

# PLEA BARGAINING UNDER GHANAIAN LAW

Plea bargaining refers to a process in the criminal justice system where an accused person negotiates an agreement to relinquish the right to go to full trial in exchange for a more lenient sentence or some other benefit.

For the first time in Ghana's history, comprehensive provisions have been made for plea bargaining arrangements in Ghana's criminal jurisprudence.

It is said that there already exist a few provisions that offered the opportunity for plea bargaining in limited cases which existing provisions include section 239 of the Criminal and Other Offences (Procedure) Act, 1960 (Act 30); section 35 of the Courts Act, 1993 (Act 459); section 71 of the Office of the Special Prosecutor Act, 2017 (Act 959); and section 47 of the Narcotics Control Commission Act, 2020 (Act 1019).

The passage of the Criminal and Other Offences (Procedure) Amendment Bill, 2021, however, ushers into Ghana a new era of plea bargaining.

On Friday, 24th June 2022, Parliament passed the Bill to amend the Criminal and Other Offences (Procedure Act), 1960 (Act 30) to formally incorporate plea bargaining firmly into the administration of justice in Ghana for the first time.

## CRIMINAL AND OTHER OFFENCES (PROCEDURE) AMENDMENT BILL, 2021



Pursuant to the Bill, an accused can enter into Plea negotiations at any time before judgment for the purposes of negotiating with the Attorney General for a plea agreement to reduce an offence charged to a lower offence or withdraw a charge against the person.

Plea bargaining only applies to the trial of any criminal offence except that of persons charged with treason or high treason; Rape; Defilement; Genocide; Robbery; Kidnapping; or Murder.

A plea agreement must provide for:

- a. A proposed sentence or range of sentences to be recommended to the Court;
- b. Payment of compensation by the accused person to a victim of the offence; or
- c. Making of restitution by the accused person.





The court is however barred from participating in plea negotiations.

Before concluding a plea agreement with the other parties, it is a requirement for the Prosecutor to:

- a. inform a victim or complainant or their representatives of the agreement;
- b. permit the victim or the complainant or their representatives to make representations regarding the interests of the agreement; and
- c. take into consideration the nature and circumstances under which the offence was committed, the views of the investigator, the personal circumstances of the accused person, the previous conviction of the accused, if any, the interest of the community; and the interest of justice.

The Attorney-General (AG) of the Republic of Ghana is empowered to authorise the conduct of plea bargaining, generally or in respect of a specified matter.

It is important to note that not all Prosecutors require the AG's consent before concluding a plea agreement. Prosecutors who are not officers of the AG must obtain the consent of the AG before they can conclude a plea agreement.

The Bill provides that plea negotiations can be initiated by the following Persons:

- a. An accused person
- b. Counsel for the accused person
- c. A Prosecutor in charge of the prosecution of an accused person.



Also, a plea agreement must take the following form:

1. It should be in writing
2. It should state the following:
  - a. that the accused person was informed of his rights before agreeing;
  - b. the terms of the plea agreement;
  - c. the relevant facts of the case;
  - d. any admission made by the accused person;
  - e. all the charges to which the accused person has agreed to plead;
  - f. the sentence to be recommended to the court, if any; and
  - g. any restitution to be made or compensation to be paid by the accused person.
3. It should be reviewed by the Accused person.
4. It should be signed by the Prosecutor, accused person and counsel for the accused person if any.

Where the accused person is blind or illiterate or a person with a disability, a person other than the Prosecutor or the investigator must read over and explain to the accused person the contents of the agreement in a language the accused person understands and the person shall certify on the plea agreement that the contents have been read over and explained to the accused person and that the accused person appeared to understand the agreement before executing the agreement.

After the conclusion of a plea agreement, the Prosecutor shall cause the agreement to be filed in court within 7 days. The Court may however admit or reject a plea agreement.

If the Court accepts the plea bargaining agreement, the Court shall call on the accused person to plead to the charge in the plea agreement, record the plea, and convict the accused person where the accused person pleads guilty to a charge.

Where the accused pleads not guilty, the Court must treat the plea as a withdrawal from the plea agreement and make an order for the accused person's trial.

Depending on the outcome of the plea, a judgment delivered on the basis of a plea agreement is final and no appeal shall lie against it. However, a Prosecutor or an accused person may apply to the High Court to set the judgment aside on the ground that the plea agreement was entered into as a result of fraud or misrepresentation on the part of a person other than the person making the application; or is in breach of the rules of natural justice.

The Bill further provides for confidentiality and protection of the plea bargaining process. As such, statements made by an accused person during plea negotiations or in a plea agreement cannot be used for any other than for the plea agreement.

However, a plea agreement can be used in a proceeding to set aside a judgment delivered in accordance with a plea agreement; or for the trial of the accused person for the offence of perjury arising from the plea negotiations and the plea agreement.



This is a welcome legislative step up as it accords with the many changes that criminal jurisprudence has undergone to meet the needs of society and has brought our laws in tune with best international practices.

Some of the benefits of the law include a reduction of the offence charged to a lesser offence, a reduction in punishment for an offence charged or a withdrawal of some of the charges against the accused.

For the State, the benefits include a reduction in the caseload of the courts and prosecutors, saving the state time and money by avoiding protracted trials, decongestion of the prisons due to reduced sentencing and aiding in the reform of convicted people, and the satisfaction of victims of offences through compensation and restitution in addition to the punishment of accused.