A BRIEF HISTORY OF PLEA BARGAINING AND ITS INTRODUCTION AND PRACTICE IN TANZANIA

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ABSTRACT

Plea bargaining, a practice rooted in American and common law traditions, has increasingly influenced criminal justice systems worldwide, including those in civil law countries and international tribunals. It enables negotiated resolutions between the prosecution and the accused, often trading concessions to expedite justice. Advocates highlight its role in reducing court congestion, lowering costs, and promoting efficiency, while critics caution against its potential to undermine fundamental rights. This article traces the historical development of plea bargaining, examines its introduction into the Tanzanian legal system, analyzes its procedural framework and early challenges, and evaluates its evolving role in balancing judicial efficiency with the protection of rights. It argues that, despite initial skepticism, plea bargaining has become a structured and cautiously progressive feature of Tanzania's criminal justice landscape.

Keywords: Plea bargaining, reduced charges, negotiated justice, criminal law, infringement of accused rights, cost-saving, victims of plea bargains.

1. Introduction

Plea bargaining has emerged as a significant component of criminal justice systems worldwide, reshaping traditional approaches to criminal trials. Originally developed within American and common law traditions, the practice has expanded globally, adapting to diverse legal cultures. In Tanzania, plea bargaining was formally introduced in 2019 through amendments to the Criminal Procedure Act and subsequent regulations. Its arrival was met with both enthusiasm and skepticism: while some praised its potential to enhance judicial efficiency, others raised serious concerns about its implications for fundamental rights, such as the presumption of innocence, the right to a fair trial, and protection against self-incrimination.

This article critically examines the introduction and practice of plea bargaining in Tanzania. It explores its historical roots, the rationale for its adoption, the statutory and procedural frameworks governing its application, the initial challenges encountered, and the safeguards implemented to ensure fairness and transparency. Ultimately, the article assesses whether plea bargaining, as practiced in Tanzania, effectively reconciles the pursuit of efficiency with the imperatives of justice and human rights.

2. The History of Plea Bargaining

Plea bargaining has been described as "negotiated justice" or "consensual justice," a concept often seen as contradictory within the criminal justice system.[1] Plea bargaining began in the United States and was later adopted in other jurisdictions. Before the nineteenth century, it was neither a regular nor visible part of criminal practice, as courts generally discouraged guilty pleas.

The emergence of plea bargaining has been attributed to factors such as rising crime rates, limited law enforcement resources, and increasingly busy court dockets. Since 1908, the first year for which federal court statistics are available, the rate of guilty pleas has steadily increased.

There is no precise date marking the origin of plea bargaining in U.S. jurisprudence. Scholars suggest that plea bargaining evolved from the practice of accepting guilty pleas. However, it

[1] Nadia Cantemir, *The Plea Bargain, a Negotiation between the Prosecutor and the Defendant*, 20 *Lex ET Scientia Int'l J.* 156 (2013).

was not until 1970 that the courts began formally addressing plea bargaining cases, notably in *Parker v. North Carolina*[2] and *McMann v. Richardson*.[3] The U.S. Supreme Court emphasized the significance of plea bargaining in the celebrated case of *Santobello v. New York*.[4]

The national implementation of the mandatory United States Sentencing Guidelines in 1989 further encouraged plea bargaining by shifting much of the sentencing discretion from judges to prosecutors. Prosecutors began using sentence adjustments and departures as tools to incentivize defendants to accept plea agreements.[5]

Traditionally, a promise of leniency from a person in authority was seen to invalidate an out-of-court confession. Courts discouraged guilty pleas if they arose from (a) potential capital punishment upon conviction, (b) the accused being unrepresented by counsel, or (c) coerced confessions.[6]

3. Reasons for the Emergence of Plea Bargaining

Proponents of plea bargaining often cite "practical reasons" to justify the practice, highlighting its cost-effectiveness, efficiency, certainty, and the reduction of burdens on the court system. Among the most common justifications are docket pressure and the limited capacity of prosecutors and judges to handle large case volumes.

Public participation in government decision-making is inherently slow and sometimes seen as inconvenient, while governance by decree, although efficient, can be viewed as immoral. In this light, plea bargaining emerges as an efficient and pragmatic solution within criminal justice systems.

The founding fathers of the United States intended for justice to progress slowly and deliberately to uncover the truth.[7] Resistance to plea bargaining is rooted in the concern that it undermines fundamental rights such as the presumption of innocence, the right to a fair and

[2] Parker v. North Carolina (1961) 393 U.S. 28.
[3] McMann v. Richardson (1970) 397 U.S. 759.
[4] Santobello v. New York (1971) 404 U.S. 257. See also United States v. Walker No. 2:17-CR-00010, 2017 WL 2766452, at 7 (S.D.W. Va. 26 June 2017).
[5] Ibid.
[6] Ibid.
[7] *United States v. Walker*, No. 2:17-CR-00010, 2017 WL 2766452, at 9 (S.D.W. Va. June 26, 2017).

public trial, and the protection against self-incrimination guaranteed by the Constitution.[8]

3.1 Plea Bargaining in Nigeria

In Nigeria, plea bargaining is a relatively new practice, formally introduced through legislation in recent years. The Administration of Criminal Law of Lagos State, enacted in 2007, was the first statute to regulate plea bargaining, followed by the Federal Administration of Criminal Justice Act of 2017.

Not everyone favors the practice. Dahiru Musdapher, former Chief Justice of Nigeria, criticized plea bargaining as dubious and alien to Nigeria's judicial traditions, asserting it was "sumptuously smuggled" into statutory law. He argued that plea bargaining amounts to "condemnation without adjudication," echoing the concerns of critics like John Langbein. Musdapher further warned that it penalizes innocent individuals who may plead guilty to avoid judicial delays and offers undue leniency to guilty parties, thereby eroding public trust in the legal system.[9]

Aborisade and Adeleke observe that plea bargaining has shifted the focus from punishment to the recovery of looted funds, especially by Nigeria's Economic and Financial Crimes Commission (EFCC).[10] Echewija adds that justice transcends court rulings, emphasizing that victims' perceptions of fairness are critical to maintaining faith in the penal system — a faith undermined when plea bargains replace convictions, especially in corruption cases.[11]

Osasona notes the financial burden of incarceration: Nigeria spends over N5.5 billion annually on prison maintenance[12], while the U.S. spends approximately $80 billion per year.[13] The high costs of incarceration have fueled the adoption of cost-saving measures like plea bargaining.[14]

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[8] Albert W. Alschuler, "The Prosecutor's Role in Plea Bargaining," *University of Chicago Law Review*, Vol. 36, Iss. 1, Article 3 (1968).
[9] *Vanguard* Newspaper, March 8, 2012.
[10] Richard A. Aborisade & Oladele A. Adeleke, 'One Rule for the Goose, One for the Gander? The Use of Plea Bargaining for High Profile Corruption Cases in Nigeria,' 12 *AFRREV* (2) Serial No. 50, April 2018, 1-12, ISSN 1994-9057 (Print), ISSN 2070-0083 (Online).
[11] S. P. Echewija, "Plea Bargaining and the Administration of Criminal Justice in Nigeria: A Moral Critique," *IAFOR Journal of Ethics, Religion & Philosophy*, 3(2), https://doi.org/10.22492/ijerp.3.2.03, accessed 30 March 2023.
[12] T. Osasona, "Time To Reform Nigeria's Criminal Justice System," *Journal of Law and Criminal Justice*, 3(2), 73-79 (2016).
[13] *The Economist*, 2016.
[14] Ibid.

Ashworth and others argue that if punishment is proportionate to the offense, victims and society are likely to feel satisfied, reducing the risk of private retaliation.[15] Where the public perceives plea bargains as overly lenient, however, a moral vacuum can arise, especially evident in Nigeria's corruption cases.[16]

3.2 Some Views on Plea Bargaining from South Africa

In South Africa, plea bargaining is viewed more favorably. During the reconciliation process following apartheid, Alex Boraine, co-chair of the Truth and Reconciliation Commission, emphasized that the purpose of criminal justice systems extends beyond determining guilt or innocence; they are also instrumental in building safe and peaceful societies. Boraine argued that accepting responsibility for serious crimes can have a profound, transformative impact on both perpetrators and victims.[17]

3.3 The U.S. Experience with Plea Bargaining

In the United States, depending on state law, courts have the authority to accept or reject plea bargains, but judges are not involved in the negotiation process itself. Before accepting a plea, courts must ensure that it is made voluntarily, without coercion or improper promises, and that the defendant fully understands the charges and consequences. There must also be a factual basis for the plea, verified by the court.

In *United States v. Walker*[18], the court warned against transferring criminal adjudications from public courtrooms to prosecutors' offices purely for expediency, noting that doing so could undermine public confidence in the justice system, particularly amid crises like the opioid epidemic.[19]

While U.S. courts generally support plea bargaining for its efficiency in case resolution, their role remains supervisory: they may veto plea agreements but cannot actively negotiate them, to maintain judicial impartiality. This principle is reinforced in cases such as *State v.*

[15] Andrew Von Hirsch & Andrew Ashworth, *Proportionate Sentencing: Exploring the Principles* (Oxford University Press, 2005), 102.
[16] Sule Peter Echewija, "Plea Bargaining and the Administration of Criminal Justice in Nigeria," *IAFOR Journal of Ethics, Religion & Philosophy*, 3(2), 35-47 (2017).
[17] Alex Boraine, *A Country Unmasked: Inside South Africa's Truth and Reconciliation Commission* (2001).
[18] *United States v. Walker*, 423 F. Supp. 3d 281, 282 (S.D.W. Va. 2017).
[19] Ibid.

Buckalew[20] and *State v. Oliver*.[21]

4. Plea Bargain in Tanzania

Plea bargaining in Tanzania was officially introduced by the Written Laws (Miscellaneous Amendments) Act No. 4 of 2019.[22] The Act was assented to by the President of the United Republic on September 19, 2019. Plea bargaining in Tanzania is a legal process that allows an accused person and the prosecution to negotiate an agreement to resolve a criminal case without proceeding to full trial.

Generally speaking, the practice of plea bargaining existed long before its formal introduction, as rudimentary forms were observed in some murder and economic cases triable by the High Court. In such cases, accused persons would agree to plead to lesser offences such as manslaughter in exchange for more lenient sentences. Judge Mlacha underscores this position, noting that plea bargaining has been practiced even in tribal settings, especially among the Maasai and Kuriya communities, for a very long time.[23]

4.1 Challenges During the Inception Period of Plea Bargain in Tanzania (2019–2021)

Plea bargaining began in a haphazard manner, as there were no rules of procedure or practice to guide the implementation of the provisions of the Act. It was left to the absolute discretion of the prosecuting authority to determine how plea agreements were reached, resulting in a process that lacked transparency.

One victim recounted the horrors and torment he endured during this period, stating that after being confined in remand prison for two years for a non-bailable offence[24], he was offered a plea bargain on the condition that he pay a substantial sum of money in exchange for dropping a money laundering charge.[25]

Plea bargaining in Tanzania significantly changed the relationship between prosecutors and accused persons. During this early period, arrangements to enter plea agreements were dictated

[20] State v. Buckalew 561 P.2d 289 (Alaska 1977).
[21] State v. Oliver 160 N.J. 123 (1999).
[22] Act No. 4 of 2019.
[23] *Vietel v. Republic*, High Court of Tanzania, Criminal Appeal No. 55 of 2021, Dar es Salaam (unreported).
[24] See s. 148 of the *Criminal Procedure Act*, Cap. 20.
[25] Act No. 4 of 2019.

by the Office of the Director of Public Prosecutions (DPP). Furthermore, as in many other countries, courts in Tanzania did not participate in the plea bargaining process; they only became involved after the prosecution and the accused had reached a written agreement.

In response to public outcry, the Chief Justice enacted the Criminal Procedure (Plea Bargaining Agreement) Rules, 2021, GN No. 180 of 2021, published on February 5, 2021. These rules were intended to address the complaints raised by victims regarding the plea bargaining process. However, the scope of the rules remains limited because "a broad range of practices relating to plea bargaining take place outside the court proceedings."[26]

Langebein shares a similar view, arguing that all aspects of plea bargaining are vested between the public prosecutor and the accused, leaving courts with a very limited role.[27]

Types of bargaining include charge bargaining, sentence bargaining, facts bargaining, and counts bargaining.[28]

4.2 Challenges of Plea Bargain

Since its inception, plea bargaining has been viewed with suspicion. Its operation has polarized legal scholars: while some uphold it in high esteem, others argue it contravenes long-standing principles of criminal jurisprudence.

Langbein defines plea bargaining as a process where "the prosecutor induces a criminal accused to confess guilt and waive his right to trial in exchange for a more lenient criminal sanction than would be imposed if the accused were adjudicated guilty following trial." [29]

The standard of proof is altered in plea bargaining, changing the landscape of fair trial principles. Once a defendant accepts a plea bargain, they automatically waive the presumption of innocence. One can argue that plea bargains are not truly voluntary, as defendants may accept them merely to avoid harsher punishment — akin to agreeing to hand over money to a

[26] Ibid, 2.
[27] John L. Langebein, "Torture and Plea Bargaining," 46 *U. Chi. L. Rev.* 3, 7, 8, 9, 12 (1978).
[28] *Plea Bargaining Guidelines*, National Prosecution Service (NPS), June 2022; see also *Plea Bargaining in Tanzania*, lawficattorneys, March 23, 2022; also *FB Attorneys*, *Plea Bargaining Rules Now in Force*, 10 February 2021.
[29] Ibid (n. 29).

robber to spare one's life.[30]

Consequently, plea bargaining results in the accused forfeiting their right to confront accusers and the privilege against self-incrimination and torture.[31] The criminal justice system, which originally created safeguards against such abuses, finds these safeguards compromised and inadequate in the context of plea bargaining.[32]

Ron Allen confirms this outcome, noting that plea bargaining forces the accused to concede guilt rather than requiring the accuser to prove it. Another significant challenge is the diminished role of advocates or attorneys representing accused persons.[33]

Albert Alschuller elaborates on this point, stating:

> *Plea bargaining leads lawyers to view themselves as administrators rather than as advocates; it subjects them to serious financial and other temptations to disregard their clients' interests, and it diminishes confidence in attorney-client relationships that can give dignity and purpose to the legal profession.*[34]

4.3 Consequences of Plea Bargaining

Section 194B of the Criminal Procedure Act[35] provides that once a plea-bargaining arrangement has been agreed upon:

- (a) The public prosecutor may charge the accused with a lesser offence, withdraw other counts, or take any other appropriate measures depending on the circumstances of the case.

- (b) The accused may enter a plea of guilty to the offence charged, to a lesser offence, or to a particular count or counts in a multiple-count charge, in exchange for the

[30] Ibid.
[31] Isabel Ortiz, "Plea-Bargaining and the Effects of Misdemeanor Convictions: A Study of the Flagstaff Arizona Municipal Court" (Order No. 13895237), ProQuest Dissertations & Theses Global (2019), 2299736459, accessed 30 March 2023, http://turing.library.northwestern.edu/login.
[32] See Langebein (n. 28).
[33] R. Allen et al., *Criminal Procedure: Adjudication and Right to Counsel*, Wolters Kluwer, New York (2020), 27.
[34] Albert W. Alschuler, "Implementing the Criminal Defendant's Right to Trial: Alternatives to the Plea-Bargaining System," 50 *U. Chi. L. Rev.* 931, 932-936, 1048-1050 (1983).
[35] *Criminal Procedure Act*, Cap. 20 (1985).

withdrawal of other counts.

- (c) The accused may be ordered to pay compensation, make restitution, or forfeit proceeds and instrumentalities used to commit the crime.

5. Plea Agreement in Tanzania

The Criminal Procedure Act, as amended by the Written Laws (Miscellaneous Amendments) Act[36], defines a "plea agreement" as an agreement entered between the prosecutor and the accused in a criminal trial, in accordance with sections 194A, 194B, and 194C.

Section 194A of the Criminal Procedure Act provides:

- (1) A public prosecutor, after consulting with the victim or investigator where circumstances permit, may at any time before judgment enter a plea-bargaining arrangement with the accused and their advocate, or if unrepresented, with a relative, friend, or other legally competent person.

- (2) The accused or their advocate, or the public prosecutor, may initiate a plea bargain and must notify the court of their intention to negotiate a plea agreement.

- (3) The court shall not participate in plea negotiations between the prosecutor and the accused.

- (4) Where prosecution is undertaken privately, no plea bargain may be concluded without the written consent of the Director of Public Prosecutions (DPP).

Thus, the plea bargaining process can be initiated when:

- (i) A criminal case is pending before the court;

- (ii) The prosecutor has not yet closed their case;

- (iii) After the prosecution has closed its case, provided written approval is obtained from the DPP.

[36] Act No. 4 of 2019.

5.1 Requirements of Plea Agreement

Parties to a plea-bargaining arrangement must not enter into agreements haphazardly. Section 194C prescribes that a plea agreement must:

- (a) Be in writing, witnessed by the accused's advocate, or if not represented, by a relative or legally competent person.
- (b) State fully the terms of the agreement, the substantial facts of the matter, and any admissions made by the accused.
- (c) Be read and explained to the accused in a language they understand.
- (d) Be accepted by the accused.
- (e) Be signed by the prosecutor, the accused, and the accused's advocate (or other legal representative).

Consent of the DPP or an officer authorized in writing by the DPP is mandatory prior to entering into a plea agreement.[37]

6. The Rationale for Plea Bargaining

Plea bargaining is a crucial mechanism in the criminal justice system, designed to provide benefits for all parties involved. For the accused person, it offers the possibility of pleading guilty to a lesser offence or obtaining a reduced sentence, thus mitigating the consequences of a more severe conviction. For the prosecution, plea bargaining ensures the efficient disposal of cases, conserving valuable time and resources that would otherwise be spent on lengthy trials. It also allows the court system to manage congested dockets, enhancing overall judicial efficiency. For victims, plea bargaining may expedite justice, providing quicker resolutions and, in some cases, opportunities for compensation.

Victory Attorneys, a law firm based in Tanzania, views plea bargaining as a significant step towards addressing case backlogs, decongesting prisons, and improving the overall administration of justice. The firm notes that it enables the accused to secure lesser sentences

[37] *Criminal Procedure Act*, Cap. 20 (1985).

while providing the State with a faster resolution of criminal cases. However, they emphasize that the practice must be applied carefully to avoid injustices, underscoring the importance of fair procedures and accountability.[38]

Despite these advantages, the implementation of plea bargaining in Tanzania has faced some challenges, particularly since its introduction in 2019–2020. There have been concerns about limited public awareness, the lack of clear guidelines, and the potential for misuse. Critics argue that, although plea bargaining is seen as a tool for enhancing efficiency, it may sometimes lead to unjust outcomes. Specifically, there is a concern that innocent individuals may be coerced into pleading guilty to avoid the uncertainty of prolonged trials, thereby compromising the fairness of the justice system. The practice, while improving efficiency in a resource-constrained legal system, raises important questions about the preservation of fundamental rights, the risk of coercion, and the potential for miscarriages of justice.

7. Procedure for Registration of Plea Agreements

Under Section 194E of the Criminal Procedure Act (CPA), once a plea agreement has been reached between the prosecution and the accused, it must be presented to the court for registration. The procedure ensures transparency and safeguards the integrity of the criminal justice system. The key steps in this process are as follows:

- **Written Agreement**: The plea agreement must be in writing and signed by both the accused and the prosecution.
- **Judicial Examination**: Upon presentation of the agreement to the court, the judicial officer must examine the accused to ensure that the agreement was entered into voluntarily, without coercion, inducement, or threat.
- **Understanding of Rights**: The court must confirm that the accused fully understands the rights being waived by entering into the plea agreement. This includes the right to a full trial, the presumption of innocence, and the burden of proof, which rests with the prosecution.[39]

If the court is satisfied that the agreement was made voluntarily and with full understanding, it

[38] *Victory Attorney's* website, accessed 30 March 2023.
[39] *Criminal Procedure Act*, Cap. 20 (1985).

will register the plea agreement and proceed to convict the accused based on the plea. If the court is not satisfied, it will reject the agreement, and the case will proceed as though the plea bargain had not been proposed.

The CPA also specifies certain offences that are excluded from plea bargaining, including serious crimes such as sexual offences, terrorism, and trafficking in narcotic drugs. The registration process is critical in ensuring that plea bargaining is carried out fairly, with appropriate safeguards to protect the rights of the accused and the integrity of the justice system.

8. The Criminal Procedure (Plea Bargaining Agreement) Rules, 2021

The procedures for plea bargaining in Tanzania are further detailed in the Criminal Procedure (Plea Bargaining Agreement) Rules, 2021, issued under Government Notice No. 180 of 2021. These rules provide a comprehensive framework for plea negotiations, ensuring that the practice is conducted transparently and in accordance with the law.

Rule 3(1) specifies that plea bargaining is permitted for all offences, except for the following:

- Offences triable only by the High Court;
- Offences under the Economic and Organised Crime Control Act, unless consent is granted;
- Offences related to sexual violence or offences against children;
- Serious offences against the State.

Rule 4(1) outlines the key stages in the plea bargaining process, as follows:

1. The accused must submit a notice of intention to plea bargain to the court, with a copy sent to the prosecution.
2. The prosecution responds, indicating their willingness or unwillingness to negotiate.
3. Upon mutual agreement, the parties proceed with negotiations.
4. If an agreement is reached, it is reduced to writing and submitted to the court for

registration.

Additionally, the rules permit plea agreements to involve reduced charges, lighter sentences, or cooperation with the prosecution in exchange for leniency. Compensation to victims can also be included, provided that the agreement is negotiated between the accused and the victim, and is endorsed by the prosecutor.[40] The rules aim to ensure that the plea bargaining process is fair, transparent, and in the best interest of justice.

9. Interests to Be Taken into Account in Plea Bargain

Rule 6(1) of the Criminal Procedure (Plea Bargaining Agreement) Rules, 2021[41], emphasizes the need for a balanced approach in plea negotiations. The prosecution is required to consider the interests of the victim, the community, and the criminal justice system as a whole. To ensure informed decision-making, the prosecution must disclose all material facts to the accused, subject to any limitations related to the protection of sensitive information or matters affecting State security.

In addition to these disclosures, the prosecutor must evaluate several factors before entering into a plea agreement, including the nature and circumstances of the offence, the criminal history of the accused, and the harm caused to the victim. The broader interests of the community must also be considered, ensuring that the plea bargain aligns with the public interest and upholds justice.

The rules stipulate that negotiations must be completed within thirty days from the date the court is notified of the intention to negotiate, unless the court grants an extension for good cause. This time frame ensures efficiency while allowing for thorough consideration of all relevant factors, making the plea bargaining process fair and transparent.

10. Issue of Compensation to Victims

Under the plea bargaining framework, compensation to victims may be included as part of the plea agreement. However, Rule 7(3) of the Criminal Procedure (Plea Bargaining Agreement) Rules, 2021, establishes that any compensation proposal requires endorsement by the prosecution to become binding. While the accused and the victim may agree on compensation,

[40] Ibid.
[41] Ibid.

the prosecutor has the discretion to assess and approve the terms of compensation to ensure that they align with the interests of justice and public policy.

This discretionary role of the prosecution is crucial to prevent agreements that may be unfair or undermine the integrity of the criminal justice system. The prosecutor's evaluation ensures that the proposed compensation adequately addresses the harm caused by the offence, serving both the interests of the victim and the broader community. By including victim compensation as part of the plea bargain, the process aims to balance the rights of the accused with the need to provide justice and redress for the victim.

11. Accused's Safeguards and Waiver

The plea bargaining process is designed to safeguard the constitutional rights of the accused. Before accepting a plea agreement, the court must ensure that the accused is fully aware of their rights and the consequences of waiving them. Specifically, the accused must be informed of:

- The right to a full trial.
- The right to be presumed innocent until proven guilty.
- The right to cross-examine prosecution witnesses.
- The right to call defense witnesses.
- The prosecution's burden to prove the case beyond a reasonable doubt.
- The court's sentencing powers, which are not limited by the plea agreement.

Additionally, the court must confirm that the accused knowingly and voluntarily waives these rights. This includes ensuring that the plea agreement is entered into without coercion or undue influence, and that the accused understands the implications of their decision. These safeguards are essential to protect the fairness and integrity of the justice system, ensuring that the plea bargaining process remains transparent, voluntary, and just.

12. Waiver of Accused's Rights

Once the court is satisfied that the plea agreement has been entered into freely, voluntarily, and with full understanding, the accused's constitutional rights related to trial, cross-examination,

and defense are deemed waived. This includes the right to a full trial, the right to remain silent, and the right to challenge the prosecution's evidence through cross-examination and the presentation of defense witnesses.

If the court rejects the plea agreement for any reason, it must refer the case to a different magistrate or judge to maintain impartiality in the subsequent trial. Furthermore, any statements or discussions made during the plea negotiations cannot be used as evidence against the accused in the trial. This ensures that the plea bargaining process remains fair and that the accused's rights are protected, even in the event that the agreement is not accepted.

13. Conviction and Sentencing by the Court

Once a plea agreement is registered, the court may convict the accused based on the admissions made in the agreement. However, sentencing remains within the discretion of the court. The court is not bound to impose the specific sentence agreed upon by the parties, although it may consider and give effect to their recommendation if it deems appropriate.

It is important to note that either party may withdraw from the plea agreement before the court passes sentence.[42] If this occurs, the case will proceed to trial before a different judicial officer, and any admissions made during the plea negotiations will not be admissible at trial. This ensures that the integrity of the judicial process is preserved, and that the accused's rights are safeguarded throughout the process.

Rules 20 and 21 of the 2021 Plea Bargaining Rules reinforce these protections, ensuring that the final conviction and sentence are fair and in accordance with the law, including ensuring any compensation agreed upon is implemented properly.

14. Conclusion

Plea bargaining has become a pivotal feature of Tanzania's criminal justice system, aimed at streamlining legal proceedings and ensuring timely resolutions. It offers a mechanism through which both the prosecution and the accused may reach mutually acceptable outcomes, often trading concessions to avoid protracted trials. In this process, the accused may agree to plead guilty to a specific offence or cooperate with the prosecution in exchange for concessions, such

[42] Rule 19 of the *Criminal Procedure Rules* (2021).

as a more lenient sentence or the withdrawal of additional charges.

Initially, when plea bargaining was first introduced in Tanzania in 2019, it was perceived with deep suspicion—associated with corruption, financial exploitation, and the erosion of fundamental rights. The concept appeared dramatically opposed to traditional notions of justice, provoking skepticism about its impact on fairness, the presumption of innocence, and the right to a fair trial. However, Tanzanian law has since evolved, and the practice now operates within a structured legal framework that seeks to balance the efficiency of the criminal justice system with the protection of the rights of the accused.

Plea agreements are governed by Sections 194A, 194B, and 194C of the Criminal Procedure Act and the Criminal Procedure (Plea Bargaining Agreement) Rules, 2021. These provisions emphasize voluntary participation, informed consent, judicial oversight, and the requirement for a factual basis to support any guilty plea. The court retains the discretion to accept a defendant's plea only if it is made knowingly, intelligently, and voluntarily—without coercion or undue influence—and if the accused fully understands the nature of the charges and the consequences of pleading guilty.

Despite the progress made in regulating plea bargaining, challenges remain. Ensuring that all parties, particularly accused persons, fully understand their rights and the implications of entering a plea agreement is crucial. Resistance continues to stem from concerns about possible abuses, including undue pressure on defendants to plead guilty and the undermining of constitutional safeguards. Therefore, ongoing judicial vigilance, effective legal education, and transparency are essential to preserving the delicate balance between promoting efficiency and upholding fairness in criminal proceedings.

As plea bargaining continues to evolve in Tanzania, its long-term success will depend on maintaining strict safeguards that guarantee justice, accountability, and the protection of human rights. Properly managed, plea bargaining can serve not only as a tool for judicial efficiency but also as a legitimate mechanism for delivering justice without compromising fundamental rights.