 2026.

complainants propose for harsh sentences, the prosecution guides them in order to achieve fairness.¹²¹ Whenever parties agree and find a solution, there's peace as opposed as to when Court has given its orders.¹²² Court only rejects a bargain that is not in the interests of justice or one that perpetrates a miscarriage of justice.¹²³ Therefore, there's always a pre-meeting in Chambers where a judicial officer gets satisfied that the Rules have been complied with and the agreement meets the interests of justice.¹²⁴

3.3.3 Public Confidence

Plea bargain aligns with a system of people centred justice.¹²⁵ The process enhances public confidence in the criminal justice system by demonstrating that the system can function efficiently and respond to crime promptly. This resolution of disputes embody fair resolution of cases and transparency which serve justice. The plea bargaining process in Uganda has facilitated a significant reduction of case backlogs thus addressing a critical problem that had resulted in prolonged detention, delayed justice, and erosion of public confidence. It further promotes public participation in decision making thus restoring the confidence in the criminal justice system due to the transparency between the parties; reducing appeals because parties participate and reach a consensus.

3.3.4 Case backlog management and Efficiency in the criminal justice system

Plea bargaining contributes to enhancing the efficiency of the criminal justice system by enabling the orderly, predictable, uniform, consistent, and timely resolution of criminal matters.¹²⁶ This allows the judiciary concentrate judicial resources to be concentrated on cases requiring trials, decreasing the burden on witnesses, prosecutors, and court staff which facilitates better case management and planning. This thus saves Courts time and resources that would have spent on appeal. Further, Counsel Ivan Evans Kyazze notes that in a month, he was in position to dispose of 100 cases at Patong High

¹²¹ Interview with Counsel Ivan Evans Kyazze, Resident Senior State Attorney in ODPP, at Makerere University Guest House on 8th May 2026.

¹²² Interview with Counsel Ochieng Evans, former Counsel in *Uganda v Mathew Kanyamunyu* at Ochieng Advocates Chambers in Ntinda on 30th April 2026.

¹²³ Interview with HW Joanita Muwanika, Magistrate at Law Development Centre Court in Chambers on 6th May 2026.

¹²⁴ Interview HW Timothy Lumunye, attached at Buganda Road Court sitting at LDC Court in Chambers 6th May 2026.

¹²⁵ Interview with HW Joanita Muwanika, Magistrate at Law Development Centre Court in Chambers on 6th May 2026.

¹²⁶ EC Lubaale, (2016). 'The advent of plea bargaining in Uganda: Is the criminal justice system cognizant of what it is up against?' (2016) 22(2) *East African Journal of Peace and Human Rights*, 136-173.

Court in Gulu District, 70 cases in one week at Pader Chief Magistrates Court thus reducing and decongesting prison.¹²⁷

The judiciary of Uganda operates on a first come and first come basis,¹²⁸ and it is one of the causes of delay in case backlogs. Although it has been reported that some accused persons take plea bargain out of frustration due to spending a lot of time on remand, defence Counsel is expected to explain to an accused person the constitutional rights to be waived, the implications of a plea bargain, and advise them not to undertake a plea bargain.¹²⁹ Plea bargain especially in minor offenses like drug abuse in some communities like Kisenyi area helps accused persons to have punishments like community service, and then undergo rehabilitation.¹³⁰

3.3.5 Reduction in prison congestion

Prison congestion is reduced in the long run. The process involves reduction of time spent on remand awaiting trial, and remission which lowers the sentence generally for persons who truthfully acknowledge having committed crimes; and faster movement of cases through the system reducing the accumulation of detainees. In 2022, it contributed to significant savings of approximately UGX 25 billion over a five year period,¹³¹ reflecting a reduced cost of detention and trial. This further reduces the number of accused persons on remand once convicted and enhances smooth integration in prison rehabilitation programs.

3.3.6 Constitutional concerns

Despite these benefits, significant constitutional concerns emerge. Due to broad prosecutorial discretion and high baseline sentences, the process may be coercive, potentially leading innocent people to plead guilty. Turner observes that incomplete investigations, inadequate disclosure, perfunctory judicial oversight, and sizeable plea discounts can lead defendants to plead guilty to crimes

¹²⁷ Interview with Counsel Ivan Evans Kyazze, Resident Senior State Attorney in ODPP, at Makerere University Guest House on 8th May 2026.

¹²⁸ Interview with Counsel Ochieng Evans, former Counsel in *Uganda v Mathew Kanyamunyu* at Ochieng Advocates Chambers in Ntinda on 30th April 2026.

¹²⁹ Interview with Counsel Rebecca Murungi, defence counsel in plea bargain cases, at Legal Aid Clinic- Law Development Centre on 5th May 2026.

¹³⁰ Interview with Counsel Damian Bwalapus, legal assistant at Legal Aid Clinic- Law Development Centre on 5th May 2026.

¹³¹ P Uma, 'Chief Justice Hails 'Money Saving' Plea Bargaining System'. Available on <https://chimpreports.com/chief-justice-hails-money-saving-plea-bargaining-system/>. (Last accessed on 26th March 2026).

different from the ones they committed.¹³² Important still, some factors can have an impact on the plea bargaining process and produce sentences that are disproportionately lenient or harsh based on arbitrary factors such as race, wealth, sex, age, education, intelligence, and confidence.¹³³ Bibas argues that plea bargaining occurs *outside the shadow of trial* because defendants lack information, representation, and bargaining power, leading to outcomes that reflect systemic inequalities rather than the merits of cases.¹³⁴

3.3.7 Inequalities in bargaining power

Prosecutors possess significantly more resources and bargaining power,¹³⁵ creating structural inequality in plea bargaining. Nakibuule's indicates that accused persons face *diverse fears and anxieties* during negotiations, conducted in *non-conducive ambience*, negatively impacting their ability to contract legitimate bargains.¹³⁶ It has been indicated that some accused persons who have been detained for months or years awaiting trial may accept plea bargains primarily to escape detention rather than as genuine admissions of guilt which renders plea bargaining fail to achieve constitutional access to justice.

3.4 The effectiveness of plea bargaining in achieving justice under the 1995 constitution of the Republic of Uganda

Justice is defined primarily as holding individuals accountable for crimes they have committed and imposing some form of punishment or incarceration, but justice cannot be measured only by the number of convictions secured or years imposed in a sentence. The effectiveness of plea bargaining in achieving justice must be assessed against the constitutional standards articulated in Article 28 and the international standards. However, unlike the United States, Uganda does not recognize a constitutional right to a speedy trial in the same way because many accused individuals can remain incarcerated for long periods before their matters are fully heard.¹³⁷

¹³² JI Turner, *Plea Bargaining in Reforming Criminal Justice: Trial and Pre-Trial Processes* (2017) 221.

¹³³ S Bibas, 'Plea Bargaining Outside the Shadow of Trial', (2004) 117 *Harvard Law Review* 2464, 2468. Also in Albert W. Alschuler, *The Trial Judge's Role in Plea Bargaining* (1976) 76 *Columbia Law Review*. 1059, 1125-26.

¹³⁴ As above.

¹³⁵ The 1995 Constitution of the Republic of Uganda, Article 122.

¹³⁶ GK Nakibuule, (n 39 above) 2093.

¹³⁷ Interview with Mr. Darnard Newell, B.A, MPA, M.DIV, J.D., LL.M; former prosecutor with the Cook County State's Attorney's Office in Chicago, via WhatsApp on 25th May 2026.

3.4.1 Judicial oversight

The process is subject to judicial oversight because the essence of the plea bargaining process is to serve interests of justice by ensuring compliance with law applicable but not pocket judgements or deals. A judicial officer is interested in ensuring that rights of both parties are observed, but has no business in taking part in the negotiations; though it has to ensure that the sentence does not cause of a miscarriage of justice before endorsing a bargain.¹³⁸

In the face of the law, Justice must be seen to be done. A judicial officer confirms with the accused person and the complainant that whatever has been discussed and agreed upon in the plea bargain is correct, constitutional waivers being read to the accused and ensure the accused understood the impacts of waiving those rights, before it adopts it.¹³⁹ Judicial oversight is intended to ensure that accused persons do not get unreasonable sentences and compromise the process.¹⁴⁰

3.4.2 Victim and complainant involvement

Victim involvement in the plea bargain process ensures that their interests and rights are protected. In practice, some courts involve victims to take part in the negotiations and even consulted about the possibility of resolving the case through a plea bargain. This process advances the rule of law by ensuring that perpetrators are brought through due process, taking accountability for violations and bringing a sense of relief to victims.¹⁴¹ The victim acknowledgment and consultation process fosters peace and reconciliation, bringing victims and offenders closer enabling forgiveness, healing, and rebuilding.¹⁴²

The purpose for involvement and consultation of the complainants and the victims is to know how much damage was done, how they define justice, whether there is need for compensation, or they just want to punish.¹⁴³ In instances where the victim is not accessible, the prosecution represents the interests of the victim.¹⁴⁴

¹³⁸ Interview HW Timothy Lumunye, attached at Buganda Road Court sitting at LDC Court in Chambers 6th May 2026.

¹³⁹ Interview with Counsel Rebecca Murungi, defence counsel in plea bargain cases, at Legal Aid Clinic- Law Development Centre on 5th May 2026.

¹⁴⁰ Interview with Counsel Atukunda Ritah, State Attorney at Nakawa ODPP on 5th May 2026.

¹⁴¹ JN Clark, Plea Bargaining at the ICTY: Guilty Pleas and Reconciliation, (2009) 20 *European Journal of International Law*. 415, 415.

¹⁴² KC Moghalu, *Reconciling Fractured Societies: An African Perspective on the Role of Judicial Prosecutions, in from sovereign impunity to international accountability: the search for justice in a world of states*. United Nations University Press, (2004) 216.

¹⁴³ Interview with Counsel Atukunda Ritah, State Attorney at Nakawa ODPP on 5th May 2026.

¹⁴⁴ Interview with Counsel Mahatma Odongo, State Attorney at Nakawa ODPP on 5th May 2026.

3.4.3 Legal representation

The right to legal representation is not waived by entering plea negotiations; rather, it is essential to their validity. Legal counsel discusses with an accused person to understand the merits and demerits of the accused's case.¹⁴⁵ This enables the accused to understand available defences, assess likely outcomes at trial versus plea offers, and appreciate the implications of pleading guilty. Where representation is adequate, it can protect against coercion and undue influence. Where accused persons are represented by overburdened state-brief lawyers who lack time for meaningful consultation, the right to counsel becomes a formalistic exercise rather than a substantive protection. In such circumstances, the voluntariness of any resulting plea is highly suspect.

The rule of law process involves taking accountability for the violations and some kind of prosecutions or acknowledgment from the perpetrators accepting responsibility for their actions bring about a sense of relief to the victims.¹⁴⁶ The acknowledgements foster peace and reconciliation bringing victims closer and enable forgiveness, healing, and rebuilding.¹⁴⁷

3.4.4 Flexibility

Plea bargaining has improved access to justice because it is flexible. The criminal justice system is highly procedural in nature and involves various forms; from the point of arrest, statement taking, trial process, evidence gathering, witness testimony, cross examinations, examining the authenticity and credibility of the evidence and witness which delays the trial process and resolution of cases. The plea bargaining process is less formal given that certain procedural rights of applicant's rights are waived due to its contractual nature that it's voluntary; and a reform process involving a truth telling process where the applicant acknowledges their guilt, taking accountability for the criminal liability rather than on rigid formalism.

Further, the process saves time that would have been spent summoning witnesses, Investigative Offices, assessors, among others.¹⁴⁸ This process saves courts time when the accused elects to own up and plea bargain. This in turn influences court to pass a lesser sentence. However, there are incidents

¹⁴⁵ Interview with Counsel Ochieng Evans, former Counsel in *Uganda v Mathew Kanyamunyu* at Ochieng Advocates Chambers in Ntinda on 30th April 2026.

¹⁴⁶ JN Clark, Plea Bargaining at the ICTY Guilty Pleas and Reconciliation, 20 *European Journal of International Law*. 415, 415 (2009).

¹⁴⁷ KC Moghalu, (n 141 above) 216.

¹⁴⁸ Interview with Counsel Atukunda Ritah, State Attorney at Nakawa ODPP on 5th May 2026.

were an accused realises that the time spent is enough, and they just choose to agree out of frustration.¹⁴⁹

3.5 Emerging issues

Having analysed the provisions of the legal framework, the effects of plea bargaining, and its effectiveness in achieving justice, the following are the emerging issues.

3.5.1 Inadequate Resources

There is lack of sufficient resources within the criminal justice system, insufficient judicial officers, prosecutors, and defence counsel to handle caseloads effectively. This resource constraint creates pressure and results into resolving cases quickly through plea bargaining, thus potentially compromising constitutional rights. Accused individuals that cannot afford legal representation often remain incarcerated for extended periods while awaiting resolution of their cases.

The state brief system, while intended to provide legal representation to persons that cannot afford legal counsel, often results in inadequate representation due to excessive caseloads hindering adequate preparation, insufficient time for meaningful client consultation, lack of resources for investigation and expert assistance. According to Dernard, Uganda does not have a fully developed public defender system comparable to that of the United States, where indigent defendants are automatically provided court-appointed Attorneys.¹⁵⁰ As a result, many individuals who lack the financial ability to hire an attorney may face the criminal justice process with limited legal support from the State brief Counsel.

3.5.2 Coercive conditions and systematic delays

Systemic delays, prolonged pre-trial detention, and inadequate representation create coercive conditions that undermine voluntariness. Most accused persons accept plea bargains not as genuine admissions of guilt but as a *gamble* to avoid indefinite detention.¹⁵¹

¹⁴⁹ Interview with Counsel Ochieng Evans, former Counsel in *Uganda v Mathew Kanyamunyu* at Ochieng Advocates Chambers in Ntinda on 30th April 2026.

¹⁵⁰ Interview with Mr. Dernard Newell, B.A, MPA, M.DIV, J.D., LL.M, former prosecutor with the Cook County State's Attorney's Office in Chicago via WhatsApp on 25th May 2026.

¹⁵¹ GK Nakibuule, (n 39 above) 2093.

3.5.3 Lack of data and monitoring

There is limited systematic data on plea bargaining outcomes more so from Magistrate Courts, making it difficult to assess whether the process is achieving its objectives or whether disparities exist across regions, courts, or demographic groups. The only little data is ULII,¹⁵² and not exhaustive.

3.5.4 Victim participation gaps

Victims are often not informed of some plea negotiations and are marginalized from the process violating the constitutional vision of justice under Article 126.¹⁵³ The provision emphasizes reconciliation, and undermines the restorative potential of plea bargaining. Further, as noticed from *Ndikubwimana George v Uganda*,¹⁵⁴ some trial courts are failing to conduct the rigorous inquiry required by Rule 4.¹⁵⁵ Where judicial oversight is perfunctory, the safeguard against coerced or uninformed pleas is lost.

3.6 Conclusion

The domestic legal framework governing plea bargaining in Uganda reflects an attempt to balance efficiency objectives with constitutional rights protections. This is evident in the constitutional provisions, criminal procedure Rules, and Guidelines which establish requirements, procedures, and safeguards for plea bargaining. Within that context, plea bargaining becomes an important practical tool. It allows the court, prosecution, defence, and complainants to move more quickly toward determining whether there is a prima facie basis for the allegations and whether responsibility is acknowledged by the accused. Administratively, this helps reduce overcrowding in prisons, decreases case backlog, and conserves limited judicial resources.

At the same time, plea bargaining creates an opportunity to focus more directly on the core question of justice: whether harm occurred, whether accountability is accepted, and whether resolution can be reached in a way that acknowledges the alleged wrong suffered by the victim or complainant. This further indicates a shift from the retributive nature of criminal law towards a restorative form of justice. This is through its promotion of reconciliation, reintegration, and a culture of offenders owning up responsibility as indicated above. Most importantly, this provides timely, fair, and victim

¹⁵² Uganda Legal Information Institute. www.ulii.com.

¹⁵³ The 1995 Constitution of the Republic of Uganda, Article 126.

¹⁵⁴ *Ndikubwimana George v Uganda*, Criminal Appeal No. 0074 of 2020.

¹⁵⁵ The Judicature (Plea bargaining) Rules, 2016, Rule 4.

centred resolution of criminal cases thus reducing case backlogs, saving courts time and reduction of congestion in prisons,¹⁵⁶ and relieves victims of the stressful burden of giving evidence in Court.¹⁵⁷

However, although plea bargaining is contractual in nature and voluntary in theory,¹⁵⁸ it can be self-defeating in practice. The Court of Appeal's decision in *Ndikubwimana George v Uganda*,¹⁵⁹ demonstrate that the safeguards on paper are not consistently applied in practice. Some accused persons, due to the uncertainties and potential risks of the trial process, delayed proceedings, and lack of adequate legal representation, are forced to undertake plea bargaining not as genuine admissions of guilt but as pragmatic responses to systemic dysfunction.

The plea bargaining framework largely meets international standards on paper. Rules 4, 9, 13, and 15 establish requirements for voluntariness, informed consent, protection of vulnerable accused, judicial oversight, and factual basis.¹⁶⁰ However, implementation falls short. Accused persons are not consistently informed of their rights; legal representation is often inadequate; judicial oversight is sometimes perfunctory; victims are marginalised; and coercive conditions induced by systemic delays undermine voluntariness.

¹⁵⁶ A Wesaka. 2015. "Plea bargain: A case system the judiciary says will curb backlog", Daily Monitor, 21 April 2015. Available: <http://www.monitor.co.ug/artsculture/Reviews/Plea-bargain-A-case-system-the-judiciary-says-will-curb-backlog/691232-2692650-k7pb7l/index.html> (Accessed 25th December 2025).

¹⁵⁷ *The Prosecutor v Ahmad Al Faqi Al Mahdi* (Sentence and Judgement) ICC-01/12-01/15 (27December 2016).

¹⁵⁸ GK Nakibuule, (n 39 above) 2093.

¹⁵⁹ *Ndikubwimana George v Uganda*, Criminal Appeal No. 0074 of 2020.

¹⁶⁰ The Judicature (Plea bargaining) Rules, 2016.

CHAPTER FOUR

COMPARATIVE ANALYSIS FROM OTHER JURISDICTIONS

4.1 Introduction
4.2 Selected Jurisdictions
4.2.1 United States of America
4.2.2 Australia
4.2.3 South Africa
4.2.4 Kenya
4.2.5 Tanzania
4.3 Emerging issues
4.4 Conclusion

There is no glory in plea bargaining. In place of a noble clash for truth, plea bargaining gives us a skulking truce...

Plea bargaining may be... the invading barbarian. But it has won all the same.

Prof. George Fisher.

4.1 Introduction

Plea bargain has emerged as a global phenomenon in criminal justice administration, transcending traditional legal family boundaries. Countries as diverse as France, Germany, India, Japan, Nigeria, Russia, and South Africa have adopted and implemented some form of negotiated justice, drawn

principally by the efficiency gains, effective resource utilization, case backlog reduction, and victim protection that plea bargaining offers.¹

The global proliferation of plea bargaining reflects common structural challenges confronting criminal justice systems. This is in form of overwhelming caseloads, limited institutional resources, prolonged pre-trial detention, delayed justice, and erosion of public confidence in legal institutions. However, the safeguards implemented to protect constitutional rights vary considerably across jurisdictions, and the effectiveness of these systems in achieving access to justice is far from uniform.

This Chapter undertakes a systematic comparative analysis of plea bargaining frameworks across selected jurisdictions. The analysis identifies best practices, common structural pitfalls, and legislative models that have successfully maintained constitutional protections while ensuring that negotiated justice remains an instrument of genuine access to justice rather than a mechanism for the wholesale erosion of fair trial guarantees.

4.2 Selected Jurisdictions

At the international level, three broad patterns of plea bargaining tradition are identified: jurisdictions that permit plea bargaining across all categories of offences, such as the United States; jurisdictions that restrict plea bargaining to minor or less serious crimes, and jurisdictions that formally prohibit plea bargaining yet employ functionally analogous practices.

4.2.1 United States of America

Plea bargain in the United States traces its formal institutional origins to the President's Crime Commission report of 1967, which gave conditional approval to the practice.² The process was subsequently codified when Chief Justice Burger proposed amendments to the Federal Rules of Criminal Procedure in 1974, including Rule 11, which now governs all federal plea proceedings. Therefore, what began as an informal practice gradually became systematized, regulated, and

¹ JI Turner, Plea bargaining across borders, Critics Hit Japan's New Plea-Bargaining System, Say It Opens Door to False Testimony, JAPAN TIMES (May 29, 2016), Available on <http://www.japantimes.co.jp/news/2016/05/29/national/crime-legal/critics-hit-japansnew-plea-bargaining-system-say-opens-door-false-testimony/#.WHL38FMrKM8>. (Last accessed on 25th March 2026).

² HS Miller, WF McDonald, & JA Cramer, (1978). *Plea bargaining in the United States*. Department of Justice, Law Enforcement Assistance Administration, National Institute of Law Enforcement and Criminal Justice. Pg. iv.

eventually judicially sanctioned as essential to the functioning of American criminal justice administration.

Plea bargaining in the United States developed as a response to the introduction of increasingly complex and time consuming criminal procedures and soaring docket in the twentieth century as criminal procedure became more formalized and elaborate.³ It became increasingly prevalent as the number of criminal trials and criminal proceedings became ever more complex, time consuming, and expensive during the twentieth century.⁴ In the United States, the legal system does not treat incarceration lightly because there are constitutional standards and procedural protections that must be met before someone can be detained for long periods of time. Mr. Dernard noted that:

Individuals in the U.S. are generally brought before a judge relatively quickly through a bond or bail process. During that process, the court considers whether there are sufficient facts to continue the prosecution and whether the accused can be released pending trial. In many cases, individuals are allowed to post bond, released on their own recognizance, or supervised while awaiting court proceedings, provided they agree to return for future court dates.⁵

The expansion of constitutional procedural protections across the twentieth century including the right to counsel affirmed in *Gideon v Wainwright*,⁶ the *Miranda warnings*,⁷ exclusionary rules for unlawfully obtained evidence, and elaborate discovery requirements rendered trials progressively more resource-intensive. Simultaneously, rising crime rates and increasing prosecutions created overwhelming caseloads. Plea bargaining was thus regarded as a procedural efficiency tool necessitated by scarce judicial and prosecutorial resources,⁸ offering time savings, cost reduction, and mitigation of case backlogs.⁹

The US criminal justice system, the judge has limited powers, as opposed to the prosecutor and defense counsel,¹⁰ the discretion of the Prosecutor is key and unconstrained. Currently, approximately ninety percent of convictions in both the federal and state systems are the product of negotiated guilty

³ JI Turner, *Plea-bargaining across borders*, Aspen Publishers, (2009) 8- 10.

⁴ DK Brown, (2014). The perverse effects of efficiency in criminal process. *Virginia Law Review*, Pg. 100-183.

⁵ Interview with Mr. Dernard Newell, B.A, MPA, M.DIV, J.D., LL.M; former prosecutor with the Cook County State's Attorney's Office in Chicago, via WhatsApp on 25th May 2026.

⁶ 372 U.S. 335 (1963).

⁷ 384 U.S. 436 (1966).

⁸ *Brandy v US*, 1970, Pg. 752.

⁹ WA Alschuler, The changing purposes of criminal punishment: A retrospective on the past century and some thoughts about the next, (2003) (Vol. 70 Issue 1.) *The University of Chicago Law Review*. 2.

¹⁰ Y Bamwine, *Plea bargaining in Uganda. Law, Procedure and Practice*, Royal Print-hood Publishers. (2022) 13.

pleas,¹¹ making the United States criminal justice system, in practical terms, a system of plea bargaining rather than trial.¹²

4.2.1.1 Constitutional framework

The presumption of innocence lies at the heart of American jurisprudence: there can be no finding of guilt without an adjudication by a legally competent authority.¹³ Plea bargaining, by its very nature, requires the defendant to relinquish that presumption, along with associated constitutional rights. A knowing and voluntary guilty plea necessarily requires the defendant to waive the privilege against self-incrimination, the right to a jury trial, and the right to confront and cross-examine witnesses.¹⁴

The foundational constitutional standard was established in *Brady v United States*,¹⁵ where the Supreme Court held that a guilty plea constitutes a waiver of the constitutional right to trial, and that the due process clause therefore demands the plea be both voluntary and knowing. The Court articulated that a plea entered by one fully aware of its direct consequences must stand, unless induced by threats, misrepresentation, or promises that are by their very nature improper. The Court recognized the constitutional safeguards and set out the minimum requirements.

This case thus entrenched three interlocking requirements: that the defendant's participation in a plea bargain must be genuinely free; that the plea must be free from coercion and improper inducements; and that the defendant must understand both what is being admitted and the rights being surrendered. The case stated that the accused must have a full understanding of the charges against their and the consequences of the plea bargain and failure to admonish the defendant as to the consequences of a reversible error.¹⁶ In the case of *Boykin v Alabama*,¹⁷ court emphasized that the record of a court must affirm that the bargain was entered knowingly and voluntarily.

However, the protective potential of *Brady* was substantially undermined eight years later in *Bordenkircher v Hayes*,¹⁸ In this case, Hayes, who had two prior felony convictions was charged with

¹¹ US Department of Justice, Bur. Justice Stat. 2004. Felony sentences in State Courts, 2002 Admin Off. US Courts. 2004. Statistical tables for the federal judiciary, June 30 2004.

¹² JE Ross, 'The entrenched position of plea bargaining in United States legal practice', (2006) 54 *American Journal of Comparative Law*, 717.

¹³ HS Miller, WF McDonald, & JA Cramer, (n 2 above) xix.

¹⁴ *Boykin v Alabama*, 395 U.S. 238 (1969).

¹⁵ 397 U.S. 742 (1970).

¹⁶ *Vasquez v State* 477 SW 2d 629 633 (Tex Crim App 1972).

¹⁷ 395 US 238 242.

¹⁸ 434 US 357 (1978).

passing a worthless cheque for less than ninety dollars, an offence punishable by two to ten years' imprisonment. The prosecutor offered a five-year sentence in exchange for a guilty plea, and threatened to invoke the state's Habitual Offender Act. This Act mandated automatic life imprisonment upon a third felony conviction should a serial offender refuse. Hayes declined the offer, the threat was carried out, and he was sentenced to life imprisonment. The Supreme Court held that this prosecutorial conduct constituted an acceptable bargaining tactic. *Bordenkircher* case therefore starkly illustrates the tension between formal voluntariness and substantive coercion. While a plea may technically satisfy the legal definition of voluntariness, structural power imbalances can render that voluntariness illusory in practice.

Voluntariness is necessarily incomplete without adequate information. A defendant's admission of criminal culpability is not meaningful unless the defendant understands the offence to which the guilty plea relates.¹⁹ Accordingly, Rule 11(b)(1) of the Federal Rules of Criminal Procedure requires the court to inform defendants of the nature of the charges, the potential maximum penalties, the mandatory minimum penalties, and the court's obligation to follow the Sentencing Guidelines.²⁰ Failing to notify defendants of crucial offence elements can render the plea involuntary.²¹

The importance of this requirement was demonstrated in *United States v Watch*,²² where the Fifth Circuit found reversible error when the district court failed to advise the defendant of the statutory mandatory minimum, thereby misleading the defendant as to the penal consequences of the plea. The court vacated the conviction and remanded the case to allow the defendant to re-plead. Similarly, in *United States v Goins*,²³ the district court's failure to inform the defendant of the mandatory minimum during the Rule 11 plea colloquy was held to constitute a substantial violation of his rights, warranting vacation of the plea. These decisions collectively establish that the adequacy of information communicated to the defendant is not merely a procedural technicality but a substantive constitutional requirement.

The application of harmless error analysis to Rule 11 violations introduces a further layer of complexity. In *United States v DeFusco*,²⁴ the court found no Rule 11 violation where the defendant had

¹⁹ *Bordenkircher v Hayes*, 434 U.S. 357 (1978).

²⁰ JE Ross, (n 12 above) 717.

²¹ *Henderson v Morgan*, 426 U.S. 637 (1976).

²² 7 F.3d 422, 429 (5th Cir.1993).

²³ 51 F.3d 400 (4th Cir. 1995).

²⁴ 949 F.2d 114, 117 (4th Cir.1991).

reviewed both the information and the plea agreement with counsel and had discussed potential defenses. By contrast, In *United States v Hourihan*,²⁵ the Eleventh Circuit found that a Rule 11 violation was not harmless where the defendant had received no effective notice of the mandatory minimum until the presentence investigation report, and where both parties had clearly contemplated a sentence below the applicable minimum.

The requirements in *Apprendi v New Jersey*,²⁶ introduced a further dimension. In *U.S. v Minore*,²⁷ the Ninth Circuit held that before accepting a guilty plea, the district court must advise the defendant that the government bears the burden of proving to the jury, beyond reasonable doubt, any quantity of drugs that would expose the defendant to a higher statutory maximum. Although the court ultimately affirmed the conviction on plain error review, the principle established has significant implications for the scope of disclosure required before a plea can be accepted as genuinely knowing.

Gary W. Minore challenged the validity of his conviction because the district court did not advise him during the plea colloquy that the government would be required to prove the amount of marijuana involved in the offense to the jury beyond a reasonable doubt. Applying the reasoning in *Apprendi* in the context of Federal Rule of Criminal Procedure 11(c) (1), we hold that before accepting a guilty plea, the district court ought to have advised the defendant that the government would have to prove to the jury beyond a reasonable doubt any quantity of drugs that would expose the defendant to a higher statutory maximum sentence. However, in applying plain error review to the district court's failure to so advise Minore, Court concluded the error did not seriously affect the fairness, integrity or public reputation of the judicial proceedings, and thus affirmed Minore's conviction.

This Rule and due process require the District Court to inform the Defendant of the critical elements of the offence. Federal Rule of Criminal Procedure is designed to assist the district judge in making the constitutionally required determination that a defendant's guilty plea is truly voluntary.²⁸ of *Apprendi v New Jersey*,²⁹ in the context of Federal Rule of Criminal Procedure 11(c) (1), and held that before accepting a guilty plea, the district court must advise the defendant that the government would have to prove to the jury beyond a reasonable doubt any quantity of drugs that would expose the defendant to a higher statutory maximum sentence. In applying the plain error review to the district

²⁵ 936 F.2d 508, 510 n. 3 (11th Cir.1991).

²⁶ 530 U.S 466, 120 S.Ct 2348.

²⁷ 292 F.3d 1109 (9th Cir. 2002).

²⁸ *McCarthy v United States*, 394 U.S. 459, 465, 89 S.Ct. 1166, 22 L.Ed.2d 418 (1969).

²⁹ 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000).

court's failure to so advise Minore, Court concluded that the error did not seriously affect the fairness, integrity or public reputation of the judicial proceedings, and thus affirmed Minore's conviction.

The Federal Rules of Criminal Procedure provide for plea bargaining by requiring pleas of guilty are entered voluntarily and in an open court.³⁰ Rule 11 of the Federal Rules of Criminal Procedure governs all federal plea proceedings and is also the rule prohibiting a judge's involvement in plea proceedings. Rule 11(c) (1) requires the district court to address the defendant personally in open court and advise the defendant of “the nature of the charge to which the plea is offered.”³¹

Critically, Rule 11 imposes an absolute prohibition on judicial participation in plea negotiations. Rule 11(e) (1) states unequivocally that the court shall not participate in any plea discussions.³² This prohibition serves several important structural purposes: it prevents the coercive influence of judicial authority from intruding into the bargaining process; it preserves the neutrality of the trial judge; and it ensures that the judicial function of sentencing is not pre-empted by executive negotiation. In the case of *United States v Bruce*,³³ the court held that a district judge's participation in plea bargaining discussions entitled the defendant to withdraw the plea, confirming that this is a clear, absolute command admitting of no exceptions.

Kenneth Reed Bruce and Deborah Miserany were arrested at their residence in Oceanside, California on January 25, 1989, for conspiracy to distribute methamphetamine. A superseding six-count indictment was filed against them on April 28, 1989. On January 9 1990, the prosecutor and the defendants discussed a proposed plea agreement with the district judge and the next day, the defendants accepted the agreement. The government waived the indictment, filed a one count superseding information that charged the defendants with aiding and abetting a conspiracy to possess a controlled substance with intent to distribute, and Bruce and Miserany entered a plea of guilty to that offense. After a colloquy with defendants, the district judge accepted their pleas, and a sentencing date was set for March 26, 1990.

Subsequently, Bruce moved to withdraw his guilty plea under Federal Rules of Criminal Procedure 11(c) (1) on the ground that his plea was not concluded knowingly and intelligently made because he did not understand the charge to which he had pled and the view that the District Court improperly

³⁰ Federal Rules of Criminal Procedure, Rule 11.

³¹ Federal Rules of Criminal Procedure, Rule 11(c)(1).

³² Fed. R. Crim. P. 11(e) (1).

³³ 976 F.2d 552, 559-60 (9th Cir.1992).

participated in the bargain in violation of Federal Rule of Criminal Procedure 11(e) (1). The district court denied the motion and sentenced Bruce to 77 months in prison. Bruce appeals. The Court permitted his Application and held that District court's failure to follow Rule 11(e) (1) was plain error reviewable because it contains a clear command.

In *McCarthy v. United States*,³⁴ a defendant who has pled guilty after the judge has participated in plea discussions should be allowed to re-plead, without having to show that actual prejudice has resulted from the participation the Supreme Court similarly held that a defendant who pleads guilty after judicial participation in plea discussions must be allowed to re-plead without demonstrating actual prejudice.

The constitutional right to counsel, as guaranteed by the Sixth Amendment, extends fully into the plea negotiation stage. The Supreme Court's trilogy of *Padilla v Kentucky*,³⁵ *Lafler v Cooper*,³⁶ and *Missouri v. Frye*,³⁷ precisely established that defendants are constitutionally entitled to the effective assistance of counsel during plea negotiations, and that defective legal advice at that stage can vitiate the entire plea agreement. In *Padilla*, the Court emphasized that where deficient advice influenced the defendant's decision to plead guilty and impaired the ability to evaluate the attendant risks of accepting criminal responsibility with open eyes, substantial rights are violated. The right to counsel extends to the disclosure of plea offers. Where defense counsel fails to communicate the government's plea offer to a defendant, the defendant cannot waive a right they do not know exists.

Federal Rules of Criminal Procedure, 11(c) (2) and (c)(3) also require the judge to inform defendants of their right to counsel at every stage in the proceeding. However, defendants cannot waive their right to claim that they were denied their Sixth Amendment right to effective assistance where defense counsel failed to inform the defendant of the government's plea offer.³⁸

Rule 11(d) of the Federal Rules of Criminal Procedure requires judges to ask defendants whether their guilty plea was the result of force or threats or of promises apart from a plea agreement, Rule 11(f) of the Federal Rules of Criminal Procedure appears to give federal judge's discretion to accept or reject such guilty pleas, depending on the underlying facts and the circumstances of the plea. Rule 32(d) of

³⁴ 394 U.S. 459 463-64, 89 S. Ct. 1166.

³⁵ 559 U.S. 356 (2010).

³⁶ 132 S. Ct. 1376 (2012).

³⁷ 132 S. Ct. 1399 (2012).

³⁸ *People v Whitfield*, 239 N.E.2d 850 (Ill 1968); *Cottle v State*, 733 So.2d 963 (Fla. 1999).

the Federal Rules of Criminal Procedure permit withdrawals of guilty pleas only to correct a manifest injustice.³⁹

In exchange for any of these benefits, prosecutors in many federal districts require waivers from the defendant.⁴⁰ Although several cases have challenged the constitutionality of plea bargaining, the United States Supreme Court has focused on the importance of voluntariness as an essential condition of a legitimated negotiated plea of guilty.⁴¹ The U.S. Sentencing Commission Guidelines Manual group together offenses and amounts whether they are charged or not.⁴²

In *North Carolina v Alford*,⁴³ and *Boykin v Alabama*,⁴⁴ the defendants agreed to plead guilty and both accepted long prison terms. The Supreme Court held that guilty pleas were voluntary. It was further stressed in *Henderson v Morgan*, that the judge must confirm that the defendant understands the essential elements of the crime to which he or she is pleading guilty.⁴⁵ In this case of *Henderson*, the Supreme Court reversed the defendant's conviction because the defendant was not informed that second-degree murder, to which he was pleading guilty, required the government to prove intent to cause death. The Court explained that Morgan's plea could not be considered voluntary without adequate notice of the nature of the charge against him, or proof that he in fact understood the charge.

Therefore, in practice, a judicial officer and the plea bargaining form indicate that the judge informs the defendant of the direct consequences of a guilty plea,⁴⁶ and of the rights waived by pleading guilty.⁴⁷ This ensures that guilty pleas reflect genuine admissions of all components of criminal offenses rather than partial or mistaken understandings. All negotiations occur directly between the parties without any mediator or neutral overseer because the judge hearing the case is prohibited from becoming involved in plea negotiations.⁴⁸ This is an absolute prohibition on all forms of judicial participation in or interference with the plea negotiation process and observing that the blanket prohibition admits of no exceptions and serves several important concerns.⁴⁹

³⁹ *People v Schneider*, 25 P.3d 755 (Colo. 2001).

⁴⁰ E Andrew, AE Taslitz, 'Prosecutorial Preconditions to Plea Negotiations: Voluntary Waivers of Constitutional Rights, (2008) 23 *Criminal Justice Review*. 14.

⁴¹ *Machibroda v U.S* 368 U.S. 487 1962.

⁴² U.S. Sentencing Guidelines Manual 3d1 (U.S sentencing comv'n 2014).

⁴³ 400 U.S. 25, 1970.

⁴⁴ 395 U.S. 238.

⁴⁵ *Henderson v Morgan*, 426 U.S. 637, 652-53 (1976).

⁴⁶ *United States v Rivera-Maldonado*, 560 F.3d 16, 22.

⁴⁷ *Boykin v Alabama*, 395 U.S. 238, 242 (1969).

⁴⁸ *United States v Hemphill*, 748 F.3d 666,672.

⁴⁹ *United States v Pena*, 720 F.3d 561, 570. Citing *United States v. Miles*, 10 F.3d 1135, 1139.

Similarly, in *United States v Young*,⁵⁰ the defendant argued that the court violated his substantial rights by failing to inform him of the statutory minimum sentence. The provision guarantees a right to a speedy and public trial in all criminal prosecutions by an impartial jury of the State and district wherein the crime shall have been committed. The Accused must as well be informed of the nature and cause of the accusation; to be confronted with witness. A court may vacate a conviction made pursuant to a plea only if the trial court's violations of Rule 11 affected the defendant's substantial rights.⁵¹ As stated in *United States v Johnson*,⁵² the court must determine whether the defendant's knowledge and comprehension of the full and correct information would have been likely to affect his willingness to plead guilty.

Although the Fifth and Sixth Amendments provided, that defendants have the right to receive exculpatory impeachment material from prosecutors;⁵³ a defendant who pleads guilty forgoes a fair trial as well as various other accompanying constitutional guarantees.⁵⁴ As a result, the defendant must enter a guilty plea that is voluntary and make related waivers knowingly, intelligently, and with sufficient awareness of the relevant circumstances and likely consequences.

The Ninth Circuit in effect held that a guilty plea is not voluntary unless the prosecutors first made the same disclosure of material impeachment information that they would have had to make had the defendant insisted upon a trial. However, there is failure in the very due process considerations that have led the Court to find trial related rights to exculpatory and impeachment information and thus argue against the existence of the right the Ninth Circuit found.⁵⁵

In the case of *United States v Santo*,⁵⁶ Jose Santo pleaded guilty to drug conspiracy and other charges after being told incorrectly, as it turned out that he faced a statutory mandatory minimum sentence of only five years. Later, upon determining that Santo was responsible for more drugs than was initially contemplated, the district court sentenced him subject to the ten-year mandatory minimum applicable to the greater drug quantity. Santo contended that the court's understatement of the mandatory minimum penalty rendered his guilty plea involuntary, as the error both violated an express provision of Federal Rules of Criminal Procedure, Rule 11 requiring advice as to the mandatory minimum

⁵⁰ 470 US 1 (1985).

⁵¹ Advisory Committee's Note to 1983 Amendment.

⁵² 1 F.3d 296, 302.

⁵³ *Brady v Maryland*, 373 U. S. 83, 87.

⁵⁴ *Boykin v Alabama*, 395 U. S. 238, 243.

⁵⁵ *Ake v Oklahoma*, 470 U. S. 68, 77.

⁵⁶ 225 F.3d 92 (1st Cir. 2000).

penalty provided by law and also affected his substantial rights.⁵⁷ On December 3, 1998, Santo and three co-defendants were charged with conspiracy to distribute heroin, and the distribution of heroin. Santo was also charged with making false statements to a federal law enforcement officer, and making false statements in a passport application. Thereafter, Santo signed a plea agreement with the United States Attorney, in which he agreed to plead guilty to all the counts against him in the indictment and admitted that he was, in fact, guilty of each of these offenses. The Court allowed Santo to withdraw his plea.

In *United States v Timbana*,⁵⁸ John Timbana appeals from the judgment entered following his plea of guilty to the crime of second-degree murder as part of a plea agreement. Timbana was indicted for first-degree murder committed on an Indian reservation in violation of 18 U.S.C. SS 1111(a) and 1153. Timbana requested that this court vacate the district court's sentencing decision on the ground that it abused its discretion in failing to grant Timbana a downward departure from his applicable range under the United States Sentencing Guidelines.

On August 30 1996, Timbana and the prosecutor agreed that, in exchange for Timbana's plea of guilty to the lesser included offense of second-degree murder, the Government would recommend that he received a three-point reduction in his offense level for acceptance of responsibility and would move to dismiss the charge of first-degree murder. The plea agreement also stated that Timbana understood that he had the right to a trial by jury and that by pleading guilty he waived his right to a trial by jury. Finally, the plea agreement stated that no person threatened or coerced Timbana to enter a plea of guilty, that the agreement had been read to him, that he had discussed the agreement with his attorney, and that he understood the agreement. Timbana indicated his acquiescence in the plea agreement by marking it with an x. The Court find Timbanas' plea of guilty to second-degree murder was knowing and voluntary. The Court accepted it and entered a judgment of guilty as to that crime.

The prohibition on judicial involvement in plea negotiations, as codified in Rule 11, prevents the coercive influence of judges in the bargaining process and preserves judicial neutrality. In *Bolivar Irizarry v United States*,⁵⁹ Bolivar Irizarry appealed from an order of the United States District Court for the Eastern District of New York, for denying his motion under Article 28,⁶⁰ to vacate a judgment of

⁵⁷ Federal Rules of Criminal Procedure, Rule 11(c)(1) and (h).

⁵⁸ 222 F.3d 688, 702 (9th Cir.).

⁵⁹ 508 F.2d 960, 965-66 (2d Cir.1975).

⁶⁰ U.S.C. 2255.

conviction for conspiracy to possess and distribute cocaine, entered upon that court's acceptance of Irizarry's plea of guilty. Irizarry attacked the judgment on the ground that the district court accepted his guilty plea in violation of Rule 11, Federal Rules of Criminal Procedure, in that it failed to establish on the record at the time of the plea that the plea was entered with an understanding of the nature of the charge and that there was a factual basis for the plea. The Court held that at the time of the plea there was a failure sufficiently to comply with the requirement of Rule 11 and thus reversed the decision to enable Irizarry to plead afresh.

4.2.1.2 Prosecutorial and Judicial discretion

Prosecutors have the authority not only to bring charges but to bargain them away in return for a guilty plea to less serious crimes.⁶¹ A defendant's admission of criminal culpability is not meaningful unless the defendant understands the crime to which he is confessing. Notice of the nature of the charge is required to obtain a knowing and intelligent guilty plea.⁶² Therefore, informing the defendant of the nature of the charge against him ensures that the defendant thoroughly understands that if he pleads not guilty the State will be required to prove certain facts, thus permitting the defendant to make an intelligent judgment as to whether he would be better off accepting the tendered concessions or chancing acquittal if the prosecution cannot prove those facts beyond a reasonable doubt.⁶³

In the case of *United States v Ruiz*,⁶⁴ the Supreme Court addressed whether the Constitution requires federal prosecutors to disclose impeachment information before entering into a binding plea agreement. The Ninth Circuit had held that a plea could not be voluntary unless prosecutors first disclosed the same material impeachment information they would have been required to disclose at trial. The Supreme Court reversed, holding that the Constitution does not require the government to disclose material impeachment evidence prior to entering a plea agreement. The Court reasoned that a defendant who pleads guilty forgoes not only a fair trial but also various other accompanying constitutional guarantees, and that the plea must simply be voluntary, knowing, and made with sufficient awareness of relevant circumstances and likely consequences.

While *Ruiz* represents an accommodation of prosecutorial efficiency, it also illuminates a significant vulnerability in the American plea bargaining framework: the defendant may enter a plea without full

⁶¹ *United States v Jacobo-Zavala*, 241 F.3d 1009 (8th Cir. 2001).

⁶² *Henderson v Morgan*, 426 U.S. 637, 645, 96 S.Ct. 2253, 49 L.Ed.2d 108 (1976).

⁶³ RL Wayne, HI Jerold & JK Nancy, 5 Criminal Procedure 21.4(c) (2d ed. 1999).

⁶⁴ 536 U.S. 622, 623 (2002).

information concerning the reliability of the evidence against them. This structural imbalance in information disclosure between the prosecution and the defense undermines the substantive equality that genuine voluntariness demands.

Judges enjoy considerable latitude in deciding whether to accept or reject plea bargains. In *United States v Brown*,⁶⁵ it was held that defendants have no absolute right to have a guilty plea accepted, and that judges are vested with sound discretion to evaluate the fairness of any arrangement. However, in *Sandy v Fifth Judicial District Court*,⁶⁶ it was held that a judge may not reject a plea agreement merely because the judge considers it overly lenient or because it infringes upon the court's preferred sentencing authority thereby preserving a degree of enforceability for agreements once validly concluded.

If a plea agreement calls for the dismissal of charges, a federal court may defer its decision to accept or reject the plea bargain until the judge has seen the pre-sentence report and formed an opinion about the gravity of the underlying conduct.⁶⁷ In *United States v Greener*,⁶⁸ It was stated that a judge is not required to accept a plea agreement that would bind the judge to a specific negotiated sentence if the judge believes that the sentence would not sufficiently reflect the seriousness of the defendant's criminal conduct.

The decisions in *Blakely v Washington*,⁶⁹ and *United States v Booker*,⁷⁰ further complicated the sentencing landscape by striking down mandatory sentencing provisions that had previously constrained judicial discretion, introducing a period of significant uncertainty concerning the relationship between plea-negotiated sentences and constitutional sentencing requirements.

4.2.2 Australia

Australian courts did not consider plea bargaining or sentence reduction for guilty pleas until the 1970s and 1980s.⁷¹ By the period 2012–2013, approximately seventy percent of all Australian criminal defendants pleaded guilty,⁷² confirming that negotiated resolution had become the dominant mode of

⁶⁵ 331 F.3d 591.

⁶⁶ 935 P.2d 1148 (Nev. 1997).

⁶⁷ *United States v Bennett*, 990 F.2d 998 (7th Cir. 1993).

⁶⁸ 979 F.2d 517.

⁶⁹ 124 S.Ct. 2531 (2004).

⁷⁰ 125 S. Ct. 738 (2005).

⁷¹ *R v Shannon* (1979) 21 SASR 442.

⁷² Australian Bureau of Statistics, "Criminal Courts, Australia, 2012-13: Method of Finalisation," Australian Bureau of Statistics, <http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4513.0~201213~Main%20Features~Method%20of%20finalisation~13> More recent prosecution data from the ABS collapses guilty pleas with convictions. "Criminal Courts,

criminal case finalization. While formal plea bargaining of the kind involving direct judicial participation in negotiations and guaranteed sentences does not exist in the Australian legal system, most states permit and some require a reduction in sentence when an accused pleads guilty.⁷³ The term plea bargaining is itself strongly rejected by the Australian legal community, given the negative connotations of a commercial trade transacted outside the scrutiny and procedural rules applied at trial.⁷⁴

Plea negotiations in Australia are not defined in legislation. Instead, they operate according to internal prosecution policies and practices, removed from the visibility and scrutiny of the court and the public.⁷⁵ They operate according to internal prosecution policies and practices, away from the visibility and scrutiny of the court, and public.⁷⁶ In this way, the community can be satisfied that the public interest is being properly served. The process involves informal discussions and correspondence between the prosecution and defense, they may occur at any time before or even after a trial has commenced,⁷⁷ and they are instigated by either party. While it may be possible to monitor the rates of guilty pleas entered, there remains very limited information as to how or why guilty pleas are entered, processes involved in reaching a resolution, and there are no official data available to document the role of plea negotiations in facilitating these pleas.

In Australia, the most frequent method of case finalisation is not a contested trial, but plea of guilty by the accused, and they have played a significant role in the delivery of modern day justice. Plea negotiations are encouraged, and sometimes mandated, to occur at an early stage in the management of a case,⁷⁸ and the process can be instigated by either the prosecution or the defense.

Early resolution-focused pre-contest hearings are actively encouraged and, in some jurisdictions, mandated. In Victoria, the Magistrates' Court operates both a summary case conference regulated by

Australia, 2016-17: Higher Courts," Australian Bureau of Statistics, <http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4513.0~201617~Main%20Features~Higher%20Courts~6>.

⁷³ SLR Anleu, & K Mack, 'Pleading guilty and professional relations in Australia'. (2001)22(2) *Justice System Journal*, 22(2), 155-184.

⁷⁴ A Flynn, 'Plea-negotiations, prosecutors and discretion: An argument for legal reform'. (2016) 49(4) *Australian & New Zealand Journal of Criminology*, 564-582.

⁷⁵ V Waye & P Marcus, 'Australia and the United States: Two Common Criminal Justice Systems Uncommonly at Odds', (2010)18 *Tulane Journal of International and Comparative Law*, 335, 349.

⁷⁶ A Flynn, (n 74 above) 564-582.

⁷⁷ Prosecution Guidelines of the Office of the Director of Public Prosecutions for New South Wales 37 (2007), <http://www.6windeyer.com/au/downloads/DPPPProsecution-Guidelines.pdf>

⁷⁸ Criminal Procedure Act 2004, Section 107.

section 54 of the *Criminal Procedure Act 2009* (Vic), and a contest mention regulated by section 55. The conference is designed to assist the accused to understand the evidence available to the prosecution,⁷⁹ to enable the parties to identify issues in genuine dispute,⁸⁰ and to facilitate early case resolution. The New South Wales Law Reform Commission confirmed in a 2013 consultation paper that most Australian jurisdictions have incorporated plea negotiations into prosecutorial practice.⁸¹

In the Australian Magistrates' Court system, early resolution focused processes are also encouraged and they include the summary case conference,⁸² and the contest mention.⁸³ There are summary case conference police prosecutors whose role is to engage in these discussions as defined by the Victoria Police Summary Case Conference Service Charter.⁸⁴ Victoria's plea bargaining system allows cases to be resolved on the basis of un-scrutinized prosecutorial decisions, in an unregulated, non-transparent process. The Victorian Office of Public Prosecutions, encourages them to initiate discussions with the defense practitioner.⁸⁵ However, this illustrates the dangers of informal plea bargaining conducted entirely behind closed doors.

The *Sentencing Act 1991* of Victoria, section 5(2)(e), requires a court, when sentencing an offender, to take into account whether the offender pleaded guilty and, if so, the stage in the proceedings at which the plea was entered thereby creating a formal legislative incentive for early resolution without prescribing the mechanics of negotiation. Section 6AAA of the same Act further requires the court to specify the sentence that would have been imposed but for the guilty plea, introducing a transparency mechanism.

4.2.2.1 Judicial oversight and Prosecutorial limits

The relationship between prosecutorial discretion and judicial authority was carefully delineated in *Maxwell v The Queen*,⁸⁶ where Gaudron and Gummow JJ held that the integrity of the judicial process, and particularly its independence, impartiality, and the public perception thereof would be compromised if courts were to concern themselves with decisions as to who is prosecuted and for what. The court further held that, save to prevent an abuse of process or where there is evidence that

⁷⁹ *Criminal Procedure Act 2009* (Vic) s 54(1)(a).

⁸⁰ *Criminal Procedure Act 2009* (Vic) s 54(1)(b).

⁸¹ N.S.W. Law Reform Commission, Encouraging appropriate early guilty pleas: 5. models for discussion 4.25 (2013).

⁸² Regulated by s 54 of the *Criminal Procedure Act 2009* (Vic).

⁸³ Regulated by s 55 of the *Criminal Procedure Act 2009* (Vic).

⁸⁴ Available on https://www.police.vic.gov.au/retrievemedia.asp?Media_ID=65536. Accessed on 26th April 2026.

⁸⁵ Prosecutorial Discretion Policy 2.

⁸⁶ (1996) 184 CLR 501, 534.

the plea is the product of ignorance, fear, duress, or mistake, a trial judge has no power to review the prosecutor's decision to accept a guilty plea to a lesser offence, nor to intervene and reject it.

In *Barbaro v The Queen*,⁸⁷ the High Court held that the prosecution cannot assist the judge in determining sentence, and that the sentencing judge alone is to decide the appropriate sentence. This decision effectively prohibited prosecutors from providing a sentencing range as part of their sentencing submission, reversing the earlier position in *R v MacNeil-Brown*,⁸⁸ which had imposed such an obligation. The position in *MacNeil-Brown* required prosecutors to make a submission on sentencing range if the court requests such assistance or if the prosecutor perceives a significant risk that the court will fall into error regarding the applicable range unless such a submission is made, stating that the bounds of the available range of sentences is an irrelevant statement of opinion, not a submission of law.

Research by Asher Flynn & Arie Frieberg,⁸⁹ found that while *Barbaro* appeared to halt numerical range negotiations, sentence negotiations continued in relation to time already served in custody and the appropriateness of Community Correction Orders. This acted as a demonstration that the regulatory effect of appellate decisions on plea bargaining practice is often partial and indirect: when formal channels are closed, informal substitutes tend to emerge.

The decisions in *Barbaro v The Queen*; and *Zirilli v The Queen*,⁹⁰ which prohibited prosecutors from providing a sentencing range to the court as part of their sentencing submission, has changed, but not removed sentence negotiations from the process. Although the decision has appeared to halt negotiations on the numerical range of the prison sentence that the prosecutor may submit to the court, negotiations still occur in relation to the prosecutor's sentencing submission about the amount of time already served in custody that should be taken into account by the sentencing judge, the appropriateness of a Community Correction Order (CCO) or its combination with a sentence of imprisonment.

The case of *GAS v The Queen*,⁹¹ reinforced the sharp distinction between prosecutorial discretion and judicial authority, confirming that once the parties conclude a plea agreement, the court's role is not

⁸⁷ (2014) 253 CLR 58, 76.

⁸⁸ [2008] VSCA 190 - 20 VR 677.

⁸⁹ A Flynn, & A Freiberg (n 74 above) 1-178.

⁹⁰ [2020] VSCA 261 (2 October 2020).

⁹¹ (2004) 217 CLR 198, 210-11.

merely to rubber-stamp the negotiated outcome but to independently assess its appropriateness. In *DPP v Perry; Perry v The Queen*,⁹² the court affirmed that procedural fairness requires the judge to inform the parties of any provisional view, in order that submissions may be made before any adverse decision is taken. Procedural fairness would require that the judge inform the parties of his or her provisional view, in order that they may be given a sufficient opportunity to make submissions. Prosecutors in Victoria cannot agree to specific punishments, either quantum or type, in exchange for a guilty plea. Instead, the sentencing decision is at the judge's discretion.

4.2.2.2 Victim interests and efficiency tensions

Flynn observes that plea negotiations will often require a negotiation between the interests of the victims involved and a satisfactory outcome in terms of the broader public interest.⁹³ The NSW Court of Criminal Appeal noted in *R v Thomson*,⁹⁴ recognized that a guilty plea spares victims from testifying, permits the healing process to commence, and reflects an element of remorse by the accused factors that are directly relevant to the sentencing discount offered. The benefits for victims of not testifying and the fact that it's an element of remorse from the accused. The Court further stated that a plea permits the healing process to commence because a victim does not have to endure the uncertainty of not knowing whether he or she will be believed, nor the skepticism sometimes displayed by friends and even family prior to a conviction. A victim will also be spared the personal rumination of the events.

Sections 41(a) and 23(b) of the *Public Prosecutions Act 1994* (Vic), impose a statutory obligation to ensure prosecutions are conducted in an efficient, economic, and effective manner. Flynn's research found that the strong institutional emphasis on efficiency creates pressure on prosecutors to resolve cases through negotiation, raising concerns that systemic resource imperatives may drive outcomes more than individual case merits.

However, defense practitioners are constrained by the requirement of prosecutorial approval, and the requirement on the court to specify the sentence it would have imposed, but for a guilty plea being entered under *Sentencing Act 1991* (Vic) s 6AAA.⁹⁵ *Crimes (Sentencing) Act 2005* (ACT) s 35 (2) (c) which

⁹² [2016] VSCA 152 (1 July 2016).

⁹³ A Flynn, & A Freiberg (n 74 above) 574.

⁹⁴ (2000) 49 NSWLR 383 [at 120].

⁹⁵ A Flynn, & A Freiberg (n 74 above) 1-178.

instructs the court to take into consideration whether the guilty plea was related to plea negotiations when applying a sentence discount.

Under s 100 of the *Sentencing Act 1991* (Vic), it states that when sentencing an offender, the court may take into account other pending charges that have been filed with the court and that the accused person admits to having committed,⁹⁶ known as taking offences into consideration. As Flynn observes above, plea negotiations will often require a negotiation between the interests of the victims involved and a satisfactory outcome in terms of the broader public's interests.⁹⁷

In *R v Williams*,⁹⁸ a plea negotiation had been undertaken between the Crown and the defense with the accused's son, notorious underworld figure Carl Williams, which included an agreement that the Crown would recommend a wholly suspended sentence in George Williams's case. The agreement was made in light of George Williams's ill health and as recognition of the resource savings for the public, the courts and the OPP resulting from Carl Williams's guilty pleas to murder and conspiracy to commit murder. King, J accepted the negotiation stating that the court ought to uphold any concessions or deals that are made between the Crown and the defense, if they are proper and appropriate concessions. Therefore, Court is not bound by the negotiations between Counsel as to the appropriateness or otherwise of a sentence.

Lastly, The Western Australian Guidelines stipulate that a plea will not be accepted if the accused person intimates that he or she is not guilty of any offense.⁹⁹ They also bar multiplicity of charging in order to simply provide scope for plea negotiation.¹⁰⁰ This serves to safe guard the integrity of the process for the prosecution and provide some measure of protection for a defendant. In *Val v The Queen*,¹⁰¹ the Court reiterated the Crown's obligation to assist a sentencing judge with a submission on sentencing range and the obligation is not discharged merely by nominating the top and bottom of the range and thus the Crown cannot recommend a particular sentence.

⁹⁶ A Flynn & A Freiberg (n 74 above) 148–52.

⁹⁷ A Flynn, & A Freiberg (n 74 above) 86.

⁹⁸ [2007] VSC 490 (15 November 2007).

⁹⁹ Dir. of Pub. Prosecutions Forw, 76(b).

¹⁰⁰ Dir. of Pub. Prosecutions Forw, 58(c).

¹⁰¹ [2011] VSCA 426.

4.2.3 South Africa

South Africa operates a legal system rooted in Roman-Dutch and English common law.¹⁰² The development of its formal plea bargaining framework represented a deliberate, research-driven legislative response to post-apartheid criminal justice reform. Following the adoption of its democratic Constitution in 1996, statutory plea bargaining was introduced through the Criminal Procedure Second Amendment Act 62 of 2001,¹⁰³ the culmination of an extensive process that included the South African Law Commission's Fourth Interim Report on the simplification of criminal procedure. South Africa has Plea and sentencing Agreements (PSAs),¹⁰⁴ in the Criminal Procedure Second Amendment Act 62 of 2001 (CPAA) which was recommended by the South African Law Commission,¹⁰⁵ after conducting extensive research, publishing reports, and documentation in the Commissions Fourth Interim Report on simplification of criminal procedure.

The Constitution of the Republic of South Africa,¹⁰⁶ read alongside the National Prosecuting Authority Act of 1998 (NPAA) places the power to institute, conduct, and discontinue criminal proceedings with the Director of Public Prosecutions. Article 35 of the Constitution provides comprehensive protections for accused persons, including the right to a fair trial, the right to be presumed innocent, the right to adduce and challenge evidence, and the right to legal representation. These protections are substantively analogous to those guaranteed under Uganda's 1995 Constitution, making the South African framework of particular comparative value.

4.2.3.1 Constitutional safeguards

Section 105A of the *Criminal Procedure Act 51 of 1977*, constitutes the central mechanism for formal plea and sentencing agreements (PSAs) in South Africa. The provision regulates its subject matter in minute detail, ostensibly to protect defendants from overzealous prosecutors who might otherwise deprive them of their right to a full trial. Under section 105A(1)(a), a prosecutor authorized in writing by the National Director of Public Prosecutions and a legally represented accused may before the accused pleads to the charge negotiate and enter into an agreement. The requirement of written

¹⁰² JJ Joubert, *Criminal Procedure Handbook*, (2020) 22.

¹⁰³ Government Gazette 22933 of 14 December 2001.

¹⁰⁴ The Criminal Procedure Act 51 of 1977, Section 105A.

¹⁰⁵ South African Law Reform Commission.

¹⁰⁶ Constitution, 1996 Article 20(1)(a)–(c), 179(2).

authorization ensures senior prosecutorial oversight; the requirement of legal representation seeks to ensure that defendants are able to engage meaningfully with the process.

The legal framework in South Africa imposes several further structural safeguards. Plea and sentencing agreements must be reduced to writing, creating clear records and preventing subsequent disputes about what was agreed. Courts must independently assess these agreements to ensure they serve justice and meet legal requirements, rather than simply ratifying the parties' arrangement. Prosecutors must consult with victims and consider their views before finalizing agreements, integrating victim interests into the process.

A significant structural limitation of section 105A is that its formal protections are, in practice, inaccessible to unrepresented defendants. As Botman observed, the majority of accused persons who are poor cannot take advantage of the formal guarantees of section 105A precisely because they lack legal representation.¹⁰⁷ This paradox, that the most carefully regulated safeguards benefit the least vulnerable accused represents one of the most significant challenges to the equity of the South African plea bargaining framework.

4.2.3.2 Judicial oversight and Prosecutorial discretion

In the case of *State v Sassin*,¹⁰⁸ Majiedt J, affirmed that the sentencing judge is not required to accept the proposed sentence and must independently apply the triad of traditional determinants established in *State v Zinn*.¹⁰⁹ The seriousness of the offence, the interests of society, and the personal circumstances of the defendant. This principle confirms that judicial oversight is substantive rather than formal, and that the court retains genuine discretion even where the parties have agreed on sentence.

In the case of *State v Ngubane*,¹¹⁰ the defendant was convicted of murder with extenuating circumstances although he had had discussions with the prosecutor over the offence of murder under Section 112 to the lesser offence of culpable homicide. the Court of Appeal held that once a prosecutor and defendant have agreed on the charge to which the latter will plead guilty, and the defendant has admitted facts sufficient to support a conviction on that charge, the presiding judge is

¹⁰⁷ A Botman, 'An Evaluation of the Benefit of Plea and Sentence Agreements to the Unrepresented Accused' Unpublished LLM thesis, Faculty of Law, University of the Western Cape) 2016 82–91.

¹⁰⁸ 2003 (4) All SA 506 (NC).

¹⁰⁹ 1969 (2) SA 537 (A).

¹¹⁰ 1985 (3) SA 677 (A) 617, 683.

bound either to reject the plea or to sentence the defendant in accordance with the statutorily authorized punishments for the agreed offence. This confirms the binary nature of the court's power at the conclusion of plea proceedings and the fact that the agreement must either be accepted in its entirety or rejected, without the court substituting its own preferred charge.

Article 179(2) of the South African Constitution places prosecutorial authority with the National Director of Public Prosecutions, analogous to Uganda's constitutional framework under Article 120. However, prosecutorial discretion is not unlimited. In *North Western Dense Concrete CC v Director of Public Prosecutions*,¹¹¹ where the prosecution reinstated charges against a co-accused in breach of an earlier plea agreement, the court held that, while prosecutors enjoy broad discretion, the court may intervene where the prosecution attempts to renege on validly concluded plea agreements. In this case, the applicant and its employee were charged with culpable homicide, and the prosecutor agreed to drop the charge against the applicant if the employee pleaded guilty, which he did in a Section 112 proceeding. But after another party had petitioned the respondent for a nolle prosequi in the case, the DPP reconsidered its position and reinstituted the charge against the applicant, in violation of the earlier plea agreement. The court held that while prosecutors have broad discretion, the court can interfere with prosecutions attempts to renege on plea agreements and refuse to prosecute individuals where agreements were validly concluded.

Further still, in *S v Armugga*,¹¹² the court similarly held that once an accused has concluded a plea agreement voluntarily and without undue influence, the court cannot set it aside absent compelling reasons related to justice or the public interest. These decisions collectively establish a balance between prosecutorial autonomy and judicial oversight, ensuring that negotiated outcomes are not unilaterally undone by the prosecution. These cases indicate a balance in prosecutorial autonomy with judicial oversight to ensure negotiated outcomes serve justice. Msimang, J refused a request to reopen Article 105A bargain after the defendant learned he had agreed to a less favorable deal than he thought he had. The Judge stated that a party is found to have acted freely and voluntarily, in his or her sound and sober senses and without having been unduly influenced when conducting a plea bargaining agreement, the fact that the assumptions turn out to be false, does not entitle such a party to resile from the agreement.

¹¹¹ Western Cape 2000 (2) SA 78 (C). at 671-672.

¹¹² 2005 (2) SACR 259, 265c–d (N).

Articles 35(2)(c) and 35(3)(f)–(h) of the Constitution of the Republic of South Africa,¹¹³ guarantee legal representation at state expense to defendants who are detained and those being tried if substantial injustice would otherwise result. In determination of the sentence in a bargain, the Court is guided by some factors which may be aggravating or mitigating. The discretion to discontinue a case can be interfered with the prosecution attempts to renege on a plea and not to prosecute an individual,¹¹⁴ and the court cannot set it aside if the accused concluded it voluntarily and without undue influence.¹¹⁵ This implies that prosecutorial discretion is not unlimited.

The Act is so entrenched that eliminating it was likely to cause the breakdown of the entire criminal justice system.¹¹⁶ In the case of *Santo Bello v New York*,¹¹⁷ the court noted that the disposition of criminal charges by agreement between the prosecutor and the accused, is an essential component of the administration of justice if properly administered. This was routed in the argument that if every criminal charge were subjected to a full-scale trial, then there would be need to multiply by many times the number of judges and court facilities. This case defined plea bargaining as an essential component of the administration of justice which involves the accused person pleading guilty to a lesser offence, or only one or some of the accounts of a multi count indictment in return for a lighter sentence than that possible for the graver charge.¹¹⁸

Guilty pleas have been negotiated in South Africa for several decades,¹¹⁹ and had been deemed to be legal and are considered legal prior to the enactment of Section 105A.¹²⁰ The legal framework requires Plea and Sentencing Agreements to be reduced in writing, creating clear records and preventing disputes about what was agreed. Therefore, courts must independently assess these agreements to ensure they serve justice and meet legal requirements. Prosecutors must consult with victims and consider their views ensuring that plea agreements reflect victim's interests before finalizing plea agreements. This procedure directly addresses the problem of disputed agreements and ensures accountability. Lastly, the process of plea bargaining in South Africa was formerly recognized and

¹¹³ The Constitution of the Republic of South Africa, 1996.

¹¹⁴ *North Western Dense Concrete CC* case at 681.

¹¹⁵ *S v Armugha* 2005 (2) SACR 259 at 265 C (N).

¹¹⁶ *Santo Bello v New York* 404 US 257 (1971).

¹¹⁷ 404 US 257.

¹¹⁸ Y Bamwine, *Plea bargaining in Uganda. Law, Procedure and Practice*, Royal Printhood Publishers. (2022) 10.

¹¹⁹ DVZ Smit & NM Isakow 'The Decision on How to Plead: A Study of Plea Negotiations in Supreme Court Criminal Matters' (1986) 10 *South African Journal of Criminal Law and Criminology* 3; CT Clarke 'Message in a Bottle for Unknowing Defenders: Strategic Plea Negotiations Persist in South African Criminal Courts' (1999) 32 *Comparative and International Law Journal of Southern Africa*, 141.

¹²⁰ South African Law Reform Commission, Project 73 (2001) at Pg. 5.1.

accepted by case law, and statutory provisions were inserted into the South African Criminal Procedure Act in 2001. Therefore, although the prosecutor may control the charge and, to a large extent, the sentence, there can be no bargain without the defendant's consent entered knowingly and voluntarily.¹²¹

4.2.4 Kenya

Kenya is a former British colony and thus inherited most of the English criminal procedure practices under Orders in Council. For a long time, plea bargaining was practiced in Kenya without statutory guidelines.¹²² The Constitution of Kenya, adopted in 2010, guarantees every accused person the right to have a trial begin and conclude without unreasonable delay.¹²³ This provision places an obligation on the state to provide adequate resources, efficient processes, and timely resolution. These obligations cannot be satisfied merely by inducing accused persons to waive rights through plea bargaining.

The constitutional right to a timely trial thus functions both as a justification for plea bargaining and as a constraint on its use as a substitute for properly resourced criminal justice administration. The Supreme Court decision in *Francis Karioko Muruatetu & Another v Republic*,¹²⁴ affirmed constitutional rights in sentencing affirmed the importance of constitutional rights in sentencing, constraining mandatory sentencing provisions that had previously limited the range of outcomes available through negotiation.

The Criminal Procedure Code of Kenya was amended to include Plea bargaining in 2008, given that the process was entirely informal with no proper legal framework. The Code was amended in 2012 to include sections 137 A to 137 O, which deal with the negotiation of a plea agreement, validity of a guilty plea, withdrawal of the agreement, as well as the procedural safeguards and sentencing among other matters.¹²⁵ Furthermore, the Criminal Procedure (Plea Bargaining Rules), 2018 which supplement the provisions of the Criminal Procedure Code were introduced as part of a reform to the

¹²¹ R Adelstein, (2019). Plea bargaining in South Africa: an economic perspective. *Constitutional Court Review*, 9(1), 81-111. Available on <https://journals.co.za/doi/pdf/10.2989/CCR.2019.0004> accessed on 29th April 2026.

¹²² PA Oyugi, 'Plea negotiation at the International Criminal Court: opportunities and costs.' Doctoral dissertation, Stellenbosch: Stellenbosch University. 2021 100-104.

¹²³ (2010, art. 50(2) (c).

¹²⁴ [2017] eKLR.

¹²⁵ PA Oyugi, (n 122 above) 100-104.

criminal justice system which is characterized by huge backlog of cases in the judiciary and overcrowded prisons which currently house triple their capacity.

Plea bargaining in Kenya may be initiated by a Prosecutor, or an applicant, or Counsel. Section 137A of the Criminal Procedure Code of Kenya provides that the prosecutor and an accused person or his representative may negotiate or discuss and enter into an agreement in respect of a reduction of a charge to a reduced included offence, or withdrawal of the charge or a stay of other charges or the undertaking not to proceed with other possible charges. Rule 7(2) of the Criminal Procedure (Plea bargaining) Rules, 2018 place the sole discretion on the Prosecutor as to whether to enter a plea bargain agreement. In *Republic v Attorney General & 3 Ors, Ex Parte Kamlesh Mansuklal Damji Pattni*,¹²⁶ Court emphasized this discretion and Court has no right to interfere with it, under Section 137D, the Prosecutor is required to consult the investigating officer and the victim. The Victim Protection Act under section 9(1)(c) gives the victims a right to give their views in a plea bargaining agreement.¹²⁷

Plea bargaining was envisioned as one of the tools essential to ensure speedy disposal of cases and ultimately reduce the number of remand prisoners.¹²⁸ Subsequently, in 2019, the Office of the Director of Public Prosecutions (ODPP) in Kenya formulated plea bargaining guidelines to guide the Kenyan prosecutors in the process of negotiating plea agreements,¹²⁹ creating a structured approval mechanism requiring senior oversight before agreements are finalized, and establishes that victim views must be solicited and meaningfully considered before any agreement is concluded. These guidelines, oversight, and victim voice represent a model for institutional accountability that addresses several of the structural deficiencies identified in less regulated frameworks.

The negotiation is generally between the prosecutor and the accused person though the victim may make representations to the Prosecutor on the content of the agreement. However, according to Section 137(c)(3) and the decision of Court in *Republic v David Kinyua Gachoi*,¹³⁰ the judge does not participate in the negotiation and is merely notified of the parties intent to negotiate an agreement.¹³¹ At any time before the judgment, the accused person and the Prosecutor may enter into a plea agreement in which the prosecutor agrees to reduce, withdraw, or stay the charge; or promises not to

¹²⁶ eKLR 13.

¹²⁷ The Victim Protection Act, Section 9(1)(c).

¹²⁸ 'The Prosecutor: A Newsletter from the Director of Public Prosecutions' <https://www.odpp.go.ke/wp-content/uploads/2019/01/ODPP-Newsletter-Issue-No.-001.pdf> (Last accessed on 3rd April 2026).

¹²⁹ Office of the Director of Public Prosecutions.

¹³⁰ [2018] eKLR 6.

¹³¹ Kenyan Criminal Procedure Code, s 137A-E and the Criminal Procedure (Plea Bargaining) Rules, 2018, s 8 - 12.

proceed with other possible charges.¹³² An agreement must contain substantial facts of the matter, and reviewed by or explained to the accused in a language an applicant fully understands after which it is signed by the accused and the prosecutor as required by Section 137 E (d).¹³³ In the case of *Republic v Joy Adhiambo Gwendu*,¹³⁴ Court stated the agreement acquires a binding nature upon being adopted by the Court, but a mere agreement between the parties before being endorsed is not binding, and according to Section 137 F (1)(h), once the agreement is entered, it is not subject to an appeal unless it is on grounds of illegality, and procedural impropriety.

In the case of *State v David Odhiambo Oloo*,¹³⁵ the court rejected the plea agreement of the parties. The accused person was charged for murder of his friend, but entered a plea bargain with the prosecution. Considering the brutal circumstances of the accused butchering the deceased, the court refused to enter the parties' plea bargain and sentenced the accused to life imprisonment in accordance with section 205 of the penal code, though the accused was a first offender. Also, in Kenya, plea bargain has been used to reduce the offence of murder to manslaughter.

In *Republic v James Kiragu Wambugu*,¹³⁶ the accused was initially charged with the offence of murder, of unlawfully killing Joseph Mathenge Wambugu contrary to section 203 of the Criminal Procedure Code. Upon a Plea Bargain Agreement being entered the charge was then reduced to manslaughter. The court in entering the plea agreement considered some mitigating factors, such that the accused readily pleaded guilty and saved the judicial time of the court and was remorseful. The court as such convicted the accused on his own plea of guilty.

In *Joyce Gwendu v Chief Magistrate's Court at Nairobi Anti-Corruption Division & 2 Ors*,¹³⁷ The appellant was arraigned before the Nairobi Chief Magistrate's Court facing five counts of stealing, forgery, issuing bad cheques and abuse of office. A plea bargain agreement was entered by the applicant and prosecution in accordance with section 137A-O of the Criminal Procedure Code, wherewith charges relating to stealing and forgery was withdrawn by the prosecution in fulfillment of the conditions set out in the Agreement. From the terms of the agreement, the applicant (accused) agreed to plead guilty to the charges of issuing bad cheques and abuse of office contrary to section 316 A (1) (a) (4) of the

¹³² PA Oyugi, (n 122 above) 100-104.

¹³³ Kenyan Criminal Procedure Code, s 137A-E.

¹³⁴ (2018) eKLR accessed on 1st May 2026.

¹³⁵ (2022) eKLR, <http://kenyalaw.org/caselaw/cases/view/229101> accessed 1st May 2026.

¹³⁶ (2021) eKLR http://kenyalaw.org/kl/ODPP_Draft_Rules_On_Plea_Bargaining.pdf accessed 1st May 2026.

¹³⁷ (2019) eKLR.

penal code and section 48(1) (a) of the Anti-Corruption and Economic Crimes Act No 3 of 2003 voluntarily, consequent upon which the prosecution dropped the charges of stealing and forgery. The court entered the plea agreement and directed the accused to pay the amount due and owing in four installments. At the Appeal, Court emphasized that the rationale of plea bargaining is premised on the need to apply non-custodial measures in decongesting custodial centres.

Further, in *Republic v NMO*,¹³⁸ the accused was charged with the offence of murder contrary to section 203, and 205 of the Penal Code. Initially he pleaded not guilty at the commencement of the trial. However, as the hearing progressed, the accused person sought to plea bargain with the state for a lesser charge of manslaughter which the prosecution acceded to, and a fresh charge of manslaughter was filed. The court considered the fact that the accused was a first offender and other factors like victim impact statement, report of probation officer, remorsefulness of the accused, and responsibility to others who are minors in exercising its discretion to sentence the accused to manslaughter to serve a five years imprisonment, instead of a murder.

Section 137N Criminal Procedure Code Act of Kenya precludes plea bargaining from being applied to offences under the Sexual Offences Act, 2006 under Section 137 N (a) and genocide offences, war crime and crimes against humanity under Section 137 N (b). Further, the prosecution has no obligation to enter a plea bargain agreement with an accused person in corruption cases. In the case *Florence Wanjiku Muiruri v Republic*,¹³⁹ the accused, a public servant was charged with the offence of receiving a bribe and abuse of office. The accused had demanded for financial benefits of Kshs 10,000 from Faith Jeruto Kiplagat as a bribe to fast track the processing of a liquor permit. The accused pleaded guilty to the charges and the court convicted the accused to the term of imprisonment of 1 year and she brought an application against the court's judgment on the basis that the state ought to have considered the applicant's request for plea bargain. In dismissing the application, the court noted that bribery has a deleterious effect, with a devastating consequence in the social and economic fabric.

4.2.5 Tanzania

The Written laws of Tanzania define plea bargaining to mean an arrangement between a Prosecutor and accused whereby the accused pleads guilty to a particular offence or a lesser charge in exchange

¹³⁸ (2021) eKLR http://kenyalaw.org/caselaw/cases/view/21_5393 accessed 1st May 2026.

¹³⁹ (2020) eKLR< http://kenyalaw.org/caselaw/cases/view/20_0517> accessed on 1st May 2026.

for a more lenient sentence or an agreement to drop other charges.¹⁴⁰ The Prosecution through the Director of Public Prosecutions (the DPP), may discretionally discontinue any case at any stage before the judgment is read by the court by entering the *no lle prosecu*.¹⁴¹ Further, the Legal Aid Act (Criminal Proceedings) provides that in any criminal proceeding where it appears that it is in the interest of justice for the accused to have legal counsel in the preparation and conduct of his defense or appeal then the certifying authority may assign an advocate to the accused person.¹⁴² This is aimed at ensuring constitutional rights are protected and excessive Prosecution discretion is not misused. The Law of the Child Act, 2009 also ensures that in plea bargains involving minors in criminal cases have the right to representation by an advocate or at least a parent, guardian, or social worker, as the case may be.¹⁴³

Tanzania introduced a formal plea bargaining framework through the Written Laws (Miscellaneous Amendments) (No. 3) Act of 2019, which amended the *Criminal Procedure Act* to insert Part VIA, establishing a structured scheme. The Tanzanian legislature made a deliberate normative choice to exclude the most serious offences from plea bargaining eligibility: the framework expressly prohibits plea bargaining for offences punishable by death or life imprisonment, thereby preserving the gravest matters for full trial.

Section 194 provides that once a plea bargain is entered into, the Prosecutor may charge the accused with a lesser offence, withdraw other counts or take any other measure as appropriate depending on the circumstances of the case. Further, the accused may be ordered to pay compensation or make restitution or be subjected to forfeiture of the proceeds and instrumentalities that were used to commit the crime in question.¹⁴⁴

The procedural requirements imposed by the Tanzanian framework are correspondingly rigorous. Plea agreements must be initiated in writing, must disclose the factual basis for the agreed charges, and must be presented to the court for independent scrutiny. The court is empowered to reject an agreement it considers unjust, inconsistent with the public interest, or entered involuntarily. Tanzania's framework also underscores the importance of prosecutorial institutional capacity: the Director of

¹⁴⁰ Written Laws (Miscellaneous Amendments) (No.4) Act, 2019, Section 15.

¹⁴¹ The Criminal Procedure Act, Section 91.

¹⁴² K Gastorn, 'Reforming Criminal Justice in Mainland Tanzania: Balancing the Pleas of Guilty and Guilty by Trials in Assuaging the Blockage of Criminal Dockets through a Plea Bargaining Scheme'. (2016) 4 *Tuma Law Review*., 113.

¹⁴³ The Law of the Child Act 21 of 2009, Section 99(1)(i).

¹⁴⁴ Criminal Procedure Act, Section 16.

Public Prosecutions is tasked with issuing guidelines to ensure consistency and prevent abuse across the prosecutorial service.

The legislative architecture Tanzania in 2019 adopted formal eligibility limits, written agreements, judicial scrutiny, and prosecutorial guidelines represents a coherent template for reform. Section 15 of the written laws of Tanzania provides that, a public prosecutor, after consultation with the victim or investigator. It is also notable that any time before the judgment, the Prosecution may enter a plea bargaining arrangement with the accused and his advocate if represented or, if not represented, a relative, friend or any other person legally competent to represent the accused under Section 194(c). Secondly, the accused or his advocate or a public prosecutor may initiate a plea bargaining and notify the court of their intention to negotiate a plea agreement. Thirdly, negotiations between a public prosecutor and the accused. Lastly, where prosecution is undertaken privately, no plea agreement shall be concluded without the written consent of the Director of Public Prosecution under Section 16 of the Criminal Procedure Act.

However, Section 194F, provides offences where plea bargaining shall not apply.¹⁴⁵ These include among others sexual offences whose punishment exceeds five years or involving victims under eighteen years; treason and treasonable offences; possession or trafficking in narcotic drugs whose market value is above twenty million shillings; terrorism; and possession of Government trophy whose value is above twenty million shillings without the consent, in writing, of the Director of Public Prosecutions.

The court is prohibited from involving itself in plea negotiation arrangements, therefore not be consulted by parties, even in suggesting the possible sentences to be imposed, prior to the entry of a plea of guilty, conviction, or a plea agreement. However, all plea agreements must be registered with the court to be effective,¹⁴⁶ and before registration, the court has a responsibility to satisfy itself that the plea was not induced by threats, coercion, was based on an unfulfilled promise, or that the accused was not mentally competent to enter into such plea agreement.¹⁴⁷ It must also inquire as to whether the victims were consulted.¹⁴⁸ The Court also powers to make any necessary order it deems justifiable

¹⁴⁵ Criminal Procedure Act, Section 194.

¹⁴⁶ Criminal Procedure Act, Section 6.

¹⁴⁷ Criminal Procedure Act, Section 6.

¹⁴⁸ Criminal Procedure Act, Section 6.

and fit in the circumstances. This includes an order nullifying the plea agreement and ordering a full trial.¹⁴⁹

4.3 Emerging issues

From the provisions of the laws discussed and Guidelines on Plea Bargain seen above, the following are the emerging issues.

4.3.1 Plea Bargain Guidelines as mere recommendations

The Guidelines in most instances function as recommendations rather than mandatory requirements and connects this to the coercive influence of pretrial detention. Under pretrial detention, is one of the most powerful and least discussed coercive instruments in the plea bargain. A defendant who is detained pending trial faces and is more likely to plead guilty than those on bail, a disparity that persists even after controlling for the seriousness of the charge. As earlier stated, The US criminal justice system, the judge has limited powers, as opposed to the prosecutor and defense counsel.¹⁵⁰

The South Africa Criminal Procedure Act under Section 105A (1)(a) opens with a restriction The restriction requires plea and sentence agreements to only be entered into by an accused who is legally represented which is an absolute precondition not a recommendation. Although the phrase legally competent to represent introduces some qualification, but it is not defined in the Act. This could reasonably be read to include any adult of sound mind who is not disqualified from appearing in court, which is practically no restriction at all. Most importantly, this threshold eligibility criterion excludes the entire population of unrepresented accused persons from the process. However, accused persons from lower socioeconomic backgrounds would be unable to afford private legal representation but remain dependent on the Legal Aid South Africa system which has its inefficiencies.

Unlike South Africa's Section 105A, which restricts plea agreements exclusively to legally represented accused persons, Tanzania's framework under Section 194A(1) and Section 194C(1) permits an accused who is not legally represented to enter a plea bargaining arrangement with the prosecutor, provided that a relative, friend or any other person legally competent to represent the accused witnesses and signs the agreement. A friend or relative, however well-intentioned, is not equipped to advise an accused person on the legal consequences of a guilty plea, the voluntariness standard

¹⁴⁹ Criminal Procedure Act, Section 6.

¹⁵⁰ Y Bamwine, *Plea bargaining in Uganda. Law, Procedure and Practice*, Royal Print-hood Publishers. (2022) 13.

required by Section 194D(2), the evidentiary implications of admissions under Section 194E(b)(iii), the waiver of appeal rights under Section 194E(b)(ii), or the sentencing implications of the agreement. It is notable that a person who pleads guilty on the advice of a relative who does not understand the law cannot be said to have made a legally informed voluntary choice, regardless of what the signed agreement says.

4.3.2 Limited Judicial Discretion

Rule 11(c) of the US Federal Rules of Criminal Procedure provides that judges are prohibited from participating in negotiations but retain residual authority to reject agreements. Although this prohibition prevents the coercive influence of judicial authority from intruding into the bargaining process; it preserves the neutrality of the trial judge; and it ensures that the judicial function of sentencing is not pre-empted by executive negotiation.

The Criminal Procedure Act of South Africa under Section 105A(3) provides that the court shall not participate in the negotiations contemplated in subsection (1). This tracks the above American Rule 11(c) designed to preserve judicial impartiality and prevent the coercive effect of judicial participation in the bargaining process. However, this creates a complication arising directly from the interaction of this prohibition with the judicial oversight role created by Sections 105A(7) through (9) of the same Act. Under these provisions, the court must proceed to consider the sentence agreement after accepting the guilty plea, and determine whether the sentence agreement is just, and if it considers it unjust, inform the parties of the sentence it considers appropriate. The court may direct questions to the prosecutor and the accused, hear evidence, and hear statements from the complainant.

Furthermore, the procedure laid in Section 105A(9) creates a peculiar dynamic. If the court names a different sentence and the parties accept it under 105 A(9)(b)(i), the court then imposes that sentence. But this amounts to the court effectively negotiating the sentence through a back-channel: the court's disclosure of its preferred sentence may functionally be an offer to which the parties respond, which is indirectly judicial participation that Section 105A(3) prohibits.

For the case of Tanzania, Section 194D(6) provides that where conviction is entered pursuant to an accepted plea agreement, the court shall proceed to sentence the accused person in accordance with the plea agreement notwithstanding the sentence specified by the provisions of the applicable law. The phrase is constitutionally and jurisprudentially extraordinary because it means that a court is obligated to impose a sentence agreed between the parties even if that sentence falls below a

mandatory minimum prescribed by statute, or even if it exceeds a statutory maximum. This is the inverse of South Africa's position. Section 105A(7)(b)(ii) of the South African Act requires that where the offence carries a minimum sentence, the court must have due regard to those provisions — a standard that preserves judicial responsibility. Tanzania's Section 194D(6) removes judicial responsibility entirely.

4.3.3 Prosecutorial Discretion

The in-formalized, off-the-record nature of plea negotiations provides no mechanism for post hoc judicial or appellate review of whether a prosecutor acted in good faith or whether charging decisions were made to create leverage rather than to reflect a bona fide assessment of culpability.

The United States of America under Rule 11(b)(1) of the Federal Rules of Criminal Procedure requires the court to inform defendants of the nature of the charges, the potential maximum penalties, the mandatory minimum penalties, and the court's obligation to follow the Sentencing Guidelines.¹⁵¹ Accused persons cannot waive their right to claim that they were denied their Sixth Amendment right to effective assistance where defense counsel failed to inform the defendant of the government's plea offer.¹⁵²

The Kenya ODPP Plea Bargaining Guidelines profess a strong commitment to voluntariness under Guideline 2 D (iv). Majority of the Guidelines on Plea Bargain require that an accused person enters negotiations voluntarily and without undue influence, coercion or misrepresentation of facts. However, the Kenya Guidelines under Guideline 3A and 3E simultaneously authorize the prosecutor to initiate plea negotiations, to set a thirty-day response deadline. This creates a structural paradox: a process initiated by the party with superior power, access to evidence, control over charging decisions, and institutional resources cannot in any meaningful sense be presumed voluntary by the party facing criminal liability and, in many instances, pretrial detention.

Further, the Kenya ODPP Plea Bargaining Guidelines under Guideline 4D cap plea negotiations at ninety days, extendable by thirty days on authorization, with further extension in exceptional circumstances. Although the rationale is to ensure timely resolution of criminal cases, in a jurisdiction where pretrial detention is common and where the alternative to a plea agreement is a trial date that

¹⁵¹ JE Ross, (2006). The entrenched position of plea bargaining in United States legal practice. *American Journal of Comparative Law*, 54, 717.

¹⁵² *People v Whitfield*, 239 N.E.2d 850 (Ill 1968); *Cottle v State*, 733 So.2d 963 (Fla. 1999).

may itself be months or years away, a ninety-day negotiation window operates as a pressure mechanism rather than a protection. This implies that an accused person detained throughout this period faces the following calculus: negotiate and accept terms within ninety days, or face indefinite remand pending trial.

Section 105A(1)(a) of the South Africa Criminal Procedure Act requires that the prosecutor be authorized thereto in writing by the National Director of Public Prosecutions which creates a layer of executive control over prosecutorial plea bargaining authority. This is quite different from the Kenyan framework, where authorization flows from the DPP or the prosecutor's supervisor at a much lower threshold. The requirement of written authorization from the National Director under Section 105A(1)(a) creates an administrative bottleneck and self-defeating. Secondly, this Section does not specify what criteria the National Director applies in granting or withholding authorization.

The Tanzania Written Laws (Miscellaneous Amendments) Act,¹⁵³ Section 194C(3) requires that no plea agreement shall be entered between a prosecutor and an accused person without the prior written consent of the Director of Public Prosecutions or any other officer authorized by him in writing. Section 194A(4) separately requires that where prosecution is undertaken privately, no plea agreement shall be concluded without the DPP's written consent. This centralization of authority mirrors, to some extent, the South African requirement of National Director Authorization. This means that Plea Bargain negotiations may proceed, the parties may reach an agreement, and the agreement may be presented to the court but it is invalid without DPP written consent that must presumably have been obtained before the agreement is registered.

The Written Laws of Tanzania Act do not specify when in the process the DPP's consent must be obtained relative to the negotiation itself. The Act provides no criteria by which the DPP exercises this consent power. There is no statutory list of factors the DPP must consider, no timeline within which consent must be granted or refused, no obligation to give reasons for withholding consent, and no mechanism for the parties to challenge a refusal. This requirement for authorization creates a concentration of unguided discretionary power that carries significant risk of arbitrary or politically influenced application.

4.3.4 The consultative gap

¹⁵³ Written Laws (Miscellaneous Amendments) Act, No. 4.

Victim centered justice requires that victims be meaningfully consulted and that their interests be taken into account in prosecutorial decisions. However, the efficiency imperative that drives plea bargaining tends to treat victim consultation as a procedural box to check rather than as a substantive input into the outcome.

The Kenya ODPP Plea Bargaining Guidelines under Guideline 2D(vii) requires reasonable effort to communicate with the victim, their family, or any affected person regarding the terms and status of the plea agreement. The Plea Agreement forms include dedicated compensation and restitution clauses, a victim signature requirement where compensation is involved, and a specific ODPP Declaration for the Victim. However, the standard of reasonable effort to communicate, is not a right to be heard, not a right to veto, and not a right to receive reasons if the prosecutor proceeds contrary to the victim's wishes. Therefore, this implies that victim consultation is essentially advisory and a paper trail to satisfy procedural form. This reduces victim participation to a courtesy rather than a constitutional entitlement.

The South Africa Criminal Procedure Act under Section 105A(1)(b)(iii) creates a complainant consultation obligation by the Prosecutor. The prosecutor must afford the complainant an opportunity to make representations regarding the contents of the agreement and the inclusion of compensation terms. The Act requires where it is reasonable to do so and taking into account the nature of and circumstances relating to the offence and the interests of the complainant. Section 105A(1)(c) further allows consultation with the investigating officer to be dispensed with if it would cause substantial prejudice or adversely affect administration of justice. This consultation right is triggered only where reasonable to do so, a standard the prosecutor determines unilaterally. Therefore, it is no requirement that the prosecutor gives reasons for concluding that consultation is not reasonable, and there is no mechanism for the complainant to challenge that determination.

4.3.5 Non-Uniformity and Sentencing Inconsistency

There are inconsistencies and non-uniformity in the law as threshold concerns in Plea Bargain. In the United States, Federal Sentencing Guidelines seek to constrain prosecutorial and judicial discretion, yet the Supreme Court's decision in *United States v. Booker* (2005) rendered those guidelines merely advisory, reintroducing the very disparity the guidelines were designed to eliminate.

Further, the non-uniformity in sentencing creates a two-tier system: defendants who can negotiate effectively perhaps with experienced legal representation obtain outcomes disproportionately favorable compared to those who cannot. The different outcomes for similarly charged accused persons raises a serious challenge to achieving justice.

4.3.6 Informal nature of Plea Bargaining

Guideline 9A of the Kenya ODPP Guidelines on Plea Bargaining establishes a quarterly reporting obligation through which Regional Heads submit data on plea agreements to the DPP, covering the number of cases resolved, nature of offences, sentence lengths, demographics of accused persons, and challenges encountered. However, the monitoring framework is entirely internal because reports flow from county stations to regional heads to the DPP, with no external oversight, and no public access to aggregate data. This means that systemic patterns of inequitable bargaining, demographic disparities in sentencing outcomes, or systematic victim marginalization would be visible only to the institution whose officers are responsible for the practice. Further, there is no obligation to disaggregate, analyze, or publish this data.

4.4 Conclusion

There is near-universal agreement across the surveyed jurisdictions that voluntariness is the foundational requirement of any constitutionally valid plea bargain, and no jurisdiction tolerates a plea that is the product of coercion, inadequate information, or defective legal advice. The constitutional legitimacy depends entirely on the safeguards within which it is embedded, the quality of legal representation available to accused persons, the rigor of judicial oversight, the transparency of the negotiation process, the substantive fairness of the outcomes achieved, and the degree to which victim interests are integrated into the process. Further, the judicial gatekeeping function is the last structural safeguard ensuring that the executive's plea bargaining power does not displace the constitutional role of the courts in administering criminal justice.

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

7.1 Introduction

7.2 Conclusions

7.3 Recommendation

7.4 Suggestions for further research

The entire legal profession ... has become so mesmerized with the stimulation of the courtroom contest that we tend to forget that we ought to be healers-healers of conflicts.

Chief Justice Warren Burger.

5.1 Introduction

This dissertation sought to look at the application of plea-bargain as a restorative justice tool in Uganda's transitional justice, thus assessing the effectiveness plea bargaining in achieving access to justice under the 1995 Constitution. The right of access to justice takes various forms and an obligation is placed on States to ensure that through its organs and institutions, its peoples enjoy their constitutionally protected rights. In the same light, plea bargain should serve as a bridge to reconciliation rather than a mere escape route for government inefficiencies or judicial backlogs

This chapter gives a general and conclusive overview of what has been gathered and discussed in the previous chapters. This chapter provides a conclusive overview of the findings, harmonizing domestic practice with international standards and offering a roadmap for reform while observing the constitutional rights and the State ensuring its mandate in access to justice. This dissertation further highlights the significant contributions and the opportunities for future research in Uganda's jurisprudence.

5.2. Conclusions

Drawing from a fair analysis of the International, regional legal framework, domestic framework and drawing a comparative analysis from other jurisdictions on how they deal with the right to access to justice and plea bargaining, these are the conclusions on all the analysis. The analysis of international, regional, and domestic legal frameworks reveals a significant gap between the law in the books and the law in action regarding plea bargaining in Uganda. These conclusions are discussed hereunder;

5.2.1 International legal framework

The international legal framework firmly establishes the minimum standards against which constitutional guarantees are drawn and assessed establishing a framework within which criminal justice systems more so plea bargaining must operate. The International framework places a duty to protect rights of its citizens to ensure justice is not waived, and Instruments like the UDHR and the ICCPR protect the rights to a fair trial and the presumption of innocence.

Constitutional rights like access to justice, fair and speedy hearing are protected under International instruments such as the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR). These instruments lay a foundation of human rights law and constitutional governance in other domestic laws and instruments, influencing constitutional rights for everyone and criminal procedure developments. These documents further operate as a guiding principle on the behaviour of governments, acting as a fundamental agreement across various cultures and ideologies.

The UDHR and AfCHR framework establishes comprehensive standards for fair trial rights, due process, and access to justice that must inform the implementation and evaluation of plea bargaining; upholding that the presumption of innocence and the right against self-incrimination, emphasized judicial oversight. Therefore, waivers of constitutional rights must be informed, and judicial officers must exercise meaningful discretion to protect fundamental rights and ensure appropriate punishment.

Therefore, under international standards, any waiver of constitutional rights must be informed and voluntary. Judicial oversight is not optional; it is a fundamental requirement to ensure that plea bargaining does not become a tool for self-incrimination under duress.

5.2.2 The National legal framework

The domestic framework on plea bargain represents a proactive attempt to balance efficiency with rights protection. The 1995 Constitution provides for the recognition, protection, and promotion of fundamental and other human rights and freedoms, and Uganda has an obligation to be respected, upheld and promoted by all organs and agencies of Government by all persons. It further entrenches comprehensive guarantees for fair and speedy trial rights, and resolution of cases within reasonable time frames. The framework lays a foundation for effective administration of justice under criminal law by safeguarding accused persons against arbitrary use of power by the State against its citizens.

The ODPP Plea Bargain Guidelines treat Plea Bargain agreements as contracts, although this model often fails in practice because accused persons frequently lack contractual capacity due to prolonged detention and inadequate representation. The Plea Bargain safeguards on paper are often perfunctory because victims remain marginalized, and the mercy of state prosecutors often dictates the outcome more than the merits of the case. Plea bargaining further indicates a shift from the retributive nature of criminal law towards a restorative form of justice through its promotion of reconciliation, reintegration, and a culture of offenders owning up responsibility. This provides timely, fair, and victim centered resolution of criminal cases thus reducing case backlogs, saving courts time and reduction of congestion in prisons, and relieves victims of the stressful burden of giving evidence in Court.

The plea bargaining framework largely meets international standards on paper. Rules 4, 9, 13, and 15 establish requirements for voluntariness, informed consent, protection of vulnerable accused, judicial oversight, and factual basis. However, implementation falls short because accused persons are not consistently informed of their rights; legal representation is often inadequate; judicial oversight is sometimes perfunctory; victims are marginalised; and coercive conditions induced by systemic delays undermine voluntariness.

5.2.3 Plea bargain in select jurisdictions

The section on comparative analysis analysed the legal and policy framework on access to justice, fair and speedy trial rights of accused persons in other jurisdictions. The selected jurisdictions among others included United States of America, Australia, South Africa, Kenya, and Tanzania. The countries use plea bargaining not as an escape due to judicial inefficiencies but as a method of dispensing restorative justice. The findings provide insights into the legal steps that Uganda can take to protect constitutional rights in advancing access to justice and implementation plea bargaining processes.

The Research analysed the current legal and policy framework, the institutional structure of each country and taking into account analysis from some cases. The research relied on doctrinal methodology collecting secondary data to examine the access to justice, fair and speedy trial rights, and plea bargaining in these countries. The research found that there are varying levels of legal application of plea bargaining due to different legal systems and historical judicial systems in those countries. However, It the process is hinged on same contractual principles and constitutional protection of rights is at the fore front and integration with Alternative justice systems.

The Guidelines in most of the select jurisdictions function as recommendations although they emphasize that judicial officers are prohibited from participating in negotiations. The essence of this prohibition as analyzed is to prevent the coercive influence of judicial authority from intruding into the bargaining process; preserve the neutrality of the trial judge; and ensure that the judicial function of sentencing is not pre-empted by executive negotiation. Further still, most of the Rules of Criminal Procedure require courts to inform defendants of the nature of the charges, the potential maximum penalties, the mandatory minimum penalties, as well as ensuring that victims be meaningfully consulted and that their interests be taken into account in prosecutorial decisions

Notably, there are inconsistencies and non-uniformity in the law as threshold concerns in Plea Bargain across various jurisdictions.

5.3 Recommendations

The following are recommended for effective plea bargain in achieving justice in Uganda.

5.3.1 Strengthen institutional and administrative measures

The Judiciary should consider reforming the sentencing guidelines to make the process fairer, more transparent, and more honest. This includes ensuring certainty in outcomes so that accused persons are not gambling with their freedom. The same should be accompanied with regular trainings of judicial officers, prosecutors, and state brief counsel in restorative justice and constitutional safeguards in plea bargaining proceedings. Administratively, a Plea Bargain department may be established at Magisterial and High Court levels in order to track the Plea Bargain applications, outcomes and disposal in order to ease the process and also assessment of the impact in regards to administering justice and reducing case backlog. This is because due to overwhelming cases, some judicial officers are forced to adjourn criminal hearings in order to attend to plea bargain applications which delays

justice for others. Further, sensitization of accused persons should be encouraged and the judicial must ensure that there are no misconceptions behind any plea bargain.

5.3.2 Enhance judicial oversight, defense, and prosecutorial discretion

Judicial involvement in plea bargain negotiations is limited, and a judicial officer is only restricted to endorsing a Bargain unless the agreed bargain defeats the interest of justice. Therefore, Court is not permitted to meaningfully intervene and ascertain the voluntariness of the process. There is need to strengthen judicial oversight to ensure that guilty pleas are factually based. Judges must move beyond perfunctory approvals. They should actively engage in the process to ensure a factual basis for the plea bargain in order to ensure that it was entered freely, voluntarily, and with full understanding of the consequences. This is intended to mitigate prosecutorial coercion, and to give a neutral assessment.

Judicial officers must ensure that fairness and justice of all parties is achieved by maintaining the integrity of the judicial process. Furthermore, a dedicated database should be established to assess the long-term impact of plea bargains on recidivism and victim satisfaction. The Prosecutor in a plea bargaining process exercises the discretion to conclude the plea bargain and this process may be abused or approached with a bias. The Rules and Regulations on plea bargaining should be strictly aligned to ensure that the applicant exercises their right to effective legal representation, enhance judicial oversight for scrutiny of the accused's voluntariness to plea bargain, and ensure that the accused makes informed choices. Judicial officers are keen to ensure that plea bargain is undertaken by only those that committed the crime, but not those that have overstayed on remand.

Balancing the rights of prosecution discretion, judicial discretion and those of the accused. Rules should mandate that defense counsel spend sufficient time explaining the strengths and weaknesses of a case before a plea is entered. This prevents the money-making incentive where state-brief lawyers process cases rapidly to collect fees. This is because accused persons tend to plea and make bargains at the mercy of State prosecutors. Further, this would help prevent perceptions of arbitrariness by State prosecutors. Measures should be put in place to ensure that prosecutors don't hide into plea bargaining to do away cases with weak evidence. Its observable from practice that prosecutors are most likely to grant enormous plea discounts to induce a plea which results into wrongful convictions.

5.3.3 Establish externship programs

Establish an externship program under Clinical Legal Education or as a Pre-enrolment criminal justice service requirement for students after their legal practice to assist in offering pro bono services in plea bargaining camps. This mandatory externship programme in form of a structured practical legal training generates a rotating cohort of supervised legal practitioners in criminal courts at relatively low institutional cost. This programme further brings fresh capacity into the system at a consistent rate.

Further, the ADR Registry's support supervision function would need more funding for this programme, and also advocate for plea bargain week and days at a quarterly level per Region. Therefore, externship program for post graduate law students to provide pro bono assistance during Plea Bargain Weeks will ensuring that even the poorest defendants have basic legal guidance for informed pleas and relieving the burden from State prosecutors.

5.3.4 Develop a database for effective assessments

The Criminal law Division does not have an accessible systematic data collection on Plea Bargain, sentence lengths, conviction rates, victim and community assessment reports, re-offending rates, and the demographic patterns. This would guide in critically examining whether constitutional rights are fully protected and observed in dispensing justice. The process should be integrated into the Electronic Court Case Management Information System or ULII to capture standardised data on every plea bargain application and outcome.

The absence of a systematic empirical data raises makes it impossible to assess whether the plea bargain framework is delivering justice, and whether prosecutorial power is exercised fairly and whether the outcomes are proportionate and just. This also forms a platform for analytical assessment of the achievements and challenges faced by the applicants through tracking jointly published annual statistical reports, participation rates, victim involvement, and quality of representation in order to build public confidence and accountability mechanisms.

However, the same should be balanced with the need for judicial officers and Counsel in plea bargain proceedings to actively manage timelines, and ensure continuity in case handling. Therefore, a dedicated database will enable in assessing the long-term impact of plea bargains on recidivism and victim satisfaction.

5.3.5 Adopt Alternative Justice Systems

Expanding alternative dispute resolution mechanisms and Alternative Justice System i.e. cultural leader, religious leaders. These leaders have the trust of the people at the grass root level, and applicable in all various communities. This can be adopted for specifically minor offences, so that they are not handled by the traditional court system. The judiciary should advocate and focus on the engagement of community leaders and victims during the plea bargain process at all levels. Further, timely hearings, clearer procedural safeguards, and more structured case management systems could help create a more balanced and efficient process. The right to a speedy trial, regular judicial review of detention, and early assessment of evidence are all mechanisms that can help prevent unnecessary incarceration and prolonged delays.

5.3.6 Rollout the program in all courts

The rollout should be expanded and effectively roll out to even Magistrate Courts both in Central other parts of Uganda. The Magistrates Court handles the bulk of criminal prosecutions covering theft, assault, minor drug offences, traffic offences, and related matters would enable resolution of cases at lower level without waiting for committal proceedings, reduce time on remand, reduce the psychological and economic burden of prolonged criminal proceedings, and free judicial resources for cases that genuinely require full trial.

Universal rollout of plea bargain creates an early disposal mechanism at every court level in all parts of Uganda. Empowering a Magistrates Court to conduct plea bargain and accept plea agreements with appropriate judicial oversight for accused persons on remand for minor offences can access resolution without waiting for trial dates that may be months or years away. However, this should be coupled with consistent training of judicial officers, lawyers, and prison authorities. This process should target minor and non-capital offences in accelerate case disposal, and decongest prisons. This same should be handled on a daily basis rather than quarterly or bi-quarterly camps in prisons.

Most importantly, the programme can incorporate restorative justice components that are particularly well-suited to the community and cultural contexts in given various magisterial and High Court jurisdictions. As stated above, Magistrates Courts are situate at sub county level in a district, where jurisdiction for most offences are property crimes, minor assaults, and neighborhood disputes. Plea agreements at that level can include compensation orders, community service, and mediated

restitution arrangements that address the victim's actual harm rather than simply punishing the offender as a retributive measure.

5.4 Suggestions for further Research

There is limited research on prosecutorial powers and discretion. This area has not been explored by many scholars as most of them tend to analyse plea bargaining legal framework and its effects. There is a dearth of research on the power dynamics within the ODPP and how implied undue influence affects vulnerable defendants. Though the process requires both sides to have equal bargaining power and rights, the prosecution exerts more bargaining power which undermines the whole essence of voluntariness due to a some implied undue influence given that most accused persons are vulnerable and poor. The same would also examine whether there is evidence that prosecutorial decisions to offer or withhold plea bargains in high-profile or politically sensitive cases are influenced by considerations external to the merits of the case, and what institutional safeguards would adequately protect the integrity of the process.

Further, there is need to analyse plea bargaining conducted by children in conflict with the law. Given that the Children Act Cap. 59 establishes a separate justice architecture for persons below eighteen years, premised on rehabilitation rather than punishment. These research should examine the mandatory parental or guardian involvement, mandatory independent legal representation, and a specific judicial inquiry calibrated to the juvenile's level of understanding.

Plea bargaining in organized crimes with emphasis on corruption cases, assessing whether plea bargaining in high-level corruption cases undermines the public's perception of justice. Further, the application of plea bargaining in complex corruption and organized crime cases remains under-researched.

Gender and Plea bargain. There is need for a gender based analysis and plea bargain. This should be focused on assessing the adequacy of the protections towards victims more so in sexual related offences, human rights protections and guarantees. This would also address the criminology elements of causes of crime like the aspect of poverty and economic survival aspect and how they influence plea agreements.

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